Bombay Chartered Accountants' Society

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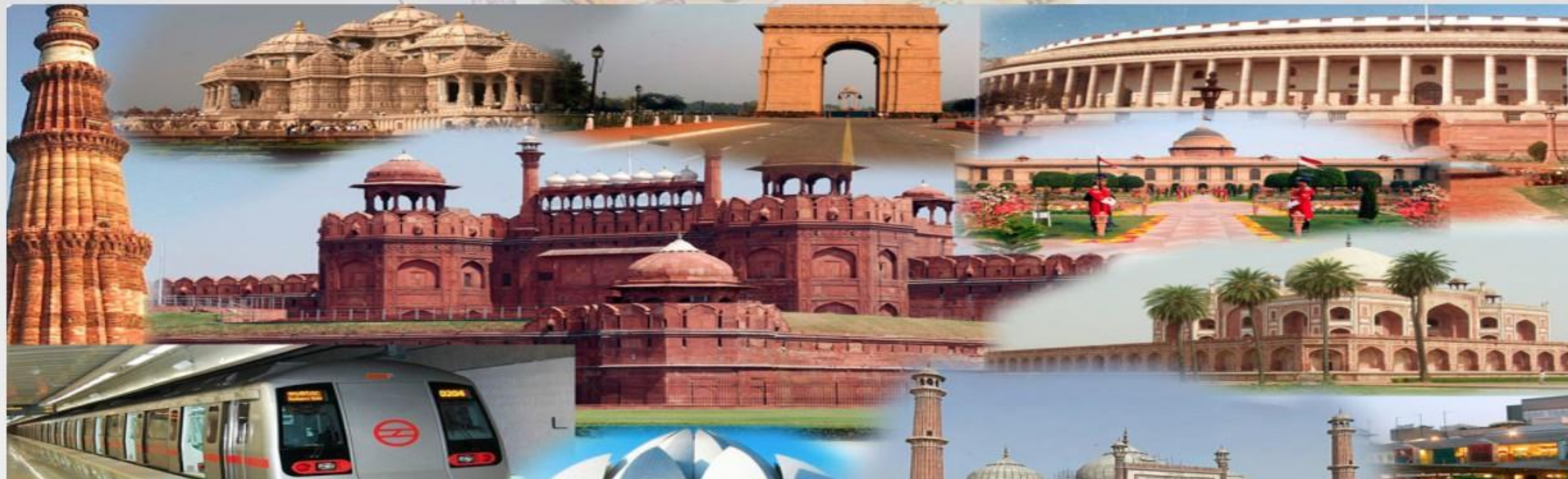
Pre-Budget Memorandum on Direct Tax Laws 2018



Bombay Chartered Accountants' Society

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Bombay Chartered Accountants' Society

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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, and hence 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	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 Index, the **need to amend the**

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions	Justification for the suggestions
	by an employer to the employee is **extremely low**.		on the same lines as the computation of long term capital gains.	**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 five years from end of financial year in which capital was borrowed.	To impose such condition of completion of construction within five years 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 by builders & developers and not by the assessees.	1. Deduction may be increased to Rs. 5,00,000. 2. The condition of completion of construction within 5 years from the year of borrowing may please be removed. 3. The limit of benefit	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 beyond their control.

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			should be increased to at least 500,000.	
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 in 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	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

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	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.		inserted.	way of depreciation.
3.3	**Section 40A (3)-Rule 6DD** Rule 6DD provides for certain circumstances in which payment in excess of Rs. 10,000/- 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 into a bank account 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.

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3.4	**Sections 40A(3)/(3A), 35AD, 43, 44AD and 269SS / 269 T etc.** Reference to payment by "account payee cheque, account payee bank draft or use of electronic clearing system through a bank account".	Today's fast changing technology provides several other modes of transferring money or making payments such as digital wallets, credit cards etc.	At all places where the words "account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account" have been used, the following words may be added at the end - "or use of such electronic mode of payment as may be notified from time to time". This will enable the government to notify new modes of electronic transfers that may be conceptualized at a future date.	Since the government's intention is to curb the use of cash and promote modes of payment which can be traced, it is imperative that any mode other than cash should be encouraged. It has been noticed that a large number of people have started using digital wallets and credit cards for making payments. It is therefore necessary to bring these modes also within the list of acceptable modes of transacting.
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		The word 'transfer' should be defined for the purpose of S. 43CA. The year of taxability	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

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	both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing 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.		of difference between the actual consideration and the stamp duty value should be clearly 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 amendments may be incorporated in section 50C and 56(2)(vii).	section 43CA. Therefore, to bring clarity and avoid unwanted litigation, an Explanation needs to be inserted in section 43CA defining the word 'transfer'. In case of percentage completion method, the income is offered for taxation based on the stage of completion of project in different years. Taxability u/s 43CA should also be correspondingly linked to different years. However, in the absence of a clear provision and also due to the absence of the definition of the word 'transfer', this may lead to unwanted litigation as to the year of taxability. The 'ready reckoner value' fixed by State 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

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				booking a flat today in the year 2017 in a big project, whose possession is likely to be received in the year 2021 (though the builder might have claimed it to be in the year 2019), 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 resident 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		It is suggested to reduce the profit percentage to	Disallowance of salary and interest paid to partners may create a havoc for

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<tr><th>Sr. No.</th><th>Existing provision under the Income-tax Act, 1961 (“the Act”)</th><th>Difficulties / Obstacles / Hurdles faced</th><th>Suggestions</th><th>Justification for the suggestions</th></tr>
<tr><td></td><td>assessee shall be required to declare net profit at 50% of the gross receipts & 8 % of the turnover/gross receipts respectively. And any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed including the salary and interest paid to partners in case of firms.</td><td></td><td>25% for sec 44ADA.

Besides, interest and salary to the partners should be allowed to all partnership firms including firm of professionals out of the Presumptive NP of the firm.</td><td>professional partnership firms where huge amount is drawn as salary by working partners in accordance with the partners’ remuneration limits as suggested u/s 40(b) which is shown in the below examples.

<table>
<tr><th>Section 44AD</th><th>Existing Provision</th><th>New Provision</th></tr>
<tr><td>Turnover</td><td>80,00,000</td><td>80,00,000</td></tr>
<tr><td>Deemed Income @ 8%</td><td>6,40,000</td><td>6,40,000</td></tr>
<tr><td>Allowable Remuneration</td><td>4,74,000</td><td>NIL</td></tr>
<tr><td>Total Income of Firm</td><td>1,66,000</td><td>6,40,000</td></tr>
<tr><td>Tax Payable by firm @ 30%</td><td>49,800</td><td>1,92,000</td></tr>
<tr><td>Tax payable by the partners</td><td>NIL</td><td>NIL</td></tr>
<tr><td>Section 44ADA</td><td>No 44ADA</td><td>Under 44ADA</td></tr>
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<table>
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<tr><td></td><td></td><td></td><td></td><td><table>
<tr><td>Gross Receipt of firm</td><td>30,00,000</td><td>30,00,000</td></tr>
<tr><td>Deemed income 50%</td><td>0</td><td>15,00,000</td></tr>
<tr><td>Regular Income (Say 50%)</td><td>15,00,000</td><td>0</td></tr>
<tr><td>Remuneration to partners</td><td>9,90,000</td><td>-</td></tr>
<tr><td>Income of firm</td><td>5,10,000</td><td>15,00,000</td></tr>
<tr><td>Tax of firm @ 30%</td><td>1,53,000</td><td>4,50,000</td></tr>
<tr><td>Tax by partners</td><td>49,000</td><td>-</td></tr>
<tr><td>Total Tax Incidence</td><td>2,02,000</td><td>4,50,000</td></tr>
</table></td></tr>
<tr><td>3.8</td><td>Section 44AD (4)
In section 44AD(4) provides as follows:
“(4) Where an eligible assessee declares profit for any previous year in</td><td></td><td>The sub section (4) may be deleted and the concept of declaration of deemed income for continuous period of 5</td><td>The businesses are highly unpredictable and casting additional burden of continuous reporting of presumptive income for five years will be counterproductive and small businesses</td></tr>
</table>

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	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 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).		years to be removed and status quo may be maintained.	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.
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."

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3.10	**Tax audit in case of partners of firm**	In case of a partner of a partnership firm, his share of profit is exempt under Sec. 10(2A) as the firm pays the tax at the maximum marginal rate. The remuneration and interest received by the partners from the firm is taxable as Business Income. In such cases, an issue has been raised in some cases that even partners are required to get their accounts audited if their share in profit and/or remuneration / interest from the firm exceeds the threshold provided in Sec. 44AB notwithstanding the fact that the accounts of the partnership firm have already been audited under Sec. 44AB.	A clarificatory amendment should be made in Sec. 44AB to provide that for the purpose of applying Sec. 44AB in the hands of the partners, the share of profit and/or remuneration/interest received from the firm shall not be taken into account while determining the amount of threshold provided in Sec. 44AB.	
3.11	**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	Section 36(1)(va) be amended to provide deduction for employees' contribution	Delay of even one day in making payment of such employees' contribution disentitles an assessee from claiming the amount of deduction permanently whereas

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		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 before the due date under the relevant Act, etc.	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).	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.
3.12	**Depreciation Allowance – Sec. 32** Restoration of Depreciation Allowance in respect of cost of small items of assets.	In the past, with a view to avoid litigation on the point of nature of expenditure (i.e. capital or revenue) in respect of purchase of small items of assets, provisions had been introduced to treat cost of such assets as depreciation allowance. Earlier, the limit on cost of such assets was Rs. 750/-. This was then increased by the Finance Act,	The above provisions should be reintroduced, with a condition that the same would not apply where the total value of such additions during the year exceeds 10% of the opening written down value of the relevant block of depreciable assets.	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.

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		1983 to Rs. 5,000/-, again for the same reasons. These provisions have been omitted w.e.f. A.Y. 1996-97. The omission of the above provisions has created unnecessary hardship of keeping records in respect of purchases of such small items. This was a useful provision to maintain simplicity and to avoid possible litigation on such small items of assets, based on principles of materiality.		

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 Lakh.		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 - 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		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.

Sr. No.	Existing provisions under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestions
	500,000, he is required to pay tax on long term capital gains at the rate of 20%.			
4.3	**Clause (xiiib) to section 47** excludes the conversion of private limited companies to LLP from the definition of transfer. However, there are certain conditions prescribed to be complied for being excluded from the definition of 'transfer'. One of the conditions is that the total sales, turnover or gross receipts in the business of the company in any of the three preceding previous year should not exceed Rs. 60 Lakh. Further a new condition is inserted wherein the total assets during the previous 3 years should not exceed		The said limits should be removed or else increased substantially. Turnover limit may be increased to 10 crores and the total assets limit may be increased to 20 crores.	Such a small limit is a big hindrance on the conversion of the company into a LLP. Provisions of the new Companies Act 2013 have created various anomalies as well as complication for doing business FDI restrictions in LLPs have also been relaxed by Central Government. Continuing restriction of turnover is against the concept of ease of doing business in India.

Sr. No.	Existing provisions under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestions
	5 crore.			
4.4	**Secs. 47(x) & (xa) and 49(2A) - Capital Gain on Conversion of Foreign Currency Exchangeable Bonds (FCEB), 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 conversion of debentures and other bonds in to shares for which also similar provision exists in Sec. 47(x).	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.
4.5	**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	With a view to avoid genuine difficulty in discharging the capital gains tax liability and avoid dispute as to the time of transfer, it	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

Sr. No.	Existing provisions under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestions
		property and consideration is to be discharged fully or partly by giving the landowner constructed area in the developed property. This is a business reality. It is practically impossible for the landowner to discharge the capital gain tax liability when he has not received the consideration in form of constructed area in the developed property. This also leads to dispute with the Department as to the point of time when transfer as contemplated u/s 2(47) has taken place under a Development Agreement.	is suggested that where the consideration for transfer of property in pursuance of a development agreement or otherwise is to be received in form of constructed area, capital gain may be computed in the year in which the transfer takes place but the capital gain so far as it relates to the consideration to be received in form of constructed area be charged to tax in the year in which such constructed area is received by the transferor landowner.	stock in trade.
4.6	**Section 45(5A)** Taxation of gains arising in case of Joint Development Agreements [JDAs]	a) Presently, JDAs between societies and developers are not covered as the new section refers only to 'Individual or HUF'. b) In the Explanation to sub-section (5A), the definition of	The words "being an individual or a Hindu undivided family," referred in sub-section (5A) be deleted. Further, the word "owning" referred in explanation to sub-section (5A) be substituted with the word "holding"**.**	Section 45(2) lays down the taxation of gains arising on conversion of a capital asset into stock in trade of a business carried on by the assessee. This provision has stood the test of time and has been well accepted

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		"specified agreement" refers to a registered agreement in which a person **owning** land or building or both. This is likely to cause unintended litigation and disputes.	The sub-section (5A) should be worded on similar lines as sub section (2) of section 45 so that there is consistency and clarity about the taxation of such transactions.	by the tax payers as well as the tax department.
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 the partners of the Firm.	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.	
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	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	

Sr. No.	Existing provisions under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestions
		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.	capital gains.	
4.9	**Section 50CA** **Special provision for full value of consideration for the transfer of shares other than quoted shares**	The section will result in double taxation of the same amount in the in the hands of the payer and the receiver. Also, it is likely to create prolonged litigation in many cases, on account of the vague and complicated definition of 'quoted shares' contained in the Explanation. Further, the term "shares" is not defined. Therefore, disputes could arise as to whether preference shares are also covered by this provision.	To avoid double taxation, section 50CA should be deleted. Alternatively, to bring more clarity, the definition of "quoted share" may be amended as under: *'Quoted share' means the equity share quoted on any recognised stock exchange and traded on not less than such number of days during the period of 12 months preceding the date of transfer as may be notified, where the quotation of such share is based on current transaction made in the ordinary course of business.'* Suitable amendments should be made in section 50CA to make it	

Sr. No.	Existing provisions under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestions
			applicable only to shares of a company in which the public is not substantially interested	

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) of Explanation, the definition of the term "relative" inter alia, covers the following: "spouse of the person refer to in items(B) to (F)." In case of an HUF only the members of the HUF are considered as relative.		The word "spouse" should be substituted with the word "spouse or children" and it should be clarified that "relative" includes maternal grandparents. In case of HUF, a relative of the Karta should also be considered as a relative.	Gift from uncle/aunt is exempt in the hands of the recipient nephew/niece. However, converse is not true i.e. a gift from nephew/niece is taxable in the hands of the uncle/aunt. This does not seem to be intended. In case a relative wants to give gift to the HUF, the same is taxable as against the gift to an individual by the same person is not considered as income.
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/- should 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. Taxation of Category III Alternate Investment Funds [AIFs]

Sr. No.	Existing provision under the Income-tax Act, 1961 (“the Act”)	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
7.1	**Sections 10(23FBA), 10(23FBB) and 115UB**	In absence of specific tax pass-through, there is possibility of double taxation under the trust taxation provisions. MAT implications where beneficiary is a company.	Suitable amendments should be made in section 115UB to provide tax pass through for Category III AIFs like in the case of Category I & II AIFs.	This would remove lot of uncertainty and confusion regarding taxation of Category III AIFs and consequently give significant boost to the investments in Category III AIFs.

8. Revision

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
8.1	**Section 263 of the Act – Revision of the orders prejudicial to revenue**	Clause (c) of the Explanation 2 provides that an order will be deemed to be erroneous in so far as it is prejudicial to the interests of revenue if the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119.	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 is settled position that the CBDT orders and instructions are not binding on the assessees. Only courts have the power to interpret the provisions of the law in the correct manner. If revision is permitted on the basis of clause (c) of the Explanation 2, it is likely to result in anarchy specially in situations where the view of the CBDT on a particular matter is different than the view emerging from various judicial decisions of either the High Courts or the Supreme Court. In the case of **Hindustan Aeronautics Ltd. vs. CIT (200) 243 ITR 808 (SC)**, it has been held that while acting in capacity of quasi judicial authorities, law laid down by HC / SC shall be followed and circulars

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
				shall be ignored if they are conflicting with such decisions of courts.
8.2	**Section 263 of the Act – Revision of the orders prejudicial to revenue**	Clause (d) of the Explanation 2 provides that an order will be deemed to be erroneous in so far as it is prejudicial to the interests of revenue if it has not been passed in accordance with any decision which is prejudicial to the assessee rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.	It is suggested that the words "any decision" in the clause should be replaced by the words "latest prevalent decision on the subject at the time of passing of the order by the assessing officer". Alternatively to apply prospectively.	Clause (d) permits revision of any order if it is not in accordance with **any decision** of jurisdictional High Court or Supreme Court. The words "any decision" are very wide and will cover decisions given before many years also which might have been subsequently overruled by the subsequent decision of the High Court or Supreme Court. In such a situation the earlier decision, which has been overruled due to subsequent decision of the courts will not have any binding precedent and therefore should not be allowed to be the basis of revision u/s 263. If the revision is allowed on the basis of a decision which has already lost its binding precedent, it will result in judicial impropriety and the same can certainly not be the intention of any provision of law.

9. Set Off and Carry Forward of Losses

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
9.1	**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 because the rate of tax on long term capital gains is considerably less than the rate of tax on short term capital gains and revenue would suffer if short term capital gains were permitted to be erased in whole or in part by setting them off against any long term capital loss. As a result, to the extent to which the capital gains is reduced or completely wiped out by set off, the assessee would gain by not having to pay the tax on the capital gains. Per contra, to the extent to which short term capital loss is reduced or wiped out, the assessee would be

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
				deprived of the advantage of carry forward of the larger short term capital loss or whole of short term capital loss to the succeeding years so as to reduce his tax liability in such succeeding years. As a result of proposed suggestion, the Revenue and the Assessee would be at par in taking the respective advantage of set off.
9.2	**Section 71(3)** Where in respect of any assessment year, the net result of the computation under the head "Capital gains" is a loss and the assessee has income assessable under any other head of income, the assessee 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

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
				of tax with respect to income falling under the other heads of income is the same, such loss may be allowed to set off against income under the other heads.
9.3	**Section 71(3A) - Restriction of set off of loss from House Property**	The restriction on the set off of loss under the head "Income from House Property" to Rs. 2,00,000 per year will affect thousands of tax payers who have availed of loans in the past based on the law as it stood then. This will also adversely impact the real estate sector which is already reeling under a lot of pressure because of lack of liquidity and reduced offtake of new properties lying unsold.	The sub-section (3A) should be deleted wef 1-4-18. Alternatively: (a) the sub-section 93A) should apply to loss arising on account of interest on loans taken for purchase of property after 1st April, 2017. (b) To bring parity in interest deduction for Self Occupied Property [SOP] and Let Out Property [LOP], a separate limit of Rs. 2 lakh each, aggregating to Rs. 4 lakh should be made, so that the interest deduction for	

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
			SOP and LOP both is available to the extent of Rs. 2 lakh each.	
9.4	**Section 72A** (1) Where there has been an amalgamation of— (a) a company owning an industrial undertaking or a ship or a hotel with another company; or (b) a banking company referred to in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949) with a specified bank; or (c) one or more public sector company or companies engaged in the business of operation of aircraft with one or more public sector company or companies engaged in similar		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.

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

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
9.7	**Section 79(b) and Section 80(IAC)** **Carry forward of losses in case of start-up companies and eligibility**	As per the language of the substituted section 79(b), a start-up will never be able to carry forward any losses incurred after the period of 7 years from the date of incorporation, irrespective of whether any change of shareholding has taken place or not. It cannot be the intention of the government to penalize a start-up as against a company which is not a start-up.	Section 79(b) should be suitably amended to ensure that carry forward of losses is not restricted even after the period of 7 years. As a company should not be discouraged from expanding its business and increasing its turnover, the section should clearly spell out that in the event that the turnover crosses Rs. 25 crore, the start-up would cease to be a start-up and thus cease to be eligible for the exemption from loss of set off of losses only from subsequent years, but for the earlier years, the set off already claimed as per law would not be affected.	The definition of eligible start up in Explanation (ii) to 80(IAC) requires that the total turnover of the business should not exceed Rs. 25 crore from 1-4-16 to 31-3-21. Clarification is required regarding turnover exceeding Rs. 25 crore in any of the previous years as any increase in a later year should not disentitle the assesse for the deduction in any earlier year. The section 80(IAC) as it is presently worded results in ambiguity in situations when, at a later date, the turnover of the eligible start up increases and crosses Rs. 25 crore. At that stage, the company would become ineligible for the deduction under section 80IAC. However, there are doubts about the deduction already claimed in the earlier years. Because of the ambiguity, there are chances that assessments of past years may be

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
				reopened to disallow the deduction already claimed.
9.8	**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 sections 2(47) r.w.s. 47 of the Act.	Objects similar to amalgamation of companies.

10. Search and Seizure

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
10.1	**Sections 132(1) & 132(9B)** **Explanation after Section 132(1) 4th proviso and 132(1A) - non-disclosure of reason to believe / reason to suspect**	These explanations are not in line with the government's thrust on providing transparency in governance in the country. Non-disclosure of reasons is not a good practice and will give rise to unfettered powers in the hands of the tax officers. It will once again lead to a regime of tax terrorism which the present government has studiously tried to curb. Non-disclosure of reason to believe / reason to suspect, to any person or authority or the appellate tribunal would only compel assessees to seek relief or remedy from the High Courts which in turn would lead to an increase in backlogs in the Courts. Lastly, these two explanations are inserted on a retrospective basis with effect from 1st April, 1962 and 1st October, 1975 respectively. It has been a stated intention of the government to not bring in any retrospective amendments and therefore the explanations contrary to the said intention and once gain gives rise to uncertainty in tax laws.	These explanations should be deleted.	
10.2	**Section 132 (9B) - Provisional Attachment**	This provision is likely to be misused and would cause harassment to tax payers. It would also lead to protracted litigation.	Section 132(9B) should be deleted.	

11. Interest and Penalty

Sr. No.	Existing provision under the Income-tax Act, 1961 (“the Act”)	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
11.1	**Calculation of the Interest u/s 201(1A) of the Act for the delay in deposit of TDS**	• The current provision u/s 201(1A) states that interest is payable from the date of deduction to the date of payment. Even a part of the month is to be considered as a month. • Even in a situation where the delay is of 1 day (i.e. TDS deposited on 8th of the succeeding month instead of 7th), at present, interest will be calculated for 2 months. • There is need to bring out clarity on this issue since even a single day’s delay leads to a 2 months’ period instead of 1 month which is penal in nature.	Sec 201(1A) should be amended to provide interest only for the period of delay. Suitable changes may also be made in the TDS utility adopted by the Central Processing Centre (CPC).	Interest being compensatory in nature ought to be charged only for the period of delay and should not be excessive (penal) in nature.
11.2	**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	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.	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 will not be	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
	under-reporting and mis-reporting of income.	3. Whether Penalty is automatic. 4. Whether penalty can be levied on debatable issue /incorrect legal claim. 5. Issues relating to commencement of penalty proceedings, initiation of penalty proceedings, recording of satisfaction. 6. Penalty on agreed additions. 7. Issue of Show cause notice.	imposed.	
11.3	**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.	
11.4	**S. 270A(i)**	Penalty u/s 270A(i) is, inter alia, 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.	
11.5	**Section 246A** which provides for appealable order before Commissioner (Appeals)	However, the Finance Act, 2016 does not amend section 246A to specifically provide that order imposing penalty under section 270A will	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
	specifically provided that order imposing penalty u/s 271(1) is appealable.	be appealable.		
11.6	**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, then 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.	
		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.	
		There is no specific bar prohibiting revision u/s 263 of order accepting immunity application.	Section 270AA(6) may be suitable amended.	
11.7	**Section 234F – Fee for default in furnishing the return of income.**	U/s 239(2)(c), a return claiming refund can be filed within one year of the end of the assessment year. As per section 234F, even such cases are covered and are liable to the fee u/s 234F. This would unnecessarily cause	No fee should be charged from a person who files the return of income beyond the normal time limit and in whose case, a refund is due as per the return filed.	

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

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
			the certificates / reports issued on or after 1st April, 2017.	

12. TDS

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
12.1	**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 deductee. These Companies could be given an option. The advance tax to be deposited monthly could be based on TDS claimed in the return of Income in last two A.Ys. This will reduce avoidable and unnecessary hardship caused to the deductor and the deductee (for taking credit).	Reducing compliance burden and reducing rectification applications.
12.2	**Exemption of TDS on certain payments** There is no specific exemptions from TDS in case of payments of personal nature, in respect of the cases covered in Sec. 194A (interest), Sec. 194 H (brokerage), and Sec. 194I (Rent).		The exemption from TDS on the payments made for personal purposes should be extended to the payments covered u/s 194A and 194H and 194I of the Act, in line with the provisions made in section 194J. Similarly to provide for TCS provisions.	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.
12.3	**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 is against the spirit of Law.
			In alternative to (i) above 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
12.4	**Credit for TDS** a) As per the current scenario, the credit for TDS is allowed on the basis of TDS reflected in Form 26AS, whereas, the assessee claims the TDS on the basis of the income offered to tax by him. This results to mismatch of credit for TDS, requiring rectification and submissions of various details by the assessee. The reasons for mismatch are many, e.g. the deductor following mercantile system of accounting, therefore TDS is deducted at the time of credit and on the other hand deductee following cash system of		a) It is suggested that rule 37BA(3) should be amended, to provide that the credit for TDS should be allowed in the assessment year immediately following the financial year in which the tax has been deducted at source. In other words, it also means that the credit to the deductee should not be denied on account of mistake in data uploaded by the deductor or non-payment of TDS to the Government by the deductor as the deductee has no control over the Deductor. b) Rule 37BA(3) should be amended to the extent that in case of default	a) The assessee should not be denied credit for TDS merely because of different methods of accounting followed by the deductor and the deductee or because of mistake of the deductor. This will reduce unproductive and unnecessary work of the department as well as the assessee. b) In many cases, the demand remains outstanding in the department's records on account of non deposit of TDS by the deductor and the same are incorrectly adjusted against subsequent refunds due to the deductee, resulting in unnecessary hardship to the assessee from whom

Sr. No.	Existing provision under the Income-tax Act, 1961 (“the Act”)	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
	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.		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.	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
12.5	**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 erstwhile excise law should be inserted in Chapter XVIIB of the Act, wherein the deductor can deposit a lump sum amount to the credit of assessee's PLA and the PLA should be accessible to the deductor online. Such amount can be adjusted and appropriated against the liability of tax deducted by way of debit to the account. Excess amount to the credit of the assessee should be refunded or carried forward at the discretion of the assessee after filing and processing of the e-tds statement filed for the last quarter.	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.

13. MAT and AMT

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
13.1	**Explanation 1 to Section 115JB(2)** In Explanation 1 to Section 115JB(2), meaning of "book profit" is explained, stating the items that should be added or deducted while computing the "book profit". It is provided that while computing "book profit", the amount of brought forward loss or unabsorbed depreciation, whichever is less, as per the books of accounts be allowed to be reduced. By way of clause (iii) to Explanation 1 to sub section (1) inserted by Finance Act, 2002, it is provided that no reduction benefit shall be available if either of the brought forward loss or unabsorbed depreciation is nil.	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 on quantum. In other words, there is no restriction on the extent of brought forward loss / unabsorbed depreciation to be set off. Therefore, there is no logic for such differential treatment while computing MAT for example, in case of service

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
				companies, where depreciation is much lesser as compared to losses.
13.2	**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.
13.3	**Clause (i) of Explanation 1 of section 115JB(2)** 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	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
			background, the Supreme Court has held that such PBDD is a permissible deduction in determining the book profits [though otherwise, the same is not deductible for computing to taxable income]. Instead of accepting the above commercially and statutorily justifiable position, law has been amended to reverse the SC decision.	
13.4	**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%.	

14. Appeals and DRP

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
14.1	**Section 250 (6A)** "(6A) In every appeal, the Commissioner (Appeals), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him under sub-section (1) of section 246A."	There are many old appeals which are pending before the CIT(A) which are not disposed off and are pending since long.	The following sub section may be substituted in place of the existing one: "(6A) In every appeal, the Commissioner (Appeals), where it is possible, shall hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him under sub-section (1) of section 246A. Provided that where it is not possible for CIT(A), to hear and decide such appeal within the aforesaid period, for reasons beyond his control, the principal CCIT/CIT on receipt of such request in writing from the CIT(A), if satisfied, may allow additional period of 6 months to	Presently, the time limit for passing the order is not mandatory but only recommendatory in nature. The time limit should be made mandatory. The DRP has the time limit and it issues the direction within the said time limit. Even the appeals before CIT(A) should have a fixed time frame.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
			hear and decide such appeal."	
14.2	**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 shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer:"	Time limit of 6 months is too less. After the order is passed, it is posted to the Assessee. Usually the assessee receives original order in 30 to 45 days after order is passed. Apart from that the time for passing of the order giving effect is 3 months. The assessee realises mistakes when confronted with the Assessing officer wherein he interprets the order differently. He may want to seek clarification from the Tribunal but cannot do so because of 6 months' time limit and cannot also move the High court thereafter.	"(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 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. "	
14.3	**Section 144C(2) – requirement of filing voluminous details**	The Assessee has to file voluminous objections in form 35A, within 30 days of receipt of the	Either 30 days may be increased to 60 days.	

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
	within 30 days	order. 30 days is very short time to compile and file before the DRP. There are many mistakes and further many arguments are also missed out.	Alternatively, format of form 35A should be revised only to include grounds and statement of facts as are before CIT(A).	

15. Trust / Charitable Organisations

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
15.1	**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.
15.2	**Section 12AA(3)** Procedure for registration.	There are a large number of cases where the registration is cancelled for reasons which are considered frivolous by a judicial forum before which they are challenged.	Guidelines may be issued under which circumstances, 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.

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

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
15.5	**Section 115TD(4) – Trust to pay tax on accreted income even though it is not otherwise required to pay income-tax**		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. 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);

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
				(7) assets acquired out of income taxed upon application of first proviso to section 2(15); (8) assets acquired out of income which has suffered tax on account of application of section 13; (9) agricultural land.
15.6	**Section 115TD (5)** Section 115TD(5) reads as follows: **"(5) The principal officer or the trustee of the trust or the institution**, as the case may be, and the trust or the institution shall also be liable to pay the tax on accreted income to the credit of the Central Government within fourteen days from, —	It seems that primary liability to pay tax is on principal officer or the trustee and if they don't pay then that would be of Trust.	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 anybody of individuals, means— "(*a*) the secretary, treasurer, manager or agent of the authority, company, association or body, or (*b*) any person connected with the management or administration of the local authority, company, association or body upon whom the Assessing Officer has served a notice of his intention of treating him as the principal officer thereof;" The AO can consider almost any person connected with the management as the principal

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
				officer of the institution.
15.7	**115TD (5)** **"(5)** The principal officer or the trustee of the trust or the institution, as the case may be, and the trust or the institution shall also be liable to pay the tax on accreted income to the credit of the Central Government **within fourteen days from**,----"	Tax need to be paid within period of 14 days.	Time limit need to be suitably modified.	a. Time limit is too short to pay especially when institution is required to dispose of its assets to make payment. b. It takes longer time to take permission from Charity Commissioner appointed under Maharashtra Public Trust Act, 1950. c. Further when capital assets are sold, proceeds would also be subject to capital gains tax.
15.8	**Section 12A(1)(ab)** Information regarding modifications of the objects which do not confirm to the conditions of registration	The time limit of 30 days provided in the new clause inserted by FA 2017 is too short. Many NGOs are run by volunteers. It is unfair to cast such an onerous responsibility on them. For example, where the	Instead of 30 days, the time limit should be 6 months.	

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

16. 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						
16.1	**2(15)**	For non-applicability of first proviso in definition of "charitable purpose". First proviso states that advancement of any other object of general public utility shall not be a charitable purpose, if it involves carrying on of any activity in the nature of trade, commerce or business___ ,……, for a cess or any other consideration ,.......unless ___	Aggregate receipt from such activity does not exceed 20% of total receipts. Earlier monetary limit was of Rs 25,00,000/-.	Monetary limit should be restored and should be at least 1,00,00,000/-.	It can be linked with limit prescribed u/s 44AB for Tax Audit.	**I and VII**

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
16.2	**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**
16.3	**13(3)(b)**	It refers to a person who has made "substantial contribution" that is to say upto the end of the relevant previous year exceeding	50,000	250,000	Since 1994	**I**
B. Co-operative Societies						
16.4	80P(2) (c) (ii)	Deduction in respect of income of co-operative societies	50,000	200,000	Since 1998	**I**
C. General						
16.5	10(32)	Exemption limit for clubbing of minor's income	1,500	10,000	Since 1993	**I**
	56(2)(x)	Gift etc. (other than from relatives etc.) in excess of aggregate	50,000	100,000	Since 2006	**I**

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
16.6	149	Increase in monetary limit for issue of notice of Re-opening 1) Up to 4 Years 2) Between 4 and 6 years	 Nil 1,00,000	 1,00,000 5,00,000	Will reduce petty litigation. Since 2001.	IV & V
16.7	263	Principal Commissioner/ Commissioner if he consider that an order passed by the A.O. is erroneous, have powers to pass an order enhancing or modifying the assessment including cancelling	Nil	Proviso should be added that no such revision would be made where the tax effect does not exceed 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
16.8	281	Certain charge or transfer shall be void unless it is made (i) for adequate consideration ; or (ii) With the previous permission of the Assessing officer. Sub section (2) provides for the applicability when - Amount of Tax or Sum payable	5000	1,00,000	w.e.f. 1-10-1975	I & V

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
		- Assets Charged or Transfer	10000	50,00,000		
D. Salaried Employees						
16.9	10(10B)	Exemption limit for retrenchment compensation	500,000	1,000,000	Since 1997	I
16.10	10(10C)	Exemption for amount received on voluntarily retirement or termination in accordance with a scheme of voluntary separation	500,000	1,000,000	Since 2001	I
16.11	10(14)(ii) Rule 2BB	Children Education Allowance	100 p.m.	2000 p.m.	Since 1997. It is so miniscule that if relief is intended then it should be increased OR removed altogether.	I & VII
16.12	10 (14) (ii) r.w. Rule 2BB	Children Hostel Expenditure Allowance	300 p.m.	2000 p.m.	Since 1997	I & VII
16.13	17(2)(iii)	Monetary limit for employee(other than Director) for adding perquisite	50,000	100,000	Since 2002	I & VII
16.14	17(2) proviso (v)	Medical Reimbursement	15,000	50,000	Since 1999	I

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
16.15	17(2) proviso (vi)	Medical Treatment outside India is subject to condition that gross total income does not exceed Rs 2,00,000	2,00,000	500,000	Since 1993	I
16.16	17 (2)(viii) r.w.Rule 3 (7) (i), (iii) and (iv)	Perquisite in respect of the following a) perquisite for interest free loan in excess of b) lunch / refreshment c) Value of any gift etc. on ceremonial occasions or otherwise	 20,000 50 5,000	 1,00,000 200 15,000	} Since 2001	I & VII
E(1) BUSINESS INCOME / EXPENDITURE						
16.17	40A (3)	Payment made otherwise than by account payee cheque (a) For Transport	(a) 35,000	50,000	Since 2009	I
E(2) REQUIREMENT OF MAINTENANCE OF BOOKS OF ACCOUNT ETC.						
16.18	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	

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
					time which is increased to Rs. 50,00,000/- since 1-4-17 by FA, 2016.	
16.19	44AA (1) r.w Rule 6F(2)	The books of account and other documents referred to in sub-rule (1) shall be following : (i) a cash book; (ii) a journal (iii) a ledger ; (iv) carbon copies of bills, whether machine numbered or otherwise serially numbered, wherever such bills are issued by the person, and carbon copies or counterfoils of machine numbered or otherwise serially numbered receipts issued by him: Provided that nothing in this clause shall apply in relation to sums not exceeding twenty-five rupees (v) Original bills wherever issued to the person and receipts in respect of expenditure	Point **(iv)** Rs. 25 Point **(v)** Rs. 50	Rs. 500 Rs. 1,000	Since 1983	I

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
		incurred by the person or, where such bills and receipts are not issued and the expenditure incurred does not exceed fifty rupees				
16.20	44AA(2)	a) Sales, Turnover or gross receipts b) Income from business or profession	10,00,000 1,20,000	25,00,000 2,50,000	Since 1998	
F. CAPITAL GAINS						
16.21	47 (xiiib)	The section excludes conversion of private limited companies to LLP, from the definition of transfer. However, there are certain conditions prescribed to be complied for being excluded from the definition of 'transfer'. One of the conditions is that the total sales, turnover or gross receipts in the business of the company in any of the three preceding previous year should not exceed Rs. 60 Lakh.	6,000,000	No limit restriction	Many people did not have option of LLP when they had formed a private limited company. In view of various difficulties under the Companies Act, 2013 many assessees would like to convert their private limited companies into LLP	

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
					and they should be given such option for some period.	
16.22	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						
16.23	193	TDS on Interest on Securities	5,000	20,000	Since 2012. Will reduce hardship to many.	I
16.24	194A	TDS on Interest other than interest on securities:- (a) Banks & Post Office (b) Others	(a) 10,000 (b) 5,000	20,000 20,000	Since 2007	I
16.25	194-J	TDS on Professional Fees etc.	30,000 and there is no separate	30,000 per contract and aggregate limit	To make it on line with limits u/s 194C.	I

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
			aggregate limit.	of Rs. 1,00,000/-.		
II. Monetary Ceilings						
16.26	10(13A) r.w Rule 2A	Exemption from production of rent receipt as Circular No. 17/ 2014	3,000	5,000		VII
16.27	192 r.w. Rule 26A	Limit for attaching form 12BA with form 16	150,000	500,000	Since 2002	VII
16.28	208	Applicability of payment of advance tax when tax payable exceeds	10,000	20,000	Since 2009	VII
16.29	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 and 10 lakh Rs 500/- and (iii) above 10 Lakh Rs 1,000/-.	Since 1998	

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
16.30	253 r.w.47 & Form no 36	Appeal to Tribunal: Limit for Appeal fees--slab of Total Income	Presently 3 slabs given in section	(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/-.	Since 1998	
16.31	285 BA	Second Proviso of sub-section (3) 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						
16.32	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
16.33	Proviso to section 143(2) Time limit for issue of	In view of insertion of 1st and 2nd proviso to section 153(1), reducing the time limit for completion of the assessment from 21 to 18 months from 1.4.18 and 12 months from 1.4.19, the time limit for issuing notice for	6 months from the end of the financial year in which returned is furnished.	3 months from the end of the financial year in which returned is furnished.		

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
	notice	selection of cases for scrutiny as provided in the Proviso to section 143(2) should also be reduced.				

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.**

17. Document Identification Number (DIN)

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
17.1	282B-Allotment of Document Identification Number:- Omitted by Finance Act, 2011 w.e.f. 1-4-2011.		To reintroduce this section	As per the justification given during the introduction of this section in the Finance (No. 2) Act, 2009 w.e.f. 1-10-2010.

18. 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
18.1	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.	The main purpose of provisions to which SDT is 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
			Such certificate may also be included as part of Form No. 3CEB which is authenticated by an Accountant.	
18.2	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.
18.3	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.	

19. GAAR

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
19.1	**Entire Chapter X-A – GAAR**	As is common knowledge the India has made a shift to a new Goods and Services Tax system and many other changes in the Indian Income-tax Act to align with the objectives of the BEPS. As an outcome there is likely to be a huge burden of multiple compliances. Further the new laws / amendments 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.	At the outset it is suggested that GAAR provisions should be removed or, in the alternative, be deferred for another couple of years. This would help the professionals as well as the 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.	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 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.
19.2	**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).**	It is humbly suggested that keeping in view the intent and the purpose of the GAAR provisions the	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

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
		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.	same may be restricted only to the Non-Resident Tax payers.	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 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.
19.3	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	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	It is suggested that the last limb of section 96(2) i.e. *"notwithstanding the fact that the main purpose of the whole*	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

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
	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.	entire arrangement to be impermissible based on some marginal tax benefit achieved by a step in transaction would lead to a situation which would render almost all transactions impermissible. Further as per the wordings used in the section it appears that the entire focus as per section 96(2) shifts and probably acts in contrast to the main provision contained in section 96(1) i.e. declaring an entire arrangement aimed at obtaining tax benefit as impermissible. This will also act as a deterrent to a favourable investment climate.	*arrangement is not to obtain a tax benefit"* be deleted to avoid any confusion. It may also be categorically provided that an arrangement may not be declared as impermissible if it entails some tax benefit on any step in transaction so as to promote a conducive investment climate. This will also avoid undertaking any unnecessary interpretational exercise.	making capital investments in India.
19.4	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*	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	A clarity on this issue is required so as to avoid any subjective interpretational difficulties and proper, just and equal applicability of the Chapter to all persons covered by it.

Sr. No.	Existing provision under the Income-tax Act, 1961 (“the Act”)	Difficulties / Obstacles / Hurdles faced	Suggestion	Justification for the suggestion
	purpose.		also be defined in the Act under section 102 like other terms used in the chapter.	
19.5	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 mentioned above.	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.
19.6	**Section 144BA(14)** – right of appeal should be given to the assessee against the direction of the Approving Panel.	Looking at the nature of intricate issues and high stakes involved absence of right to appeal will be causing genuine hardship to assessees.	The assessee should be given a right to appeal against the directions of the approving panel.	The Approving Panel has only six months to adjudicate on the issue. Further, there can be no extension of the same. In six months’ time, if the approving panel adjudicates on the invocation of Chapter X-A, then a right to appeal should be given to the assessee, otherwise the High Courts will have to exercise their extra-ordinary writ jurisdiction. Further, the time

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

20. International Taxation

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

Sr. No	Issues	Recommendations	Justifications
	17, he is in India for more than 182 days. Therefore he will be an Indian resident. In FY 2017-18, he continues his employment and comes to India for 80 days. Will he be considered as non-resident? (In FY 2017-18 he did not leave for employment.)		
B. Application for nil / lower deduction of tax at source certificate – Section 195(2) and 197			
20.4	No time limit has been prescribed for processing of application filed u/s 195(2) and 197 of the Act.	We suggest that a reasonable but mandatory time limit for disposal of the applications made u/s 195(2) and 197 of the Act say, 60 days or 90 days from the date of application.	To make it time-bound and hence impart discipline and certainty.
C. Foreign Tax Credit			
20.5	Foreign Tax Credit - Rule 128 (8) & (9) and Form 67	Rule 128(9) provides that the statement in Form 67 referred to in clause (i) of sub-rule (8) and the certificate or the statement referred to in clause (ii) of sub-rule (8) shall be furnished on or before the due dates specified for furnishing the return of income under sub-section (1) of section 139. It is suggested that the time period for submission of form 67 for claiming Foreign Tax Credit should be permitted even during the process of assessment, s	

Sr. No	Issues	Recommendations	Justifications
		the correct FTC can be ascertained at that time only.	
D. Shipping income – Section 44B and 172			
20.6	The provisions of the above sections are almost similar, although both sections apply to different manners of doing businesses. (Section 172 applies to non-residents undertaking occasional shipping activity. Section 44B applies to non-residents undertaking regular shipping activities.) This difference in section creates some difficulties in operations of other provisions of Income-tax Act – Some examples are: 1) Circular 30 dated 26.8.2016 provides that Annual NOC issued by jurisdictional AO may be accepted in case the shipping company is eligible for DTA relief. There is no requirement of voyage NOC. This circular is issued for Section 172 and not 44B. 2) Payer of shipping freight is exempt	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
	from TDS if shipping company is covered under section 172 (**Circular:** *No. 723, dated 19-9-1995.)*; whereas if the shipping company is covered under section 44B, there is no exemption from TDS. 3) Further the recipient may be liable to advance tax provisions depending under which section it is covered.		
E. Transfer Pricing			
20.7	**Section 92CE – Secondary Adjustments**	Section 92CE should be deleted wef 1-4-2018. Alternatively, the threshold for applicability of Section 92CE should either be increased to Rs. 10 Crores of primary adjustment or should be amended to a minimum of Rs. 2 Crore of secondary adjustment. In any case, it also needs to be clarified that this provision will not apply retrospectively and also that the present threshold of Rs. 1 crore will apply for future transactions.	Section 92CE is not in accordance with international best practice. Hardly any other country has such a practice. Further, the Companies Act, 2013 also does not have explicit provisions relating to 'adjustments' in the books of accounts of the assesse. In any case, Non-discrimination Article in the DTAAs could be invoked by the non-resident entities. On another front, reciprocal secondary adjustments by the other countries may

Sr. No	Issues	Recommendations	Justifications
			not be beneficial for India and would hurt the Government's initiative of enhancing ease of doing business in India.
20.8	Transfer pricing provisions apply to international transactions without any threshold.	We suggest that international transactions below Rs. 10 crores should not be covered within transfer pricing rules.	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.
20.9	There is an overlap of provisions which prescribe income computation and Transfer Pricing. For example, if an Associated Enterprise (AE) purchases Indian company's shares from its group company, income has to be computed under section 56(2)(x) if purchase price is less than the fair value. Section 56(2)(x) itself prescribed the fair value	It may be provided that where the fair value basis for computation of income is prescribed under any provision of Income-tax Act, computation of ALP will not be required. In the Transfer Pricing audit report, the fair value as prescribed under the respective sections, may be reported as ALP.	To avoid the overlap of provisions which may result in irrelevant computation.

Sr. No	Issues	Recommendations	Justifications
	computation. Then to further compute the ALP under Transfer Pricing rules is not relevant.		
20.10	**Safe harbour Rules**	Govt. should come out with attractive safe harbour provisions for the Manufacturing Sector, to make "Make in India" drive successful and thereby making India a manufacturing hub of the World, to generate employment and develop skills. In addition, the Govt. should enter into bilateral safe harbours to avoid double taxation.	
F. Thin Capitalisation			
20.11	**Section 94B - Thin Capitalisation**	Section 94B should be deleted wef 1-4-2018. Alternatively: a) Section 94B should not be made applicable to certain priority sectors to be notified by government like Infrastructure, heavy industries etc. b) Section should not apply to loss making companies. c) The terms 'Implicit or' in 1st proviso to section	Section 94B is not conducive for better investment environment climate in India and is counter productive to the excellent initiatives of the government in the form of "Make in India", "Start up India" etc.

Sr. No	Issues	Recommendations	Justifications
		94B(1) should be deleted to avoid litigation. d) In any case, the exemption provided to an Indian company or a permanent establishment of a foreign company which is engaged in the business of banking or insurance should also be extended to non-banking finance companies. e) The provisions of section 94B should not be made applicable to new companies/start-ups (i.e. companies formed after 1 April 2016) for initial period of 3 years. This would help them to build good track record and be able to independently obtain debt without support of AE. f) Thin cap rules are in nascent stage and hence the companies must be provided transition window to re-align its debt structure. Further, aligning the capital structure is time consuming and requires regulatory approvals. Hence, the EBITDA capping should be initially @ 60-70% and phased reduction of the same to 30% could be provided over a span of 3 years. Alternatively, grandfathering should be provided for existing debt-equity structures. g) Businesses may not earn consistent profit year on	

Sr. No	Issues	Recommendations	Justifications
		year. However, the interest expenditure may be consistent. Given that EBITDA may vary on account of economic considerations, it may be that the cap of 30% may not be exhausted in a particular year (say year 1). It is suggested that there should be a credit mechanism to offset the unutilized limit in subsequent years. The period of set-off may be restricted to 3-5 years.	
G. Tax Residency Certificate			
20.12	An Indian resident is required to give a TRC to the non-resident for receiving income from the non-resident. It takes about 2 months or more for getting a TRC.	A TRC should be given on automatic basis. An application can be made online and after basic checks, a TRC can be issued within 24 hours. Suitable amendment may be made in the law / rules.	Providing a TRC to Indian residents is directly beneficial to India. A person is not seeking any exemption. By giving a TRC, the other country will levy less tax. Resident will get more funds.
H. Indirect transfers			
20.13	**Section 9(1)(i) Explanation 6 and 7**	a. Explanations 6 and 7 to Section 9(1)(i) should be introduced retrospectively from 1st April 1962, in line with Explanation 5 to Section 9(1)(i). b. Explanation 7 should provide exemption to all transferors not holding voting power or share capital or interest exceeding 26 per cent. This is	

Sr. No	Issues	Recommendations	Justifications
		in line with the Shome Committee recommendation and 5% is too low a threshold.	
20.14	**Section 9(1)(vi) – Scope of Royalty income**	Explanation 5 to Section 9(1)(vi) should be redrafted in a manner so as to exclude the unintended e-commerce transactions from the definition of "Royalty". An exception should be carved out in Explanation 6 to Section 9(1)(vi) so as to exclude payments for use of standard facilities to the general public at large like payments for telephone service, internet service, cable television services and other similar services. Payments for copyrighted articles like shrink-wrapped software and payments made by distributors of software should be specifically excluded from the definition of "Royalty".	

Sr. No	Issues	Recommendations	Justifications
20.15	**Furnishing of information or documents** **Section 285A**	a) The reporting obligation under Section 285A, on Indian companies to gather information on the off-shore transfers is onerous and needs to be simplified. Reporting obligations must be restricted to the concerned transferor, and penalties must be a fixed sum of Rs. 100,000 in line with other provisions, instead of at 2% of transaction value. b) Further, the reporting obligations under Section 285A, should not arise in case the benefit of exemption as per Explanation 7 to Section 9(1)(i) is availed i.e. income not considered as deemed to arise or accrue in India.	
20.16	**Exemption u/s 56(2)(x)** 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	We submit that a similar exemption be provided for indirect transfer.	To bring uniformity in approach.

Sr. No	Issues	Recommendations	Justifications
	indirect transfers.		
20.17	**Explanation 2 to section 2(47) – meaning of “transfer”** The Explanation was inserted vide Finance Act 2012 to take care of transactions similar in nature to the Vodafone case. As explained in the Memorandum to the Finance Bill, this amendment was a part of Rationalisation of International Tax provisions.	We suggest that it may be clarified that the Explanation 2 applies to “transfer by a non-resident”.	Explanation 2 to section 2(47) was not meant to apply to domestic transfers.
I.	**Taxation of Foreign dividends under Section 115BBD of the Act**		
20.18	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 by the Indian Company whereas Section 115-O provides for 51% or more shareholding by 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.

Sr. No	Issues	Recommendations	Justifications
J. Dispute Resolution			
20.19	**Authority of Advance Ruling** **Chapter XIX-B Section 245N to 245V**	1. Prescribe mandatory time limit for passing the AAR order, i.e., within 180 days from the end of month in which application is filed. 2. The transaction limits and fees for approaching AAR by Resident tax payer should be revisited as they are quite high – Reduction will help to broad base AAR which can significantly help to mitigate litigation which will help in enhancing the Ease of doing business. 3. In order to expedite disposal, the admission process can be dispensed with and cases can be heard in one go – Only technical conditions can be verified by the Secretariat based on which application to be admitted or rejected. Other objections of Revenue can be heard at time of final hearing. 4. It is imperative to notify that the rulings of the AAR, would be appealable directly to the Supreme Court.	
20.20	**First Appellate Authority ('FAA') - Commissioner of Income-tax (Appeals) (CIT(A)) and Dispute**	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	

Sr. No	Issues	Recommendations	Justifications
	Resolution Panel ('DRP')	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 lakh 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. 6. On appeal pending before DRP - Tax officers not to press demand recovery - or as a standard	

Sr. No	Issues	Recommendations	Justifications
		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 itself.	
20.21	**Income-tax Appellate Tribunal**	1. Create specialized benches at all locations – for	

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

Sr. No	Issues	Recommendations	Justifications
		Inspector level support to DR's to help them effectively function i.e. write orders in time and also help DRs to effectively prepare for the matters.	
K. Requirement to obtain Tax Residency Certificate – Introduction of threshold			
20.22	**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.

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