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14th January, 2020

Smt. Nirmala Sitharaman
Hon. Union Minister of Finance
Ministry of Finance,
Government of India,
North Block,
New Delhi 110 001.

Respected Madam,

Sub: Pre-Budget Memorandum 2020-21

We take this opportunity to present a Pre-Budget Memorandum on Direct Taxes with a request to consider the same while framing proposals in the Finance Bill, 2020 for amendments to the Income-tax Act, 1961.

The nation is looking forward to proposals aimed at reducing litigation and compliance costs in the field of Direct Taxes.

We request your honour to consider this Memorandum favourably. We will be happy to present ourselves for any explanation and clarification that may be required by your honour.

Thanking you,

We remain,

Yours truly,

For BOMBAY CHARTERED ACCOUNTANTS' SOCIETY

CA Manish Sampat **President**	**CA Ameet Patel** **Chairman - Taxation Committee**

CC:

- Shri Anurag Thakur, The Minister of State, Ministry of Finance
- Shri Rajiv Kumar, The Finance Secretary, Ministry of Finance
- Shri Bhushan Pandey, The Revenue Secretary, Ministry of Finance
- Shri Pramod Chandra Mody, Chairperson, Central Board of Direct Taxes
- The Member (Budget), Central Board of Direct Taxes
- The Prime Minister's Office

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Pre-Budget Memorandum on Direct Tax Laws 2020

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1. General macro level changes

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
1.1	Tax rates for non corporate tax payers	Recently, tax rates for corporates have been reduced and MAT rates have also been reduced. However, the rates of tax for non-corporates, such as LLPs and AOPs, continue to be high. Similarly, the tax rates for individuals earning high income are also exceedingly high. Capital gains, other than those under section 111A, 112A or 115AD, are also subject to high surcharge applicable to individuals.	It is therefore suggested that the rate of tax (including surcharge and cess) for all non-corporate entities (including LLPs and AOPs) should be brought down to 25%. The tax rates for individuals should be reduced, say to maximum 30% (including surcharge and cess). Also, the maximum rate excluding surcharge, which is presently applicable for income over Rs 10 lakh should be triggered only at a much higher base, say Rs 30 lakh.
1.2	Dividend Distribution Tax u/s. 115-O and 115-R as well as Section 14A and resultant litigation	Dividend Distribution Tax as is currently administered is resulting in double taxation in many cases - once in the hands of the company @20% by way of DDT and then again in the hands of the shareholder @ 10% where the dividend income exceeds Rs. 10 lakh. Further, provisions of Section 14A are imposed to disallow any expenses incurred to earn exempt income. Section 14A has given rise to large scale litigation and genuine hardship has been caused to thousands of tax payers by way of disallowance of artificial amounts on account of Rule 8D.	The DDT regime needs to be replaced by the erstwhile classical system of taxing dividends in the hands of the shareholder. However, this should be done at a concessional rate. Also, the earlier system of providing a deduction upto a certain level under section 80L should be reinstated after taking into consideration the inflation over the years and suitable hike in the amount of deduction. Simultaneously, section 14A should be omitted from the Statute. In the alternative, if the DDT is to eb retained then Section 14A should be amended suitably to exclude investments in shares.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
1.3	Long term capital gains on sale of listed equity issues	There are certain unaddressed issues in cases of inheritance, amalgamation, and demerger that would result in unwarranted litigation. While grandfathering as on 31st January, 2018 is available for listed shares acquired prior to 1st February, 2018, there is no clarity in situations where the shares have been received on or after 1st February 2018 by virtue of holding in listed company shares prior to 1st February, 2018. For instance, shares received by way of inheritance, bonus shares or shares issued on merger/ demerger after 31st January 2018.	It is recommended that all shares received by virtue of transactions covered under section 49 should be eligible for grandfathering under section 55(2)(ac) (such as shares received on inheritance, shares acquired on merger/ demerger).
1.4	Income Computation and Disclosure Standards (ICDS)	The introduction of ICDS has only added to the compliance burden on certain tax payers without actually increasing the revenue collection. Ind AS is anyway applicable to a large number of companies. Conceptually, tax should be paid on income and logically the income should be that which is in the books of accounts, especially if they are audited and maintained in accordance with generally accounting principles, except to the extent of adjustments on fair	The ICDS should be scrapped with immediate effect. Instead of having separate computation standards in the form of ICDS, it would be advisable to identify items under Ind AS that do not meet the criteria of real income or accrued expense or loss and the relevant section(s) in the Act could be modified to require adjustments to the declared profits for all items as identified above, so as to reflect only real income.

Sr. No.	Existing provision under the Income-tax Act, 1961 (“the Act”)	Difficulties / Obstacles / Hurdles faced	Suggestions
		value accounting which does not either cause income or create losses in a recognised sense, as required under IFRS or Ind AS. ICDS has only succeeded in introducing significant complexity in the computation of income. Further, the ICDS are inconsistent with the concept of real income. In most cases, the main objective behind enacting the ICDS seems to be to prepone the taxation of income.	
1.5	Payment of advance tax – section 209	The threshold limit of INR 10,000 for payment of advance tax as per section 208 has been last amended by Finance Act, 2009. Considering the inflation in the economy, there is a need to increase this limit to a more realistic figure. Further, the requirement to pay 15% advance tax for non-corporate assesses by 15th June causes unnecessary hardship, since it is extremely difficult to estimate the total income for the entire year within a mere 75 days from the commencement of the financial year. The hardhip is further compounded by the levy of interest u/s. 234C for shortfall in the instalment of advance tax paid.	The threshold for payment of advance tax should be increased from the present Rs. 10,000 to Rs. 1,00,000. The requirement to pay 15% advance tax by 15th June for non-corporate assesses should be removed.

2. Salary

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
2.1	For salaried tax payers, various exemptions need to be revisited. The **current exemption limits for various** allowances granted by an employer to the employee are **extremely low**.	The exemption limits for these allowances are considerably low as the same were set decades ago. The limits need to be enhanced, so as to bring them in line with the rising inflation and cost of living. By linking the upper limits of the exemptions to the Cost Inflation Index, the **need to amend the sections time and again will be done away with**. Tax payers would automatically get advantage of increased limits in line with inflation.	The exemption limits for these allowances may be substantially increased. Also, in all the cases, the sections may be suitably amended to state that the upper limit would be **linked to the Cost Inflation Index** on the same lines as the computation of long term capital gains.

3. House Property

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
3.1	**Section 23** New clause be inserted to provide deduction of maintenance charges paid to Society, federation etc.	In most urban areas, **maintenance of building** is undertaken by the society, federation, company or common body and the expenses for such maintenance are substantial. The same need to be allowed as deduction against rental income so as to ensure that it is only the real income that is brought to tax. There is a spate of litigation that prevails in	Contribution towards maintenance charges actually paid to society, company, federation or common body should be allowed as deduction.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
		the country on account of this item of expense. **Amending the law and allowing a deduction for the same would lead to considerable reduction in litigation**.	

4. Business Income and Expenditure

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
4.1	Explanation 2 in sub-section (1) of section 37 provides that any expenditure incurred by an assessee on the activities relating to CSR referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession and deduction shall not be allowed.	As per the Companies Act, 2013, it is mandatory for specified companies (as per Section 135) to spend 2% of their average profits towards Corporate Social Responsibility. These expenses are all connected to social and charitable causes and not for any personal benefit or gain. It is, therefore, fair to allow the same as business expenditure. There is no bar on allowability of CSR expenditure falling under other sections like 35, 35AC etc.	There is a strong need to revisit this provision and companies should be allowed 100 per cent deduction of CSR under section 37. If at all required, necessary safe guards may be incorporated.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
4.2	Certain expenses being of revenue nature or of deferred revenue nature are considered as capital in nature and are disallowed. They are not allowed even by way of amortisation /depreciation. For example: 1. Fees for increase in authorised capital; 2. Infrastructure set up by third party for a new project by an Assessee; 3. Website expenses for newly commenced business; 4. Amortisation of Lease premium for Land; 5. Factory shifting expenses; 6. Expenditure for setting up separate and independent	Presently, expenditure of the nature described in first column suffers permanent disallowance resulting into higher tax liability in the hands of an assessee. Though there are several decisions allowing depreciation on some of such expenses, in the absence of a clear legislative framework, it leads to increase in litigation. In order to simplify the computation of business income, such expenditure requires to be allowed either as revenue or in deferred manner or by way of depreciation.	Expenditure which are incurred in the course of business may be allowed either as revenue or, if treated as capital, then, such expenditure is to be allowed in deferred manner or by way of depreciation. Hence, specific provision may be inserted.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
	unit; 7. Non-compete fees; 8. Lease expenditure / Payments.		
4.3	**S. 43CA(1) reads as follows:** Where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing	The word 'transfer' as defined in section 2(47) is only in relation to a capital asset. As section 43CA applies to stock in trade which is outside the definition of 'capital asset', section 2(47) will not apply to section 43CA. Therefore, to bring clarity and avoid unwanted litigation, an Explanation needs to be inserted in section 43CA defining the word 'transfer'. In case of percentage completion method, the income is offered for taxation based on the stage of completion of project in different years. Taxability u/s 43CA should also be correspondingly linked to different years. However, in the absence of a clear provision and also due to the absence of the definition of the word 'transfer', this may lead to unwanted litigation as to the year of taxability. The 'ready reckoner value' fixed by State	The word 'transfer' should be defined for the purpose of S. 43CA. The year of taxability of difference between the actual consideration and the stamp duty value should be clearly prescribed. Similar amendments may be incorporated in section 50C and 56(2)(vii).

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
	profits and gains from transfer of such asset, be deemed to be the full value of the consideration received or accruing as a result of such transfer.	Governments for an under construction property and a ready possession property are the same. It is common knowledge that the property rates vary according to the stages of construction. If a person books a flat today in the year 2020 in a big project, whose possession is likely to be received in the year 2023 (though the builder might claim it to be in the year 2021), the rates would be substantially different from the rates for a ready possession property. Further, in many cases, the builder offers the properties at much lower rates in the pre-booking stage, to finance the construction. It is openly advertised in newspapers etc for discounts in pre-booking stage. But the 'ready reckoner value' does not provide for any concession for such under construction properties.	
4.4	**Section 44AD** relating to presumptive taxation applies only to businesses run by	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	The benefit of section 44AD should also be made available to LLP.

<table>
<tr><th>Sr. No.</th><th>Existing provision under the Income-tax Act, 1961 (“the Act”)</th><th>Difficulties / Obstacles / Hurdles faced</th><th>Suggestions</th></tr>
<tr><td></td><td>resident Individual, HUF and Firms excluding LLP.</td><td>a Firm are treated at par. Even section 44ADA does not exclude LLP.</td><td></td></tr>
<tr><td>4.5</td><td>Sub section (1) of Section 44ADA and section 44AD provides that an eligible assessee shall be required to declare net profit at 50% of the gross receipts & 8 % of the turnover/gross receipts respectively. And any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed including the salary and interest paid to partners in case of firms.</td><td>Disallowance of salary and interest paid to partners may create havoc for professional partnership firms where huge amount is drawn as salary by working partners in accordance with the partners’ remuneration limits as suggested u/s 40(b) which is shown in the below examples.
<table>
<tr><th>Section 44AD</th><th>Existing Provision</th><th>New Provision</th></tr>
<tr><td>Turnover</td><td>80,00,000</td><td>80,00,000</td></tr>
<tr><td>Deemed Income @ 8%</td><td>6,40,000</td><td>6,40,000</td></tr>
<tr><td>Allowable Remuneration</td><td>4,74,000</td><td>NIL</td></tr>
<tr><td>Total Income of Firm</td><td>1,66,000</td><td>6,40,000</td></tr>
<tr><td>Tax Payable by firm @ 30%</td><td>49,800</td><td>1,92,000</td></tr>
<tr><td>Tax payable by the partners</td><td>NIL</td><td>NIL</td></tr>
</table></td><td>It is suggested to reduce the profit percentage to 25% for sec 44ADA.

Besides, interest and salary to the partners should be allowed to all partnership firms including firm of professionals out of the Presumptive NP of the firm.</td></tr>
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<tr><th>Sr. No.</th><th>Existing provision under the Income-tax Act, 1961 (“the Act”)</th><th>Difficulties / Obstacles / Hurdles faced</th><th>Suggestions</th></tr>
<tr><td></td><td></td><td>
<table>
<tr><th>Section 44ADA</th><th>No 44ADA</th><th>Under 44ADA</th></tr>
<tr><td>Gross Receipt of firm</td><td>30,00,000</td><td>30,00,000</td></tr>
<tr><td>Deemed income 50%</td><td>0</td><td>15,00,000</td></tr>
<tr><td>Regular Income (Say 50%)</td><td>15,00,000</td><td>0</td></tr>
<tr><td>Remuneration to partners</td><td>9,90,000</td><td>-</td></tr>
<tr><td>Income of firm</td><td>5,10,000</td><td>15,00,000</td></tr>
<tr><td>Tax of firm @ 30%</td><td>1,53,000</td><td>4,50,000</td></tr>
<tr><td>Tax by partners</td><td>49,000</td><td>-</td></tr>
<tr><td>Total Tax Incidence</td><td>2,02,000</td><td>4,50,000</td></tr>
</table>
</td><td></td></tr>
<tr><td>4.6</td><td>Section 44AD (4)
In section 44AD(4) provides as follows:
“(4) Where an eligible assessee declares profit for any previous year in accordance with the</td><td>The businesses are highly unpredictable and casting additional burden of continuous reporting of presumptive income for five years will be counterproductive and small businesses will be hit hard and will be pushed out of simplified scheme by this amendment defeating the very purpose of introducing presumptive taxation and will severely affect ease of doing business.</td><td>The sub section (4) may be deleted and the concept of declaration of deemed income for continuous period of 5 years to be removed and status quo may be maintained.</td></tr>
</table>

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
	provisions of this section and **he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section for five assessment years** subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).		
4.7	**Presumptive taxation Section 44AD** The definition of the words eligible business has been modified and the threshold	Explanatory Memorandum while amending section 44AD limit stated as under: "In order to reduce the compliance burden of the small tax payers and facilitate the ease of doing business, it is proposed to increase the threshold	Amendment in Section 44AB to increase the threshold limit of tax audit from Rs. 1 crore to Rs. 2 crores.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
	limit of Rs. 1 crore has been increased to Rs. 2 crores	limit of one crore rupees specified in the definition of "eligible business" to two crore rupees." For similar reason, amendment is required for increasing the limit u/s. 44AB.	
4.8	**Tax audit in case of partners of firm**	In case of a partner of a partnership firm, his share of profit is exempt under Sec. 10(2A) as the firm pays the tax at the maximum marginal rate. The remuneration and interest received by the partners from the firm is taxable as Business Income. In such cases, an issue has been raised in some cases that even partners are required to get their accounts audited if their share in profit and/or remuneration / interest from the firm exceeds the threshold provided in Sec. 44AB notwithstanding the fact that the accounts of the partnership firm have already been audited under Sec. 44AB.	A clarificatory amendment should be made in Sec. 44AB to provide that for the purpose of applying Sec. 44AB in the hands of the partners, the share of profit and/or remuneration/interest received from the firm shall not be taken into account while determining the amount of threshold provided in Sec. 44AB.
4.9	**Depreciation Allowance – Sec. 32** Restoration of Depreciation Allowance in respect of cost of small items of assets.	In the past, with a view to avoid litigation on the point of nature of expenditure (i.e. capital or revenue) in respect of purchase of small items of assets, provisions had been introduced to treat cost of such assets as depreciation allowance. Earlier, the limit on cost of such assets was Rs. 750/-. This was then increased by the Finance Act,	The above provisions should be reintroduced, with a condition that the same would not apply where the total value of such additions during the year exceeds 10% of the opening written down value of the relevant block of depreciable assets.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
		1983 to Rs. 5,000/-, again for the same reasons. These provisions have been omitted w.e.f. A.Y. 1996-97. The omission of the above provisions has created unnecessary hardship of keeping records in respect of purchases of such small items. This was a useful provision to maintain simplicity and to avoid possible litigation on such small items of assets, based on principles of materiality. Such a provision will act as a check on the temptation to abuse but at the same time, will serve the purpose for which it was originally introduced.	

5. Capital Gains

Sr. No.	Existing provisions under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
5.1	**S. 54EC** The section restricts exemption for investment in capital gains bonds up to Rs. 50 Lakh.	This will also help the Government in generating funds at much lesser cost, especially when the government is burdened with high cost of borrowing. This step will also will provide impetus to the infrastructure sector. Further, since the lock in period has now been increased to 5 years, if the	The ceiling for making investment in specified assets be increased from Rs. 50,00,000 to Rs. 1,50,00,000.

Sr. No.	Existing provisions under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
		limit is also increased, the government will have more funds for a longer period at lower cost.	
5.2	**Clause (xiiib) to section 47** excludes the conversion of private limited companies to LLP from the definition of transfer. However, there are certain conditions prescribed to be complied for being excluded from the definition of 'transfer'. One of the conditions is that the total sales, turnover or gross receipts in the business of the company in any of the three preceding previous year should not exceed Rs. 60 Lakh. Further a new condition is inserted wherein the total assets during the previous 3 years should not exceed 5 crore.	Such a small limit is a big hindrance on the conversion of the company into a LLP. Provisions of the new Companies Act 2013 have created various anomalies as well as complication for doing business FDI restrictions in LLPs have also been relaxed by Central Government. Continuing with the restriction of turnover is against the concept of ease of doing business in India.	The said limits should be removed or else increased substantially. Turnover limit may be increased to 10 crores and the total assets limit may be increased to 20 crores.

Sr. No.	Existing provisions under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
5.3	**Secs. 47(x) & (xa) and 49(2A) - Capital Gain on Conversion of Foreign Currency Exchangeable Bonds (FCEB), Other Bonds & Debentures.**	It is suggested that appropriate amendment should be made in Sec. 2(42A) to provide that holding period of such shares should be taken from the date of acquisition of FCEB/debentures/ other bonds and not from the date of allotment of shares.	Sec. 47 (xa) read with Sec. 49(2A) effectively provide that conversion of FCEB in to shares of any company will not give rise to capital gain and for the purpose of computing capital gain arising on sale of such shares at subsequent stage, cost of acquisition shall be taken as the relevant part of cost of FCEB. There is no corresponding provision for taking holding period of the shares from the day of acquisition of the Bonds [FCEB]. Similar difficulty exists in case of conversion of debentures and other bonds in to shares for which also similar provision exists in Sec. 47(x).
5.4	**Taxation of Capital Gains in case of Development Agreements**	Presently, most new constructions in cities take place where the developer/builder acquires a property or development rights in a property and consideration is to be discharged fully or partly by giving the landowner constructed area in the developed property. This is a business reality. It is practically impossible for the landowner to discharge the capital gain tax liability when he has not received the consideration in form of constructed area in the developed property. This also leads to dispute with the Department as to the point of time when transfer as contemplated u/s	With a view to avoid genuine difficulty in discharging the capital gains tax liability and avoid dispute as to the time of transfer, it is suggested that where the consideration for transfer of property in pursuance of a development agreement or otherwise is to be received in form of constructed area, capital gain may be computed in the year in which the transfer takes place but the capital gain so far as it relates to the consideration to be received in form of constructed area be charged to tax in the year in which such constructed area is received by the transferor landowner.

Sr. No.	Existing provisions under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
		2(47) has taken place under a Development Agreement. Similar provision for taxing capital gain in a subsequent year exists u/s 45(2) of the Act where a capital asset is converted into stock in trade.	
5.5	**Section 45(5A)** Taxation of gains arising in case of Joint Development Agreements [JDAs]	a) Presently, JDAs between societies and developers are not covered as the new section refers only to 'Individual or HUF'. b) In the Explanation to sub-section (5A), the definition of "specified agreement" refers to a registered agreement in which a person **owning** land or building or both. This is likely to cause unintended litigation and disputes. Section 45(2) lays down the taxation of gains arising on conversion of a capital asset into stock in trade of a business carried on by the assessee. This provision has stood the test of time and has been well accepted by the tax payers as well as the tax department.	The words "being an individual or a Hindu undivided family," referred in sub-section (5A) be deleted. Further, the word "owning" referred in explanation to sub-section (5A) be substituted with the word "holding**".** The sub-section (5A) should be worded on similar lines as sub section (2) of section 45 so that there is consistency and clarity about the taxation of such transactions.
5.6	**Distribution of capital assets on dissolution of**	In the event of distribution of capital assets to partners on dissolution of a partnership firm, tax on	Sec. 45(4) should not be made applicable in the event where a firm gets dissolved on account of the

Sr. No.	Existing provisions under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
	firm to partners - Sec. 45(4)	notional capital gain is levied on the firm by taking fair market value of such capital assets as the consideration irrespective of causes or motives of dissolution. This, at times, results into serious hardships on a literal construction of Sec. 45(4) e.g. if a firm is dissolved due to demise or insolvency of one of the partners of the Firm.	circumstances beyond the control of the partners such as demise or insolvency of a partner or on account of operation of statutory provisions of any other law etc.
5.7	**Distribution of Capital Assets to Partners - Removal of serious hardships - Sec. 45(4)**	Neither Sec. 49 nor Sec. 55 of the Act provide that if the firm has paid Capital Gains tax on distribution of capital assets on dissolution or otherwise, the cost in the hands of the concerned partner will be the value at which the firm is deemed to have transferred the asset to the partner.	Secs. 49/55 should clarify that in such cases, cost to the partner will be the value on the basis of which the firm has been assessed to capital gains.
5.8	**Section 50CA** **Special provision for full value of consideration for the transfer of shares other than quoted shares**	The section will result in double taxation of the same amount in the in the hands of the payer and the receiver. Also, it is likely to create prolonged litigation in many cases, on account of the vague and complicated definition of 'quoted shares' contained in the Explanation. Further, the term "shares" is not defined. Therefore, disputes could arise as to whether preference shares are also covered by this provision.	To avoid double taxation, section 50CA should be deleted. Alternatively, to bring more clarity, the definition of "quoted share" may be amended as under: *'Quoted share' means the equity share quoted on any recognised stock exchange and traded on not less than such number of days during the period of 12 months preceding the date of transfer as may be notified, where the quotation of such share is based*

Sr. No.	Existing provisions under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
			on current transaction made in the ordinary course of business.' Suitable amendments should be made in section 50CA to make it applicable only to shares of a company in which the public is not substantially interested.

6. Income from Other Sources

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
6.1	**Section 56 (2)** **Under section 56 (2)(vii)** in clause (e) of Explanation, the definition of the term "relative" inter alia, covers the following: "spouse of the person refer to in items(B) to (F)." In case of an HUF only the members of the HUF are considered as relative.	Gift from uncle/aunt is exempt in the hands of the recipient nephew/niece. However, converse is not true i.e. a gift from nephew/niece is taxable in the hands of the uncle/aunt. This does not seem to be intended. In case a relative wants to give gift to the HUF, the same is taxable as against the gift to an individual by the same person is not considered as income.	The word "spouse" should be substituted with the word "spouse or children" and it should be clarified that "relative" includes maternal grandparents. In case of HUF, a relative of the Karta should also be considered as a relative.
6.2	**Exemption for certain transactions from Section 56(2)(viib)**		a. Issue of shares pursuant to otherwise exempt transactions such as merger, demerger, inorganic acquisitions, etc. should be excluded. b. Clarify that it would apply only in the year of issue of shares. c. Value of the shares may be determined as per the latest adopted Balance Sheet.

7. Re-Assessment

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
7.1	**Reassessment Section 147 (Second Proviso) r.w.s. 149** **Section 149 (1) and clause (b) and (c)**	To ensure clarity and avoid litigation. Justification would be the same basis as were considered while inserting clause (b) to sub-section (1) of section 149 of the Act.	1. The term "financial interest" may be defined. i. Threshold limit of Rs. 1,00,000/- should be prescribed for re-opening within four years. ii. Beyond four years and within six years limit of Rs. 5,00,000/- should be prescribed.

8. Revision

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
8.1	**Section 263 of the Act – Revision of the orders prejudicial to revenue**	Clause (c) of the Explanation 2 provides that an order will be deemed to be erroneous in so far as it is prejudicial to the interests of revenue if the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119. Orders, direction and instructions of CBDT are merely the views of the CBDT about any particular provision of law. The view adopted by CBDT need not always be the correct legal view of the matter.	It is suggested that clause (c) should be deleted from Explanation 2 to section 263 of the Act.

Sr. No.	Existing provision under the Income-tax Act, 1961 (“the Act”)	Difficulties / Obstacles / Hurdles faced	Suggestion
		Further it is settled position that the CBDT orders and instructions are not binding on the assessees. Only courts have the power to interpret the provisions of the law in the correct manner. If revision is permitted on the basis of clause (c) of the Explanation 2, it is likely to result in anarchy specially in situations where the view of the CBDT on a particular matter is different than the view emerging from various judicial decisions of either the High Courts or the Supreme Court. In the case of **Hindustan Aeronautics Ltd. vs. CIT (200) 243 ITR 808 (SC)**, it has been held that while acting in capacity of quasi judicial authorities, law laid down by HC / SC shall be followed and circulars shall be ignored if they are conflicting with such decisions of courts.	
8.2	**Section 263 of the Act – Revision of the orders prejudicial to revenue**	Clause (d) permits revision of any order if it is not in accordance with **any decision** of jurisdictional High Court or Supreme Court. The words “any decision” are very wide and will cover decisions given before many years also which might have been subsequently overruled by the subsequent decision of the High Court or Supreme Court. In such a situation the earlier decision, which has	It is suggested that the words “any decision” in the clause should be replaced by the words “latest prevalent decision on the subject at the time of passing of the order by the assessing officer”. Alternatively to apply prospectively.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
		been overruled due to subsequent decision of the courts will not have any binding precedent and therefore should not be allowed to be the basis of revision u/s 263. If the revision is allowed on the basis of a decision which has already lost its binding precedent, it will result in judicial impropriety and the same can certainly not be the intention of any provision of law.	

9. Set Off and Carry Forward of Losses

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
9.1	**Section 70(2)** Set off of short term capital loss.	Under the present law, short term capital loss is permitted to be set off either against short term capital gains or long term capital gains. But, long term capital loss is permitted to be set off only against the long term capital gains. This is because the rate of tax on long term capital gains is considerably less than the rate of tax on short term capital gains and revenue would suffer if short term	It is suggested to provide an option to assessee either to set off short term capital loss against long term capital gains or to set off such a loss to subsequent assessment years subject to limitation period provided u/s 74 of the **Act** for set off against short term capital gains of subsequent assessment years.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
		capital gains were permitted to be erased in whole or in part by setting them off against any long term capital loss. As a result, to the extent to which the capital gains is reduced or completely wiped out by set off, the assessee would gain by not having to pay the tax on the capital gains. Per contra, to the extent to which short term capital loss is reduced or wiped out, the assessee would be deprived of the advantage of carry forward of the larger short term capital loss or whole of short term capital loss to the succeeding years so as to reduce his tax liability in such succeeding years. As a result of proposed suggestion, the Revenue and the Assessee would be at par in taking the respective advantage of set off.	
9.2	**Section 71(3)** Where in respect of any assessment year, the net result of the computation under the head "Capital gains" is a loss and the assessee has income assessable under any other head of income, the assessee	Short term capital gains other than that referred to in section 111A of the Act, is subject to tax at the normal rate of tax. As the rates of tax applicable to short term capital gains are the same as those applicable to income under any of the other heads, it cannot be said that there is no justification for not allowing set off of short term capital loss against income under any of the other heads. Thus, where the rate of tax on short term capital gains under the	Short term capital loss under the head capital gains be allowed to be set off against income under the other head.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
	shall not be entitled to have such loss set off against income under the other head.	head capital gains and the rate of tax with respect to income falling under the other heads of income is the same, such loss may be allowed to set off against income under the other heads.	
9.3	**Section 71(3A)** Notwithstanding anything contained in sub-section (1) or sub-section (2), where in respect of any assessment year, the net result of the computation under the head "Income from house property" is a loss and the assessee has income assessable under any other head of income, the assessee shall not be entitled to set off such loss, to the extent the amount of the loss exceeds two lakh rupees, against income under the other head.	Finance Act, 2017 has inserted a new sub section (3A) to section 71 of the Act, restricting the set-off of losses arising under the head 'Income from house property' to Rs. 2 lakhs. Introducing such provisions is causing undue hardship and discouraging fresh investments in immovable properties. Alternatively, the limit of Rs 2 lakhs may be raised to at least Rs 10 lakhs.	It is suggested that the restriction of set-off of losses arising under the head 'Income from house property' be removed.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
9.4	**Section 72A** (1) Where there has been an amalgamation of— (a) a company owning an industrial undertaking or a ship or a hotel with another company; or (b) a banking company referred to in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949) with a specified bank; or (c) one or more public sector company or companies engaged in the business of operation of aircraft with one or more public sector company or companies engaged in similar business……	With the development in technology, more and more service undertakings have been set up and evolved. Similarly, with the liberalization of import policy, businessmen preferred to import goods rather than manufacture the same, in order to survive in the competitive market. Therefore, for the objects with which section 72A has been inserted to allow benefit of carry forward and set off of accumulated loss and unabsorbed depreciation, the benefit may be extended to service and trading undertakings.	It is suggested that the benefit of the section may be extended even to companies owning service and/ or trade undertakings.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
9.5	**Section 73(4)** Section 73(4) provides as follows: "(4) No loss shall be carried forward under this section for more than four assessment years immediately succeeding the assessment year for which the loss was first computed."	Speculation profit is subject to tax at the normal rate. Thus, speculation income and non-speculation income are subject to tax at the same rate. When non speculation loss can be carried forward for eight assessment years, then for the same reason speculation loss should also be allowed to be carried forward for eight assessment years.	It is suggested that speculation loss be allowed to carry forward for eight assessment year immediately succeeding the assessment year for which the loss was first computed.
9.6	**Section 78(2)** Section 78(2) provides as follows: "Where any person carrying on any business or profession has been succeeded in such capacity by another person otherwise than by inheritance, nothing in this Chapter shall entitle any person other than the person incurring the loss to have it carried forward and set off against his income."	Objects similar to amalgamation of companies should be available for firms also.	It is suggested that the provision for carry forward and set off in case of succession of firm should be inserted similar to section 72A of the Act.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
9.7	**Amendment to section 47 and 2(47) in respect of succession of firm**	Objects similar to amalgamation of companies should be available for firms also.	It is suggested that succession of firm should not be treated as 'transfer' within the meaning of sections 2(47) r.w.s. 47 of the Act.

10. Interest and Penalty

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
10.1	**Calculation of the Interest u/s 201(1A) of the Act for the delay in deposit of TDS**	• The current provision u/s 201(1A) states that interest is payable from the date of deduction to the date of payment. Even a part of the month is to be considered as a month. • Even in a situation where the delay is of 1 day (i.e. TDS deposited on 8th of the succeeding month instead of 7th), at present, interest will be calculated for 2 months. • There is need to bring out clarity on this issue since even a single day's delay leads to a 2 months' period instead of 1 month which is penal in nature. Interest being compensatory in nature, it ought to be charged only for the period of delay and should not be excessive (penal) in nature.	Sec 201(1A) should be amended to provide interest only for the period of delay. Suitable changes may also be made in the TDS utility adopted by the Central Processing Centre (CPC).
10.2	**Section 270A replaces Section 271.** A paradigm shift has been brought by replacing the concept of concealment of income and furnishing inaccurate particulars of	Following issues which were fairly settled u/s 271(1)(c) will again have to be considered in the context of Section 270A : 1. Requirement of mens rea 2. Burden of proof.	Section 270A be scrapped and scope of Section 273B should be suitably enlarged to provide for circumstances where penalty for concealment of income or furnishing inaccurate particulars will not be imposed.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
	income by under-reporting and mis-reporting of income.	3. Whether penalty is automatic. 4. Whether penalty can be levied on debatable issue /incorrect legal claim. 5. Issues relating to commencement of penalty proceedings, initiation of penalty proceedings, recording of satisfaction. 6. Penalty on agreed additions. Issue of Show cause notice. Section 270A will once again open up several issues which were plaguing section 271(1)(c). Hence, the objective will not be achieved.	
10.3	**S. 270A**	No provision dealing with a situation where tax has been paid but only return is not filed.	To incorporate a provision dealing with a situation where return is not filed but the tax has been paid.
10.4	**Section 246A** which provides for appealable order before Commissioner (Appeals) specifically provided that order imposing penalty u/s 271(1) is appealable.	The Finance Act, 2016 has not amended section 246A to specifically provide that order imposing penalty under section 270A will be appealable.	A specific amendment will avoid controversy.
10.5	**Section 270AA - Immunity from Imposition of penalty.**	Where penalty is levied on certain additions on ground of mis-reporting and certain additions on ground of only under-reporting, then assessee will	Suitable provision be inserted to solve this anomaly that arises when penalty is levied on certain additions

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
		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.	on ground of mis-reporting and certain additions on ground of only under-reporting.
		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 to enable filing of delayed appeal against quantum order in the event that the application for immunity is rejected.
		There is no specific bar prohibiting revision u/s 263 of an order accepting immunity application.	Section 270AA(6) may be suitable amended to provide that an order granting immunity cannot be made subject matter of revision u/s. 263.
10.6	**Section 234F – Fee for default in furnishing the return of income.**	U/s 239(2)(c), a return claiming refund can be filed within one year from the end of the assessment year. As per section 234F, even such cases are covered and are liable to the fee u/s 234F. This results in such persons having to unnecessarily pay a fee even though the revenue is not adversely affected by the late filing of the return.	No fee should be charged from a person who files the return of income beyond the normal time limit and in whose case, a refund is due as per the return filed.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
10.7	**Section 269 ST and 271 DA** **Mode of undertaking transactions and penalty for failure to comply with section 269ST**	269ST begins with 'No person shall receive an **amount…'.** The word amount will include not only sum of money but any 'transfer for any value'. This is unintended and should be amended to clearly apply only to cash transactions. The Memorandum explaining the provisions of FA 2017 brings out the intention.	The word "amount" in section 269ST should be replaced with "sum of money".
10.8	**Section 271J** **Penalty for furnishing incorrect information in reports or certificates.**	It is widely felt that this provision could be subjected to widespread misuse and would result in harassment of honest and genuine professionals. Also, in any case, there is no provision for preferring an appeal to the ITAT in respect of orders passed by the CIT.	Section 271J should be deleted. Alternatively, the right of appeal to the ITAT be given to the affected person by way of a suitable amendment in section 253. Also, in order to provide a prospective impact of the section, an amendment should be made in the section to the effect that the section would apply to the certificates / reports issued on or after 1st April, 2017.

11. TDS

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
11.1	**Fresh scheme of tax collection instead of TDS**	Reducing compliance burden and reducing rectification applications.	Large companies including PSUs/PSBs should be allowed to pay advance tax on a monthly basis and exempted from the TDS provisions in the capacity of deductee. These Companies could be given an option. The advance tax to be deposited monthly could be based on TDS claimed in the return of Income in last two A.Ys. This will reduce avoidable and unnecessary hardship caused to the deductor and the deductee (for taking credit).
11.2	**Exemption of TDS on certain payments** There is no specific exemptions from TDS in case of payments of personal nature, in respect of the cases covered in Sec. 194A (interest), Sec. 194 H (brokerage), and Sec. 194I (Rent).	There does not seem to be any logic to deduct tax at source on payments made on personal account. Merely because an assessee happens to be a proprietor of a concern which is liable for tax audit u/s 44AB of the Act, he should not be made liable for tax deduction on the payments made for personal purposes. He should be treated at par with other individuals and HUFs.	The exemption from TDS on the payments made for personal purposes should be extended to the payments covered u/s 194A and 194H and 194I of the Act, in line with the provisions made in section 194J. Similarly, to provide for TCS provisions.

Sr. No.	Existing provision under the Income-tax Act, 1961 (“the Act”)	Difficulties / Obstacles / Hurdles faced	Suggestion
11.3	**234E - Fees for default in furnishing the statement:**	(i.a) With respect to the default for non-deduction of tax or, after deduction, non payment of the same to the credit of the Central Govt. there are sufficient compensatory and penal provisions under the Act, viz. Ss 201, 271C and 221; (i.b) Levy of such penalty would amount to punishment for the same offence twice. This is against the spirit of Law.	(i) This section should be dropped. (ii) In alternative, when there is reasonable cause for not furnishing the statement of TDS/TCS then, such cases can be covered under section 273B of the Act.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
11.4	**Credit for TDS** a) As per the current scenario, the credit for TDS is allowed on the basis of TDS reflected in Form 26AS, whereas, the assessee claims the TDS on the basis of the income offered to tax by him. This results to mismatch of credit for TDS, requiring rectification and submissions of various details by the assessee. The reasons for mismatch are many, e.g. the deductor following mercantile system of accounting, therefore TDS is deducted at the time of credit and on the other hand deductee following	a) The assessee should not be denied credit for TDS merely because of different methods of accounting followed by the deductor and the deductee or because of mistake of the deductor. This will reduce unproductive and unnecessary work of the department as well as the assessee. b) In many cases, the demand remains outstanding in the department's records on account of non deposit of TDS by the deductor and the same are incorrectly adjusted against subsequent refunds due to the deductee, resulting in unnecessary hardship to the assessee from whom the tax is wrongly recovered. There are sufficient provisions in the law to recover the amount not deposited by the deductor who is an assessee in default.	a) It is suggested that rule 37BA(3) should be amended, to provide that the credit for TDS should be allowed in the assessment year immediately following the financial year in which the tax has been deducted at source. In other words, it also means that the credit to the deductee should not be denied on account of mistake in data uploaded by the deductor or non-payment of TDS to the Government by the deductor as the deductee has no control over the Deductor. b) Rule 37BA(3) should be amended to the extent that in case of default on the part of the deductor for non deposit of tax deducted at source, the deductee should not be denied the credit of such tax deducted and the refund also should be allowed to the deductee.

	cash system of accounting and claiming credit for TDS in the year in which the income is actually received by him and vice-versa. As per the Finance Act, 1987, effective from 01/06/1987, the requirement for giving credit for TDS in the assessment year in which the income is assessable was introduced and has been applicable since then. Sec. 199 r.w. rule 37BA (3) states that credit for tax deducted and paid to the Central Government shall be given for the assessment year in which the income is assessable. b) In case deductor does not upload the details of tax deducted of the payee correctly, credit of the tax deducted is not allowed to the deductee thereby causing undue hardship to the deductee.		

Sr. No.	Existing provision under the Income-tax Act, 1961 (“the Act”)	Difficulties / Obstacles / Hurdles faced	Suggestion
11.5	**Scheme for Lump sum payments of TDS** In order to comply with the provisions of S. 200(1) read with Rule 30(1), the deductor has to deposit the tax deducted within the 7th day of the subsequent month.	The introduction of such a scheme shall reduce the burden of the tax deductors for making various payments every month under different sections within the due date. Considering the computerization of the entire TDS system, it is possible to keep a track of the appropriations made by the deductor as against the actual liability.	A scheme similar to Personal Ledger Account (PLA) in erstwhile excise law should be inserted in Chapter XVIIB of the Act, wherein the deductor can deposit a lump sum amount to the credit of assessee’s PLA and the PLA should be accessible to the deductor online. Such amount can be adjusted and appropriated against the liability of tax deducted by way of debit to the account. Excess amount to the credit of the assessee should be refunded or carried forward at the discretion of the assessee after filing and processing of the e-tds statement filed for the last quarter.

12. MAT and AMT

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
12.1	**Explanation 1 to Section 115JB(2)** In Explanation 1 to Section 115JB(2), meaning of "book profit" is explained, stating the items that should be added or deducted while computing the "book profit". It is provided that while computing "book profit", the amount of brought forward loss or unabsorbed depreciation, whichever is less, as per the books of accounts be allowed to be reduced. By way of clause (iii) to Explanation 1 to sub section (1) inserted by Finance Act, 2002, it is provided that no reduction benefit shall be available if either of the brought forward loss or unabsorbed depreciation is nil.	Nowadays, companies procure assets on lease or with the help of technology tie up. Fewer companies buy their own assets. Current restriction causes genuine hardship to companies, specialty service industries recovering from losses as they are liable to pay MAT despite huge brought forward losses. Effectively, it is partial postponement of set off. Further, unabsorbed depreciation as well as loss are allowed to be carried forward and set off against normal provisions of computation of income without any restriction on quantum. In other words, there is no restriction on the extent of brought forward loss / unabsorbed depreciation to be set off. Therefore, there is no logic for such differential treatment while computing MAT for example, in case of service companies, where depreciation is much lesser as compared to losses.	1. The word 'or' to be substituted with 'and'. 2. The words 'whichever is less' should be removed. This will result in allowance of both, brought forward loss and unabsorbed depreciation while computing the "book profit".

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
12.2	**Clause (iii) of Explanation 1 of section 115JB(2),** clearly states that amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account is liable to be reduced.	Current law does not provide any guidance as to determination of loss and depreciation. Current set of decisions are also conflicting. Hence mechanism be provided. Loss brought forward or unabsorbed depreciation, has to be considered on year-to-year basis or on an aggregate figure for all years in unison.	If there is loss brought forward and unabsorbed depreciation for more than one year, then one combined figure each of unabsorbed depreciation and brought forward loss for such years is to be determined for consideration.
12.3	**Clause (i) of Explanation 1 of section 115JB(2)** Effect of provision for diminution in value of any asset. The Finance (No. 2) Act, 2009 provided (with retrospective effect from 1st April, 2001) that any provision for diminution in the value of any asset will not be a permissible deduction in computing the Book Profit.	This is unjustified as for the purpose of MAT, the base is not the total income, but the book profit, which is essentially the commercial profit. In view of the above, it is suggested that the above provision should be deleted as the same is unjust. Merely because the apex court has justifiably confirmed the stand of the assessees, it is not correct to amend the Statute to reverse the situation.	MAT is based on the book profit, which generally should be in line with the commercial profits. While determining such commercial book profit, Provisions for Bad and Doubtful Debts (PBDD) is required to be deducted because the object is to arrive at the commercial profits. In fact without such a provision, the profit can never be regarded as true and fair, which is the requirement of the Companies Act. Such provisions are essential in view of the mandatory Accounting Standards. In this background, the Supreme Court has held that such PBDD is a permissible deduction in determining the book profits [though otherwise, the same is not deductible for computing to taxable income]. Instead of accepting the above commercially and statutorily justifiable position, law has been amended to reverse the SC decision.

13. Appeals and DRP

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
13.1	**Section 250 (6A)** "(6A) In every appeal, the Commissioner (Appeals), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him under sub-section (1) of section 246A."	Presently, the time limit for passing the order is not mandatory but only recommendatory in nature. The time limit should be made mandatory. There are many old appeals which are pending before the CIT(A) which are not disposed off and are pending since long. The DRP has the time limit and it issues the direction within the said time limit. Even the appeals before CIT(A) should have a fixed time frame.	The following sub section may be substituted in place of the existing one: "(6A) In every appeal, the Commissioner (Appeals), where it is possible, shall hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him under sub-section (1) of section 246A. Provided that where it is not possible for CIT(A), to hear and decide such appeal within the aforesaid period, for reasons beyond his control, the principal CCIT/CIT on receipt of such request in writing from the CIT(A), if satisfied, may allow additional period of 6 months to hear and decide such appeal."
13.2	**Section 254(2)** **Section 254(2) reads as follows:** "(2) The Appellate Tribunal may, at any time within six	Time limit of 6 months is too less. After the order is passed, it is posted to the Assessee. Usually the assessee receives original order in 30 to 45 days after order is passed.	The following sub section may be substituted in place of the existing one: "(2) The Appellate Tribunal may, at any time within six months from the end of the month in which the

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
	months from the end of the month in which the order was passed, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer:"	Apart from that the time for passing of the order giving effect is 3 months. The assessee realises mistakes when confronted with the Assessing officer wherein he interprets the order differently. He may want to seek clarification from the Tribunal but cannot do so because of 6 months' time limit and cannot also move the High court thereafter.	order was served on the Assessee, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer. Provided the Tribunal may pass an order under this subsection after six months but not beyond 1 year, after condoning the delay for the reasons recorded in writing. "
13.3	**Section 144C(2) – requirement of filing voluminous details within 30 days**	The assessee has to file voluminous objections in form 35A, within 30 days of receipt of the order. 30 days is very short time to compile and file before the DRP. There are many mistakes and further many arguments are also missed out.	Either the time limit of 30 days may be increased to 60 days or, in the alternative, format of Form 35A should be revised only to include grounds and statement of facts as are before CIT(A).

14. Trust / Charitable Organisations

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
14.1	**Charitable purpose Section 2(15)** Limit of 20% in the definition of "Charitable Purpose"	Several difficulties are faced by small charitable organisations and therefore there is a need to amend the definition and relax the upper limit of 20% of total receipts.	In place of existing clause (ii), the following may be substituted: "The aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, ***or rupees One crore, whichever is higher,*** of the trust or institution undertaking such activity or activities, of that previous year."
14.2	**Section 12AA(3)** Procedure for registration.	There are a large number of cases where the registration is cancelled for reasons which are considered frivolous by a judicial forum before which they are challenged. One must appreciate that section 11 exemption is not an automatic one. A trust needs to be registered under Section 12AA and such registration is granted u/s 12AA by DIT (E). Needless to say the same is granted after detailed examination of objects and activities and recording satisfaction that the same are genuine and as per the Act.	Guidelines may be issued under which circumstances, cancelation of registration 12AA can be done.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
14.3	**Tax on accreted income - Section 115TD**(1) – clause (b) – merger of two trusts / organisations.	These provisions create a charge without considering practical and real difficulties. a. One will appreciate that entire scheme of Income tax is based on Real income theory. b. Tax on accreted income is payable even if entity is merged with other entity which is registered u/s 12AA but whose objects are not similar. c. Further, the term "similar object" is subjective and prone to litigation. d. Provisions will apply even if a charitable institution transfers its assets to an institution substantially financed by government or which has turnover not exceeding the specified limit. e. Provisions will apply even if a charitable institution transfers its assets to an institution which is approved by Charity Commissioner under Maharashtra Public Trust Act, 1950.	It is suggested that the existing clause (b) be substituted by the following clause: "(b) merged with any entity other than an entity which is a trust or institution registered under section 12AA;"
14.4	**Tax on accreted income - Section 115TD(1)(c**) – time limit for transfer of assets to any other trust or institution.	Time limit of 12 months may not be enough for the trust to comply with in some cases due to various genuine reasons.	Appropriate provisions may be made which would empower Pr. CIT/CIT to extend this period.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
14.5	**Section 115TD(4) – Trust to pay tax on accreted income even though it is not otherwise required to pay income-tax**	a. Proposed balance sheet approach may result in taxation of income which has legitimately enjoyed exemption in earlier years. b. It may result in taxing an amount which was always eligible or entitled to an exemption. The proposed suggestion would ensure that only the following assets would be liable to accreted tax: (1) assets acquired out of non-agricultural income which is otherwise exempt, (e.g. dividend income, etc.); (2) assets acquired out of the basic accumulation of 15% of income; (3) assets acquired out of corpus donations exempt under section 11(1)(d); (4) assets acquired out of bequests; (5) assets acquired out of income below exemption limit; (6) assets acquired out of business income on which tax is paid under section 11(4A);	Provisions should not apply to the assets generated out of specified income on which exemption was not claimed.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
		(7) assets acquired out of income taxed upon application of first proviso to section 2(15); (8) assets acquired out of income which has suffered tax on account of application of section 13; (9) agricultural land.	
14.6	**Section 115TD (5)** Section 115TD(5) reads as follows: **"(5) The principal officer or the trustee of the trust or the institution**, as the case may be, and the trust or the institution shall also be liable to pay the tax on accreted income to the credit of the Central Government within fourteen days from, —	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. The term 'principal officer' is very widely defined in section 2(*35*) - "'principal officer', used with reference to a local authority or a company or any other public body or any association of persons or anybody of individuals, means— "(*a*) the secretary, treasurer, manager or agent of the authority, company, association or body, or (*b*) any person connected with the management or administration of the local authority, company, association or body upon whom the Assessing Officer has served a notice of his	Applicability of recovery provisions on the trustees etc. should be made only if it is proved that non-recovery is attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the charitable institution or trust.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
		intention of treating him as the principal officer thereof;" The AO can consider almost any person connected with the management as the principal officer of the institution.	
14.7	**115TD (5)** **"(5)** The principal officer or the trustee of the trust or the institution, as the case may be, and the trust or the institution shall also be liable to pay the tax on accreted income to the credit of the Central Government **within fourteen days from**,----"	Tax need to be paid within period of 14 days. a. Time limit is too short to pay especially when institution is required to dispose of its assets to make payment. b. It takes longer time to take permission from Charity Commissioner appointed under Maharashtra Public Trust Act, 1950. c. Further when capital assets are sold, proceeds would also be subject to capital gains tax.	Time limit need to be suitably modified.
14.8	**Section 12A(1)(ab)** Information regarding modifications of the objects which do not confirm to the conditions of registration	The time limit of 30 days provided in the new clause inserted by FA 2017 is too short. Many NGOs are run by volunteers. It is unfair to cast such an onerous responsibility on them. For example, where the amendment to the trust deed is sanctioned by a Court etc., it may take time to get	Instead of 30 days, the time limit should be 6 months.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
		copies of the court order. 30 days' period is impractical and merely onerous.	
14.9	**Section 12A(1)(ba)** Condition of filing the return of income within the time specified in section 139(4A)	The condition of filing the return of income within the time specified in section 139(4A) is too harsh and unfair. There could be several genuine reasons for a charitable trust not being able to file its return in time.	This clause (ba) inserted by FA 2017 should be suitably amended to provide for condonation of delay in case a reasonable cause is provided by the concerned trust.

15. Threshold limits & time limit with Due Date

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
I	**Monetary limit**					
A. Charitable Trusts						
15.1	**2(15)**	For non-applicability of first proviso in definition of "charitable purpose". First proviso states that advancement of any other object of general public utility shall not be a charitable purpose, if it involves carrying on of any activity in the nature of trade, commerce or business___ ,……, for a cess or any other consideration ,.......unless ___	Aggregate receipt from such activity does not exceed 20% of total receipts. Earlier monetary limit was of Rs 25,00,000/-.	Monetary limit should be restored and should be at least 1,00,00,000/-.	It can be linked with limit prescribed u/s 44AB for Tax Audit.	**I and VII**

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
15.2	**13(2)(g**)	**Exclusion for Benefit to person referred in Section 13(3).** Section 13(2) provides that income or property of the trust shall be deemed to have been used or applied for the benefit of person referred to in sub-section (3) and Clause (g) refer to diversion of income to such person. Proviso to the said Clause (g) of section 13(2) provides that the said Clause shall not apply.....if the aggregate of such diverted amount does not exceed….	1,000/-	10,000/-	Since 1972	**I**
15.3	**13(3)(b**)	It refers to a person who has made "substantial contribution" that is to say upto the end of the relevant previous year exceeding	50,000	250,000	Since 1994	**I**
B. Co-operative Societies						
15.4	80P(2) (c) (ii)	Deduction in respect of income of co-operative societies	50,000	200,000	Since 1998	**I**
C. General						
15.5	10(32)	Exemption limit for clubbing of minor's income	1,500	10,000	Since 1993	**I**
	56(2)(x)	Gift etc. (other than from relatives etc.) in excess of aggregate	50,000	100,000	Since 2006	**I**

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
15.6	149	Increase in monetary limit for issue of notice of Re-opening 1) Up to 4 Years 2) Between 4 and 6 years	Nil 1,00,000	1,00,000 5,00,000	Will reduce petty litigation. Since 2001.	IV & V
15.7	263	Principal Commissioner/ Commissioner if he consider that an order passed by the A.O. is erroneous, have powers to pass an order enhancing or modifying the assessment including cancelling	Nil	Proviso should be added that no such revision would be made where the tax effect does not exceed 5,00,000/-.	Ceiling would prevent revision in small cases. Ceiling suggested is the same which is for filing of appeal by the Department before the Tribunal.	I & V
15.8	281	Certain charge or transfer shall be void unless it is made (i) for adequate consideration ; or (ii) With the previous permission of the Assessing officer. Sub section (2) provides for the applicability when - Amount of Tax or Sum payable	5000 10000	1,00,000 50,00,000	w.e.f. 1-10-1975	I & V

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
		- Assets Charged or Transfer				
D. Salaried Employees						
15.9	10(10B)	Exemption limit for retrenchment compensation	500,000	1,000,000	Since 1997	I
15.10	10(10C)	Exemption for amount received on voluntarily retirement or termination in accordance with a scheme of voluntary separation	500,000	1,000,000	Since 2001	I
15.11	10(14)(ii) Rule 2BB	Children Education Allowance	100 p.m.	2000 p.m.	Since 1997. It is so miniscule that if relief is intended then it should be increased OR removed altogether.	I & VII
15.12	10 (14) (ii) r.w. Rule 2BB	Children Hostel Expenditure Allowance	300 p.m.	2000 p.m.	Since 1997	I & VII
15.13	17(2)(iii)	Monetary limit for employee (other than Director) for adding perquisite	50,000	100,000	Since 2002	I & VII

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
15.14	17(2) proviso (vi)	Medical Treatment outside India is subject to condition that gross total income does not exceed Rs 2,00,000	2,00,000	500,000	Since 1993	I
15.15	17 (2)(viii) r.w.Rule 3 (7) (i), (iii) and (iv)	Perquisite in respect of the following a) perquisite for interest free loan in excess of b) lunch / refreshment c) Value of any gift etc. on ceremonial occasions or otherwise	 20,000 50 5,000	 1,00,000 200 15,000	Since 2001	I & VII
E(1) BUSINESS INCOME / EXPENDITURE						
15.16	40A (3)	Payment made otherwise than by account payee cheque (a) For Transport	(a) 35,000	50,000	Since 2009	I
E(2) REQUIREMENT OF MAINTENANCE OF BOOKS OF ACCOUNT ETC.						
15.17	44AA(1) r.w Rule 6F	Requirement of maintenance of books of account by legal, medical, engineering or architectural profession etc. if the total gross receipts exceed	150,000	500,000	The present limit has remained unchanged since 2000. Earlier, applicability of Tax Audit for such professionals was	

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
					Rs. 10,00,000/- which has since been increased to Rs. 50,00,000/-.	
15.18	44AA (1) r.w Rule 6F(2)	The books of account and other documents referred to in sub-rule (1) shall be following : (i) a cash book; (ii) a journal (iii) a ledger ; (iv) carbon copies of bills, whether machine numbered or otherwise serially numbered, wherever such bills are issued by the person, and carbon copies or counterfoils of machine numbered or otherwise serially numbered receipts issued by him: Provided that nothing in this clause shall apply in relation to sums not exceeding twenty-five rupees (v) Original bills wherever issued to the person and receipts in respect of expenditure incurred by the person or, where such bills	Point **(iv)** Rs. 25 Point **(v)** Rs. 50	Rs. 500 Rs. 1,000	Since 1983	I

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
		and receipts are not issued and the expenditure incurred does not exceed fifty rupees				
15.19	44AA(2)	a) Sales, Turnover or gross receipts b) Income from business or profession	10,00,000 1,20,000	25,00,000 2,50,000	} Since 1998	
F. CAPITAL GAINS						
15.20	47 (xiiib)	The section excludes conversion of private limited companies to LLP, from the definition of transfer. However, there are certain conditions prescribed to be complied for being excluded from the definition of 'transfer'. One of the conditions is that the total sales, turnover or gross receipts in the business of the company in any of the three preceding previous year should not exceed Rs. 60 Lakh.	6,000,000	No limit restriction	Many people did not have option of LLP when they had formed a private limited company. In view of various 54difficulties under the Companies Act, 2013 many assessees would like to convert their private limited companies into LLP and they should be	

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
					given such option for some period.	
15.21	54 EC	Exemption of capital gain on investment in certain bonds	5,000,000	No limit restriction	The original position to be restored. The Govt. will have more funds for stated purpose at lower rate of interest.	
G. TAX DEDUCTION AT SOURCE						
15.22	193	TDS on Interest on Securities	5,000	20,000	Since 2012. Will reduce hardship to many.	I
15.23	194-J	TDS on Professional Fees etc.	30,000 and there is no separate aggregate limit.	30,000 per contract and aggregate limit of Rs. 1,00,000/-.	To make it on line with limits u/s 194C.	I
II. Monetary Ceilings						
15.24	208	Applicability of payment of advance tax when tax payable exceeds	10,000	20,000	Since 2009	VII
III. Time Limits						

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
15.25	139(1)	Due date of filling of return of income. Time limit for Charitable Trusts	30th September	30th November	There is heavy bunching of due date and creates huge bottlenecks in the month of September as it coincides with due date in case of business audits and corporate returns.	VII

16. Domestic Transfer Pricing - Specified Domestic Transactions (SDT)

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Suggestion	Justification for the suggestion
16.1	Meaning of the term "Close connections" in sec. 80IA(10) not defined any where in the Act.	It is, therefore, suggested that the same should be defined.	This will bring clarity to the said definition.
16.2	The threshold limit of related party transactions for invoking SDT is very low at Rs. 20 crores considering that it is aggregate of all such transactions.	It is suggested that the said limit should be enhanced to at least Rs. 50 crores so that the small and medium companies will be out of the ambit of SDT since, otherwise, it imposes a lot of burden on such enterprises.	

17. GAAR

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Suggestion	Justification for the suggestion
17.1	**Entire Chapter X-A GAAR**	It is humbly suggested that keeping in view the intent and the purpose of the GAAR provisions the same may be restricted only to the Non-Resident Tax payers.	GAAR provisions were introduced as an aftermath of the verdict of the Hon'ble Supreme Court in the case of **Vodafone Holdings (341 ITR 1).** As per the current GAAR provisions the Revenue is empowered to declare certain arrangements as Impermissible Avoidance Arrangements and by virtue of which it is entitled to completely withdraw the tax benefits or alternatively determine the taxability of the parties to the arrangement both under the Act as well as any of the Tax Treaties. Based on the above, it appears that any and every transaction could be tested and declared as impermissible. It is highly possible that even Residents may be tested and thereby brought to tax as per the GAAR provisions. This despite the fact that in case of residents there are ample anti-avoidance provisions, (more rigorous and specific in nature) in the Act. For e.g. section 56, section 40A, 2(22)(e), 94(7), 94(8), Chapter X, etc. Applying GAAR in case of residents may

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Suggestion	Justification for the suggestion
			land the resident tax payers in a situation of double jeopardy. Further certain transactions in the case of Residents which at times may be approved by the High Court, would run the risk of being termed as impermissible under the Act, thereby disregarding the court order. This would result in a situation of overlap and conflict of Constitutional Powers conferred on the Executive and the Judiciary. Hence it is suggested that the GAAR provisions if at all to be enforced be applicable only in case of Non-residents.
17.2	Section 96(2) provides that if the main purpose of even a step in transaction (which is a part of the main transaction / whole arrangement) is to obtain a tax benefit then the entire arrangement may be declared to be an impermissible avoidance arrangement under GAAR provisions. This is so despite the fact that main purpose of the whole arrangement is not to obtain a tax benefit.	It is suggested that the last limb of section 96(2) i.e. *"notwithstanding the fact that the main purpose of the whole arrangement is not to obtain a tax benefit"* be deleted to avoid any confusion. It may also be categorically provided that an arrangement may not be declared as impermissible if it entails some tax benefit on any step in transaction so as to promote a conducive investment climate. This will also avoid undertaking any unnecessary interpretational exercise.	There will invariably be transactions between entities which will have some element of tax benefit involved at some stage of the transaction. Permitting the revenue to declare an entire arrangement to be impermissible based on some marginal tax benefit achieved by a step in transaction would lead to a situation which would render almost all transactions impermissible. Further as per the wordings used in the section it appears that the entire focus as per section 96(2) shifts and probably acts in contrast to the main provision contained in section 96(1) i.e. declaring an entire

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Suggestion	Justification for the suggestion
			arrangement aimed at obtaining tax benefit as impermissible. This will also act as a deterrent to a favourable investment climate. This amendment / clarification is required to avoid any conflicting interpretations within the section and also to promote clarity in the law. It will also invoke positive investor confidence aiming at making capital investments in India.
17.3	Under section 97(2) round trip financing is meant to include transactions where funds are transferred among the parties to the arrangement and such transfer of funds lacks *substantial commercial purpose.*	It is suggested that the word *substantial* be dropped so as to bring the definition in line with section 97(1). Alternatively, substantial commercial purpose may also be defined in the Act under section 102 like other terms used in the chapter.	The definition contains the phrase *'substantial commercial purpose'.* However, the said phrase is not defined and the word substantial may lead to varied interpretations leading to possible difficulties. A clarity on this issue is required so as to avoid any subjective interpretational difficulties and proper, just and equal applicability of the Chapter to all persons covered by it.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Suggestion	Justification for the suggestion
17.4	Sections 98 and 99 of the Act provide that as a consequence of attracting GAAR provisions any corporate structure may be disregarded.	A mechanism may be provided whereby instead of the Department disregarding any corporate structure it may be authorised to approach the court in order to decide whether a corporate structure may be disregarded.	Under the Companies Act, only High Court is empowered to pierce the corporate veil and disregard the Corporate Structure. Empowering the Department to so disregard the Corporate Structure may lead to conflict of Constitutional Powers as mentioned above.
17.5	**Section 144BA(14)** – right of appeal should be given to the assessee against the direction of the Approving Panel.	The assessee should be given a right to appeal against the directions of the approving panel.	The Approving Panel has only six months to adjudicate on the issue. Further, there can be no extension of the same. In six months' time, if the approving panel adjudicates on the invocation of Chapter X-A, then a right to appeal should be given to the assessee, otherwise the High Courts will have to exercise their extra-ordinary writ jurisdiction. Further, the time period of six months to adjudicate on such a controversial and high stake involving issue is not justified, thereby making such direction subject to appeal inevitable.

18. International Taxation

Sr. No	Issues	Recommendations	Justifications
A. Residence under section 6			
18.1	For **persons other than companies and individuals (firm etc.)** if even part of Control & Management is in India it is an Indian resident. (Ss. 6(2) and 6(3)).	We suggest that residence test be on similar lines as in case of companies. i.e. If Place of Effective Management [POEM] is in India, then it will be considered as Indian resident.	To avoid this harsh application of residential test on other entities and bring uniformity in approach and principles.
18.2	**Individuals** – In a previous year (FY 2016-17), an NRI visits India once for 30 days. In the second visit he settles down in India. In that previous year he is in India for a period exceeding 59 days but less than 182 days. Will he be considered as resident or non-resident?	We suggest that reference to "visit" may be avoid to remove any controversy. Alternatively, the term "visit" may be explained.	To avoid the controversy on the meaning of "visit" to India under Explanation (b) to section 6(1).
18.3	**Section 6(1) Explanation 1 (a)** It provides that if a person leaves for employment in any previous year, he can get the relief of 182 days "in relation to that year". (i.e. he can be a non-resident even if he stays in India for 182 days).	It may be clarified that if a person leaves India for employment, then he will get the relief for that previous year, or "any subsequent previous year". The intention is that once a person leaves India for employment, he will get the relief of being in India for 182 days in any subsequent year.	To clarify and avoid ambiguity in such cases.

Sr. No	Issues	Recommendations	Justifications
	Say a person leaves India for employment in Nov 2018. In FY 2018-19, he is in India for more than 182 days. Therefore he will be an Indian resident. In FY 2019-20, he continues his employment and comes to India for 80 days. Will he be considered as non-resident? (In FY 2019-20 he did not leave for employment.)		
B. Application for nil / lower deduction of tax at source certificate – Section 195(2) and 197			
18.4	No time limit has been prescribed for processing of application filed u/s 195(2) and 197 of the Act.	We suggest that a reasonable but mandatory time limit for disposal of the applications made u/s 195(2) and 197 of the Act say, 60 days or 90 days from the date of application.	To make it time-bound and hence impart discipline and certainty.
C. Foreign Tax Credit			
18.5	Foreign Tax Credit - Rule 128 (8) & (9) and Form 67	Rule 128(9) provides that the statement in Form 67 referred to in clause (i) of sub-rule (8) and the certificate or the statement referred to in clause (ii) of sub-rule (8) shall be furnished on or before the due dates specified for furnishing the return of income under sub-section (1) of section 139. It is suggested that the time period for submission of form 67 for claiming Foreign Tax Credit should be	

Sr. No	Issues	Recommendations	Justifications
		permitted even during the process of assessment, as the correct FTC can be ascertained at that time only.	
D. Shipping income – Section 44B and 172			
18.6	The provisions of the above sections are almost similar, although both sections apply to different manners of doing businesses. (Section 172 applies to non-residents undertaking occasional shipping activity. Section 44B applies to non-residents undertaking regular shipping activities.) This difference in section creates some difficulties in operations of other provisions of Income-tax Act – Some examples are: 1) Circular 30 dated 26.8.2016 provides that Annual NOC issued by jurisdictional AO may be accepted in case the shipping company is eligible for DTA relief. There is no requirement of voyage	Section 44B can be brought on par with section 172. Alternatively, at least for the payer, a similar exemption from TDS may be provided u/s 44B as u/s 172.	To avoid difficulties for the payers and recipients in operations of other provisions of Income-tax Act.

Sr. No	Issues	Recommendations	Justifications
	NOC. This Circular is issued for Section 172 and not 44B. 2) Payer of shipping freight is exempt from TDS if shipping company is covered under section 172 (**Circular:** *No. 723, dated 19-9-1995.)*; whereas if the shipping company is covered under section 44B, there is no exemption from TDS. 3) Further the recipient may be liable to advance tax provisions depending under which section it is covered.		
E. Transfer Pricing			
18.7	**Section 92CE – Secondary Adjustments**	Section 92CE should be deleted wef 1-4-2020. Alternatively, the threshold for applicability of Section 92CE should either be increased to Rs. 10 Crores of primary adjustment or should be amended to a minimum of Rs. 2 Crore of secondary adjustment.	Section 92CE is not in accordance with international best practice. Hardly any other country has such a practice. Further, the Companies Act, 2013 also does not have explicit provisions relating to 'adjustments' in the books of accounts of the assesse. In any case, Non-

Sr. No	Issues	Recommendations	Justifications
			discrimination Article in the DTAAs could be invoked by the non-resident entities. On another front, reciprocal secondary adjustments by the other countries may not be beneficial for India and would hurt the Government's initiative of enhancing ease of doing business in India. Secondary adjustment would also create major issues under FEMA, as the obligation to receive foreign income is created without the consent or agreement of the foreign party which may refuse to pay such enhanced value.
18.8	Transfer pricing provisions apply to international transactions without any threshold	We suggest that international transactions below Rs. 10 crores should not be covered within transfer pricing rules. Alternatively in Rule 10D(2), the exisitng limit of Rs 1 crore should be enhanced to Rs 10 crores.	Transfer pricing provisions are very subjective. Determination of ALP cannot be objective. A threshold will go a long way to reduce compliance costs and burden for small assessees. We suggest that there should be a threshold above which the provisions should apply. No threshold creates difficulties for small taxpayers.

Sr. No	Issues	Recommendations	Justifications
18.9	There is an overlap of provisions which prescribe income computation and Transfer Pricing. For example, if an Associated Enterprise (AE) purchases Indian company's shares from its group company, income has to be computed under section 56(2)(x) if purchase price is less than the fair value. Section 56(2)(x) itself prescribed the fair value computation. Then to further compute the ALP under Transfer Pricing rules is not relevant.	It may be provided that where the fair value basis for computation of income is prescribed under any provision of Income-tax Act, computation of ALP will not be required. In the Transfer Pricing audit report, the fair value as prescribed under the respective sections, may be reported as ALP.	To avoid the overlap of provisions which may result in irrelevant computation.
18.10	**Safe harbour Rules**	Govt. should come out with attractive safe harbour provisions for the Manufacturing Sector, to make "Make in India" drive successful and thereby making India a manufacturing hub of the World, to generate employment and develop skills. In addition, the Govt. should enter into bilateral safe harbours to avoid double taxation.	Awaiting renewal of CBDT notifications for extending the period of applicability of Safe Harbour rules.
18.11	**Sec 92A- the Word "Control" not defined.**	It is suggested that the same should be defined	

Sr. No	Issues	Recommendations	Justifications
18.12	**Selection of Transfer Pricing Method**	Guidelines/parameters on the selection of TP appropriate methods, comparable companies and adjustments to PLI, are required with legislative backing.	High levels of litigations are revolving around selection of method, comparable companies and adjustment to PLI. Therefore guidelines will help in reduction of litigation.
F. Thin Capitalisation			
18.13	**Section 94B - Thin Capitalisation**	Section 94B should be deleted wef 1-4-2020. Alternatively: a) Section 94B should not be made applicable to certain priority sectors to be notified by government like Infrastructure, heavy industries etc. b) The threshold for applicability of section is Rs. 1 crore which is low considering rate of interest in India. Threshold should be increased to at least 5 crores. c) Section should not apply to loss making companies. d) The terms 'Implicit or' in 1st proviso to section 94B(1) should be deleted to avoid litigation.	Section 94B is not conducive for better investment environment climate in India and is counter productive to the excellent initiatives of the government in the form of "Make in India", "Start up India" etc.

Sr. No	Issues	Recommendations	Justifications
		e) In any case, the exemption provided to an Indian company or a permanent establishment of a foreign company which is engaged in the business of banking or insurance should also be extended to non-banking finance companies. f) Thin cap rules are in nascent stage and hence the companies must be provided transition window to re-align its debt structure. Further, aligning the capital structure is time consuming and requires regulatory approvals. Hence, the EBITDA capping should be initially @ 60-70% and phased reduction of the same to 30% could be provided over a span of 3 years. Alternatively, grandfathering should be provided for existing debt-equity structures. g) Businesses 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). 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.	

Sr. No	Issues	Recommendations	Justifications
		h) Meaning of EBITDA should be clarified.	
G. Tax Residency Certificate			
18.14	An Indian resident is required to give a TRC to the non-resident for receiving income from the non-resident. It takes about 2 months or more for getting a TRC.	A TRC should be given on automatic basis. An application can be made online and after basic checks, a TRC can be issued within 24 hours. Suitable amendment may be made in the law / rules.	Providing a TRC to Indian residents is directly beneficial to India. A person is not seeking any exemption. By giving a TRC, the other country will levy less tax. Resident will get more funds.
H. Indirect transfers			
18.15	**Section 9(1)(i) Explanation 6 and 7**	a. Explanations 6 and 7 to Section 9(1)(i) should be introduced retrospectively from 1st April 1962, in line with Explanation 5 to Section 9(1)(i). b. Explanation 7 should provide exemption to all transferors not holding voting power or share capital or interest exceeding 26 per cent. This is in line with the Shome Committee recommendation and 5% is too low a threshold.	
18.16	**Section 9(1)(vi) – Scope of Royalty income**	Explanation 5 to Section 9(1)(vi) should be redrafted in a manner so as to exclude the unintended e-commerce transactions from the definition of "Royalty". An exception should be carved out in Explanation 6 to Section 9(1)(vi) so as to exclude payments for use of	

Sr. No	Issues	Recommendations	Justifications
		standard facilities to the general public at large like payments for telephone service, internet service, cable television services and other similar services. Payments for copyrighted articles like shrink-wrapped software and payments made by distributors of software should be specifically excluded from the definition of “Royalty”.	
18.17	**Furnishing of information or documents** **Section 285A**	a) The reporting obligation under Section 285A, on Indian companies to gather information on the off-shore transfers is onerous and needs to be simplified. Reporting obligations must be restricted to the concerned transferor, and penalties must be a fixed sum of Rs. 100,000 in line with other provisions, instead of at 2% of transaction value. b) Further, the reporting obligations under Section 285A, should not arise in case the benefit of exemption as per Explanation 7 to Section 9(1)(i) is availed i.e. income not considered as deemed to arise or accrue in India.	
18.18	**Exemption u/s 56(2)(x)** Exemption in specified situations of mergers and demergers has been granted to companies receiving	We submit that a similar exemption be provided for indirect transfer.	To bring uniformity in approach.

Sr. No	Issues	Recommendations	Justifications
	shares of another company at a value which is less than the fair value. The exemption is in case of Indian situations (i.e. where the amalgamated company, resultant company, etc. is in India). Similar exemption is not available to indirect transfers.		
18.19	**Explanation 2 to section 2(47) – meaning of "transfer"** The Explanation was inserted vide Finance Act 2012 to take care of transactions similar in nature to the Vodafone case. As explained in the Memorandum to the Finance Bill, this amendment was a part of Rationalisation of International Tax provisions.	We suggest that it may be clarified that the Explanation 2 applies to "transfer by a non-resident".	Explanation 2 to section 2(47) was not meant to apply to domestic transfers.
I.	**Taxation of Foreign dividends under Section 115BBD of the Act**		
18.20	The benefit of reduced rate of tax on dividends as per Section 115BBD of the Act is available only to Indian companies and not to other persons.	We suggest that the benefit under the section should also be extended to all persons.	To bring uniformity in principles and approach which would help in removing ambiguity in application of the provisions.

Sr. No	Issues	Recommendations	Justifications
	Further, Section 115BBD provides for 26% or more shareholding by the Indian Company whereas Section 115-O provides for 51% or more shareholding by the Indian Company for exemption from Dividend Distribution Tax.	Further the requirement of shareholding in the company declaring dividend may be reduced to 26% u/s 115-O.	
J. Dispute Resolution			
18.21	**Authority of Advance Ruling** **Chapter XIX-B Sections 245N to 245V**	1. Prescribe mandatory time limit for passing the AAR order- i.e., within 180 days from the end of month in which application is filed. 2. The transaction limits and fees for approaching AAR by Resident tax payer should be revisited as they are quite high – Reduction will help to broad base AAR which can significantly help to mitigate litigation which will help in enhancing the Ease of doing business. 3. In order to expedite disposal, the admission process can be dispensed with and cases can be heard in one go – Only technical conditions can be verified by the Secretariat based on which application to be admitted or rejected. Other	

Sr. No	Issues	Recommendations	Justifications
		objections of Revenue can be heard at time of final hearing. 4. It is imperative to notify that the rulings of the AAR- would be appealable directly to the Supreme Court.	
18.22	**First Appellate Authority ('FAA') - Commissioner of Income-tax (Appeals) (CIT(A)) and Dispute Resolution Panel ('DRP')**	1. The present first appellate structure involving DRP and CIT(A) should be overhauled - Replaced by single DRP route (i.e. panel consisting of 3 members). 2. DRP constitution – One Chief Commissioner and two CITs - Only CITs having experience of working at ITAT be considered - APA commissioners can be appointed as member for specialised TP Panels - CCITs/CITs should not be the administrative commissioners. 3. Cases involving additions below Rs. 50 lakh could be decided by a single CIT instead of the Panel. All the other cases involving addition above Rs. 50 lakhs involving Transfer Pricing and International Tax issues should be decided by the DRP. 4. Considering the strength of the CIT(As) currently functioning in various cities, the number of DRP	

Sr. No	Issues	Recommendations	Justifications
		benches and jurisdiction could be decided - In Metros there should be at least 10 benches. 5. Strict timelines for hearing/ disposing of appeals filed before panel – 12 months from the date of filing of appeal. 6. On appeal pending before DRP - Tax officers not to press demand recovery - or as a standard practice, stay to be granted on payment of 15% demand - DRP should have power to grant stay in bonafide cases. 7. Guidelines to be set for issuance of remand report - not more than 60 days from receipt of intimation. Designated Board member to monitor functioning of DRPs. 8. CBDT to designate a Board member along with 1-2 chief commissioner working with him to keep records of issues in dispute and also maintain and monitor statistics of cases disposed of by DRP - Every month board should release guidelines to DRP on the issues accepted by Board. 9. All the orders being passed by the Tax officers, should be reviewed by the jurisdictional CCIT. There should be directive for CCIT to have	

Sr. No	Issues	Recommendations	Justifications
		meeting with the Taxpayer and settle the dispute at first level itself – this will help to reduce litigation at source itself.	
18.23	**Income-tax Appellate Tribunal**	1. Create specialized benches at all locations – for TP, International Tax [IT] and repetitive dispute areas of law. 2. Before newly appointed ITAT Members start sitting on benches, there should be an orientation programme undertaken for them whereby training is provided to them for functioning as tribunal members and also provide knowledge as to TP/ IT issues. This will help in reducing pendency. 3. Capacity building/ regular trainings etc. to be given to Members/ CIT(DR)s. 4. All the TP and IT matters, are high value matters and are more fact base, hence require more time for preparation than normal matter - Hence there should be 2-2 CIT(DR)s for TP and IT benches instead of 1 deputed at this point to have effective hearings and avoid probability of bench collapsing in absence of CIT(DR) and hence help in reducing pendency.	

Sr. No	Issues	Recommendations	Justifications
		5. Also, additional permanent CIT(DR)s should be appointed for effective functioning of ITAT. 6. Strengthening administrative support by providing Officer level support to bench members to help them function effectively i.e. write orders in time. Similar and Inspector level support to DR's to also help them to effectively prepare for the matters.	
K. Requirement to obtain Tax Residency Certificate – Introduction of threshold			
18.24	**Requirement to obtain Tax Residency Certificate – Introduction of threshold.**	Sec. 90(2) provides that in respect of an assessee to whom a DTAA applies, the provisions of the Act shall apply to the extent they are more beneficial to the assessee. However, for this purpose, a Tax Residency Certificate (TRC) is required to be furnished by the claimant. Sub-section (4) applies to all non-residents irrespective of the level of income and the nature thereof. This creates unintended hardship to both non-resident recipient and the resident payer even where amounts involved are not very large and also creates a negative image of the country as it involves time and cost to obtain such Tax Residency Certificate. This also substantially affects business environment.	It is therefore strongly suggested that the threshold, of say Rs. one crore in aggregate from a single payer per annum, be specified for applicability of this provision relating to obtaining a Tax Residency Certificate.

Code for Rationale

I	Equity and Fairness
II	Certainty
III	Convenience of payment
IV	Economy of collection
V	Simplicity
VI	Neutrality
VII	Economic Growth and efficiency
VIII	Transparency and visibility
IX	Minimum Tax Gap
X	Appropriate Government Revenues.