Bombay Chartered Accountants' Society

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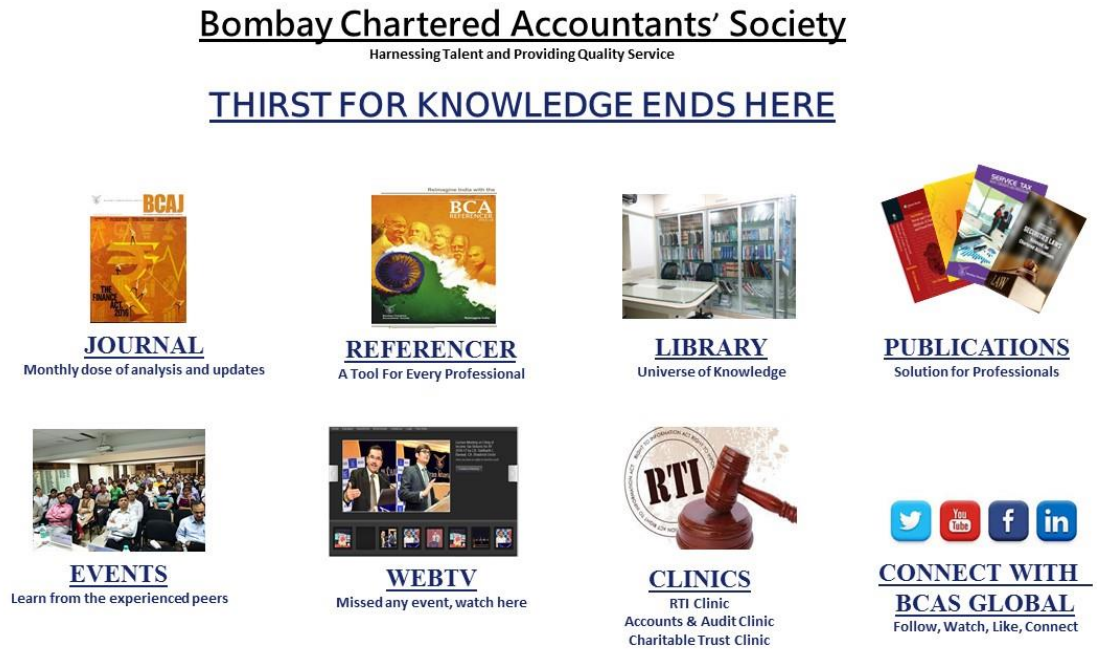
BOMBAY CHARTERED ACCOUNTANTS' SOCIETY

Bombay Chartered Accountants' Society (BCAS) is the oldest voluntary association established over 67 years ago on 6th July 1949 as a non-profit organisation to serve the profession of chartered accountancy. Today, it has nearly 9000 members from across the country and overseas. BCAS through its multifarious high quality educational activities ensures that its members keep pace with the challenges of time. Through these ongoing professional educational events on contemporary subjects of importance, the BCAS achieves its vision of disseminating knowledge and harnessing talent.



BOMBAY CHARTERED ACCOUNTANTS' SOCIETY

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BOMBAY CHARTERED ACCOUNTANTS' SOCIETY [BCAS]

Pre-Budget Memorandum on Direct Tax Laws 2017-18

Contents

1. Salary

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions	Justification for the suggestions
1.1	Salaried employees are not allowed deduction of any expenses incurred during the course of the employment other than profession tax on employment.	There are various expenses that the employees incur during the course of employment which they cannot claim as deduction. At the same time, the few exemptions that are available to them u/s 10 are subject to upper limits which have been fixed several years back and virtually serve no purpose on account of inflation.	Provisions similar to that of erstwhile standard deduction may be re-introduced. Simultaneously, the multiple exemptions that are available (with miniscule upper limits) may be done away with.	Employees during the course of their employment incur various expenses, including for upgrading skill, for rendering their services as employees, deduction for such expenses should be allowed. For avoiding leakage of revenue if any such deduction maybe a fixed sum or certain percentage of salary, say 25% of the salary, but maximum may be restricted upto say Rs. 5,00,000/- . Doing away with the multiple exemptions will help in cleaning up the Act and removing unwieldy provisions – thereby simplifying the law.
1.2	If the above suggestion is, for any reason, not acceptable, then, in the alternative, various exemptions need to be revisited. The current exemption limit for various allowances granted by an employer to the employee is extremely low.	As the limits are low, most of them have become irrelevant in the current inflationary scenario.	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	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

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions	Justification for the suggestions
			on the same lines as the computation of long term capital gains.	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.

2. House Property

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions	Justification for the suggestions
2.1	**Section 23** New clause be inserted to provide deduction of maintenance charges paid to Society, federation etc.	No provision presently exists to allow deduction for maintenance charges paid to a housing society etc even though it is a substantial and recurring expense.	Contribution towards maintenance charges actually paid to society, company, federation or common body should be allowed as deduction.	In most urban areas, maintenance of building is undertaken by the society, federation, company or common body and the expenses for such maintenance are substantial. The same need to be allowed as deduction against rental income so as to ensure that it is only the real income that is brought to tax. There is a spate of litigation that prevails in the country on account of this item of expense. Amending the law and allowing a deduction for the same would lead to considerable reduction in litigation.
2.2	**Second proviso to section 24 (b)** also provides that increased deduction upto 2,00,000/- shall be allowed if acquisition or construction is completed within three years from end of financial year in which capital was borrowed	To impose such condition of completion of construction within five year from the end of financial year of borrowing is unjustified and may deprive the assessees of this deduction for reasons beyond their control as the construction activities are generally carried out	1. Deduction may be increased to Rs. 5 lacs. 2. The condition of completion of construction within 5 year from the year of borrowing may please be	In metropolitan and urban areas generally construction is undertaken by builders & developers and high rise towers / mega projects takes 5 to 7 years to complete and this condition may deprive the assessee of higher deduction for reasons

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions	Justification for the suggestions
		by builders & developers and not by the assessees.	removed.	beyond their control.
2.3	**Explanation to Second Proviso:** Interest incurred on housing loan taken during construction period is allowed in five equal instalments commencing from year of completion of construction	Though the assessees have to pay Pre EMI interest to banks/ housing financial institution every year the deduction is postponed to future years putting more financial burden on borrower during construction period during which he may already be paying rent.	The deduction for interest payable during construction period may be allowed in the year of payment itself.	This will ease the financial burden on assessees who may already be staying in rented accommodation during construction period and also promote ease of compliance as there would be no need to keep track of interest paid during construction period to claim the same during further five years.

3. Business Income and Expenditure

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions	Justification for the suggestions
3.1	The Finance Act, 2014 had added new Explanation 2 in sub-section (1) of section 37 providing that any expenditure incurred by an assessee on the activities relating to CSR referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession and deduction shall not be allowed.		There is a strong need to revisit this provision and the companies should be allowed 100 per cent deduction of CSR under section 37. If at all required, necessary safe guards may be incorporated.	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.
3.2	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		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.	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

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions	Justification for the suggestions
	commenced business; 4. Amortisation of Lease premium for Land; 5. Factory shifting expenses; 6. Expenditure for setting up separate and independent unit; 7. Non-compete fees; 8. Lease expenditure / Payments.			way of depreciation.
3.3	Section 40A (3) The limit prescribed in section 40A (3) is Rs. 20,000/- in general and Rs. 35,000/- for business of plying, hiring or leasing goods carriages. Further the disallowance is provided for the entire amount of payment in violation of the section.		It is suggested that the limit of payment should be enhanced to Rs. 50,000/- and the disallowance should be restricted to 20% of the amount of payment in excess of Rs. 50,000/-. Alternatively, no disallowance should be made where the payer takes the PAN from the payee and proves that he has offered the corresponding receipt as income. Alternatively, the above restriction of aggregating payments in a single day	The limit of Rs. 20,000/- has been in force since 1988 and is very petty considering the present inflationary economy. The disallowance of the entire sum is an out of proportion penalty on the payer. The disallowance was being made at 20% during AY 1996-97 to A.Y. 2007-08. The purpose of the section is to prevent non-genuine payments and not to doubt bona fide transactions. In any case, disallowance of 20% of the genuine business expenses will be adequate deterrent for transactions in cash.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions	Justification for the suggestions
			should be confined to each transaction and should not be extended to payments made to the same person for different transactions.	
3.4	**Section 40A (3)-Rule 6DD** Rule 6DD provides for certain circumstances in which payment in excess of Rs. 20,000/- may be made otherwise than by a account payee cheque or account payee draft.		It is suggested that a clause be added in Rule 6DD for- (a) Direct payment of cash in payee's bank account. (b) Exceptional circumstances beyond the control of the assessee.	(a) An amount paid by cash directly in Bank should not be an item of litigation. Please see decision of Bangalore ITAT in case of **Sri Renukeswara Rice Mills v. ITO [2005] 93 ITD 263 (Bang).** (b) There might be many exceptional situations where payments have to be made in cash e.g.: Payment in emergency situations or unavoidable circumstances etc. In such cases, the above amendment will be of great relief.
3.5	**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		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	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

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	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 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.		prescribed. Some concession should be provided in case of under-construction or litigations property or exceptional circumstances. Alternatively, a tolerable difference, say 15% be provided similar to the one in Transfer Pricing Regulations. Similar amendments may be incorporated in section 50C and 56(2)(vii).	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 Governments for an under construction property and a ready possession property are the same. When it is an open secret that in real estate market there is an undesirable flow of black money, it is also an equally open secret that the property rates vary according to the stages of construction. If a person is booking a flat today in the year 2016 in a big project, whose possession is likely to be received in the year 2020 (though the builder might have claimed it to be in the year 2018),

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				the rates would be substantially different from the rates for a ready possession property. Further, in many cases, the builder offers the properties even 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.
3.6	**Section 44AD** relating to presumptive taxation applies only to businesses run by residents Individual, HUF and Firms excluding LLP.		The benefit of section 44AD should also be made available to LLP.	Tax on presumptive basis should be extended to all assessees, including a LLP. Only section 44AD excludes LLP, for which there appears to be no cogent reason. Otherwise under the Act, a LLP and a Firm are treated at par.
3.7	**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),		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.	Disallowance of salary and interest paid to partners may create a 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>Sr. No.</th><th>Existing provision under the Income-tax Act, 1961 (“the Act”)</th><th>Difficulties / Obstacles / Hurdles faced</th><th>Suggestions</th><th>Justification for the suggestions</th></tr>
<tr><td></td><td>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></td><td></td><td>
<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>
<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>
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Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions	Justification for the suggestions
				<table><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>
3.8	In section 44AD of the Income-tax Act, with effect from the 1st day of April, 2017,— (a) in sub-section (2), the proviso shall be omitted; (b) for sub-sections (4) and (5), the following sub-sections shall be substituted, namely:— "(4) Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and **he declares profit for any of the five assessment years relevant to the previous year succeeding such**		The new sub section (4) may be deleted and the concept of declaration of deemed income for continuous period of 5 years to be removed and status quo may be maintained.	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.

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	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).			
3.9	**Presumptive taxation Section 44AD** The definition of the words eligible business has been modified and the threshold limit of Rs. 1 crore has been increased to Rs. 2 crores		Amendment in Section 44AB to increase the threshold limit of tax audit from Rs. 1 crore to Rs. 2 crores.	Amendment is required as the stated purpose for increasing the limit under section 44AD, as stated in Explanatory Memorandum is 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 limit of one crore rupees specified in the definition of "eligible business" to two crore rupees."
3.10	**Instalment of Advance Tax (Section 211)** An eligible assessee in respect of eligible business referred in Section 44AD opting for computation of profits or gains of business on		Such provision should also cover eligible professionals covered under Section 44ADA.	The benefit of presumptive tax is made available to a professional from this year. But the advance tax is to be paid in four instalments. While assessee having businesses and who have opted for presumptive tax are required to pay

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	presumptive basis shall be required to pay advance tax on the whole amount in one installment on or before 15th March of the financial year.			advance tax only in one instalment. On the basis of the same logic, this benefit should be extended to professionals. By end of the year professionals will also be in a position to decide whether he wants to opt for presumptive tax or not.
3.11	**Tax audit in case of partners of firm**		Persons carrying on profession/business are required to comply with the requirements of Tax Audit under Sec. 44AB once their Gross Turnover/Receipts etc. exceed the threshold. 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	In view of the above, it is suggested that 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.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions	Justification for the suggestions
			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.	
3.12	**Definition of `Income' and Employees' Contribution to P.F. etc. - Put it on par with Sec. 43B, Sec. 2(24)(x) and Sec. 36(1)(va)**	Under Sec. 2(24)(x), monies received by an assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of ESI Act or any other fund for the welfare of such employees are treated as income of the assessee. Under Sec. 36(1)(va), such monies received from employees are allowed as a deduction only if the same are credited by the assessee to the employee's account in the fund on or	It is, therefore, suggested that Sec. 36(1)(va) be amended to provide deduction for employees' contribution on the lines of Sec. 43B which provides that such employer`s contribution will be allowed as deduction if the amount is paid on or before the due date of furnishing return of income under Sec. 139(1).	Therefore, delay of even one day in making payment of such employees' contribution disentitles an assessee from claiming the amount of deduction permanently whereas employer's contribution gets different treatment under section 43B which permits payment upto due date of filing return of income under section 139(1). This is unjust and unfair, particularly when such small delays are not even taken cognizance of under the relevant Acts.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions	Justification for the suggestions
		before the due date under the relevant Act, etc.		
3.13	**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, 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	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.	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.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions	Justification for the suggestions
		on principles of materiality.		

4. Capital Gains

Sr. No.	Existing provisions under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestions
4.1	**S. 54EC** The section restricts exemption for investment in capital gains bonds up to Rs. 50 Lacs.		The ceiling for making investment in specified assets be increased from Rs. 50,00,000 to Rs. 1,50,00,000.	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. The limit of Rs. 50,00,000 seems to be too low in the current economic scenario.
4.2	**S. 112 provides scheme of concessional tax on long term capital gains.** For an individual and HUF normal tax rate for income up to Rs 500,000 is 10%. However, in case of such assessee who has long term capital gain and his total income is up to Rs 500,000, he is required to pay tax on long term capital gains at the rate of 20%.		Rate of tax on long term capital gain should be 10% in case of total income including long term capital gains is between maximum amount not chargeable to tax and Rs. 500,000.	Scheme of taxation provides concessional rate of tax for long capital gains. However, current provisions double the rate of tax in case of assessee who has long term capital gain and as such loses if total income is below Rs. 5,00,000.
4.3	**Clause (xiiib) to section 47** excludes the conversion of private limited companies to LLP from the definition of transfer. However, there		The said limits should be removed or else increased substantially.	Such a small limit is a big hindrance on the conversion of the company into a LLP.

Sr. No.	Existing provisions under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestions
	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 exceeds 5 crores.		Turnover limit may be increased to 10 crores and the total assets limit may be increased to 20 crores.	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 restriction of turnover is against the concept of ease of doing business in India.
4.4	**Secs. 47(x) & (xa) and 49(2A) - Capital Gain on Conversion of Foreign Currency Exchangeable Bonds (FCEB) and other Bonds & Debentures.**		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	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.

Sr. No.	Existing provisions under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestions
			conversion of debentures and other bonds in to shares for which also similar provision exists in Sec. 47(x).	
4.5	**Assets acquired prior to 1st April, 1981 – Cost of acquisition – Sec. 55(2)(b)**		For the purpose of computing capital gains in case of transfer of capital asset acquired prior to 1st April, 1981, assessees have been given an option to substitute cost of acquisition by a fair market value as on 1st April, 1981. This date of 1st April, 1981 was substituted in the place of 1st January, 1964 by the Finance Act, 1986 w.e.f. 1st April, 1987.	It should be appreciated that the prices of capital assets, especially immovable properties, have increased manifold in last two decades on account of inflation and this date of 1st April, 1981 has remained unchanged since 1987. This is unfair and unjust. In the Direct Tax Code Bill, 2010, for this purpose, 1st January, 2000 was proposed. It is suggested that the date for substitution of cost of acquisition by the fair market value should be changed from 1st April, 1981 to 1st April, 2000.
4.6	**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	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

Sr. No.	Existing provisions under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestions
			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 2(47) has taken place under a Development Agreement.	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. 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.
4.7	**Distribution of capital assets on dissolution of firm to partners - Sec. 45(4)**		In the event of distribution of capital assets to partners on dissolution of a partnership firm, tax on 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	In view of the above, it is suggested that the provisions of Sec. 45(4) should not be made applicable in the event where a firm gets dissolved on account of the 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.

Sr. No.	Existing provisions under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestions
			the partners of the Firm.	
4.8	**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.	Therefore, 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. Income from Other Sources

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestions
5.1	**Section 56 (2)** **Under section 56 (2)(vii)-** in clause (e) 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 relatives of an HUF only the members of the HUF are considered as relative.		The word "spouse" should be substituted with the word "spouse or children" and clarify that relative includes maternal grandparents. In case of HUF, relative of the Karta should also be considered as a relative.	Gift from uncle is exempt. However, converse is not true, as gift from nephew 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.
5.2	**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.	

6. Re-Assessment

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
6.1	**Reassessment Section 147 (Second Proviso) r.w.s. 149** **Section 149 (1) and clause (b) and (c)**		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/- shall be prescribed.	1. 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.

7. Revision

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion	Remarks, if any
7.1	**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 and 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	It is suggested that clause (c) should be deleted from Explanation 2 to section 263 of the Act.	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. Further it	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,

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion	Remarks, if any
		under section 119.		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.	law laid down by HC / SC shall be followed and circulars shall be ignored if they are conflicting with such decisions of courts.
7.2	**Section 263 of the Act – Revision of the orders prejudicial to revenue**	Clause (d) of the Explanation 2 provides that an order will be deemed to be erroneous and prejudicial to the interests of revenue if it has not been passed in accordance with any decision which is prejudicial to	It is suggested that the words "any decision" in the clause shall be replaced by the words "latest prevalent decision on the subject at the time	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	

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion	Remarks, if any
		the assessee rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.	of passing of the order by the assessing officer". Alternatively to apply prospectively.	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 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.	

8. Set Off and Carry Forward of Losses

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
8.1	**Section 70(2)** Set off of short term capital loss.		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.	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 for the reason that the rate of tax on long term capital gains is considerably less than the rate of tax on short term capital gains (which is subject to tax at normal rate) and revenue would suffer if short term capital gains carrying a higher incidence of tax were permitted to be erased in whole or in part by setting them off against any capital gains. 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 irrespective of short term capital gains, if any, of that year. As a result of proposed suggestion, the Revenue

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
				and the Assessee would be at par in taking the respective advantage of set off.
8.2	**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 shall not be entitled to have such loss set off against income under the other head.		Short term capital loss under the head capital gains be allowed to be set off against income under the other head.	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 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.
8.3	**Section 74A** Carry forward of loss under the head Income from Other Sources.		It is suggested that loss under the head income from other sources may be allowed to be carried forward against subsequent year's income from other sources.	Income from other sources is taxable at the same rate at which income under any of the other head is taxable subject to certain exceptions like short term capital gains referred to in section 111A, long term capital gains referred to in section 112. As the rates of tax applicable to income from other sources 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 carry forward of loss under the head

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
				income from other sources at par with losses under the other heads of income.
8.4	**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……		It is suggested that the benefit of the section may be extended even to companies owning service and/ or trade undertakings.	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.
8.5	**Section 73(4)** Section 73(4) provides as		It is suggested that speculation loss be	Speculation profit is subject to tax at the normal rate. Thus, speculation income and non-

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
	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."		allowed to carry forward for eight assessment year immediately succeeding the assessment year for which the loss was first computed.	speculation income are subject to tax at the same rate. When non speculation loss can be carried forward for eight assessment years, even for the same reason speculation loss allowed to be carried forward for eight assessment years.
8.6	**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."		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.	Objects similar to amalgamation of companies.
8.7	**Amendment to section 47 and 2(47) in respect of succession of firm**		It is suggested that succession of firm should not be treated as 'transfer' within the meaning of	Objects similar to amalgamation of companies.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
			sections 2(47) r.w.s. 47 of the Act.	

9. Interest and Penalty

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
9.1	**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. • The Government should 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.	Government should amend Sec 201(1A) of the Act 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).	Interest being compensatory in nature ought to be charged only for the period of delay and should not be excessive (penal) in nature.
9.2	**Section 270A replaces Section 271.** A paradigm shift has been brought by replacing the concept of concealment of income and furnishing inaccurate particulars of income by under-reporting of income and mis-reporting.	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. 3. Whether Penalty is automatic.	To scrap Section 270A. The suggestion is as under: Scope of Section 273B should be suitably enlarged to provide for circumstances where penalty for concealment of income or furnishing inaccurate particulars	Section 270A will once again open up several issues which were plaguing section 271(1)(c). Hence, the objective will not be achieved.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
		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. 7. Issue of Show cause notice.	will not be imposed.	
9.3	**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 this aspect.	
9.4	**S. 270A**	Penalty u/s 270A is on difference between assessed income and income determined u/s 143(1)(a). However Explanation (b) to S. 270A(3) which deals with loss uses the term "claimed" implying penalty will be difference between income assessed and returned income.	Explanation (b) to Section 270A(3) may be clarified or suitably amended.	
9.5	**Section 246A** which provides for appealable order before Commissioner (Appeals) specifically provided that order imposing penalty u/s 271(1) is	However, the Finance Act, 2016 does not amend section 246A to specifically provide that order imposing penalty under section 270A will be appealable.	A specific amendment will avoid controversy.	

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
	appealable.			
9.6	**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 than assessee will have to make a choice whether to file appeal or make application for immunity as he cannot file appeal on penalty levied on mis-reported income and immunity application for under-reported income.	Suitable provision be inserted to solve this anomaly.	
9.7		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.	
9.8		There is no specific bar prohibiting revision u/s 263 of order accepting immunity application.	Section 270AA(6) may be suitable amended.	

10. TDS

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
10.1	**Fresh scheme of tax collection instead of TDS**		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 deductees. 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).	Reducing compliance burden and reducing rectification applications.
10.2	**Exemption of TDS on certain payments** There is no specific exemptions from tax deduction at source in case of payments of personal nature, in respect of the cases covered in Sec. 194A (interest), Sec. 194 H (brokerage), and Sec. 194I (Rent).		The exemption from tax deduction at source 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.	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

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
				and HUFs.
10.3	**234E: Fees for default in furnishing the statement:**		(i) This section should be dropped;	(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 may be against the spirit of Law.
			In alternative to (i) above, (ii) 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	Justification for the suggestion
10.4	**Credit for Tax deducted at source** As per the current scenario, the credit for tax deducted at source 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		a) It is suggested that rule 37BA(3) should be amended, to provide that the credit for tax deducted at source 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 with the Treasury of the Government by the deductor as the deductee has no control over the Deductor. b) Rule 37BA(3) of the Income Tax	a) The assessee should not be denied credit for tax deducted at source 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

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
	credit and on the other hand deductee following 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.		Rules 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.	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.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
10.5	**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.		A scheme similar to Personal Ledger Account (PLA) in excise law should be incepted in Chapter XVIIB of the Act, wherein the deductor can deposit a lump sum amount to the credit of assessee's Personal Ledger Account and the Personal Ledger Account 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.	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.

11. MAT and AMT

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
11.1	**Explanation1to Section115JB(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.	Because of this restriction, enterprises which are asset light are unable to claim deduction even though they have brought forward loss.	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".	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. 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

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
				compared to losses.
11.2	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.	Loss brought forward or unabsorbed depreciation, has to be considered on year-to-year basis or on as 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.	Current law does not provides any guidance as to determination of loss and depreciation. Current set of decisions are also conflicting. Hence mechanism be provided.
11.3	Effect of provision for diminution in value of any asset including provision for doubtful debts 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.		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	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.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
			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.	
11.4	**Rate of tax on MAT**		Apart from the above, 18.5% rate of MAT is too high. It started with the rate of 7.5%. Therefore, this rate should be reduced to 10%.	

12. Appeals and DRP

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion	Remarks, if any
12.1	**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	There are many old appeals which are pending before the CIT(A) which are not disposed off and are pending since long.	"(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	The time limit for passing the order is not mandatory but only recommendatory in nature. The time limit should be made	The DRP has the time limit and it issues the direction within the said time limit. Even the appeals before CIT(A) should have

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion	Remarks, if any
	such appeal is filed before him under sub-section (1) of section 246A."		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."	mandatory.	a fixed time frame.
12.2	**Section 254(2)** **Section 254(2) reads as follows:** "(2) The Appellate Tribunal may, at any time within six 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	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 30 to 45 days after order is passed. Apart from that the time for passing of the order giving effect is 3 months. The assessee realises mistakes when confronted with the	"(2) The Appellate Tribunal may, at any time within six months from the end of the month in which the 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	Time limit of 6 months is too less. After the order is passed, it posted to the Assessee. Usually the assessee receives original order after 30 to 45 days after order is passed. Apart from that the time for passing of the order giving effect is 3 months. The assessee realises	

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion	Remarks, if any
	shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer."	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.	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. "	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.	
12.3	**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. There is no rule to file a paper book or raise additional arguments or grounds. 30 days is very short time to compile and file before the DRP. There are many mistakes and further many arguments are also missed out.	Either 30 days may be increased to 60 days or alternatively Format of form 35A should be revised only to include grounds and statement of facts as were before CIT(A).		

13. Trust / Charitable Organisations

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
13.1	**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."	This would help small charitable organisations to carry on other charitable objects without losing the exemption.
13.2	**Procedure for registration.** **12AA**(3)	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.	Guidelines may be issued under which circumstance, cancelation of registration 12AA can be done.	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.
13.3 a	**Tax on accreted income - Section 115TD** (1) – clause (b) –	These provisions create a charge without considering practical and real difficulties.	It is suggested that the existing clause (b) be substituted by the following clause:	a. One will appreciate that entire scheme of Income tax is based on Real income theory.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
	merger of two trusts / organisations.		"(b) merged with any entity other than an entity which is a trust or institution registered under section 12AA;"	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.
13.3 b	**Tax on accreted income - Section 115TD(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.	
13.4	**S. 115TD(4) – Trust to pay tax on accreted income even though it is not otherwise**		Provisions should not apply to the assets generated out of specified income on which exemption was not claimed.	a. Proposed balance sheet approach may result in taxation of income which has legitimately enjoyed exemption in earlier years.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
	required to pay income-tax			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); (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

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
				application of section 13; (9) agricultural land.
13.5	**115TD** **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.	a. 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.	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 any body of individuals, means— "(*a*) the secretary, treasurer, manager or agent of the authority, company, association or body, or (*b*) any person connected with the management or administration of the local authority, company, association or body upon whom the Assessing Officer has served a notice of his intention of treating him as the principal officer thereof;" The AO can consider almost any person connected with the management as the principal officer of the institution.
13.6	**115TD** **"(5)** The principal officer	Tax need to be paid within period of 14 days.	Time limit need to be suitably modified.	a. Time limit is too short to pay especially when institution is required to dispose

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
	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**,----"			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.

14. 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						
14.1	**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**
14.2	**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
14.3	**13(3)(b)**	It refers to a person who has made "substantial contribution" that is to say upto	50,000	250,000	Since 1994	I

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
		the end of the relevant previous year exceeding				
B. Co-operative Societies						
14.4	80P(2) (c) (ii)	Deduction in respect of income of co-operative societies	50,000	200,000	Since 1998	
C. General						
14.5	10(32)	Exemption limit for clubbing of minor's income	1,500	10,000	Since 1993	
14.6	56	Gift etc. (other than from relatives etc.) in excess of Aggregate	50,000	100,000	Since 2006	
14.7	148/149	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
14.8	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 4,00,000/-	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

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
14.9	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 - Assets Charged or Transfer	5000 – 10000	1,00,000 50,00,000	w.e.f. 1-10-1975	I & V
D. Salaried Employees						
14.10	10(10B)	Exemption limit for retrenchment compensation	500,000	1,000,000	Since 1997	I
14.11	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
14.12	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
14.13	10 (14) (ii) r.w. Rule 2BB	Children Hostel Expenditure Allowance	300 p.m.	2000 p.m.	Since 1997	I & VII

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
14.14	17(2)(iii)	Monetary limit for employee (other than Director) for adding perquisite	50,000	100,000	Since 2002	I & VII
14.15	17(2)(v)	Medical Reimbursement	15,000	50,000	Since 1999	I
14.16	17(2)(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
14.17	17 (2)(viii) r.w .Rule 3	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						
14.18	40A (3)	Payment made otherwise than by account payee cheque (a) For Transport (b) For Others	 (a) 35,000 (b) 20,000	 50,000 50,000	 Since 2009 Since 1996	I
E(2) REQUIREMENT OF MAINTENANCE OF BOOKS OF ACCOUNT ETC.						

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
14.19	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	Limit is since 2000. Earlier applicability of Tax Audit for such professionals was Rs. 10,00,000/- that time which is increased to Rs. 25,00,000/- since 2011 by FA, 2012.	
14.20	44AA (1) r.w Rule 6F	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	Point **(iv)** Rs. 25 Point **(v)** Rs.		Since 1983	I

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
		person and receipts in respect of expenditure incurred by the person or, where such bills and receipts are not issued and the expenditure incurred does not exceed fifty rupees	50			
14.21	44AA(2)	a) Income from business or profession b) Sales, Turnover or gross receipts	1,20,000 10,00,000	2,50,000 25,00,000	Since 1998	
F. CAPITAL GAINS						
14.22	47 (xiiib)	The said 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 Lakhs.	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 difficulties under the Companies Act, 2013 many assessees would like to convert their private limited companies into LLP and they should be given such option for some period.	

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
14.23	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						
14.24	193	TDS on Interest on Securities	5,000	20,000	Since 1989. Will reduce hardship to many.	I
14.25	194A	TDS on Interest other than interest on securities:- (a) Bank (b) Others	 (a) 10,000 (b) 5,000	 20,000 20,000	-do-	I
14.26	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						
1	10(13A) r.w Rule 2A	Exemption from production of rent receipt as Circular No. 17/ 2014	3,000	5,000		VII
2	192 r.w. Rule 26A	Limit for attaching form 12B with form 16	150,000	500,000	Since 2002	VII

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
3	208A	Applicability of payment of advance tax when tax payable exceeds	10,000	20,000	Since 2009	VII
4	249 r.w. Rule 45 & Form no 35	Appeal to CIT(A): Limit for Appeal fees--slab of Total Income	Presently 3 slabs given in Section	(i) No fees till 5 lakh (ii) Between 5 lakh and10 lakh Rs 500/ and (iii) above 10 Lakh Rs 1,000/-.		
5	253 r.w.47 & Form no 36	Appeal to Tribunal: Limit for Appeal fees--slab of Total Income	Presently 3 slabs given in Form no 36	(i) Till 5 lakh Rs 1,500/-. (ii) Between 5 lakh to 10 lakh Rs 2,500/-. and (iii) above 10 lakh Rs. 10,000/-.		
6	285 BA	Second Proviso of sub-section (2) states that the value of aggregate transactions to be furnished shall not be less than Rs. 50,000/-.	50,000	2,00,000	Since 1-4-2004	I & IV
III. Time Limits						

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
1	139(1)	Due date of filling of return of income. Time limit for Charitable Trusts	30th September	30th November	It is difficult for all when it coincides with date that of business audits.	VII

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.**

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

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
15.1	The judgment of the Hon. Supreme Court In GlaxoSmithKline's case envisaged the introduction of SDT to situations where the related parties could avail the benefit of tax arbitrage between a profit making unit/ company with its related loss making unit/company or shifting profits from taxable units/entities to tax exempt units etc. To prevent this leakage of revenue the Hon. Supreme Court had suggested the introduction of SDT.		In view of the above, it is suggested that in case of transactions between related parties where there is no tax arbitrage in the sense that both of them are at the same tax bracket and that no shifting of profits can be alleged with the primary objective of saving on tax, the provisions of SDT should not be made applicable. This would reduce the compliance burden for a vast majority of assessees. Further in such a case, the Department may provide for a certificate to be issued by the assessee with all relevant facts and figures to the effect that the transactions are tax neutral. Such certificate may also be included as part of Form No. 3CEB which is authenticated by an Accountant.	The main purpose of sec. 40A(2) and other provisions to which SDT is made applicable is to prevent assessees from shifting profits from one to another or from one unit to another with the objective of reducing the overall tax liability. Hence, if the transactions between such assessees do not lead to any tax arbitrage, the rigours of SDT should not be made applicable in such cases.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
15.2	Sec.92BA provides for meaning of SDT as "any of the following transactions, **not being an international transaction**". International transaction means a transaction between two or more associated enterprises, either or both of whom are non-residents. The threshold limit of substantial interest for SDT under explanation to sec. 40A(2) is 20%. Thus, SDT will apply to transactions where any company holds more than 20% of the voting rights in the assessee company. However, for international transaction the provisions of Chapter X will apply where the shareholding is 26% or more. Thus an international transaction between two parties where one holds stake between 21% and 26% of the voting rights will not trigger the provisions of Chapter X (though it is a cross border transaction) but will trigger the provisions of SDT. It is only where the shareholding is 26% or more will the provisions of Chapter X apply.		It is, therefore, suggested that the limit in SDT for substantial interest should also be increased to 26% so as to clearly delineate the provisions of SDT and Chapter X.	This will clearly distinguish between Domestic Transactions being governed by SDT and International Transaction being governed by International Transfer Pricing.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
15.3	The provisions of the Companies Act, 2013 have made it mandatory for certain categories of companies to appoint Independent Directors, not due to their shareholding or their being able to exert influence in the company, but due to their standing in society and to bring in professionalism and independence in the functioning of the Boards. These Directors have no significant financial or shareholding interest in the company and hence cannot influence the Board in the matter of getting any undue financial benefit from the company in which they are Independent Directors.		In this regard it is recommended that any transactions with Independent Directors per se should be excluded from the rigours of SDT.	Independent Directors are appointed not by virtue of their shareholding but because of their qualification, skill and experience. They are appointed for the efficient governance of the company in an independent manner. Such directors cannot influence the benefits that may accrue to them due to their being directors in the company and hence payments to such directors should be excluded from the ambit of SDT.
15.4	The above should equally apply to Professional Directors who have no substantial stake either in the shareholding (except to the extent of either ESOPs or ESPP arising out of and in the course of their employment) or in the management of the company.		In this regard it is recommended that any transactions with Professional Directors per se should be excluded from the rigours of SDT.	Professional Directors are also appointed not by virtue of their shareholding but because of their qualification, skill and experience. They are appointed for the efficient governance of the company in an independent manner. Such directors cannot influence the benefits that may accrue to them due to their being directors in the company and hence payments to such directors should be excluded from the ambit of

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
				SDT.
15.5	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.
15.6	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.		It is suggested that the said limit should be enhanced to at least Rs. 50 crores.	This will take the small and medium companies out of the ambit of SDT since, otherwise, it imposes a lot of compliance burden on such enterprises.

16. GAAR

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
16.1	**Entire Chapter X-A - GAAR**	As is common knowledge the Indian Tax System is on the cusp of a mega shift to a new and more advanced tax system. As an outcome there is likely to be a huge burden of multiple compliances. Further the new laws / amendments	At the outset it is suggested that GAAR may not be introduced at all or, in the alternative, be deferred for another couple of years. This would help the professionals as well as the	The current provisions contained in the Act are capable of providing adequate safeguards against the abuse of law and tax evasion and hence deferring the GAAR may not have significant impact as far as avoidance of income-tax is

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
		in the existing law are likely to lead to multifarious interpretational difficulties to professionals and the revenue department alike. Introducing and applying GAAR in such a situation may lead to adding up to the burden of tax payers.	assessees to cope with the manifold simultaneous amendments in the Act and the Domestic Tax laws which are leading to a great shift from the traditional tax system prevalent in the country.	concerned. Further, in any case there exists a judicial GAAR in the form of Hon'ble Supreme Court's Ruling in the case of **Mc-Dowell & Co. (154 ITR 148)** so as to take care of any tax evasion exercise through subterfuges.
16.2	**Entire Chapter X-A GAAR**	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 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.	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 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

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
				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.
16.3	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.	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 the 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 arrangement	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	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.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
		aimed at obtaining tax benefit as impermissible. This will also act as a deterrent to a favourable investment climate.	interpretational exercise.	
16.4	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.*	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.	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.	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.
16.5	Sections 98 and 99 of the Act provide that as a consequence of attracting GAAR provisions any 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 discussed in Sr. No. 2.	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.	The said amendment / clarity is required so as to avoid any conflict of constitutional powers.
16.6	**Section 144BA(14)** – right of appeal should be given to the assessee against the	Looking at the nature of intricate issues and high stakes involved absence of right to appeal will be	The assessee should be given a right to appeal against the directions of the	The Approving Panel has only six months to adjudicate on the issue. Further, there can be no extension

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
	direction of the Approving Panel.	causing genuine hardship to assessees.	approving panel.	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.

17. International Taxation

Sr. No	Issues	Recommendations	Justifications
A) Residence under section 6			
1	Place of Effective Management (POEM) has been prescribed under section 6(3) for determining residence of **companies**.	Draft guidelines have been issued for POEM. The final guidelines have still not been issued although 5 months of the year has passed. We suggest that final guidelines be issued considering various suggestions made by us and other organisations.	To avoid uncertainty due to delays in issuance of guidelines.
2	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 is in India, then it will be considered as Indian resident. Draft POEM guidelines issued for foreign companies should be suitably modified to include entities (other than companies).	To avoid this harsh application of residential test on other entities and bring uniformity in approach and principles.
3	**Individuals** – In a previous year (FY 2015-16), 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 removed 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).
4	**Section 6(1) Explanation (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-	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	To clarify and avoid ambiguity in such cases.

Sr. No	Issues	Recommendations	Justifications
	resident even if he stays in India for 182 days). Say a person leaves India for employment in Nov 2015. In FY 2015-16, he is in India for more than 182 days. Therefore he will be an Indian resident. In FY 2016-17, he continues his employment and comes to India for 80 days. Will he be considered as non-resident? (In FY 2016-17 he did not leave for employment.)	India for employment, he will get the relief of being in India for 182 days in any subsequent year.	
B) Application for nil / lower deduction of tax at source certificate – Section 195(2) and 197			
1	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) Shipping income – Section 44B and 172			
1	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 or not depending under which section it is covered.		
D) Transfer Pricing			
1	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.	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 transactions.
2	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)(viia)	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.	To avoid the overlap of provisions which may result in irrelevant computation.

Sr. No	Issues	Recommendations	Justifications
	if purchase price is less than the fair value. Section 56(2)(viia) itself prescribed the fair value computation. Then to further compute the ALP under Transfer Pricing rules is not relevant.	In the Transfer Pricing audit report, the fair value as prescribed under the respective sections, may be reported as ALP.	
E) Tax Residency Certificate			
1	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.
F) Indirect transfers			
Indirect transfer provisions have fairly reasonable clarity to avoid tax in unintended situations. A few exemptions for group restructuring appear to have been missed out. These are submitted below.			
1	**Section 47(viab) and 47(viac)** The exclusion for indirect transfers from the definition of transfer in an amalgamation and demerger is limited to shares which derive their value **only from shares of an Indian company**. As per Explanation 5 to Section 9(1), indirect transfer provisions apply to shares which derive their value substantially from Indian assets (which can include	This provision should be modified to remove the condition of value derived only from shares of an Indian company. It can simply be restricted to shares of a foreign company referred to in Explanation 5. This is line with section 47(vi) and 47(vib) for Indian companies.	There is no exemption if assets in India comprise of assets other than shares. This can affect foreign companies who have say infrastructure projects in India. (Infrastructure projects are directly owned by foreign companies rather than through Indian companies).

Sr. No	Issues	Recommendations	Justifications
	assets other than shares of an Indian company).		
2	Present proposal for exemption of indirect transfer in case of amalgamation referred to in clause (viab); and in case of a demerger referred to in clause (vicc); provide exemption only for the transfer of the **capital asset** deriving its value substantially from shares of an Indian company. Similar exemption is not available to **shareholder** of amalgamating foreign company or demerged foreign company.	An exemption may be available to **shareholder** of amalgamating foreign company or demerged foreign company.	This will be in line with exemption available for shareholders of amalgamations or demergers where the amalgamated company or resulting company is an Indian company. (Section 47(via) and 47(vic)).
3	There is no exemption for transfer of shares between holding and subsidiary companies where the recipient company is not a Indian Company.	We submit that exemptions provided for transfers between subsidiary and holding company where the recipient is an Indian company, may be extended to foreign companies in case of indirect transfer provisions.	This is in line with section 47(iv) and 47(v).
4	**Exemption u/s. 56(2)(viia) -** Exemption in specified situations of mergers and demergers has been granted to companies receiving 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.	We submit that a similar exemption be provided for indirect transfer.	To bring uniformity in approach.
5	**Explanation 2 to section 2(47) – meaning of**	We suggest that it may be clarified that the Explanation 2 applies to "transfer by a non-	This meaning was not meant to

Sr. No	Issues	Recommendations	Justifications
	"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.	resident".	apply to domestic transfers.
G) Taxation of Foreign dividends under Section 115BBD of the Act			
1	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. Further, Section 115BBD provides for 26% or more shareholding of the Indian Company whereas Section 115-O provides for 51% or more shareholding of the Indian Company for exemption from Dividend Distribution Tax.	We suggest that the benefit under the section should also be extended to all persons. Further the requirement of shareholding in the company declaring dividend may be reduced to 26% u/s. 115-O.	To bring uniformity in principles and approach which would help in removing ambiguity in application of the provisions.
H) Dispute Resolution			
1	**Authority of Advance Ruling**	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 composition of AAR needs to be changed as under: a. Chairman – Retd./ Sitting High Court Judge or b. Vice Chairman – Retd. President of ITAT or Retd. Vice President of ITAT or Retd members as recommended by President	

Sr. No	Issues	Recommendations	Justifications
		c. Members – CCIT having experience of at least 2 years in International Tax d. The Retd. ITAT members have relevant knowledge and experience about judicial proceedings, Income-tax law and in particular International tax on account of wide exposure in the Tribunal. 3. Members should have tenure of minimum 3 years. Also there should not be any time gap between date of retirement and new appointments of members and chairman. 4. 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. 5. 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 objections of Revenue can be heard at time of final hearing. 6. It is imperative to notify that the rulings of the AAR, would be appealable directly to the	

Sr. No	Issues	Recommendations	Justifications
		Supreme Court.	
2	**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 - CITs'/ CCITs should not be the administrative commissioners. 3. Cases involving additions below Rs. 50 lakhs could be decided by a single CIT instead of the Panel. All the cases involving Transfer Pricing and International Tax issues is to be decided by the DRP. 4. Considering the strength of the CIT(A) currently functioning in various cities, the number of DRP benches and jurisdiction could be decided - In Metros there should be at least 10 benches with 2 or 3 dedicated DRP for Transfer Pricing and International taxation matters. 5. Strict timelines for hearing/ disposing of appeals filed before panel – 12 months from the date of filing of appeal.	

Sr. No	Issues	Recommendations	Justifications
		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 a guidelines to DRP on the issues accepted by Board. Jurisdictional CCIT to review orders passed by AO and try to settle dispute. 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 meeting with the Taxpayer and settle the dispute at first level itself – this will help to reduce litigation at source root itself.	
3	**Income-tax Appellate Tribunal**	1. Create specialized benches at all locations –	

Sr. No	Issues	Recommendations	Justifications
		for TP, international tax 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. 5. Also, additional permanent CIT(DR)s and Senior ARs should be appointed for effective functioning of ITAT. 6. Strengthening administrative support by providing Officer level support for bench members and Inspector level support to DR's to help them effectively function i.e.	

Sr. No	Issues	Recommendations	Justifications
		write orders in time and also help DRs to effectively prepare for the matters.	
I. Requirement to obtain Tax Residency Certificate – Introduction of threshold			
	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 from single payer per annum, be specified for applicability of this provision relating to obtaining a Tax Residency Certificate.