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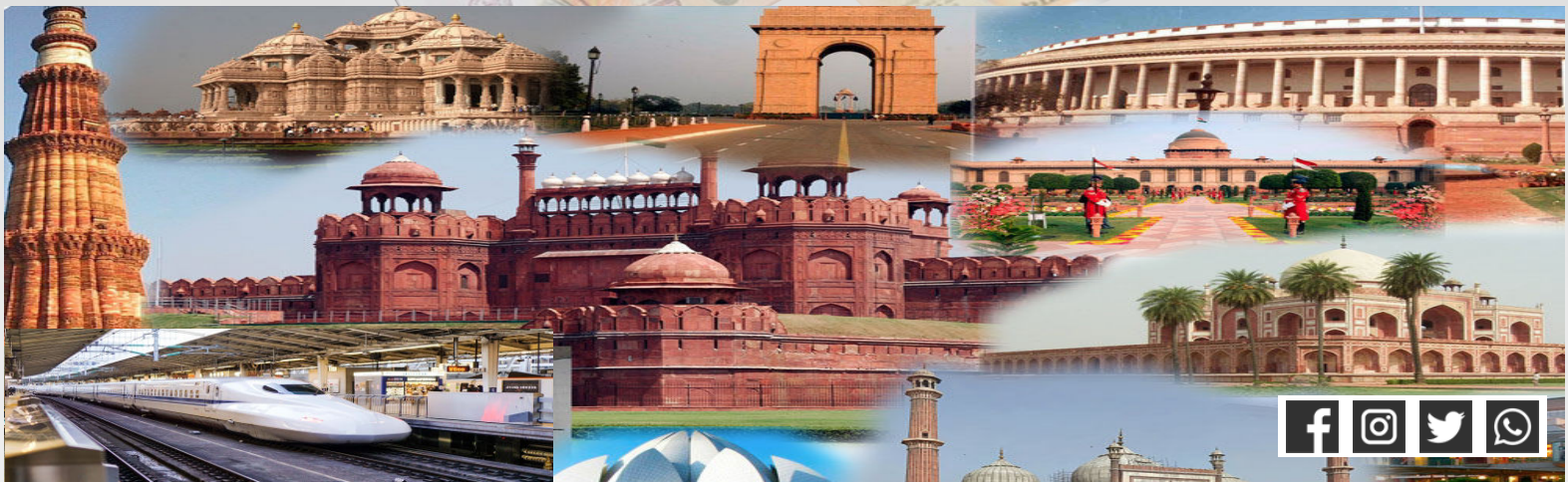
Pre-Budget Memorandum on Direct Tax Laws 2021



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02 December, 2020

Smt. Nirmala Sitharaman

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

Respected Madam,

Sub: Pre-Budget Memorandum 2021-22

We take this opportunity to present a Pre-Budget Memorandum on Direct Taxes with a request to consider the same while framing proposals in the Finance Bill, 2021 for amendments to the Income Tax Act, 1961.

The world is grappling to overcome the pandemic crisis and the nation is looking forward to proposals aimed at simplification in the area of Direct Tax Law provisions to boost the ease of doing business.

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

Thanking you,
We remain,
Yours truly,

For BOMBAY CHARTERED ACCOUNTANTS' SOCIETY

CA Suhas Paranjpe
President

CA Ameet Patel
Chairman - Taxation Committee

CC:

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

BOMBAY CHARTERED ACCOUNTANTS' SOCIETY [BCAS]

Pre-Budget Memorandum on Finance Bill, 2021

Contents

1. General macro level changes

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
1.1	Tax rates for non corporate tax payers	Recently, tax rates for corporates have been reduced and MAT rates have also been reduced. However, the rates of tax for non-corporates, such as LLPs and AOPs, continue to be high. Similarly, the tax rates for individuals earning high income are also exceedingly high. Capital gains, other than those under section 111A, 112A or 115AD, are also subject to high surcharge applicable to individuals.	It is therefore suggested that the rate of tax (including surcharge and cess) for all non-corporate entities (including LLPs and AOPs) should be brought down to 25%. The tax rates for individuals should be reduced, say to maximum 30% (including surcharge and cess). Also, the maximum rate excluding surcharge, which is presently applicable for income over Rs 10 lakh should be triggered only at a much higher base, say Rs 30 lakh.
1.2	Long term capital gains on sale of listed equity issues	There are certain unaddressed issues in cases of inheritance, amalgamation, and demerger that would result in unwarranted litigation. While grandfathering as on 31st January, 2018 is available for listed shares acquired prior to 1st February, 2018, there is no clarity in situations where the shares have been received on or after 1st February 2018 by virtue of holding in listed company shares prior to 1st February, 2018. For instance, shares received by way of inheritance, bonus shares or shares issued on merger/ demerger after 31st January 2018.	It is recommended that all shares received by virtue of transactions covered under section 49 should be eligible for grandfathering under section 55(2)(ac) (such as shares received on inheritance, shares acquired on merger/ demerger).

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
1.3	Income Computation and Disclosure Standards (ICDS)	The introduction of ICDS has only added to the compliance burden on certain tax payers without actually increasing the revenue collection. Ind AS is anyway applicable to a large number of companies. Conceptually, tax should be paid on income and logically the income should be that which is in the books of accounts, especially if they are audited and maintained in accordance with generally accounting principles, except to the extent of adjustments on fair value accounting which does not either cause income or create losses in a recognised sense, as required under IFRS or Ind AS. ICDS has only succeeded in introducing significant complexity in the computation of income. Further, the ICDS are inconsistent with the concept of real income. In most cases, the main objective behind enacting the ICDS seems to be to prepone the taxation of income.	The ICDS should be scrapped with immediate effect. Instead of having separate computation standards in the form of ICDS, it would be advisable to identify items under Ind AS that do not meet the criteria of real income or accrued expense or loss and the relevant section(s) in the Act could be modified to require adjustments to the declared profits for all items as identified above, so as to reflect only real income.
1.4	Payment of advance tax – section 209	The threshold limit of INR 10,000 for payment of advance tax as per section 208 has been last amended by Finance Act, 2009. Considering the	The threshold for payment of advance tax should be increased from the present Rs. 10,000 to Rs. 1,00,000.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
		inflation in the economy, there is a need to increase this limit to a more realistic figure. Further, the requirement to pay 15% advance tax for non-corporate assesses by 15th June causes unnecessary hardship, since it is extremely difficult to estimate the total income for the entire year within a mere 75 days from the commencement of the financial year. The hardship is further compounded by the levy of interest u/s. 234C for shortfall in the instalment of advance tax paid.	The requirement to pay 15% advance tax by 15th June for non-corporate assesses should be removed.

2. Salary

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
2.1	Interest on self- assessment tax	Because of short deduction many times by the employer on account of change of employment, the excess tax has to be paid in form of SA Tax by the employee.	Interest u/s. 234B and 234C for short deduction or deferment in payment should not be charged to employees on account of failure of deduction on the part of employer.

3. House Property

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

4. Business Income and Expenditure

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
4.1	Explanation 2 in sub-section (1) of section 37 provides that any expenditure incurred by an assessee on the activities relating to CSR referred to in section 135 of the Companies Act, 2013 shall	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	There is a strong need to revisit this provision and companies should be allowed 100 per cent deduction of CSR under section 37. If at all required, necessary safe guards may be incorporated.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
	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.	to allow the same as business expenditure. There is no bar on allowability of CSR expenditure falling under other sections like 35, 35AC etc.	
4.2	Certain expenses being of revenue nature or of deferred revenue nature are considered as capital in nature and are disallowed. They are not allowed even by way of amortisation /depreciation. For example: 1. Fees for increase in authorised capital; 2. Infrastructure set up by third party for a new project by an Assessee; 3. Website expenses for newly commenced business; 4. Amortisation of Lease premium for Land;	Presently, expenditure of the nature described in first column suffers permanent disallowance resulting into higher tax liability in the hands of an assessee. Though there are several decisions allowing depreciation on some of such expenses, in the absence of a clear legislative framework, it leads to increase in litigation. In order to simplify the computation of business income, such expenditure requires to be allowed either as revenue or in deferred manner or by way of depreciation.	Expenditure which are incurred in the course of business may be allowed either as revenue or, if treated as capital, then, such expenditure is to be allowed in deferred manner or by way of depreciation. Hence, specific provision may be inserted.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
	5. Factory shifting expenses; 6. Expenditure for setting up separate and independent unit; 7. Non-compete fees; 8. Lease expenditure / Payments.		
4.3	**S. 43CA(1) reads as follows:** Where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing profits	The word 'transfer' as defined in section 2(47) is only in relation to a capital asset. As section 43CA applies to stock in trade which is outside the definition of 'capital asset', section 2(47) will not apply to section 43CA. Therefore, to bring clarity and avoid unwanted litigation, an Explanation needs to be inserted in section 43CA defining the word 'transfer'. In case of percentage completion method, the income is offered for taxation based on the stage of completion of project in different years. Taxability u/s 43CA should also be correspondingly linked to different years. However, in the absence of a clear provision and also due to the absence of the definition of the word 'transfer', this may lead to unwanted	The word 'transfer' should be defined for the purpose of S. 43CA. The year of taxability of difference between the actual consideration and the stamp duty value should be clearly prescribed. Similar amendments may be incorporated in section 50C and 56(2)(vii).

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

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
	only to businesses run by resident Individual, HUF and Firms excluding LLP.	excludes LLP, for which there appears to be no cogent reason. Otherwise under the Act, a LLP and a Firm are treated at par. Even section 44ADA does not exclude LLP.	
4.5	**Section 44AD (4)** In section 44AD(4) provides as follows: "(4) Where an eligible assessee declares profit for any previous year in accordance with the 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	The businesses are highly unpredictable and casting additional burden of continuous reporting of presumptive income for five years will be counterproductive and small businesses will be hit hard and will be pushed out of simplified scheme by this amendment defeating the very purpose of introducing presumptive taxation and will severely affect ease of doing business.	The sub section (4) may be deleted and the concept of declaration of deemed income for continuous period of 5 years to be removed and status quo may be maintained.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
	year in which the profit has not been declared in accordance with the provisions of sub-section (1).		
4.6	**Presumptive taxation section 44AD and section 44AB.**	If the cash receipts and payments does not exceed 5% of the aggregate receipts and payments, tax audit is applicable under section 44AB only if turnover exceeds INR 5 crore. For an assessee who has turnover between 1 crore to 2 crore i.e. the presumptive tax limit, if the assessee shows profit less than 6%, than compulsory tax audit will have to be done under section 44AB read with section 44AD. Thus, an assessee having turnover between 2 crore to 5 crore can continue to show lesser than 6% profit and still avail benefits of not undertaking tax audit.	Provisions u/s. 44AD and section 44AB and the audit limit should be streamlined and the assessees who have lower turnovers should not be at a disadvantageous position as compared to assessees having higher turnover.
4.7	**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	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

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
		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.	determining the amount of threshold provided in Sec. 44AB.
4.8	**Depreciation Allowance – Sec. 32** Restoration of Depreciation Allowance in respect of cost of small items of assets.	In the past, with a view to avoid litigation on the point of nature of expenditure (i.e. capital or revenue) in respect of purchase of small items of assets, provisions had been introduced to treat cost of such assets as depreciation allowance. Earlier, the limit on cost of such assets was Rs. 750/-. This was then increased by the Finance Act, 1983 to Rs. 5,000/-, again for the same reasons. These provisions have been omitted w.e.f. A.Y. 1996-97. The omission of the above provisions has created unnecessary hardship of keeping records in respect of purchases of such small items. This was a useful provision to maintain simplicity and to avoid possible litigation on such small items of assets, based on principles of materiality.	The above provisions should be reintroduced, with a condition that the same would not apply where the total value of such additions during the year exceeds 10% of the opening written down value of the relevant block of depreciable assets.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestions
		Such a provision will act as a check on the temptation to abuse but at the same time, will serve the purpose for which it was originally introduced.	

5. Capital Gains

Sr. No.	Existing provisions under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
5.1	**S. 54EC** The section restricts exemption for investment in capital gains bonds up to Rs. 50 Lakh.	This will also help the Government in generating funds at much lesser cost, especially when the government is burdened with high cost of borrowing. This step will also will provide impetus to the infrastructure sector. Further, since the lock in period has now been increased to 5 years, if the limit is also increased, the government will have more funds for a longer period at lower cost.	The ceiling for making investment in specified assets be increased from Rs. 50,00,000 to Rs. 1,50,00,000.
5.2	**Under section 54F, the deduction is available only if the assessee does not hold more than one residential property at the**	Similar provisions of restriction of holding one property is not present in section 54 which is also an investment linked deduction.	If the assessee is making an investment of sale proceeds than deduction should be allowed across all sections of deductions irrespective of number of residential properties held by the assessee.

Sr. No.	Existing provisions under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
	time of making investment under this section.		
5.3	**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. Also, there is another condition wherein the total assets during the previous 3 years should not exceed 5 crore.	Such a small limit is a big hindrance on the conversion of the company into a LLP. Provisions of the new Companies Act 2013 have created various anomalies as well as complication for doing business FDI restrictions in LLPs have also been relaxed by Central Government. Continuing with the restriction of turnover is against the concept of ease of doing business in India.	The said limits should be removed or else increased substantially. Turnover limit may be increased to 10 crores and the total assets limit may be increased to 20 crores.

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

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

Sr. No.	Existing provisions under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
	firm to partners - Sec. 45(4)	notional capital gain is levied on the firm by taking fair market value of such capital assets as the consideration irrespective of causes or motives of dissolution. This, at times, results into serious hardships on a literal construction of Sec. 45(4) e.g. if a firm is dissolved due to demise or insolvency of one of the partners of the Firm.	circumstances beyond the control of the partners such as demise or insolvency of a partner or on account of operation of statutory provisions of any other law etc.
5.8	**Distribution of Capital Assets to Partners - Removal of serious hardships - Sec. 45(4)**	Neither Sec. 49 nor Sec. 55 of the Act provide that if the firm has paid Capital Gains tax on distribution of capital assets on dissolution or otherwise, the cost in the hands of the concerned partner will be the value at which the firm is deemed to have transferred the asset to the partner.	Secs. 49/55 should clarify that in such cases, cost to the partner will be the value on the basis of which the firm has been assessed to capital gains.
5.9	**Time limit under section 54 and section 54F for purchase of property or under-construction property.**	Due to Covid-19 pandemic, the time limit that fell between 20.03.2020 to 29.09.2020 for making any purchase or construction to avail the exemptions was extended to 30.09.2020. However, by 30.09.2020, things were still not opened up liberally at many places. Also, it was not the first priority for assesses to look for purchase of properties especially senior citizens.	The time limits should be extended liberally upto 31.3.2021 so that the assessee can avail deduction of investments in such hard times.

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

6. Income from Other Sources

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

7. Re-Assessment

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

8. Revision

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

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

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

9. Set Off and Carry Forward of Losses

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

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

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
	shall not be entitled to have such loss set off against income under the other head.	head capital gains and the rate of tax with respect to income falling under the other heads of income is the same, such loss may be allowed to set off against income under the other heads.	
9.3	**Section 71(3A)** Notwithstanding anything contained in sub-section (1) or sub-section (2), where in respect of any assessment year, the net result of the computation under the head "Income from house property" is a loss and the assessee has income assessable under any other head of income, the assessee shall not be entitled to set off such loss, to the extent the amount of the loss exceeds two lakh rupees, against income under the other head.	Finance Act, 2017 has inserted a new sub section (3A) to section 71 of the Act, restricting the set-off of losses arising under the head 'Income from house property' to Rs. 2 lakhs. Introducing such provisions is causing undue hardship and discouraging fresh investments in immovable properties. Alternatively, the limit of Rs 2 lakhs may be raised to at least Rs 10 lakhs.	It is suggested that the restriction of set-off of losses arising under the head 'Income from house property' be removed.
9.4	**Section 73(4)**	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	It is suggested that speculation loss be allowed to carry forward for eight assessment year

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

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

10. Interest and Penalty

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
10.1	**Calculation of the Interest u/s 201(1A) of the Act for the delay in deposit of TDS**	• The current provision u/s 201(1A) states that interest is payable from the date of deduction to the date of payment. Even a part of the month is to be considered as a month. • Even in a situation where the delay is of 1 day (i.e. TDS deposited on 8th of the succeeding month instead of 7th), at present, interest will be calculated for 2 months. • There is need to bring out clarity on this issue since even a single day's delay leads to a 2 months' period instead of 1 month which is penal in nature.	Sec 201(1A) should be amended to provide for interest only for the period of delay. Suitable changes may also be made in the TDS utility adopted by the Central Processing Centre (CPC).

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
		Interest being compensatory in nature, it ought to be charged only for the period of delay and should not be excessive (penal) in nature.	
10.2	**Section 270A replaces Section 271.** A paradigm shift has been brought by replacing the concept of concealment of income and furnishing inaccurate particulars of income by under-reporting and mis-reporting of income.	Following issues which were fairly settled u/s 271(1)(c) will again have to be considered in the context of Section 270A : 1. Requirement of mens rea 2. Burden of proof. 3. Whether penalty is automatic. 4. Whether penalty can be levied on debatable issue /incorrect legal claim. 5. Issues relating to commencement of penalty proceedings, initiation of penalty proceedings, recording of satisfaction. 6. Penalty on agreed additions. Issue of Show cause notice. Section 270A will once again open up several issues which were plaguing section 271(1)(c). Hence, the objective will not be achieved.	Section 270A be scrapped and scope of Section 273B should be suitably enlarged to provide for circumstances where penalty for concealment of income or furnishing inaccurate particulars will not be imposed.
10.3	**S. 270A**	No provision dealing with a situation where tax has been paid but only return is not filed.	To incorporate a provision dealing with a situation where return is not filed but the tax has been paid.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
10.4	**Section 246A** which provides for appealable order before Commissioner (Appeals) specifically provided that order imposing penalty u/s 271(1) is appealable.	Section 246A has not been amended to specifically provide that order imposing penalty under section 270A will be appealable.	A specific amendment will avoid controversy.
10.5	**Section 270AA - Immunity from Imposition of penalty.**	Where penalty is levied on certain additions on ground of mis-reporting and certain additions on ground of only under-reporting, then assessee will 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 remove this anomaly that arises when penalty is levied on certain additions on ground of mis-reporting and certain additions on ground of only under-reporting.
		There is no guarantee that appeal against quantum order with application for condonation of delay after rejection of application for immunity, will be admitted.	Suitable provision may be inserted to enable filing of delayed appeal against quantum order in the event that the application for immunity is rejected.
		There is no specific bar prohibiting revision u/s 263 of an order accepting immunity application.	Section 270AA(6) may be suitable amended to provide that an order granting immunity cannot be made subject matter of revision u/s. 263.
10.6	**Section 234F – Fee for default in furnishing the return of income.**	U/s 239(2)(c), a return claiming refund can be filed within one year from the end of the assessment year. As per section 234F, even such cases are covered and are liable to the fee u/s 234F. This results in such	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
		persons having to unnecessarily pay a fee even though the revenue is not adversely affected by the late filing of the return.	
10.7	**Section 269 ST and 271 DA** **Mode of undertaking transactions and penalty for failure to comply with section 269ST**	269ST begins with 'No person shall receive an **amount...'.** The word "amount" will include not only sum of money but any 'transfer for any value'. This is unintended and should be amended to clearly apply only to cash transactions. The Memorandum explaining the provisions of FA 2017 brings out the intention.	The word "amount" in section 269ST should be replaced with "sum of money".
10.8	**Section 271J** **Penalty for furnishing incorrect information in reports or certificates.**	It is widely felt that this provision could be subjected to widespread misuse and would result in harassment of honest and genuine professionals. Also, in any case, there is no provision for preferring an appeal to the ITAT in respect of orders passed by the CIT.	Section 271J should be deleted. Alternatively, the right of appeal to the ITAT be given to the affected person by way of a suitable amendment in section 253. Also, in order to provide a prospective impact of the section, an amendment should be made in the section to the effect that the section would apply to

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

11. TDS

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
11.1	**Fresh scheme of tax collection instead of TDS**	Reducing compliance burden and reducing rectification applications.	Large companies including PSUs/PSBs should be allowed to pay advance tax on a monthly basis and exempted from the TDS provisions in the capacity of deductee. These Companies could be given an option. The advance tax to be deposited monthly could be based on TDS claimed in the return of Income in last two A.Ys. This will reduce avoidable and unnecessary hardship caused to the deductor and the deductee (for taking credit).
11.2	**Meaning of the term 'technical services' vis-à-vis 'professional services'**	The Finance Act, 2020 amended section 194J of the Act to provide for reduced rate of TDS @ 2% where payment is towards for fees for technical service, not being a professional service. While the terms "fees for technical services" and "professional services" are defined separately,	The definition of professional fees may be amended to specifically exclude Technical Services from its ambit.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
		the issue may arise while interpreting the term managerial, technical and consultancy services included in the definition of "fees for technical services" as it could overlap vis-à-vis term 'technical consultancy' included in the definition of "professional services".	
11.3	**As per section 194-O of the Act, an e-commerce operator is liable to deduct tax at source @ 1% from payments made to an e-commerce participant in respect of the sale of goods or provision of services facilitated by the e-commerce operator through its digital or electronic facility or platform.** **Various issues have emanated from its practical implementation**	a) Section 194-O of the Act mandates the e-commerce operator to deduct and pay tax on behalf of the e-commerce participant, even when customer makes direct payment to e-commerce participant. In this scenario, such TDS may be borne by the e-commerce operator, if it is not reimbursed by the e-commerce participant. b) e-commerce operators may charge delivery fee or offer discount on the products sold by the e-commerce participants. For instance, a laptop company (being e-commerce participant) offers mobile phone at INR 100,000 as per the list price and the e-commerce operator charges a delivery fee of INR 500, thereby making the total amount payable by the customer as INR 100,500. As a promotional / festive offer, the e-commerce operator offers discount of INR	a) B2B transaction may be carved out from section 194-O b) Tax should be withheld from net of sales c) Tax should not be withheld from GST / indirect taxes d) The scope of the term 'service' mentioned in Explanation to section 194-O of the Act should be elaborated further Considering that the non-resident e-commerce operator is not present in India, the Government may ease the compliance burden i.e. simplify the details required to be filed in the withholding tax statements etc.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
		5,000 on the list price thereby offering the laptop at INR 95,500. The said discount is compensated by the e-commerce operator to the e-commerce participant. In this scenario, whether the payment made by the e-commerce operator to the e-commerce participant should be liable for TDS on INR 100,500, even if only INR 95,500 is received from the buyer. c) Where the sales transaction is subsequently cancelled (or say the buyer rejects the goods on delivery), whether such transaction would also attract TDS. Section 194-O of the Act provides that the taxes are to be withheld on the amount of the sales. Through Circular No.23/2017 dated 19 July, 2017, the CBDT has clarified that no taxes shall be withheld on the portion of 'GST on services' if it is indicated separately in the invoice. However, section 194-O would cover goods and hence this circular may not be applicable. Further, while Circular No. 17 of 2020 has clarified regarding exclusion of GST for the purpose of section 206C(1H) of the IT Act, it is silent for section 194-O of the IT Act. Thus, as	

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
		the extant position, tax needs to be withheld on the amount inclusive of GST.	
11.4	**Exemption of TDS on certain payments** There is no specific exemptions from TDS in case of payments of personal nature, in respect of the cases covered in Sec. 194A (interest), Sec. 194 H (brokerage), and Sec. 194I (Rent).	There does not seem to be any logic to deduct tax at source on payments made on personal account. Merely because an assessee happens to be a proprietor of a concern which is liable for tax audit u/s 44AB of the Act, he should not be made liable for tax deduction on the payments made for personal purposes. He should be treated at par with other individuals and HUFs.	The exemption from TDS on the payments made for personal purposes should be extended to the payments covered u/s 194A and 194H and 194I of the Act, in line with the provisions made in section 194J. Similar provisions may also be inserted in the TCS sections.
11.5	**234E - Fees for default in furnishing the statement:**	(i.a) With respect to the default for non-deduction of tax or, after deduction, non payment of the same to the credit of the Central Govt. there are sufficient compensatory and penal provisions under the Act, viz. Ss 201, 271C and 221; (i.b) Levy of such penalty would amount to punishment for the same offence twice. This is against the spirit of Law.	(i) This section should be dropped. (ii) In alternative, when there is reasonable cause for not furnishing the statement of TDS/TCS then, such cases can be covered under section 273B of the Act.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
11.6	**Penalty under section 271-I for Failure to furnish information / Inaccurate information under section 195**	It is not clear whether the penalty is qua the payment made or qua the transaction or qua the contractual obligations for a specific financial year.	Clarificatory amendment may be made.

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

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

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

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
11.9	**Exemption of TDS when the deductee is a registered charitable organisation and approved by the new application made.**	As per the amended charitable trust provisions, every charitable trust has to register afresh and get its objects verified. In case this procedure has to be regularly followed then where the Chartable Trust is a deductee, the TDS provisions should not apply so that such trusts are unnecessarily not put to hardship of claiming refund and blockage of their funds.	TDS provisions should not be made applicable when the deductee is an approved Charitable Trust.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
11.10	**Only listed securities have been carved out of section 206C(1H) of the Act.** **Further, the key terms such as 'goods', 'turnover' etc. are not defined in the section.**	The term 'goods' on which the entire gamut of section 206C(1H) depends, is not defined. Hence, support needs to be taken from other Acts. GST Act and Sale of Goods defines the terms 'goods' differently and thus the Tax Officer may take different definition than the one taken by the assessee. Further, while the key terms are not defined, CBDT has issued a circular clarifying various queries. One of the clarifications given by the CBDT is that the provision of section 206C(1H) of the Act would not apply to listed securities. Thus, it appears that unlisted securities could get covered by section 206C(1H) of the IT Act.	Securities, whether listed or not, should be out of the purview of section 206C(1H). Further, key terms such as 'goods', 'turnover', may be defined so as to minimise the risk of protracted litigation.

12. Appeals and DRP

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
12.1	**Section 250 (6A)** "(6A) In every appeal, the Commissioner (Appeals),	Presently, the time limit for passing the order is not mandatory but only recommendatory in nature.	The following sub section may be substituted in place of the existing one:

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

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
	shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer:"	but cannot do so because of 6 months' time limit and cannot also move the High court thereafter.	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. "
12.3	**Section 144C(2) – requirement of filing voluminous details within 30 days**	The assessee has to file voluminous objections in form 35A, within 30 days of receipt of the order. 30 days is very short time to compile and file before the DRP. There are many mistakes and further many arguments are also missed out.	Either the time limit of 30 days may be increased to 60 days or, in the alternative, format of Form 35A should be revised only to include grounds and statement of facts as are before CIT(A).

13. Trust / Charitable Organisations

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties / Obstacles / Hurdles faced	Suggestion
13.1	**Charitable purpose Section 2(15)** Limit of 20% in the definition of "Charitable Purpose"	Several difficulties are faced by small charitable organisations and therefore there is a need to amend the definition and relax the upper limit of 20% of total receipts.	In place of existing clause (ii), the following may be substituted: "The aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, ***or rupees One crore, whichever is higher,*** of the trust or institution undertaking such activity or activities, of that previous year."
13.2	**Tax on accreted income - Section 115TD**(1) – clause (b) – merger of two trusts / organisations.	These provisions create a charge without considering practical and real difficulties. a. One will appreciate that entire scheme of Income tax is based on Real income theory. b. Tax on accreted income is payable even if entity is merged with other entity which is registered u/s 12AA but whose objects are not similar. c. Further, the term "similar object" is subjective and prone to litigation. d. Provisions will apply even if a charitable institution transfers its assets to an institution	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;"

		substantially financed by government or which has turnover not exceeding the specified limit. e. Provisions will apply even if a charitable institution transfers its assets to an institution which is approved by Charity Commissioner under Maharashtra Public Trust Act, 1950.	
13.3	**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.
13.4	**Section 115TD(4) – Trust to pay tax on accreted income even though it is not otherwise required to pay income-tax**	a. Proposed balance sheet approach may result in taxation of income which has legitimately enjoyed exemption in earlier years. b. It may result in taxing an amount which was always eligible or entitled to an exemption. The proposed suggestion would ensure that only the following assets would be liable to accreted tax: (1) assets acquired out of non-agricultural income which is otherwise exempt, (e.g. dividend income, etc.); (2) assets acquired out of the basic accumulation of 15% of income;	Provisions should not apply to the assets generated out of specified income on which exemption was not claimed.

		(3) assets acquired out of corpus donations exempt under section 11(1)(d); (4) assets acquired out of bequests; (5) assets acquired out of income below exemption limit; (6) assets acquired out of business income on which tax is paid under section 11(4A); (7) assets acquired out of income taxed upon application of first proviso to section 2(15); (8) assets acquired out of income which has suffered tax on account of application of section 13; (9) agricultural land.	
13.5	**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	It seems that primary liability to pay tax is on principal officer or the trustee and if they don't pay then that would be of Trust. The term 'principal officer' is very widely defined in section 2(*35*) - "'principal officer', used with reference to a local authority or a company or any other public body or any association of persons or anybody of individuals, means—	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.

	Central Government within fourteen days from, —	"(*a*) the secretary, treasurer, manager or agent of the authority, company, association or body, or (*b*) any person connected with the management or administration of the local authority, company, association or body upon whom the Assessing Officer has served a notice of his intention of treating him as the principal officer thereof;" The AO can consider almost any person connected with the management as the principal officer of the institution.	
13.6	**115TD (5)** **"(5)** The principal officer or the trustee of the trust or the institution, as the case may be, and the trust or the institution shall also be liable to pay the tax on accreted income to the credit of the Central Government **within fourteen days from**,----"	Tax need to be paid within period of 14 days. a. Time limit is too short to pay especially when institution is required to dispose of its assets to make payment. b. It takes longer time to take permission from Charity Commissioner appointed under Maharashtra Public Trust Act, 1950. c. Further when capital assets are sold, proceeds would also be subject to capital gains tax.	Time limit need to be suitably modified.
13.7	**Section 12A(1)(ab)** Information regarding modifications of the objects	The time limit of 30 days is too short. Many NGOs are run by volunteers. It is unfair to cast such an onerous responsibility on them. For example, where the amendment to the trust deed is sanctioned by a Court etc., it may take time to get	Instead of 30 days, the time limit should be 6 months.

	which do not confirm to the conditions of registration	copies of the court order. 30 days' period is impractical and merely onerous.	
13.8	**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) should be suitably amended to provide for condonation of delay in case a reasonable cause is provided by the concerned trust.

14. Threshold limits & time limit with Due Date

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
I	**Monetary limit**					
A. Charitable Trusts						
14.1	**2(15)**	For non-applicability of first proviso in definition of "charitable purpose". First proviso states that advancement of any other object of general public utility shall not be a charitable purpose, if it involves carrying on of any activity in the nature of trade, commerce or business___ ,……, for a cess or any other consideration ,.....unless ___	Aggregate receipt from such activity does not exceed 20% of total receipts. Earlier monetary limit was of Rs 25,00,000/-.	Monetary limit should be restored and should be at least 1,00,00,000/-.	It can be linked with limit prescribed u/s 44AB for Tax Audit.	**I and VII**
14.2	**13(2)(g)**	**Exclusion for Benefit to person referred in Section 13(3).** Section 13(2) provides that income or property of the trust shall be deemed to have been used or applied for the benefit of person referred to in sub-section (3) and Clause (g) refer to diversion of income to such person. Proviso to the said Clause (g) of section 13(2) provides that the said Clause shall not apply.....if the aggregate of such diverted amount does not exceed….	1,000/-	10,000/-	Since 1972	**I**

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
14.3	**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						
14.4	80P(2) (c) (ii)	Deduction in respect of income of co-operative societies	50,000	200,000	Since 1998	**I**
C. General						
14.5	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**
14.6	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
14.7	263	Principal Commissioner/ Commissioner if he consider that an order passed by the A.O. is erroneous, have powers to pass an order enhancing or modifying the assessment including cancelling	Nil	Proviso should be added that no such revision would be made where the tax effect does not exceed 5,00,000/-.	Ceiling would prevent revision in small cases. Ceiling suggested is the same which is for filing of appeal by the	I & V

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
					Department before the Tribunal.	
14.8	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 - Assets Charged or Transfer	 5000 10000	 1,00,000 50,00,000	 w.e.f. 1-10-1975	 I & V
D. Salaried Employees						
14.9	10(10B)	Exemption limit for retrenchment compensation	500,000	1,000,000	Since 1997	I
14.10	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
14.11	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

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
14.12	10 (14) (ii) r.w. Rule 2BB	Children Hostel Expenditure Allowance	300 p.m.	2000 p.m.	Since 1997	I & VII
14.13	17(2)(iii)	Monetary limit for employee (other than Director) for adding perquisite	50,000	100,000	Since 2002	I & VII
14.14	17(2) proviso (vi)	Medical Treatment outside India is subject to condition that gross total income does not exceed Rs 2,00,000	2,00,000	500,000	Since 1993	I
14.15	17 (2)(viii) r.w.Rule 3 (7) (i), (iii) and (iv)	Perquisite in respect of the following a) perquisite for interest free loan in excess of b) lunch / refreshment c) Value of any gift etc. on ceremonial occasions or otherwise	 20,000 50 5,000	 1,00,000 200 15,000	Since 2001	I & VII
E(1) BUSINESS INCOME / EXPENDITURE						
14.16	40A (3)	Payment made otherwise than by account payee cheque (a) For Transport	 (a) 35,000	 50,000	 Since 2009	I
E(2) REQUIREMENT OF MAINTENANCE OF BOOKS OF ACCOUNT ETC.						
14.17	44AA(1) r.w Rule 6F	Requirement of maintenance of books of account by legal, medical, engineering or	150,000	500,000	The present limit has remained unchanged since 2000. Earlier,	

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
		architectural profession etc. if the total gross receipts exceed			applicability of Tax Audit for such professionals was Rs. 10,00,000/- which has since been increased to Rs. 50,00,000/-.	
14.18	44AA (1) r.w Rule 6F(2)	The books of account and other documents referred to in sub-rule (1) shall be following : (i) a cash book; (ii) a journal (iii) a ledger ; (iv) carbon copies of bills, whether machine numbered or otherwise serially numbered, wherever such bills are issued by the person, and carbon copies or counterfoils of machine numbered or otherwise serially numbered receipts issued by him: Provided that nothing in this clause shall apply in relation to sums not exceeding twenty-five rupees (v) Original bills wherever issued to the person and receipts in respect of expenditure incurred by the person or, where such bills	Point **(iv)** Rs. 25 Point **(v)** Rs. 50	Rs. 500 Rs. 1,000	Since 1983	I

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
		and receipts are not issued and the expenditure incurred does not exceed fifty rupees				
14.19	44AA(2)	a) Sales, Turnover or gross receipts b) Income from business or profession	10,00,000 1,20,000	25,00,000 2,50,000	Since 1998	
F. CAPITAL GAINS						
14.20	47 (xiiib)	The section excludes conversion of private limited companies to LLP, from the definition of transfer. However, there are certain conditions prescribed to be complied for being excluded from the definition of 'transfer'. One of the conditions is that the total sales, turnover or gross receipts in the business of the company in any of the three preceding previous year should not exceed Rs. 60 Lakh.	6,000,000	No limit restriction	Many people did not have option of LLP when they had formed a private limited company. In view of various 51difficulties under the Companies Act, 2013 many assessees would like to convert their private limited companies into LLP and they should be given such option for some period.	

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
14.21	54 EC	Exemption of capital gain on investment in certain bonds	50,00,000	No limit restriction	The original position to be restored. The Govt. will have more funds for stated purpose at lower rate of interest.	
G. TAX DEDUCTION AT SOURCE						
14.22	193	TDS on Interest on Securities	5,000	20,000	Since 2012. Will reduce hardship to many.	I
14.23	194-J	TDS on Professional Fees etc.	30,000 and there is no separate aggregate limit.	30,000 per contract and aggregate limit of Rs. 1,00,000/-.	To make it in line with limits u/s 194C.	I
II. Monetary Ceilings						
14.24	208	Applicability of payment of advance tax when tax payable exceeds	10,000	20,000	Since 2009	VII
14.25	276CC	There is a limit of Rs. 25,000 and Rs. 10,000 in proviso to clause (i) and (ii) of the section respectively	25,000 and 10,000	50000 and 25000	The limits are less to undergo harsh rigours of prosecution	
III. Time Limits						

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
14.26	154	Rectification under Section 154	6 months	• The time limit for disposing an application made under section 154 should also be specified in the Taxpayer's Charter introduced under section 119A of the Income Tax Act making the officers accountable for lapse in following the time limits enshrined in section 154(8) in letter and spirit. • Provisions should be introduced such that if the application for rectification is not disposed within the prescribed time, it would be deemed that the application is	Inordinate delay in disposal of rectification application under section 154 - • It is observed that rectification application u/s 154 made by Assessee are not getting disposed within the time limits specified under section 154(8). The section stipulates that where application is made by assessee for rectifying any mistake apparent from record, the income-tax authority shall pass an order, within a period of 6 months from the end of the month in which such an application is received, by either making	

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
				granted and the AO shall be bound to rectify the mistake.	amendment or refusing to allow the claim. • In fact, the Central Board of Direct Taxes (CBDT) tried to address the issue of delays in disposal of rectification application / petition vide instruction No. 01 of 2016 dated 15.02.2016 directing that the time-limit of six months mentioned in section 154(8) is to be strictly followed by the assessing officer while disposing off the rectification application filed by the assessee. However, it may be noted that time limit of	

Sr. No.	Present Provision / Practice			Suggested Modification	Rationale for change	Code for Rationale
	Section / Rule	Provision	Present Limit			
					six months is not being observed in deciding the applications. In many cases, the assessee has to file repeated application because an application on which order has not been passed within six months is considered by authorities as lapsed or no longer valid.	

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

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

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Suggestion	Justification for the suggestion
		the ambit of SDT since, otherwise, it imposes a lot of burden on such enterprises.	

16. GAAR

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

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Suggestion	Justification for the suggestion
			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.
16.2	Section 96(2) provides that if the main purpose of even a step-in transaction (which is a part of the main transaction / whole arrangement) is to obtain a tax benefit then the entire arrangement may be declared to be an impermissible avoidance arrangement under GAAR provisions. This is so despite the fact that main purpose of the whole arrangement is not to obtain a tax benefit.	It is suggested that the last limb of section 96(2) i.e. *"notwithstanding the fact that the main purpose of the whole arrangement is not to obtain a tax benefit"* be deleted to avoid any confusion. It may also be categorically provided that an arrangement may not be declared as impermissible if it entails some tax benefit on any step in transaction so as to promote a conducive investment climate. This will also avoid undertaking any unnecessary interpretational exercise.	There will invariably be transactions between entities which will have some element of tax benefit involved at some stage of the transaction. Permitting the revenue to declare an entire arrangement to be impermissible based on some marginal tax benefit achieved by a step in transaction would lead to a situation which would render almost all transactions impermissible. Further as per the wordings used in the section it appears that the entire focus as per section 96(2) shifts and probably acts in contrast to the main provision contained in section 96(1) i.e. declaring an entire arrangement aimed at obtaining tax benefit as

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Suggestion	Justification for the suggestion
			impermissible. This will also act as a deterrent to a favourable investment climate. This amendment / clarification is required to avoid any conflicting interpretations within the section and also to promote clarity in the law. It will also invoke positive investor confidence aiming at making capital investments in India.
16.3	Under section 97(2) round trip financing is meant to include transactions where funds are transferred among the parties to the arrangement and such transfer of funds lacks *substantial commercial purpose.*	It is suggested that the word *substantial* be dropped so as to bring the definition in line with section 97(1). Alternatively, substantial commercial purpose may also be defined in the Act under section 102 like other terms used in the chapter.	The definition contains the phrase *'substantial commercial purpose'.* However, the said phrase is not defined and the word substantial may lead to varied interpretations leading to possible difficulties. A clarity on this issue is required so as to avoid any subjective interpretational difficulties and proper, just and equal applicability of the Chapter to all persons covered by it.
16.4	Sections 98 and 99 of the Act provide that as a consequence of attracting GAAR provisions any corporate structure may be disregarded.	A mechanism may be provided whereby instead of the Department disregarding any corporate structure it may be authorised to approach the court in order to decide whether a corporate structure may be disregarded.	Under the Companies Act, only High Court is empowered to pierce the corporate veil and disregard the Corporate Structure. Empowering the Department to so disregard the Corporate Structure may lead to conflict of Constitutional Powers as mentioned above.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Suggestion	Justification for the suggestion
16.5	**Section 144BA(14)** – right of appeal should be given to the assessee against the direction of the Approving Panel.	The assessee should be given a right to appeal against the directions of the approving panel.	The Approving Panel has only six months to adjudicate on the issue. Further, there can be no extension of the same. In six months' time, if the approving panel adjudicates on the invocation of Chapter X-A, then a right to appeal should be given to the assessee, otherwise the High Courts will have to exercise their extra-ordinary writ jurisdiction. Further, the time period of six months to adjudicate on such a controversial and high stake involving issue is not justified, thereby making such direction subject to appeal inevitable.

17. International Taxation

Sr. No	Issues	Recommendations	Justifications
A. Residence under section 6			
17.1	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.
17.2	**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).
17.3	The government released a clarification in May 2020 exempting the period between 22 March 2020 and 31 March 2020 for the calculation of residential status for FY19-20. However, no clarification has been issued for FY 20-21 till date. A change in residential status may result in increased tax liability for some NRIs who have been forced to stay on in India.	In light of the current pandemic the government must issue clarifications with respect to tax residency rules for FY 2020-21 at the earliest. This would ensure smooth compliance of advance tax and withholding taxes. This lack of clarity is also resulting in issues for assessees who have to deduct tax on payments to such NRIs.	To ensure timely compliance and payment of appropriate taxes.
B. Application for nil / lower deduction of tax at source certificate – Section 195(2) and 197			

17.4	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			
17.5	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, as the correct FTC can be ascertained at that time only.	
D. Shipping income – Section 44B and 172			
17.6	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	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.

	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 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			
17.7	**Section 92CE – Secondary Adjustments**	Section 92CE should be deleted w.e.f. 1-4-2021 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	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

		adjustment.	accounts of the assessee. 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 not be beneficial for India and would hurt the Government's initiative of enhancing ease of doing business in India. Secondary adjustment would also create major issues under FEMA, as the obligation to receive foreign income is created without the consent or agreement of the foreign party which may refuse to pay such enhanced value.
17.8	Transfer pricing provisions apply to international transactions without any threshold.	We suggest that international transactions below Rs. 10 crores should not be covered within transfer pricing rules. Alternatively in Rule 10D(2), the existing limit of Rs 1 crore should be enhanced to Rs 10 crores.	Transfer Pricing provisions are very subjective. Determination of ALP cannot be objective. A threshold will go a long way to reduce compliance costs and burden for small assessees. We suggest that there should be a threshold above which the provisions should apply. No threshold creates difficulties for small assessees.

17.9	There is an overlap of provisions which prescribe income computation and Transfer Pricing. For example, if an Associated Enterprise (AE) purchases Indian company's shares from its group company, income has to be computed under section 56(2)(x) if purchase price is less than the fair value. Section 56(2)(x) itself prescribed the fair value computation. Then to further compute the ALP under Transfer Pricing rules is not relevant.	It may be provided that where the fair value basis for computation of income is prescribed under any provision of Income-tax Act, computation of ALP will not be required. In the Transfer Pricing audit report, the fair value as prescribed under the respective sections, may be reported as ALP.	To avoid the overlap of provisions which may result in irrelevant computation.
17.10	**Safe harbour Rules**	Govt. should come out with attractive safe harbour provisions for the Manufacturing Sector, to make "Make in India" drive successful and thereby making India a manufacturing hub of the World, to generate employment and develop skills. In addition, the Govt. should enter into bilateral safe harbours to avoid double taxation.	Awaiting renewal of CBDT notifications for extending the period of applicability of Safe Harbour rules. Also, in light of COVID-19 pandemic, the rates mentioned in the extant Rules may be revisited
17.11	**Sec 92A- the Word "Control" not defined.**	It is suggested that the same should be defined.	
17.12	**Selection of Transfer Pricing Method**	Guidelines/parameters on the selection of TP appropriate methods, comparable companies and adjustments to PLI, are required with legislative backing.	High levels of litigations are revolving around selection of method, comparable companies and adjustment to PLI. Therefore, guidelines will help in reduction of litigation.

F. Thin Capitalisation			
17.13	**Section 94B - Thin Capitalisation**	Section 94B should be deleted w.e.f.1-4-2021. Alternatively: a) Section 94B should not be made applicable to certain priority sectors to be notified by government like Infrastructure, heavy industries etc. b) The threshold for applicability of section is Rs. 1 crore which is low considering rate of interest in India. Threshold should be increased to at least 5 crores. c) Section should not apply to loss making companies. d) The terms 'Implicit or' in 1st proviso to section 94B(1) should be deleted to avoid litigation. e) In any case, the exemption provided to an Indian company or a permanent establishment of a foreign company which is engaged in the business of banking or insurance should also be extended to non-banking finance companies. f) Thin cap rules are in nascent stage and hence the companies must be provided transition window to re-align its debt structure. Further, aligning the capital structure is time consuming and requires regulatory approvals. Hence, the EBITDA capping should be initially @	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.

		60-70% and phased reduction of the same to 30% could be provided over a span of 3 years. Alternatively, grandfathering should be provided for existing debt-equity structures. g) Businesses may not earn consistent profit year on year. However, the interest expenditure may be consistent. Given that EBITDA may vary on account of economic considerations, it may be that the cap of 30% may not be exhausted in a particular year (say year 1). It is suggested that there should be a credit mechanism to offset the unutilized limit in subsequent years. The period of set-off may be restricted to 3-5 years. h) Meaning of EBITDA should be clarified.	
G. Tax Residency Certificate			
17.14	An Indian resident is required to give a TRC to the non-resident for receiving income from the non-resident. It takes about 2 months or more for getting a TRC.	A TRC should be given on automatic basis. An application can be made online and after basic checks, a TRC can be issued within 24 hours. Suitable amendment may be made in the law / rules.	Providing a TRC to Indian residents is directly beneficial to India. A person is not seeking any exemption. By giving a TRC, the other country will levy less tax. Resident will get more funds.
H. Indirect transfers			
17.15	**Section 9(1)(i) Explanation 6 and 7**	a. Explanations 6 and 7 to Section 9(1)(i) should be introduced retrospectively from 1st April 1962, in line with Explanation 5 to Section 9(1)(i). b. Explanation 7 should provide exemption to all	The suggestion for retrospective effect of Explanations 6 and 7 to Section 9(1)(i) is to make the Explanation 5 workable.

		transferors not holding voting power or share capital or interest exceeding 26 per cent. This is in line with the Shome Committee recommendation and 5% is too low a threshold.	
17.16	**Section 9(1)(vi) – Scope of Royalty income**	Explanation 5 to Section 9(1)(vi) should be redrafted in a manner so as to exclude the unintended e-commerce transactions from the definition of "Royalty". An exception should be carved out in Explanation 6 to Section 9(1)(vi) so as to exclude payments for use of 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".	
17.17	**Furnishing of information or documents** **Section 285A**	a) The reporting obligation under Section 285A, on Indian companies to gather information on the off-shore transfers is onerous and needs to be simplified. Reporting obligations must be restricted to the concerned transferor, and penalties must be a fixed sum of Rs. 100,000 in line with other provisions, instead of at 2% of transaction value. b) Further, the reporting obligations under Section 285A, should not arise in case the benefit of exemption as per Explanation 7 to Section 9(1)(i)	

		is availed i.e. income not considered as deemed to arise or accrue in India.	
17.18	**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 indirect transfers.	We submit that a similar exemption be provided for indirect transfer.	To bring uniformity in approach.
17.19	**Explanation 2 to section 2(47) – meaning of "transfer"** The Explanation was inserted vide Finance Act 2012 to take care of transactions similar in nature to the	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.

	Vodafone case. As explained in the Memorandum to the Finance Bill, this amendment was a part of Rationalisation of International Tax provisions.		
I. Taxation of Foreign dividends under Section 115BBD of the Act			
17.20	The benefit of reduced rate of tax on dividends as per Section 115BBD of the Act is available only to Indian companies and not to other persons.	We suggest that the benefit under the section should also be extended to all persons.	To bring uniformity in principles and approach which would help in removing ambiguity in application of the provisions.
J. Dispute Resolution			
17.21	**Authority of Advance Ruling** **Chapter XIX-B Sections 245N to 245V**	1. Prescribe mandatory time limit for passing the AAR order- i.e., within 180 days from the end of month in which application is filed. 2. The transaction limits and fees for approaching AAR by Resident tax payer should be revisited as they are quite high – Reduction will help to broad base AAR which can significantly help to mitigate litigation which will help in enhancing the Ease of doing business. 3. In order to expedite disposal, the admission process can be dispensed with and cases can be heard in one go – Only technical conditions can be verified by the Secretariat based on which application to be admitted or rejected. Other 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.	
17.22	**First Appellate Authority ('FAA') - Commissioner of Income-tax (Appeals) (CIT(A)) and Dispute Resolution Panel ('DRP')**	1. The present first appellate structure involving DRP and CIT(A) should be overhauled - Replaced by single DRP route (i.e. panel consisting of 3 members). 2. DRP constitution – One Chief Commissioner and two CITs - Only CITs having experience of working at ITAT be considered - APA commissioners can be appointed as member for specialised TP Panels - CCITs/CITs should not be the administrative commissioners. 3. Cases involving additions below Rs. 50 lakh could be decided by a single CIT instead of the Panel. All the other cases involving addition above Rs. 50 lakhs involving Transfer Pricing and International Tax issues should be decided by the DRP. 4. Strict timelines for hearing/ disposing of appeals filed before panel – 12 months from the date of filing of appeal. 5. On appeal pending before DRP - Tax officers not to press demand recovery - or as a standard practice, stay to be granted on payment of 15% demand - DRP should have power to grant stay in bonafide cases.	

		6. 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.	
17.23	**Income-tax Appellate Tribunal**	1. Create specialized benches at all locations – for TP, International Tax [IT] and repetitive dispute areas of law. 2. Capacity building/ regular trainings etc. to be given to Members/ CIT(DR)s. 3. 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. 4. Also, additional permanent CIT(DR)s should be appointed for effective functioning of ITAT. 6. Strengthening administrative support by providing Officer level support to bench members to help them function effectively i.e. write orders in time. Similar and Inspector level support to DR's to also help them to effectively prepare for the matters.	

K. Requirement to obtain Tax Residency Certificate – Introduction of threshold			
17.24	**Requirement to obtain Tax Residency Certificate – Introduction of threshold.**	Sec. 90(2) provides that in respect of an assessee to whom a DTAA applies, the provisions of the Act shall apply to the extent they are more beneficial to the assessee. However, for this purpose, a Tax Residency Certificate (TRC) is required to be furnished by the claimant. Sub-section (4) applies to all non-residents irrespective of the level of income and the nature thereof. This creates unintended hardship to both non-resident recipient and the resident payer even where amounts involved are not very large and also creates a negative image of the country as it involves time and cost to obtain such Tax Residency Certificate. This also substantially affects business environment.	It is therefore strongly suggested that the threshold, of say Rs. one crore in aggregate from a single payer per annum, be specified for applicability of this provision relating to obtaining a Tax Residency Certificate.

Code for Rationale

I	**Equity and Fairness**
II	**Certainty**
III	**Convenience of payment**
IV	**Economy of collection**
V	**Simplicity**
VI	**Neutrality**
VII	**Economic Growth and efficiency**

VIII Transparency and visibility

IX Minimum Tax Gap

X Appropriate Government Revenues.