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Date: 24th July, 2018

To,
The Chairman
Central Board of Direct Taxes
Task Force on New Direct Tax Law
Department of Revenue
Ministry of Finance, Govt. of India
North Block,
New Delhi - 110001

Sir,

**Sub: Representation on Important issues/provisions in the Proposed New Direct Tax Law**

We are pleased to submit herewith our considered suggestions on important issues that may be addressed in the proposed new Direct Tax Law.

We have made suggestions on following lines:

1) Path breaking suggestions for making the law more taxpayer friendly by rewarding and encouraging compliances;
2) Suggestions for reducing litigations by providing clarity;
3) Suggestions for "Ease of Doing Business in India".

We hope that these suggestions will find your favour.

We would be glad to meet you in person and explain/discuss various points arising from this representation or otherwise, therefore we request you to grant an opportunity for the same.

Thanking you,

Yours truly,

For Bombay Chartered Accountants' Society

CA Sunil Gabhawalla
President

CA Mayur Nayak
Chairman
International Taxation Committee

CA Ameet Patel,
Chairman
Taxation Committee

**Representation to the Task Force for New Direct Tax Code**

| Sr. no. | Broad heading of topic for which suggestion is made | Relevant section of existing Income-tax Act, 1961 | Provision and Issues | Rationale and Recommendations |
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| 1 | Agricultural Income<br><br>(Audit of Income beyond a specified Threshold) | 10(1)<br>44AA<br>44AB | Agricultural income is completely exempt from tax. Also, such assessee's are not required to maintain books of accounts or get them audited. | Assessee who claims agricultural income beyond a threshold should be mandatorily required to maintain books of account and get them audited. Only that income which is reflected in such audited accounts be allowed for exemption. The balance will be income from other sources and should be taxed.<br><br>If the assessing officer does not accept the audited accounts, and there is a variation in the income there should be penal consequences. This will serve two purposes, the first being that agricultural income will be properly declared and some significant data can possibly be captured for other uses. |
| 2 | Tax Deduction at Source<br><br>(Reward the Deductor instead of punishing for services to the State) | 192 - 198 | Collection of taxes is the responsibility of the State. However, this is outsourced to the deductors. Over the last decade, the scope of the TDS provisions has been continuously expanded. Further for every default, the deductor is severely punished.<br><br>Further, on account of small defaults, thousands of deductors are facing long drawn out litigation / disputes with the income-tax department. This results in substantial wastage of time and efforts on the part of the deductors as well as the income-tax department. | There are two suggestions in this regard:<br><br>a) A threshold limit may be drawn up and only if a default exceeds that threshold should the deductor be pursued as per existing law. All petty defaults may be overlooked as the cost of administering the law in such cases would surely be higher than the benefit to the Revenue.<br><br>b) Passbook scheme should be introduced where an assessee can deposit an amount every year at any point of time and that balance should be used for any payments/ appropriations against his TDS liability. |
| 3 | Reduction of deeming fictions<br><br>(No DDT on deemed distribution) | 2(22)(e) | Deeming fictions in a taxing Statute should be significantly reduced. While the use of these provisions for plugging tax evasion or avoidance is appreciated, one should really weigh the cost benefit. | The payments in the form of deemed dividends u/s 2(22)(e) have now been made liable to dividend distribution tax. This will create innumerable hurdles with little corresponding benefit and therefore, this provision should be dropped. |
| 4 | Time limit for disposal of appeals/ applications by CIT(A) | | Tax litigations are being extended for long periods and cases are piling up at each appellate level. | Two suggestions are made in this regard:<br>a) To provide a monetary compensation by way of credit against a tax liability if the application/appeal is not disposed of within the given time |

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| | | | | frame and;<br>b) If the application/appeal is not disposed of beyond a particular time limit, it should be treated as having been allowed.<br><br>While this will undoubtedly cost the exchequer, it will also create significant accountability. |
| 5 | Backward carrying of losses | | The law today provides for a carry forward of losses. A businessman needs support in the years in which he suffers losses. In those years if he receives a portion of the taxes that he had borne in earlier years it would be of great help. | This can be achieved by carry backward of losses. |
| 6 | Providing social welfare to tax payers in recognition of taxes paid by an individual during his lifetime | | At present a tax payer is not rewarded for taxes paid by him during his active life. In his old age, when his income either stops or reduces considerably, he faces sever financial crunch. | India is not a welfare state. And therefore, a tax payer suffers a lot in his old age.<br><br>Ideally a tax payer should be rewarded or helped by reimbursement of medical expenses or pension out of the taxes paid by him during his active life. With the help of technology now it is feasible to record the amount of taxes paid by an individual. It will help as an incentive for the tax payer to contribute positively for the nation building during his active service life. |
| 7 | MAT Provisions – Ind-AS | 115JB | Ind AS have now been made mandatory for a large number of companies. In principle, such mandatory provisions should be made tax neutral. Unfortunately, at present, there are various complicated and ambiguous provisions in the Act as well as in the FAQs issued by the CBDT which have resulted in substantial MAT liability on account of some of the Ind AS related changes in the financial accounts of companies. | An appropriate provision in the Act should be enacted to protect companies from the unfair and unnecessary MAT liability arising on Ind AS implementation. |
| 8 | Tax Profit Vs. Book Profit | 115JB | MAT on exempt profit or profit not considered as income. | The issue being contentious requires legislative clarification.<br>. |
| 9 | Valuation of assets to | 55 | FA 2018 have amended the provisions of Sec. 55 wherein | Given the fact that mechanism for determination of FMV is separately |

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| | determine FMV as on 01.04.2001 | | FMV as on 01.04.1981 was replaced with 01.04.2001. Presently mechanism for determination of FMV as on 01.04.2001 is not provided in IT Act. | referred under various sections. Reference to particular valuation mechanism should be provided |
| 10 | Cash outflow limit by trust<br><br>(Amend Rule 6DD to cover disaster relief) | 10(23C)/11 | Cash payments above Rs. 10,000/- to single person/day shall result into disallowance of expenses u/s 40A(3). | Rule 6DD may be suitably amended to provide exceptions/exclusions in case of relief work during natural disaster. |
| 11 | Mandatory Tax Audit | 44AD | Mandatory tax audit and maintenance of books of accounts for smallest of derivative loss with other Income is causing hardship to several taxpayers. | Currently any amount of loss in derivative transactions demands a tax audit u/s 44AD which causes hardship for taxpayers which may not be the legislative intention. A minimum cap should be introduced considering the fact that such calculations are system driven which may not warrant audit and maintenance of books of account. |
| 12 | Passing of TDS credit u/s 199 | 199 & Rule 37BA | Rule 37BA(2) – Credit for whole or part of TDS shall be passed to other person and not to deductee based on declaration. | It is hereby recommended to amend Rule 37BA which provides mechanism for grant of TDS credit so as to overcome genuine hardship faced by taxpayer in following circumstances:<br><br>a) In case deductor has not reported PAN of deductee u/s 206AA(1) or 206AA(6) i.e. non furnishing of PAN or invalid PAN furnished by deductee<br><br>b) In case deductor has wrongly furnished TDS credit in name of deductee instead of such other person despite reporting of such information to deductor as per declaration.<br><br>Deductee shall report such information in prescribed form to concerned authority before due date of filing ROI u/s 139(1) to claim TDS credit accordingly. |
| 13 | Re-opening or revision of assessments | 147 & 263 | In terms of existing arrangement within Internal Audit Party & Revenue Audit | Since audit objections are based on available material on record and no new material is foreseen; it |

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| | | | Party, concerned authority takes corrective steps following audit objections by invoking provisions of sections 154 or 147 or 263. | tantamounts to "change of opinion" & hence various courts have already overruled such cases.<br><br>Accordingly we suggest that re-opening or revision of completed assessments should not take place as a tool to rectify internal audit objections as such instances only create uncertainty for taxpayer and increase disputes and litigation. |
| 14 | Making of fresh claim during assessment proceedings | 143(3)/148 | Presently AO does not entertain fresh claim by assessee during assessment proceedings except by way of revised return filed u/s 139(5) which was confirmed in case of Goetze (India) Ltd. vs. CIT (2006) 284 ITR 323 (SC). However assessee can claim such fresh claim before appellate authorities. | It is recommended that necessary amendments be made to the existing provisions to enable a taxpayer to make fresh claims at the assessment stage also. |
| 15 | No penalty for bonafide claim to reduce litigation | 273B | Initiation and consequent levy of penalty by AO for additions or disallowances made under scrutiny assessment to avoid audit objection has led to large scale wasteful litigation. | It is recommended that penalty u/s 273B should not be levied in following cases:<br><br>Any addition or disallowance made without any evidence or in a routine manner or on estimate basis and in cases where Assessing Officer takes a view which is different from bonafide view adopted by assessee on any issue involving interpretation of any provision of IT Act or any other law in force and which is supported by any judicial ruling. |
| 16 | Release of attached property on submission of bank guarantee | 281B | Option of submission of bank guarantee towards release of asset was introduced in 2016 but recovery before appellant order needs clarity. | It is recommended that prohibiting recovery from such Bank Guarantee till the time for filing an appeal against the assessment order has expired, or in case where such an appeal is filed, till the time that appeal is disposed, would be necessary assurance for the taxpayer for exercising this option, and would facilitate resolution of disputes related to attachment of property u/s 281B without impacting taxpayer's business plans. |
| 17 a. | Transfer Pricing | Sec 92 | Applicability of Transfer Pricing Provisions even where | i) There are several instances where there is shifting of |

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| | | | there is no shifting of profits outside India should be relooked at.<br><br>Further, there is frequent litigation in respect of transactions of Income arising to the Foreign Company, and adjustments proposed / made by TPOs, when payment is accepted at Arm's Length in hands of Payer Indian Co. | profits and yet transfer pricing provisions apply. For example transactions between Indian PE of Foreign Company and Indian Company, AE of same group, for purpose of PE of a Foreign Company helping Indian Company (AE), which is executing projects in India or helping to render services in India.<br><br>ii) Therefore, while dealing with TP provisions, base erosion principle should be kept in mind and if this test is not satisfied then notional adjustment under TP should not be made. Areas where there is widespread litigation are in respect of payment of Royalty/ FTS and interest transactions. |
| b. | Transfer Pricing- APA | Sec 92CC | Alternative mechanism to file review petition where APA is not concluded. | In order to reduce litigation, many MNCs prefer to file Advance Pricing Agreements (APA) under Section 92CC and get certainty for five years ahead and four years backward. In India, it has started well particularly in respect of unilateral APAs. However, it has not been very successful in case of bilateral APAs. The whole process takes between 24 months to 40 months.<br><br>There is an option given to the applicant to not accept the proposal given by APA authority and instead proceed with the normal litigation route. This considerably delays the whole process of resolution and certainty.<br><br>Where agreement is not reached with APA authorities, a mechanism should be provided by amendment in the Act, permitting the applicant to file an appeal before the appellate body (wherein one of them should be retired / sitting Tribunal member). This body may hear the applicant as well as APA authorities and pass an order. There should be time limit for mandatorily passing order within six months from filing of appeal. Such orders passed by the |

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| | | | | appellate body should be non-appealable. This will enable the applicant to avoid going through full assessment, TP, DRP, Litigation process. |
| c. | Transfer Pricing | Sec 92 | Intra Group Services – Safe Harbor rules | Lot of litigation is happening under TP for the intra group services / cost share agreements on account of insistence by TPOs to establish with more than reasonable documentation for establishing benefit test as well as provision of services. Even though, it may not be possible to suggest any standard rules and regulations for maintaining documentation, amendment could be made in TP provisions for recommending maintenance of documentation including certification of cost base and allocation basis as certified by Independent Accountant/Auditor of Parent Company. Insistence of documents for benefit analysis or for provision of services with such rules will help to reduce the litigation at various levels including Tribunal.<br><br>Safe Harbor Rules have provided certain documentation for low value services, cost base and allocation basis. These could be enlarged to cover intra group services and cost charges. |
| d. | Transfer Pricing | Section 92D r.w. Rule 10D(2) | Low threshold for maintenance of Benchmarking Study and other information/documentation | The aggregate limit of Rs. One Crore for maintenance of TP information and documentation must be increased to Rs. Five Crores with a view to give relief to small assessees. |
| e. | Transfer Pricing | Section 92CE | The provisions of Secondary Adjustment are very harsh.<br><br>The concept of secondary adjustment in Section 92CE was introduced w.e.f. AY 2018-19. This provision results into a violation of FEMA as it entails treating the transfer pricing adjustment amount as a loan to Associated Enterprises.<br><br>In practice, at times it is quite difficult for the Associated | It is therefore recommended to abolish such a provision. Even if, this provision is not abolished, the threshold limit be increased to a reasonable level say Rs. Ten Crores . |

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| | | | Enterprise to repatriate the excess money from the foreign company keeping in view the foreign exchange laws, accounting principles and corporate laws etc. prevailing in other country.<br><br>The threshold limit of Rs. One Crore is quite low as most of the time the TP adjustments made are above this figure. | |
| f. | Transfer Pricing | Rule 10CA | Bench-Marking Study Related provisions.<br><br>Under Rule 10CA, the TPO can insist on substituting the figures of current year in case the same were not available at time of preparing study report. This instills a lot of uncertainty. | TP adjustments should be done on the basis of the available reports as on the date of submission of transfer pricing report. In any case, assessee should not be penalized for difference in the benchmarking price based on the reports available post filing of transfer pricing report or secret comparables available with the TPO. |
| g. | Transfer Pricing | Rule 10TA to Rule 10THD | Safe Harbor Rules | In respect of "low value added services":<br>a) the definition should be the same as provided by OECD and UN; and<br>b) the prescribed rate should apply irrespective whether Indian party is receiving or rendering the services and not only where Indian party is receiving such services. |
| 18 a. | International Tax | | Taxation in cases of expatriates employees – inbound / outbound | In case where the services are rendered by the employee in a particular country (inbound as well as outbound cases) for more than 180 days, pertaining to such services, the income of the employee should be taxed only in that country.<br><br>**i. <u>Employees deputed abroad by Indian Companies</u>**<br><br>Controversy arises on several occasions particularly in respect of taxability of employees of Indian MNCs deputed for rendering services outside India, either on short term or long term basis. Many times, major part of the salary is paid/deposited by the |

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| | | | | Indian company/employer into the Indian bank account of the employee (mainly to discharge their obligations towards EMI, family expenses, PF, insurance, schooling expenses etc). Part of the salary and allowances are paid to such expats in the country where they are rendering services.<br><br>The tax department takes a view that since he is an employee of an Indian company, and he is receiving part of the salary in India, the salary will be taxable in India as per Section 5 and/or under Section 9(1)(ii) of the IT Act. Even though some of the treaties do clarify that if the employee is working for more than 180 days in other country he will be chargeable to tax only in that country.<br><br>**Suggestion for amendment:**<br><br>Suitable amendment have to be made in Section 5, Section 9 (1)(ii), 9 (1)(iii) and Section 192 etc. to clarify that in respect of employees of Indian companies, if they are working in a foreign country for more than 180 days in a financial year, salary will be deemed to accrue or arise in the country, wherever services are rendered, irrespective of where the salary is received. This is based on source principle and based on the principle that income accrues to the employee wherever the services are rendered.<br><br>This would considerably reduce the litigation in respect of taxation of inbound and outbound expats.<br><br>Presently, Section 9(1)(iii) in respect of Government employees, provides that salary of Government employees, taxable only in India, irrespective of wherever services are rendered. |
| | | | | ii. **Secondment / Deputation of** |

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| | | | | **Employees by Foreign Companies to India :**<br><br>It is a common practice for MNCs operating in India to depute their senior executives to ensure smooth functioning of their Indian subsidiaries or joint ventures in India. The expats are deputed and become employees of Indian subsidiaries or joint venture companies. Their salaries are partly paid in India and partly paid by their overseas parent company in the bank accounts of expats, (mainly for expats to discharge their obligations like EMI, social security, insurance, schooling expenses etc.). Tax is however paid by the expats in India on the entire salary irrespective of where salary is received. The Indian subsidiary reimburses the parent company towards part of the salary paid/ deposited for expats.<br><br>Controversy has arisen in respect of taxability of reimbursements/ payments made by Indian subsidiary to parent company towards amount paid/ deposited by them for expats. In many cases, view is taken by the Tax Department that, such reimbursement is chargeable to tax in India as FTS on the ground that the parent company is rendering services to Indian subsidiary / JV. In many cases Tax Department has taken a view that service PE gets created, on account of deputation of employees to India. There are judgements by AAR, HC and ITAT on various issues resulting in multiple taxation of the same income as salary in the hands of the employee and FTS / Business Income in the hands of the Foreign principal.<br><br>**Suggestion :**<br><br>With a view to reduce litigation and achieve certainty, suitable amendments need to be made in Section 9(1)(vii) and Section 195, |

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| | | | | that once the expats/employees of the foreign company are deputed/ seconded to Indian subsidiary, and if they are working as an employee of Indian company and salary earned by them is taxed in India, based on services are rendered in India, the foreign company should not be taxed on the amount of reimbursements given by Indian subsidiary (towards part of the salary paid to the employees on behalf of Indian subsidiary) as FTS on the ground that services are rendered by expats for and behalf of foreign company.<br><br>Many times even the Treaties do not envisage such situation and do not provide a solution to reduce the litigation. Therefore, if the amendment is made in the Act, it will avoid lot of litigation. |
| b. | | Sec 92F | PE Definition | Presently, Permanent Establishment has been defined in Section 92F by way of inclusive definition. Further, the PE definition is not uniform even in the DTAAs.<br><br>In view of the far reaching importance, PE should be clearly defined in the Act. |
| c. | **Presumptive Taxation for a PE in India** | | Profit Attribution to PE | i. **Offshore supply and services – PE in India :**<br><br>Consequent to the decision of Ishikawajima 288 ITR 408, it was felt that law is now well settled, and offshore supply of goods or rendering of services outside India (i.e. offshore services) by the foreign company to Indian companies, will not be chargeable to tax in India, unless the foreign company has a PE in India. Subsequently, amendments were made in Section 9(1)(vii) that the services rendered by foreign company to Indian companies, irrespective of the place of rendering service, whether in India or outside India, will be chargeable to tax in India, irrespective of the fact whether foreign company has PE in India or not. |

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| | | | | Many treaties have a provision that in respect of offshore supply of goods, where the title of goods and delivery is given outside of India, no income should be deemed to accrue or arise to foreign company in India, merely because payment is done by Indian company from India. As regards, rendering of offshores services, most of the treaties, provide that unless the foreign company has PE in India, payment for offshore services shall not be taxable in India.<br><br>**Controversy:**<br><br>Tax Department has started taking a view that after supply of goods and services from outside India, foreign company has also rendered onshore services, then it would be deemed to be installation PE/ fixed place PE and profit arising from the entire supply and services i.e. offshore and onshore, will be deemed to accrue to the PE in India. This view has been adopted more regularly after the decision of Madras High Court, in the case of Ansaldo, 310 ITR 237 without realizing that it was peculiar to the facts of that case only.<br><br>Even in respect of offshore services rendered by foreign companies (which does not have PE in India) to the Indian companies, are held to be chargeable to tax in India, based on the explanation to Section 9(1) inserted by Finance Act 2010 with retrospective effect (Explanation is made applicable to 9(1)(v), 9(1)(vi) and 9(1)(vii))<br><br>**Suggestions:**<br><br>Based on the principle of sourced based taxation, amendment should be made in Section 9(1) read with Section 195 to clarify that offshores supply and services, should not be taxed in India unless the foreign company has PE in India and said income is attributable to that PE. In case |

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| | | | | after completion of offshore supply and services, onshore services have been rendered by such foreign company, income that is attributable to the activities carried out by the PE should only be liable to tax. This will help to bring the provisions in the Act in line with the Treaty provisions.<br><br>Even though many Courts (L.G. Cables 237 CTR 438 Delhi(HC), Hyosung Corporation 314 ITR 343(AAR)), Tribunals have taken a view on those lines, still the Tax Department in many of the contracts of offshore and onshore supply create these controversies. Hence, clarity and certainty in the statute itself will avoid unwanted litigation.<br><br>Exceptions:<br>However, exceptions could be provided in respect of certain type of income which is deemed to accrue or arise in India on presumptive basis like in case of Royalties, profits arising to Shipping, Airline, certain type of projects in India etc.<br><br>**ii. Attribution of Profits:**<br><br>Foreign companies operating in India, expect certainty about the rate of tax and the income being attributed to the PE in India. Higher attribution of profit to PE or any litigation, ultimately increases cost of the projects and cost to be borne by the Indian entity availing those services. Therefore, for improving the investment climate and ease of doing business in India, it is important to bring about certainty and clarity in determination of PE and attribution of income to such PE.<br><br>As per the provision of Section 9(1)(i), all income accruing or arising through or from business connection in India, or through or from any property in India or from any asset or source of Income in India, or through the transfer of a |

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| | | | | capital asset situated in India is taxable in India. It is also clarified in the Explanation that in case of a business, where all operations are not carried out in India, income of the business shall be deemed to accrue or arise in India, only to the extent as is reasonably attributable to operations carried out in India.<br><br>Most of the treaties also contain similar provisions for deeming the income that could accrue or arise in India.<br><br>**Controversy:**<br><br>Lot of litigation arises on account of attribution of profit/ Income to the PE of a foreign company or on account of business connection in India.<br><br>**Suggestions:**<br><br>Appropriate amendment in Section 9(1)(i) read with Section 195 and some clarity need to be brought in for determining or attributing profits to a PE in India or on account of business connection.<br><br>Amendment could be considered on the basis of existing provisions contained in Section 44DA (special provisions for computing income by way of royalty etc. in case of Non-resident having PE in India) or 44BBB (special provisions for competing profits and gains of foreign company engaged in business of civil construction in Turnkey power projects).<br><br>It is true that there cannot be universal rate applied to all assessees for determining profit attributed to a PE of a foreign company. However, it should be industry, sector or activity wise. These rates may be prescribed in Rules, based on mandate given by the Act, (as determined by the committee consisting of industry representatives, IRS and professionals), and may be reviewed periodically. |

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| | | | | The taxation principles should be on the basis of source, either on gross basis or on the basis that profit is worked out similar that to of Indian company.<br><br>**iii. EPC Projects:**<br><br>In case of EPC projects executed by PE, actual profitability from the project shall be considered on the basis of overall profitability earned by the foreign company and by attributing proportionately to Indian PE. In these cases also, presumptive basis of taxation could be recommended unless proved by PE to be lower than that with documentary evidence. |
| d. | | Sec 9 (1)(i) | E-Commerce Transaction vis-à-vis Royalty | In order to cover the E-Commerce transactions, series of amendments have been made by inserting a chapter for levy of tax called Equalization Levy. In addition, further amendments are made by Finance Act 2018, by inserting Explanation 2A to Section 9(1)(i), under the category of Significant Economic Presence (SEP). The definition of SEP appears to be extremely wide and vague and includes instances which hitherto did not result in Business Connection. This will lead to multifold increase in litigation and add to already complex taxation of E-Commerce transactions. Therefore, there is a urgent need to re-visit these new amendments including those pertaining to Equalization Levy to ensure that basis of taxation as well as method of tax credit are on a rational basis and similar to those adopted by Developing Countries. |
| e. | | | Equalization Levy | i. Before introduction of Equalization Levy, from the budget speech, it appeared that this levy is a direct tax. However, the same is introduced as a separate Chapter in Finance Act 2016. Hence there is a confusion whether this levy is a direct tax and |

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| | | | | whether credit can be claimed in the home country. An amendment needs to be made to treat the Equalization Levy as tax and to provide enabling provisions allowing credit in the country of residence. The rate of 6% of the gross revenue is considerably high as compared to the earlier basis of taxation deeming 10% of the revenue as deemed income. Therefore, as against the earlier rate of 4% (40% of 10%), on which credit was allowed in the host country 6% without the tax credit is considerably higher. The effect of this levy, without tax credit, only increases the tax of the Indian company which is making payment to the foreign companies, as foreign company generally, make tax protected contracts and pass on the burden to the Indian companies/customers.<br><br>ii. The levy is applicable to payments made by a person resident in India, irrespective of whether the payments are made for carrying business/profession in India or outside India. The applicability of levy could be viewed as "extra-territorial" and could lead to protracted litigation.<br><br>iii. The levy should not be made applicable to payments in respect of services utilized for carrying on the business or profession outside India (Similar to Section 9(1)(vii)) |
| f. | | | Corporate Tax | **<u>Group taxation Regime:</u>**<br><br>i. In the current Indian tax regime, losses of a business carried on by subsidiaries / group entities are not allowed to be offset against the profits of business carried on by the holding entity or by other subsidiaries / joint venture entities in the group. This leads to inefficiency and immobility in the conduct of business operations, resulting in complex business structures. In several situations (e.g. infrastructure sector or financial services sector), |

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| | | | | commercial imperatives (e.g. requirement of a separate Special Purpose Vehicle for bidding for infrastructure projects) or regulatory requirements (e.g. Securities and Exchange Board of India regulations requiring a separate entity for an Asset Management Company), necessitate set up of separate companies; however, it is more rational to look at this as an integrated operation, which is the underlying rationale for the suggested Group Taxation regime.<br><br>ii. Based on the Group Taxation regimes prevailing in various countries the following concepts are suggested to be introduced in Indian tax legislation:<br><br>**Concept – Group Taxation Relief Mechanism:**<br><br>Allow transfer of losses incurred by eligible entities under the group to the profit making entities within the group for set-off against such profits<br><br>**Entities to be considered for group taxation (Eligible entities under the (Group) :**<br>All domestic wholly owned subsidiaries may be covered<br><br>**Anti-abuse provisions**<br>Restriction on divestment of entities aggregated under group taxation for certain period of time say 3 years post set-off of losses/income<br><br>**MAT provisions**<br>Non-applicability of MAT to profit making entities aggregated under group taxation |
| g. | | | Power to DRP to settle the issues and also adjudicate on Penalty matters | Amendment should be made to provide that DRP shall have power to settle issues and direct that penalty and prosecution proceedings shall not be initiated on payment of tax liability (subject to what is mentioned below). |
| h. | | Sec 6(3) | Place of Effective | It is suggested to prescribe |

**Representation to the Task Force for New Direct Tax Code**

| Sr. no. | Broad heading of topic for which suggestion is made | Relevant section of existing Income-tax Act, 1961 | Provision and Issues | Rationale and Recommendations |
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| | | | Management | appropriate Rule pertaining to various consequences of companies which are held to be resident of India under the POEM test providing for methodology of set off of earlier year's losses, WDV of assets, TDS provisions etc. |
| i | | Section 9 | Provisions regarding indirect transfer of capital asset situated in India<br><br>Capital gain on Rupee Denominated Bonds (RDBs) ('Masala Bonds') | A listed company should not be considered as a shell or conduit company as recommended by the Shome Committee. Therefore, gain arising on transfer of shares in a foreign company (listed and actively traded on a stock exchange outside India) having substantial assets located in India should be exempted.<br>It suggested to bring about clarity on taxability of capital gains on transfer of Rupee Denominated Bonds through Stock Exchanges outside India since its situs is in India. |
| j | | Section 40(a)(i)) | Disallowance of payments to non-resident – | Payment made to a non-resident without deducting tax at source is fully disallowed. In order to remove discrimination, it is suggested that disallowance u/s.40(a)(i) should restricted to 30 percent of the amount of expenditure as per section 40(a)(ia) of the Act as in case of Resident. |
| k | | Sec 95 | GAAR | The 'Multilateral Instrument' (MLI) provides for denial of treaty benefits in cases of anti-abuse transactions entered by tax payers. Therefore, where transaction is subject to MLI provision, GAAR provision should not be made applicable to those transactions. |
| l. | | Sec 115JB | Minimum Alternative Tax (MAT) | It is suggested that foreign companies having permanent establishment in India and covered under the presumptive tax regime should be kept outside the provisions of MAT. |
| m. | | | Clarity is required in respect of certain other matters:<br><br>i) Sale of shrink wrapped | These matters are interpreted differently by different people. There is unnecessary litigation |

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| | | | software;<br>ii) Payment for standard facility with no human intervention<br>iii) Treaty benefit to airlines on code sharing basis. | around the matters. Therefore, clarity should be brought into the Statute by having clearly laid down provisions dealing with each such item. |
| | | | Rule 26 | It has been provided under the Act that SBI TT Buying rate must be used for conversion of foreign exchange into an INR. Using SBI rates involves extra cost / additional outlay and time as same is not publicly available.<br><br>It is suggested that the requirement of SBI TT buying rates be substituted with the RBI exchange rate which is freely available on RBI website. |
| n. | Functioning of Authority on Advance Rulings (AAR) | Sec 245N | | The intent with which AAR was set-up i.e. to provide upfront certainty to the taxpayers has not been achieved on account of disrupted functioning of AAR as well as delay in disposing of applications (matters are pending for 4 to 6 years as against recommended time-limit for 6 months). Accordingly, in order to dispose of the already pending matters and also to make it effective and available to all taxpayers for determining tax liability upfront, it is suggested that following changes may be made:<br><br>i) The composition of AAR needs to be changed as under:<br><br>Chairman – Retired/Sitting Supreme Court/ High Court Judge;<br><br>Vice Chairman – Retired President of ITAT or retired Vice President of ITAT or retired members of ITAT as recommended by President;<br><br>Members – CCIT having experience of at least 2 years in International Tax or Senior Officer of legal department having 2 years' experience in direct tax including International tax. |

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| | | | | Members should have a tenure of minimum 3 years. Also there should not be any time gap between date of retirement and new appointments of members and chairman.<br><br>ii) The transaction limits (of minimum Rs.100 Crores) and fees for approaching AAR (ie. Rs. 2 lakh – 10 lakh) 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 (availability of Advance ruling before transaction is entered into) which will help in enhancing the Ease of Doing Business.<br><br>iii) Admission process can be dispensed with and cases should be heard as in ITAT to expedite disposals – only technical conditions can be verified based on which application to be admitted or rejected. Other objections of Revenue can be heard at the time of final hearing. This will speed up the process and time limit of 6 months for pronouncing ruling can be adhered to.<br><br>iv) It is suggested that the rulings of the AAR be made appealable directly to the Supreme Court.<br><br>v) The recommendatory time limit of 6 months should be made mandatory so that the real purpose of providing certainty to taxpayers is achieved. |