Bombay Chartered Accountants' Society

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Post-Budget Memorandum on Direct Tax Laws 2018

Bombay Chartered Accountants' Society

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BOMBAY CHARTERED ACCOUNTANTS' SOCIETY

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Harnessing Talent and Providing Quality Service

Date: 19th February, 2018

Shri Arun Jaitley
Minister of Finance
Government of India
North Block
New Delhi – 110 001

Respected Shri Jaitley,

Sub: Post-Budget Memorandum 2018

We compliment you for the non-populist Budget presented on 1st February, 2018. We wholeheartedly support the various initiatives taken by the government in expanding the formal economy in the past more than a year as also the efforts made at widening the tax base in the country. We are confident that with the removal of initial hindrances in the administration of GST law and with the efforts made by the government in spurring manufacturing sector, the economy will improve for the better.

The provision that changes the taxation of long term capital gains from transfer of listed shares and other securities is bound to create disruption in the stock markets for some time. However, the grandfathering of the gains up to 31st January is a welcome and desirable move at providing a fair transition to existing investors.

The extension of lower corporate tax rate to more companies this year is also a welcome step as it will help in increasing post tax surplus which in turn can be ploughed back into business by the corporate sector. The thrust given to health care and other development related economic measures in the Budget are clear indicators of the government's strong resolve to take the Indian economy to the heights that it deserves.

We take this opportunity to make certain suggestions for rationalization of law, rectification of certain anomalies in the proposed amendments as also clarifying certain ambiguities so that the amendments meet the intended objectives of the government.

We would be happy to personally explain the suggestions if we are presented with an opportunity to do so.

Thanking you,

We remain,

Yours truly,

For BOMBAY CHARTERED ACCOUNTANTS' SOCIETY

Narayan Pasari	**Ameet Patel**
President	Chairman - Taxation Committee

CC:
Shri Shiv Pratap Shukla, Minister of State, Ministry of Finance
Shri P Radhakrishnan, Minister of State, Ministry of Finance
Dr Hasmukh Adhia, Finance Secretary, Ministry of Finance
Joint Secretary, TPL-2
Shri Sushil Chandra, Chairman, Central Board of Direct Taxes
The Member (Budget), Central Board of Direct Taxes
The Prime Minister's Office

Executive Summary for BCAS Post Budget Memorandum - 2018

Sr. No.	Clauses & Schedule	Page No.
1.	**Clauses 3 & 21 – Section 56** - Compensation received by employees proposed to be taxed as Income from Other Sources – **specific Provision already exists in Section 17(3)(i) – hence, proposed amendment should be scrapped.**	**1**
2.	**Clause 3 – Section 10 (12A)** - Exemption in respect of payment from National Pension System Trust on closure of the account or opting out of pension scheme – **Section 10(12B) should be amended so as to extend the benefit to all assessees.**	**1**
3.	**Clause 4 - Section 9(1)(i)** - Significant Economic Presence – **should be deferred till an international consensus on SEP is achieved through the OECD TFDE.**	**1**
4.	**Clause 4 - Section 9(1)(i)** - Business Connection brought in line with modified PE definition in MLI – **certain uncertainties to be removed.**	**3**
5.	**Clauses 3 & 9 – Sections 2(42A) & 28** - Conversion of stock-in-trade into capital asset – **clarification needed.**	**5**
6.	**Clause 5 read with Clause 31 - Section 10(38) and Section 112A** - Taxation of long term capital gains on transfer of listed shares and units of equity oriented mutual funds – **certain crucial amendments needed to avoid unnecessary litigation arising out of present wording of the framework.**	**5**
7.	**Clause 7 – Section 16** - Standard deduction for salaried tax payers – **should be in addition to current exemption for reimbursement of medical expenses and transport allowance.**	**8**
8.	**Clauses 14,19 & 21 – Section 43CA, Section 50C and Section 56** - Rationalisation of sections 43CA, 50C and 56 - **the tolerance band be increased to 15% from the proposed 5%.**	**8**

9.	**Clause 38 – Section 115-O** - Dividend Distribution Tax – **should be scrapped as it is an unjust amendment**	**8**
10.	**Clause 42 – Section 139A** - PAN made mandatory for certain entities entering into specified financial transactions – **individuals connected with such entities should be spared – list of Financial Transactions should be notified on a priority basis to avoid speculation.**	**10**
11.	**Clause 45 – Section 145A** - ICDS related amendments – Need to clarify that these apply only when ICDS are applicable – **ICDS should be scrapped or the amendments should be made applicable from AY 2018-19 instead of AY 2017-18.**	**10**
12.	**Clause 50 – Section 253** - Appeals to the Appellate Tribunal – **amendment to section 253(1)(a) should also be made applicable w.e.f 1.4.2017.**	**14**
13.	**Clause 53 - Section 286(4)** - Country by Country Reporting – **clarification needed.**	**14**
14.	**Schedule 1 – Part III** - Reduction of corporate tax rate to 25% in certain cases – **this lower rate should be made applicable even for Partnership Firms/ LLPs and Companies incorporated after 31st March 2017 satisfying the conditions.**	**15**

Additional Recommendation

1.	246A – appeal to CIT(A) - orders passed u/s. 139(9) should be made appealable by making necessary amendment in section 246A	**16**

Post Budget Representation
Finance Bill - 2018

Sr. no.	Amendment/ announcement made	Relevant clause of the Finance Bill/Section of Income-tax Act, 1961	Provision and Issues	Rationale and Recommendations
1	Compensation received by employees to be taxed as Income from Other Sources	Clauses 3 & 21 – Section 56	• The proposed amendment seeks to tax any compensation received or receivable in connection with termination or modification of the terms and conditions of any contract relating to employment.	**Rationale:** It is to be noted that a specific provision already exists u/s 17(3)(i) of the Act pursuant to which any such compensation in connection with termination of employment or modification of the terms and conditions relating thereto is chargeable to tax as 'profits in lieu of salary'. Also, Sec. 56 is a residual head of income and thus, since the compensation is already chargeable to tax under Sec. 17(3)(i), the provisions of the proposed clause (xi) to Sec. 56(2) would not be applicable. **Recommendation:** Accordingly, we suggest that the amendment should be scrapped.
2.	Exemption in respect of payment from National Pension System Trust (NPST) on closure of the account or opting out of pension scheme	Clause 3 – Section 10(12A)	Section 10(12A) provides that any payment from the NPST to an employee on closure of the account or opting out of pension scheme referred to in section 80CCD, to the extent of 40% of the total amount payable at the time of such closure or opting out, shall not be included in total income. Section 10(12A) has been amended to extend the aforesaid exemption to all the assessees who have subscribed to NPST.	**Recommendation:** Section 10(12B) provides similar exemption to an employee up to 25% of the amount contributed, on the partial withdrawal made out of his account with NPST. It is suggested that Section 10(12B) should also be amended to extend the aforesaid exemption, in respect of partial withdrawal, to all the assessees who have subscribed to NPST.
3	Significant Economic Presence	Clause 4 - Section 9(1)(i)	• It is proposed to introduce Explanation 2A to Section 9(1)(i) of the Income-tax Act to provide a new nexus rule of Significant Economic	**Rationale:** **1)** The new nexus rule is intended to bring within the tax net emerging business models such as digitized businesses which do not require any physical presence or any agent in India.

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			Presence (SEP) in the Income-tax Act. Due to this, a non-resident which has SEP in India shall constitute a business connection in India for the purposes of Section 9. SEP shall mean: a. Transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or b. Systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means. • A non-resident's SEP shall constitute a business connection in India whether or not the non-resident has a residence or place of business in India, or renders services in India.	**2)** However, the present wording of clause (a) of the Explanation 2A is very wide in its impact. It covers all businesses, whether digitized or not. **3)** SEP has been suggested in the BEPS Action Plan 1. However, it was not accepted as final recommendations. A final approach may be suggested by the TFDE a few months later. 4) There are several new phrases which are not defined in the Explanation or in the Act – 'transaction'; 'systematic & continuous soliciting'; 'engaging in interaction'; 'through digital means'; etc. This will lead to uncertainty for a non-resident and litigation in the future. 5) It is stated that unless corresponding modifications to PE rules are not made in DTAA, the existing treaty rules will apply. However, there are several non-residents who are trading with India through non-treaty countries, for e.g., Hong Kong. Further, these provisions will become applicable in every case where a non-resident is not able to provide a Tax Residency Certificate. 6) The stated objective of taxing businesses which do not require physical presence in India may not be achieved. This is because the proposed explanation requires the non-resident to "carry out transactions"; "involve in systematic & continuous soliciting of business"; and "engage in interaction with users" **in India.** **Recommendation:** 1) Due to the above reasons, it is imperative that this provision is deferred till an international consensus on SEP is achieved through the OECD TFDE.

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			• Further, only so much of the income as is attributable to the transactions or activities referred to in a and b above shall be deemed to accrue or arise in India.	2) Alternatively, Equalisation Levy (Chapter VIII of the Finance Act 2016) be extended to certain other digital businesses. The levy is at present restricted only to advertising business. However, it provides better clarity and certainty due to it being a simple levy with corresponding exemption on such transactions for the non-resident from income-tax. 3) If the provision is sought to be continued, it must be reworded to achieve its objective and bring certainty for both tax department and tax payers. This can be achieved by bringing in necessary definitions in the Act itself.
4	Business Connection brought in line with modified PE definition in MLI.	Clause 4 - Section 9(1)(i)	It is proposed to substitute clause (a) of Explanation 2 to Section 9(1)(i) to bring business connection rule in line with definition of PE as modified by the MLI. This is to make effective the treaty provisions which would be modified by the MLI, as otherwise the Income-tax Act would become more restrictive than the treaty provisions.	**Rationale:** **1)** The amendments proposed in clause (a) are largely in line with the amendments forming part of MLI. However, certain inconsistencies can result in unnecessary uncertainty. **2)** As per Article 12 of the MLI, DAPE provisions in Article 5(5) are to be modified. The phrase suggested in MLI Article 12 is substituted in proposed amendment to clause (a) of Explanation 2 to Section 9(1)(i). The phrase which forms part of existing clause (a) is repeated at the beginning: “has and habitually exercises **in India** an authority to conclude contracts on behalf of the non-resident”. The MLI while amending Article 5 of the treaty also seeks to restrict the constitution of PE only to agents who perform such activities **in a contracting state**. However, the newly inserted second limb of clause (a) to Explanation 2 do not include the words “in India”. This results in expansion of the business connection rule beyond that which is sought under MLI. A person acting on behalf of a non-resident who habitually concludes contracts, or habitually plays the principal role leading to conclusion of contracts by that non-resident, **whether in India or outside India**, would lead to constitution of such non-resident’s business connection in India.

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				3) The amendment is proposed by substituting existing clause (a) of Explanation 2 to Section 9(1)(i). However, on substitution, the exemption for “activities of a non-resident which are limited to the purchase of goods or merchandise for the non-resident” is inadvertently deleted. This would result in a significant number of cases where non-residents who are involved only in purchase activities to constitute business connections in India. While clause (b) to Explanation 1 to Section 9(1)(i) provides that no income shall be deemed to accrue or arise in India to a non-resident through or from operations confined to purchase of goods in India, it would still not resolve the gap left by deletion of existing exemption. This is because the exemption in clause (b) is from attribution of profits and not from constitution of a business connection in India. Further, it is limited to purchase of goods ***in India*** and for the purpose of exports only. This exemption is thus severely restrictive in its impact. **4)** In a case where the agent habitually plays the principal role leading to conclusion of contracts, the MLI restricts the constitution of a non-resident’s PE only to those contracts which are **routinely concluded without material modification** by the non-resident. The proposed amendment in clause (a) to Explanation 2 applies to all contracts, even if they are materially modified by the non-residents before conclusion. This expands the business connection rule much beyond that sought by the MLI and is not in line with taxation of a non-resident for activities done by its dependent agent in India. **Recommendation:** 1) The proposed amendment must include the words “in India” after the words ‘concludes’ and ‘plays’ to bring the business connection rule in line with MLI and make it applicable only when activities are performed by a dependent agent “in India”.

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				2) The existing exemption in clause (a) for purchase of goods or merchandise in India should be reinstated. 3) The proposed amendment must include the words "which are routinely concluded without material modification by the non-resident" after the phrase "conclusion of contracts".
5	Conversion of stock-in-trade into capital asset	Clauses 3 & 9 – Sections 2(42A) & 28	At present, there is a lot of confusion about the year of taxability of the gains arising on conversion of stock-in-trade into capital asset. It is a well known tenet of taxation that a person cannot make profit from himself. At the time of conversion, the taxpayer cannot be said to have made any profit as there is no transaction that takes place. This principle is enshrined in the provisions dealing with conversion of capital asset into stock-in-trade.	**Recommendation:** Therefore, with a view to clarifying the same, it is suggested that the profit/ gains arising on account of conversion of stock-in-trade to capital asset should be taxed at the time of sale of capital asset on the lines of section 45(2), in order to avoid complications which may arise based on method of accounting followed by a taxpayer.
6	Taxation of long term capital gains on transfer of listed shares and units of equity oriented mutual funds	Clause 5 read with Clause 31 - Section 10(38) and Section 112A	• It is proposed that on the LTCG arising on account of sale of equity shares/ unit of equity oriented fund/ unit of business trust, subject to certain conditions, the tax payable on CG exceeding Rs.1 lakh shall be calculated @ 10% • The above rate of 10% will be applicable, if	With a view to removing any doubts and to provide congruence in the law, we suggest the following amendments: **Rationale:** At present, section 112A provides for computation of tax liability on the long term capital gains from transfer of certain types of securities. However, there is no amendment made to the computation section – Sec. 48. This leaves a confusing situation whereunder for computing the total income, one needs to follow section 48 which provides for compulsory indexation of cost. On the other hand, section 112A mandates that the tax has to be computed on the unindexed gains. Even in the FAQs issued on 4th February, it has been clarified that indexation of cost would not be

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			○ in case of equity share in a company, STT has been paid at the time of both acquisition and transfer, (however, Central Government may, by notification, provide relaxation); and ○ in case of unit of equity oriented fund or unit of business trusts, STT has been paid at the time of transfer. • The tax has to be computed without giving effect first proviso (Indexation) and second proviso (forex fluctuation) The increase in valuation of assets acquired by taxpayer before 1 February, 2018 to be protected from LTCG to the extent of Fair Market Value, as on 31 January 2018.	available while computing the long term capital gains. Further, a notification will have to be issued for excluding certain bonafide modes of acquisition from the requirement of STT having to be charged at the time of acquisition in order to be eligible for taking benefit of section 112A. There is considerable unwarranted confusion about the taxation of the first Rs. 1 lakh of such long term capital gains although the intention of the government seems to be not to charge tax on this amount. **Recommendation:** 1) It is therefore suggested that a suitable amendment be made in section 48 itself to provide that in case of long term capital gains from transfer of the concerned securities, the second Proviso to the said section will not apply. This amendment would ensure that even for the purpose of computing the total income, it would be the unindexed gains that would be taken into consideration. 2) The notification to be issued under Sec. 112A should be issued as soon as possible so that there is no room for unnecessary doubt and confusion in the minds of investors. This would also prevent the spread of rumors and unwanted unfounded discussions about the taxation of securities acquired through various modes without payment of STT. The draft notification should be put in the public domain for discussion and suggestions before the same is finalised. 3) Also, necessary clarifications should be issued to not tax the LTCG under section 112A arising to a promoter group on account of divestment in shares during the process of listing of companies on the recognized stock exchange as this would be unjust to tax their LTCG. Such shares should also be grandfathered by suitable

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				amendment to definition of FMV – by adding "in any other manner as may be prescribed". 4) Further, it should be specifically provided in the Act that LTCG upto Rs.1 lakh is exempt from tax and only LTCG exceeding Rs.1 lakh threshold is taxable @ 10%. The present wording is likely to give rise to confusion and ambiguity resulting in unnecessary litigation. A suitable amendment may be made in Section 10 (38) to provide for the exemption. **Rationale:** Presently, in section 10(38), the third Proviso categorically refers to acquisition of shares and units on or after 1st October, 2004 and where the transaction of acquisition is not chargeable to STT under Chapter VII of the Finance (No. 2) Act, 2004. Thus, the existing provisions clearly exclude acquisitions of shares/units prior to 1st October, 2004. However, the proposed section 112A does not have any such express provision to exclude acquisitions prior to 1st October, 2004 from the requirement of chargeability of STT for being eligible for the concessional tax rate of 10%. This will unnecessarily cause confusion and give rise to interpretational issues. **Recommendation:** It is therefore suggested that section112A be suitably amended and provisions on the lines of the third Proviso to Section 10(38) are inserted therein.

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7	Standard deduction for salaried tax payers	Clause 7 – Section 16	A new standard deduction of upto Rs. 40,000 is now proposed to be made available to salaried taxpayers. However, this would be in replacement of the existing exemption available in respect of transport allowance to the extent of Rs. 1,600 per month and reimbursement of medical expenses upto Rs. 15,000 per annum.	**Rationale:** The new standard deduction of Rs. 40,000 effectively provides a relief in terms of reduction of taxable income only upto Rs. 5,800 in light of the removal of the two exemptions mentioned. This is a very meagre relief for salaried tax payers. The effective tax benefit on Rs. 5,800 is very limited in light of the increase in the cess on tax. **Recommendation:** The exemptions for reimbursement of medical expenses and transport allowance should continue and the standard deduction of Rs. 40,000 should be in addition to these exemptions.
8	Rationalisation of sections 43CA, 50C and 56	Clauses 14,19 & 21 – Section 43CA, Section 50C and Section 56	Amendment to provide tolerance band of 5% in both sections.	**Rationale:** The band of 5% is too small and is insufficient to provide relief to genuine cases – particularly in light of the recent fall in real estate prices. **Recommendation:** The tolerance band be increased to 15% from the proposed 5%. Further, the same tolerance band should also be made applicable to valuation done by Departmental Valuation Officers
9	Dividend Distribution Tax	Clause 38 – Section 115-O		**Rationale:** 1) The liability of tax should not be cast on the company providing the loan as it is unjust burden on the company which has to shell out 30% of DDT out of its own pocket so the total outgo would be 130% (ie 100 loan and 30% DDT thereon). 2) Further, the provisions of section 2(22)(e) give rise to several interpretational issues, as to what type of loans/advances are covered under its ambit and this has been a matter of litigation before various courts. For eg. trade advances provided to concerns is not covered under section 2(22)(e).

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				3) Similarly, in case of advance or loan to a concern in which a shareholder holding not less than 10% of the voting power, is a member and he has a substantial interest i.e. entitled to not less than 20% income of the concern, then issue arises is that in whose hands the dividend is taxable i.e. in the hands of shareholder or the concern. 4) Proviso to 2(22)(e) allows set off in case of a subsequent dividend. Now, the new section does not allow such a set off. 5) It is to be noted that a company which would have inadvertently given a loan and fallen under section 2(22)(e) would become an assessee in default on account of non-payment of DDT u/s 115-O within 14 days and would be liable to interest as per section 115P @ 1% p.m. and also would be considered as assessee-in-default under section 115Q which would lead to applicability of penalty and prosecution provisions also. It would not be possible for a company providing loan to evaluate that it is liable to pay DDT at the stage when a loan is advanced. 6) In case of group concerns, deployment of temporary funds may at times be required on account of business exigencies. It may be difficult to avail temporary funds at short notices from an external borrower and also bear the interest cost. **Recommendation:** It is suggested that the said amendment should be scrapped as it is an unjust amendment. In the alternative, the effective rate of such tax should be capped at 15% at par with the rate provided in section 115-O.

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				Further, where eventually the transactions are reversed in say subsequent year/s, a mechanism needs to be put in place for the credit/refund of the DDT already paid earlier. Therefore, it is suggested to incorporate the view taken in para 10.3 of the circular no. 495 dated 22-9-1987 explaining the amendment in section 2(22)(e) and holding that the deemed dividend would be taxable in the hands of the concern.
10	PAN made mandatory for certain entities entering into specified financial transactions	Clause 42 – Section 139A	PAN to be made mandatory for non individual persons entering into specified financial transactions. This amendment is ambiguously drafted and it is not clear as to whether, in case of companies, all directors will need to obtain PAN.	**Rationale:** At present, almost all important transactions require the PAN to be quoted. Further, all companies and partnership firms are even otherwise required to file their returns of income and for which PAN would be mandatory. It is therefore not clear as to how the amendment will bring in more filers into the system. On the other hand, it will unnecessarily cause harassment to individuals connected with such entities. **Recommendation:** This amendment should be scrapped. **Rationale:** There is already considerable speculation and debate about the type of financial transactions that would be covered by the amendment. **Recommendation:** The list of financial transactions covered by this amendment should be notified on a priority basis as soon as the Finance Act is passed.
11	ICDS related amendments – Need to clarify that these apply	Clause 45 – Section 145A	The existing Section 145A is being retrospectively replaced by new Section 145A with effect from 1st April, 2017 with a view to	**Rationale:** 1. The basic principle of income-tax is to tax the **real income and commercial profit** of the assessee subject to certain specific allowances / disallowances. The accounts of the assessee are

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	only when ICDS are applicable		incorporating certain ICDS into the Statute itself.	maintained on the basis of the Accounting Standards prescribed under the Companies Act and / or issued by The Institute of Chartered Accountants of India [ICAI], a statutory body established under the Act of the Parliament to regulate the accounting profession. **Therefore, the profit disclosed in the books of account maintained by the assessee adopting such Accounting Standards reflects the true commercial profit earned by the assessee.** Generally, that should be accepted as income for the purpose of the Act, subject to certain necessary allowances and disallowances. 2. **ICDS is not adding any value and in fact, is bound to create uncertainty and deterrence in the conduct of business in India. It militates against the professed policy of the Government to simplify the taxation system.** While amendments in the law, guidelines and standards are made with the intent of reducing litigation, it is feared that these notified ICDS will not achieve the intended objectives. It is apparent that with a huge divergence in the accounting prescribed under Ind AS regime, differences with Accounting Standards, overwriting of the law established through judicial precedents and coinage of new terminologies, **there will be a substantial increase in unintended tax litigation**. **Again there will not be any significant revenue benefit in the long run by enforcing ICDS.** 3. It is **totally unjust, unfair, unrealistic and very onerous to impose another set of standards i.e. ICDS** on the assessees for the purpose of computation of total income. **These ICDS in fact change the above basic principles and affect the computation of total income of assessees.** Although it is stated that such ICDS are not meant for maintenance of books of account, if one peruses even the amended ICDS notified by the CBDT, it becomes clear that effectively such ICDS will have a direct bearing on the

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				maintenance of books of account. **As such, with these ICDS, effectively the assessee would be required to keep and maintain dual set of books of account to comply with the requirement of ICDS and /or will have to spend considerable amount of time, energy and man hours in preparing and reconciling income as per ICDS and the one computed as per books of accounts maintained as per the applicable Accounting Standards.** This becomes clearer with the amendment made in Form No. 3CD (part of Tax Audit Report) in this respect. 4. Accounting Standards are applicable to all corporate and non-corporate entities based on the classification of such non-corporate entities as provided by the ICAI; whereas ICDS is applicable to all taxpayers following mercantile method of accounting (i.e. to all tax payers other than those following the cash system of accounting). It has been stated in each ICDS that the ICDS would not apply for the purpose of maintenance of books of accounts. While theoretically this may be the position, the question arises as to whether it is practicable or even possible to compute the income under ICDS without maintaining a parallel set of books of account, given the substantial differences between AS being followed in the books of accounts and ICDS. Most taxpayers would end up at least preparing a parallel profit and loss account and balance sheet, to ensure that ICDS and its consequences have been properly taken care of while making the adjustments. It would be highly burdensome to maintain two separate books of accounts and it would be humanly impossible for all the accountants to understand the finer aspects of ICDS and AS.

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				There are bound to be practical problems in accounting and auditing of the same Further, the amended Form 3CD requires a tax auditor to certify the adjustments to be made to the profit and loss in accordance with the provisions of ICDS. Before certification, a tax auditor would invariably require such parallel profit and loss account and balance sheet to be prepared, to ensure that all adjustments required on account of ICDS have been considered. This will result in substantial work for most businesses and may even result in the requirement of parallel MIS, one for the purposes of regular accounts, and the other for the purposes of ICDS. 5. Compliance with ICDS is an additional requirement, which will increase the compliance burden and cost in the hands of the tax payers and would thus defeat the purpose of ICDS in terms of simplification of processes. **Recommendation:** ICDS should be scrapped. **In the alternative, the following issues and recommendations may be considered:** **Rationale:** The amendment is proposed to be made effective A.Y. 2017-18. Several taxpayers would have filed their tax returns for AY 2017-18 based on the order of the Delhi High Court in the case of Chamber of Tax Consultants. All such tax payers will now have to file revised returns based on the amendments proposed in the Finance Bill, 2018.

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				Recommendation: The amendments should be made effective prospectively with effect from A.Y. 2018-19 and not A.Y. 2017-18. **Rationale:** The ICDS are applicable to only certain categories of taxpayers. On the other hand, the amendments are worded in a manner that it creates doubt as to whether they are applicable to all categories of tax payers. **Recommendation:** The proposed amendments should be reworded to clearly bring out that these amendments are applicable only to those cases where ICDS is applicable. This will avoid confusion and ambiguity (e.g. small tax assesses not liable to tax audit).
12	Appeals to the Appellate Tribunal	Clause 50 – Section 253	Section 253(1) provides that any assessee aggrieved by any of the orders mentioned therein may appeal to the appellate tribunal. Section 253(1)(a) has been amended wef 1-4-2018 so as to make an order passed by a CIT(A) u/s 271J, also appealable to the appellate Tribunal.	**Recommendation:** Since section 271J providing for penalty by an AO/CIT(A) for furnishing incorrect information in reports or certificates, has been inserted by the Finance Act, 2017 wef from 1.4.2017, amendment in section 253(1)(a) should also be made applicable wef 1.4.2017.
13	Country by Country Reporting	Clause 53 - Section 286(4)	Amendment is made to Section 286(4) to provide that where parent entity is not obligated to file the CBCR report, the subsidiary in India is required to file such report in India.	**Rationale:** The foreign countries where financial year is other than the financial year followed in India and the parent entity does file CBCR report in the home country for the applicable financial year in the home country, it should be treated as sufficient compliance. **Recommendation:**

Sr. no.	Amendment/ announcement made	Relevant clause of the Finance Bill/Section of Income-tax Act, 1961	Provision and Issues	Rationale and Recommendations
				It should be clarified that in such cases provisions of Section 286(4) shall not be attracted. The difficulty will arise particularly in the first year of compliance as it may happen that a foreign parent company of an Indian subsidiary may be required to file CBCR report after 31st March 2018 for the Calendar Year 2017 or FY 2016-17. In such an event Indian subsidiary should be given more time to submit CBCR.
14	Reduction of corporate tax rate to 25% in certain cases	Schedule 1 – Part III	We welcome the move to lower the corporate tax rate from 30% to 25% in respect of a wide range of small domestic companies whose turnover for F.Y. 2016-17 did not exceed Rs. 250 crore. This is a welcome amendment.	**Rationale:** However, this move has placed non corporate entities such as partnership firms and LLPs at a distinct disadvantage as compared to companies. It is a known fact that in India, a large portion of the small and medium enterprises are non corporates. Many entities took advantage of the introduction of LLP Act and have either converted into LLPs or have set up new LLPs. **Recommendation:** We therefore suggest that the tax rates for partnership firms and LLPs satisfying the same conditions laid down for companies be also brought down from 30% to 25%. This will provide a level playing field to different types of legal entities in the same businesses. **Rationale:** Secondly, inadvertently, companies which are incorporated after 31st March, 2017 will not be entitled to the benefit of this concessional tax rate. Since the requirement of the turnover being less than Rs. 250 crore for F.Y. 2016-17 does not prohibit such an eligible company from continuing to pay tax in a later year even if its turnover crosses Rs. 250 crore, it is obvious that ultimately, the government intends to cover all companies at a later date for the reduced corporate tax rate of 25%. This was also the stated intention as per the speech made by the Finance Minister in July 2014 immediately after the present government was voted to power. **Recommendation:**

Sr. no.	Amendment/ announcement made	Relevant clause of the Finance Bill/Section of Income-tax Act, 1961	Provision and Issues	Rationale and Recommendations
				Companies incorporated after 31st March, 2017 should not be excluded from the scope of this amendment. The reduced rate of 25% should also be made applicable to all companies incorporated on or after 1st April, 2017.

In addition to the above suggestions in respect of the amendments proposed in the Finance Bill, 2018, with a view to removing certain anomalies, providing clarity and making the tax laws more equitable, we suggest the following fresh amendment:

Sr. No.	Section in which amendment is required	Issue involved	Recommendation
1	246A – appeal to CIT(A)	At present, an order passed u/s. 139(9) treating a return filed as defective is not appealable. This causes great hardship to several persons whose return is treated as defective even though there can be genuine reasons for the defects.	Such orders passed u/s. 139(9) should be made appealable by making necessary amendment in section 246A.