

PRE-BUDGET MEMORANDUM - 2019

DIRECT TAXES AND INTERNATIONAL TAXATION



THE INSTITUTE OF CHARTERED ACCOUNTANT OF INDIA

NEW DELHI



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PRE-BUDGET MEMORANDUM – 2019 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 - 2019 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 2019-20.
- 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

PART A

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



CHAPTER I

PRELIMINARY



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
1.	Section 2(42A) – Reduction in holding period in case of immovable property, being land or building or both, to qualify as long-term capital asset – Consequential amendments to be made in sections 54, 54B, 54D and 54F	<p>The Finance Act, 2017 amended section 2(42A) so as to reduce the period of holding from the existing 36 months to 24 months in case of immovable property, being land or building or both, to qualify as long-term capital asset. The same is done to promote the real estate sector and to make it more attractive for investment.</p> <p>Issue</p> <p>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.</p>	<p><i>It is suggested that consequential amendments may be made in sections 54, 54B, 54D & 54F so as to enable the holding period of the new asset purchased to be reduced to 2 years from 3 years in case of land and/or building.</i></p> <p>(SUGGESTION FOR IMPROVING TAX COLLECTION)</p>



Chapter III

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
2.	Section 10(12A) – Extending the benefit of tax-free withdrawal from NPS to non-employee subscribers under section 10(12A) – Similar amendment may also be made in section 10(12B)	<p>For A.Y. 2018-19, section 10(12A) provides for an exemption of upto 40% of the total amount payable to an employee contributing to the NPS on closure of his account or on his opting out the scheme. Further, in cases of partial withdrawal from NPS, section 10(12B) provides for exemption of upto 25% of contributions made by an employee. These exemptions were, however, not available to non-employee assessee contributing to NPS.</p> <p>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.</p> <p>However, the Finance Act, 2018 does not contain a similar amendment in respect of benefit of exemption under section 10(12B), consequent to which such benefit of exemption in case of partial withdrawal continues to be restricted to employees alone.</p> <p>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.</p>	<p><i>It is suggested that the amendment as made in section 10(12A) may also be made in section 10(12B) thereby extending the benefit of exemption in case of partial withdrawal to non-employee subscribers as well. The said amendment would also be in line with the intention of the legislature to provide a level playing field to both types of subscribers to NPS.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
3.	Section 10(13) - Payment from approved superannuation fund	<p>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.</p> <p>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</p>	<p><i>Section 10(13) may be amended to exempt commuted value received by an employee from the superannuation corpus standing to his credit at the time of voluntary retirement, by including the words “or otherwise” in line with section 10(10AA) of the Income tax Act, 1961.</i></p>



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Sr. No	Section	Issue/Justification	Suggestion
		<p>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.</p> <p>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.</p>	<p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
4.	<p>Section 10(23C) - Mandatory application of income by charitable trusts/institutions</p>	<p>Application of income is mandatory by charitable trusts/institutions including those enjoying benefits under section 10(23C) to its objects, subject to accumulation of not more than 15% of its income including income from voluntary contributions. Similar provisions under section 11(1) read with section 12(1) exclude 'corpus donations' (voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution) from the mandatory requirement of application of the income. No such provision has been made in section 10(23C). This will compel the Institutions coming within the scope of section 10(23C) to apply even their corpus donations to the day to-day activities for getting the exemption. This will be prejudicial to them because they cannot build up the corpus fund.</p>	<p>Section 10(23C) should be amended to specifically exclude 'corpus donations' from the requirement of mandatory application of income by such trusts / institutions.</p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
5.	<p>Section 10(23C) - Annual Receipts</p>	<p>Under section 10(23C)(iiiad) and (iiiiae) of Income-tax Act, it is provided that the income of University/Educational institutions/hospitals/ other institutions specified therein will be exempt provided they comply with the conditions stipulated therein. Also, it is provided that "aggregate annual</p>	<p>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</p>



Sr. No	Section	Issue/Justification	Suggestion
		<p>receipts” of such institutions shall not exceed the amount of annual receipts as may be prescribed. Though annual receipts have been prescribed as Rs.1 crore vide Rule 2BC of Income-tax Rules, the word “annual receipts” have not been defined in the Income-tax Act.</p> <p>It is not clear as to whether:</p> <p>(a) for computing “annual receipts” only the receipts of such institutions from educational/hospital activities alone are to be considered each year;</p> <p>(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”;</p> <p>(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.</p>	<p>way movable assets, land, hospitals/educational equipment, sale consideration received on disposal of land, shares or other movable property, hospital/educational equipment etc.</p> <p>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.</p> <p>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</p>
6.	Section 10(23C) - Rationalisation of Provisions	<p>The 15th Proviso to Section 10(23C) states that application for obtaining approval under this section shall be made on or before 30th September of the relevant assessment year from which the exemption is sought. For example, if an institution seeks approval for Financial year 2017-18, it will have to apply up to 30th September 2018.</p> <p>Further, the 9th proviso to Section 10(23C) states that order granting approval or rejection shall be passed within 12 months from the end of month in which such application was received.</p> <p>In view of this proviso, in respect of applications received on 30th September 2018, the order has to be passed on or before</p>	<p>It is suggested that:</p> <ul style="list-style-type: none">• Such application should be allowed to be made at any time during the financial year for which exemption is sought even if the annual receipts have not exceeded or is not expected to exceed the limit of Rs 1 crore.• Time limit for granting approval may be reduced from 12 months to “within 4 months from the end of the month in which application has been



Sr. No	Section	Issue/Justification	Suggestion
		<p>30th September, 2019. So the status of the application is not known till next 12 months i.e. for 2 financial years.</p> <p>If such institution is not granted approval as on 30th September 2019 then it will have to pay income tax for Financial year 2017-18 and 2018-19. Resultantly, the charitable institution will have to face heavy tax burden.</p> <p>At the same time, it is to be noted that ITD doesn't accept such application before close of financial year i.e. application for F.Y. 2017-18 cannot be made on or before 31st March 2018, though there is no such restriction under the Act.</p>	<p><i>filed", so that any institution should be well aware of its status before due date of filing its income tax return.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
7.	Section 10(23FB) - Tax exemption for Alternative Investment Funds – Venture Capital Funds	<p>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".</p> <p>The sectoral restriction stands removed in Union Budget, 2012 which was a welcome move. However, the tax exemption still remains limited to "any income of a VC company or VC fund from investment in a venture capital undertaking". Keeping in mind the growing importance of VC funds in infrastructure and also in other important sectors of our economy, the previous wording of "set up to raise funds for investment" needs to be restored in place of "from investment" under Section 10(23FB).</p> <p>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</p>	<p><i>It is suggested that section 10(23FB) be reworded as follows:</i></p> <p><i>"Any income of a venture capital company or venture capital fund from investment set up to raise funds for investment in a venture capital undertaking."</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



Sr. No	Section	Issue/Justification	Suggestion
		necessary to evaluate the project viability as well as to render other services for the projects in which investments are made. Restricting the wording to “any income of a VC company or VC fund from investment” severely restricts the tax exemption thus affecting the commercial viability of the VCC / VCF.	
8.	Section 10(32) - Income of minors - to increase exemption limits	At present income of minors included in the hands of parents is exempt to the extent of Rs.1,500/- for each minor. The average expenditure to meet cost of a minor's education/health/living expenses which has gone up considerably in recent years, limit of Rs.1,500/- fixed is woefully inadequate.	<i>It is suggested that this should be raised to at least Rs. 5,000/- for each minor child.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>



CHAPTER IV

COMPUTATION OF TOTAL INCOME



PART A-SALARIES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
9.	Deduction to salaried assesses - Payment for notice period	<p>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.</p> <p>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.</p>	<p><i>It is suggested that said anomaly may be resolved and appropriate provisions be inserted so that income from notice period pay is chargeable in the hands of ex-employer and deduction of the amount of notice period pay paid be made available to the employee as he has not effectively received that income (unless reimbursed by the new employer).</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



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

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



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



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



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



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Sr. No	Section	Issue/Justification	Suggestion
		<p>The CBDT while issuing Circular No. 1/2013 dated 17.01.2013 in relation to tax benefit under section 10AA/10A/10B stated that mere change of ownership under a slump sale of business would not affect the entitlement to the tax benefit under section 10AA or 10A or 10B.</p> <p>Subjecting slump sale between parent and wholly owned subsidiary and vice-versa to the anti-abuse provisions under section 32AC puts such slump sale on an unequal footing to intra-group mergers, demergers even though there is no abuse of law involved.</p>	
14.	Section 35D - Amount paid for increase in authorized capital	<p>Currently, amount paid for increase in authorized capital is not allowed as deduction.</p> <p>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.</p> <p>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.</p>	<p><i>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.</i></p> <p><i>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>
15.	Due date for crediting the contribution of employees to the respective fund – Section 36(1)(va) read with Section 2(24)(x)	<p>Section 2(24)(x) of the Act, inter alia defines “Income”, to include any sum received by the employer from its employees’ as contribution towards certain specified funds. However, deduction for such income are available under section 36(1)(va), provided that the contributions collected by the employer are credited to the respective fund within the due date specified under the relevant legislation of</p>	<p><i>It is suggested that the due date defined under Explanation to Section 36(1)(va) shall be amended and accordingly the due date shall mean the due date for filing return of income under section 139(1), thereby</i></p>



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Sr. No	Section	Issue/Justification	Suggestion
		<p>the fund.</p> <p>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.</p> <p>Further, the Employer's contribution made after the due date specified under the relevant social security legislation but deposited within the due date of filing return of income are allowed under the Act by virtue of Section 43B.</p> <p>It may be noted that the statutory laws under the respective contribution schemes have provisions to levy interest, penalty etc. for the delayed payment. Hence, disallowing a genuine business expenditure merely on the ground that it has been paid after relevant due date is not justified.</p> <p>On the subject there have various conflicting judgments. Where Hon'ble Uttarakhand High Court and Hon'ble Delhi High Court have considered the due date under section 36(1)(va) to be read in sync with the due date mentioned in section 43B, Hon'ble Gujarat High Court has given a different view.</p> <p>To remove the hardship caused to the assessee and to reduce avoidable litigations, it is suggested that deduction be allowed on the employee's contribution made before the due date of filing the return of income.</p>	<p><i>bringing it at par with the due date specified for the Employer's contribution under Section 43B of the Act.</i></p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>
16.	Section 40(b)(v) – Raise in	Currently, the remuneration to working partners is allowed at Rs. 1,50,000 or 90 percent of book profits whichever is more	<i>It is suggested that limit for allowable remuneration for each</i>



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Sr. No	Section	Issue/Justification	Suggestion
	allowable expenses in the form of remuneration to working partner	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.	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.
17.	Explanation 5 to Section 43(1) – “building” to be replaced by “assets”	Section 43 deals with actual cost. There are 14 explanations provided in section 43(1) describing the method of computation of actual cost of asset under different situations. Explanation (5) deals with actual cost in respect of building previously used by the assessee for certain purposes & subsequently brought into business or profession. According to this explanation, the building so brought in should be notionally depreciated & the resultant WDV as at the date of introducing the building into business shall be deemed to be the actual cost. While all other explanations use the term “asset” or “capital asset”, Explanation 5 uses the term “building” instead of “assets”. It has therefore been held that this explanation would not apply to all other assets other than building.	In line with the other explanations to section 43(1), it is suggested that the term “Assets” be used instead of the term “building” in Explanation 5 to section 43(1). (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
18.	Section 43D - Taxability of interest on Non-Performing Asset	Section 43D of the Act provides that income by way of interest in relation to bad and doubtful debts of a public financial institution or a scheduled bank or a co-operative bank or a state financial corporation or a state industrial investment corporation or a housing finance company is chargeable to tax in the previous year in which it is credited to the profit and loss account or, as the case may be, in which it is actually received. The reason for introduction of section 43D	<u>Amendment to section 43D</u> In light of the above, an amendment should be made to section 43D of the Act, to extend the benefit of section 43D to “Non-Banking Financial Company” (other than housing finance companies which are



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Sr. No	Section	Issue/Justification	Suggestion
		<p>in the Act, was that interest from bad and doubtful debts in the case of banks and financial institutions is difficult to recover and taxing such income on accrual basis reduces the liquidity of the bank without actual generation of income. Therefore, with a view to improve the viability of banks and financial institutions, the provisions of section 43D were introduced w.e.f. AY 1992-93.</p> <p>Subsequently with a view to boost the viability of housing finance companies and to provide a boost to the housing sector, w.e.f. AY 2000-01, the benefit of the said provision was also extended to housing finance companies (a category of NBFCs) which are regulated by the National Housing Bank.</p> <p>Further, w.e.f. AY 2018-19, to provide a level playing field to co-operative banks, the provisions of section 43D have recently been rationalised to extend the benefit of the said provisions to co-operative banks as well.</p> <p>While NBFCs (other than housing finance companies which are already covered by the provisions of section 43D) have not been specifically covered by the aforesaid provisions, various judicial precedents¹ have held that interest income on NPA's under the provisions of the Act should be chargeable to tax only on receipt basis following the principle of real income. However, in absence of specific provisions under the Act, this matter has constantly been a subject matter of litigation.</p>	<p><i>already covered by the provisions of section 43D), whereby interest income on non-performing assets should be taxed only on receipt basis.</i></p> <p><u>Amendment to Rule 6EA of Income-tax Rules ('the Rules')</u></p> <p><i>Section 43D refers to the income by way of interest in relation to such category of bad and doubtful debts as may be prescribed in Rule 6EA of the Rules having regard to guidelines issued by RBI in relation to such debts.</i></p> <p><i>Accordingly, consequential amendment should also be made in Rule 6EA of Rules, which provides special provision regarding interest on bad and doubtful debts of banks and financial institutions, to include the "Non- Banking Financial Company" as well.</i></p> <p><u>Amendment to section 43B</u></p>

¹ UCO Bank vs. CIT [1999] 237 ITR 889 (SC); CIT v. Vasisth Chay Vyapar Ltd [2011] 330 ITR 440; CIT v. India Equipment Leasing Co. Ltd. [2007] 293 ITR 350 (Mad); CIT v. Elgi Finance Ltd., [2007] 293 ITR 357 (Mad); Ted Co Investment and Financial Services (P.) Ltd. v. DCIT [2003] 87 ITD 298 (Delhi)



Sr. No	Section	Issue/Justification	Suggestion
		<p><u>Impact of Income Computation and Disclosure Standards ('ICDS') on taxation of Interest on NPAs</u></p> <p>The CBDT has recently notified the Income Computation and Disclosure Standards ('ICDS') which are effective from AY 2017-18. As per ICDS IV on Revenue Recognition, interest income shall be recognised on time proportionate basis i.e. on accrual basis.</p> <p>This has been further clarified by the CBDT in its recent FAQs issued on 23 March 2017, which provides clarification on various aspects of applicability of ICDS. As per Question 13 of the FAQ, it has been clarified that interest accrues on time basis. Further, as per Question 2 of the FAQ, CBDT has also clarified that provisions of ICDS shall prevail over past judicial precedents (thus overriding the real income principle laid down by various judicial precedents). However, recently it has been held by the Hon' ble Delhi HC in the case of Chamber of Tax Consultants v. Union of India, dated 8.11.2017 that, <i>inter alia</i>, ICDS cannot supercede past judicial decisions.</p> <p>In view of the above CBDT clarifications, it may be challenging for NBFCs (other than housing finance companies) to adopt the position of taxing interest on NPA on receipt basis, severely impacting their cash flows and liquidity.</p> <p>Like Banks, even NBFCs are regulated by Reserve Bank of India ('RBI') and are mandated to follow RBI guidelines including on the prudential norms. As per RBI circular on NBFC (Deposit Accepting or Holding) Prudential Norms, Banks as well as NBFCs are required to create provision for NPAs. Further, as per the prudential norms, Banks as well as NBFCs shall recognise interest income on NPA</p>	<p>Consequential amendment should also be made in section 43B of the Act which provides a list of deductions which are allowed to the payer on actual payment basis. As represented above, given that interest income on NPA for "Non-Banking Financial Company" should be taxed on receipt basis, deduction to the payer of interest on NPA to "Non-Banking Financial Company" should be allowed on actual payment basis.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



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Sr. No	Section	Issue/Justification	Suggestion
		<p>only when it is actually realised. However, despite these similarities between a Bank and a NBFC, there is a distinction in the applicability of various tax provisions which puts NBFCs in a disadvantageous position vis-à-vis other financial institution including Banks. Thus, the need for a uniform practice and level playing field in terms of tax treatment for NBFCs is indispensable.</p> <p>In this regard, as mentioned above, in accordance with the directions issued by the RBI, similar to other financial institutions, NBFCs also follow prudential norms and are required to create provision for NPAs and defer income in respect of their non-performing accounts.</p> <p>Considering the fact that similar to Banks, NBFCs are also engaged in financial lending to different sectors of the society, the Finance Act 2016, has expanded the scope of section 36(1)(viiia) of the Act, by providing deduction to the extent of 5% of total income in respect of provision for bad and doubtful debts to NBFCs.</p> <p>However, in absence of specific coverage of NBFCs (other than housing finance companies which are already covered by the provisions of section 43D) in section 43D and in light of the ICDS provisions, NBFCs would be required to recognise income on such NPAs for tax purposes on an accrual basis, resulting in levy of tax on income which may not be realised at all. This would severely impact the liquidity of NBFCs in terms of cash flow pay-outs, impacts their profitability and also has a consequent impact on their cost of operations.</p> <p>Given the same, it is appropriate in all fairness that the provisions of section 43D which recognises the principle of taxing interest income on NPAs on receipt basis to certain banks and financial institutions,</p>	



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Sr. No	Section	Issue/Justification	Suggestion
		also be extended to NBFCs (other than housing finance companies which are already covered by the provisions of section 43D).	
19.	Section 44AD - Presumptive Income – Some Issues	<p>Section 44AD was repealed w.e.f. 01/04/2011 i.e. from AY 2011-12. According to the new provisions, in case of an eligible assessee engaged in eligible business, income shall be deemed equal to a sum @ 8% of the turnover or higher income as per books. Section 44AD is applicable to any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE, agency business, commission / brokerage income business and whose total turnover or gross receipts in the previous year does not exceed an amount of Rs. 2crore. It was further amended by the Finance Act, 2016.</p> <p>Applicability of section 44AD</p> <p>The Finance Act, 2012 had inserted sub-section (6) with retrospective effect from 1st April, 2011 to clarify that the presumptive tax provisions under section 44AD shall not be applicable to, inter alia, persons earning income in the nature of commission or brokerage or persons carrying on an agency business.</p> <p>Further, the section 44AD(6) apparently seems to exclude the applicability to persons carrying on profession, agency business and earning commission or brokerage. It is possible that such persons have other businesses eligible for presumptive taxation under section 44AD. Therefore, it is suggested that the definition of “eligible business” be amended to exclude professions, agency business and business in respect of which the earnings are in the form of commission or brokerage.</p>	<p><i>It is suggested that instead of sub-section 44AD(6), the definition of “eligible business” be amended to exclude ‘specified professionals’, agency business and business in respect of which the earnings are in the form of commission or brokerage.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
20.	Benefit of	Section 44AD relating to presumptive	The benefit of section



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



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Sr. No	Section	Issue/Justification	Suggestion
		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.	LAWS)
	b) Rate of estimated tax @ 50% too high	<p>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.</p> <p>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.</p>	<p>It is suggested that the estimated rate of income @ 50% of the total gross receipts may be reduced appropriately (say to 30%) considering the high cost of providing the services by specified professionals specially the small tax payers having income from profession.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
22.	Section 44AE – Clarification required w.r.t. ‘gross vehicle weight; or ‘unladen weight’	<p>Relevant extracts of section 44AE are reproduced below:</p> <p>“(2) For the purposes of sub-section (1), the profits and gains from each goods carriage,—</p> <p>(i) being a heavy goods vehicle, shall be an amount equal to one thousand rupees per ton of gross vehicle weight or unladen weight, as the case may be, for every month or part of a month during which the heavy goods vehicle is owned by the assessee in the previous year or an amount claimed to have been actually earned from such vehicle, whichever is</p>	<p>In view of the ambiguity arising due to clause (i) of section 44AE wherein it is provided to compute income @ Rs. 1,000 per tonne of ‘gross vehicle weight’ or ‘unladen weight’, it is suggested to clarify with retrospective effect that in situations where both ‘gross vehicle weight’ or ‘unladen weight’ is available for a heavy</p>



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Sr. No	Section	Issue/Justification	Suggestion
		<p>higher;"</p> <p>It is not yet clear whether computation of income @ Rs 1,000 per tonne is to be done w.r.t. 'gross vehicle weight' or 'unladen weight' of the heavy goods vehicle.</p> <p>It is pertinent to mention that almost all heavy goods vehicles have both 'gross vehicle weight' and 'unladen weight'. In other words, every heavy goods vehicle has both criteria in its registration certificate:</p> <ul style="list-style-type: none">• Gross Vehicle Weight as well as• Unladen Weight <p>In such cases, it needs to be clarified whether to use 'gross vehicle weight' or 'unladen weight' for computation of income in case both are available for the heavy goods vehicle.\</p> <p>A clarification is required w.r.t how a Heavy goods vehicle owner should calculate its presumptive income u/s 44AE. A simple example is as under:</p> <p>Mr. A has only one Heavy Goods Vehicle (HGV). Vehicle's Registration Certificate mentions both the weights i.e.:</p> <ul style="list-style-type: none">• Gross Vehicle Weight 35 Tons; and• Unladen Weight 18 Tons <p>It means that the HGV can load maximum 17 Tons of Goods.</p> <ul style="list-style-type: none">• If Unladen Weight is taken, tax u/s 44AE would be minimum Rs. 18000/- p.m.• If Gross Vehicle Weight is taken, tax u/s 44AE would be minimum be Rs. 35,000/- p.m. <p>What should be the presumptive income of Mr. A u/s 44AE.</p>	<p>goods vehicle, the relevant weight to be used for the purpose of computation of income should be specified.</p> <p>(SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)</p>



PART E-CAPITAL GAINS

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



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Sr. No	Section	Issue/Justification	Suggestion
		<p>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.</p> <p>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.</p>	
	<p>(c) Consequential amendment required in section 47(xiiiib)</p>	<p>The existing section 47(xiiiib) provides that no capital gains tax is payable on conversion of a private limited or unlisted public company into LLP subject to certain conditions. Proviso (e) states that this provision will not apply if the total sales, turnover or gross receipts in the business of any of the three preceding years exceed Rs. 60 lakhs. Since this was an amendment to facilitate conversion of private limited companies and unlisted companies into LLPs, ideally,</p>	<p>Many companies are now converting themselves to LLP. With a view to popularize the concept of LLP and also in view of the fact that such provision should apply to all cases of revenue neutral conversions from one form of entity to another form of entity, there should be no threshold on turnover, to avail the benefit under section 47(xiiiib) or alternatively, the limit of sixty Lacs rupees should be substantially</p>



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Sr. No	Section	Issue/Justification	Suggestion
		<p>there should be no restriction on the turnover to avail the benefit of section 47(xiiiib). It may also be noted that the parent Act i.e. Limited Liability Partnership Act 2008, allows this conversion without any such restrictions.</p>	<p><i>enhanced or the condition of the turnover should be deleted.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
	<p>(d) Section 47(xiiiib) - Conversion of company into LLP - Clarification required relating to additional condition</p>	<p>LLP is a preferred form of organization for smooth conduct of business. Accordingly, section 47(xiiiib) 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.</p> <p>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</p>	<p>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.</p> <p>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.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



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Sr. No	Section	Issue/Justification	Suggestion
		shown on asset side (with corresponding provisions for tax on liability side), etc. are the other issues which need to be addressed.	
24.	Business reorganizations - Section 47(x)/(xa)	<p>Presently, section 47(x)/(xa) clarifies that conversion of bonds/debentures (including FCCBs/FCEBs) into shares or debentures shall not be regarded as 'transfer' and hence shall not trigger capital gains.</p> <p>In absence of similar clarification, there is ambiguity when there is conversion of equity shares into preference shares or conversion of one class of shares into another class of shares. Such conversions do not trigger any immediate cash flows for the investors.</p> <p>Section 79 denies carry forward of loss for closely held companies where there is change in shareholding beyond 50% from shareholding which prevailed in the year of loss. This provision is intended as anti-abuse provision to prevent business reorganizations with sole motive of benefit of tax losses. However, this provision acts as impediment in many bonafide circumstances like investment by PE investor in a start-up company or amalgamation or demerger of shareholder company or intra-group reorganization.</p>	<p><i>In view of the aforesaid, it is suggested that Section 79 may be appropriately amended since abusive transactions of change in shareholding with a view to avoid or reduce tax liability shall be addressed by GAAR from 1st April, 2017.</i></p> <p><i>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>
25.	Sections. 47(x) & (xa) and 49(2A) - Capital Gain on Conversion	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	<i>It is suggested that appropriate amendment should be made in Section 2(42A) to provide that holding period of such shares</i>



Sr. No	Section	Issue/Justification	Suggestion
	of Foreign Currency Exchangeable Bonds (FCEB) and other Bonds & Debentures.	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).	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)
26.	Section 54EC - Time Limit for investment in specified bonds	<p>a) Time limit for investment in specified bonds is presently 6 months from the date of transfer.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p>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.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



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Sr. No	Section	Issue/Justification	Suggestion
		<p>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.</p> <p>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.</p>	
		<p>(b) Capital gains exemption on investment in Specified Bonds during the financial year</p> <p>In furtherance of the existing proviso to section 54EC, a new proviso has been inserted to clarify that the investment made by an assessee in the long-term specified asset, from capital gains arising from transfer of one or more original assets, during the financial year in which the original asset or assets are transferred and in the subsequent</p>	<p><i>(b) Considering the fact that the new proviso takes care of the true intent of the law, and appears to be contrary to the existing proviso, thereby causing hardship to the genuine taxpayers, it is suggested that the act be amended to substitute the first proviso with the newly inserted proviso.</i></p> <p><i>Further, considering the inflationary conditions in the economy, it is further</i></p>



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		<p>financial year does not exceed fifty lakh rupees.</p> <p>The change is proposed to plug the revenue leakage and to clarify the real intent of the law. Since, the new proviso is in furtherance of the existing proviso; it may cause hardship in genuine cases where investment has to be made in long term specified asset in respect of two previous years in a single financial year. For example, an assessee selling a long-term capital asset in February, 2015 (Previous year 2014-15) may invest in Section 54EC assets either in 2014-15 or 2015-16 (upto August,2015). However, in respect of any long-term capital asset sold by him in the year 2015-16, he will not be able to invest in 54EC bonds since exemption will be available to him due to applicability of first proviso to section 54EC.</p>	<p>suggested that the said limit of Rs.50 Lakhs may be raised to Rs. 1 crore.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
27.	Reference to the Valuation Officer - Section 55A	<p>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.</p> <p>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.</p>	<p>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.</p> <p>Further, section 55A(b)(i) may be amended as follows:</p> <p>“(i) that the fair market value of the asset exceeds the value of the asset as claimed by the assessee <u>AND HIGHER OF</u> by more than such percentage of the value of the asset as so</p>



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Sr. No	Section	Issue/Justification	Suggestion
		<p>The variance has not been defined by the board and hence it is creating lot of difficulties to the assesses as even in case of minor variation, the matters are getting referred to the valuation officer.</p> <p>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.</p>	<p><i>claimed or by more than such amount as may be prescribed in this behalf ; or”</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



PART F-INCOME FROM OTHER SOURCES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
28.	Definition of the term relative - Explanation to Section 56(2)(vii)	<p>Under the existing provisions of section 56(2)(vii), any sum or property received by an individual or HUF for inadequate consideration or without consideration is deemed as income and is taxed under the head 'Income from other sources'. However, in case of any individual, receipts from specified relatives are excluded from the purview and hence, are not taxable.</p> <p>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.</p> <p>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.</p> <p>Further, it may be noted that, in relation to an "individual", the term relative, as it stands at present, does not include nieces and nephews. This may not be the legislative intent as they also form part of the close circle of relatives and accordingly have been considered as "relative" in the Direct Taxes Code Bill, 2010 and 2013.</p>	<p>Suggestions:</p> <p>(i) <i>The provisions of clubbing of income as contained in Chapter V of the Income-tax Act, 1961 should not be attracted once the sum of money or value of assets are subject to tax under section 56(2) in the hands of the recipient.</i></p> <p>(ii) <i>Lineal descendants of brothers and sisters of self and spouse may also be included in the definition of "relative" in line with the provisions of section 13(3). Also, maternal grandparents may be included in the definition of relatives.</i></p> <p>(iii) <i>The application of the provision should also be extended to the relatives of the members of HUF.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
29.	Section 56(2)(viii) – reference to section 145A(b) be changed to	<p>Section 56(2)(viii) refers to income by way of interest received on compensation or on enhanced compensation referred to in clause (b) of section 145A. However, section 145A has been substituted by a new Section 145A and a</p>	<p><i>It is suggested to give reference of Section 145B(1) and to remove the reference of Section 145A(b) in section 56(2)(viii).</i></p>



Sr. No	Section	Issue/Justification	Suggestion
	145B(1)	new Section 145B is inserted vide the Finance Act, 2018.	(SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)
30.	Section 56(2)(x) – Certain exceptions to be provided w.r.t. conversion	<p>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.</p> <p>4th Proviso to section 56(2)(x) provides the cases to which this clause would not apply.</p> <p>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.</p> <p>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:</p> <ul style="list-style-type: none"> - Clause (xiii) – conversion of firm into company - Clause (xiiib) – conversion of company into LLP - Clause (xiv) – conversion of sole proprietorship into company 	<p>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</p> <ul style="list-style-type: none"> • (xiii) • (xiiib) • (xiv) <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
31.	Section 56(2)(x) read with sections 43CA, 50C, 50CA –	<p>The combined effect of these 4 sections is as under:</p> <p>(i) If a Real Estate Company sells an Immovable Property to its client at a price below the stamp duty valuation, the difference</p>	It is suggested that, in the interest of equity, the aforesaid provisions require to be amended as under:



Sr. No	Section	Issue/Justification	Suggestion
	Issues to be addressed	<p>between the stamp duty valuation and the actual sale price (subject to the margin of 5%) is taxable in the case of Real Estate Company, u/s 43CA. The same amount is taxable in the case of the purchaser of the property u/s 56(2)(x).</p> <p>(ii) Similarly, when a person sells an Immovable Property to another person at a price below the Stamp Duty Valuation, the difference between the Stamp Duty Valuation and actual sale price (subject to the margin of 5%) is taxable in the case of the seller u/s 50C and in the case of the purchaser u/s 56(2)(x).</p> <p>(iii) If a person sells Shares in a company, which are not quoted on the Stock Exchange, at a price below Fair Value determined in the prescribed manner, the difference between such Fair Value and the actual sale price will be taxable in the hands of the seller u/s 50CA and in the hands of the purchaser u/s 56(2)(x).</p> <p>From the above provisions, it is evident that the difference between the Fair Market Value / Stamp Duty Valuation and the actual sale / purchase price is only a notional income. Further, under the above provisions, such notional income is taxed in the hands of the seller as well as the purchaser. In other words, in respect of the same notional amount, arising in one transaction, there is double taxation, once in the hands of the purchaser and again in the hands of the seller.</p> <p>Further, if such transaction is between two relatives, as defined u/s 56(2)(vii), the seller will have to pay tax u/s 43CA, 50C or 50CA, whereas the purchaser will be able to claim exemption u/s 56(2)(x).</p>	<p><i>(i) If the transactions covered u/s 43CA, 50C or 50CA are between relatives, the seller may be granted exemption which is available to the purchaser u/s 56(2)(x).</i></p> <p><i>(ii) If the transactions are between non-relatives, it may be provided that only 50% of the difference between the Fair Market Value and the actual sale price (Notional income) will be taxable in the hands of the seller and 50% of the notional income will be taxable in the hands of the purchaser of the asset.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



CHAPTER VI

AGGREGATION OF INCOME AND SET OFF OR CARRY FORWARD OF LOSS



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
32.	Section 72A - Carry forward of losses in case of amalgamation or merger for service industry	<p>Currently, all industrial undertakings in the Manufacturing, Software, Electricity, Telecom, etc. sectors are allowed to carry forward of losses in case of merger / amalgamation.</p> <p>Services industry undertaking in general are not allowed such carry forward with the exception of Software and Telecom services.</p> <p>Media and Entertainment Industry requires huge investments in digitization, technology set up and distribution network.</p> <p>Seeking level playing field with other services like Telecom, Software etc.</p> <p>As per the Notification issued by the Govt. in 2004, Broadcasting and Cable Services are a part of Telecommunication Services.</p> <p>Consolidation of media industry will help in rapid growth and generation of substantial employment opportunities and faster digitization.</p>	<p><i>It is suggested to amend Section 72A(7)(aa) to also include Broadcasting, Media and Entertainment sector.</i></p> <p><i>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>
33.	Section 78 - Issue of carry forward and set off of losses of an LLP	<p>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.</p> <p>Under Income Tax, firm is a separate person and it includes an LLP.</p> <p>LLP is a body corporate under LLP Act, 2008 and has separate legal entity and perpetual succession. An LLP may have</p>	<p><i>It is suggested that section 78 and 79 may be suitably amended to allow / restrict carry forward of losses and set-off of an LLP assessee under section 79 and not as per section 78.</i></p> <p><i>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>



Sr. No	Section	Issue/Justification	Suggestion
		<p>100 or 1000 partners, as there is no limit on maximum number of partners under LLP.</p> <p>Being a body corporate like company, an LLP having separate legal entity, the carry forward of losses and set-off should not be similar to a firm but should be similar to a company.</p>	
34.	Section 79 – (a) Carry forward and set off of loss in case of eligible start-ups - Condition to be further relaxed	<p>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.</p> <p>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.</p> <p>The Government, in pursuance of the start-up action plan and facilitating ease of doing business, introduced a beneficial</p>	<p><i>It is, therefore, suggested that the condition of continuous holding of the promoters/investors (being persons holding shares in the year of loss) be relaxed. Inter-se transfers between such shareholders be permitted. Also, it should suffice that the group of promoters/investors hold upto 26% of the voting power in the year of set-off. In any case, the turnover condition for a company to be an 'eligible start up' may be omitted in Explanation (ii)(b) to section 80-IAC.</i></p> <p><i>Also, the period for carry forward and set-off of losses can be extended based on period of gestation in the particular industry instead of initial period of 7 years.</i></p> <p><i>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>



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Sr. No	Section	Issue/Justification	Suggestion
		<p>regime for start-up to carry forward and set off losses. It has been provided that as long as all the original shareholders of the Company at the end of the financial year in which the loss was incurred continue to be shareholders of such shares in the financial year in which the loss is to be set off, the benefit of carry forward of loss would be available.</p> <p>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.</p> <p>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.</p>	
	<p><i>(b) Insertion of third proviso in Section 79 - relief for change in shareholding of subsidiaries pursuant to</i></p>	<p>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</p>	<p><i>It is suggested that the language of the third proviso to section 79 be modified to clarify that it applies both to the company undergoing resolution process as well as its subsidiaries. The</i></p>



Sr. No	Section	Issue/Justification	Suggestion
	resolution plan	<p>day of the previous year in which such loss was incurred.</p> <p>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.</p> <p>In addition, thereto, the company may also be required to hive off its investments in subsidiaries by selling its stake to interested investors. This may result in change in shareholding of the subsidiaries triggering consequences u/s 79 of the Income-tax Act, 1961 in the hands of subsidiaries as well. Hence, this may discourage the interested acquirers/bidders from making investments in loss making subsidiaries and also in offering higher bids.</p> <p>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.</p> <p>Issue:</p> <p>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</p>	<p>provision may be modified as follows:</p> <p><i>“Provided also that nothing contained in this section shall apply to a company as well as its subsidiary where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner holding jurisdiction over the applicant”.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



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Sr. No	Section	Issue/Justification	Suggestion
		<p>subsidiaries will not be impacted by section 79, if the change in shareholding takes place pursuant to a resolution plan approved by AA.</p> <p>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.</p>	



CHAPTER VIA

DEDUCTIONS TO BE MADE IN COMPUTING TOTAL INCOME



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

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
35.	Section 80C	<p>PPF is used as a means of savings by entrepreneurs and professionals. While the assesseees in employment have the compulsion of saving 12% of their salary (with matching contribution from employers), the only safe and tax efficient saving option available for self-employed assesseees 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.</p>	<p>It is suggested that:</p> <p>a) the annual limit for contribution to PPF be increased to Rs.3 lakhs from the present ceiling of Rs.1.5 lakhs.</p> <p>b) the maximum limit for deduction under section 80CCF may be increased from Rs.1.5 lakhs to Rs.3 lakhs.</p> <p>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.</p> <p>d) the limit for deduction under section 80DDB for expenses incurred on treatment of certain chronic diseases may be increased.</p> <p>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</p>



Sr. No	Section	Issue/Justification	Suggestion
			<p><i>the principal amount) ARE SUBJECTED TO TAX. This is causing hardship in respect of those assesseees who have simply made contributions to this scheme and have not claimed any deductions. Hence, the suggestion to amend this section to the effect that in cases where deduction is not claimed under this section, only the appreciation component of the investment will be subjected to tax. Even if deduction is claimed, only the amount of deduction claimed should be added to the income at the time of withdrawal from the scheme and not the entire maturity proceeds. Of course, any appreciation over the principal invested can also be taxed as capital gain.</i></p> <p>(SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</p>



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

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
36.	Deduction in respect of interest on deposits in savings account - Section 80TTA	<p>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.</p> <p>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.</p>	<p>Interest on all types of deposits (eg FDRs) may also be included within the scope of section 80TTA.</p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
37.	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	<p>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.</p> <p>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.</p> <p>This amendment will greatly benefit the senior citizens whose main source of income is generally from interest income.</p> <p>It is pertinent to mention that another main source of income for senior citizens is interest income on</p>	<p>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.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
		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.	
38.	Section 80U – Consequential amendments required due to the enactment of ‘The Rights of Persons with Disabilities Act, 2016’ w.e.f. 28.12.2016	<p>Section 80U, <i>inter alia</i>, provide for a deduction to an individual, being a resident, who, at any time during the previous year, is certified by the medical authority to be a person with disability. As per Explanation to the said section, certain terms like "disability", "medical authority", "person with disability" and "person with severe disability" have been defined w.r.t. to provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. However, the said Act has been repealed w.e.f. 28.12.2016 with the enactment of the ‘The Rights of Persons with Disabilities Act, 2016’. Accordingly, section 80U needs amendment in consonance with the new Act. Some of the salient features of the new law are:</p> <ol style="list-style-type: none">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.	<p><i>It is suggested that section 80U may be suitably amended so as appropriately incorporate the provisions of the newly enacted law i.e. ‘The Rights of Persons with Disabilities Act, 2016’ repealing the law ‘the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995’ w.e.f. 28.12.2016 as referred in existing section 80U. (SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)</i></p>



CHAPTER VIII

REBATES AND RELIEFS



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
39.	Section 89 – Interest u/s 234B/C to be charged after relief computed	<p>Currently, Interest u/s 234B and 234C are levied on shortfall/deferment of advance tax on the difference in the tax liability computed on the total income computed (before giving relief u/s 89) but considering prepaid taxes in accordance with the explanation 1 to Section 234B(1). However, relief u/s 89 is provided when salary, etc., is paid in arrears or in advance.</p> <p>Levy of interest even after payment of taxes /dues in full by way of TDS is not justified and causes unnecessary hardship to affected salaried assesseees.</p>	<p><i>It is suggested to amend the appropriate provisions of section 234B and 234C so to levy interest after computing/providing for relief u/s 89 with retrospective effect.</i></p> <p><i>(SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)</i></p>



CHAPTER X

SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
40.	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'. (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
41.	Section 115BBDA – (a) Dividend received by resident individuals, HUFs and firms receiving dividend in excess of Rs.10 lakh to be subject to tax @ 10% in their hands – Consequence of the new levy- Triple taxation	<p>The provision to tax dividend in the hands of the recipient results in economic four level taxation viz.</p> <ul style="list-style-type: none">- once as corporate tax on profits,- secondly as DDT in hands of the company,- thirdly as tax on dividends.- Fourth by disallowing expenses on dividend u/s. 14A. <p>The economic tax ultimately borne by resident shareholders may be as high as 54%.</p>	<p><i>It is suggested that this levy amounting to multiple level taxation on profits may be done away with.</i></p> <p><i>Alternatively, the earlier system of taxation of dividend, prior to 1997, namely, tax in the hands of the shareholder can be re-introduced and levy of Dividend Distribution Tax in the hands of the company may be removed.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
	(b) Tax on certain dividends received from domestic companies	<p>In the Finance Act, 2016 new section 115BBDA was introduced to levy tax on certain dividend income received by a resident individual, HUF and firms aggregating Rs.10 lakhs at the rate of 10%. However, the act has not clarified about the payment of advance tax on the same.</p>	<p><i>As the timing of receipt of dividend is uncertain and estimation of the same is also not possible, it is suggested that exemption from advance tax provisions may be given for such Dividend Income taxable under section 115BBDA.</i></p> <p><i>Further, it is suggested that full and complete advance tax in this respect may be permitted to be paid by the 31st march of the previous year.</i></p> <p>(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)</p>
42.	Section 115BBE – Need to reconsider the	<p>Section 115BBE was amended during the demonetization period where if income was assessed u/s 68 to 69D, tax would be charged</p>	<p><i>It is suggested that rate of tax u/s 115BBE be restored to 30% and surcharge</i></p>



Sr. No	Section	Issue/Justification	Suggestion
	high rate of tax	@ effective rate of 78%. 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.	thereon be reduced as per applicable total income levels/slab rates. (SUGGESTION TO CHECK TAX AVOIDANCE)
43.	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	<p>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.</p> <p>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.</p> <p>Further, the position regarding taxability of income from transfer of carbon credits for earlier years may be clarified since there have been divergent decisions given by the courts on whether such receipts are capital or revenue in nature. If the tax treatment is made applicable for earlier years also, it would garner more revenue from assesseees who have not offered the same to tax on the ground that the same represents capital receipt. This would also help avoid future litigation and complete pending assessments.</p> <p>The Government has also been taking several steps aimed at curbing litigation. These include coming up with schemes for dispute resolution both for legacy disputes arising out of retrospective amendments as well as other disputes that are pending in the appellate hierarchy. These measures and schemes are welcome steps and have been commended by the taxpayers. A similar scheme for income from transfer of carbon credits for the past years would go a long way towards furthering the Government's stated objective of curbing litigation.</p>	<p>It is suggested that section 2(24) may be amended to include income from transfer of carbon credits in the definition of "income".</p> <p>The option to pay tax on such receipts at 10% could be structured as a one-time scheme open for a limited time.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



CHAPTER XII-B

SPECIAL PROVISIONS RELATING TO CERTAIN COMPANIES



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
44.	Rationalization of MAT rates – Section 115JB	<p>The purpose behind introduction of MAT was to bring all zero tax companies within the tax net and to neutralize the impact of certain benefits/incentives. The Finance Minister while introducing the Finance Act, 2015 announced to reduce the rates of corporate tax from 30 per cent to 25 per cent in a phased manner. The Finance Minister further stated that the reduction of tax has to be necessarily accompanied by rationalisation and removal of various kinds of tax exemptions and incentives for corporate taxpayers.</p> <p>The Finance Act, 2016 has also amended the relevant provisions of the Act that would ensure the phasing out of deductions and incentives available to companies to realign with the governments' decision of reducing the corporate tax rates as mentioned above. Similar phasing out has been done by the Finance Act, 2017.</p>	<p><i>Since government has already started implementing phase out of exemptions and incentives, it is suggested that the levy of MAT should be withdrawn.</i></p> <p><i>Without prejudice to above, since the exemptions and incentives being phased out for corporate taxpayers, it would be necessary that the MAT provisions, which were introduced to bring in the tax net the corporate taxpayers which were otherwise not being taxed, should also be streamlined.</i></p> <p><i>It is suggested that with the phasing out of exemptions and incentives and reduction of corporate tax rates, the burden of MAT should also be gradually reduced from the current levels of 18.5 per cent to a rate (say 15%) which will match with phasing out of tax exemptions and incentives.</i></p> <p>(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)</p>
45.	Section 115JB - Insertion of	<p>The newly legislated Insolvency and Bankruptcy code, 2016 (IBC) is a comprehensive legislation in India dealing with insolvency and bankruptcy</p>	<p><i>It is suggested that:</i></p> <p><i>i. Suitable clarification</i></p>



Sr. No	Section	Issue/Justification	Suggestion
	<p>clause (iih) in Explanation 1 to section 115JB - Downward adjustment of aggregate brought forward losses and depreciation u/s 115JB</p>	<p>of Corporates. The Code consolidates all the other laws in India dealing with insolvency. Pursuant to enactment of IBC, the Sick Industrial Companies Act (SICA) has been repealed and provisions are made to enable sick companies undergoing resolution through BIFR to approach National Company Law Tribunal (NCLT). IBC provides for implementation of resolution plan which is intended to revive distressed companies in a time bound manner under the creditor in command process.</p> <p>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.</p> <p>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.</p> <p>Issues:</p> <ol style="list-style-type: none">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	<p>may be inserted in Section 115JB to clarify that the brought forward losses and unabsorbed depreciation for this purpose should be considered as per books of account. It may be provided that the aggregate of the brought forward losses and unabsorbed depreciation as at the end of the year preceding the year in which application is admitted may be allowed to be reduced from book profits.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



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



Sr. No	Section	Issue/Justification	Suggestion
			REDUCE/ MINIMIZE LITIGATIONS)
47.	Rationalization of provisions of MAT for short term capital gains	<p>As per section 115JB, where in case of a company, the income tax payable on the total income as computed under the Income-tax Act in respect of any previous year is less than 18.5% of its book profit, then such book profit shall be deemed to be the total income of the assessee and the tax payable on such total income shall be the amount of income tax at the rate of 18.5%. This income tax is further to be enhanced by surcharge (as applicable) and health and education cess(es) (@4%).</p> <p>However, specified short term capital gains are taxable @ 15% under section 111A.</p> <p>Due to this, companies under the MAT regime may not be able to get away with a lower tax rate of 15% on Short term capital gains.</p>	<p><i>It is suggested that in case of companies under the MAT regime, income tax liability for short term capital gains be the lower of the following:</i></p> <p><i>1) Income tax computed as per provisions of Section 111A of the Income-tax Act.</i></p> <p><i>2) Income tax computed as per provision of section 115JB of Income-tax Act.</i></p> <p>(SUGGESTION FOR IMPROVING TAX COLLECTION)</p>
48.	Section 115JB – MAT implications for Ind AS compliant companies	<p>Under Ind AS, prior period adjustments are not reflected in the financials in which error is discovered but earlier period financials are restated to which such errors pertain. There could be an issue if the return of income for such earlier year has already been filed and due date of filing revised return has lapsed.</p>	<p><i>It is suggested that a specific provision for revising return in the aforesaid situation may be provided or prior period adjustments may be allowed to be adjusted from book profit in the year in which errors are discovered.</i></p> <p>(SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)</p>



CHAPTER XII-D

SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED PROFITS OF DOMESTIC COMPANIES



DETAILED SUGGESTIONS

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



Sr. No	Section	Issue/Justification	Suggestion
		<p>is quite possible that an investor like PE investor or a passive investor may create such a situation without the concerns being aware of the same. Further, the requirement is beneficial holding in the concern. It may not be possible for a company giving loan to ascertain the beneficial holding of its shareholders in another concern. The company will be dependent wholly on the certification of the shareholder. Further, if the company proceeds on the basis of the certification provided by shareholder and the same were to be untrue, there might be adverse consequences considering the company and its principal officer will be regarded as assessee in default and all consequences of interest, penalty prosecution, etc. will consequently follow.</p> <p>(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</p> <p>(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.</p> <p>(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</p>	<p><i>by amending section 2(22)(e) to provide that, out of amount distributed by the company either in the same year or in the succeeding year, the amount of DDT paid earlier will be considered as a credit against DDT payable at the time of distribution.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



Sr. No	Section	Issue/Justification	Suggestion						
		<p>blow to the remaining 90% of the shareholders who lose their value on simultaneous basis upto the amount of tax paid. This would be a permanent loss to the shareholders. They are being punished for no fault of theirs.</p> <p>(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.</p>							
50.	<p>Section 115-O - Grossing up of rate of dividend distribution tax</p>	<p>Section 115-O was introduced vide the Finance Act, 1997 w.e.f 1.6.1997, with a view to reduce the hardship caused to the shareholders due to the procedural work for refund and a lot of paper work. It was provided that any dividend declared by an Indian company will be taxable in the hands of the company and it would be tax free in the hands of the shareholders. The rate of dividend distribution tax was increased over the years to 15% (plus surcharge and education cess).</p> <p>However, the Finance (No. 2) Act 2014 provided for the rate of dividend distribution tax to be grossed up w.e.f. 1 October, 2014. Thus, the effective dividend distribution tax rate would increase to 17.647% (plus surcharge and education cess). Table below will illustrate the difference in cash outflow after the amendment:</p> <table border="1" data-bbox="451 1749 906 1843"> <thead> <tr> <th data-bbox="451 1749 607 1843">Particulars</th> <th data-bbox="607 1749 753 1843">Earlier</th> <th data-bbox="753 1749 906 1843">Now</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Particulars	Earlier	Now				<p><i>In order to encourage small shareholders to invest in domestic companies, it is suggested to drop the requirement of grossing up the dividend distribution tax rate.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
Particulars	Earlier	Now							



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Sr. No	Section	Issue/Justification			Suggestion
		Dividend declared	500	500	
		DDT (Incl. of surcharge and education Cess)	84.975	99.95	
		Total Outflow for the company	584.975	599.95	
		<p>If the company decides to keep the outflow constant i.e. Rs 584.975/-, then as per the amendment, dividend to be received in the hands of shareholders would reduce to Rs 487.52/- [584.975*500 / 599.95] as compared to Rs 500/-.</p>			
		<p>In other words, shareholders would receive 2.499% less as compared to what they would have received under earlier provisions. Even though dividend income is exempt in the hands of shareholders, it will mainly affect the large number of small shareholders, whose income is below exemption limit as they would have paid tax on dividend received at a lower rate.</p>			
		<p>Further, the total outflow for the company would also increase by 2.99% (including surcharge and education cess).</p>			



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
51.	Section 115QA – Effect on foreign investments	<p>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:</p> <ol style="list-style-type: none">1. Amount invested by foreign investor in unlisted company = USD 1 million2. Amount for which shares were issued (Exchange rate USD 1 = INR 40) = INR 4 Crores3. No. of shares issued @10 per share = 40,00,0004. No. of Shares bought back by the company (25% of share issued) 10,00,0005. Amount paid to foreign investor (buy back price INR 12.50 per share) = INR 1,25,00,0006. Amount received by foreign investor {USD 1 = INR 60} = USD 208,3337. Loss to foreign investor (i.e. 250,000-208,333) = USD 41,6678. Additional tax payable by the company (125,00,000–100,00,000)*20% = INR 500,000 <p>Tax to be paid by the company on Rs. 25,00,000 is the final tax in addition to corporate tax and the amount of tax so paid is nothing but tax paid by the foreign investor. The foreign investor is thus required to pay tax even when he makes losses. Private equity investor who</p>	<p><i>In view of the concerns faced by foreign investors after introduction of section 115QA, suitable amendments may be carried out in the Income-tax Act, 1961 so that foreign investors do not have to pay tax when their holding results in losses only due to foreign exchange fluctuation.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



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



CHAPTER XII-EB

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



Sr. No	Section	Issue/Justification	Suggestion
52.	a) Recovery provisions on trustees etc. – Section 115TD(5)	<p>Section 115TD(5) reads as follows: “(5) <i>The principal officer or the trustee of the trust or the institution, as the case may be, and the trust or the institution shall also be liable to pay the tax on accreted income to the credit of the Central Government within fourteen days from,...</i>”</p> <p>The term 'principal officer' is very widely defined in section 2(35) as follows-</p> <p>“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—</p> <p>“(a) the secretary, treasurer, manager or agent of the authority, company, association or body, or</p> <p>(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;”</p> <p>The AO can consider almost any person connected with the management as the principal officer of the institution.</p> <p>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.</p>	<p>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.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
	b) Section 115TD(5) - Period of 14 days insufficient	<p>Section 115TD(5) reads as follows: “(5) <i>The principal officer or the trustee of the trust or the institution, as the case may be, and the trust or the institution</i></p>	<p>Time limit may be suitably modified /increased.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



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



CHAPTER XIV-

PROCEDURE FOR ASSESSMENT



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
53.	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)	<p>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.</p> <p>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.</p> <p>The Finance Act, 2016 has substituted section 139(4) & 139(5) as follows:</p> <p>“(4) Any person who has not furnished a return within the time allowed to him under sub-section (1), may furnish the return for any previous year at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.”;</p> <p>“(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.”;</p> <p>Reference to return filed in response to section 142(1) is missing in new sub-section (4) and sub-section (5) of section 139.</p> <p>As per the Explanatory Memorandum to the</p>	<p>It is suggested that-</p> <p>(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).</p> <p>(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.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



Sr. No	Section	Issue/Justification	Suggestion
		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.	
54.	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.	<p>It is suggested that provision may be made for:</p> <p>(a) application within 30 days of amendment in PAN data and</p> <p>(b) surrender on</p> <ul style="list-style-type: none"> - death (by legal representative), - merger, - conversion, - liquidation, - strike-off. <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
55.	Section 139A – need for certain persons to mandatorily have PAN	<p>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</p> <ul style="list-style-type: none"> • 139(4B) • 139(4C) • 139(4D) • 139(4E) • 139(4F) 	<p>It is suggested that aforesaid sections be added to section 139A(1)(iii) where only persons covered u/s 139(4A) are required to obtain PAN.</p> <p>(SUGGESTION TO IMPROVE TAX COLLECTION)</p>
56.	Section 142A- Estimation of value of asset by Valuation Officer	As per the provision prior to Finance (No. 2) Act, 2014 contained in section 142A, the Assessing Officer may, for the purpose of making an assessment or re-assessment require the Valuation Officer to make an estimate of the value of any investment, any bullion, jewellery or fair market value of any property. On receipt of the report of the Valuation Officer, the Assessing Officer may after giving the assessee an opportunity of being heard take into account such	<p>Keeping in view the settled law on the subject, the legislature must specifically provide that satisfaction may be recorded before making any reference to the Valuation Officer.</p> <p>Alternately, sanction of a higher authority must be taken before</p>



Sr. No	Section	Issue/Justification	Suggestion
		<p>report for the purpose of assessment or re-assessment.</p> <p>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.</p> <p>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.</p> <p>Probable hardships after amendment by Finance (No. 2) Act, 2014</p> <p>(a) As per the earlier section 142A, the Assessing Officer may refer to valuation for the purpose of estimating the value of any investment referred to in section 69 or 69A or 69B or 56(2). The law, as far as the trigger for valuation is concerned, was settled and permitted. The Assessing Officer was to resort to valuation only after he was satisfied that the books of account were not correct or were incomplete. Henceforth, as per the amendment made, the Assessing Officer need not record any reason for making a reference. In fact, as is the experience, the Assessing Officer may even fear an audit enquiry or objection if they do not refer cases for valuation.</p> <p>(b) The amended section may open flood gates to valuation in each and every case resulting in unnecessary litigation and inappropriate</p>	<p>any reference is made by the Assessing Officer.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



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Sr. No	Section	Issue/Justification	Suggestion
		<p>use of valuable resources of the Department.</p> <p>(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.</p> <p>(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.</p>	
57.	Section 271AAB - Need to simplify penal provisions	<ul style="list-style-type: none">• Amended Section 271AAB provides for imposition of penalty @ 10% on undisclosed income found during the course of search and admitted at the stage of search subject to fulfilment of other specified conditions in section 271AAB(1A)(a) 60% penalty is to be imposed in other cases u/s 271AAB(1A)(b).• The above system of penalty is very complex to implement in reality. In search cases, penalty should ideally be the same irrespective of the time of admission/declaration by the culprit assessee. Assessing officers sometimes puts undue pressure on the assessee during search proceedings to extract the maximum amount of declaration. One of the reasons for the same is the pressure of target achievement by the assessing officers.• In such cases, quality of assessment suffers a lot and high-pitched assessments are made unnecessarily.	<p><i>It is suggested that the provisions of section 271AAB needs to be simplified. The time of admission may not be considered for imposition of penalty amount as once admitted all culprit assesses should be treated on the same footings.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
58.	Credit of Tax Collected at Source relating to earlier years (for which Assessments are already over & time period mentioned in	<p>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.</p>	<p><i>It is suggested that considering the hardship being faced by assesseees in respect of cases mentioned aforesaid, the department should give credit for such TDS/TCS even if the assessments have been completed and also the period mentioned u/s 155(14) has</i></p>



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Sr. No	Section	Issue/Justification	Suggestion
	Section 155(14) has elapsed) demanded by the Government authorities at a later date	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.	expired. (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



CHAPTER-XVII

COLLECTION AND RECOVERY OF TAX



PART B-DEDUCTION AT SOURCE

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
59.	Section 194A - Interest payments to NBFC	<p>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).</p> <p>It may be noted that Section 194A does not treat Non-Banking Financial Institutions (NBFCs) at par with the Banking companies or Co-operative Banks. Due to this, the middle-class businessmen who have borrowed money from NBFC's are disallowed interest paid on the same due to non-deduction of tax at source under section 194A of the Income-tax Act, 1961. It is suggested that section 194A should not apply to NBFCs as:</p> <p>a) NBFCs principal business is of lending money under various products just like Banking Company or a co-operative Bank.</p> <p>b) There is no mechanism for deduction of tax on interest paid by the assesseees as the NBFCs collect cheques of EMI for the tenure of loan.</p>	<p><i>To provide relief to the genuine taxpayers paying interest to NBFC's, it is suggested that the section 194A(3)(iii)(a) be amended to treat NBFC's at par with other banking companies. Further, in order to ensure compliance of the provisions of the Act for timely collection of taxes, provisions of Tax collection at source be made applicable to NBFC's in respect of such interest.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



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Sr. No	Section	Issue/Justification	Suggestion
		<p>c) NBFCs are also regulated by RBI just like Banking Company and a Co-operative Bank.</p> <p>Considering the fact that there is no mechanism for deduction of tax on interest paid by the assessee as the NBFCs collect cheques of EMI for the tenure of loan, the non-compliance of the provisions of this section is inevitable. However, the said provision creates problem for the assessee who has borrowed money as he is unable to claim deduction in respect of said interest due to operation of section 40(a)(ia).</p>	
60.	Section 193 - No tax withholding on 'interest on securities' earned by a business trust defined as per section 10(23FC)	<p>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.</p> <p>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'.</p> <p>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-</p> <p><i>"The income by way of interest received by the business trust from SPV is accorded pass through treatment i.e., there is no taxation of such interest income in the hands of the trust and no</i></p>	<p><i>It is suggested that as provided in section 194A, a similar exclusion may be provided in section 193 with respect to no applicability of tax withholding on any income by way of interest referred to in section 10(23FC).</i></p> <p><i>(SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)</i></p>



Sr. No	Section	Issue/Justification	Suggestion
		<p>withholding tax at the level of SPV. (emphasis supplied)</p> <p>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).</p>	
61.	Section 194H – Request to increase TDS exemption limit to Rs 40,000	<p>The Digital India programme is a flagship programme of the Government of India with a vision to transform India into a digitally empowered society. In order to transform the entire ecosystem of public services, banking etc. through the use of information technology, the Government of India has launched the Digital India programme.</p> <p>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.</p> <p>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</p>	<p>It is suggested that TDS exemption limit u/s 194H may be increased to Rs 40,000 in cases of recipients having PAN.</p> <p>It will eliminate the following difficulties / challenges for the Merchants, Companies as well as Income-tax department:</p> <ul style="list-style-type: none">- It takes huge amount of calculations and on top of it, compliance of TDS on the small amounts on millions of transactions which is a very cumbersome task and the TDS on the amounts may be in paise as well. With the above volume, filing of TDS Returns and generation of TDS certificates is a challenge;- TDS provisions are applicable once the threshold limit crosses. In the given business scenario, incentives payable to the merchants



Sr. No	Section	Issue/Justification	Suggestion
		<p>of purchase.</p> <p>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.</p> <p>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.</p> <p>It requires a lot of push as this entails a behavioural 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.</p> <p>While convenience and accountability is the key to digital payments, for the customer and merchants to change their behaviour, government is giving incentives. Similar incentives are proposed by the private players also. These small incentive will go a long way to make behavioural changes.</p> <p>It is to be noted here that there are voluminous transactions, but the incentive in absolute amount is very low. The number of merchants to be benefitted from the incentive programme is also huge, however, the amount payable to any single merchant may not be large. These incentives may be termed as “Commission” under the Income-tax</p>	<p><i>is based on the business given by the merchants and thus, the projection of incentive payable by the Company is not be possible. If the Company starts TDS deduction before the threshold limit crosses, it will not be acceptable by the merchants;</i></p> <p><i>- 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.</i></p> <p>(SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</p>



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Sr. No	Section	Issue/Justification	Suggestion
		Act, 1961 and thus, applicability of TDS provisions will arise.	
62.	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.	<i>It is, therefore, suggested that section 197A may be amended to permit the assessee to make an application to the Assessing Officer for issuing a certificate for no deduction of tax or deduction of tax at a lower rate. In the alternative, the seller may be permitted to give a declaration to the Assessing Officer and furnish a copy of the same to the buyer.</i> (SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)
63.	Section 194J - Fees for professional or technical services	The amendment to section 194J by the Finance Act, 2012 requires deduction of tax at source @ 10% on any remuneration or fees or commission, by whatever name called, to a director of a company, other than those on which tax is deductible under section 192. However, the independent limit of Rs.30,000 each provided for under section 194J in respect of other payments covered therein, namely, royalty, fee for technical services, fee for professional services and non-compete fees, as a threshold, beyond which TDS @ 10% would be attracted, is not being provided in respect of director's remuneration. This unintended inequity may be removed.	<i>It is suggested that section 194J be amended to provide an independent limit of Rs.30,000, above which remuneration or fees or commission to director may be subject to tax deduction at source.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
64.	Section 197A - Rationalizing TDS applicability on Merchant Discount Rate ('MDR')	<p>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.</p> <p>In the light of government's push on digital payments, the concept of Merchant Aggregator/Acquirer has come up where the Merchant Aggregator is not the bank, but a separate entity. Merchant Aggregator acquires various merchants and ties up with banks for processing of payments. The Merchant Aggregator collects money from banks on behalf of its merchants and then makes the final settlement with its merchants. The Merchant Aggregators are integral part of the overall Digital Payment system which act as a conduit between customers, bank and merchant. These Merchant Aggregators collect money from customer's bank/PPI Wallet and make payment to merchants.</p> <p>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.</p> <p>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</p>	<p><i>(i) It is suggested that MDR retained by bank from Merchant Aggregator and by Merchant Aggregator from Merchant Establishment may be exempted from TDS.</i></p> <p><i>(ii) The exemption u/s 197A(1F) may be extended to cases:</i></p> <ul style="list-style-type: none">- <i>where the commission is retained by the bank while making payment to Merchant Aggregator (as the Income-tax department may consider Merchant Aggregator on a different footing with Merchant Establishment); and</i>- <i>where the commission is retained by the Merchant Aggregator while making payment to Merchants</i> <p><i>The above suggestion will remove the deterrent for merchant aggregators as they will be in line with merchant establishment. This move will encourage online transactions by reducing the compliance burden as the merchant establishment will not have to deduct TDS before making the payment to the Merchant Aggregators. This will also make the whole process seamless and the merchants will not be wary to accept the</i></p>



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Sr. No	Section	Issue/Justification	Suggestion
		<p>made by a person to a bank, namely:- (vii) Credit card or debit card commission for transaction between merchant establishment and acquirer bank.</p> <p>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.</p> <p>When Merchant Aggregator receives payment from bank for ultimate settlement with merchant, bank makes the payment to Merchant Aggregator after deducting its commission. The Merchant Aggregator, at no instance, get any chance to withhold Tax since it is only receiving payments and not making any payment to Bank.</p> <p>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.</p>	<p><i>new modes of payment due to the additional compliance of withholding tax. This will encourage the merchants to move from cash to digital money, which is key pillar of the Government of India initiative of Digital India.</i> <i>(SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)</i></p>
65.	Section 204 – Issue	As per section 204, person	<i>It is suggested that in</i>



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Sr. No	Section	Issue/Justification	Suggestion
	w.r.t. appeal filing by Principal Officer u/s 201/201A	<p>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 authorised 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.</p> <p>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.</p>	<p>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.</p> <p>(SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</p>
66.	TDS on Recharge Vouchers	<p>Telecom companies distribute their pre-paid services by transferring pre-paid service products to an independent third party distributors at a discount over MRP. Independent third party distributor in turn sells to sub-distributor or the end customer. The transaction results in transfer of the right to receive pre-paid mobile telecommunication services from telecom operators to the distributors on a principal to principal basis.</p> <p>It may be noted that the distributors are not agents to the telecom operators and no tax is required to be withheld by the telecom companies on the discount extended to the prepaid distributor. However, the tax authorities have</p>	<p>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.</p> <p>(SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)</p>



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



PART C-ADVANCE PAYMENT OF TAX

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
67.	Section 208 - Revision of Limit of advance tax	<p>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.</p>	<p><i>The limit to pay advance tax under section 208 be raised appropriately. Infact, any assessee whose advance tax payable does not exceed Rs. 30,000 may be allowed to pay full amount in the last instalment.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



PART G-LEVY OF FEE IN CERTAIN CASES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion								
68.	Section 234E – Day wise slab	<p>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.</p> <p>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.</p>	<p>It is suggested to follow day wise slab system & it may be taken as:</p> <table border="1"> <thead> <tr> <th>Period of Default</th> <th>Max. Fees u/s 234E</th> </tr> </thead> <tbody> <tr> <td>Upto 15 Days</td> <td>Rs. 500/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.</td> </tr> <tr> <td>From 15 Days to 1 Month</td> <td>Rs. 1000/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.</td> </tr> <tr> <td>From 1 Month Onwards</td> <td>Rs. 1000/- + Rs. 200/- per day or tax amount, whichever is higher, but subject to maximum of Rs.20,000/-.</td> </tr> </tbody> </table> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>	Period of Default	Max. Fees u/s 234E	Upto 15 Days	Rs. 500/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.	From 15 Days to 1 Month	Rs. 1000/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.	From 1 Month Onwards	Rs. 1000/- + Rs. 200/- per day or tax amount, whichever is higher, but subject to maximum of Rs.20,000/-.
Period of Default	Max. Fees u/s 234E										
Upto 15 Days	Rs. 500/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.										
From 15 Days to 1 Month	Rs. 1000/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.										
From 1 Month Onwards	Rs. 1000/- + Rs. 200/- per day or tax amount, whichever is higher, but subject to maximum of Rs.20,000/-.										



CHAPTER XX

APPEALS & REVISION



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
69.	Section 246A – Necessary amendment required enabling filing of Appeal against penalty imposed by Assessing Officer under section 271J	<p>Section 246A provides that any assessee aggrieved by any of the orders mentioned therein may appeal to the Commissioner (Appeals).</p> <p>The Finance Act 2018 has amended clause (a) of section 253(1) so as to make an order passed by a Commissioner (Appeals) under section 271J also appealable to the Appellate Tribunal.</p> <p>This amendment is applicable from 1st April, 2018.</p> <p>Issue:</p> <p>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.</p>	<p><i>It is suggested that necessary amendment may be made in section 246A so as to make an order passed by an Assessing Officer under section 271J appealable to the Commissioner (appeals) u/s 246A.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



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



CHAPTER XXI

PENALTIES IMPOSABLE



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
71.	<p>Section 270A inserted to provide for levy of penalty in case of reporting of income and misreporting of income - Issues to be addressed</p> <p>a) Penalty order under section 270A be made an order appealable before Commissioner (Appeals) under section 246A</p>	<p>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.</p> <p>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 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.</p>	<p>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).</p> <p>(SUGGESTION FOR IMPROVING TAX COLLECTION)</p>
	<p>b) Penalty for under-reporting of income</p>	<p>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.</p>	<p>Without prejudice thereto, with regard to this methodology of levying penalty, the following suggestions may be considered.</p> <ul style="list-style-type: none"> By way of express requirement, the Assessing Officer may be required to



Sr. No	Section	Issue/Justification	Suggestion
			<p><i>initiate the proceedings prior to or concurrently with the closure of assessment proceedings. Unless this is done, there may be initiation of penalty several years after the assessment proceedings are completed. The time limit under section 275(c) is, unfortunately, linked with the date of initiation of proceedings.</i></p> <ul style="list-style-type: none"><i>• 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.</i><i>• There may be some concern on resolution of the formula specified in the section if, intimation under section 143(1)(a) is not available. It may be good to clarify that, in such a case, returned income will be the substituted basis.</i><i>• Penalty proceedings may be permitted only when specific conditions are satisfied. e.g.</i>



Sr. No	Section	Issue/Justification	Suggestion
			<p><i>the adjustment made exceeds a minimum threshold or say 10% of taxable income, etc.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
	<p>c) Order to specify the specific clause of under - reported or misreported income for levy of penalty under section 270A</p>	<p>Section 270A has done away with the undue discretion in the hands of Assessing Officer by imposing penalty at the rate of either 50% or 200% depending on whether the income is under reported or misreported. Certain controls may be required in the effective implementation of the new section.</p> <p>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.</p> <p>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</p>	<p><i>It is suggested that suitable amendments be introduced or alternatively administrative instructions may be issued so that each order contains the specific fact of either misreported income or under-reported income or both along with the mention of specific clause of section 270A(2)/(9) against each disallowance/addition. Such measures would act as a suitable control mechanism in the absence of recording of satisfaction to initiate penalty proceedings and would also enable assessee to opt for section 270AA providing for immunity from penalty and prosecution in case income is not misreported.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



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



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Sr. No	Section	Issue/Justification	Suggestion
		(b) Also, there is no guarantee that appeal against quantum order with application for condonation of delay after rejection of application for immunity, will be admitted.	Suitable provision may be inserted. (SUGGESTION FOR IMPROVING TAX COLLECTION)
73.	Section 271AAB - Penalty where search has been initiated	<p>Section 271AAB(1) (till 15.12.2016) provides for imposition of penalty @ 10% on undisclosed income found during the course of search and admitted at the stage of search. Undisclosed income not admitted at the stage of search but disclosed in the return of income filed after the search to attract penalty @ 20%. These are covered under clauses (a) and (b) of section 271AAB. In other cases, i.e. cases covered under clause (c), penalty to be imposed @ 60% of undisclosed income. Aforesaid provisions of section 271AAB are applicable till 15.12.2016 due to insertion of sub-section (1A) vide the Taxation Laws (Second Amendment) Act, 2016. Section 271AAB(1A) provides penalty @ 30% under sub-clause (a) and 60% under sub-clause (b).</p> <p>Sub-section (3) provides that the prosecution provisions under sections 274 and 275 would apply in relation to penalty levied under this section.</p> <p>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</p>	<p>Sub-section (3) may be amended to provide that the prosecution provisions under sections 274 and 275 would apply in relation to penalty levied only under clause (b) of section 271AAB(1A), and not in respect of cases covered under clause (a).</p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



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Sr. No	Section	Issue/Justification	Suggestion
		prosecution provisions should be made applicable only in respect of cases covered under clause (b).	
74.	Rationalization of Section 271D & 271E	<p>As per section 271D & 271E, if a person accepts/repays a loan or deposit or specified sum/advance, as the case may be in contravention with the provisions of section 269SS/269T, he shall be liable to pay, by way of penalty, a sum equal to the amount of loan or deposit.</p> <p>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.</p>	<p><i>It is suggested to restrict the levy of penalty to the maximum marginal rate of tax i.e. 30% or the slab rate applicable to the assessee instead of 100% of the amount of loan or deposit taken or repaid in violation of provisions u/s 269SS & 269T.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
75.	Section 271FA – Clarity required regarding appealability of penalty order	<p>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</p>	<p><i>It is suggested that an amendment be made in relevant sections (246A or 253) to clearly specify the authority to whom an appeal may lie against an order passed by DIT under section 271FA.</i></p> <p>(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)</p>



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Sr. No	Section	Issue/Justification	Suggestion
		<p>114(4)(a).</p> <p>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).</p> <p>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.</p> <p>As per <i>DIT v Ravi Vijay [2012] 25 taxmann.com 176 (Raj.)</i>, the Rajasthan High Court has held that an appeal against order of penalty passed under section 271FA by Director, who holds rank of a Commissioner, is maintainable before Commissioner (Appeals) with reference to section 246A(1)(q). Similar view is supported in <i>SRO, Meppayur-Kozhikode v DIT [2013] 37 taxmann.com 36 (Cochin - Trib.)</i> wherein it was held that where Director of Income-tax (Intelligence) levied penalty under section 271FA upon assessee, appeal against impugned order was not maintainable before Tribunal. Similarly, in <i>the District Co-operative Central Bank Ltd., R.R. Peta, Eluru, W.G. District v DIT ITA Nos. 576 to 578/VIZ/2018</i>, the Visakhapatnam Bench held that penalty order under section 271FA is an appealable order before CIT(A).</p> <p>However, Lucknow bench in</p>	



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Sr. No	Section	Issue/Justification	Suggestion
		<p><i>Raibareilly District Co-operative Bank Ltd. v DIT [2015] 54 taxmann.com 382 (Lucknow - Trib.)</i> held that appeal against an order of Director of Income-tax passed under section 271FA is to be filed before Tribunal who is higher in rank and not before Commissioner (Appeals) who is equivalent in rank with Director of Income-tax. The aforesaid view is also supported by the Hyderabad Bench in <i>the Nizamabad District Cooperative Central Bank Ltd, Nizamabad v DIT ITA Nos.1291 to 1296/Hyd/2017</i>, wherein it held that ITAT is not the forum to entertain the appeal against the penalty order under section 271FA.</p> <p>In order to reduce litigation with regard to this provision, clarification is sought on the aforesaid issue.</p>	
76.	Section 271H - Penalty for failure to furnish TDS/TCS statements	<p>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.</p> <p>However, such penalty would not be levied if the person has paid the taxes deducted or collected along with fee and interest to the credit of the Central Government and has filed the statements within a period of one year from the respective due dates i.e., namely, 31st July, 31st October, 31st January and 31st May, respectively for the quarters</p>	<p><i>It is suggested that:</i></p> <p><i>i. Sub-section (3) may be amended to provide that penalty provisions under section 271H would not be attracted if the person proves that after paying tax deducted or collected along with the fee and interest, if any, to the credit of the Central Government, he has delivered or caused to be delivered the statement referred to in section 200(3) or the proviso to section 206C(3) before the expiry of due date of filing of return of income of the previous year in which the tax was so</i></p>



Sr. No	Section	Issue/Justification	Suggestion
		<p>ending 30th June, 30th September, 31st December and 31st March.</p> <p>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.</p> <p>Therefore, it is felt that penalty provisions should be attracted if such statements are not filed before due date of filing return of income.</p> <p>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.</p>	<p><i>deducted or collected, irrespective of the quarter to which the tax relates.</i></p> <p><i>ii. Penalty may be prescribed having regard to quantum of default and the period of delay, and no discretion may be given to the Assessing Officer in this regard. In any case, it should not exceed the tax deductible or collectible at source, in respect of which the quarterly statement has not been filed.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



Sr. No	Section	Issue/Justification	Suggestion
		Discretion element in levying penalty should be removed. Penalty may be prescribed having regard to quantum of default and the period of delay. In any case, it should not exceed the tax deductible or collectible at source, in respect of which the quarterly statement has not been filed.	
77.	<i>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</i>	<p>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.</p> <p>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</p>	<p><i>It is suggested that the matter may be looked into and appropriate measures may be taken so that prosecution proceedings under section 276B are not initiated against genuine tax deductors, who have deposited the TDS voluntarily after the prescribed time limit but before service of any notice by the department.</i></p> <p><i>Further, certain threshold limits may be prescribed to avoid genuine errors in estimations.</i></p> <p><i>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>



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Sr. No	Section	Issue/Justification	Suggestion
		<p>hardship to genuine tax deductors. Voluntary remittance of TDS before issue of notice clearly indicates the absence of any malafide intention on the part of the tax deductors to retain the taxes due to the government. The tax deductors are, in any case, being subject to higher interest @ 1.5% per month or part of a month under section 201(1A) for the period of delay in remittance. The TDS statements submitted by them also clearly reflect the taxes deducted, the date of deduction and the date of remittance along with interest, which indicates the bona fide intent on the part of the deductors to report the correct details to the Department. However, it appears that the notices for prosecution 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.</p> <p>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</p>	



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



CHAPTER XXIII

MISCELLANEOUS



DETAILED SUGGESTIONS

Sr. No.	Section	Issue/Justification	Suggestion
78.	<p>Request to consider amendment in Explanation to section 288(2) pertaining to definition of 'Accountant'</p>	<p>We wish to bring to your kind attention the concerns of ICAI in respect of definition of 'Accountant' as provided in Explanation to section 288(2). The definition of 'Accountant' in Explanation to section 288(2) was last amended vide the Finance Act, 2015. The relevant extract of the amended Explanation to section 288(2) is as follows:</p> <p><i>"Explanation.—In this section, "accountant" means a chartered accountant as defined in clause (b) of subsection (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) who holds a valid certificate of practice under sub-section (1) of section 6 of that Act, but does not include [except for the purposes of representing the assessee under sub-section (1)]—</i></p> <p>(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</p> <p><i>(b) in any other case,—....."</i></p> <p>{Emphasis provided}</p> <p>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.</p> <p>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</p>	<p><i>In view of the aforesaid, the definition of the term 'accountant' as per Explanation to section 288(2) of the Income-tax Act, 1961 may be modified suitably to remove the applicability of section 141(3) of the Companies Act, 2013 so that:</i></p> <p>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.</p> <p>b. Requirements prescribed for non-company assesseees should be made applicable to company assesseees to ensure parity in applicability of the eligibility requirements for being an 'accountant'. Further, term "Relative" as used in sub-clause (iv) and (vii) of clause (b) Explanation to section 288(2) may be replaced with</p>



	<p>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.</p> <p><i>Explanation.—For the purposes of this clause, the term "directly or indirectly" shall have the meaning assigned to it in the Explanation to section 144.”</i> {Emphasis provided}</p> <p>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”.</p> <p>A. Situation 1 – Where the CA is the statutory auditor of the company</p> <p>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.</p> <p>It is pertinent to mention that the list of the prohibited services (NAS) by the statutory auditor of a company does not contain provision of taxation services including tax certification services. Therefore, there is no restriction on the statutory auditor to provide tax certification services subject to approval of the Board of Directors/Audit Committee under section 144 of Companies Act, 2013.</p> <p>B. Situation 2 – Where the CA is NOT the statutory auditor of a company</p> <p>In such a case, the CA can be appointed to</p>	<p>“Immediate Family” Members as is used in the IESBA Code of Ethics. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
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	<p>provide the NAS, by the management on such terms as it considers appropriate as there is no restriction under the Companies Act 2013.</p> <p>ISSUES FACED DUE TO RESTRICTIONS IMPOSED BY APPLICATION OF SECTION 141(3)(i) OF THE COMPANIES ACT, 2013</p> <p>I. Difference in scope of statutory audit and tax certification services</p> <p>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.</p> <p>Pursuant to the amendment to the definition of "accountant" under section 288, once a CA, who is not the statutory auditor of the company, is appointed (or is in the process of being appointed) to provide tax certification services as an 'accountant', he is being subject to the same service restrictions specified in section 144 of the Companies Act 2013 as the statutory auditor of the company although the scope of work of tax certification is much narrower than statutory audit {by virtue of applicability of section 141(3)(i) of Companies Act 2013 read with clause (a) of Explanation to section 288(2)}. The statutory auditor is required to audit the whole of financial statements and opine as to whether the same present a true and fair view. However, opining on the financial statements as a whole is not required in case of issuance of a tax certificate/report by a non-auditor wherein the scope of enquiry is specific to the concerned provisions/sections of the Income-tax Act. However, the CA even in a case where the scope of service is limited to tax certification, is prohibited from providing other NAS specified in section 144 of the Companies Act 2013 which he could have provided but for section 288 of the Income-tax Act 1961.</p> <p>The aforesaid issue can be more clearly</p>	
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	<p>understood by way of an example as below:</p> <p>Situation 1- Where the CA is issuing a CERTIFICATE under the Income – tax Act, 1961</p> <p>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'.</p> <p>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.</p> <p>Since Mr. X is providing tax certification services as an 'accountant', Mr. X has to comply with the provisions of section 141(3) of the Companies Act, 2013 {due to definition of accountant in Explanation to section 288(2)}.</p> <p>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.</p> <p>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}.</p> <p>Situation 2- Where the CA is providing TAX ADVISORY SERVICES</p> <p>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.</p> <p>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.</p> <p>Clearly, Mr. X (providing tax certification services) is at a disadvantage to Mr. Z (providing</p>	
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	<p>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.</p> <p>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.</p> <p>II. Discrimination between company assesseees and non-company assesseees</p> <p>In case of assesseees other than company assessee, Explanation to section 288(2) prescribes the eligibility requirements only for the assessee and not for any other related entities. Further, there is no prohibition from providing other NAS specified in section 144 of Companies Act 2013. By making eligibility criteria for company assesseees with reference to section 141(3) of Companies Act 2013, the scope of restrictions has been broadened to extend to other related entities of the company as well as prohibition of NAS under section 144 of Companies Act 2013. A comparison of the restrictions as applicable to an accountant in the case of an assessee, being a company, and in the case of other assesseees is quite clear from the bare perusal of explanation to section 288(2) of Income-tax Act 1961.</p> <p>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”.</p>	
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		<p>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.</p>	
79.	<p>(a) Waiver of liabilities by companies undergoing Corporate Insolvency Resolution Process (CIRP)</p>	<p>The companies undergoing CIRP, while implementing the resolution plan may enter into settlement with its creditors. This could result in waiver of loans/liabilities.</p> <p>Taxability of waiver of loan/liability is a litigated issue. It could result in tax liability on the acquirer of the insolvent company.</p>	<p>Currently, only the banks are allowed to claim deduction for the amount of bad loans and hence the amount of bank loans waived are taxable under section 41(1).</p> <p>To ease the process of insolvency, the amount of loans waived should not be taxed as income of the insolvent company.</p> <p>(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)</p>
	<p>(b) Computation of MAT profit in case of companies undergoing Corporate Insolvency Resolution Process under the Insolvency Code, 2016</p>	<p>As per the extant provisions under section 115JB pertaining to computation of book profits for MAT purposes, the amount of profits of sick industrial company from the assessment year in which the said company had become sick industrial company under SICA, till the year in which the entire net worth equals or exceeds the accumulated losses, is reduced from the profit as shown in the profit and loss statement.</p>	<p>The profits earned during the CIRP and the period during which the resolution plan is implemented should be excluded from ‘Book profits’ computed for MAT purposes.</p> <p>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.</p> <p>(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)</p>
80.	<p>Conversion of convertible</p>	<p>Section 47(x) exempts conversion of bonds or debentures or debenture-stock or deposit certificate in any form, into shares or debenture</p>	<p>Indian start-ups were allowed to issue CNs to resident individuals. RBI has</p>



	<p>notes into shares</p>	<p>of that company, from capital gains tax liability.</p> <p>However, the conversion of Convertible Notes (CNs) issued by an Indian start-up into shares or debentures is not specifically exempted.</p>	<p>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)</p> <p>To bring CN at par with other instruments, a specific exemption should be provided for its conversion into equity.</p>								
<p>81.</p>	<p>Regarding - Co - Operative Housing Societies</p>	<p>Tax rates for Co-operative societies are very harsh as follows:</p> <table border="1" data-bbox="521 814 1040 957"> <thead> <tr> <th>Total Income</th> <th>Tax Rate</th> </tr> </thead> <tbody> <tr> <td>Upto Rs. 10000</td> <td>10%</td> </tr> <tr> <td>Rs. 10001 to Rs. 20000</td> <td>20%</td> </tr> <tr> <td>Above Rs. 20000</td> <td>30%</td> </tr> </tbody> </table> <p>These rates have remained unchanged for past several years. It may be noted that for a total income as low as Rs. 20001 tax rates of 30% is attracted.</p> <p>Over the period of past few years, Tax slabs/rates for individuals, HUF, AOP etc. are very moderate with basic exemption of Rs. 250000 and rates of 5% /20%/ 30% (highest rate is attracted when income is above Rs 10 lakhs). Therefore, there is a need to moderate/reduce tax rates applicable to societies especially housing societies which are not carrying out any business and do not exist for profit but essentially exist and formed for collecting contribution from members, for meeting outgoings such as property tax, water charges, common electricity expenses. In cities and towns, common people essentially live in co –operative housing societies and there is no rationale to taxing income of housing societies @ 30% for total income as low as Rs 20001 and upwards.</p>	Total Income	Tax Rate	Upto Rs. 10000	10%	Rs. 10001 to Rs. 20000	20%	Above Rs. 20000	30%	<p>Therefore, it is suggested that tax rates for individuals be made applicable to Co-operative housing societies as well.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
Total Income	Tax Rate										
Upto Rs. 10000	10%										
Rs. 10001 to Rs. 20000	20%										
Above Rs. 20000	30%										
<p>82.</p>	<p>Harmonize all those disclosure requirements</p>	<p>Already the present IT return forms for various types of assesseees have been made comprehensive to capture detailed information</p>	<p>It is suggested to harmonize all those disclosure requirements and</p>								



		<p>concerning the incomes and assets of the assesseees. Apart from that, assesseees are required to file various returns under different legislations like Benami Transactions (Prohibition) Act, Foreign Assets Disclosure Act, PMLA and also as per Section 285BA of Income Tax Act 1961.</p>	<p><i>incorporate them in the I.T. return form itself with separate sections for disclosure so that the filing obligations of the assesseees will be one time every year.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
<p>83.</p>	<p>Section 43CA, 50C and 56 – Allowance of variation of 5% between stamp duty value and the sale consideration – Increasing the permissible variation and need for retrospective amendment</p>	<p>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.</p> <p>However, to minimize hardship in case of genuine transactions in the real estate sector, the Finance Act 2018 amended the said sections to provide that no adjustments shall be made in a case where the variation between stamp duty value and the sale consideration is not more than five percent of the sale consideration.</p> <p>The Finance Act 2018 provided that in cases where the stamp duty value of immovable property does not exceed 105% of consideration received/receivable on transfer of capital asset/stock in trade being land or building or both, consideration received/receivable shall be full value of consideration.</p> <p>Similarly, it provided that where the stamp duty value does not exceed 105% of consideration paid to acquire immovable property, there will be no trigger of taxation u/s 56(2)(x) of the Income-tax Act.</p> <p>Issues:</p> <p>i. In certain states, there is generally a significant/considerable difference</p>	<p><i>i. The erstwhile provisions dealing with transfer of immovable property for lower consideration had delta of 15% and 25% respectively in section 52(2) and section 269C(2)(a) of the Act. The present delta of 5% is accordingly far too inadequate and may be increased to atleast 15%.</i></p> <p><i>ii. Also, since the amendment is rationalisation measure it may be made applicable from the date the provisions were inserted.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



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		<p>between the stamp duty value/rate and the actual sale consideration and consequently in such cases gap between the two values is more than 5%. Hence, it is suggested to further increase the permissible variation.</p> <p>ii. The delta of 5% of consideration is highly inadequate as stamp duty value is determined as per area and not as per property. The circle rate may vary due to several reasons.</p> <p>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</p> <ul style="list-style-type: none">• 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%)	
84.	Exemptions – Skill Development	<p>Section 11 and 12 – Exemption of Income of specified public charitable and religious trusts</p> <p>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.</p>	<p><i>It is suggested to include institutions exclusively engaged in “Skill Development programmes” under the ambit of section 11 exemptions.</i></p> <p><i>(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)</i></p>



OTHERS



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion												
85.	<p>Increase in the rate of surcharge increases cost of doing business for domestic companies</p>	<p>The Finance Act, 2015 increased the rate of surcharge levied on domestic companies by 2 per cent. The surcharge at the rate of 7 per cent shall be levied in case of a domestic company if the total income of the domestic company exceeds INR one crore but does not exceed INR ten crore and at the rate of 12 per cent in case total income exceeds INR ten crore.</p> <p>The comparative scenarios of tax rate for domestic companies (including surcharge and education cess) is as follows: -</p> <table border="1" data-bbox="542 898 1070 1236"> <thead> <tr> <th data-bbox="542 898 688 1052">Particulars</th> <th data-bbox="688 898 797 1052">Income upto INR 1 crore</th> <th data-bbox="797 898 956 1052">Income above INR 1 crore but upto INR 10 crore</th> <th data-bbox="956 898 1070 1052">Income above INR 10 crore</th> </tr> </thead> <tbody> <tr> <td data-bbox="542 1052 688 1142">Pre 2015 surcharge scenario</td> <td data-bbox="688 1052 797 1142">30.9%</td> <td data-bbox="797 1052 956 1142">32.445%</td> <td data-bbox="956 1052 1070 1142">33.99%</td> </tr> <tr> <td data-bbox="542 1142 688 1236">Post 2015 surcharge scenario</td> <td data-bbox="688 1142 797 1236">30.9%</td> <td data-bbox="797 1142 956 1236">33.063%</td> <td data-bbox="956 1142 1070 1236">34.608%</td> </tr> </tbody> </table> <p>The Finance Act, 2015 has also increased the surcharge rate from 10 per cent to 12 per cent on DDT. The increase in surcharge by 2 per cent will bring the effective DDT rate to 20.358 per cent as against the present rate of 19.995 per cent.</p> <p>The increased rate of surcharge on tax makes cost of doing business in India significantly high. The increased tax cost will adversely impact the investors' sentiments and economic growth.</p> <p>Further, the effective tax rate applicable to domestic companies also happens to be one of</p>	Particulars	Income upto INR 1 crore	Income above INR 1 crore but upto INR 10 crore	Income above INR 10 crore	Pre 2015 surcharge scenario	30.9%	32.445%	33.99%	Post 2015 surcharge scenario	30.9%	33.063%	34.608%	<p>The increased rate of surcharge on tax and DDT makes cost of doing business in India significantly high. It is recommended that the levy of additional surcharge on tax rates should be removed (regardless of the ceiling of income) on domestic companies. Further the additional surcharge on DDT should also be removed.</p> <p>Since the government has already declared that it will be reducing corporate tax rates from 30 per cent to 25 per cent in a phased manner, without prejudice to the above suggestion, the tax rates should be made inclusive of all surcharge.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
Particulars	Income upto INR 1 crore	Income above INR 1 crore but upto INR 10 crore	Income above INR 10 crore												
Pre 2015 surcharge scenario	30.9%	32.445%	33.99%												
Post 2015 surcharge scenario	30.9%	33.063%	34.608%												



		<p>the highest in the world with a very few countries² levying a higher tax rate (of 34.6%) for income levels of more than INR 10 crore.</p> <p>DDT is a levy on the company which was earlier levied in the hands of the shareholders. The increased DDT rate (inclusive of surcharge and education cess) creates disparity when compared with the tax rate of dividends received by an Indian company from specified foreign subsidiaries.</p> <p>In the past, the government has introduced additional surcharge for a limited period, for example the Finance Act, 2013 had increased the surcharge from 5 per cent to 10 per cent on domestic companies whose taxable income exceeds 10 crore per year. Further in case of foreign companies, who pay the higher rate of corporate tax, the surcharge was increased from 2 per cent to 5 per cent. In case of dividend distribution tax or tax on distributed income, surcharge was increased from 5 per cent to 10 per cent. However, such additional surcharge was in force only for one year i.e. for Financial Year 2013-14.</p>	
86.	Issues arising from applicability of Companies Act, 2013 - Amalgamation	a) Section 72A of the Income-tax Act, which deals with treatment of unabsorbed losses and unabsorbed depreciation, in case of amalgamation, is restrictive in its application. Presently benefits of Section 72A are available only to company owning industrial undertaking or a ship or a hotel or banking company. Due to this restriction, other sectors namely service sector and real estate sectors are not eligible for benefits in the form of handing over of loss from one company to another.	<i>It is suggested that sectoral restrictions u/s 72A may be removed and provisions of this section be made applicable for all the sectors. (SUGGESTION FOR IMPROVING TAX COLLECTION)</i>

²For the purposes of comparison, the tax rate in the case of the other BRICS nations is as follows:
Brazil – 34%; China – 25%; Russia – 20%; and South Africa – 28%.



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		b) Presently MAT credit u/s. 115JAA cannot be carried forward by the amalgamated company.	<i>The Income-tax Act needs to be amended so as to allow carry forward of MAT Credit in the hands of amalgamated company for remaining number of years. (SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)</i>
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PART B

SUGGESTIONS FOR IMPROVING TAX ADMINISTRATION AND CITIZEN SERVICES



DETAILED SUGGESTIONS

Sr. No.	Section	Issue/Justification	Suggestion
87.	Section 154 - Mistake apparent from record	<p>Even after due efforts taken by the Government to ensure compliance relating to filing of TDS returns by the deductors, the defaults on behalf of deductors continue for one or the other reason. This deprives the deductee from claiming the Tax so deducted in his return of income filed before due date of filing return. However, situations do arise where the returns are belatedly filed or a correction statement has been filed at a later date by the deductor resulting into a credit in Form No. 26AS of the deductee at a later date say after the time limit of filing a revised return has also expired.</p> <p>Considering the fact that such an omission in the return of income, duly supported by the entries of Form No. 26AS, is a mistake apparent from record, it is suggested that the Assessing Officers may be intimated to accept the rectification application under section 154 in such cases. This will surely be helpful in removing the administrative hindrances being faced by the assesseees as well as the Government.</p>	<p><i>It is suggested that section 154 may be amended so that rectification applications u/s 154 in cases where Form No. 26AS reflects the entries relating to TDS but the same has not been claimed in the return of income be treated as errors/omissions.</i></p> <p>(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</p>
88.	Section 200 - Furnishing of TDS returns	<p>Section 200 provides for the payment of TDS and filing of TDS Returns. The Income Tax Law requires payment of TDS every month by 7th of the following month and by 30th April of the Assessment year for tax deducted in the month of March of the Previous year. The said payment is to be made under various codes as per the sections under which the tax is deducted. Currently, the payment under each code is to be made under a separate challan which requires filling up the same PAN, TAN, name, address etc details over and over again. This is clubbed with the internet connection problems and it becomes a very cumbersome job especially for the small and medium assesseees.</p> <p>Practically, for payment of tax so deducted</p>	<p><i>Since the details are already available with the deductor at the time of payment of taxes, the e-challan itself can be so designed that it captures all the details at that time. The details so submitted at that time may respectively be reflected in the Form 26AS of all deductees as an alternative Return system.</i></p> <p>(SUGGESTIONS TO REMOVE ADMINISTRATIVE</p>



Sr. No.	Section	Issue/Justification	Suggestion
		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.	DIFFICULTIES)



PART C

SUGGESTIONS PERTAINING TO INTERNATIONAL TAXATION



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
89.	Place of Effective Management (POEM)	<p>The Finance Act, 2015 amended the definition of a company resident in India under section 6(3) Of the Income Tax Act 1961. Indian companies have foreign subsidiaries carrying on business in the foreign country. There are cases where 100% shares may be held by Indian residents. In cases of dual residency, double taxation cases are high and criteria set for Poem is altogether complex for every industry. The concept of Poem is difficult to define and it is a matter of judgment whether Poem is in India or in foreign jurisdiction countries like USA also do not have Poem as the criterion to determine the residential status of a company.</p>	<p><i>It is suggested to omit the concept of Poem from section 6 of the Act.</i></p> <p>(SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)</p>
90.	Provisions regarding indirect transfer of capital asset situated in India - Section 9	<p>The Finance Act, 2015 has amended provisions dealing with indirect transfer of capital asset situated in India. The amendment provides clarity on certain contentious aspects with regards to taxation of income arising or accruing from such indirect transfers. The following amendments have been introduced in the Act.</p> <ul style="list-style-type: none">• Share or interest in a foreign company or entity shall be deemed to derive its value substantially from Indian assets only if the value of Indian assets (whether tangible or intangible) as on the specified date exceeds the amount of INR 10 crores and represents at least 50 per cent of the value of all the assets owned by the foreign company or entity.• The value of an asset shall be its Fair Market Value (FMV). Subsequently, the CBDT notified the Rules prescribing the manner of computation of FMV of assets of the foreign company or entity and the reporting requirements by the Indian concern.• The date of valuation of assets (without reducing the liabilities) shall be as at the end of the accounting period preceding the date	<ul style="list-style-type: none">• Since the objective of the amendment is to tax indirect transfer through shell companies, a listed company should not be considered as a shell or conduit company. The same was also suggested by the Shome Committee. It is recommended that exemption should be provided in respect of transfer of shares in a foreign company (listed on a stock exchange outside India) having substantial assets located in India.• Intra-group transfers as part of group re-organisations (other than amalgamation and demerger) should also be exempt from the indirect transfer



Sr. No	Section	Issue/Justification	Suggestion
		<p>of transfer. However, in case the valuation of assets as on the date of transfer exceeds by at least 15 per cent of book value of the assets as on the date on which the accounting period of the company/entity ends preceding the date of transfer, then the specified date shall be the date of transfer.</p> <ul style="list-style-type: none">• Exemption from applicability of the aforesaid provision has been provided in the following situations<ul style="list-style-type: none">○ Where the transferor along with its related parties does not hold (i) the right of control or management; (ii) the voting power or share capital or interest exceeding 5 per cent of the total voting power or total share capital in the foreign company or total interest in the entity directly holding the Indian assets (Holding Co).○ In case where the Indian assets are not directly held, then if the transferor along with related parties does not hold (i) the right of management or control in relation to such foreign company or the entity; and (ii) any rights in such foreign company which would entitle it to either exercise control or management of the holding company or entitle it to voting power exceeding 5 per cent in the holding company.• The Finance Act, 2015 has introduced Section 47(vicc) in the Act which, subject to fulfillment of certain conditions provides that transfer of shares of a foreign company (which directly or indirectly derives its value substantially from shares of an Indian company) by the demerged foreign company to the resulting foreign company under a scheme of demerger will not be regarded as transfer.• The Indian entity will be required to furnish information relating to indirect transfers. The same has also been notified. In case of any	<p>provisions.</p> <ul style="list-style-type: none">• While Explanation 5 to Section 9(1)(i) of the Act provides that shares of a foreign company which derives directly or indirectly its substantial value from the assets located in India shall be deemed to be situated in India. Section 47(vicc) of the Act provides exemption only if the shares of foreign company derive substantial value from shares of an Indian company. While the intent may be to exempt all cases of demerger where foreign company derives substantial value from assets located in India, the reading of Section 47(vicc) of the Act indicates that the said exemption would be available only in cases where the shares of the foreign company derive substantial value from shares of Indian company. Due to this inconsistency in the language of Section 47(vicc) vis-à-vis Explanation 5 to Section 9(1)(i), transfer of shares of a foreign company which derives its value



Sr. No	Section	Issue/Justification	Suggestion
		<p>failure, the Indian company will be liable for a penalty of INR 5 lakhs or 2 per cent of the value of the transaction as specified.</p>	<p><i>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,—”</i></p> <p><i>It is suggested that a similar amendment should also be made under Section 47(viab) of the Act (in case of amalgamation).</i></p> <ul style="list-style-type: none"><i>Section 234A, 234B, 234C and 201(1A) of the Act should not be applied in cases where a demand is raised on a taxpayer on account of retrospective amendment relating to indirect transfer. An appropriate</i>



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



Sr. No	Section	Issue/Justification	Suggestion
		<p>funds and such direct transfer is taxable in India.</p> <p>The Circular applies to specified funds (VCF, Category I or II – AIF) and not to offshore funds in general. Further, the exemption will be restricted to pro-rata share (of the non-resident) in the total consideration realized by the specified funds from the said transfer of shares or securities in India.</p>	
92.	Scope of Royalty Income - Section 9(1)(vi)	<p>(a) Right to use a copyright vis-à-vis Right to use a copyrighted article</p> <p>Internationally, as evidenced by OECD Commentary and opinion of eminent experts, the following two basic principles with regard to software payments are recognized and well settled:</p> <p>(i) The proposition that “right to use a copyright” is different from “right to use a copyrighted article” is recognized and it is only the ‘right to use a copyright’ which is covered within the definition of royalty.</p> <p>(ii) The distributor of computer software does not pay to exploit any rights in the software but only for acquisition of the software for further circulation. In view of these, payments made by a distributor to the copyright holder are in the nature of business income and not royalty income.</p> <p>Also, ‘Packaged /Canned Software’ means ready-made software that could be sold off the shelf. Sale of such software products represent sale of copyrighted articles as against a copyright i.e. such transactions represent sale of goods. Packaged software has been held to be ‘Goods’ even by the Supreme Court in case of TCS vs. State of AP (271 ITR 401). The Central Board of Excise and Customs (“CBEC”) has recognized ‘Information Technology Software’ as ‘Goods’ and classified the same as Central Excise Tariff Item 8523 80 20 in Schedule I to the Central Excise Tariff Act, 1985. Further, ‘Packaged Software/Canned Software’ is recognized as ‘Goods’ for the</p>	<p><i>It is suggested that payments for copyrighted article like shrink-wrapped software as also payments made by distributors of software be specifically excluded from the definition of “royalty”.</i></p> <p>(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)</p>



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Sr. No	Section	Issue/Justification	Suggestion
		<p>purposes of Central Excise Law by the CBEC, which is another wing of the Ministry of Finance. These facts lead to the conclusion that 'Packaged Software /Canned Software' are in the nature of 'Goods' and the legislation also recognizes the same.</p> <p>Given the above, it is recommended that a specific amendment be made to the Income-tax Act to exclude 'Packaged/Canned Software' from the purview of 'royalty' defined under Section 9(1)(vi). Further, in certain cases, these software products are downloadable from the internet and not necessarily delivered in tangible media such as a CD or a DVD. However, irrespective of the mode of delivery, the fact remains that what is sold is a 'copyrighted article' and not a 'copyright'.</p>	
		<p>(b) Use of Standard facilities</p> <p>The Apex Court in CIT Vs. Kotak Securities Limited has clarified that the common services which are necessary for carrying out trading in securities for which transaction charges are paid, do not amount to technical services.</p>	<p><i>In view of decision of Apex Court in CIT Vs. Kotak Securities Limited an exception should be carved out in Explanation 6 to Section 9(1)(vi) so as to exclude payments for use of standard facilities to the general public at large like payments for telephone service, internet service, cable television services and other similar services.</i></p> <p>(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)</p>
		<p>(c) Exclusion of packaged software from applicability of TDS under Section 194J of the Income-tax Act</p> <p>Circular No. 13/2006, dated 13.12.2006 issued by the CBDT states that TDS shall be applicable only when there is a 'contract for work' and not where there is a 'contract for</p>	<p><i>To bring utmost clarity, it is also suggested that a specific amendment be made to Section 194J to exclude sale of software products from the ambit of tax withholding. In this regard, it is</i></p>



Sr. No	Section	Issue/Justification	Suggestion
		<p>sale'. This proposition has also been upheld in various judicial precedents like <i>BDA Limited vs. ITO (TDS) 281 ITR 99 (HC Bom), CIT vs. Dabur India Limited (283 ITR 197) (HC Del)</i>.</p> <p>Considering the facts and arguments above, it is clear that transaction of sale of 'Packaged/Canned Software' is a 'contract for sale' as against a "contract for work' and consequently, should not attract TDS provisions. It is relevant to note that 'Packaged/Canned Software' is also subject to excise duty. There are no other goods in India which are subject to both excise duty and TDS.</p> <p>An amendment to the Income-tax Act to exclude 'Packaged/Canned Software' from the purview of 'royalty' would automatically exclude the transactions from the purview of Section 194J of the Income-tax Act and would help resolve the withholding tax issue faced by traders of hardware with embossed software. The distribution network and channel partners for off the shelf packaged software also deal with hardware like computers, desktop etc. The packaged software is mostly sold along with the hardware, on the same invoice. There is no obligation of TDS on any hardware items, and the traders are finding it confusing and difficult to discharge the TDS obligation arising out of the sale of the 'Packaged Software/Canned Software'. Resolution of the definition of royalty to exclude 'Packaged Software/Canned Software' would also help traders and boost ease of business.</p> <p>Separately, Software Ancillary Services such as Upgrade Fees, Subscriptions, etc. which do not involve transfer of rights, or grant of license but involve only payments of consideration for services is not 'Royalty' for the purposes of Section 194J read with Section 9(1)(iv)</p>	<p><i>suggested that the following provision be included in Section 194J of the Act:</i></p> <p><u>Amendment required</u></p> <p><i>"194J. (1) Any person, ... Provided that no deduction shall be made under this section—</i></p> <ol style="list-style-type: none"> <i>1. ...</i> <i>2. ...</i> <p><i>from any sums, if credited or paid for the transfer of a computer software (including the granting of a licence), along with or without a computer or computer-based equipment or for ancillary services such as up gradation or subscriptions, which does not involve transfer of all or any rights in respect of any copyright."</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



Sr. No	Section	Issue/Justification	Suggestion
		<p>Explanation 2 of the Income-tax Act. Clarification may be issued that AMC's, Upgrade Fees, Subscriptions, etc. which do not involve transfer of rights, or grant of license, but involve only payments of consideration for services is not "Royalty" for the purposes of Section 194J read with Section 9(1)(iv) Explanation 2 of the Income-tax Act and that such transaction are not liable for TDS under Section 194J of the Act.</p>	
93.	<p>Explanation 5 to Section 9(1)(vi) – e-commerce services</p>	<ul style="list-style-type: none"> Explanation 5 to Section 9(1)(vi) has been introduced by Finance Act 2012 w.e.f. 1 June 1976 to clarify that royalty includes and has always included consideration in respect of any right, property or information, whether or not the right, property or information is used directly by the payer or is located in India or is in the control or possession of the payer. Finance Act 2012 also brought in another retrospective amendment to the definition of the term 'Royalty' by introducing Explanation 6 to Sec 9(1)(vi) thereby enlarging the scope of the term 'process' to include transmission by satellite, cable, optical fiber or by any other similar technology, whether or not such process is secret. The above amendments could be interpreted to bring within its ambit, payments made by Telcos to other domestic operators for services like interconnect, roaming, etc. Tax withholding on such payments would result in significant cash flow issues for Telcos. <p>Rationale</p> <ul style="list-style-type: none"> As regards payments made to non-resident operators, a position may be taken that since the term 'process' has not been defined in the treaty, meaning of the same can be imported from domestic tax law for interpreting provisions of the tax treaty [relying on Article 3(2) of treaty read with section 90 and 90A of the Act]. The above would result in payments being made to foreign operators located in 	<ul style="list-style-type: none"> <i>In view of the above, it is recommended that revised definition is withdrawn to keep the definition as it was before the amendment by Finance Act</i> <i>In a bid to fuel the highly competitive Telecom Industry as well as to bring in clarity, the Government should clarify that Explanations 5 and 6 should not be interpreted in a way to bring payments, whether made to domestic operators or international operators, for standardized telecom services including basic/ mobile telephony, internet, roaming, interconnect, etc. under the ambit of definition of 'Royalty'.</i> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



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		<p>treaty countries also subject to tax withholding in India.</p> <ul style="list-style-type: none">• Treaty override - The term used in the treaty is 'secret process' whereas in the domestic law the term is 'process' and hence not pari materia. Any such interpretation would lead to treaty override since such position is not in line with principles of Vienna Convention of Law on Treaties and would be tantamount to unilateral rewriting of the treaty.• Non availability of tax credit- Without a corresponding amendment in the treaty, tax deduction due to amended definition of royalty under the provisions of the Act may not be treated as tax paid in accordance with the provisions of tax treaty. Accordingly, foreign government may refuse to grant credit of taxes withheld by Indian payer, resulting in double taxation for the payee. In the absence of clarity on the subject, foreign partners would increase the pricing by 10-15% with the Indian companies to factor in the impact of withholding tax. This would adversely impact the negotiating power of Indian telecom companies.• The SC court in a recent decision in the case of CIT vs. Kotak Securities Ltd. held that provision of standard service or facility should not be classified as technical services under section 9(1)(vii) of the Act.	
94.	Tax withholding on transponder hire charges - Section 9(1)(vi) Explanation 6	<ul style="list-style-type: none">• Finance Act, 2012 amended the section 9 retrospectively to include payment for transponder hire and other charges as royalty w.e.f. 01.06.1976.• However these are not regarded as royalty under DTAA as definition of royalty in the DTAA remains same and has not been amended, which results in denial of tax credit of withholding tax/tax paid in India, to the Satellite Service Providers.	<ul style="list-style-type: none">• Clarification to be issued that Transponder hire charges are not "royalty" in order to avoid protracted litigation. Further, a clarification should also be issued that the definition of 'process' under the treaty



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		<ul style="list-style-type: none">The contracts with Satellite Service Providers are on “net of tax” basis leading to 12-13% extra cost burden on Indian service recipients (at the present level of WTH rate of 10%).	<p><i>should be read independently and the definition of ‘process’ under Section 9 of the Act should not be interposed in the treaty definition.</i></p> <ul style="list-style-type: none"><i>Various courts in India have held that such charges are not ‘royalty’ or FTS as these are standard services and involve no transfer of technology.</i><i>Even globally, OECD commentary also does not treat such payments as “royalty” or “FTS”.</i><i>The Media Industry which includes the Satellite Broadcasting, DTH, HITS and Satellite News gathering (DSNG & VSAT) leases over 100 transponders on foreign satellites, which on a gross basis are priced at \$190 Million dollars per year. Owing to the satellite transponder leases being treated as Royalty, which is not being held admissible for benefit of DTAA in different jurisdictions, the Indian industry is being forced to gross up the withholding tax levied in India, as the</i>



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			<p><i>benefit of the same is not available to the foreign satellite provider in its country, despite having a DTAA with India. This leads to a gross up to the tune of \$20 - \$22 Million to be borne by Indian industry over and above the fees for transponders as the foreign satellite operators need to be paid on a net basis the price of the transponder use. This is putting an undue burden on the industry without any benefit to the Indian entity or the foreign satellite provider. This is also against the spirit of the DTAA.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
95.	Section 9(1)(i) Explanation 6(b)	Section 9(1)(i) Explanation 6 (b) the value of an asset shall be the fair market value as on the specified date, of such asset without reduction of liabilities, if any, in respect of the asset, determined in such manner as may be prescribed; "specified date" means the— (i) date on which the accounting period of the company or, as the case may be, the entity ends preceding the date of transfer of a share or an interest; or (ii) date of transfer, if the book value of the assets of the company or, as the case may be, the entity on the date of transfer exceeds the book value of the assets as on the date referred	<p><i>To remove this double taxation, anomaly and hardship in such genuine cases, it is recommended that the provision be amended as follows:</i></p> <p><i>This provision should not be attracted where:</i></p> <p><i>(i) the Indian asset owned by the foreign company is sold between the specified date & the</i></p>



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		<p>to in sub-clause (i), by fifteen per cent. [EMPHASIS PROVIDED]</p> <p>This and connected provisions were brought on the statute book as an anti-avoidance measure to curb the practice of foreign companies changing control at significantly high value which decidedly came from Indian business and such structure was essentially adopted to avoid Indian capital gains tax.</p> <p>However, this provision is attracted even where there is no such intention. The definition of specified date being the date of the end of the latest accounting period prior to the date of transaction of transfer of the shares of the foreign company, particularly poses a problem.</p> <p>A Multinational company, which is reorganising or restructuring its global business may be doing so for a number of reasons, least of which may be connected with Indian taxation. Hence, even where such foreign company has already sold off its Indian subsidiary (or asset) separately to a third-party buyer just before transferring its own shares, it may still be liable to this indirect taxation because on the specified date it owned the Indian company (or asset).</p> <ul style="list-style-type: none"> This provision is anomalous and results in double taxation in this situation since post the specified date, when the Indian asset is sold, the foreign company would have paid its capital gains tax in India. Yet, because such Indian asset was on its balance sheet on the specified date, the transfer of its share may still attract capital gains tax in India on account of indirect Indian asset transfer. 	<p><i>date of transfer of the shares of the foreign company and the Indian capital gains tax thereon is paid as applicable.</i></p> <p>NOTE: In view of the anti-avoidance provisions of sections 50CA and section 56(2)(x), avoidance of capital gains tax on sale of the Indian asset or shares at low value prior to the date of transfer of the shares of the foreign company is unlikely to happen. Hence this risk is avoided.</p> <p><i>(ii) The value contributed by the Indian asset to the foreign company has reduced by more than 15% between the specified date and the date of transfer of the shares of the foreign company,</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
96.	Definition of Significant	<ul style="list-style-type: none"> SEP was introduced to tax non-resident entities conducting business through digital 	Considering the intent to tax digital business carried



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	Economic Presence (SEP) for the purpose of business connection	medium. <ul style="list-style-type: none">• However, definition of SEP is not clear that it is applicable only to non-resident entities conducting business through digital medium.	out by non-resident entities in India, the definition of SEP should be amended to restrict its applicability to business carried through digital medium. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
97.	Introducing safeguards while applying Principal Purpose Test under the tax treaty	India has adopted the minimum standard Article 7(1) of the Multilateral Instrument (MLI) which introduces Principal Purpose Test (PPT) in its tax treaties. PPT test is akin to the Indian General Anti-Avoidance Rules (GAAR). However, while introducing PPT (once MLI becomes effective), there are no safeguards provided under the Income Tax Act, 1961. In fact, GAAR provides additional safeguards like pre-approvals and process under GAAR-panel, etc.	It is suggested that for the cases where PPT test under MLI is invoked, the Government should provide similar treatment as GAAR-safeguards. This will provide certainty to the foreign investors and will facilitate ease of doing business in India. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
98.	Grandfathering of Principal Purpose Test application	India has adopted the minimum standard Article 7(1) of the Multilateral Instrument (MLI) which introduces Principal Purpose Test (PPT) in its tax treaties. PPT test is akin to the Indian General Anti-Avoidance Rules (GAAR). GAAR provides grandfathering to the specified transactions entered into before 1 April 2017 (the date on which GAAR became effective). A similar grandfathering, however, is absent in case where PPT under the treaty is invoked. This creates uncertainty for past transactions once MLI becomes effective.	Therefore, it is suggested that the Government should provide the grandfathering for the application of PPT test to the past transactions. This will provide certainty to the foreign investors and will facilitate ease of doing business in India. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



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99.	Carry forward of excess foreign tax credit	The Income-tax Act, 1961 allows for set off in respect of foreign taxes paid on overseas income. However, in case of loss/inadequate profits, no set off may be possible. In the current economic scenario of the global economy, business outlook has become extremely uncertain and results have become very volatile.	<i>It is suggested that assesseees be permitted to carry forward (say for five years) such unutilized credit (in USA such relief is granted vide section 904(c) of Federal Tax Act) for adjustment in future years.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
100.	Tax Sparing Credits	Grant of tax sparing credits not dealt with in the notified Foreign Tax Credit Rules.	<ul style="list-style-type: none">• <i>Many treaties signed by India provide for tax sparing clauses under which India will give a deemed credit for taxes on exempt income in the source country. The notified Foreign Tax Credit Rules do not deal with such instances.</i>• <i>It is therefore submitted that with a view to avoiding potential issues surrounding the determination of the credit in absence of actual taxes paid abroad, it should be expressly clarified that tax sparing credit should be available based on a certificate of relevant authority of the overseas jurisdiction.</i> (SUGGESTION TO



Sr. No	Section	Issue/Justification	Suggestion
			REDUCE / MINIMIZE LITIGATIONS)
101.	Disallowance for TDS defaults on payments to non-resident – Section 40(a)(i)	<p>In relation to section 40(a)(ia), Explanatory Memorandum to Finance (No.2) Bill 2014/CBDT Circular No. 1 of 2015 explained that disallowance of whole of the amount of expenditure in case of payments to residents for whom TDS is a merely mode of collection of tax and not discharge of final tax liability results into undue hardship for the taxpayers and accordingly, s.40(a)(ia) is amended to restrict disallowance only to 30% of the expenditure amount. Thus, disallowance should be in proportion to the TDS rates which apply to residents which ranges from 2% to 30%.</p> <p>However, similar changes are not made in section 40(a)(i) which governs the non-deduction of TDS on payments to non-residents. It may be noted that TDS rates applicable to majority of payments to non-residents by way of interest, royalty and FTS also are in the range of 5% to 10% which are also final tax payable by non-resident payees.</p> <p>Disallowance of 100% of expenditure involving payments to residents effectively results in recovery of 30% tax by the Revenue from the payers whereas the final tax payable by non-residents is only in the range of 5% to 10%.</p>	<p>In line with section 40(a)(ia) of the Act, it is recommended that s.40(a)(i) should also be amended restricting the disallowance to 30 percent of the amount of expenditure.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
102.	Cross-border merger	<p>Exemption from Capital gains</p> <p>A transaction of amalgamation, where the amalgamated company is an Indian company, is exempt from capital gains tax liability. Further, in case of an inbound merger, the capital gains arising to the shareholders of the amalgamating company is also exempt. Similar tax exemption is not available to the amalgamated company or its shareholders in case of an outbound merger.</p> <p>Exposure to a permanent establishment (PE)</p> <p>Post an outbound merger, the assets, liabilities and employees of the amalgamating Indian company may continue to physically exist in India.</p>	<p><i>The merger of an Indian company with a foreign company in a specified jurisdiction is now permitted as per section 234 of the Companies Act, 2013 r.w. Rule 25A of the Companies Merger Rules.</i></p> <p><i>The FEMA Merger Rules have also been amended to permit an outbound merger, subject to conditions. One such condition is that a foreign company can acquire and hold only certain assets in India</i></p>



Sr. No	Section	Issue/Justification	Suggestion
		<p>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).</p>	<p>which are permitted under the relevant FEMA regulations for the acquisition of property in India.</p> <p>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.</p> <p>The following tax treatment is recommended for consideration:</p> <p>Removal of a condition specified in section 47(vi):</p> <ul style="list-style-type: none">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. <p>No taxability for the shareholders of the amalgamating company.</p> <ul style="list-style-type: none">The shareholders receiving shares of the foreign amalgamated company should not be subject to capital gains. Relaxation of a condition specified under section 2(1B)



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			<ul style="list-style-type: none">• Due to restrictions in FEMA Regulations, ALL assets and liabilities pertaining to the undertaking may not be transferred to the amalgamated foreign company. Considering the impossibility of performance, the condition for transfer of all assets and liabilities of the undertaking as required under section 2(1B) should be relaxed. <p>Clarity on 'Business Connection' under section 9(1)(i):</p> <ul style="list-style-type: none">• 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. <p>Transfer of carried forward losses and unabsorbed depreciation under section 72A.</p> <ul style="list-style-type: none">• 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.



Sr. No	Section	Issue/Justification	Suggestion
			(SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)
103.	Master File Regulations	<p>a) The threshold for applicability of master file regulations has been kept at consolidated group turnover of INR 500 crore accompanied with aggregate international transaction(s) of INR 50 crore.</p> <p>This is significantly lower than the OECD recommendations/global trend. This has brought a lot of mid-sized taxpayers into the net of master file compliance, increasing the compliance burden on them.</p>	<p><i>The threshold should be aligned with that for CBCR.</i></p> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
		<p>b) Section 92D(1) first proviso r.w. rule 10DA – Master File – Constituent Entity of International Group to file form 3CEAA i.e. Master File. This requirement is inserted as a proviso to section 92D(1) which requires every person who has entered into international transactions to keep and maintain information and documents in respect of international transactions. On the basis of rule of interpretation that the proviso is to be read in continuation of the main section, it is understood that the requirement of first proviso applies when:</p> <ul style="list-style-type: none">• there are associated enterprises having international transactions• there is group and international group• there is constituent entity of international group (These terms are defined in section 286(9). <p>On the basis of plain reading of the definitions of “associated enterprises”, “International Group”, “Group”, “Constituent Entity”, it can be understood</p>	<p>Provisions related to applicability of additional documentation requirements for transfer pricing cases into the Income Tax Act shall be aligned to the provisions of applicability of transfer pricing provisions in the Income Tax Act.</p> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



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		<p>that various situations like following examples can arise. Example ABC India, ABC USA and ABC Japan are having relation in such a manner that it can be terms as a group and international group as per the definitions given in section 286(9). Requirements of preparing CFS and inclusion in CFS are the theme of the definitions of group, International Group and Constituent Entity. Now ABC UAE is company owned by the promoters of ABC India. This means that ABC UAE is associated enterprise of ABC India but not the part of International Group as defined under section 286(9) relevant clause. Now let us assume that there are international transactions between ABC India and ABC UAE but no such transactions between ABC India, ABC Japan and ABC UAE. This means there are no international transactions within the international Group. However, still there exist :</p> <ul style="list-style-type: none">• International Transactions between associated enterprises• International Group• Constituent Entity of International Group. <p>But the international 142standardized are not with the entity which is part of international group. Confusion exist whether in such cases, the master file reporting is required to be done? Also whether the entity which is associated enterprise but not part of the international group shall be included in the form 3CEAA?</p> <p>Before budget, 2016, documentation and reporting were limited to International Transactions. OECD (Organisation of Economic Co-operation and Development) has issued report on 15 BEPS Action Plans. The OECD report on Action 13 of BEPS Action plan provides for revised standards for transfer pricing documentation. It is recommended in the BEPS report that the countries should adopt a 142standardized approach to transfer pricing documentation. India has Implemented these suggestions by inserting first proviso to section</p>	



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		92D(1) and Section 286. However, the applicability criteria for these new documentation requirements might not cover all the cases where transfer pricing regulations (International Transactions at ALP) applies. This might keep large number of cases where transfer pricing applies out of the ambit of additional documentation requirements.	
104.	Reporting of issuance of Share Capital Transaction in Form 3CEB	<p>Clause 16 of the Form 3CEB requires the reporting of particulars in respect of the purchase or sale of marketable securities, issue and buyback of equity share, optionally convertible/ partially convertible/ compulsorily convertible debentures/ preference shares. Bombay High Court in the case of "Vodafone India Services Pvt. Ltd. vs. UOI (Dated – 10th October 2014)" has held that Chapter X of the Income Tax Act 1961 i.e. Transfer Pricing Provision does not apply on any transaction involving issue/receipt of share capital money (including issued on premium) as no income/expense will arise from such transaction.</p> <p>Government of India in its PIB dated 28th January 2015, has accepted the order of Bombay High Court in the case of Vodafone and came to the view that the transaction involved is on capital account and there is no income to be chargeable to tax. So, applying any pricing formula is irrelevant.</p> <p>However even after the acceptance of the Bombay High Court Judgment by Government of India, Share Capital transaction is still required to be reported /justified in Form 3CEB.</p>	<p><i>In view of Vodafone India Services Pvt. Ltd. vs. UOI (Dated – 10th October 2014)" and PIB dated 28th January 2015 issued by CBDT, it is suggested that clause 16 of Form No. 3CEB should be amended so as clarify that share Capital transaction is not required to be reported /justified in Form 3CEB.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
105.	Advertising Marketing & Promotion Expenses (AMP)	From last many years, companies advertising foreign brands in India are being scrutinized in TP audits, for the AMP expenditure made by them. On this issue large TP adjustments are being made. This has led to litigation between the companies and TPOs resulting in the disallowance all marketing expense and the same is being challenged in higher authorities.	<p><i>It is suggested that clarifications be issued in respect of AMP expenditure made by companies advertising foreign brands in India so that litigation can be avoided.</i></p> <p>(SUGGESTION FOR</p>



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		<p>Still after several cases been disposed by the High Court and the Appellate Tribunals, there is no clear resolution to this issue and it is still one of the most litigated TP issues before the courts.</p>	<p>RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
106.	<p>Permissible variation available in case of Single comparable used determining the arm's length price</p>	<p>The second proviso to Section 92C(2) of the Act permits a variation between arm's length price so determined and price at which International Transaction or Specified Domestic Transaction has actually been undertaken.</p> <p>The amended proviso of section 92C(2) of the Act, clearly allows the assessee a benefit of availing the permissible variation even if single price is determined as an arm's length price. Further permissible variation applies for the difference between the 'Arm's length price so determined' and the price at which the international transaction/SDT is actually undertaken and not from the "arithmetic mean" in the pre amended proviso. The amended proviso as it stands now nowhere mentions that the term "arithmetic mean" as a precondition for availing the permissible variation benefit. However, there is still an ambiguity in the interpretation as to availability of the permissible variation where single comparable is used in determining the arm's length price. The ITAT has given conflicting rulings on the issue and this is leading to unnecessary litigation.</p>	<ul style="list-style-type: none"> It is recommended to clarify by way of an amendment or a circular that considering the revised proviso the benefit of variation from transfer price is available even in case of single comparable. It will reduce the litigation, which is one of the agenda items of the existing government. The above recommendations are also in line with the observations of Hon'ble Income Tax Appellate Tribunal in the case of The Development Bank of Singapore (ITA No. 6631/Mum/2006) and in the case of Reliable Cashew Co. <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
107.	<p>Section 92C(2) and Rule 10 CA - Range concept</p>	<p>Arm's length range is the 35th to 65th percentile of the dataset.</p> <p>Globally, arm's length range is the Inter quartile range (25th to 75th percentile of the dataset). This is</p>	<ul style="list-style-type: none"> The arm's length range in India be aligned with the globally accepted inter quartile range of 25th to 75th percentile of



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		practiced in most of the countries, for eg. US, Canada, UK, etc.	<p><i>the dataset.</i></p> <ul style="list-style-type: none"><i>It will reduce the compliance cost for the Assessee as a benchmarking from one country perspective can be applied from the other country perspective as well.</i> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
108.	Tolerance Band – Second proviso to section 92C(2)	<p>By Finance Act 2012, the Government notified that the flexibility of the range as was provided in the second proviso to Section 92C(2) cannot exceed 3 percent.</p> <p>In case where the arithmetic mean is adopted to compute the arm's length price (as an alternative to adopting the identified range as introduced in Finance (No 2) Act 2014), limiting the tolerance band to 3 percent (1 percent for wholesalers) is extremely restrictive.</p>	<ul style="list-style-type: none"><i>The tolerance band be restored to the earlier limit of 5 percent.</i><i>The arithmetic mean is used as an alternative where range concept is inapplicable. Allowing higher tolerance band will provide better flexibility.</i> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
109.	Mutual Agreement Procedures (MAP)	MAP provisions as agreed in the respective tax treaties were discussed several years ago and the same needs to be relooked at in light of the changing dynamics of business environment in India and globally. Accepting bank guarantee will make MAP more effective for resolution of tax disputes, irrespective of jurisdiction involved. US, UK and Denmark are some of the jurisdictions where an option is available to the tax payer to provide bank guarantee for the tax demand.	<ul style="list-style-type: none"><i>The law may provide that where a MAP application has been preferred, the demand may be stayed on furnishing of bank guarantee or other security till completion of MAP process.</i> <p>(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)</p>



Sr. No	Section	Issue/Justification	Suggestion
110.	Section 92CE - Introduction of secondary adjustment	<p>The Finance Act, 2017 introduced the concept of secondary adjustment on Transfer Pricing (TP) adjustments. A taxpayer is required to make a secondary adjustment, where the primary adjustment to transfer price has been made in the following situations: -</p> <ul style="list-style-type: none">• Suo moto by the taxpayer in the return of income;• By the AO during assessment proceedings, and has been accepted by the taxpayer;• Adjustment determined by an Advance Pricing Agreement (APA) entered into by the taxpayer;• Adjustment made as per the safe harbour rules under section 92CB; or• Adjustment arising as a result of resolution of an assessment by way of the mutual agreement procedure (MAP) under an agreement entered into under section 90 or section 90A for avoidance of double taxation. <p>Further, the section 92CE(3)(v) defines 'Secondary adjustment' as an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.</p> <p>The additional amount receivable from the AE as a result of the primary adjustment should be repatriated by the taxpayer into India within a prescribed time limit. If the same is not received by the taxpayer within the time-limit, then the primary adjustment will be deemed as an advance extended to the overseas AE and a secondary adjustment in the form of notional</p>	<p>Sub-sections (1), (2) and (3) need to be revisited to streamline and appropriately link up the three sub-sections to provide adequate clarity as to the specific requirements from the taxpayers on this front.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



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Sr. No	Section	Issue/Justification	Suggestion
		<p>interest on the outstanding amount should also be offered to tax as an income of the taxpayer.</p> <p>The above requirements for repatriating the adjustment amount into India and imputing a notional interest are triggered if the TP or primary adjustment exceeds rupees one crore. The manner of computation of interest on the amount deemed as advance made by the taxpayer to the AE would be prescribed.</p> <p>The situation of excess payment treated as loan given to AE on which notional interest is computed and added to the income of the assessee till the excess amount is repatriated by AE.</p> <p>It would be difficult for AE to repatriate the money to India on account of secondary adjustment as the income-tax laws and any other relevant laws pertaining to such country may not allow to repatriate money. Further the AE would have paid tax on such amount in its home country. This would lead to double taxation. This would lead to double taxation.</p> <p>Further, the same cannot be treated as advance in the books of account maintained in India as the books of account are prepared as per the provisions of Companies Act, 2013 read with Indian Accounting Standards.</p> <p>(i) Sub-section (1) of the proposed section 92CE provides for secondary adjustments to be made in respect of primary adjustments in certain situations. The phrase "secondary adjustment" has been defined in Clause (v) of Sub-section (3) to mean an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated</p>	



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



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Sr. No	Section	Issue/Justification	Suggestion
	(iv)	Clause (ii) to sub-section (1) of the section 92CE provides that a taxpayer is required to make a secondary adjustment where primary adjustment to transfer price has been made by the AO during assessment proceedings and has been accepted by the taxpayer. There is lack of clarity on what exactly the term 'has been accepted by the taxpayer' means.	Government should clarify the term 'has been accepted by the taxpayer' in order to provide certainty on the applicability of these provisions in such situations. For e.g. if the taxpayer is in appeal against the assessment order to Tribunal, in such cases, will secondary adjustment provisions be applicable only after the Tribunal proceedings are completed or the same will be applicable after Court proceedings are completed i.e. if the taxpayer further appeals to High Court/ Supreme Court. (SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)
	(v)	Since adjustments are made subsequently when returns are taken up for scrutiny, any requirement to make secondary adjustment would depend upon whether the Associated Enterprise is willing to accept the secondary adjustments to be made in its books abroad. Non-acceptance of the same will lead to inter-company issues during consolidation. It could also require restatement of financial statements of an Indian entity if adjustments are material. This in turn might lead to filing of revised returns. Implication on shareholders value and lenders agreement (where there are borrowings) would need to be evaluated besides implications under the Companies Act, 2013. Further, FEMA requires money to be remitted within 6 months from the end of the accounting year. Also, if the Associated Enterprise (AE) located abroad does not pass entries in the books, inter-company adjustments/eliminations could be a challenge if	The said issues may be considered and appropriate remedial measures may be incorporated to avoid genuine hardship. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



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Sr. No	Section	Issue/Justification	Suggestion
		the AE is a holding company.	
	(vi)	<p>The proviso to the section 92CE(1) states that nothing contained in this section shall apply, if;-</p> <p>(i) the amount of primary adjustment made in any previous year does not exceed one crore rupees; and</p> <p>(ii) the primary adjustment is made in respect of an assessment year commencing on or before the 1st day of April, 2016.</p> <p>From a bare reading of the section, it appears that both conditions i.e. primary adjustment made before 1.4.2016 and it being less than 1 crore need to be complied, because the word "AND" is written between two conditions. It ought to be "OR". Else, in future years, there will be no threshold limit for secondary adjustment.</p>	<p><i>It is suggested that the proviso may be restated as under:</i></p> <p><i>(i) the amount of primary adjustment made in any previous year does not exceed one crore rupees; and OR</i></p> <p><i>(ii) the primary adjustment is made in respect of an assessment year commencing on or before the 1st day of April, 2016.</i></p> <p>(SUGGESTION FOR IMPROVING TAX COLLECTION)</p>
	(vii)	<p>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.</p>	<p><i>In order to remove this anomaly it is recommended that section 92CE(2) be amended to clarify that the section applies only in case where the primary adjustment is made in the hands of the Indian AE.</i></p> <p>(SUGGESTION FOR IMPROVING TAX COLLECTION)</p>
	(viii)	<p>Section 92CE provides for secondary adjustment in case where excess money (difference between transaction price and arm's length price), which remains outside India, due to the primary adjustment under TP is not repatriated to India.</p> <p>Taxable funds may remain outside India only in case where a foreign party is involved. In other</p>	<p><i>In order to avoid any unwarranted litigation, it may be clarified that section 92CE applies only to international transaction and not domestic transactions as covered under section 92BA.</i></p> <p>(SUGGESTION FOR</p>



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Sr. No	Section	Issue/Justification	Suggestion
		words, there may be possible base erosion only in case where one of the parties to the transaction is foreign AE. A transaction between two domestic entities, will not lead to profits allocable to India, remaining outside India.	IMPROVING TAX COLLECTION)
	(ix)	<p>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.</p> <p>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.</p>	<p><i>It may be specifically provided that the advances appearing in the books of the parties be reversed in following cases where AE relationship ceases to exist, or excess money is repatriated.</i></p> <p>(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)</p>
	(x)	<p>Constructive loan v/s constructive dividend</p> <ul style="list-style-type: none"> • Primary adjustment to the income of an Assessee dealing with a foreign AE is treated as interest bearing loan given to the AE, if the amount of money equivalent to the adjustment is not repatriated within the time limits prescribed in Rule 10CB and interest at prescribed rate is imputed on said deemed loans. • Further, adjustments in books of accounts of the Assessee and its foreign AE are required to reflect actual allocation of profits between the Assessee and its AE which is consistent with transfer price determined as a result of primary adjustment. • As per OECD Transfer pricing guidelines, secondary adjustment may take the form of constructive (or deemed) loan/ dividend/ equity contributions. • Most countries follow the constructive dividend approach, for example, USA, Korea, Germany, France, and South Africa. The most significant 	<ul style="list-style-type: none"> • It is recommended that the provisions of secondary adjustment be amended to treat excess profits in the hands of the foreign AE as equity contribution or deemed dividend, at the option of the Assessee. Deemed dividend can be brought to tax in the hands of the recipient (Assessee). • It is also recommended that the cumbersome requirement of adjusting the books of accounts of the Assessee in India as well as the overseas AE, should be done away with, as the foreign AE may be prohibited to make adjustment in books by local laws of its country of



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		<p>advantage of constructive dividend is that it is one time event without a carry-forward impact on future years, unlike the loan approach, where it may remain in place for several years if not acknowledged by AEs.</p> <ul style="list-style-type: none"> Repatriation of profits may not be feasible as AE relationship may cease to exist when the primary adjustment attains finality. The AE relationship may cease to exist on account of liquidation/winding up of AEs, or transfer of the AE to another entity. Alternatively, remittance of money on account of primary adjustment attaining finality may not be possible due to restrictions of the Central Bank in the jurisdiction where the AE is incorporated. Most countries that apply secondary adjustment do not recognize deemed loan approach, many countries do not have secondary adjustment legislation at all. Therefore, the deemed loan approach is likely to increase the risk of double taxation. 	<p>incorporation.</p> <ul style="list-style-type: none"> It would ease the burden on the Assessee to repatriate the adjusted amounts. <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
	(xi)	<p>Time limit for secondary adjustment</p> <ul style="list-style-type: none"> The time limit prescribed under Rule 10CB for repatriation of excess money is 90 days from the due date of filing of return under sub-section (1) of section 139 of the Act in the case of agreement for advance pricing entered into by the Assessee under section 92CD. The APA negotiation process usually takes 2-3 years or even more. The due date of return under section 139(1) of the Act in respect of couple of initial years covered under the APA has expired by the time the APA is concluded. This would result in secondary adjustment for most of the companies under the APA even though the APA program requires the Assessee 	<ul style="list-style-type: none"> It is recommended that the time limit prescribed under rule 10CB, in respect of primary adjustments made consequent upon entering into an APA, be set to 90 days from the signing of the APA or the due date of filing of return of income u/s 139(1) of the Act, whichever is later. It would ease the burden on the Assessee under the APA program <p>(SUGGESTION FOR</p>



Sr. No	Section	Issue/Justification	Suggestion
		to file modified return of income in respect of covered past years.	RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
111.	Advance Pricing Agreements ('APA')	<ul style="list-style-type: none">• The guidelines provide for conducting the assessment proceedings simultaneously, during the pendency of APAs.• This may result in duplication of time and effort of TPO and Assessee, once APA is concluded.	<ul style="list-style-type: none">• It is recommended the transfer pricing proceedings be kept in abeyance till the conclusion of the APA, qua covered transactions. In case on conclusion of the APA, the modified returns could be summarily scrutinized. In case the APA proceedings fail, the assessment proceedings can be revived for the proposed covered transactions. The period between date of filing of APA application and date for signing of the APA can be excluded for the purposes of computation of the limitation.• Ease the burden on the Assessee and the Tax Authorities <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
112.	Rollback of APA	The CBDT introduced the rollback rules under the APA program on 14 March 2015. There were some ambiguities about the implementation of the rollback rules, and therefore, CBDT issued Frequently Asked Questions (FAQs) clarifying certain issues. In this regard, some of the	<i>It is recommended that this provision should be relaxed to the extent that the taxpayers with similar transactions with no substantial changes in the</i>



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



Sr. No	Section	Issue/Justification	Suggestion
		<p>options if such an issue arises:</p> <p>The Article 25 on Mutual Agreement Procedures in various DTACs covers such instances of allowing a corresponding adjustment for TP, hence bilateral APAs should be allowed, or the countries (like India) that do not agree that Article 25 of DTACs cover corresponding TP adjustments, should make unilateral changes in their regulations to allow such adjustment.</p>	THE PROVISIONS OF DIRECT TAX LAWS)
114.	Section 94A - Special measures in respect of transactions with persons located in notified jurisdictional area	<p>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.</p> <p>Section 206AA which provides for higher withholding @ 20% in absence of PAN of payee is also applicable notwithstanding anything to the contrary contained in the Act.</p> <p>Though the intent appears to be that section 94A would override section 206AA, there may be some difficulties in interpretation.</p>	<p>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.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
115.	Section 94B - Limitation of interest benefit provisions introduced - certain concerns to be addressed	<p>The Finance Act, 2017 introduced limitation of interest benefit (deduction) provisions in where an Indian company, or a permanent establishment of a foreign company in India, being the borrower, pays interest exceeding rupees one crore in respect of any debt issued/guaranteed (implicitly or explicitly) by a non-resident AE. The interest shall not be deductible in computing income chargeable under the head 'Profits and gains of business or profession' to the extent, it qualifies as excess interest.</p> <p>Excess interest shall mean total interest paid/payable by the taxpayer in excess of thirty per cent of cash profits or earnings before interest, taxes, depreciation and amortisation</p>	<p>In view of the above policy level issues, it is suggested that the restrictions imposed on the interest benefits on overseas borrowings may be done away with entirely or at least deferred for 5-10 years to give India a chance to achieve high growth and achieve significant infrastructural development and maturity.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF</p>



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Sr. No	Section	Issue/Justification	Suggestion
		<p>(EBITDA) or interest paid or payable to AEs for that previous year, whichever is less.</p> <p>There will be restriction on the deductibility of the interest in the hands of the taxpayer in a particular financial year to the extent it is excess as explained above. However, the same shall be allowed to be carried forward for a period of eight years and allowed as deduction in subsequent years. The above restrictions shall not be applicable to the taxpayer engaged in the business of banking or insurance. These provisions will be applicable for FY 2017-18 and subsequent years.</p> <p>(i) India is a developing country with a need for foreign investment to fund various initiatives, in particular, the development of India's infrastructure. The Government has given its support at a policy level, inter-alia, consistently reducing tax withholding rates on ECBs by Indian entities from non-residents, which indicates encouragement by the Government towards debt obtained by Indian entities by overseas parties. However, the restrictions imposed under the proposed Section 94B above in respect of interest of overseas loans is giving mixed signals to foreign as well as Indian parties at a policy level on overseas borrowings. This inconsistency may lead to further policy level uncertainty in the minds of the business community in India and may undermine the attempts at enhancing the "ease of doing business" by the Government. Under existing ECB guidelines, there is already a mechanism in place to limit the Borrower's Debt/Equity ratio, which effectively safeguards India's interests with regard to excessive debt. As such, there is no need for any additional measure to protect India's interests in this regard.</p>	DIRECT TAX LAWS)
	(ii)	Without prejudice to the aforesaid, if at all it is considered necessary to have provisions to limit	It is recommended to carve out exceptions for



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		<p>the deductibility of interest, the exclusions granted to banking and insurance companies may be extended to other sectors such as Infrastructure and Non-Banking Finance Companies. Large capital-intensive companies with long gestation periods, Non-Banking Finance Companies, companies in the real estate sector and companies in the infrastructure sector (requiring significant foreign capital which may not always come in the form of equity) are typically highly leveraged on account of the business requirements (either by way of external or related party debt) and might be negatively impacted by the interest restriction.</p>	<p><i>inherently highly leveraged industries from the aforesaid restrictions.</i> The exclusions granted to banking and insurance companies may be extended to other sectors such as Infrastructure, Non-Banking Finance Companies and loss-making companies.</p> <p><u>Also, the provisions should not be made applicable to new companies/start-ups (i.e. companies formed after 1 April 2016) for initial period of 3 years. This would help them to build good track record and be able to independently obtain debt without support of AE.</u></p> <p>Alternatively, the provisions may not be applicable, subject to certain conditions in line with BEPS Action Plan 4.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
	(iii)	<p>The proviso to sub-section (1) provides that where debt is issued by a non-associated lender but an AE either provides implicit or explicit guarantee to such lender, such debt shall be deemed to have been issued by an AE.</p> <p>In respect of explicit guarantees, the transaction</p>	<p><i>The said section should be amended to specify limitation of benefits in guarantee cases only to the extent of the guarantee commission (if any) paid by the Indian entity to the</i></p>



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		<p>relating to associated enterprises is only towards a guarantee commission (in case charged by the overseas guarantor). The interest towards the borrowing is paid in this case only to a third party wherein the rate and terms are decided purely through negotiation. Hence, restriction of benefit in relation to guarantees ought to be only to the extent of the guarantee commission (if any) claimed as a deduction by the Indian entity and not interest paid to the third-party lender.</p> <p>Further, including implicit guarantees under the above restrictions would lead to significant hardship for the taxpayers and may result in protracted litigation in the coming years. It is pertinent to note that there is no clear definition of implicit guarantee and it would be an onerous task for the taxpayers and tax authorities to determine existence of an implicit guarantee. E.g. when a letter of comfort or simply an undertaking is provided by one AE to a lender or a bank, the tax authorities may contest that guarantee exists, without going into details whether the same has benefited the borrower and whether the AE has actually rendered any service or assumed any liability.</p>	<p>overseas guarantor (being its AE) and not the interest. Further, the word implicit guarantee may be dropped from the provisions. The term 'explicit guarantee' may also be appropriately defined to obviate future litigation on this front.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
	(iv)	<p>Based on the definition of the term 'debt' as provided in clause (ii) of sub-section (5) of proposed section 94B, interest may include many other payments made on various kinds of financial arrangements and instruments. There may be an issue as to what payments made by the taxpayer needs to be included in the term interest e.g. which payments on account of finance lease and financial derivatives should be included in the term 'interest or similar consideration' etc. which may again lead to litigation.</p>	<p>It is recommended that:</p> <ul style="list-style-type: none">Appropriate guidelines may be issued to clarify what the term 'interest or similar consideration' should include or exclude as the definition provided in the existing Section 2(28A) of the Act may not be adequate for the purposes of thin-capitalisation rules based on the definition of the term 'debt'.



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			<ul style="list-style-type: none">• <i>the provisions of this section should be made applicable to new debts taken on or after 1 April 2017.</i>• <i>Interest disallowed under other provisions (sections 40(a)(i) or 43B) should be specifically excluded from definition of "total interest".</i> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
	(v)	There is lack of clarity on the mechanism to calculate EBITDA i.e. say, on the basis of book profits calculated on the basis of accounting standards, Ind-AS or otherwise. This may result in unnecessary litigation.	<p><i>It is suggested that the mechanism to calculate EBITDA be clearly laid down.</i></p> <p>(SUGGESTION FOR IMPROVING TAX COLLECTION)</p>
	(vi)	The BEPS Action Plan 4 provides for a Group Ratio Rule wherein the Group's overall third-party interest as a proportion of the Group's EBITDA is computed and that ratio is applied to the individual company's EBITDA to determine the interest restriction. This would take into account the actual third-party debt and leverage at global level vis-à-vis third parties. This also addresses the issue relating to inherently highly leveraged industries since the global leverage ratio would take into account the significant debt and would be commensurate to the leverage ratio required at individual country level. Given this, a relatively fair leverage requirement at India level would emerge.	<p><i>It is suggested in place of a fixed 30 per cent EBITDA restriction, a Group Ratio could be considered in order to apply the interest deduction restriction under the above provision.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
	(vii)	Sub-section (1) of Section 94B specifically	<p><i>It is suggested that</i></p>



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		<p>requires the lending to be from a non-resident AE for the section to trigger. However, branches or permanent establishments of foreign banks are also “non-residents” for the purposes of the Income-tax Act. Whilst branches or permanent establishments of foreign banks operate essentially as Indian companies and compete directly with Indian banks, debt by related Indian branches of banks or guarantees given by AEs towards borrowings by Indian companies from branches or permanent establishments of foreign banks would qualify for disallowance under the above provision. This place the Indian branches of foreign banks at a disadvantageous position vis-à-vis competing Indian banks.</p>	<p><i>borrowings by Indian companies from Indian branches or permanent establishments of foreign banks may be wholly excluded from the purview of the aforesaid Sec 94B (either by way of direct borrowing from or by way of guarantee by AE to such branches or permanent establishments of foreign banks).</i></p> <p><i>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>
	<p>(viii)</p>	<p>Section 94B(4) provides that where for any assessment year, the interest expenditure is not wholly deducted against income under the head "Profits and gains of business or profession", so much of the interest expenditure as has not been so deducted, shall be carried forward to the following assessment year or assessment years, and it shall be allowed as a deduction against the profits and gains, if any, of any business or profession carried on by it and assessable for that assessment year to the extent of maximum allowable interest expenditure in accordance with sub-section (2):</p> <p>Provided that no interest expenditure shall be carried forward under this sub-section for more than eight assessment years immediately succeeding the assessment year for which the excess interest expenditure was first computed.</p>	<ul style="list-style-type: none"><i>The CBDT may consider allowing carry forward of excess interest without any restriction on the number of years similar to provisions adopted in case of depreciation. However, in case the same is not feasible carry forward of excess credit should be allowed for a longer period, say 15 years, instead of the prescribed 8 years to cushion the long gestation periods for such industries.</i><i>It may further be clarified that set off will be available even if the section is not</i>



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			<p>triggered in the subsequent year due to interest expense being less than INR 1 Crore.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
	(ix)	<p>Carry forward of unused interest capacity: Section 94B(2) provides that the excess interest shall mean an amount of total interest paid or payable in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year or interest paid or payable to associated enterprises for that previous year, whichever is less.</p> <p>Business may not earn consistent profit year on year. However, the interest expenditure may be consistent. Given that EBITDA may vary on account of economic considerations, it may be that the cap of 30% may not be exhausted in a particular year (say year 1).</p>	<ul style="list-style-type: none"> • It is suggested that there should be a credit mechanism to offset the unutilized limit in subsequent years. • The period of set-off may be restricted to 3-5 years. <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
	(x)	<p>Section 94B deals with limitation on interest deduction in certain cases. The relevant extract of the same is reproduced below:</p> <p><i>“94B. (1) Notwithstanding anything contained in this Act, where an Indian company, or a permanent establishment of a foreign company in India, being the borrower, incurs any expenditure by way of interest or of similar nature exceeding one crore rupees which is deductible in computing income chargeable under the head “Profits and gains of business or profession” in respect of any debt issued by a non-resident, being an associated enterprise of such borrower, the interest shall not be deductible in computation of income under the said head to the extent that it arises from excess interest, as specified in sub-section (2):</i></p>	<p>Thus with a view to resolve the issue discussed, it is suggested that for the purpose of computing ‘excess interest’ under section 94B(2), the term ‘total interest paid or payable’ should only include interest paid to the associated enterprise.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



Sr. No	Section	Issue/Justification	Suggestion
		<p>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.</p> <p>(2) For the purposes of sub-section (1), the excess interest shall mean an amount of <u>total interest paid or payable</u> in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year or interest paid or payable to associated enterprises for that previous year, whichever is less. <i>(emphasis supplied)</i>.</p> <p>I. Issue</p> <p>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?</p> <p>Rationale:</p> <ul style="list-style-type: none">• Sub-section (2) to section 94B refers to "an amount of total interest paid or payable". The literal reading of the section does not create any limitation on inclusion of interest paid or payable to associated enterprises only. The words referred to are 'total interest paid or payable'.• The legislature in its wisdom has separately referred to "an amount of total interest paid or payable" and "interest paid or payable to associated enterprises" within the same sub-section itself. <p>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).</p> <p>Having said the above, it may be possible to contend that interest paid to third party lenders may</p>	



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Sr. No	Section	Issue/Justification	Suggestion
		<p>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</p> <p>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.</p> <p>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]</p>	
	(xi)	<p>The proviso to sub-section (1) of Sec 94B provides that where debt is issued by a non-associated lender but an AE either provides implicit or explicit guarantee to such lender, such debt shall be deemed to have been issued by an AE. In respect of explicit guarantees, the transaction relating to associated enterprises is only towards a guarantee commission (in case charged by the overseas guarantor). The interest towards the borrowing is paid in this case only to a third party wherein the rate and terms are decided purely through negotiation. Hence, restriction of benefit in relation to guarantees ought to be only to the extent of the guarantee commission (if any) claimed as a deduction by the Indian entity and not interest paid to the third party lender.</p> <p>Further, including implicit guarantees under the above restrictions would lead to significant hardship for the taxpayers and may result in protracted litigation in the coming years. It is pertinent to note that there is no clear definition of implicit guarantee and it would be an onerous task for the taxpayers and tax authorities to determine existence of an implicit guarantee. E.g. when a letter of comfort or simply an undertaking is provided by one AE to a lender or a bank, the tax authorities may contest that guarantee exists, without going into details whether the same has benefited the borrower and whether the AE has actually rendered any service or assumed any liability.</p>	<p>Section 94B section should be amended to specify limitation of benefits in guarantee cases only to the extent of the guarantee commission (if any) paid by the Indian entity to the overseas guarantor (being its AE) and not the interest.</p> <p>Further, the word implicit guarantee may be dropped from the provisions. The term explicit guarantee may also be appropriately defined to obviate future litigation on this front. Based on present clause, even the banking facilities which are backed by Letter of Awareness from the AE can also qualify as guarantee given by AE for the facility.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



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	(xii)	There is lack of clarity on the mechanism to calculate EBITDA i.e. say, on the basis of book profits calculated on the basis of accounting standards, Ind-AS or otherwise. This may result in unnecessary litigation.	<i>It is suggested that the mechanism to calculate EBITDA be clearly laid down. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
	(xiii)	Sub-section (1) of Section 94B specifically requires the lending to be from a non-resident AE for the section to trigger. However, branches or permanent establishments of foreign banks are also non-residents for the purposes of the Income-tax Act. Whilst branches or permanent establishments of foreign banks operate essentially as Indian companies and compete directly with Indian banks, debt by related Indian branches of banks or guarantees given by AEs towards borrowings by Indian companies from branches or permanent establishments of foreign banks would qualify for disallowance under the above provision. This places the Indian branches of foreign banks at a disadvantageous position vis-a-vis competing Indian banks.	<i>It is suggested that borrowings by Indian companies from Indian branches or permanent establishments of foreign banks may be wholly excluded from the purview of the aforesaid proposed Sec 94B (either by way of direct borrowing from or by way of guarantee by AE to such branches or permanent establishments of foreign banks). (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
	(xiv)	As per FDI Policy, 100% FDI towards infrastructure falls under automatic route. Foreign investor invest in India with combination of equity and debt. Further maximum debt is back by parent guarantee. The parent guarantee helps Indian borrowers to reduce the interest rate on their borrowing. Given high capital intensive nature of the infrastructure sector, reduced interest costs makes the project further viable. Disallowance / limitation of allowance of interest expense on instances where such borrowing is secured by guarantee by AE will adversely affect the viability of infrastructure projects.	<i>It is suggested that borrowings by Indian companies backed by corporate guarantee shall be fully excluded in this clause. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
116.	Section 95 – Applicability of GAAR to be effective from A.Y.2018-19 - Protection from	Section 95 was amended via the Finance Act, 2015 to provide that provisions of Chapter X-A relating to General Anti-Avoidance Rule (GAAR) are made applicable from A.Y. 2018-19. In effect, the applicability of GAAR is deferred by two years.	<i>It is suggested that: (a)All transactions entered into before 01.04.2017 be provided protection from applicability of GAAR, so as to further improve the</i>



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	<p>applicability of GAAR should not be restricted to only investments, but may extend to all transactions upto 31.03.2017</p>	<p>In this regard, the following further amendments are required:</p> <p>(a) As per the Explanatory Memorandum to the Finance Bill, 2015, investments made up to 31.03.2017 are to be protected from the applicability of GAAR by amendment in the relevant rules in this regard. Accordingly, Rule 10U has been appropriately amended, and all investments made before 1.4.2017 are protected from the applicability of GAAR.</p> <p>However, all transactions entered before 01.04.2017, and not only investments made, need to be protected from the applicability of GAAR, so as to further improve the investment climate in the country</p> <p>(b) Further, the applicability of section 144BA providing for reference to Principal Commissioner or Commissioner to declare an arrangement as an impermissible avoidance arrangement in order to determine the consequence of such an arrangement within the meaning of Chapter X-A, also needs to be consequently deferred by two years and made applicable from A.Y.2018-19.</p>	<p>investment climate in the country.</p> <p>(b)Section 144BA, providing for reference to Principal Commissioner or Commissioner in certain cases, be consequently deferred by two years and made applicable with effect from A.Y.2018-19.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
117.	<p>Section 95 - General Anti-Avoidance Rule</p>	<p>a) Meaning of the terms 'Substantial' and 'Significant' in Section 97(1) of the Act</p> <p>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.</p> <p>Section 97(1) of the Act provides that an arrangement shall be deemed to be lacking commercial substance, if inter alia; -</p> <ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> 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;



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		<ul style="list-style-type: none"> it does not have a significant effect upon business risks, or net cash flows apart from the tax benefit. <p>The terms 'substantial commercial purpose' and 'significant effect' in the context of GAAR have not been defined in the Act.</p>	<p><i>value of a transaction as comparable to the total assets of the business or any other such related parameter).</i></p> <ul style="list-style-type: none"> Similarly, what will constitute as 'significant effect' vis-a-vis business risks / net cash flows needs to be clarified. <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
		<p>b) Clarification on the term 'tax benefit' as defined under section 102(10) of the Act</p> <p>The term 'tax benefit' as defined under section 102(10) of the Act includes, —</p> <p>"(a) a reduction or avoidance or deferral of tax or other amount payable under this Act; or</p> <p>(b) an increase in a refund of tax or other amount under this Act; or</p> <p>(c) a reduction or avoidance or deferral of tax or other amount that would be payable under this Act, as a result of a tax treaty; or</p> <p>(d) an increase in a refund of tax or other amount under this Act as a result of a tax treaty; or</p> <p>(e) a reduction in total income; or</p> <p>(f) an increase in loss,</p> <p><i>in the relevant previous year or any other previous year;"(Emphasis supplied)</i></p> <p>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</p>	<p><i>Clause (e) and (f) should be appropriately worded to correspond with the 'tax' amount. In other words, the reference to income/loss should not be the base for defining the term 'tax benefit'.</i></p> <p><i>In line with the Expert Committee recommendations, it is suggested that:</i></p> <p><i>a) the tax benefit should be computed in the year of deferral and the present value of money should be ascertained based on the rate of interest charged under the Act for shortfall of tax payment under section 234B of the Act.</i></p> <p><i>b) for the sake of clarity, it may be specified that tax benefit for the purposes of the threshold shall include only income tax, dividend</i></p>



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		<p>defeat the objective of INR 3 crore tax benefit threshold as provided in Rule 10U of the Income-tax Rules, 1962 (the Rules).</p> <p>Computation of tax benefit on deferral of tax (which is merely a timing difference) needs to be clarified. As observed by the Expert Committee recommendations³, 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.</p> <p>Further, as observed by the Expert Committee⁴, 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.</p>	<p>distribution tax and profit distribution tax, and shall not include other amounts like interest, etc.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
		<p>c) India has signed the 'Multilateral Instrument' (MLI) in accordance with the Base Erosion Profit Shifting (BEPS) Action Plan 15 of the OECD, which, inter alia, deals with the denial of tax treaty benefits in certain cases of anti-abuse arrangements/transactions entered into by the taxpayer. The MLI provides for insertion of anti-abuse provisions (the PPT and the LOB provisions) in the tax treaties so as to deny tax treaty benefits in case of abusive arrangements/transactions being entered into by the taxpayer. The anti-abuse provisions inserted through the MLI would be effective once the same are ratified by both the signatories to the MLI. With India having signed the MLI, there could be a possibility that the same transaction/arrangement could be subjected to multiple anti-abuse provisions, one would be through the anti-abuse provisions inserted in the tax treaty network through the MLI and second by way of the same transaction being subjected to the GAAR provisions which also targets anti-abuse provisions.</p>	<p>It is suggested that GAAR provisions should not be made applicable to abusive transactions (in the case on MNE's) which are subjected to anti-abuse provisions under the tax treaty pursuant to adoption of the MLI provisions. Once the anti-abuse provisions are inserted in the respective tax treaties through the MLI, the government could then assess the situation and examine if GAAR provisions should be made applicable in the case of the said non-resident taxpayers'. This would also pave the way for a conducive economic environment and persuade the global multinationals to establish their foot print in</p>

³Page 48 and 49 of the Final Report by the Expert Committee on GAAR chaired by Dr. Parthasarathi Shome.

⁴Page 47 of the Final Report by the Expert Committee on GAAR chaired by Dr. Parthasarathi Shome.



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



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Sr. No	Section	Issue/Justification	Suggestion
119.	Section 139(5) – Reduction in time limit for filing revised return – Request to bring back erstwhile time limit for filing of revised tax return at least in cases of claim of foreign tax credit	<p>The Finance Act 2017 amended section 139(5) to provide that the time for furnishing of revised return shall be available upto the end of the relevant assessment year or before the completion of assessment, whichever is earlier.</p> <p>This particularly impacts claims for any Foreign Tax Credit (FTC) in respect of the taxes paid by the individual assessee(s) in the overseas tax jurisdiction. Generally, the information/ final payment of foreign taxes/ tax return is unlikely to be available within the timeline for filing the revised tax return i.e. by the end of the relevant assessment year.</p> <p>As an example, USA follows calendar year as their tax year and the first due date of filing a USA income-tax return is April 15th of the following calendar year, meaning thereby, the USA income-tax return for calendar year 2018 will be required to be filed by 15th April, 2019.</p> <p>In a case of Indian income-tax return for tax year 2017-18, the due date to file a revised return as per the said amendment will be 31st March, 2019.</p> <p>In the above situation, the assessee may not have his final tax return available with him till 15th April 2019, hence, such assessee will not be able to claim the FTC of the final USA taxes paid by him in his Indian income-tax return as he may not have the final USA tax details by 31 March 2019.</p>	<p>Keeping in mind the aforesaid hardship of double taxation which may arise to the individual assessee as he may not be able to claim foreign tax credit in the absence of overseas income-tax return, there is a need to retain the time limit for filing of revised tax return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier. Therefore, the earlier time limit may be brought back at least in respect of revision required for claiming foreign tax credit.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
120.	Application for Permanent Account Number (PAN) in certain cases	<ul style="list-style-type: none">• W.e.f AY 18-19, as per section 206AA of the Act, every person (including foreign entities), not being an individual, which enters into a financial transaction of an amount aggregating to Rs. 2,50,000 or more in a financial year (FY) shall be required to apply for PAN by the end of the FY in which it enters into such transaction. Further, the term 'Financial transaction' is not defined.• 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	<ul style="list-style-type: none">• It is recommended to withdraw the requirement for obtaining PAN in case of foreign entities entering into financial transaction for a value of Rs 2,50,000 or more as it is in contradiction to the provisions of Section 206AA of the Act.



Sr. No	Section	Issue/Justification	Suggestion
		<p>in the nature of Royalty, Fees for Technical Services and payment in case of transfer of Capital Asset.</p> <ul style="list-style-type: none"> There may be instances where the foreign entities enters into financial transaction for a value more than Rs. 2,50,000 and there would be no tax liability due to favourable DTAA provisions. They will now be required to obtain PAN. This will create unnecessary hassle to the foreign entities and not be in line with of 'ease of doing business. 	<p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
121.	<p>Section 155(14A) - Claim of FTC pertaining to taxes which are under dispute in the foreign country – Clarification required on certain issues relating to period of limitation and documents which shall constitute evidence of settlement</p>	<p>Section 155(14A) provide that where the payment of foreign tax is under dispute, credit of such taxes will be available in India in the year in which the dispute is settled, on satisfaction of certain conditions. To give effect to this an enabling provision shall be inserted through which Tax Authority will rectify the assessment orders or an intimation order and allow credit of taxes in the year in which the taxpayer furnishes the evidence of settlement of dispute and discharge of foreign tax liability.</p> <p>However, the said amendment does not provide for time limit within which the Assessing Officer has to rectify the assessment order. This provision only gives a reference to section 154. Section 154 provides a time limit of 4 years for reassessment, excluding anything specifically provided under section 155. Issues may arise on what is period of limitation which may apply for section 155(14A) and how it should be applied.</p> <p>The said provision provides that the Assessing Officer shall amend the earlier order which denied FTC, if the taxpayer, within six months from the end of the month in which the dispute is settled, furnishes to the Assessing Officer, evidence of settlement of dispute and evidence of payment of tax. Time threshold of six months from date of dispute settlement gives a very small window for taxpayers to claim the benefit for previous years, hence, giving a limited scope to the benefit.</p>	<p>(i) The time limit applicable for rectification of order may be clarified. Since all the sub-sections in section 155, provide for the time limit to be applied and some of the sub-sections provide for a different time limit, it may be expressly clarified that what is the period of limitation which may apply to cases covered by the section 155(14A).</p> <p>(ii) It may also be clarified that the period of limitation (e.g. if it is 4 years), should be 4 years from the end of the year in which the amended order is passed and it should not be the date of the original order. This is for the reason that if the dispute in the foreign country takes more than 4 years to get resolved and if the limitation period is considered to be 4 years from the date of the original order, the taxpayer may not get credit for taxes which</p>



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		<p>It is also not clear as to what could constitute sufficient evidence on the part of taxpayers to claim the FTC benefit on dispute settlement.</p>	<p>he has actually paid. Such may not be the intent of the said provision.</p> <p>A similar provision is contained in Section 155(16) which provides that where the compensation for compulsory acquisition is reduced by any Court or Tribunal, then the period of limitation shall be reckoned to be 4 years from the end of the year in which the order of the Court or Tribunal is passed.</p> <p>(iii) The time limit may be amended to provide for 6 months from date of settlement of dispute or date of effect of the amended order passed u/s. 155(14A), whichever is later.</p> <p>(iv) Clarification may be provided on what is the documentation which shall constitute as sufficient evidence for justifying that the dispute has been settled. This may be done by specifying an illustrative set of documents, which shall constitute as evidence for settlement of dispute.</p> <p>Illustratively the following may be considered as evidence for settlement of dispute:</p> <ul style="list-style-type: none">• Final assessment order/ final demand notice of the tax authority of the foreign country



Sr. No	Section	Issue/Justification	Suggestion
			<ul style="list-style-type: none">• Judgment of the Court of Law along with the final demand notice of the tax authority based on the judgement• Proof of payment of taxes• Self-declaration (SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)
122.	Section 194LC - Income by way of interest from Indian Company	<p>a) Income by way of interest from Indian Company</p> <p>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%.</p> <p>Section 194LC(2)(ii) provides that for the purpose of deduction of tax at source at the rate of 5%, the interest payable by the specified company or business trust to a non-resident, not being a company or a foreign company, shall be the income payable by the specified company TO THE EXTENT TO WHICH SUCH INTEREST DOES NOT EXCEED the amount of interest calculated at the rate approved by the Central Government in this regard, having regard to the terms of the loan or the bond and its repayment.</p> <p>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</p>	<p>a) <i>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”</i></p> <p>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</p>



Sr. No	Section	Issue/Justification	Suggestion
		reworded.	
		<p>b) Expansion of scope and extension of time limit The Finance Act, 2012 had introduced Section 194LC in the Act to provide for lower deduction of tax @ 5 per cent on interest payments by Indian companies on borrowings made in foreign currency (under a loan agreement or by way of issue of long term infrastructure bonds) before 31 July 2017.</p> <p>The Finance (No 2) Act, 2014, amended Section 194LC of the Act to include all long-term bonds (including infrastructure bonds).</p> <p>Apart from loans and bonds, debentures are also widely used for raising funds by the Indian companies. Currently, there is no clarity whether interest payment on such debentures would be eligible for reduced tax deduction rate under Section 194LC of the Act.</p> <p>Also, the cut-off date as provided in the section (31st July 2017) is impendent. In line with the objective of the government to attract foreign investments and a higher growth rate, the current time lines may be extended.</p>	<p>b) The concessional tax rate of 5 per cent on interest should be made applicable on other debt securities including debentures, trade credit issued/ availed by any Indian company.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
123.	Section 194LC and Section 206AA - Scope of concessional rate of tax on overseas borrowings	<p>Currently as per the provisions of section 194LC of the Act, interest paid by an Indian company to a non-resident, in respect of approved borrowings made (during the period 1 July 2012 to 30 June 2015) in foreign currency from sources outside India (under a loan agreement or on issue of long-term infrastructure bonds) is taxable at a concessional rate of 5% (plus applicable surcharge and education cess).</p> <p>Further, as per section 206AA(7) of the Act, interest paid on the long-term infrastructure bonds would be subject to a concessional rate of tax irrespective of whether the lender has a Permanent Account Number (PAN) in India or not.</p> <p>In order to further augment low cost long-term</p>	<p><i>It is therefore, suggested to make the aforesaid amendments to the Act effective from 1 April 2014 to enable corporates to use this rare window of opportunity to raise long term capital at competitive price, for their capital expenditure. There are quite a few proposals in the pipeline for raising long term capital from the international debt markets which could get adversely impacted if this amendment is implemented as per the</i></p>



Sr. No	Section	Issue/Justification	Suggestion
		<p>overseas borrowings, the amendments to section 194LC and section 206AA of the Act respectively are made effective from 1st October 2014. Under the aforesaid proposed amendment, the benefit of lower withholding tax @5% for overseas borrowing is extended up to 1 July 2017 and it shall apply to all long-term bonds and not merely restricted to infrastructure bonds as is the case under the relevant provisions of the existing Income tax Act.</p> <p>Further, the benefit of section 206AA(7) of the Act, shall be extended to all types of long term bonds including infrastructure bonds, which means PAN of beneficial holders of bonds shall not be mandatory for all types of long term bond issues in the international market.</p> <p>Hardships</p> <p>While the fiscal measure taken by the Government to encourage the corporates to raise long term capital at competitive price for their capital expenditure are appreciated, there is an urgent need for making the proposed amendments effective from 1 April 2014 so that companies can take advantage of the prevailing opportune market conditions.</p> <p>In this connection, the global market conditions have been summarized below:</p> <ul style="list-style-type: none">➤ The international debt markets are very strong and buoyant, with the Asia ex Japan G3 market seeing over US\$116bn in 2014 till date in issuance volumes, nearly 83% of total issuance in 2013.➤ Investor liquidity remains very strong, and there are consistent fund flows back into emerging market and Asian bonds for the past 14 consecutive weeks.➤ US treasury yields remain significantly lower than at the start of the year, as the markets gauge the outlook for the global economy, geopolitical risks and the expected actions of the Central Banks. 2.55% / 3.37%.	<p>currently enacted timeline of 1st October 2014. Therefore, there is an urgent need to make the amendment effective as suggested.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



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		<ul style="list-style-type: none">➤ US rates at 2.55% for 10 years and 3.37% for 30 years remain conducive for issuers looking to extend duration, with the 30-year US Treasury currently close to a 9-month low.➤ Global credit market conditions remain very strong with credit spreads having tightened sharply over the past year.➤ The demand for Indian credits has been extremely strong, with Indian credit spreads having tightened by 30-40 bps since 1 April and 80-100 bps since 1 February 2014. This has been driven by supportive technical, relative lack of supply and improved macro indicators. <p>These favourable financial market conditions could get impacted in the short term by changes in the economic data emanating from the major economies as well as due to geopolitical factors such as the continued unrest in the Middle East.</p>	
124.	Section 194LD - Income by way of interest on certain bonds and Government securities	<p>As per Section 2(28A) of the Income-tax Act 1961, "interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised;"</p> <p>As per the provision of major DTAA, "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits; and in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.</p> <p>As per ICDS, Interest shall accrue on the time basis determined by the amount outstanding and</p>	<p><i>It is suggested that Clarity on the definition of effective interest rate i.e. whether or not it includes premium on redemption may be provided.</i></p> <p><i>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>



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		<p>the rate applicable. Discount or premium on debt securities held is treated as though it were accruing over the period to maturity.</p> <p>The above 3 definitions have led to the following confusion in both borrowers and lenders domain.</p> <ol style="list-style-type: none">1. Borrower would now have to deduct tax on what amount?2. If TDS is deducted on premium wouldn't that tantamount to tax on capital gains3. Per provisions of section 194LD, the lower withholding rate would be applicable only on interest paid on bonds whose interest rates do not exceed the rate as specified by the Central Government in this regard (at present 15%). The debentures instruments comprise of two aspects<ol style="list-style-type: none">a. interest rateb. redemption premium	
125.	Section 195 – a) Scope and applicability	<p>Finance Act, 2012 extended the obligation to withhold taxes to non-residents irrespective of whether the non-resident has -</p> <ol style="list-style-type: none">(i) a residence or place of business or business connection in India; or(ii) any other presence in any manner whatsoever in India. <p>The aforesaid amendment was introduced with retrospective effect from 1 April 1962.</p> <p>The amendment results in a significant expansion in the scope of withholding provisions under the Act and will cover all non-residents, regardless of their presence/ connection in India.</p> <p>The Supreme Court in the case of Vodafone International Holdings B.V. had observed that the provisions of Section 195 of the Act would not apply to payments between two non-residents situated outside India. The Supreme Court also referred to tax presence as being a relevant factor in order to determine whether a non-resident has a withholding obligation in India under Section 195 of the Act.</p>	<p><i>Keeping in view the observations of the Supreme Court, it is suggested that the amendment should be modified to restrict the applicability of withholding tax provisions to residents and non-residents having a tax presence in India.</i></p> <p><i>At least, it should be clarified that the amendment will not have retrospective application.</i></p> <p><i>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>



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	<p>b) Time limit for Issuance of “general or special order</p>	<p>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.</p> <p>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.</p>	<p><i>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.</i></p> <p><i>Further, where an application is rejected, the Assessing Officer may be required to pass a speaking order after providing a reasonable opportunity of being heard to the applicant.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
	<p>c) Withholding tax on reimbursements - Section 195</p>	<p>Cross border transactions may result in reimbursements of expenditures / costs incurred on behalf of the Indian company by the foreign parent/group company.</p> <p>Contrary positions have been taken by various judiciaries on the issue of withholding tax on reimbursements made by an Indian company to its foreign parent / group company.</p> <p>There is no clear view with respect to the same. Further, non-compliance with withholding tax provisions will attract disallowance under section 40(a)(i) of the Act including interest and penal proceedings.</p>	<p><i>It is suggested that a clarification, perhaps by way of a CBDT circular, stating that withholding tax would not be applicable for specific cases of reimbursements, would help reduce undue litigation in this regard.</i></p> <p>(SUGGESTION FOR IMPROVING TAX COLLECTION)</p>
	<p>d) Consequential amendment required in section 204</p>	<p>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.</p> <p>However, consequential amendment has not been made in section 204(iii), defining “person</p>	<p>(i) Section 204 may be amended as follows -</p> <p><i>For the purposes of the foregoing provisions of this Chapter and section 285, the expression “person responsible for paying” means –</i></p>



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		<p>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.</p> <p>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.</p> <p>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.</p> <p>Consequently, taking into consideration the above issues, section 204 needs to be appropriately amended.</p> <p>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.</p> <p>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.</p>	<p><i>‘(iii) in the case of credit, or, as the case may be, payment of any other sum chargeable under the provisions of this Act, or in the case of furnishing of information relating to payment of any sum to a non-resident (not being a company), or to a foreign company, whether or not such sum is chargeable under the provisions of the Act, the payer himself or if the payer is a company, the company itself including the principal officer thereof.’</i></p> <p><i>(ii) The penalty may be reduced, in case non-furnishing of information relates to a transaction not chargeable to tax.</i></p> <p><i>(iii) The meaning of “person responsible for collecting” may be incorporated in the Act.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
	<p>e) Section 195 - Clarification required</p>	<p>In section 195, Clarification on TDS from payments to non-residents having no Indian branch/ fixed place/ Permanent Establishment in India should be inserted. In various cases, Income-tax department attracts the provision of</p>	<p><i>In order to avoid litigation, it is suggested that a suitable amendment in form of Explanation should be inserted in section 195 of</i></p>



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



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	f) Applicability of Rule 37BB read with Section 195 for making remittances outside India	<p>Remittance under Liberalised Remittances Scheme of RBI</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>The press release issued by the CBDT on 17 December 2015 states that Form 15CA and 15CB will not be required to be furnished by an individual for remittances which do not require RBI approval under the LRS. However, it may be noted that LRS does not find any specific mention in the amended Rules.</p> <p>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.</p>	<p>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.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
	g) Penalty for failure to furnish information or furnishing inaccurate information under Section 195	<p>The Finance Act, 2015 has introduced penalty (Section 271-I of the Act) in case of failure to furnish information or furnishing of inaccurate information as required to be furnished under Section 195(6) of the Act, to the extent of INR one lakh.</p>	<p>It is not clear whether the penalty is qua the payment made or qua the transaction or qua the contractual obligations for a specific financial year. Therefore, the same should be clarified in a suitable manner.</p>



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			(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
126.	Section 201 – Limitation period for Non-resident	<p>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</p> <p>There is no limitation period for invocation of this provision.</p> <p>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.</p>	<p>Limitation period should be provided as follows:</p> <p>(I) 4 years from the end of the financial year in which the transaction requiring tax to be withheld, took place;</p> <p>(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.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
127.	Consequences of failure of deduct or pay withholding tax - Section 201 – Extension of benefit in respect of payments made to non-residents	<p>Where in case any person fails to deduct or pay the whole or any part of the tax on the sum paid or on the sum credited to the account of a person, he shall be deemed to be an assessee in default in respect of such tax.</p> <p>However, proviso to S. 201 states that a person shall not be considered to be an assessee in default in respect of such taxes, if the resident has furnished his return of income under Section 139, has taken into account such sum for computing income in the return of income, has paid the tax due on such income in the return of income and the person has obtained a certificate from an accountant in the prescribed form.</p>	<p>The benefit of the first proviso has only been provided to a person in respect of payments made to resident and the conditions mentioned in the first proviso have been fulfilled.</p> <p>With a view bring more relief to assessee, the benefit of the said proviso shall also be extended in respect of payments made by persons to non-residents. (SUGGESTION FOR IMPROVING TAX COLLECTION)</p>
128.	a) Relieve return filing obligation if royalty/ FTS/	<p>Pursuant to recommendations in the first report of the Income Tax Simplification Committee, Finance Act 2016 has liberalized the provisions of</p>	<p>In line with recent exemption provided to non-residents from obtaining PAN for</p>



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Sr. No	Section	Issue/Justification	Suggestion
	<p>capital gains has suffered TDS and also clarify that s.206AA(7)(ii) read with Rule 37BC has retrospective effect</p>	<p>s.206AA by inserting s.206AA(7)(ii) which provides that s.206AA shall not apply to payments to non-residents subject to conditions as may be prescribed.</p> <p>Recently, CBDT has notified Rule 37BC which provides that if the non-resident payee furnishes certain information and documents like TRC or Unique Identification number in his home country, s.206AA shall not apply to specified payments viz. interest, royalty, FTS and capital gains.</p> <p>This is a welcome relief to the taxpayers and considerably improves ease of doing business with non-residents by obviating the need to obtain PAN for non-residents.</p> <p>However, the requirement of filing returns by such non-residents still continues (except for interest payments covered by s.115A(1)(a)) and without PAN, it is also possible to file return.</p> <p>Thus, the position which presently exists is that while PAN is not necessary at withholding stage, it is still necessary for filing return. Non-filing of return attracts penalty u/s. 271F has also risk of prosecution u/s. 276CC</p> <p>The TDS rates applicable for non-residents is generally the final tax payable by such non-residents. The information of payments to non-residents gets transmitted to Tax Department on real time basis through compliance u/s. 195(6) read with Rule 37BB (Form 15CA/B) and quarterly withholding tax returns. Hence, requirement of filing return has no real benefit to the Tax Department. On the contrary, it increases compliance burden for the non-residents and makes them liable for penalty or prosecution.</p>	<p>avoiding higher TDS u/s. 206AA if they furnish TRC, they should also be relieved from return filing obligation where payer has already withheld taxes and reported in Form 15CA/CB.</p> <p>Additionally, the non-residents shall also be relieved from filing Form 3CEB and maintaining transfer pricing document in case of transactions with associated enterprises on which appropriate TDS has been deducted.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
	<p>b) PAN for foreign</p>	<p>India has entered into number of DTAA under the</p>	<p>It is suggested that section</p>



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	parties i.e. non-residents	Vienna Convention and the domestic law under section 206AA should not override such agreements with other countries. Therefore, it should be provided that wherever the rate of tax under the DTAA is lower than 20% under section 206AA, same should be applicable irrespective of the non-resident having PAN in India.	206AA should not override the DTAA entered in to by India. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
129.	TDS on interest on NRO account	Presently, Indian residents who earn interest on their Indian bank accounts are liable to pay TDS on amounts over and above Rupees 10,000. However, when it comes to NRIs they are not allowed this benefit on their NRO accounts. All interest earned in NRO accounts is subject to a TDS rate of whopping 30%. In majority cases, the NRI's are not able to file for refunds due to small amount as the cost of filing is more than deduction.	Commercial banks may be instructed by proper authority, not to deduct TDS on NRO account earning interest upto INR 10,000 per annum. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
130.	Equalization levy	The Finance Act, 2016 has introduced a levy of 6% on consideration paid or payable by an Indian resident carrying on business or profession, or by an Indian permanent establishment of a non-resident to a non-resident not having a permanent establishment in India, for providing specified online advertisement services.	<ul style="list-style-type: none"> <li data-bbox="1138 1010 1479 1419">• The responsibility for payment is cast on resident payer to deduct and deposit the levy. Interest and penalty are levied for delay or failure of compliance. This involves additional cost of compliance to Indian businesses. <li data-bbox="1138 1472 1479 1839">• The equalization levy is a separate levy under the Finance Act and is not a part of the Act. The non resident liable to equalization levy will not be able to claim credit for the levy paid in India in the country of his residence. This



Sr. No	Section	Issue/Justification	Suggestion
			<p><i>will lead to double taxation of the same income.</i></p> <p><i>It is recommended that Chapter VIII should be omitted.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
131.	<p>Chapter VIII of the Finance Act, 2016 - Equalisation Levy - Issues to be addressed</p>	<p>The Finance Act, 2016 has inserted a new Chapter VIII titled "Equalisation Levy" to provide for an equalisation levy of 6% of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment ('PE') in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India. In other words, the Finance Act, 2016 enacted a levy of 6% on consideration paid or payable by an Indian resident carrying on business or profession, or by an Indian permanent establishment of a non-resident to a non-resident not having a permanent establishment in India, for providing specified online advertisement services.</p> <p>Certain issues arising from the same are as below:</p> <ul style="list-style-type: none"> • 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 	<p><i>In view of the issues detailed, it is suggested that suitable amendments may be carried out in the Chapter VIII of the Finance Act, 2016. Particularly, after 1 April 2017, GAAR will ensure that artificial avoidance of taxable presence is not likely to remain tax protected for the non-residents.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



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		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.	
132.	Tax consolidation Scheme	<p>In India, separate entities are incorporated based on their specialization in various lines of businesses (like manufacturing, trading, retail, infrastructure etc.) by the parent company. Separate companies are incorporated to attract investors which suits their needs. Investors are more likely to invest in a well-structured organisation.</p> <p>Because of commercial compulsions, the business houses are forced to have many subsidiaries under one parent. The group as a whole and the tax Department face many challenges. Some of them are:-</p> <ul style="list-style-type: none">• Each Entity is considered as separated entity and therefore required to file a separate income tax return, involving huge cost of Income Tax compliance by tax payer.• Each entity is assessed/ scrutinized separately resulting in litigation cost for each entity. Significant administrative costs are incurred by the Income tax Department in keeping track of records and assessing multiple subsidiaries.• Apart from cost, a lot of efforts are required by both tax payer as well as Income tax Department for undertaking compliance. <p>Tax consolidation or combined reporting is a regime adopted in the tax or revenue legislation of a number of countries which treats a group of wholly owned or majority-owned companies and other entities (such as trusts and partnerships) as a single entity for tax purposes. The head entity of the group is responsible for all or most of the group's tax obligations such as paying tax and lodging tax returns.</p> <p>In terms of mechanics, all transactions between</p>	<p><i>In view of the aforesaid benefits it is suggested that a tax consolidation scheme may also be adopted in India. This would create a positive impact on business with significant reduction of compliance and litigation cost.</i></p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



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



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		<p>cost of the tax payer and administrative cost of the Income-tax Department.</p> <p>v. In group taxation all transactions between group companies are ignored for tax purposes. This will help in tax free movement of assets across the group which would aid in internal restructuring.</p> <p>vi. In India, each company is individually liable for separate tax assessments. By introducing the tax consolidation scheme, the parent company would act as an agent in all the tax matters.</p> <p>vii. The number of litigations pending with the tax department would also reduce and thereby reducing the administrative cost of the Income-tax Department.</p> <p>viii. In the long run such a regime would not negatively impact the overall tax revenues as tax offset of carry forward losses/depreciation is already allowed under the Income-tax Act, 1961, accordingly any tax offset claimed by the individual taxpayer would be offset when the aggregate approach for the economy as a whole is considered.</p> <p>ix. Member of the group companies obtaining for tax consolidation can enter into an arrangement with Income Tax Department/CBDT for a nominated member of the group to be in liaison with Income Tax Department/CBDT, such that all payments of tax flow through that nominated company.</p> <p>x. It is believed that for capital intensive sectors like infrastructure and financial services introduction of such a progressive tax regime would be beneficial and fair to the taxpayer.</p> <p>xi. The tax consolidation regime has been adopted in tax legislations of a number of</p>	



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		<p>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.</p> <p>xii. This will create a positive impact on business and provide a level playing field to the Indian companies. The tax consolidation regime also endorses the Government's efforts of "Ease of doing business in India" and assist in aligning the business and tax objectives of the industry.</p> <p>xiii. No. of tax exemptions are being reduced and very soon, no deduction/exemption will be allowed in computing taxable income. It is very logical to introduce tax consolidation scheme. Many mergers, demergers which are being done only to take advantage of tax losses will not be required.</p> <p>A snapshot of the tax consolidation regime in various jurisdictions is summarized in Annexure A</p>	
133.	<p>Deputation of employees - [Taxability as fees for technical services/ Permanent Establishment issues]</p>	<p>An issue is under debate as to whether payments made by the Indian company to foreign company towards reimbursement of the salary costs of persons deputed to India would be treated as fees for technical services.</p> <p>Further, such deputations are often tested for a risk of creation of a PE for the foreign enterprise in India.</p> <p>Employees deputed to the Indian company work under the control and supervision of the Indian company and are essentially employees of Indian company. Any payments made by the Indian company towards the amounts cross-charged by the Foreign Company would be in the nature of re-imburement of the salary costs and ought not to be taxable.</p>	<p><i>It is suggested that a specific clarification may be provided by the Government to the effect that as long as the employee works exclusively for the Indian company during the period of deputation and operationally works under the 'control and supervision' of the Indian company, payments made by the Indian company to the foreign company would not qualify as FTS. Further, it should be clarified that</i></p>



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			<p><i>such an arrangement would not trigger a creation of PE for the foreign enterprise in India.</i></p> <p>(SUGGESTION FOR IMPROVING TAX COLLECTION)</p>
134.	TDS on payment made to non-residents	<p>a) Section 195(1) of the Income-tax Act, 1961 provides for the applicability of TDS provisions on “any person” responsible for paying to a “non-resident” subject to exceptions as provided in the section. Practically, the fact that every person including individuals, making any payment to non-residents, is liable to deduct tax at source is not known to many. There have been instances where the payment of rent is made to a non-resident through online banking by a salaried employee who is claiming HRA, without knowing that he is required to deduct tax. This not only leads to loss of revenue but also causes hardship to the assessee only due to ignorance of law, which but of course is not an excuse.</p> <p>b) Section 195(2) provides that where the person responsible for paying any sum chargeable under this Act to a non-resident considers that whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the Assessing officer to determine by general or special order, the appropriate portion of sum so chargeable. Further section 195(3) gives the recipient an option to make an application to Assessing Officer for the grant of certificate authorizing him to receive any sum without deduction of tax at source, subject to the rules notified in this regard. Making an application to the Assessing officer and follow ups thereafter leads to administrative hassles.</p> <p>c) The provisions of section 54 to 54F relating to investments allow the assessee to save tax on capital gains arising from transfer of property. However, such investments are made over the period of time i.e. within 6 months or 1 year. Certain assesseees face hardship on this account</p>	<p><i>It is suggested that</i></p> <p>a) the fact that any person including individuals, making any payment to non-residents, is liable to deduct tax at source should be widely publicized by the Department.</p> <p>b) To remove administrative hassles, the payer or the payee should be allowed to issue certificate for short or non-deduction of tax at source) Since a benefit has been extended to the assesseees by way of the provisions of section 54 to 54F, the same should be taken into account by the Assessing officers while issuing certificate of lower deduction of tax at source or no deduction under section 195 and 197.</p> <p>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



Sr. No	Section	Issue/Justification	Suggestion
		since their income becomes non-chargeable to tax only after taking into consideration the proposed investments. The issue arises since the investments proposed to be made under sections 54 to 54F are not taken into account by the Assessing Officer while giving a certificate of lower deduction of tax at source or no deduction of tax.	
135.	<i>Time limit for TDS assessments of payments made to non-residents</i>	Presently, there is no time limit specified by the Act for initiating & completion of TDS proceedings under section 201 of the Act in respect of payments made to non- residents. Thus, the TDS returns are scrutinized by the assessing officers for past years without any limit, which has resulted into enormous difficulty for the assessee as it becomes practically difficult to store & retrieve data beyond four years of filing of TDS returns.	<i>It is suggested to fix a specific time limit for initiating & completing TDS proceedings under section 201 of the Act in respect of payments made to non-residents which should not be more than 4 years from the relevant financial year.</i> <i>(SUGGESTION FOR IMPROVING TAX COLLECTION)</i>
136.	<i>Provision for the employer to provide tax treaty benefits while calculating TDS</i>	<p>Under the current tax regime, there is no provision under the Act which enables an employer to consider admissible benefits under the respective Double Taxation Avoidance Agreements (e.g. credit for taxes paid in another country/ treaty exclusions of income etc.), while computing tax to be deducted under Section 192 at the time of payment of salaries to employees. Further, the foreign tax credit rules notified by the CBDT in June 2016 also does not contain explicit provision for providing credit for taxes paid in another country by the employer at the time of deduction of tax on salary payments.</p> <p>Due to the above, it creates cash out-flow issues to the employees (migrating employees coming to and leaving India) who are initially subject to full TDS by their employers and thereafter required to claim refunds on account of tax treaty benefits while filing their income tax return. Many of these employees may complete their assignments and leave India prior to obtaining their tax refunds which also creates hardships with respect to receiving back the refund amounts.</p>	<i>It is recommended to provide for claiming relief available under the tax treaty, at the time of TDS.</i> <i>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>

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