PRE-BUDGET MEMORANDUM 2015

Direct Taxes

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

New Delhi

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1.1 The Council of the Institute of Chartered Accountants of India considers it a privilege to submit this Pre-Budget Memorandum - 2015 on Direct Taxes to the Government. The memorandum contains suggestions for the consideration of the Government while formulating the tax proposals for the year 2015-16.

1.2 The suggestions have been broadly categorized under the following heads:

Part I : Suggestions for improving Tax Administration and Compliance

Part II : Suggestions relating to the provisions of Income-tax Act, 1961

Part III : Suggestions relating to the provisions of Wealth-tax Act, 1956

1.3 The suggestions are given Chapter wise and are intended to serve the following purpose:

I. Improve tax collection.

II. Reduce/minimize litigations

III. Rationalization of the provisions of direct tax laws.

IV. Removal of administrative and procedural difficulties relating to Direct Taxes

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PART I

SUGGESTIONS FOR IMPROVING TAX ADMINISTRATION AND COMPLIANCE

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
1.	***Definition of the term "accountant" in the Direct Taxes Code, 2013***	The Institute of Chartered Accountants of India (ICAI) is a statutory body established by the Chartered Accountants Act, 1949 for the regulation of the profession of Chartered Accountants in India exclusively formed to regulate in the matter of accounts and audit and its professionals. The ICAI has achieved recognition as the premier accounting body in India and today it is the second largest accounting body in the world. However, the proposed definition of "Accountant" under clause 320(2) of the Direct Taxes Code, 2013 which includes the "Cost Accountants" and "Company Secretaries" has been a cause of major concern to the entire profession. Before the Code enacts into a Bill and then law of the land, we would like to place on record our concern not only for the profession but for the country as a whole since issuance of audit certificates by persons who have not been authorized to do so by the Acts of Parliament. With regard to the definition of the term "Accountant" in the Direct Taxes Code Bill, 2010, the Standing Committee had made the following observations and had suggested widening of the definition of the term	***Difference in scope of service of CA, CS and CWA*** ***a) Section 2(2) of the Chartered Accountants Act, 1949 permits a chartered Accountant to conduct a FINANCIAL AUDIT or issue certificates BASED ON FINANCIALS of an assessee.*** ***b) Section 2(2) of the Cost and Works Accountant Act, 1959 restricts the domain of services of cost accountant to services relating to COSTING OR AUDITING OF COST ACCOUNTING and related statements only. A Cost Accountant is in no case eligible to conduct a financial audit. The argument that such activities can be included in the residuary clause also will not hold good since residuary clause cannot go beyond the main function like a doctor cannot be called to do the job of an advocate.*** ***b) The Company Secretaries Act, 1980 restricts the domain of services of Company Secretary to SECRETARIAL SERVICES RELATING TO COMPANIES ONLY. A Company Secretary is in no case eligible to conduct a financial audit or issue certificates based on accounts of a company or any other assessee. In fact the Income-tax Act covers a wide range of assessees other than***

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		"Accountant" on the request made by ICSI and ICWAI (Now ICAI): "*17.9 The Committee observed that the Ministry's reasoning for non-inclusion of related professionals in the definition of accountant is a very strict construction of the term. In the view of the Committee, the suggested amendment may provide the Small and Medium Enterprises (SMEs) a wider and cost effective scope for selection of professionals and will be an important initiative towards simplified tax compliance regime. The Ministry may therefore re-consider the suggestion to widen the scope of the definition of "accountant"."* **Observations of the Ministry of Finance** Although, the Institute of Cost Accountants and Institute of Company Secretaries have suggested inclusion of terms "Cost Accountant" and "Company Secretary" in the definition of "accountant", the Ministry of Finance had not accepted their suggestion on the ground that "*an accountant for the purposes of tax matters is required to deal with all financial matters and audit all financial ledgers, books, records and statements of a company or firm etc whereas a cost accountant deals primarily with estimates of cost for projects and monitoring the project to ensure that these are within the*	***companies like individuals, HUF, firms, Co-operative societies and so on.*** ***There is no doubt that ICAI is a premier body formed by MCA only to train chartered accountants to gain expertise in accounting and auditing. There is much more which can be elaborated like difference in the focus of the syllabi on the basis of which expertise is tested, effective steps taken by ICAI to ensure the quality of audit, guidance provided by ICAI in the field of auditing and accounting and the like. However, it is felt that the very fact that the mother Act itself does not allow the Cost Accountants and Company Secretary to conduct audit is good enough ground to convince one that the definition of "Accountant" does not require any change.***

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		budget. Therefore, a cost accountant may not have the expertise to deal with all the financial statements and matters. *Further, the question here is not of giving privilege to any particular profession rather the most suited profession for dealing with the matters relating to direct taxes has to be assigned the work. Accordingly, the suggestion is not acceptable.* *Under clause 304(3) (F) of the DTC, the Board may prescribe any person with specified educational qualification to act as an authorized representative. The same procedure is followed under the current Act. Accordingly, this will be considered at the time of framing of subordinate legislation."* As per the Report of the Standing Committee on Finance on Direct Taxes Code Bill, 2010 the Ministry of Finance had protested this change. ICAI, by way of a letter dated 16-05-2012 had appreciated the stand taken by the Ministry of Finance in this regard. Since the provisions of the proposed Direct Taxes Code are not in alignment with the view of the Ministry of Finance, it is difficult to understand the reason of change of opinion of the Ministry of Finance. **Recognization of all three professionals by the Companies Act, 2013** Audit of Financial Accounts is the	

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		exclusive domain of chartered accountants is a well known fact and is even recognized by the Companies Act, 2013 (as also the erstwhile Act of 1956). Section 141(1) clearly provides that a person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant. While considering the domains of other two professionals, section 143(14) of the said Act also provides that the provisions of section 143 shall mutatis mutandis apply to: (a) the cost accountant in practice conducting cost audit under section 148; or (b) the company secretary in practice conducting secretarial audit under section 204. It may be noted that the Ministry of Corporate affairs is very clear about the domains of all the three professionals and has, thus, assigned the right task to the right professional who are supposed to carry out the assigned task in a professional manner. ***Implications of Conduct of audit by non-chartered accountants*** Conducting of tax audit by non-chartered accountants having limited knowledge of the principles of accounting, auditing and tax procedures thereof would result into complexities not only for the assessees as also for the Government including but not	

<table>
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<tr><td></td><td></td><td>limited to inaccurate computation of income, leading to leakage of revenue.</td><td></td></tr>
<tr><td>2.</td><td>Rates of Taxation</td><td>With regard to rates of taxation for individuals and HUFs, the Parliamentary Standing Committee on Direct Taxes Code had observed the following:

"When the present Income Tax Act was enacted way back in 1961, the per capita income of this country was extremely low. During the course of five decades of the working of the Income Tax Act, the national per capita income has increased multifold, widening the scope for taxing various incomes. At the same time, the absolute number of poor has also increased manifold, warranting much larger government outlays. The aspirations of the people for better living standards and their expectation from government to deliver the same has also simultaneously increased. It is therefore, necessary that these challenges in a growing economy and a developing society are kept in mind, while formulating a new Direct Tax Law.

84. A Direct Tax by definition is a levy on the incomes, profits and wealth earned and generated by individuals and entities. Thus, a direct tax by its very nature and scope cannot be imposed on everybody. It has necessarily to be a focussed levy which should reflect and tap the rising incomes and prosperity in a growing</td><td>In line with the recommendations of the Standing Committee on Finance on DTC and for the reasons mentioned therein, the following tax slabs are suggested:

<table><tr><th>Slab (lakhs)</th><th>Tax rate</th></tr><tr><td>0-3</td><td>Nil</td></tr><tr><td>3-10</td><td>10%</td></tr><tr><td>10-20</td><td>20%</td></tr><tr><td>beyond 20</td><td>30%</td></tr></table></td></tr>
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		economy. The tax rates and structure should therefore be tailored in a way that will ensure sufficient buoyancy and dynamism. As the economy expands and diversifies, the tax policies cannot remain caught in a time-warp. Ways and means of augmenting revenue would have to be found not merely by broadening the base but also by deepening the trunk to tap both potential as well as concealed incomes and wealth. In this regard, there are three distinct categories of income, which require to be tapped or brought to book, namely (a) untaxed/non-taxed income; (b) potential income; (c) concealed income. *85. On the whole, the Committee would expect the tax policy and procedures to be fair, just and equitous, bringing fiscal stability at least over the medium-term, obviating the need to make changes in rates structure etc. during every Budget. Fiscal stability together with certainty will no doubt go a long way in sustaining economic growth and development. Needless to say, governance standards would, in the final count, determine the efficacy and the credibility tax policies carry with taxpayers.* *86. The Committee find from the information made available that tax collected in the income slab of 0-10 lakh is Rs. 21,094 crore and the total number of taxpayers is about 2.76 crore;*	

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		while the corresponding figures for the income slab of 10-20 lakh is Rs. 10,185 crore with only 3.35 lakh taxpayers; the same for the more than 20 lakh income slab is Rs. 53,170 crore tax collected with a mere 1.85 lakh taxpayers. The Committee further find that in the income slab of 0-2 lakh, the number of taxpayers is around 2.02 crore, which decreases to 56.73 lakh in the next income slab of 2-4 lakh. With regard to the percentage of taxpayers in different income slabs, it is 89% (0-5 lakh), 5.5% (5-10 lakh), 4.3% (10-20 lakh) and 1.3% (above 20 lakh). On the corporate tax side, the tax collected in the slab of 0 to 100 crore is Rs. 44,016 crore, Rs. 23,421 crore in 100-500 crore slab; and Rs. 54,558 crore in the above 500 crore slab. The extent of revenue foregone for the above slabs has been found to be Rs. 23,200 crore, Rs. 11,779 crore and Rs. 27,895 crore respectively. The figures mentioned above only seek to confirm the view that the tax structure and the prevailing tax regime is regressive – both for individual as well as corporate tax payers. The Committee desire that the character of the tax regime should change and it should be made more progressive. This would entail greater relief for small taxpayers – both individuals and corporate and moderately higher rates for taxpayers in the higher bracket.	

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		87. The Committee find it astonishing that almost 90% comprise of individual taxpayers in the 0-5 lakh income slab without commensurate tax yield; which translates into nearly 3 crore assesees. In a belated recognition of this paradox, the Department has exempted taxpayers in the lower income slab (0-5 lakh) from filing tax returns, thereby reducing the Department"s processing burden. The Committee find it absurd that the Department should diffuse their energies and spread their resources thin over handling such a large number of individuals with low income potential. The argument that more taxpayers have to be brought within the tax net for widening the tax base can hold water only to the extent that this approach brings in more taxpayers and tax revenue from the higher income brackets, rather than simply adding to the numbers in the lower segments. *88. Keeping in view the inflationary trends in the economy and the imperative to leave more disposable incomes in the hands of individual tax payers, particularly those in the lower income bracket, the Committee would recommend that the tax slab attracting „nil" rate, that is, full exemption from tax on income should be raised to three lakhs from the proposed two lakhs. Higher exemption limit may be considered for women*	

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<tr><td></td><td></td><td>and senior citizens. The age for senior citizens should be relaxed from 65 years to 60 years. As reasoned earlier, higher exemption limit would go a long way in minimising the compliance and transaction costs of the Income Tax Department, which can now focus their attention and re-orient their resources on the higher income groups, untaxed or concealed incomes, and categories and sectors that are avoidance or evasion prone. The revenue gap, if any, could be easily bridged by way of stringent measures to curb and bring to book unaccounted money and through realisation of huge tax arrears and by way of savings from the proposed transition to the investment-linked incentive / exemption regime.

89. Thus, in the light of reasons cited above and in pursuance of the well-recognised and widely accepted rationale of moderate tax rates inducing better tax compliance and with a view to giving some relief to the small tax payers, the Committee would recommend the following revised tax slabs :
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<tr><td>3.</td><td>Introduction of a citizen tax</td><td>As per the Union Finance Budget 2013, India is incurring on an average not less than Rs 3000</td><td>As a first step, any citizen of the age of 25 years or more and up to the age of 70 years</td></tr>
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		per citizen per annum towards its internal and external security (Defence and Police). It is the responsibility of every citizen to contribute for the same.	***shall pay Rs.1500 per annum as a citizen tax. The same will be allowed as a deduction from their income tax liability. As on date, nearly 40 crore citizens who are in the said age group are not assessee under the Income-tax act, 1961. The government may collect Rs 60,000 crores as a contribution by every citizen to this country.***
4.	***Foremost requirement - Recognize the "Taxpayer"***	The revenue of the Government of India is sourced through taxation, be it direct taxes/indirect taxes at central / state level. Even though the "taxpayer" is the only source of revenue, he is not respected by the Department. In fact, he is harassed and looked upon with suspicion. The shift of the Department from manual to electronic and formation of CPC, Bengluru and CPC(TDS) is remarkable, but the taxpayers are still facing issues and feel harassed as they are unable to find solution to system generated issues. Taxpayers who share a part of their income with the government as a partner in nation building are not getting their due respect. Today the taxpayer wants to comply with legal requirements and wants a hassle free life. However, still they are viewed as tax evaders. In all private organizations, the client who is the source of income is highly valued. In fact priority services are provided to	***The taxpayers should be given due respect and be treated as a client. In fact there should be a system where the taxpayer paying tax, beyond a certain limit, is provided priority services. Like the taxpayer contributing tax more than Rs 25 Lakhs tax may be issued a Gold card, like wise taxpayers contributing more than Rs 1 crore tax may be issued a Platinum card. These cards may have certain services attached to them like home service for preparation or renewal of AADHAR card / / driving license/passport etc and the like. Alternatively, some monetary benefits say 10% of tax paid in life time is refunded when such high taxpayer attains 70 years of age. There are many examples of famous film or business personalities paying high taxes in their youth and suffering badly in their old age.***

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		members who add on more to the income of the organization. The government of India should treat the "taxpayer" as its client since he is the only source of revenue.	***For other taxpayers, services like online grievance portal, instant posting of all related orders in the account of the assessee, proper sitting arrangements in the Income tax offices and the like be provided. This attitude towards taxpayers, if adopted, would undoubtedly improve tax compliance thereby increasing the tax base.***
5.	***Need for educating tax payers in the right manner***	Till date all government advertisements relating to education of tax payers is provided in the form of either through stick approach like making them realize of penalties and prosecution under the Income-tax Act, 1961 or though moral/emotional pressure by way of benefit to society/country as a result of honest payment of taxes say by mentioning them as "partner in nation building". It is felt that such type of advertisements have not produced the desired results. There appears to be a need to change the way of educating the tax payers. The focus needs to be shifted to the honest tax payers specifically. The tax payer needs to be treated like a customer for the Income tax department as suggested in recent Tax Administration Reform Commission report by Mr. Shome. The new age tax payers as well as older assessees need to be told the	***There is a need for educating tax payers about the benefits that will directly accrue to them if taxes are paid honestly. Some of the suggestions in this respect are as follows:*** ***a) Honest payment of taxes will lead to a better credit rating for the assessees which will help them in getting various loans at much cheaper rates and with relative ease.*** ***Such loans provided by financial institutions in the organized sector will impact their personal as well as professional life. Their business will grow if they are able to get working capital loans as well as loans for purchasing specific assets. Similarly they may get housing loans and have better residential facilities. All this would be***

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		benefits of paying the taxes honestly, the impact it will have on them.	***possible only if they declare their true income in Income Tax Returns and pay taxes thereon. Every loan provider looks at the ITR first to gauge the paying capacity of the assessee.*** ***b) Cash and other incentives may be provided for compliances related to Income taxes. Eg 1% or any specified amount may be provided as a cash incentive to Tax deductors as well tax collectors in case of 100% accuracy in timely depositing of taxes and filing of TDS/TCS returns thereof.***
6.	***Targets for collection of taxes - Not essential***	India adopts a progressive system of taxation where the tax rate depends on the level of income earned during a financial year. Taxes paid by the taxpayers are utilized for the betterment of the nation as a whole. Since a majority portion of direct taxes is paid to the credit of the Government through TDS and advance tax, the possibility of evasion of tax gets meager in the private sector. Also, today the assessee wants to voluntarily comply with the existing laws to avoid any hassles. In such a scenario, it is difficult to understand as to why targets are set for Assessing Officers for collection of tax. The Government is not a profit	***Since a majority portion of direct taxes is paid to the credit of the Government through TDS and advance tax, it is suggested that no targets should be set by the Department for collection of taxes. In fact, internal mechanism is to be developed to ensure adherence of the timelines mentioned in the Citizens charter of the Department with regard to performance of services and adherence to the timelines should be made as a part of performance appraisal of the concerned officer.***

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		making organization. It belongs to the people of India, works for the people and is formed by the people of India. In order to achieve the yearly targets, all means, fair and unfair, are being adopted. There have been instances which have been reported to us as to how, in order to complete targets the genuine assesses are being harassed. This creates an unhealthy environment. One cannot enforce on collection of taxes when there is no income and then the taxpayer has to go round and round to get a refund of the extra taxes paid by him.	
7.	**Mandatory filing of return of income by Non-residents owning a property or asset in India**	All Income tax retuns contain a Schedule FA where the resident assessee has to provide details of any asset located outside India (including financial asset) or signing authority in any bank account located outside India. However, similar provision for disclosing details of assets located in India is missing for Non-residents. The Non-residents having one or more properties or asset in India should be required to file return of income with regard to income received or accrued or arise or deemed to accrue or arise in India. Even if the return filed is of nil income, the Department will have the details/ statistics of all such properties held by non-residents in India which may be useful for taking informed	***Filing of income tax return should be made mandatory for all Non-residents owning a property or asset in India.***

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		decisions with regard to non-residents as a whole.	
8.	**Verification of all income-tax returns**	There are classes of persons who are filing income tax returns but are not declaring their income properly. Either the income is suppressed or various deductions are being claimed which are not legally permissible. With the increase in the work of the Department it is not practicable to scrutinize each and every return. Taking into consideration this aspect the person filing the return takes a calculated risk. Further, basic deductions provided by the Act like section 80C (Rs.1, 50,000), section 80D (15,000/20,000), section 24(b)(Rs.2,00,000) being claimed by the individuals and HUFs, in large numbers, have huge revenue impact. To check on the admissibility of the claim for deduction, no proof of investment is called for by the assessee. Today as per e-filing website there are **2.79 crore** assessees who have filed return for ITR-1,2,3,4 and 4S online for the AY 2014-15 and are thus expected to have an income of Rs.5,00,000 or more. Considering the slab rate of **10%**, the minimum revenue impact is 3,70,000*10.3%*2.79 crore is approximately Rs106327 **crores**. In case the applicable rate of tax is **20.6%,** the revenue impact is approx. **212654 crores**. In case the applicable rate of tax is	***Since non verification of admissibility of basic deductions provided in sections 80C, 80D and 24(b) have huge revenue impact, it is imperative to have a certification /verifications of all claims of deductions under section 80C, 80D, 24(b) and the like. In this verification, not only the arithmetical accuracy but the admissibility of the claim regarding the expenditure incurred, income earned or investment made on the basis of the evidence collected from various sources will also be verified. Since this work is voluminous, the same will also be required to be out-sourced preferably to the professionals understanding the law better and who are in a position to identify the grey areas.*** ***(SUGGESTION TO IMPROVE TAX COLLECTION)***

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		30.9%, the maximum revenue impact is Rs. 318981 crores. To address this, it is important that all the returns filed are thoroughly checked and cross-verified with the information collected through AIR and other sources by the Department. This process is entirely different from the scrutiny process. In this verification, not only the arithmetical accuracy but the admissibility of the claim regarding the expenditure incurred, income earned or investment made on the basis of the evidence collected from various sources will also be verified. Since this work is voluminous, the same will also be required to be out-sourced preferably to the professionals understanding the law better and who are in a position to identify the grey areas. Although the chartered accountants, through whom approx 85% of the returns are filed, ensure the correctness of the claim, the law does not recognizes the same. Thus, the chartered accountant is questioned by the assessee, when documents are asked for. In the interest of the revenue, it is imperative to have a certification of claims of deductions under section 80C, 80D, 24(b) and the like. This process once started will ensure better voluntary compliance as every taxpayer filing the return would be aware	

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		that the return being filed would be subject to a verification process and he cannot afford to take the liberty of making adjustments which are legally impermissible.	
9.	**TCS on luxury goods**	Due to easy consumer loans available in the market the purchasing power of assessees have increased manifold. The generation today is buying luxury items like LED TVs, Spilt ACs etc. Apart from the one's which are financed, there are transactions / purchases made in cash which are not traceable.	***In order to bring unaccounted money also in the main stream, it is suggested TCS be collected @1% on luxury goods purchased in cash (not purchased through finance scheme) in excess of Rs.30,000. Credit of the same can however, be claimed in the return of income.***
10.	**TCS @ 1% on sale of all motor vehicles**	India was the sixth largest motor vehicle/car manufacturer in the world in 2012. The sales of motor vehicles have increased manifold times since 2009. In fact the domestic motor vehicle sale that has been recorded in the year 2013 is 18.10 million units which comprise of: *Passenger Vehicles:* 1.81 million units, *Commercial Vehicles*: 0.69 m, *Two-wheelers:* 14.36 m, *Three-wheelers:* 0.50 m It may be noticed that the number of motor vehicle cars owned are generally not commensurate with the income of the person that is offered to tax. Further, possibility of use of black money to purchase high value cars also cannot be ruled out.	***In order to prevent evasion of taxes, Tax @1% of ex-showroom price should be allowed to be collected by the seller of high value cars, say, cars having value above Rs. 10 Lakhs, from the ultimate consumer. The consumer may however, be allowed to take credit of tax so collected in his return of income after furnishing details of source of income in the relevant ITR form. The procedure followed in respect of section 206C(ID) i.e. TCS on jewellery and bullion may be adopted.*** ***(SUGGESTIONS TO INCREASE THE TAX BASE)***

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		In order to track information about the source of income of the buyer, the seller of high value cars, say motor vehicles of value above Rs. 10 Lakhs, may be required to collect tax at source @1%. The assessee may, however, be allowed to take credit of tax so collected in his return after furnishing details of source of income in the relevant ITR form. The procedure followed in respect of section 206C(ID) i.e. TCS on jewellery and bullion may be adopted.	
11.	***Forms of Income tax return to incorporate details of tax payments made under other legislations***	Income tax return forms are such that they have reasons to capture some Information about other tax payments like service tax, VAT etc. The return form should be made more elaborate so as to give comprehensive information about the other indirect taxes paid. Thereafter, the said information be shared with the relevant Department of the Government for verification. This will ensure that the data being reported by the assessee matches with the data provided by him in other Departments. In the long run, it will improve the quality of the data being received in the return forms as the assessee will not take the risk of mentioning the wrong data.	***It is suggested that the forms of income tax shall incorporate all the relevant details of tax payments made under other legislations like central excise, VAT, service tax etc.*** ***(SUGGESTIONS TO INCREASE THE TAX BASE)***
12.	***Consolidation of multiple reports to be issued by***	As per the current provisions, an assessee has to file multiple audit reports in different formats	***Multiple reports to be issued by chartered accountants be compiled and a single form of***

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	Chartered Accountants in a single format	as per the statutory requirements. For a simplified tax regime, a single audit form should be introduced which will incorporate or consolidate multiple audit reports/ certificates required to be issued under various sections of the Income-tax Act, 1961.	***audit/ certificate be prepared. The said format may have multiple annexures i.e. existing formats in different sections.*** ***(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***
13.	***Reconciliation of Interest payments by banking sector with TDS returns of Banks***	Interest payments by banking sector may be reconciled with the TDS returns of Banks submitted with respect to section 194A of the Income-tax Act, 1961. For example, as per the balance sheet of SBI on 31.03.2014, it held Rs.762000 crores of Term deposits from others. It had paid more than Rs.78000 crores of rupees as Interest. Taking it as a sample study since all the banks are not of the same size, one can estimate interest commitment paid in this country from all the banks and NBFCS exceed Rs.10 Lakhs crores. It means TDS on interest alone shall not be less than Rs.1,00,000 crore.	***It is suggested that such exercise of reconciliation be undertaken by the Income tax department to identify major defaults in respect of TDS on interest other than interest on securities.***
14.	***Scope of TDS/TCS to be widened***	Currently very few activites are under the scope of TDS/TCS provisions under Chapter XVII "Collection and Recovery of Tax" of Income-tax act, 1961. As a result, a lot of transactions go untaxed. Indian economy is currently at a stage where such activities can be monitored and taxed using latest IT infrastructure. The same will generate a lot of tax revenue if	***Where the Income tax Act, 1961 does not specifically provide for TDS/TCS provision, a Transaction tax may be introduced either in the form of TDS or TCS on sale of goods or provision of services to every person other than ultimate end user of the same. The said transaction tax may be 1% on a single transacton***

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		some tax like transaction tax is introduced on all such untaxed activites.	***exceeding Rs.20,000 and in aggregate exceeding Rs. 50,000 (i.e. on the lines of TDS in section 194C). This transaction tax, if imposed would successfully replace section 40A(3) which is practically difficult to implement and monitor.***
15.	***Generation of Form No. 15G, 15H ,60 and 61 through system***	Form No.15G/15H is a form of declaration that has been prescribed for those persons who desire to receive certain specified income without deduction of tax at source. These forms can be used only if the total income of the person making declaration does not exceed the maximum amount not chargeable to tax. Form No.60/61 are used by persons who do not have a Permanent account number and who have entered into transactions specified under Rule 114B of the Income-tax Rules, 1962. The purpose of existence of these forms is mainly to avoid inconvenience to senior citizens and other persons whose income chargeable to tax is below the maximum amount not chargeable to tax and those who do not have a PAN. These forms are however being misused, since there is no mechanism to track and control those persons who wrongly fill the form to avoid deduction of tax at source.	***Since there is no central system to locate multiple forms 60, 61, 15G and 15H, filled by a particular person, it is suggested that the filing of the same be made electronic. On the basis of particulars received from these form Nos, the banks should be mandated to punch the said particulars in the e-form which will generate a unique number. The details so furnished may be then used for analyzing and taking action against those persons who have given false declaration to avoid payment of taxes. This system if put in place will ensure genuine usage of these forms.*** ***(SUGGESTION TO INCREASE THE TAX BASE)***

Sr. No	Section	Issue/Justification	Suggestion
		Today, every branch of a bank collects Form No. 60/61/15G/15H and does not deduct tax at source on FDs having interest below Rs. 10,000. This gives a way to the assessee to have FDs in multiple branches with interest below Rs. 10,000 and escape tax deduction at source by furnishing the relevant form. Considering the fact that presently PAN is allotted in less than 7 days from the date of online application, Form No. 60 and 61 has lost its relevance. Further, filling of PAN should be made mandatory in Form No. 15G/H without which such forms should not be accepted or given benefit of.	
16.	***A single ITR form to replace all ITR forms***	At present, we have different ITR forms for different assessees which make filing of ITR a cumbersome task. There should be a single form for all the assessees so that filing of return will be done in a simplified & effective manner.	***A single ITR form instead of ITR 1,2,3,4,4S,5,6,7 should be prepared. The common fields in all ITR can be clubbed and Income under the various heads of income is restricted in the form of Annexures. The assessee should click and fill only the annexure which is relevant for him. This would amount to simplification in true sense.***
17.	***Need to have new bank account numbers***	The current system of allotment bank account numbers be it saving or current or any such type of account do not reveal the identity of the holder of the account from the tax point of view. There is a need to change the system of allotment of bank account numbers so as to make the data mining exercise of the	***In order to help the government in data mining exercise to locate tax evaders/ non filers , it is suggested that following type of bank account number be allotted:*** ***XXXX YYYYY ZZZZZZZZZZ W*** ***(Bank Code, Branch Code,***

Sr. No	Section	Issue/Justification	Suggestion
		government fruitful.	***PAN, Nature of account)*** ***The first four letters of the proposed type of bank account number should reflect the bank name in the form of code, next five letters should reflect the branch name/code followed by 10 digit alpha numeric PAN number allotted to the assessee/account holder and the last digit should reflect the type of bank account be it saving or current represented by a code.***
18.	**Procedure for surrender of PAN**	In case of firms, who have discontinued their business still have to file return u/s 139(1), since no procedure has been prescribed for surrender of PAN by the discontinued firms. Due to this firms are liable to penalty u/s 271F at any time. .	***It is suggested that procedure for surrender of PAN & exemption from filing of return of income in respect of Firms having business discontinued, may be prescribed. With this, firms may be saved from penalty u/s 271F.*** *(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)*
19.	***PAN card to be chip enabled for certain transactions required to be reported in TDS/TCS returns***	The misuse of PAN details of assesees is prevalent since long. There is a need to provide new age chip enabled PAN cards so as to prove the identity of the concerned person rather than using the photo copy of the card. Recently, a number of cases have come to the notice where the PAN of the assessees used at Photo ID was publically available at places like railway stations (in charts) are found to	***In order to curb the misuse of PAN to carry out benami transactions and the like, it is suggested that the PAN be made chip enabled and be required swiping in the machines specifically designed for it so that the transactions carried on by him are recorded in the same and the assessee is able to prove the transactions entered into by him.***

Sr. No	Section	Issue/Justification	Suggestion
		be misused and quoted in the TDS/TCS returns. For eg. The Finance Act, 2012 through an amendment in section 206C made it mandatory to collect tax at specified rate in case of any person selling jewellery or bullion. The seller in this case has to file TCS returns quarterly where currently PAN of all the buyers need to be reported. In order to hide / accommodate the information wrt the high net worth individuals not quoting their PAN at the time of purchase in order to evade tax, fake PANs are being mentioned in the TCS returns. Such sellers are able to get the PAN numbers by various means as mentioned above. In such cases, the asseessee who's PAN has been quoted faces severe hardship as he may not have that much income to substantiate the expenditure quoted against his PAN. It will also be difficult for him prove his innocence. Thus, there is a need to curb such practice and new age Pan cards be issued in order to prove the identity of the person carrying the transaction.	
20.	***Tracking of certain information***	There are certain transactions which are covered under clubbing provisions as per	***It is suggested to device a mechanism by suitable amendment in the Income-tax***

Sr. No	Section	Issue/Justification	Suggestion
		Chapter V Income of other persons, included in assessee's income (section 60 to 65 of the Income-tax Act, 1961). Practically it is very difficult to apply such provisions unless the Income tax return is scrutinized. Also, currently, there is no tracking of such information wrt to the generation of income liable to be taxed. Eg Income generated on transfer of funds by husband to wife is liable to be taxed under section 64 but as of now there is no tracking mechanism to catch such income. Similarly, the income generated on funds transferred by father to major son although is not covered under section 64 is also not reported by such assessees.	***Act, 1961 to track the generation of income from transfer of funds like husband to wife or father to son and the like transactions to reduce reliance on lengthy assessment procedures.***
21.	***Creation of Online grievance portal***	At present, no online grievance handling mechanism is in existence to resolve the difficulties being faced by assessees relating to TDS or E-filing of income-tax returns. To enable the assessees to seek early resolution of their queries within a short span of time, it is suggested that an online portal may be created wherein the assessee can post his complain/query relating to his own returns and which are answered by the respective Assessing Officer. The system may have following features: a) The query not replied within a specified period of time is escalated to higher authority	***It is suggested that an online grievance portal for speedy resolution of queries of assesses be created. If required, the ICAI would extend its full support in developing the said grievance portal.***

Sr. No	Section	Issue/Justification	Suggestion
		say Assistant Commissioner, then to Deputy Commissioner and so on according to the hierarchy. b) Once the issue is resolved the assessee should be allowed to reopen his query if he is not satisfied with the response received and has further submissions to make. c) The assessee should be able to check the status of his grievance online. d) SMS and email alert may be given at the time of receipt of grievance and at the time of disposal of grievance. In this regard, we wish to mention that the Institute of Chartered Accountants of India is successfully operating an online grievance portal "*E-Sahaayataa*" to cater to the queries of more 8.5 Lakh students and more than 2 Lakh members. All the officials of the ICAI are mapped in the portal to ensure that all unanswered grievances are escalated to higher levels. Since the inception of this system in June 2010, ICAI has successfully answered approximately 2,00,000 queries.	
22.	**Extension of last date of Payment of tax due to Public holiday - Circular No. 676 dated 14.01.1994 read with Section**	Considering the provisions of section 10 of the General Clauses Act, 1987 the Board had through Circular No. 676 dated 14.01.1994 clarified that if the last day for payment of any instalments of advance tax is a	***It is suggested that the Circular No. 676 dated 14.01.1994 be revised in the light of existing scenario. The circular should clearly provide as to whether or not the due date shall be deemed to be***

Sr. No	Section	Issue/Justification	Suggestion
	10 of the General clauses Act, 1897	day on which the receiving bank is closed, the assessee can make the payment on the next immediately following working day, and in such cases, the mandatory interest leviable under sections 234B and 234C of the Income-tax Act, 1961 would not be charged. Considering the change in the functioning of the Department, assessees and the banking system in India, it is felt that the said circular needs revision.	***extended by one day if the last date is a public holiday.*** ***(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***
23.	**Issues arising from applicability of Companies Act, 2013:** **a) One person Company (OPC):**	Section 2(*62*) of the Companies Act, 2013 has introduced the concept of "One Person Company" which means a company which has only one person as a member. Section 2(31) of the Income-tax Act, 1961 which defines person has to be amended to include within its ambit an OPC. Section 2(68) of the Companies Act, 2013 defines "private company" to mean *a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles,—* *(i) restricts the right to transfer its shares;* *(ii) except in case of One Person Company, limits the number of its members to two hundred:* *Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this*	***It is suggested that OPC should be treated like any other company for taxation purposes. The concept of separate legal entity of OPC should be followed for Income tax and Wealth tax both. However a specific clarification may be inserted in the income tax act as to allowability of remuneration paid by OPC to member.*** ***(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***

Sr. No	Section	Issue/Justification	Suggestion
		clause, be treated as a single member: *Provided further that—* *(A) persons who are in the employment of the company; and* *(B) persons who, having been formerly in the employment of the company, were members of the. company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and* *(iii) prohibits any invitation to the public to subscribe for any securities of the company;* From the above it can be inferred that one person company will be required to comply with the provisions applicable to private Limited Company. However, section 18 of the Companies Act, 2013 provides for conversion of companies already registered from one class to other class under that Act. This implies an OPC can be converted into a Private limited or a public Limited Company provided that conditions are fulfilled.	
	b) Reopening of accounts on Court's/ Tribunal order under section 130 of the Companies Act, 2013:	b) Section 130 of the Companies Act, 2013 provides for revision of the books of accounts and the financial statements of the Company on application made by the Central Government, the Income tax Authorities, the SEBI and any other statutory regulatory body or authority or any person concerned.	***a) A provision be inserted to provide that in cases where the financial statements have been revised by virtue of section 130 of the Companies Act, 2013, no refund shall be granted in case such revision has the effect of lowering of profits of the company.*** ***b) A specific provision is***

Sr. No	Section	Issue/Justification	Suggestion
		Such revision can, however, be done on an order by a court of competent jurisdiction or the Tribunal to the effect that the relevant earlier accounts were prepared in a fraudulent manner or the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of the financial statements. Before passing the order notice of the same will be given to the Income tax authorities. This revision may, however, give rise to three situations namely, no effect on the profits, higher profits or lower profits. These profits have a direct impact on the computation of income of Companies due to applicability of section 115JB of the Income- tax Act, 1961. In case the profits are higher, the Department can issue a notice under section 147 of the Income tax Act. The issue will arise where the profits were inflated by the company and due to the reopening of accounts, the actual profits are lowered. The company in such a case may apply for refund by filing a revised return of income within the time limit prescribed under section 139(5) of the Income-tax Act, 1961.	***required in the Income tax Act to take care of adjustments required in taxable income due to revision of accounts. The provision may be in line with Section 155 of the Act.***
	c) Reference of Schedule VI of the Companies Act, 1956 to be substituted with Schedule III of the	The Companies Act, 2013 provides for the General instructions for preparation of "Balance Sheet" and "Statement of Profit and Loss" of the Company in Schedule III. The	***Consequential amendments be made in the Income-tax Act, 1961 and the Reference of Schedule VI of the Companies Act, 1956 be substituted with Schedule III of the Companies***

Sr. No	Section	Issue/Justification	Suggestion
	Companies Act, 2013:	references made in the Income-tax Act to Schedule VI of the erstwhile Companies Act, 1956 are to be substituted accordingly.	***Act, 2013.***
	d) Difference in the definition of "related party" in Companies Act, 2013 and Income tax Act,1961*:*	The concept of related party is relevant for defining "specified domestic transactions" and "international Transactions" in the Income-tax Act, 1961. The Companies Act, 2013 also defines "covered transactions" and "related party" However, the definition in both the cases is different.	***There is a need for alignment in the scope of related parties in Companies Act, 2013 with that of the Income-tax Act, 1961***
	e) Depreciation Transition Provisions- Impact on MAT	Schedule II of the Companies Act, 2013 requires depreciation to be charged in books of accounts calculated as per new useful life specified in the schedule. Note 7 to part C of Schedule II provides that in case of an asset whose useful life is "nil", its carrying amount is to be recognized in opening balance of retained earnings. This means that so much amount shall not routed through Profit & Loss statement but shall be adjusted directly in Balance sheet. In case of companies covered by MAT, this shall have an adverse impact in the sense that this much amount shall not be available for adjustment against book profit.	***It is suggested that a specific provision be introduced u/s. 115JB to provide that so much amount of carrying cost of asset as has been adjusted against opening balance of retained earnings, shall, for the purpose of computing book profit under Sec. 115JB, be allowed as deduction.***
	f) Amalgamation	a) Section 72A of the Act, which deals with treatment of unabsorbed losses and unabsorbed depreciation, in case of amalgamation, is restrictive in its application.	***It is suggested that sectoral restrictions u/s 72A may be removed and provisions of this section be made applicable for all the sectors.***

Sr. No	Section	Issue/Justification	Suggestion
		Presently benefits of Section 72A are available only to company owning industrial undertaking or a ship or a hotel or banking company. Due to this restriction, other sectors namely service sector and real estate sectors are not eligible for benefits in the form of handing over of loss from one company to another.	
		b) Presently MAT credit u/s. 115JAA cannot be carried forward by the amalgamated company**.**	***The Income-tax Act needs to be amended so as to allow carry forward of MAT Credit in the hands of amalgamated company for remaining number of years.***
		c) Section 56(2)(vii)(c)(ii) applies when an individual or HUF receives shares for a consideration which is less than fair market value of the shares by an amount exceeding Rs. 50,000. Similar rule apply for a firm or closely held company by virtue of Section 56(2)(viia). In case of Section 56(2)(viia), it has been specifically provided that this clause is not applicable when shares have been received by way of amalgamation covered u/s. 47. No such exclusion is applicable for Section 56 (2)(vii)(c)(ii).	***It is suggested that a proviso on the lines of clause (viia) be introduced for the purpose of clause (vii)(c)(ii) also.***
		d) Companies Act, 2013 has	***Clause (vi) of Section 47 needs***

Sr. No	Section	Issue/Justification	Suggestion
		permitted amalgamation of Indian company with foreign company. However, exemption from capital gains u/s. 47 of the Income tax Act is available only when amalgamated company is an Indian Company.	***to be amended in order to make amalgamation with foreign company also a tax neutral transaction. Similar amendment is required in clause (vii) of Section 47 also, so that shareholders are not taxed when shares of amalgamated company are received and amalgamated company is not an Indian company.***
	g) Amalgamation and Demergers – Limitation on powers for assessment of cases dealing with Amalgamation and Demergers effected under the new Companies Act, 2013.	In recent times, tax litigation in relation to amalgamation and demerger has increased many folds. Certain examples of such litigations are as under: a. Tax benefits of amalgamation and demerger have been denied on the ground that the assessee has not fulfilled the conditions stated under section 2(1B) in case of amalgamation and section 2(19AA) in case of demerger; b. Litigation as to whether the transaction is in the nature of amalgamation, demerger or slump sale under the Income Tax Act; c. In certain cases, the Tax department has alleged that the scheme was a Tax avoidance device; d. Issues relating to carry forward of unabsorbed losses in the hands of transferee company, availability of credit for TDS and advance tax paid by the transferor	***Since now under the Companies Act, 2013, at the time of approval of Scheme, adequate representation has been given to the Income Tax Department, corresponding amendments should be made in Income-tax Act, 1961 (may be by way of introduction of a separate chapter or by introducing new section dealing with these kind of assessments) to the effect that the tax issues under the Income-tax Act, 1961 relating to amalgamations/demergers in the hands of the transferor company, transferee company and the shareholders of transferor/transferee company should be examined and adjudicated by the tax department at the stage of making representation itself. In such a case, the Assessing Officer shall not be allowed to re-examine and re-adjudicate the issues relating to amalgamation or demerger at***

Sr. No	Section	Issue/Justification	Suggestion
		company on behalf of transferee company, etc. e. In certain cases, the AO has invoked provisions of Section 28(iv) in the hands of amalgamated company on the ground that the amalgamated company has acquired Reserve & Surplus from its amalgamating company under the scheme of amalgamation. The same was considered as a perquisite by the AO and taxed under section 28(iv) of the Income Tax Act after the scheme has been approved by the High Court. Now, under Section 230(5) of the Companies Act, 2013, it is mandatory for the companies to send a notice of amalgamation and demerger to the income-tax department. Under the old Companies Act, 1956, such notice was not mandatorily required. Hence, now, such notices would ensure that the income tax department can make a representation in relation to the amalgamations and demergers before the same is approved.	***the time of scrutiny assessment or reassessment.*** ***The said amendment would have following positive effects:*** ***a. Reduction in tax litigation in respect of amalgamations/demergers*** ***b. The Assessees would be saved from hardship of the double scrutiny – one at the time of filing of the scheme and second at the time of assessment.*** ***c. Certainty as to the tax treatment in relation to amalgamations and demergers, which will lead to improvement of investors' sentiment;*** ***d. Safeguard of shareholder's interest since they would be aware about potential tax exposures to them and the company in respect of the amalgamation and mergers and would consider the same while voting in respect of the same;***
24.	**Corporate Social Responsibility Costs**	Corporates are currently involved in various areas of social responsibility / community development as part of nation building. Further, the concept of Corporate Social Responsibility	***It is suggested that:*** ***a) The amendment made in Section 37 vide Finance (No. 2) Act, 2014 should be reconsidered.*** ***b) A deduction of the***

Sr. No	Section	Issue/Justification	Suggestion
		Costs has been introduced under Companies Act, 2013. The expenditure is mandatory in its nature and as such it is a statutory levy. Accordingly it deserves tax deduction. However, amendment made in section 37 vide Finance (No. 2) Act, 2014 has made it clear that expenditure incurred on activities relating to CSR under Companies Act, 2013 will be deemed to be a non business expenditure. Providing suitable tax incentives in respect of such Corporate Social Responsibility Costs would accelerate the process and ensure that the country can reach the goal of being a developed nation in the near future and is the need of the hour.	***expenditure on community /social development (both capital and revenue) be introduced, specifically covering critical areas like education, health, animal husbandry, water management, women empowerment, poverty alleviation and rural development.*** ***c) Even in cases where a company has its own trust or foundation, the deduction in respect of expenditure incurred for CSR activities should be allowed.*** ***d) CSR expenditure is allowed by way of donation to Prime Minister Relief Fund/ Trust registered u/s. 80G/ associations approved u/s. 35AC. If deduction of CSR expenditure is not allowed, this shall be discriminatory for those corporates, who may like to carry out CSR activities on their own.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
25.	**Gaps in electricity generations**	In order to provide Environmental friendly solutions and Low cost availability of electricity to end user, alternate & clean energy resources may be promoted	***It is suggested that concessions or additional tax benefits may also be provided where a new building (resident/ commercial/ hotel***

Sr. No	Section	Issue/Justification	Suggestion
		more by way of additional exemptions/incentives if, the project gets completed on time.	***etc) installs a solar energy devices & rain harvesting instruments.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
26.	**Allowability of Interest paid under Income-tax Act, 1961:**	Presently, interest paid by the Government to an assessee is chargeable to tax. However, interest paid by the assessee to the Government under various sections is not allowed as deduction while computing the total income. Interest paid by the assessee is for the use of money by him and is compensatory in nature.	***Interest paid by the assessees to the Government under various sections of the Income Tax Act should be allowed as deduction in computing total income. If the assessee does not have business income, interest should be allowed under the head `Income from other Sources'.*** ***Alternatively, the interest received by the assessee on refund should be exempt from tax.***
27.	***Issues regarding PAN allotment***	For filing of return, it is mandatory to have PAN. A person applying for PAN has to give his details in a prescribed form & the same will be allotted to him by the Income Tax Department. Earlier, when the assessee identification system was based on "GIR Number" i.e. "General Index Register Number" that used to be allotted, "Free of Cost", by the concerned Income Tax Officer who had a jurisdictional authority to assess the assessee. Later on this was switched over to the era of "Permanent Account Number", under the authority of new Section 139A, substituting the old one, by	***It is suggested that :*** ***a) The person entrusted with the work of verification should possess sufficient knowledge & understanding of the provisions of the Income-tax Act so as to complete the assigned work in a timely manner.*** ***b) If the application of the applicant is withheld by NSDL, NSDL should inform the applicant the reasons thereof.*** ***c) If there are any queries/doubts regarding details provided in form no. 49A, NSDL should clarify the same with the***

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
		Finance Act, 1995, with effect from 1-7-1995 and by insertion of New Rule 114, by replacing the old Rule 114, with effect from 1-4-1976. Due to the some reasons, this function of receiving applications and allotment of Permanent Account Number and issue of PAN Card was transferred to NSDL. With this switch over, now the applicants were required to pay requisite amount, as prescribed by the authorities, along with the PAN application. Making an application for allotment of the Permanent Account Number and incurring **"COST"** for that is **"unfair and unjust"** to the applicant. **It is the proprietary/statutory function of the Income Tax Department to allot the same "Free of Cost", as the same has been the normal part of its function, empowered by the Income-tax Act, 1961.**	***applicant.***
28.	***Unique code for high valued property transactions***	Currently, every Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908 has to report through AIR, the data related to every purchase or sale by any person of immovable property valued at thirty lakh rupees or more as per section 285BA rwr 114E. There is a need to for integrating the data related to such high valued transactions and to strengthen the reporting requirements.	***It is suggested that a unique code be allotted to all transactions reported through AIR w.r.t property transactions exceeding a certain amount so as to help in data mining exercise of the government. One such unique code can be as follows:*** ***(XX YY ZZZZZZZZZZ MMMMMM)*** ***STATE code, Registrar Code, PAN, Date of Transaction***

Sr. No	Section	Issue/Justification	Suggestion
			The first 2 digits should reflect the state code followed by 2 digit sub registrar code and next ten digits should be PAN of the asseseess and last 8 digits showing the date of registration in DDMMYYYY format.
29.	***Foreign contribution to be reported/populated in form 26AS***	As per the Foreign Contribution (Regulation) Act, 2010 read with Foreign Contribution (Regulation) Rules 2011 as amended, any contribution received above the specified amount (INR 1 crore) needs to be reported by the recipient bank on behalf of assessee registered under the FCRA Act to the Central Government. Further, all the receipts along with the audited financial statements as at the end of the year is reported to the Ministry of Home affairs by the recipient (mostly NGOs) of such funds from foreign sources. As on date the same is not reported in form 26AS of such assessee. Since all the data wrt foreign receipts is already available with the designated bank as well as Ministry of Home Affairs, it would be really useful if the same is also covered under the scope of AIR under section 285BA. The foreign receipts of such assessee could be matched with the Income Tax Returns and any discrepancy may be scrutinized accordingly.	***In view of the fact that the data related to foreign receipts are governed by the Foreign Contribution (Regulation) Act, 2010 read with Foreign Contribution (Regulation) Rules 2011 as amended is already available with the designated banks and the Ministry of Home Affairs, it is suggested that the same may be incorporated in the Form No. 26AS and also in AIR information under section 285BA. In case it is reflected in Form No.26AS, the assessee would be more cautious of his tax obligations.***
30.	***Applicability of SA - 700 on form of audit reports***	The ICAI had pursuant to the issuance of the Revised SA 700, “Forming an Opinion and	***The suggested draft format of a clean report has been submitted to the Under***

Sr. No	Section	Issue/Justification	Suggestion
		Reporting on Financial Statements", prescribed a revised format of the auditor's report on financial statements. As per SA 700 an auditor shall modify the opinion in the audit report when: a) the auditor concludes that, based on the audit evidence obtained, the financial statements as a whole are not free from material misstatements b) the auditor is unable to obtain sufficient appropriate audit evidence to conclude that the financial statements as a whole are free from material misstatement Considering the materiality and the pervasiveness of the effects or possible effects on the financial statements, the auditor may issue a modified report with a: a) Qualified opinion b) Adverse Opinion c) Disclaimer of Opinion Also, SA 700 requires the auditor to clearly lay down management's responsibility and auditor's responsibility. This revised format has been made effective in respect of audits of financial statements for periods beginning on or after 1st April 2012. Considering the fact that SA700 is applicable to non-corporate entities also, ICAI had suggested certain changes vide its letter No. *ICAI/DTC/2013-14/Rep-25 dated 7th February,*	***Secretary (TPL-III), CBDT vide its letter No. ICAI/DTC/2013-14/Rep-25 dated 7th February, 2014. The modifications in the report i.e. qualification, adverse opinion, disclaimer of opinion, may be reported by the auditor accordingly.*** ***(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***

Sr. No	Section	Issue/Justification	Suggestion
		2014 to the Under Secretary (TPL-III) in Format of Form No. 3CB so as to enable our members to comply with guidelines issued by its Council.	
31.	***Re-introduction of hybrid/mixed system of accounting for prepaid taxes***	Under the Income-tax Act 1961, nearly two decades back hybrid system of accounting was permitted. Erstwhile section 145 as substituted via Finance Act, 1995 w.e.f 1.4.1997 permitted the use of mixed system of accounting. This system was abolished from AY 1997-98 onwards via Finance Act, 1995. Such types of accounting system have its pros and cons. There were multiple litigations due to which such system was abolished as some assessees evaded taxes using such system of accounting. But now a days, with electronic books of account and e-filing of income tax and other returns and 360 degree profiling by the income tax department, it would be next to impossible to misuse the hybrid system of accounting. Such system has its own advantages and may prove highly useful in some specific types of transactions specially while accounting for credit of prepaid taxes. It is high time that government may look at the option of allowing hybrid system of accounting with proper checks and control enacted and implemented.	***In view of the use of latest technology and advantages attached to the use of hybrid system of accounting, it is suggested that a relook may be given to such form of accounting and may be permitted for accounting of prepaid taxes along with proper checks and controls. This will enable the assessees to use the balance credit available to them for setting off against next year income.***

Sr. No	Section	Issue/Justification	Suggestion
32.	***Foreign tax credit guidelines***	Clause 207 relates to foreign tax credit allowable to an assessee, being a resident in India in any financial year on income which is taxed in India as well as outside India. The said clause further provides that where the assessee is required to pay Indian income-tax in respect of an income which has been taxed in any specified territory or other country with which India has an agreement under clause 291, the foreign tax credit shall be allowed in accordance with the agreement entered into with such specified territory or country. Where there is no such agreement, the tax credit shall be determined at the Indian rate of tax or the rate of tax of the other country, whichever is lower. The credit, in either case shall not exceed the Indian income-tax payable in respect of income which is taxed outside India and the Indian income-tax payable on total income of the assessee. The existing foreign tax credit guidelines are not sufficient to deal with various foreign tax credit issues. Hence, detailed guidelines should be introduced to bring clarity.	***It is suggested that detailed & clear guidelines on foreign tax credit should be introduced.***
33.	**Issues arising from Notification No 67/2013, dated 2-9-2013 amending Rule 37BB of Income Tax Rules, 1962 wrt Foreign Outward**	Ministry of Finance had amended Income tax Rules vide Notification No 67/2013, dated 2-9-2013 with regard to Foreign Outward Remittances and Form 15CA &15CB. This notification is in supersession of an earlier Notification No 58/2013, dated 5-	***Since "Advance payment against imports" and "Payment towards imports-settlement of invoice" are routine payments made by the importers, they may be included in the specified list.*** ***(SUGGESTIONS FOR***

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
	Remittances - Form 15CA & Form 15CB	8-2013. Rule 37BB provides for the method/procedure to be followed while furnishing of information in case any payment is made to non-resident which is chargeable to tax. Notification No. 67/2013, dt 2-9-2013 provides through an explanation a list of 28 payments where there is no need to file form 15CA/15CB. As per the earlier Notication no 58/2013, dated 5-8-13, there were a total of 39 payments in the specified list which were required to furnish information in Part B of the Form No.15CA. Payments which are not there in the new specified list are as below: **(i) Advance payment against imports** This is a routine payment made by the importers. Non exclusion of such payment from specified list is unnecessarily increasing the compliance burden of the assessees. Further, it may lead to harassment at the time of assessment. **(ii) Payment towards imports-settlement of invoice** As mentioned above, such payment is also made in a routine manner by the importers. Similarly, other payments which were earlier in the specified list of Not No 58/2013, dt 5-8-13 but not included in new specified list of Not No 67/2013, dt 2-9-2013 and thereby increasing the compliance burden of assesses	***REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***

Sr. No	Section	Issue/Justification	Suggestion
		unnecessarily are as follows: **(iii) Imports by diplomatic missions** **(iv) Payments for surplus freight or passenger fare by foreign shipping companies operating in India** **(v) Freight on imports - Shipping companies** **(vi) Freight on exports - Shipping companies** **(vii) Booking of passages abroad - Shipping companies** **(viii) Freight on imports - Airlines companies** **(ix) Payments for life insurance premium** **(x) Freight insurance - relating to import and export of goods** **(xi) Other general insurance premium**	
34.	**Reconciliation of Foreign Currency remittances**	All the foreign currency remittances/payments are required to be reconciled with details provided in Form No.15CA. RBI report 2012-13 provides that the foreign currency remittances for imports (all types of imports – goods and services) is more than 5,00,000 million dollars i.e. more than Rs. 3,00 Lakhs million Rupees	***Out of the said amount, even if 1/3rd remittance is liable for tax @ 1%, government should have received Rs. 1,00,000 Lakh crore by way of TDS on foreign currency remittance. It is thus suggested that all the foreign currency remittances/payments are required to be reconciled with details provided in Form No.15CA.***
35.	**Number of Returns and payment schedule should be curtailed**	Even in the e-filing era, the assessees are overburdened with the compliances to be made with regard to filing of	***For the convenience of the tax payers it is suggested that the number of returns and payment schedule to be filed***

Sr. No	Section	Issue/Justification	Suggestion
		returns and payment schedules. An assessee is required to file quarterly returns relating to TDS on salaries, Quarterly returns relating to TDS on amounts other than salary, and quarterly returns relating to TCS. These are in addition to the Income tax return form which is to be filed on annual basis. Due to errors in the punched data or for some other reason, the assessee is required to file correction statements or revised return which is also a cumbersome process. Apart from this there is a payment schedule to be followed in respect of TDS/TCS, advance tax, Self assessment tax and so on. This is too cumbersome.	***by the assessee should be curtailed appropriately.*** ***(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***
36.	**Extension of time limit for filing of TDS Return**	As the filing of e-TDS returns is an onerous task, it is very difficult for assessees to collate and compile all the voluminous data/information for filing of TDS returns within 15 days from the end of the relevant quarter. Further, as the payment challans from banks reach the deductors by 10th of the next month, it becomes all the more difficult to file returns within a short span of time.	***It is suggested that due date for furnishing of the TDS returns may be extended to 30 days from the end of the quarter instead of 15 days.*** ***(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***
37.	**Challan rectification mechanism**	Considering the fact that several mistakes were being reported which occurred on account of wrong punching of data in the OLTAS by the banks, the CBDT introduced a new challan correction mechanism for paper	***It is suggested that challan Correction Mechanism be made applicable to all types of challans including challans for online payments, payments of wealth tax etc.***

Sr. No	Section	Issue/Justification	Suggestion
		based payments of income tax. The said system has been appreciated by the assessees. Since, inadvertent mistakes can occur while paying the income tax online also, it is felt that challan correction system be made applicable to challans in respect of online payments of income tax also.	***(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES`` RELATING TO DIRECT TAXES)***
38.	**Difficulties in obtaining old paper refunds**	Presently, the refund, if exceeds Rs. 1 lakhs requires approval from the higher authorities. Apart from these, re-issue of old paper refunds, already issued by the department before the implementation of Refund Banker Scheme but not received by the assessee, also requires approval from the higher authorities. The second part of the administrative steps in refund cases have become very cumbersome procedures and at the same time also increases the responsibilities of the higher authorities. Moreover, refunds in such cases often gets delayed by more than 6 months inspite of furnishing of bank pass book and the indemnity bond by the assessee in support of refund not received by them.	***It is suggested that old paper refunds not exceeding Rs.1 lakh, issued by the department and not received by the assessees, may not require approval from higher authorities and must be left to the Assessing Officers for disposal. This will help in reducing the pending grievances of non-receipt of old paper refunds.*** ***(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***
39.	**Audit of TDS returns**	A major portion of the revenue by way of income-tax is recovered through deduction of tax at source. Thus, in-depth verification of all the TDS returns is necessary. Even though for furnishing the information required under clause 34 of Form No.3CD, an in-depth	***It is suggested that an independent audit provision may be inserted to provide for a comprehensive audit of all the TDS returns filed with the Department. Appropriate forms of audit report can be prescribed to certify about the correctness of the quarterly***

Sr. No	Section	Issue/Justification	Suggestion
		verification of the TDS returns is done, an independent audit provision only for audit of TDS returns would reduce the mismatch and other challenges being faced by the Department.	***TDS returns. This will enable the Department to be rest assured about the correctness of the TDS returns filed as well as the remittance of the tax deducted at source to the credit of the Central Government.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
40.	**Monetary limits in the Income-tax Act, 1961**	The monetary limits for all exemptions or deductions were provided long back. In has been long since the same have been revised considering the prevailing inflationary conditions in India. An effort has been made to compile all such monetary limits with the Cost inflation index (CII) of the year in which they were last revised and the CII of the year 2014-15 to arrive at the figure of tentative present limit. The same is given as an Annexure to this memorandum.	***Considering the Cost inflation Index (CII) of the year in which the various monetary limits under the Income-tax Act, 1961 were last revised and the CII of the year 2014-15, an effort has been made to make a comparative statement of the present limit and the figure of tentative limit, had the CII been applied to them, has been prepared. The same is given as an annexure to this memorandum. It is suggested that the present monetary limits be revised upwards appropriately.***
41.	***Need for new Kar Vivad Samadhan Scheme (KVSS)***	Litigation is a long drawn process in India and it also occupies a lot of precious resources which puts additional pressure on the Government. Considering the huge pendency due to litigations, it is felt that introduction of another scheme on the lines of Kar Vivad Smadhan scheme as introduced way back in year 1998, is the need of the hour. The said scheme was successful as the government was able to	***In respect of high no. of pending cases and to reduce litigations, a scheme on the lines of Kar Vivad Samadhan Scheme (KVSS) may be introduced. It is suggested that in cases where addition made is NOT more than 50% of income or Rs.10,00,000 whichever is less:*** ***a) Penalty under section 271(1)(c) may be dropped.***

Sr. No	Section	Issue/Justification	Suggestion
		collect approximately Rs 2000 crore out of the Rs 5000 crore target for the said scheme. In order to meet the stiff fiscal deficit target, such scheme may prove to be more than useful. A current alternative is resorting to Income Tax Settlement commission but it has many downsides to it like once in a lifetime opportunity, high threshold of Rs 50/10 lakhs and pendency of proceedings of a case etc. The same may be overcome in the proposed new KVSS by having a lower threshold of outstanding tax to approach settlement commission or cap on number of times it can be resorted to. It may be noted that the government has recently come out with one such scheme in the year 2013 by the name of VCES (Voluntary Compliance Encouragement Scheme) under the Service Tax law. Similar amnesty scheme was introduced in Company Law (Company Law Settlement Scheme) as well recently. Such schemes show the intent of the government to move towards a positive dispute settlement regime. Introduction of KVSS will unearth such domestic black money and will put it to some constructive use. KVSS, if introduced will have multiple benefits like raising one-time tax revenue, improving tax administration environment and unclogging the overburdened litigation system	***b) 50% of the interest levied may be waived off.*** ***c) No further appeals should be allowed to be filed either by the Department or by the assessee similar to existing provisions of Central Excise.***

Sr. No	Section	Issue/Justification	Suggestion
		and the like.	
42.	***Clarity / guidelines in attribution of profits to PE of a non-resident in India***	No clear rules laid down on profit attribution to a PE of a non-resident on income accruing or arising through or from business connection in India. The existing Rule 10 is not specifically worded and could potentially lead to unnecessary litigation.	***It is suggested that amendments may be made to the Act/ Rules to provide for a clear methodology for computation of profit attributable to a PE, after taking into account international best practices and the rules prescribed as per OECD PE Attribution Guidelines.***

PART II

SUGGESTIONS RELATING TO THE PROVISIONS OF INCOME-TAX ACT, 1961

CHAPTER I

PRELIMINARY

DETAILED SUGGESTIONS

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
43.	**Definition of "amalgamation" in section 2(1B)**	The Finance Act, 2012 had amended Sections 47(vii) and Section 2(19AA) of the Income-tax Act. As per the Explanatory Memorandum to the Finance Bill 2012, the purpose of aforesaid amendments is as under: *In a case where a subsidiary company amalgamates into the holding company, it is not possible to satisfy one of the conditions i.e. the amalgamated company (the holding company) issues shares to the shareholders of the amalgamating company (subsidiary company), since the holding company is itself the shareholder of the subsidiary company and cannot issue shares to itself.* *Similarly, in the case of a demerger there is a requirement under section 2(19AA)(iv) that the resulting company has to issue the shares to the shareholders of the demerged company on a proportionate basis. However, it is not possible to satisfy this condition where the demerged company is a subsidiary company and the resulting company is the holding company.* *Therefore, it is proposed to amend the provisions of section 47(vii) and 2(19AA) so as to exclude the requirement of issue of shares to the shareholder where such shareholder itself is the amalgamated company or the*	***(a) Since, these amendments are clarificatory in nature and are proposed to remove the conditions which were impossible to fulfill, it is suggested to make them applicable with retrospective effect i.e. from the date when the above conditions were inserted in the said sections i.e. for Section 47 (vii) with effect from 1st April 1967 and for Section 2(19AA) with effect from 1 April 2000.*** ***(b) Section 2(1B)(i) may be amended appropriately to provide that all the property of the amalgamating company or companies (other than assets like shares, debentures etc. held by any amalgamating company or companies in another amalgamating company or companies) before amalgamation becomes the property of the amalgamated company by virtue of amalgamation. Corresponding amendment may also be made in Clause (ii) of section 2(1B).*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		resulting company. Further, section 2(1B) of the Income-tax Act, 1961 provides for the definition of "amalgamation" which, *inter alia,* states that all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of amalgamation. This may lead to hardship in a case where the two amalgamating companies have cross holdings. In such a case, on amalgamation the shares held by the amalgamating companies in each other are cancelled out and thus the requirement of transfer of all assets to the amalgamated company will never be fulfilled. This seems to be an inadvertent error in drafting and thus needs to be amended appropriately.	
44.	**Books of accounts in electronic mode-Section 2(12A)**	The existing income tax laws do not specifically clarify or permit the maintenance of books of accounts in electronic form instead of physical books / print outs With the IT and telecom revolution and the consequent digitization in the past decade, the economies globally are moving towards a paperless environment and there is an increasing reliance on the digitized records. Further, as the companies are	***Section 2(12A) defining books or books of accounts should clearly state that the books maintained in digital form would also be considered as books of accounts for the purposes of the Act. The assessees may scan the original documents and subsequently be permitted to destroy the same as they would be available only in digitized form.*** ***The permission to maintain the books in electronic form should be given to companies beyond a***

Sr. No	Section	Issue/Justification	Suggestion
		increasing in size, the volume of documents generated has increased manifold and there are logistic issues in maintaining the documents such as invoices, contract, ledgers, etc in a physical format. Maintaining books of account in electronic mode, would not only free the precious and ever shrinking office space of the corporates but also ensures better data storage & IT enabled Record management sorting, Indexing, Bar Coding at document & file level to ensure speedy retrieval. It may be noted that Section 6 to Section 8 of the Information Technology Act 2000 permits use of electronic records and use of electronic signature while dealing with Government or its agencies. Thus, Government itself accepts the electronic mode while dealing with it. However, the Section 9 of the said Act does not enforce the electronic form and hence in the absence of a suitable amendment to the Act, it may not be possible to use the electronic records as envisaged by the Information Technology Act, 2000.	***certain prescribed size & scale of operations. Consequential amendments may be made and rules prescribed, as deemed necessary to provide guidance and check points to prevent misuse.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
45.	***Consortium of Members not to be treated as an Association of Persons (AOP)***	The term 'person' as defined in Section 2(31) of the Income-tax Act includes therein the 'Association of Persons'. The Oxford Dictionary meaning of 'associate' is 'to join in common purpose, or to join in an action'. In the context of tax on income, one	***In view of the aforesaid, it is suggested that the AOP be defined under the Income-tax Act, 1961 to explicitly exclude the consortium arrangement in the situations described.*** ***The following proviso be inserted after Explanation to***

Sr. No	Section	Issue/Justification	Suggestion
		can add that the association must be with the objective to produce income, profits and gains. However, the term Association of Persons (AOP) has not been defined in the Act. This has caused ambiguities in the interpretation of what could constitute an 'AOP' especially in EPC (Engineering, Procurement and Construction) contracts in infrastructure, railways, power sector which are very crucial for country's development. For all Large EPC contracts, especially PSUs / Government companies typically insist contractors to bid, inter-alia, in a consortium with a view to ensure that specific components of the project get executed by an earmarked contractor who has requisite capabilities in this regard (any one contractor may not have the capability to execute the entire project) and yet, derive the comfort that the entire project (comprising of several parts) will be successfully commissioned by the consortium of contractors, although each contractor will be executing its specific part only. The consortium of contractors generally have separate capabilities and undertake their respective scope of work separate and independent of each other and do not share profits / losses with each other. There is a separate consideration earmarked for each contractor and the payment is made directly to	***section 2(31) of the Act :*** ***"Provided however that an association of persons shall not be deemed to be a person for the purposes of this clause if the members of such association of persons*** ***•Receive gross receipts in their respective separate bank account(s);and*** ***•Incur their respective expenditure or costs from their respective separate bank account(s); and*** ***•There are no adjustment inter-se members to share the (net) profit or loss."*** ***Alternatively,*** ***Considering importance of developing infrastructure, railways and power sector in India it is suggested that a new section may be introduced on similar lines of section 293A*** ***Alternatively,*** ***It is suggested that section 293A be amended to extend the benefit of section 293A to consortium members entering into contracts for infrastructure or railways or power sector in India. {Notification no G.S.R.117(E) dated 8th March 1996 was issued under section 293A in which it has been explicitly clarified that persons***

Sr. No	Section	Issue/Justification	Suggestion
		respective contractor by the customer, there is no common expenditure incurred by contractors. The Customer generally requires a joint and several undertaking in the Consortium agreement to have a better hold over the Consortium members. However internally, the Consortium members remain liable only to their respective scope of work towards the project and the joint and several liability clause is included in the Consortium Agreement merely to facilitate the convenience of the developer and for no other purpose. It is also clear between the consortium members that they have not created an agency/partnership relationship. Under this business arrangement, each contractor files its own return of income in respect of the contractual revenues that relate to it. However, of late the revenue authorities have apart from the taxing the individual contractors separately, started taxing the consortium of contractors also as an AOP as a resident taxpayer. This has created the following practical issues which are severely affecting the EPC contractors: - The income of a foreign company (offshore supplies / offshore services), which may otherwise not be taxable or taxable at lower rate, may become taxable in the hands of the AOP. Apart from taxability of offshore supplies, it creates issues such as	***with whom Government has entered into agreement for the association or participation in any business consisting of the prospecting for or extraction or production of mineral oils - (a) shall not be assessed on the income as association of persons or body of individuals consisting of such persons; but (b) each of the persons referred to above be assessed in respect of his or its share of income, as the case may be, in the same status in which that person has entered into the agreement with the Central Government.}***

Sr. No	Section	Issue/Justification	Suggestion
		multiple assessments in the hands of the individual contractors as well as in the hands of an AOP. - The above may lead to double taxation of non-residents in India as well as in their country of residence without any tax credits being available. - The PSU customers usually insist the contractors to obtain withholding tax orders which are required to be obtained as per the provisions of Section 195 of Income-tax Act, 1961. However, Revenue officers generally refuse to issue withholding tax orders to MNC contractors stating that consortium constitutes an AOP which is a resident and to which section 195 is not applicable. - Even in cases where withholding orders are issued with respect to Individual MNC contractors, tax authorities may issue order providing for withholding tax rate of 1 to 2 percent on offshore supplies, which otherwise may not be taxable. MNC contractors operate on wafer-thin margins as EPC contracts awarded by PSUs are under competitive bidding. This leads to blockage of cash flows in withholding tax. Such withholding tax is adjusted against the tax liability of MNC contractors at the conclusion of assessment / appellate proceedings which takes many years due to long drawn litigation with tax authorities. - Each contractor would	

Sr. No	Section	Issue/Justification	Suggestion
		have paid their own taxes in their respective name and withholding tax credit is available to the credit of Individual contractors. Whereas if tax authorities sought to assess the income in the hands of an AOP, tax credit may not be available to AOP since same may not be reflected in the records of the tax authorities. - Apart from taxation in hands of AOP being unfair, it may also Involve many additional administrative and compliance costs like obtaining Permanent Account Number, Tax Deduction Account Number, maintaining separate books of account of AOP, tax audit compliances, separate bank accounts, filing of return, Rejection of the books of account of an AOP, best judgment assessment, long drawn litigation which would ultimately result locked up funds due to recovery of high tax demands. - Generally, there are multiple EPC contracts which may lead to multiple AOPs on account of consortium arrangement with different parties which would end up in multiple compliance requirements. - This may lead to increase in legal, administrative and compliance costs for the MNC contractors and therefore for infrastructure, railways and power projects in the country. Due to above reasons and complexities, on certain occasions, MNC contractors from	

Sr. No	Section	Issue/Justification	Suggestion
		various countries are wary of bidding for Indian projects due to uncertainty in planning cash flows / Internal Rate of Return from the project or even if MNC contractors do bid for projects in India, they want to factor in the tax costs in their pricing schedule, which, in turn, results in increasing the project cost for the developer. These apprehensions / skepticisms are more prevalent for the infrastructure projects which have long gestation periods and huge project costs. The MNC contractors bring to India highly advanced technology / equipment which is critical in the entire value chain of infrastructure projects. Further, projects in infrastructure, railways and power sectors are critical for the development of the nation. In case the offshore supplies are sought to be taxed as an AOP, this would lead to cascading effect on the overall project costs. As mentioned above, large amount of working capital will get blocked up in withholding tax / payment of tax demands consequent to completion of assessments. This combined with the high interest rates / credit crunch, has already affected the financial health of EPC contractors. The said position of the Revenue is causing hardship to the industry and is also resulting in pessimism as regards the uncertain tax environment in India.	

Sr. No	Section	Issue/Justification	Suggestion
		Hon'ble Prime Minister, Shri Narendra Modi ji during his speech at 2014 SAARC summit mentioned that Infrastructure is our region's greatest weakness and it's most pressing need and therefore is greatest priority in India. Similarly, Mr. Modi has in the past made announcements of urbanization (100 smart/twin/satellite cities), railway reforms coupled with the bullet train, Golden Quadrilateral, etc. For these reforms, India would certainly require to partner with MNCs across the globe to develop necessary infrastructure needs. MNC contractors seek clear, simple, predictable and fair tax regime for carrying out business in India and the clarity on AOP issue would help encourage confidence of MNC contractors. The Central Board of Direct Taxes in instruction no. 1829 dated 21-9-1989 had also accepted the principle that in the consortium arrangement as mentioned above, no AOP is constituted between the members of consortium. However, the Instruction was withdrawn primarily due to concern that there is a deliberate over-loading of prices of offshore supplies and under pricing of onshore scope of work by certain contractors. However, such withdrawal has affected honest taxpayers even though above kind of situation could be taken care of by tax avoidance provisions such as GAAR, Transfer Pricing.	

Sr. No	Section	Issue/Justification	Suggestion
46.	***Section 2(14)-* Sale of Rural Agriculture Land shall be taxable as Capital Gain in certain situations**	Presently, under section 2(14), rural agriculture land is not a capital asset and consequently sale of rural agriculture land does not result in to capital gains. India is one of the very few countries with such a high production of food grains. Further export promotion is also amongst the top priority points for present and past Governments of India. To support and promote agriculture, the income from agriculture and related products is not taxable under Income-tax Act, 1961. The sale of agriculture land to buy other agriculture land shall always be out of income tax purview. Such tax benefits are absolutely acceptable as the same are to promote agriculture and encourage agriculturist. However, sale of agriculture land for being used for a purpose other than agriculture is also not taxed. On one hand Government encourages agriculture and on the other hand offers tax exemption even if agricultural land is sold for its subsequent use for the purpose other than agriculture. In Tier II cities like Pune, Indore, Lucknow etc., there is remarkable growth in real estate sector in last 10 years. There is tremendous real estate growth in the radius of 50 kms from city centre. The profit margins in real estate are substantially high as compared to most of the other sectors. Many agriculturists themselves have	***The higher rate of tax results in to lower collection. Hence in order to lower the rate of tax, there is a need to broaden the tax base. Further to discourage agriculturist to sell land, the same may be taxed at some flat rate say 20% or 30% if the sold land is subsequently going to be used for the purpose other than agriculture. The mechanism shall be set to track subsequent use of land. Initially, for the purposes of verification mandatory e filing of income tax returns may be made applicable to assessees selling rural agricultural land for a consideration exceeding Rs 10,00,000.***

Sr. No	Section	Issue/Justification	Suggestion
		become developers or they have entered in to Joint Venture with a developer. Further, deductions like section 80-IB are offered in last 15 years, because of which real estate developers could avail complete tax benefit. Hence neither the land owner nor the developer is taxed in spite of having the business of highest profit margin.	
47.	**Taxation of agricultural income**	The agricultural segment of the economy consisting of a large number of wealthy agriculturists should contribute to the national exchequer. It is to be noted that agricultural income is taxed but not by the Centre but by the States. The founding fathers of the Constitution assigned the power to tax agricultural income to the States in the pious hope that they, being close to the areas of operation of agriculturists, would effectively collect large revenue for development purposes. However, this expectation appears to have been belied. Besides, many persons offer huge agricultural income in the income-tax returns and there is no mechanism to verify whether such income has suffered tax under the relevant State law. Hence, the time has come that the power to tax income from agriculture should be put in the Union List and the Central Government should levy and collect the tax. Of course, the revenue can ultimately be distributed among the State	**It is suggested that the power to tax income from agriculture should be put in the Union List and the Central Government should levy and collect the tax. Of course, the revenue can ultimately be distributed among the State Governments.** **A beginning can be made by granting exemption limit of Rs.3 lakhs separately for agricultural income. This will enable to bring high income earners into tax net and spare small farmers.**

Sr. No	Section	Issue/Justification	Suggestion
		Governments. A beginning can be made by granting exemption limit of Rs.3 lakhs separately for agricultural income. This will enable to bring high income earners into tax net and spare small farmers.	
48.	**Agricultural activities by corporate enterprises**	With the expansion of the agri-business many corporates are undertaking composite activities of agriculture. There is no necessity to exempt corporates in respect of their agricultural income.	***It is suggested that income from agricultural activities carried on by corporates may be brought into the scope of the tax net.***
49.	**a) Section 2(15)- Definition of charitable purpose**	a) Though as per section 2(15), "charitable purpose" includes the advancement of any other object of general public utility, however, the advancement of any other object of general public utility would not be a "charitable purpose", if it involves carrying any activity in the nature of trade, commerce or business or rendering any service in relation to any trade, commerce or business for a cess, fee or any other consideration irrespective of the nature of use or application or retention of the income from such activities. In order to provide relief to the genuine hardship faced by charitable organizations which receive marginal consideration from such activities, the Finance Act, 2010 had provided that the benefit of exemption will not be denied to the institutions having object of advancement of general	***It is suggested that Rs.25 lakhs may be enacted as the basic exemption limit in case of such trusts/entities, and receipts in excess of Rs.25 lakhs may be subject to tax at maximum marginal rate after deducting the related expenditure.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		public utility, even where they are engaged in the activity of trade, commerce or business or rendering any service for a cess or fee, provided the aggregate value of receipts from such activities does not exceed Rs.10 lakh in the year under consideration. Therefore, in effect, "advancement of any other object of general public utility" would continue to be a "charitable purpose", if the total receipts from any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business does not exceed Rs.10 lakh in the previous year. The said limit of Rs.10 lakhs was increased to Rs.25 lakhs by the Finance Act, 2011 with effect from A.Y. 2012-13. Accordingly, if the receipts from such activities are Rs.25 lakhs or less, it would continue to be a charitable purpose. However, if the receipts from such activities are Rs.25 lakhs or more, the trust would lose its "Charitable" status. Also, the "charitable" status of the trust or institution is likely to change every year depending on whether or not its receipts exceed Rs.25 lakhs in that year. In order to overcome this difficulty, instead of denying exemption in cases where the receipts exceed the specified limit, the exemption limit may be fixed at Rs.25 lakhs and receipts over this limit may be subject to the maximum marginal	

Sr. No	Section	Issue/Justification	Suggestion
		rate after deducting the related expenditure i.e., the net receipts over and above Rs.25 lakhs may be subject to maximum marginal rate.	
	b) Activities of Governmental authorities be treated as activities for charitable purpose	b) Proviso to section 2(15) of the Income-tax Act provides that in case the receipt from any trade, commerce, business or services related thereto exceeds to Rs 25 Lacs, it would not be treated as charitable purpose under the head "advancement of general public utility". As a consequence the provisions of section 11 and 12 of the income tax act will not apply. It may be noted that the Development authorities or urban improvement trust are carrying the activities of the municipalities as provided in the Article 243W in Schedule XII of the Constitution of India. They are termed as governmental authority as per Notification 25/2012-Service tax dated 20th June 2012. The aforesaid notification provides a negative list of services i.e. services which are exempt from the applicability of the service tax. Para 39 of the said notification exempts services of a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution from applicability of service tax. Since governmental authorities are carrying on activities in relation to any function entrusted to a municipality under article 243W of	***It is suggested that section 2(15) be amended to provide a third proviso to the effect that the first proviso shall not apply to a governmental authority carrying any function entrusted to a municipality under article 243W of the Constitution. In effect, for such government authorities, even if the activities incidental thereto result in receipts of an amount exceeding Rs 25 lacs it should be considered as incurred for advancement of general public utility.*** ***Also, as in case of service tax Notification No. 25/2012 dated 20th June 2012, the term "governmental authority" may be defined in the Income-tax Act, 1961 as under:*** ***" 'Governmental Authority' means a board, or an authority or any other body established with 90% or more participation by way of equity or control by government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution."*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX***

Sr. No	Section	Issue/Justification	Suggestion
		the Constitution, in line with the provisions of service tax, their activities should atleast be considered as being carried for "charitable purpose" under the provisions of the Income-tax Act, 1961. This may be done by amending the definition of "charitable purpose" through insertion of third proviso to the effect that the first proviso shall not apply to the activities of a governmental authority carrying any function entrusted to a municipality under article 243W of the Constitution. Also, as in case of service tax, the term governmental authority should be defined in the Income-tax Act, 1961. Such clarity in law would reduce avoidable litigations in this regard.	***LAWS)***
	c) Mandatory application of income by charitable trusts/ institutions under section 10(23C)	a) Application of income is manadatory by charitable trusts/institutions including those enjoying benefits under section 10(23C) to its objects, subject to accumulation of not more than 15% of its income including income from voluntary contributions. Similar provisions under section 11(1) read with section 12(1) exclude 'corpus donations' (voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution) from the mandatory requirement of application of the income. No such provision has been made in section 10(23C). This will compel the Institutions coming within the	***Section 10(23C) should be amended to specifically exclude 'corpus donations' from the requirement of mandatory application of income by such trusts / institutions.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		scope of section 10(23C) to apply even their corpus donations to the day to-day activities for getting the exemption. This will be prejudicial to them because they cannot build up the corpus fund.	
		b) Section 11(1) and section 10(23C) require mandatory application of income by charitable trusts/institutions to its objects, subject to accumulation of not more than 15% of its income. The income to be applied includes income which is otherwise exempt under section 10 of the Income tax Act, 1961 like dividend income, dividend from mutual funds. Since section 10 provides for incomes which do not form part of total income, such incomes should be exempted from the provisions of application under section 10(23C) and 11(1).	***Since section 10 provides for incomes which do not form part of total income, like dividend from mutual funds etc such incomes should be exempted from the mandatory provisions of application under section 10(23C) and 11(1).*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
50.	***Deemed Dividend- section - 2(22)(e):***	According to section 2(22)(e), any payment by a company, not being a company in which public are substantially interested, of any sum, by way of advance or loan to a shareholder (holding not less than 10% of voting power) or to a concern in which such shareholder is a member or partner having substantial interest shall be treated as deemed dividend to the extent company possesses accumulated profits & shall be taxable in the hands of shareholder or concern, as the case may be. The logic behind insertion of this provision is to tax transactions	***a) Firstly, it would be in the interest of justice that genuine & bonafide transactions of loan or advance should not be treated as deemed dividend. To effectuate this, a provision should be introduced that if the loan or advance is not repaid within a certain period, it should be taxed as deemed dividend in the year in which such certain period expires. In this way, bonafide assessee with an intention to repay loan would get excluded & those with an intention of never repaying will get taxed.*** ***b) Secondly, whenever the***

Sr. No	Section	Issue/Justification	Suggestion
		coloured as loans or advances in an attempt to avoid dividend distribution tax by the payer & also avoiding tax in the hands of the recipient. But the same is causing difficulty in genuine and bonafide cases. For example, for the purpose of diversifying into new business activities by a group, a new entity is often formed & therefore, management is common. So the conditions of section 2(22)(e) are satisfied. It's natural that the new entity will borrow funds from existing entity to meet its funding requirements & will repay when it becomes self sufficient. The provision u/s 2(22)(e) is based on the blanket assumption that there is an attempt to avoid tax & the bona fide assessee will also get crushed under this. Therefore, there is a strong need to amend the provisions of this section so that the genuine assessee shall be relieved.	***loan or advance is to be taxed as a deemed dividend in the hands of recipient, tax should not be levied on the entire amount of loan or advance (provided there are sufficient accumulated profits). Tax should be levied only on that proportion of the loan or advance/ accumulated profits having regard to the shareholding percentage of the concerned shareholder. This is for the very simple reason that a particular shareholder does not have a right on the entire accumulated profits of the company & his right is restricted to his shareholding only.***
51.	***Section 2(22)(e)- Beneficial owner***	One of the situations which attract the provisions of deemed dividend under section 2(22)(e) is where payment by way of advance or loan is made by a company (not being a company in which public is substantially interested) to a shareholder being a person who is **the beneficial owner** of shares holding not less than 10% of the voting power. The language of section 2(22)(e) is so drafted that the recipient has	***Section 2(22)(e) may be amended appropriately to remove this anomaly.***

Sr. No	Section	Issue/Justification	Suggestion
		to be a registered owner as well as the beneficial owner of shares for the deeming provisions to get attracted. Where the shares are held by the Karta on behalf of HUF, the karta becomes registered owner, while the HUF is the beneficial owner. In such a case, the provisions of section 2(22)(e) are not attracted in respect of the loan given by the company to the Karta and the HUF. Such situations fall outside the scope of the provisions of section 2(22)(e) since the Karta is a registered owner but not the beneficial owner and the HUF is only the beneficial owner but not the registered owner. Since this does not seem to be the intention of lawmakers and also leads to leakage of revenue, the said loophole needs to be plugged.	
52.	***Section 2(42A) – Definition of Short Term Capital Asset and rate of tax on Capital gain on transfer of certain shares and Debt units***	By an amendment made by the Finance (No. 2) Act, 2014, unlisted shares of Companies and Debt Units of Mutual Funds transferred after being held for one year, which were earlier treated as a "long term capital asset", are now treated as a "short term capital asset" if sold after 10th July, 2014. Consequently, the capital gain arising from transfer of such shares or units after 10th July, 2014 which was earlier considered a "long term capital gain" will now be taxed as a "Short Term Capital Gain", thus resulting in a substantial increase in tax liability of the investors in such	***It is suggested that in order to do away with the aforesaid unfair situation caused to the investors who had invested before 1.4.2014 but who could not redeem them before 10.7.2014, an amendment be made by the Finance Bill, 2015 to provide that in the second proviso to section 2(42A) and in the second proviso to Sec. 112(1)(d), the words and figures "10th day of July, 2014" be substituted by the words and figures "31st day of March, 2015".***

Sr. No	Section	Issue/Justification	Suggestion
		shares/units. The increase in tax liability may vary between 29% and 33% depending on the indexation benefit. It is submitted that the above amendment results in "retrospective" tax liability being imposed and causes unjustified hardship to many small investors who purchased such shares or debt units before 1.4.2014 but who could not redeem them before 10.7.2014. When such investors made the investment, according to the law then prevailing, on transfer, they would have got the benefit of indexation and taxed at 10% as a long term capital gain. The "Net" tax liability could be between 0% & 4% depending on the "indexation" benefit. Such investors had acquired a "vested right" to be taxed at the low effective rate of 0-4%. Such "vested right" has been taken away by the subsequent amendment made by the Finance (No 2) Act, 2014 as a result of which their tax liability will shoot up to 30%, plus surcharge, if any. Thus, such assessees have most unfairly been subjected to "retrospective" taxation which is against the declared policy of the Government. It is, therefore, submitted that in fairness to such investors they should continue to have the benefit of indexation and concessional rate of 10% as long term capital gain in respect of such shares or units even if the shares/units are redeemed after	

Sr. No	Section	Issue/Justification	Suggestion
		10th July, 2014 but before 31st March, 2015.	
53.	**Section 3- Definition of Previous year**	In Income-tax Act, 1961 is "Assessment Year" defined in Section 2(9) as: "Assessment Year" means the period of twelve months commencing on the 1st day of April every year. "Previous Year" is defined in Section 3 of the Income-tax Act, 1961 to mean "for the purpose of this Act, "previous year" means the financial year immediately preceeding the assessment year. There is no difference in the period of Assessment Year & Previous Year since both are financial year/Income Year for accounting purpose. A normal income tax assessee does not understand the difference of wordings of Assessment Year (AY) & Previous Year/ Accounting Year (AY) and gets confused in presenting his details, while paying Advance Income tax, TDS or filing the return of income Tax. Everybody considers Assessment Year (AY), previous year (PY) and Accounting Year (AY) as same. To avoid misunderstanding or confusion among Income Tax payers (Assessees) and for keeping the records, the concept of "previous year" and "assessment year" may be replaced with the "financial year" of "previous year". Even though, the said suggestion has been considered while framing the	***In line with the provision of section 320(92) read with section 2 of the Direct Taxes Code, 2013 the concept of "previous year" and "assessment year" may be replaced with the "financial year" to mean as below:*** ***"financial year" as per Direct Taxes Code,2013 means—*** ***(a) the period beginning with the date of setting up of a business and ending with the closure of the business or the 31st day of March following the date of setting up of such business, whichever is earlier;*** ***(b) the period beginning with the date on which a source of income newly comes into existence and ending with the closure of the business or the 31st day of March following the date on which such new source comes into existence, whichever is earlier;*** ***(c) the period beginning with the 1st day of the financial year and ending with the date of discontinuance of the business or dissolution of the unincorporated body or liquidation of the company, as the case may be;or*** ***(d) the period of twelve months commencing from the 1st day of April of the relevant year in any other case;***

Sr. No	Section	Issue/Justification	Suggestion
		Direct Taxes Code, to simplify the law, it would be appropriate to bring the change in the Income-tax Act itself.	
54.	***Definition of 'Month'***	As of now, the term 'month' is nowhere defined in the Income-tax act, 1961. However, it is mentioned in several sections of the Act like section 44AE, 201, 234A/B/C/D and 244A and many more. A lot of times, due to non availability of definition of month in the Act, disputes arise specially at the time of payment of interest either by assessee or income tax department.	***In order to avoid disputes with regard to calculation of taxes based on month, it is suggested that the term 'month' be defined in the Income-tax Act, 1961 itself.***

CHAPTER II

BASIS OF CHARGE

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
55.	***Scope of Royalty Income - Section 9(1)(vi) of Income-tax Act, 1961***	a) Various retrospective amendments with effect from 1st June, 1976 were made to section 9(1)(vi) dealing with royalty income.Internationally, as evidenced by OECD Commentary as also books of eminent experts, the following two basic principles with regard to software payment are recognized and well settled: i) The proposition that "right to use a copyright" is different from "right to use a copyrighted article" is recognized and it is only the 'right to use a copyright' which is covered within the definition of royalty. ii) The distributor of computer software does not pay to exploit any rights in the software but only for acquisition of the software for further circulation. In view of these, payments made by a distributor to the copyrighter holder are in the nature of business income and not royalty income. Also, 'Packaged /Canned Software' means ready-made software that could be sold off the shelf. Sale of such software products represent sale of copyrighted articles as against a copyright i.e. such transactions represent sale of goods. Packaged software has been held to be 'Goods' even by the Supreme Court in case of *TCS vs. State of AP (271 ITR 401)*. The Central Board of Excise and	***It is suggested that*** ***1) Payments for copyrighted article like shrink-wrapped software as also payments made by distributors of software be specifically excluded from the definition of "royalty".*** ***2) Infact 'Explanation 4' inserted by the Finance Act, 2012 should be deleted from Section 9(1)(vi):*** ***Such an amendment to remove the clarificatory retrospective amendment made by Finance Act, 2012 would positively impact the sentiment of the software industry and also uphold the constitutional validity.***

		Customs ("CBEC") has recognized 'Information Technology Software' as 'Goods' and classified the same as Central Excise Tariff Item 8523 80 20 in Schedule I to the Central Excise Tariff Act, 1985. Further, 'Packaged Software/Canned Software' is recognized as 'Goods' for the purposes of Central Excise Law by the CBEC, which is another wing of the Ministry of Finance. These facts lead to the conclusion that 'Packaged Software/Canned Software' are in the nature of 'Goods' and the legislation also recognizes the same. Given the above, it is recommended that a specific amendment be made to the Income tax Act to exclude 'Packaged/ Canned Software' from the purview of 'royalty' defined under Section 9(1)(vi). Further, in certain cases, these software products are downloadable from the internet and not necessarily delivered in tangible media such as a CD or a DVD. However, irrespective of the mode of delivery, the fact remains that what is sold is a 'copyrighted article' and not a 'copyright'.	
		b) Exclusion of packaged software from applicability of TDS under Section 194J of the IT Act: Circular13/2006 dated 13.12 2006 issued by the CBDT states that TDS shall be applicable only when there is a 'contract for work' and not where there is a 'contract for sale'. This proposition has	***To bring utmost clarity, it is also suggested that a specific amendment be made to Section 194J of the IT Act to exclude sale of software products from the ambit of tax withholding. In this regard, it is suggested that the following provision be included in Section 194J***

		also been upheld in various judicial precedents like *BDA Limited vs. ITO (TDS) 281 ITR 99 (HC Bom), CIT vs. Dabur India Limited (283 ITR 197) (HC Del).* Considering the facts and arguments above, it is clear that transaction of sale of 'Packaged/Canned Software' is a 'contract for sale' as against a "contract for work' and consequently, should not attract TDS provisions. It is relevant to note that 'Packaged/Canned Software' is also subject to excise duty. There are no other goods in India which are subject to both excise duty and TDS. An amendment to the Income tax Act to exclude 'Packaged/Canned Software' from the purview of 'royalty' would automatically exclude the transactions from the purview of Section 194J of the IT Act and would help resolve the withholding tax issue faced by traders of hardware with embossed software. The distribution network and channel partners for off the shelf packaged software also deal with hardware like computers, desktop etc. The packaged software is mostly sold along with the hardware, on the same invoice. There is no obligation of TDS on any hardware items, and the traders are finding it confusing and difficult to discharge the TDS obligation arising out of the sale of the 'Packaged Software/Canned Software'. Resolution of the definition of royalty to exclude 'Packaged Software/Canned Software' would	***of the Act:*** ***<u>Amendment required</u>*** ***"194J. (1) Any person, ...*** ***Provided that no deduction shall be made under this section—*** ***(A) ...*** ***(B) ...*** ***(C) from any sums, if credited or paid for the transfer of a computer software (including the granting of a licence), along with or without a computer or computer-based equipment or for ancillary services such as up gradation or subscriptions, which does not involve transfer of all or any rights in respect of any copyright."***

		also help traders and boost ease of business. Separately, Software Ancillary Services such as Upgrade Fees, Subscriptions, etc. which do not involve transfer of rights, or grant of license but involve only payments of consideration for services is not 'Royalty' for the purposes of Section 194J read with Section 9(1)(iv) Explanation 2 of the IT Act. Clarification may be issued that AMC's, Upgrade Fees, Subscriptions, etc. which do not involve transfer of rights, or grant of license, but involve only payments of consideration for services is not "Royalty" for the purposes of Section 194J read with Section 9(1)(iv) Explanation 2 of the IT Act and that such transaction are not liable for TDS under Section 194J of the IT Act.	
56.	***Explanation 5 to Section 9(1)(vi) – e commerce services***	Explanation 5 to Section 9(1)(vi) has been introduced by Finance Act, 2012 w.r.e.f. 1st June 1976 to clarify that royalty includes and has always included consideration in respect of any right, property or information, whether or not the right, property or information is used directly by the payer or is located in India or is in the control or possession of the payer. It appears that this amendment may also cover within its domain payment for telecom services (including basic / mobile telephony, internet charges, roaming charges, interconnect charges, etc.); e-commerce transactions like access of data bases, cloud computing; etc.	***In view of the reasoning given, it is suggested that the Government should clarify by way of insertion of a proviso or issue of a circular that Explanation 5 as mentioned would not be applicable to any payments for telecom services; e-commerce transactions; etc.***

		which may not be the real intention. Even internationally, a large variety of above referred transactions are not covered within the ambit of "royalty".	
57.	***Explanation 6 to Section 9(1)(vi) – telecom services***	Expansion of definition [Explanation 6 to section 9(1)(vi)] of 'process' so as to include transmission by satellite, cable, optic fiber or by any other similar technology within definition of "Royalty" should be dropped as it is negatively impacting telecom sector and leading to: (i) Non viability for Indian entrepreneurs to run such capital intensive projects due to rise in cost, as the overseas service providers (of roaming, bandwidth, etc.) would seek to shift their tax burden (TDS and Income-tax) to Indian players. (ii) Increase in cost of basic amenities (like telephone, internet, electricity, cable charges etc.) to the general public at large and adding on to inflation.	***In a bid to fuel the highly competitive and unnerved Telecom Industry as well as to bring in certainty, the government should clarify by way of insertion of a proviso or issue of a circular that Explanation 6 would not be applicable to any payments for telecom services including basic / mobile telephony, internet charges, roaming charges, interconnect charges, etc.***
58.	**Carry forward of excess foreign tax credit**	The Income-tax Act, 1961 allows for set off in respect of foreign taxes paid on overseas income. However, in case of loss/inadequate profits, no set off may be possible. In the current economic scenario of the global economy, business outlook has become extremely uncertain and results have become very volatile.	***It is suggested that assessees be permitted to carry forward (say for five years) such unutilized credit (in USA such relief is granted vide section 904(c) of Federal Tax Act) for adjustment in future years.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Chapter III

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

DETAILED SUGGESTIONS

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
59.	**Leave Travel Concession/ Assistance - Replacement of "Calendar year" by "Financial year":**	As per the provisions of section 10(5) of the Income-tax Act, 1961, an exemption of the value of leave Travel Concession/Assistance received by the employee from his employer is provided subject to fulfillment of prescribed conditions. Rule 2B provides for the specified conditions to be fulfilled. One of the conditions is that the exemption can be availed only in respect of two journeys performed in a block of four CALENDER YEARS. The concept of "Calendar year" was introduced in the year prior to 1989 when there was no uniform Previous Year. Since 1989 uniform Previous Year has been introduced i.e. April – March. To be in line with the concept of "financial year" adopted by other provisions of the Income tax Act, it is suggested that the concept of calendar year should be replaced with financial year (April – March) i.e. the calculation of block period shall be shifted from Calendar year to Financial Year.	***To be in line with the concept of "financial year" adopted by other provisions of the Income tax Act, it is suggested that the concept of calendar year should be replaced with financial year (April – March)*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***
60.	**CER Sale to be treated as Capital Receipt**	Carbon credit is an incentive available to the Industries reducing CO_2 emission by investing in energy efficient technologies. In the present day scenario, the cost of putting additional technology for clean development mechanism is relatively high. The incentive is given to relatively offset the additional cost of Investments in such Capex. Further, this credit can be viewed as an incentive, which augments country`s foreign exchange earnings.	***This credit should be treated as capital receipt free from any taxes. Alternatively, the amount spent should be eligible for deduction under section 10AA, 80IA, 80IB, 80IC etc.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
61.	**Section 10(10D) TDS**	Section 10(10D) provides for non-taxability of sum received from maturity	***It is suggested:*** ***(a) that where the***

Sr. No	Section	Issue/Justification	Suggestion
	in respect of maturity of insurance policies which are taxable under section 10(10D)	of insurance policies. However, following are some exceptions to this: (a) any sum received under section 80DD(3) or 80DDA(3) (Substituted by section 80DD by Finance Act,2003)or (b) any sum received under Keyman Insurance Policy. (c) any sum received under an insurance policy issued after 01.04.2003, but on or before 31.03.2012 in respect of which premium payable for any of the years during the term of policy exceed 20% of actual capital sum assured. (d) any sum received under an insurance policy issued on or after 01.04.2012 in respect of which premium payable for any of the years during the term of the policy exceeds 10% of the actual sum assured. (e) any sum received under an insurance policy issued on or after 01.04.2013 in respect of which premium payable for any of the years during the term of the policy exceeds 15% of the actual sum assured, for insurance of life of the person referred to in section 80U and section 80DDB.	***premium paid is above 10% or 15% or 20%, as the case may be, of capital sum assured, the premium paid certificate (receipt) issued by insurance companies for the purpose of 80C should clearly mention that the qualifying amount for 80C deduction in respect of such premium paid is only up to 10%/15%/20% as the case may be, of capital sum assured.*** ***(b) Instead of any sum received being made chargeable to income tax, only the sum, which is in excess of the premium payments made by the insured to the insurer should be considered as income exigible to tax. Suitable clarifications may be made accordingly.*** ***(SUGGESTION TO IMPROVE TAX COLLECTION)***
62.	**Definition of “Keyman Insurance Policy” - Section 10(10D)**	Any sum received under a Keyman insurance policy is not exempt under section 10(10D). The meaning of “Keyman Insurance Policy” given in Explanation 1 to section 10(10D) was amended by Finance Act, 2013 to include such policy which has been assigned to a person at any time during the term of the policy, with or without consideration”. This amendment is effective w.e.f. 1.4.2014 (i.e. A.Y.2014-15).	***It is suggested that section 17(3)(ii) may be appropriately amended to provide that tax would be levied only to the extent of such difference, or in the alternative, deduction for surrender value may be provided for under section 16. In such a case, the employer can deduct tax at source on the differential***

Sr. No	Section	Issue/Justification	Suggestion
		The effect of this amendment is to deny the benefit of exemption in respect of maturity proceeds of keyman insurance policy which has been assigned to a person during the term of the policy, whether with or without consideration, by including the assigned policy within the definition of "Keyman insurance policy". The issues under consideration and suggestions thereof in this regard are as follows – The entire proceeds would be subject to tax under section 17(3)(ii) in the hands of the person to whom the policy is assigned, whereas only the premium paid by the employer on which deduction has been claimed less the surrender value paid by the employee to the employer at the time of assignment should be subject to tax, since the same represents the actual benefit availed by the assignee.	***amount treated as "profit in lieu of salary" at the time of assignment.*** ***Further, in any case, the maturity proceeds received on death of the assignee should be kept out of the tax net. This benefit is similar to the exemption given in respect of life insurance policies, where the annual premium paid exceeds 10% of minimum sum assured.***
63.	**Section 10(13)- Payment from approved superannuatio n fund**	Section 10(10AA) provides for exemption for payment received as cash equivalent of leave salary in respect of earned leave period at the time of retirement whether superannuation **or otherwise**. Section 10(13) provides for exemption with regard to payment from an approved superannuation fund. Section 10(13)(ii) of the Act provides for exemption in the hands of the employee in respect of the amount received on commutation of the annuity in case of retirement at or after a specified age or becoming incapacitated prior to such retirement. This provision however, does not cover commutation of an	***Section 10(13) may be amended to exempt commuted value received by an employee from the superannuation corpus standing to his credit at the time of voluntary retirement, by including the words "or otherwise" in line with section 10(10AA) of the Income tax Act, 1961.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		annuity paid on voluntary retirement of the employee. Section 10(10AA), as mentioned above, has taken care of such case by using the terminology "or otherwise". Since the intention of the law makers is clear by the wordings of section 10(10AA), section 10(13)(ii) may be appropriately amended to include the words "or otherwise". This will provide relief to genuine taxpayers who are taking voluntary retirement.	
64.	**Annual receipts under section 10(23C)**	Under section 10(23C)(iiiad) and (iiiae) of Income-tax Act, it is provided that the income of University/Educational institutions/hospitals/ other institutions specified therein will be exempt provided they comply with the conditions stipulated therein. Also, it is provided that "aggregate annual receipts" of such institutions shall not exceed the amount of annual receipts as may be prescribed. Though annual receipts have been prescribed as Rs.1 crore vide Rule 2BC of Income-tax Rules, the word "annual receipts" have not been defined in the Income-tax Act. It is not clear as to whether: (a) for computing "annual receipts" only the receipts of such institutions from educational/hospital activities alone are to be considered each year; (b) Certain receipts of such institutions that are not received on annual basis e.g. receipts from sale of property, equity shares and other proceeds on divestment are to be excluded from the computation of "annual receipts";	***It is suggested that "Annual Receipts" be clearly defined as income of the hospitals/ educational institutions arising regularly/every year but excluding value of donation received in kind by way movable assets, land, hospitals/educational equipment, sale consideration received on disposal of land, shares or other movable property, hospital/educational equipment etc.*** ***Further, it may be specifically provided that donations received towards corpus by way of land, movable assets are excluded from computation of "Annual Receipts" as prescribed under Rule 2BC of Income-tax Rules.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		(c) In certain cases where such charitable institutions receive donations in kind in the form of land, movable assets etc. whether "annual receipts" would exclude such receipts since they are not received annually.	
65.	**Tax policy for MGNREGA, SSA, NRHM**	The National Rural Health Mission (NRHM) of the Ministry of Health & Family Welfare was launched on 12th April, 2005 by the Government of India to improve medical facilities in rural areas in the country. The NRHM seeks to provide accessible, affordable and quality health care to the rural population, particularly vulnerable sections. NRHM aims to reduce the Maternal Mortality Ratio (MMR), Infant Mortality Rate (IMR) and the Total Fertility Rate (TFR). It also envisages increasing public spending on health from 0.9% to 2-3% of the GDP with improved arrangements for community financing and risk pooling. The NRHM has provided an umbrella under which the existing Reproductive and Child Health Programme (RCH) and various National Disease Control Programmes (NDCPs) have been incorporated. The Ministry of Health & Family Welfare is implementing National Rural Health Mission as a Centrally Sponsored Scheme (CSS). As against a Central Sector Scheme, a CSS is funded by the Govt. of India and implemented by and in the States. For the Scheme's implementation, the funds are routed as Grants-in-Aid from the Govt. of India to the State Health Societies and District Health Societies/ Sub district formations. As per the existing provisions of the Income-tax Act, 1961, all the States and	***The provisions of Section 10(23C) (iiiac) of the Income-tax Act, 1961 may be applicable to such societies for getting exemption from levy of Income Tax which are reproduced below:*** ***"Any hospital or other institution for the reception and treatment of persons, suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes not for profit and which is wholly or substantially financed by the Government"*** ***As per the above provisions a notification may be issued granting exemption to all the Societies registered at State & District level being funded by Govt. (Central/ State) otherwise a specific exemption should be provided to such societies w.e.f. the date of the formation of such societies/***

Sr. No	Section	Issue/Justification	Suggestion
		District Health Societies are required to get themselves registered under 'Section 12AA' and required to file the return of income. Further, as per the provisions of the Income-tax Act, 1961 each such society should spend 85% of the grant received during the year within the same year and if the unspent balance is more than 15% of the grant received the same becomes taxable. Under the NRHM, States/ Districts when unable to utilise the entire Grant within the year of receipt have to carry forward the same for the ensuing financial year(s). The NRHM programme is an ongoing programme and funds unspent are being utilised in subsequent years, as absorptive capacity increases. Taxing the unspent balances therefore in effect reduces funds available for implementation of the Mission and is a retrograde measure adversely impacting the programme and expenditure in such a critical social sector as health. Several representations have been received from State of Tamil Nadu, Karnataka & Himachal Pradesh requesting to get exemption to the State & District Health Societies from the levy of Income-tax, as either they are not getting registration u/s 12AA of Income-tax Act, 1961 or if got registered being tax imposed on the unspent balances.	***launching of the programme. This may not be applicable not only for societies formed for implementation of Health Programme but also for other programmes such as Education & National Aids Control Programmes, where also the funds are routed through societies.*** ***As per the existing provisions of Section 12A of the Income Tax Act, 1961 each State and District Health Societies are eligible to get tax exemption if they comply the conditions and procedure as laid down under Section 12A & 12AA of Act which provides of getting Registration of the Society and filling a regular Income Tax Return as per the provisions of the Income Tax Act.*** ***Recently introduced section empowers the Central Government to notify for 100% exemption u/s 10(46) if covered under the provisions of this section and the SHS and DHS falls under such category, it is therefore suggested that exemption be granted to all SHS and DHS so that the same is made available to all at least from the current financial year so that from the Assessment Year 2015-16 these societies are exempted from filling the***

Sr. No	Section	Issue/Justification	Suggestion
			Income Tax Return or even if they are required to file the return they can do so as per the directions to be given in the Notification. ***(SUGGESTION FOR REDUCE/ MINIMIZE LITIGATIONS)***
66.	***Section 10(23C) – Need for amendment similar to section 12A wrt reopening of cases under section 147***	A very welcome amendment has been brought in section 12A via Finance (No. 2) Act, 2014 by way of second proviso which reads follows :- "*Provided further that no action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year*: …" (subject to conditions) The first para of Circular no. 11 of 2008 dated 19th December, 2008 reads as follows:- "*Section 2(15) of the Income Tax Act, 1961 ('Act') defines "charitable purpose" to include the following:-* *(i) Relief of the poor* *(ii) Education* *(iii) Medical relief, and* *(iv) the advancement of any other object of general public utility.* *An entity with a charitable object of the above nature was eligible for exemption from tax under* ***section 11 or alternatively under section 10(23C) of the Act***	***A circular may be issued clarifying that the proviso applicable to 'section 12A registered charitable entities', will also be applicable to 'section 10(23C) charitable entities' who have obtained approval from the competent authority in the subsequent year.*** ***Alternatively, an amendment on the lines of proviso inserted in section 12A regarding relief from section 147 reassessment for preceding/earlier years subject to necessary conditions may be made in section 10(23C) also.***

Sr. No	Section	Issue/Justification	Suggestion
		……." Although the purpose of both sections 12A and 10(23C) is same or similar i.e. providing exemption to entities engaged in charitable purpose, but because of a specific provision, relief from proceeding u/s 147 has been permitted to entities who have been allowed registration only u/s 12A by the competent authority i.e. the Commissioner of Income Tax. No such specific provision has been made for the entities which have been approved u/s 10(23C) of the Income Tax Act, 1961 although they are also pursuing charitable purpose under various clauses of section 10(23C) i.e. clauses (iv), (v), (vi) and (via) and where they have obtained approval from the Chief Commissioner of Income Tax. In the absence of such specific provision as in section 12A (regarding relief from application of section 147), the proceeding are being initiated u/s 147 although the charitable entity has fulfilled all the conditions required and obtained approval u/s 10(23C) under clause (iv), (v), (vi) and (via) for a later year. In view of the genuine hardship such Charitable Institutions are going to suffer financially, as well as, by involving themselves in avoidable litigation.	
67.	**Income-tax exemption for securitization trusts, levy of distribution tax on income distributed by such trusts**	The securitization trust has so far been treated as a pass through vehicle for tax purposes i.e. all the income of the securitization trust has been offered to tax by its investors (unless the investor is tax exempt viz., a mutual fund). This is consistent with the tax rules that apply to trusts under the tax law which	***Instead of distribution tax model, a complete pass through model identical to existing regime be made applicable to Venture Capital Funds/Venture Capital Companies under section 10(23FB) read with***

Sr. No	Section	Issue/Justification	Suggestion
	under section 10(23DA)	prescribes a single level tax on a trust's income (i.e. tax is levied either on the trustee or on the beneficiaries). The interest income arising to such trusts from securitized debts is taxed directly in the hands of the contributories. The tax implications may be summarized as follows:- ➢ If contributory is a Mutual Fund, it will be entitled to exemption under section 10(23D). ➢ Any other contributory can claim deduction for corresponding expenses against such income (eg. interest and overheads) ➢ Contributories can claim credit of TDS, if any, made by the borrower However, due to disputes regarding the person on whom tax incidence lies, tax demands were raised on the securitization trusts rather than the investors, by treating such trusts as AOPs. In order to set at rest such controversies, the Finance Act 2013 : ➢ Exempted the securitization trust from tax on income earned. ➢ Imposed a distribution tax on income distributions by the securitization trust @ 25% in case of distributions to individuals and HUFs and @ 30% in other cases. ➢ Distribution tax will not be payable on income distributed by the securitization trust to a person in whose case income, irrespective of its nature and source, is not chargeable to tax under the Act (viz. mutual funds). ➢ Exempted the investors in the securitization trust from taxation on income distributions received.	***section 115U, since the participation in PTCs is largely restricted to well regulated financial institutions.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

<table>
<tr><th>Sr. No</th><th>Section</th><th>Issue/Justification</th><th>Suggestion</th></tr>
<tr><td></td><td></td><td>
The above mentioned provisions have, however, created certain problems or securitized structures in vogue on account of the following reasons:
(a) The exemption to the investors in the securitization trust means that investors (other than exempt investors such as mutual funds) in pass through certificates (PTCs) will now earn exempt income instead of taxable income as was the case hitherto. This implies that the investors would not be able to set-off expenditure/ losses against income earned from PTCs in view of provisions of section 14A which prohibits deduction of any expenditure incurred in relation to exempt income. This may result in the entire transaction becoming unviable for investors, which is illustrated below.
If the investor is a bank investing Rs.100 crores in a Securitized debt yielding interest @ 10% p.a. Assuming, that the bank's own cost of borrowing is say 8% p.a., its tax liability on interest income from securitized debt pre and post amendment and profit after tax is as follows :-
<table>
<tr><th>Particulars</th><th></th><th>Pre amend ment</th><th>Post amend ment</th></tr>
<tr><td>Interest income @ 10% on Rs. 100 Cr distributed by Securitised Trust</td><td>(A)</td><td>10.00 Cr</td><td>10.00 Cr</td></tr>
</table>
</td><td></td></tr>
</table>

Sr. No	Section	Issue/Justification	Suggestion

Less: Distribution tax paid by the trust@30% on gross income		N.A.	3.00 cr
Net income distributed		10.00 Cr	7.00 Cr
Less :- Interest expenditure @ 8% on Rs. 100 Cr	(B)	8.00 Cr	8.00 Cr
Net income	C= (A-B)	2.00 Cr	(1.00) Cr
Tax payable			
By Investor @ 30%[1] on net income	(D)	0.60 Cr[2]	-
Profit/(Loss) after tax	(C-D)	1.40 Cr	(1.00) Cr *Not allowed to be set-off on account of section 14A.*

The above illustration highlights that a structure which was commercially viable prior to amendment made by Finance

[1] Surcharge and cess ignored for the sake of simplicity
[2] 30% of Rs. 2.00 Cr

Sr. No	Section	Issue/Justification	Suggestion
		Act, 2013 has the effect of becoming unviable solely due to change in the basis of incidence of taxation. It may be noted that the financial sector works on spread between yield from investments and own cost of borrowing. Levy of distribution tax severely impacts the spread and make securitization structures commercially unviable defeating the object of SEBI and RBI guidelines for orderly development of securitization market. (a) The trading of PTCs (most PTCs are tradable instruments) also creates dual points of taxation (i.e. at the time of distribution of income by the securitization trusts and at the time of realization of gain when the PTC itself is sold for a profit) which seems to be unintended. (b) Ambiguity also arises for the borrower while evaluating withholding obligation at the time of payment of interest. Since the securitization trust is assessable as a separate tax entity and not a mutual fund or bank exempt from withholding, the borrower will be required to withhold tax unless the trust provides NIL withholding certificates. The securitization trust will be required to file return to claim refund of such TDS. The securitization trust should be able to set off TDS credit against distribution tax payable by it. (c) There is no grandfathering provided for existing securitized trusts. Hence, any income distributed by existing securitized trusts on or after 1 June 2013 will also be subject to the new tax	

Sr. No	Section	Issue/Justification	Suggestion
		regime.	
68.	**Section 10(23FB) Tax exemption for Alternative Investment Funds – Venture Capital Funds**	a) The Finance Act, 2012 provided an exemption to venture capital funds (VCFs) with a corresponding direct tax charge on the investors on the income earned by the fund from its investments. The VCF Regulations were repealed on 21 May, 2012 with the simultaneous introduction of the SEBI (Alternative Investment Funds) Regulations 2012 (AIF Regulations). Funds raised under the VCF Regulations were resultantly grandfathered. AIF Regulations now regulate all privately pooled investment vehicles which collect funds from investors for investments in accordance with a predefined investment policy for the benefit of its investors. AIF Regulations cover a much broader ambit of funds and categorize them into broadly three categories: **Category I AIF** – these are funds which invest in start-up or early stage ventures or social ventures or SMEs or infrastructure or other sectors or areas which the government or regulators consider as socially or economically desirable. Category I AIF presently has 4 sub-categories, namely, venture capital funds, SME Funds, social venture funds and infrastructure funds. Investment norms have been prescribed for each of the sub-categories to ensure that the fund allocates substantial majority of its capital to the target focus. The stated intent of Category I AIF is to cover AIFs that are generally perceived to have positive spillover effects on economy and for which the SEBI/ Government/	***(a) The pass-through status may be extended at least, to cover all sub-categories of Category I AIFs (i.e. not only to venture capital funds but also to SME Funds, social venture funds, infrastructure funds), in line with the assurance held out explicitly by AIF Regulations.*** ***(b) From a long-term perspective, it is best to maintain an alignment of the tax laws and the AIF Regulations to mitigate the need to constantly update the tax law for changes in Regulations so as to not artificially stifle the AIFs.*** ***In fact, the Finance Act, 2012 had removed the sectoral restrictions imposed on VCUs by the Income-tax Act, 1961 on the ground that since SEBI regulates the working of VCF, VCC & VCU, there is no necessity of having separate conditions under the Income-tax Act, 1961 imposing sectoral restrictions on the VCUs.*** ***Therefore, multiplicity of conditions in different regulations in respect of***

Sr. No	Section	Issue/Justification	Suggestion
		other regulators might consider providing incentives or concessions. The Explanation to Regulation 3(4)(a) of AIF Regulations which clarified this aspect also clarified that such funds which are formed as trusts or companies shall be construed as VCF/VCC as specified under section 10(23FB) of the Act. The said Explanation is reproduced below: *"Explanation.— For the purpose of this clause, Alternative Investment Funds which are generally perceived to have positive spillover effects on economy and for which the Board or Government of India or other regulators in India might consider providing incentives or concessions shall be included and such funds which are formed as trusts or companies shall be construed as venture capital company or venture capital fund as specified under sub-section (23FB) of Section 10 of the Income-tax Act, 1961"* **Category II AIF** is a residual category and covers AIFs for which no specific incentives or concessions are given by the Government/ other regulators. Category II AIF will cover classic private equity funds and debt funds. **Category III AIFs** are AIFs which employ diverse or complex trading strategies and may employ leverage including through investment in listed or unlisted derivatives. Category III AIF will cover hedge funds or funds which trade with a view to make short term returns. Similar to Category II AIF, no specific incentives or concessions are given by the Government/ other regulators. The AIF Regulations provide that	***the same entities should be avoided. Hence, additional conditions should not be imposed under the Income-tax Act, 1961 to qualify for tax benefit.*** ***(c) As regards condition of disqualification on account of investment in associate VCU, it is suggested that disqualification from pass through status may be restricted to income arising from associate VCU only. Further, to remove any ambiguity, it may also be clarified that if breach of any condition is subsequently rectified, the pass through status may be restored.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		Category I AIF which are formed as trust/ company shall be construed as venture capital company/ venture capital fund under s. 10(23FB) of the Act (and will hence be eligible for the basis of taxation described above ie direct tax charge on the investors). The Finance Act, 2013 had granted tax exemption and corresponding direct tax charge on the investors to only the Venture Capital Fund sub-category of Category I AIFs. Further, three conditions have been imposed on AIFs in order to be covered within the ambit of section 10(23FB), namely: (i) The units/shares of the AIF should not be listed on a recognised stock exchange. (ii) The AIF should not have invested in associated companies as defined. (iii) The AIF should have invested not less than 2/3rd of its investible funds in unlisted equity shares/equity linked instruments of domestic unlisted companies. The first two of the above conditions are imposed only in the tax law (listing of AIFs is permitted under the AIF Regulations after the final close of the fund subject to conditions and investment in associated companies is permitted subject to obtaining a majority investor consent). The tax implications on account of this amendment is as follows – (a) VCCs/VCFs registered prior to 21st May 2012 under VCF regulations is impacted by the proposed amendment. They continue to be eligible for pass through taxation	

Sr. No	Section	Issue/Justification	Suggestion
		under section 115U. (b) The impact on AIFs registered on or after 21st May 2012 under AIF Regulations is summarized as follows :-	

Category	Sub-categories which qualify for pass through status	Tax status in an event AIF is registered on or after 21 May 2012
I	VCF being trust or company	Will qualify as VCC/VCF under s.10(23FB) but, subject to compliance of 3 additional conditions viz., VCC/VCF should remain unlisted Should invest > 2/3rd investible funds in unlisted equity shares/equity linked instruments of VCUs Should not invest in associate VCU
I	▪ SME Fund ▪ Social	Will not qualify as (and, will cease to be)

<table>
<tr><th>Sr. No</th><th>Section</th><th>Issue/Justification</th><th>Suggestion</th></tr>
<tr><td></td><td></td><td>
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<tr><td></td><td>Venture Fund
▪ Infrastructure Fund</td><td>VCC/VCF under s.10(23FB) and consequently will not be eligible for pass through taxation despite being identified as socially desirable having positive spillover effects on the economy and eligible for other concessions from Government/SEBI
Will be governed by normal rules of taxation as applicable to relevant nature of entity</td></tr>
<tr><td>II</td><td>Generally includes Private equity and debt funds</td><td rowspan="2">Will not qualify as VCC/VCF under s.10(23FB)</td></tr>
<tr><td>III</td><td>Generally includes hedge funds</td></tr>
</table>
(c) Even for new VCCs/VCFs which are registered under AIF Regulations, compliance with three additional tax conditions referred
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</table>

Sr. No	Section	Issue/Justification	Suggestion
		earlier is necessary to be eligible for pass through taxation. In case of breach of any of the conditions, VCC/VCF will be governed normal rules of taxation as applicable for ordinary company or trust. A clarification is required as to whether tax status of VCC/VCF will be restored if the breach is subsequently rectified. (d) Another concern on account of the proposed provisions is that if a VCC/VCF makes an investment in one associate VCU, would it lose its pass-through status despite the fact that all other VCUs in which it has invested are not its associates. (e) When normal rules of taxation are applied as a consequence of disqualification from pass through taxation, issues such as double taxation and/or levy of DDT and/or applicability of withholding may arise due to interposition of VCC/VCF between VCU and investor.	
		b) Earlier under Section 10(23FB) of Income-tax Act, any income of a Venture Capital Company (VCC) or Venture Capital Fund (VCF) set up to raise funds for investment was exempt from taxation. However, in 2007, this was amended and the scope of VCC / VCF was narrowed down to select sectors and the exemption from income tax was limited to “any income of a VC company or VC fund from investment in a venture capital undertaking”. The sectoral restriction stands removed in Union Budget, 2012 which was a welcome move. However, the tax	***It is suggested that section 10(23FB) be reworded as follows:*** ***“Any income of a venture capital company or venture capital fund from investment set up to raise funds for investment in a venture capital undertaking.”*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		exemption still remains limited to "any income of a VC company or VC fund from investment in a venture capital undertaking". Keeping in mind the growing importance of VC funds in infrastructure and also in other important sectors of our economy, the previous wording of "set up to raise funds for investment" needs to be restored in place of "from investment" under Section 10(23FB). A change in the wording from "any income of a VC company or VC fund from investment" to "any income of a VC company or VC fund set up to raise funds for investment" will enable the VCC / VCF to undertake analysis / study necessary to evaluate the project viability as well as to render other services for the projects in which investments are made. Restricting the wording to "any income of a VC company or VC fund from investment" severely restricts the tax exemption thus affecting the commercial viability of the VCC / VCF.	
69.	***Section 10(26) – Exemption to Scheduled Tribes in specified areas – time for removal***	Section 10(26) which provides exemption to the members of Scheduled Tribes residing in specified areas was introduced in the year 1974. This exemption was basically provided for the development of persons residing in backward areas and to enable them to have more disposable income in their hands. In current scenario, even these areas have been developed and people residing therein have high disposable incomes. It is thus suggested that this exemption be gradually withdrawn.	***Considering the development of the areas mentioned in section 10(26), it is suggested that the exemption provided be withdrawn gradually. Section 10(26) may be amended to provide that only members having income up to, say Rs 20 lakhs, are exempt from taxation.***

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
70.	**Income of minors - to increase exemption limits under section 10(32)**	At present income of minors included in the hands of parents is exempt to the extent of Rs.1,500/- for each minor. The average expenditure to meet cost of a minor's education/health/living expenses which has gone up considerably in recent years, limit of Rs.1,500/- fixed is woefully inadequate.	***It is suggested that this should be raised to at least Rs.10,000/- for each minor child.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
71.	**Section 12A - Applicability to earlier years of the registration granted to a trust or institution.**	a) A proviso is inserted w.e.f. 1.10.2014 in section 12A(2) to provide that where registration has been granted to the trust or institution under section 12AA, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which **assessment proceedings are pending** before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year. It is done to give benefit of registration u/s 12AA of the Act to the institutions, entities prior to the Assessment Year(s) preceding the Assessment Year in which registration u/s 12AA has been granted. However, the language of the said proviso is restricting the benefit only for the Assessment Year(s), **assessments of which are pending** at the time of registration u/s12AA. **Hardships** Since the term "assessment proceedings are pending" before the	**It is suggested that** **a) pending assessment proceedings be appropriately defined so that the real benefit is passed on to the genuine trusts or institutions, as intended.** **b) In order to achieve the intended object of providing relief in case of trust and to remove hardship faced in genuine cases, the amnesty provided by the said provisions of section 12A should be made time bound.**

Sr. No	Section	Issue/Justification	Suggestion
		Assessing Officer has not been specifically defined some hardship in interpretation of the term may be faced, leading to protracted and avoidable litigation: a) "Assessment pending" should indicate cases where notices have been issued u/s 143(2) of the Act and the assessment has not been completed; returns have been filed and the due date of issuance of notices u/s 143(2) of the Act has not expired; and also in cases where the due date of filing return has not expired. b) The said proviso does not cover the assessment year or years which were not pending for assessment at the time of registration and the Assessing Officer has issued notice u/s 147 of the Act after the date of registration u/s 12AA but before the date of 1st October, 2014 when this section has come in to force. c) The immunity granted through the said provisions of section 12A seems to be open ended, which may defeat the very purpose of providing amnesty to such trusts and institutions which are facing issues in getting themselves registered under the provisions of the Income-tax Act. It is thus suggested that the said provision should be reconsidered.	

CHAPTER IV

COMPUTATION OF TOTAL INCOME

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
72.	***Disallowance of expenditure incurred in relation to income not includible in total income under section 14A of the Act:***	As per the existing provisions of section 14A of the Act, no deduction shall be allowed in respect of expenditure incurred by a taxpayer in relation to income which does not form part of the total income under the Act. Further, Section 14A of the Act states that the provisions of this section shall also apply in cases where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act. In this regard, a method has been prescribed under rule 8D of the Income-tax Rules, to calculate the amount of disallowance for the purpose of section 14A of the Act. As per the prescribed method in rule 8D, the disallowance for the purpose of section 14A is aggregate of the following: a) Amount of expenditure directly relating to exempted income. b) Amount of interest expenses not directly attributable to any particular income- in the proportion of average value of investments (whose income is exempt) to average of total assets. c) Half percent of average value of investments (which generate exempt income) Rule 8D has created genuine hardships for tax payers, as the	***It is suggested that:*** ***a) Only those expenses which are directly related to earning of exempt income shall be disallowed.*** ***b) Further, the overall maximum limit of expense to be disallowed should not exceed the tax payable on exempted income earned.*** ***c) Overall maximum limit of expense to be disallowed in case of dividend income earned from holding strategic investment in group companies shall be capped.*** ***(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***

Sr. No	Section	Issue/Justification	Suggestion
		calculation basis under rule 8D is arbitrary. In many cases, the disallowance calculated as per rule 8D method exceeds the amount of total exempted income earned during the year. This is because of the following reasons: • Firstly, the interest expense, which does not form part of exempted income, is disallowed. • Secondly, while working out half percent of the average investments, all the investments in shares/mutual funds are considered. • Thirdly, this method does not demarcate between investments that have generated or not generated income during the year. • Lastly, no distinction has been made for companies earning dividend income due to holding strategic investments in group companies and very little expenditure is attributable to earn such dividend income.	

PART A-SALARIES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
73.	**Deduction to salaried assesses-Payment for notice period**	As per the prevalent norm, the employees are required to serve notice within the stipulated time before leaving the organisation. The notice period, however, varies from organisation to organisation. For example, in an organisation the notice period may be 90 days or an employee has to pay 90 days salary amount to the organisation as an employee may get a better job opportunity in another organisation wherein he is required to join within 30 days. Accordingly the employee has to give 30 days notice in old organisation, and pay for short notice of 60 days. Generally, the contract of service also provides that in case the employer is not satisfied with the performance of the employee he may terminate his services by giving a notice of 30 days or 30 days salary. In case the employer suspends the employee with immediate effect he pays an amount equivalent to 30 days salary and claims deduction thereof. Such amount becomes taxable in the hands of the employee. However, in case the employee is required to pay notice period salary, no deduction of such amount paid is allowed to him. If the new employer agrees to bear the brunt of notice period pay, say of 60 days in above	***It is suggested that said anomaly may be resolved and appropriate provisions be inserted so that income from notice period pay is chargeable in the hands of ex-employer and deduction of the amount of notice period pay paid be made available to the employee as he has not effectively received that income.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		example, the said amount will be included in the total income of the employee and tax will be deducted thereon even if such income belonged to the ex-employer and is taxable in his hands. Thus, in effect the assessee will be liable to pay tax on 14 months salary i.e. salary for more than 12 months without any deduction available to him.	
74.	**Deduction for Employee Stock Option Cost**	Grant of Employee Stock Option is one of the accepted and widely followed practices for remunerating the employees. Detailed guidelines have been prescribed by SEBI in this regard. Further, the SEBI guidelines and Accounting Standards, provides for accounting of difference between option price and market value of security of the date of grant as employee remuneration cost. Under Income-tax Act, difference between the fair market value of shares and exercise price is treated as income in the hands of the employees. Delhi Tribunal in the case of Ranbaxy (39 SOT 17) has taken a view that ESOP cost is not allowable as deduction. Thus, the situation is that for levy of tax on employee, ESOP is income but the same is not allowed as deduction in the hands of the employer company.	***Necessary amendment may be made in Income-tax Act or circular should be issued by the CBDT to allow deduction for ESOP cost being employee remuneration cost.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
75.	**Medical reimbursements for retired employees:**	Under section 17 of the Income-tax Act, medical reimbursements to employees are exempted from tax up to Rs.15,000 per annum. Further, the expenditure incurred by the employer for the medical treatment of the employees and his family in approved hospitals is also not treated as a perquisite in the hands of the employee. However, this tax benefit is not available to retired employees.	***It is suggested that the provisions of section 17 be amended to include retired employees for the tax benefit on medical reimbursements / hospitalization expenditure in approved hospitals.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

PART C-INCOME FROM HOUSE PROPERTY

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
76.	***Section 22 – Taxability of House Properties/buildings held as Stock in trade***	Section 22 the charging section for income from house property specifically excludes from its ambit the property occupied for the purposes of any business or profession carried on by the assessee the profits of which are chargeable to income tax. The issue that arose was whether buildings/House properties held as stock in trade would be taxable under section 22 as income from house property. Recently, Delhi High Court held in *Commissioner of Income Tax v M/s Ansal Housing Finance and Leasing Co. Ltd. 354 ITR 180 (Del)* that the levy of income tax in case of one holding house property is premised not on whether assessee carries on business as landlord but on ownership. Thus, the assessee is liable to pay income tax on annual letting value of unsold flats owned by it under the head "income from House property" even though the property has not actually been let out. The argument that the assessee itself is occupier because it holds property till it is sold, also did not find favour since the Court felt that the intention of the law makers was that the	***It is suggested that a suitable amendment may be brought in section 22 so that genuine assessees like the real estate developers/builders owners are not taxed on their unsold stock of house properties under the head income from House property.***

Sr. No	Section	Issue/Justification	Suggestion
		occupation of one's own property, in the course of business, and for the purpose of business i.e an active use of property, (instead of mere passive possession) qualifies as "own" occupation for business purpose. The above mentioned judgment is causing hardship to real estate developers/builders. The slow growth in the real estate sector has lead to piling of huge stock in trade i.e. unsold properties which is now being taxed on notional basis at annual letting value even though said properties are not actually let out. It may act as an impediment for real estate sector as the unsold stock will be taxed even though the builder owners' huge invested capital is already blocked in such properties.	
77.	**Deduction u/s 24(a) of the Income-tax Act, 1961:**	a) Section 25B provides that the arrears of rent received after allowing a deduction of 30% will be taxable as Income from House property. Further, section 25AA also provides for taxation of unrealised rent subsequently charged to income-tax. Even though the nature of income being charged to tax in both cases is similar, the deduction of 30% is not allowed in case of unrealised rent subsequently	***Section 25AA be suitably amended to provide that unrealised rent subsequently realised shall after deducting a sum equal to thirty percent of such amount shall be deemed to be income chargeable under the head "Income from House property"*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		received. It may be noted that had the rent been realised earlier in normal course deduction of 30% would have been allowed under section 24(a). This discrimination seems to be inadvertent omission and thus needs rectification.	
		b) Huge lease rent is generally paid if the land is taken on lease and the building is constructed by the assessee. However, section 24 of the Income-tax Act, 1961 does not provide any deduction from income from house property for an amount so paid by the assessee.	***Considering the cost involved in payment of lease rents, it is suggested that ground rent shall be allowed as separate deduction while computing income under the head "Income from House property".*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
78.	***Deduction for ground rent other than u/s 24(a)***	At present, there is no provision for allowing deduction towards ground rent paid in computation of income from house property & the same has been merged into 24(a). Ground rent shall be allowed as deduction in addition to section 24(a) deduction since 24(a) mainly focuses on repairs & maintenance. The logic behind this suggestion is that the repairs by way of 30% standard deduction cannot accommodate a huge lease rent which may have to be paid if the land is taken on lease & building is constructed by the assessee.	***It is suggested that ground rent shall be allowed as deduction in addition to section 24(a)*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF THE INCOME-TAX ACT)***

PART D-PROFIT AND GAINS OF BUSINESS AND PROFESSION

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
79.	***Section 28(iiia) – Sale of license***	Section 28 provides for income that is chargeable to income tax under the head "profit and gains from business or profession". As per sub-section (iiia) of section 28, profit on sale of licence granted under the Imports (Control) Order, 1955, made under the Imports and Exports (Control) Act, 1947 is chargeable to tax under the head "profit and gains from business or profession". It is pertinent to mention that "The Import and Exports Control Act, 1947" as mentioned in section 28(iiia) has been repealed. Further, advance Authorization issued in place of erstwhile advance licenses are not transferable as per the Foreign Trade Policy issued under Foreign Trade (Development and Regulation) Act, 1992.	***Since the Import and exports Control Act, 1947 has been repealed and advance Authorization issued in place of erstwhile advance licenses are not transferable as per the Foreign Trade Policy issued under Foreign Trade (Development and Regulation) Act, 1992, sub-section (iiia) to section 28 be omitted.***
80.	***Section 28(iiic) – inclusion of service tax repayable***	Section 28(iiic) provides that any duty of customs or excise re-paid or repayable as drawback to any person against exports under the Customs and Central Excise Duties and Drawback Rules, 1995 is chargeable to tax under the heading profit and gains from business or profession. The omission of	***Since service tax is an important component of indirect taxes, repayment of which is also chargeable to income tax, the said section 28(iiic) be reworded as follows:*** *"Any duty of customs or excise* ***<u>or service tax</u>*** *re-paid*

Sr. No	Section	Issue/Justification	Suggestion
		mention of service tax repaid or repayable seems to be an inadvertent mistake which needs to be corrected.	*or repayable as drawback to any person against exports under the Customs, ~~and~~ Central Excise Duties **and Service tax** Drawback Rules, 1995 "*
81.	***Section 28(iiid) – Duty Entitlement Pass Book Scheme no more in existence***	Section 28(iiid) provides that any profit on transfer of the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) shall be chargeable to income-tax under the head "Profits and gains of business or profession". However, the aforementioned DEPB scheme was abolished w.e.f 1.10.2011 vide Notification No. 51/2011 – Customs, dated 22.06.2011. .	***It is suggested that sub section (iiid) to section 28 be omitted since the Duty Entitlement Pass Book Scheme was abolished w.e.f. 1.10.2011 vide Notification No. 51/2011 – Customs, dated 22.06.2011.***
82.	**a) Depreciation on books used by professionals**	Books are very important tools used by professionals to carry on their profession. Though expenditure on purchase of books is no doubt capital in nature, the books purchased by professionals' have a very short shelf life of around a year or sometimes even less, due to the fast pace of developments in their respective fields, be it medicine or engineering or law or accountancy. Depreciation was always	***In view of the above, it is suggested that the depreciation on books purchased by professionals be restored to its original rate of 100 per cent*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		allowed on books at 100 per cent till 1st April, 2003, from which date, by the amendment to Appendix I to the Income-tax Rules, 1962, the rate of depreciation has been reduced to 60 per cent for books not being annual publications. This has created numerous difficulties and hardship for professionals who need to capitalize each and every book purchased by them though its value may not be very significant. It has resulted in additional book-keeping for these professionals. Also, the revenue does not gain from such an amendment as the expenditure on books by professionals would not be material.	
	b) Section 32 - Depreciation in case of slump sale	The proviso to section 32 provides that the aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, being intangible assets allowable to the predecessor and the successor in the case of succession referred to in clause (xiii) and clause (xiv) of section 47 or section 170 or to the amalgamating company and the	***a) Section 32 may be amended to clarify the legal position as to whether depreciation can be claimed on the basis of proportionate number of days by the transferor and the transferee company in case of slump sale also considering the proviso to section 32 read with section 170 of the Act.*** ***b) Due to practical and administrative difficulties, there may be a time gap between holding of the asset and using the asset so***

Sr. No	Section	Issue/Justification	Suggestion
		amalgamated company in the case of amalgamation, or to the de-merged company and the resulting company in the case of de-merger, as the case may be, shall not exceed in any previous year the deduction calculated at the prescribed rates as if the succession or the amalgamation or the de-merger, as the case may be, had not taken place, and such deduction shall be apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the de-merged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets *were used by them*. The following issues may be considered for appropriate amendment in the law : a) An issue arises whether depreciation can be claimed on the basis of proportionate number of days by the transferor and the transferee company in case of slump sale considering the proviso to section 32 read with section 170 of the Act. b) As per the current	***transferred. To avoid genuine difficulties in such cases, instead of the words, "used by them", the words "held by them" may be substituted in the proviso to section 32.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		provisions of proviso to section 32 the depreciation can be claimed on the basis of proportionate number of days for which the assets were used by the predecessor and the successor, or the amalgamating company and the amalgamated company, or the de-merged company and the resulting company, as the case may be. Due to practical and administrative difficulties, there may be a time gap between holding of the asset and using the asset so transferred. To avoid genuine difficulties in such cases, instead of the words, "used by them", the words "held by them" may be substituted in the proviso to section 32.	
	c) Incentive for installation of Solar Power generating devices	Presently, the whole country is confronted with the problem of power cut. In order to curb this problem, solar power generating devices may be installed, the cost of which is also affordable. An incentive provided by the Income-tax	***It is suggested that an incentive may be given in the Income-tax Act, 1961 for installation of solar power generating device. In other words, 100% depreciation may be allowed to Companies in respect of installation of such devices.***

Sr. No	Section	Issue/Justification	Suggestion
		Act for installation of such devices would motivate people to take initiative and would in turn enable the Government to tackle the power problem effectively.	***A deduction of the amount so invested may also be given to Individuals and HUFs who install such devices including salaried class.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	d) Depreciation on "Oil Well"	As per the provisions of the Income-tax Act, the "oil well" is considered as a "Building" and not Plant and machinery and depreciation is accordingly, allowed at rate of 10%. In the exploration of Oil and Gas, drilling of oil is a major activity and Oil well is a key "Plant and machinery" for Oil and gas exploration. Also, "oil well" is a major profit earning apparatus for said activity. Further, unlike normal water wells and tube wells, oil wells are special wells which are drilled with the use of specialized equipment. Under Income-tax Act and Rules, there is no specific depreciation rate provided for "Oil Wells". Specific rates are provided for buildings, plant and machinery, etc. Since, the inclusive definition provided in the notes forming part of Appendix-I "Table of rates at which depreciation is admissible" provides that	***In order to avoid unnecessary litigations, it is suggested that any of the following amendments may be broughtin the Income-tax Act or Rules to classify oil well as a plant and machinery.*** ***a) Section 43(3) may be amended to include 'oil wells' in the definition of plant as follows:*** ***"plant" includes ships, vehicles, books, oil well(s), scientific apparatus and surgical equipment used for the purposes of the business or profession but does not include tea bushes or livestock or buildings or furniture and fittings;*** ***Or*** ***b) Alternatively, to issue notification under Income-tax Rules to exclude "oil well" from the term Building under Note 1 to New Appendix 1 to the Income-tax Rules; and***

Sr. No	Section	Issue/Justification	Suggestion
		"building" includes roads, bridges, culverts, wells and tubewells. Relying on the said definition, various Income-tax authorities have taken a view that oil wells are also in the nature of building and hence eligible for depreciation at the rate of 10 percent. Consequently, the Oil wells are also being given a treatment of a "building" rather than a "plant and machinery". From the said description, it must be appreciated that there is a vast difference between a normal well and an 'oil well'. As it is understood in common paralance, well is a hollow made to hold and preserve the water and it is lined by bricks and cement. However, an oil well is significantly different and more scientific and serves larger purpose than a water or tube well. Oil wells are not normal wells since development of the same requires special equipment and knowledge skill. An oil well is made up of various machineries and cementing is just the process to strengthen the structure of such well and therefore, oil wells cannot be compared to wells and tubewells, which classifies them in the category of building and depreciation, is	***simultaneously include "oil wells" in clause 8(xii) of the Appendix 1 under Mineral Oil Concerns.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		allowed by the authorities at the rate of 10 percent. It may be noted that a special rate of depreciation @ 60% is available for mineral oil concerns in clause 8(xii) of the aforesaid appendix as depreciation on "plant and machinery". Since the intention of the lawmakers is to promote oil industry, it is felt that the definition of "building" is being misinterpreted to include "oil wells". This treatment of the tax officers is causing great hardship to the assessee's engaged in Oil and gas exploration activity.	
83.	**Additional Depreciation u/s 32(1)(iia)**	With a view to give a boost to the manufacturing sector, the Finance Act, 2002 allowed a deduction of a further sum equal to fifteen per cent of the actual cost of such machinery or plant acquired and installed after a specified date in the case of a new industrial undertaking in the previous year in which it begins to manufacture or produce any article or thing or in the case of an existing industrial undertaking in the previous year in which it achieves substantial expansion by way of increase in the installed capacity by not less than twenty five per cent. In order to give a thrust to investment in manufacturing sector, the limit for increase in	***It is suggested that an express provision may be incorporated in the Act for the allowance of the remaining 10% additional depreciation in the next year so that a number of litigations may be avoided.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		installed capacity was reduced from 25% to 10% by the Finance Act (No.2),2004. Further, in order to encourage new investment, the Finance Act, 2005 increased the initial depreciation on new machinery and plant to 20 per cent from 15 per cent. The requirement of creating a minimum increase of 10 per cent in installed capacity for availing the initial depreciation was also eliminated. This amendment accordingly, applied in relation to assessment year 2006-07 and subsequent years. From all the above amendments, the intention of the lawmakers was clear i.e. encouraging the investment in the business of manufacture or production of any article or thing. The Finance Act, 2013 further extended the benefit of this section to the business of generation or generation and distribution of power. As mentioned above additional depreciation under section 32(1)(iia) is admissible @ 20% on the cost of the new investments. However, the same is reduced to 10% in case of additions which are used for less than 180 days in the year of acquisition. There is no	

Sr. No	Section	Issue/Justification	Suggestion
		express provision for the allowance of the remaining 10% in the next year. As mentioned earlier, section 32(1)(iia) was introduced in the Act with a specific purpose / object of providing relief to assessees who make investment in the new plant and machinery. The section therefore has to be interpreted keeping in view the intent and purpose for which it was introduced. It is a cardinal rule of interpretation that a beneficial provision should be given a liberal and purposive interpretation so as to fulfill the object of the legislation and comply with the legislative intent. The Delhi Bench of the Tribunal in the case of DCIT v/s. Cosmo Films Ltd. [ITA No 2831/Del/2007] inter-alia had examined the provisions of section 32(1) as to whether the balance additional depreciation under section 32(1)(iia) can be claimed in the succeeding year. The Tribunal held in favour of the assessee and allowed the claim of the balance additional depreciation in the subsequent year to the assessee. It observed that this provision has been directed towards encouraging industrialization by allowing additional benefit to the tax	

Sr. No	Section	Issue/Justification	Suggestion
		payers setting up new industrial undertakings/making more investment in capital goods. Thus, these are incentives aimed to boost new investments in setting up and expanding the units.	
84.	**Amendment in section 32AC**	Prior to Finance (No. 2) Act 2014, in order to encourage the companies engaged in the business of manufacture or production of article or thing to invest substantially in plant and machinery, an investment allowance of 15% was allowed, if it acquires or installs new plant and machinery during the period between 1.4.2013 to 31.3.2015, by investing a sum of more than Rs.100 crore. The Finance (No.2) Act, 2014 further reduced the limit of investment to Rs. 25 crores and increased the time period of investment up to 31.3.2017. This move of the government was appreciable. However, certain issues regarding section 32AC which have been left unaddressed are briefed hereunder - (a) Non-extension of the benefit of this clause to non corporate assessees seems to be unjustifiable. (b) It may be noted that vide the Finance Act, 2012, the benefit of additional depreciation under section	***It is suggested that :*** ***a) For the purpose of encouraging investment in Plant and Machinery, the benefit of deduction may be extended to assessees other than companies as well.*** ***b) On the lines of section 32(1)(iia), the benefit of investment allowance under section 32AC may be extended to an assessee engaged in the business of generation or generation and distribution of power.*** ***c) The provisions of section 32AC be suitably amended so that new assets acquired on or after 1.04.2014 and installed before 31.03.2017 be provided the benefit of investment allowance in the year of installation on meeting the prescribed threshold of Rs 25 crores.***

Sr. No	Section	Issue/Justification	Suggestion
		32(1)(iia) was extended to an assessee engaged in the business of generation or generation and distribution of power. However, section 32AC does not extend the benefit of investment allowance to this sector. (c) For claiming deduction under Section 32AC, both acquisition and installation of the new asset should take place during the previous year. The satisfaction of twin condition of acquisition and installation in the same year is difficult to meet considering the economic conditions currently prevailing in the country. Even though similar conditions are provided in the Act to claim the deduction with respect to additional depreciation under section 32(1)(iia), the same has also led to abundant avoidable litigations. This said amendment will also trigger numerous avoidable litigations. Thus, the said conditions may be reconsidered.	
85.	***Section 32AC – Investment in new plant and machinery***	To incentivize investment, section 32AC was introduced which stated that specified new assets installed and acquired cost of which exceed the specified amount by any manufacturing	***It is suggested that:*** ***a) second hand machinery imported and used for first time in India should be allowed benefit under section 32AC in line with erstwhile section 32A and various profit***

Sr. No	Section	Issue/Justification	Suggestion
		company between 1 April 2013 and 31 March 2017, a special deduction of 15% would be given as investment allowance over and above the regular depreciation and additional depreciation available. While the provision is good, certain crucial points merit consideration: ➢ Currently only investment in new asset qualify for the special deduction under section 32AC, expansion of same may be considered in view of the scarcity of capital in Indian businesses. ➢ Taxpayer may become liable to pay MAT in view of investment allowance under normal computation. ➢ Investment linked benefit of section 32AC has been extended to only manufacturing sector on the ground that the sector contributes extensively in job creation. Indian	***/investment linked deductions currently available.*** ***b) protection from MAT may be provided to make the incentive more meaningful.*** ***c) In view of the reasoning provided, it is suggested that the investment linked benefit under section 32AC be extended to telecom sector as well.***

Sr. No	Section	Issue/Justification	Suggestion
		telecom sector has been one of the key contributors to the growth of India's economy. This new era of investments in telecom and creation of millions of new jobs deserves encouragement from the Government. Such investment has also culminated into unprecedented proliferation of employment opportunities in India. The added social benefit of this fiscal incentive is that it will help create jobs across the country including rural areas since telecom investments are always geographically dispersed.	
86.	**Section 35(1)(ii) and 35(1)(iii)- Removal of discrimination u/s 80GGA**	In case of assessees having `Income from Business or Profession', donations to the institutions approved u/s 35(1)(ii) and 35(1)(iii) are eligible for deduction @ 175% of the amount of donation. However, in case of assessees not having `Income from Business or Profession', donations to the institutions approved u/s	***Deduction at an enhanced percentage be provided in section 80GGA to all assessees in line with deduction provided in section 35(1)(ii) and 35(1)(iii) which is available to an assessee having income from business or profession.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE***

Sr. No	Section	Issue/Justification	Suggestion
		35(1)(ii) and 35(1)(iii) are eligible for deduction under section 80GGA @100% of the amount of donation only. In fact, this mistake crept in at the time of amendment of Section 35(1)(ii) and (iii) w.e.f. 1-4-2000 without corresponding and simultaneous amendment in section 80GGA. This was an inadvertent omission which needs to be rectified by making the necessary amendment in Section 80GGA so as to allow an enhanced deduction to other assessees also. In fact, other assessees who do not have Business/ Professional income deserve to be encouraged more to invest for such purposes.	***PROVISIONS OF DIRECT TAX LAWS)***
87.	***Deductibility of R&D expenditure incurred by software development companies under Section 35(2AB)***	The Income-tax Act provides for a weighted deduction of 200% of the expenditure incurred on scientific research on in-house research and development facility on obtaining an approval from the Department of Scientific and Industrial Research ("DSIR"). To be eligible for such deduction, the Companies should be engaged in the activity of manufacturing or producing an article/ thing. While it is fairly arguable that development of software products qualifies as 'production' of article or thing,	***A clear policy on what constitutes R&D activities in the software product industry to be issued to DSIR. Attached is a document which defines R&D in a software product industry, which may be considered. In line with the attached document, it is suggested that R&D in the software product industry be notified / clarified*** ***(Annexure II)***

Sr. No	Section	Issue/Justification	Suggestion
		there is no clarity in the Income tax Act. While a few software product development company have been recognised by DSIR, there have been reservations in granting approval due to ambiguity of R&D in software development	
88.	**Expenditure on Specified Business under section 35AD**	Section 35AD was introduced with effect from A.Y. 2010-11 to switch over from profit linked incentives to investment linked incentives under the Income-tax Act, 1961 as the profit based incentives were distorting the tax base. Investment based incentives do not put the Government in a disadvantageous position as these incentives only postpone the payment of taxes and give relief to the tax payers in the initial years by granting deduction for the CAPEX which would have been otherwise allowed by way of depreciation over a longer period. Accelerated deductions @150% were allowed under Section 35AD of the Income-tax Act for specified core businesses with effect from A.Y. 2010-11 with a view to creating rural infrastructure. This incentive should be provided to other core businesses as well, which are essential for the growth of the economy. Apart from the new	***It is suggested that following businesses are required to be covered under this provision and to achieve this, the following sub-clauses be added after sub-clause (viii) of clause (c) of sub-section (8) of section 35AD:*** ***"(ix) Power generation and Distribution*** ***(x) Petroleum & petrochemicals*** ***(xi) Steel*** ***(xii)Cement*** ***(Xiii) Port Facilities*** ***(Xiv) Telecommunication and allied services"*** ***Granting of section 35AD benefit to the aforesaid sectors will ensure rapid development of infrastructure across the country, creation of employment opportunities and easy flow of foreign funds for the debt ridden sectors. Considering the need for greater penetration and infrastructure development in such areas enhanced rate of deduction***

Sr. No	Section	Issue/Justification	Suggestion
		entities incurring expenditure, even existing entities incurring capital expenditure for substantial expansion of these essential core activities incurred by existing entities should also be allowed the accelerated deductions as substantial capital infusion is required periodically to sustain their viability.	***(1.5 times) under 35AD(1A) for the capital expenditure is the need of the hour.***
89.	***Section 35AD – Asset used for purpose other than specified business***	Section 35AD provides for a deduction in respect of capital expenditure incurred wholly and exclusively for the purposes of any specified business carried on by assessee during the year. Sub-section (7B) of section 35AD provides that where any asset, in respect of which a deduction is claimed and allowed under section 35AD, is used for a purpose other than the specified business within a period of 8 years, (otherwise than specified mode in section 28(vii)), the deduction so claimed and allowed as reduced by depreciation allowable under section 32, shall be deemed to be income under the head profits and gains from business or profession. In effect, if the specified asset is transferred to non-specified business within the eight year period, the asset becomes a normal asset, the cost of which should be recorded as	***Where there is a deemed income by virtue of applicability of the provisions of sub-section (7B) of section 35AD, the cost of asset being used for non-specified business shall be the actual cost of acquisition as reduced by the depreciation allowable under section 32, as if no deduction under section 35AD had been allowed.*** ***The said amendment may be made either by inserting a proviso under Explanation 13 to section 43(1) or by inserting another explanation to this effect. Similar amendment is also required in Explanation 2 to section 50B.***

Sr. No	Section	Issue/Justification	Suggestion
		capital expenditure less depreciation allowable under section 32 as if no deduction under section 35AD had been allowed. However, Explanation 13 to section 43(1) provides that the actual cost of any asset ***on which deduction is allowed or is allowable to the assessee*** under section 35AD shall be treated as "nil". In the above case, the deduction has been allowed under section 35AD, but is deemed as income in the subsequent year since the asset has been transferred to a non-specified business. Although the asset is being used for non-specified business, as per Explanation 13 to section 43(1), the cost will be taken as nil, which is unjustifiable. The issue has been clarified through the following example: Eg: A Company engaged in setting up and operating a cold chain facility (a specified business) purchases machinery costing Rs 50 lakhs in AY 12-13 and claims deduction under section 35AD. Now in AY 15-16, it starts using the said machinery for some of its other non-specified business.	

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
		As per the provisions of sub-section (7A) and (7B) of section 35AD, the deduction claimed less depreciation allowable under section 32 would be deemed income of the assessee. Since the said machinery is used in that other non specified business, ideally assessee is eligible to claim depreciation on the said machinery but due to application of Explanation 13 to section 43(1), the cost of said machinery would be taken as nil which is unjustified. Similar to some other provisions in the Act, the actual cost of machinery less depreciation allowable under the normal provisions of section 32 should be the deemed actual cost.	
90.	**Section 35D** **(a) Capital raising expenses**	Expenses incurred for raising capital are being treated as capital in nature and no deduction is allowed in tax assessment. Section 35D provides for deduction in respect of some of the expenses, over a period of five years, subject to conditions and limits. Raising capital is necessary activity for carrying out the business activity. Not allowing deduction of expenses for raising capital increases cost of carrying out the business and adversely affects the competitiveness of the business	***Section 35D should be amended to allow deduction for all expenses incurred by an assessee for raising capital in five equal installments over a period of five years.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
	(b) Amortization of Capital expenditure	Cash outflows by way of capital expenditure logically reduce the income. However, certain preliminary expenditure allowed to be amortised under section 35D , there is no provision in the act for amortization of capital expenditure like fees paid for increase in authorized share capital and payment made towards elimination of competition etc. Such expenditures being capital in nature cannot be charged to revenue as there is no provision for claiming these expenses in computing the income. As a result there is a difference between real income & taxable income.	***It is suggested that provisions may be incorporated in the Act to allow amortisation of such capital expenditures which are essential to run the business.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
91.	**Deduction for payments under Voluntary Retirement Scheme – Section 35DDA:**	Under Section 35DDA, deduction @ 1/5th of the amount paid to the employees is allowed in respect of payments made to employees under voluntary retirement schemes. Thus, the deduction is allowed over a period of 5 years. This section covers "*payment of any sum to an employee at the time of his voluntary retirement.*" Many companies have structured different schemes to give voluntary retirement to their employees. Some of them are in the nature of monthly pension or payments spread over a few years. Many corporate would like to fund	***Section 35DDA(1) may be re-worded as follows:*** ***"Where an assessee incurs any expenditure in any previous year by way of payment of any sum to an employee in connection with his voluntary retirement <u>or purchase of an annuity from an insurance company to cover such payments</u>, in accordance with any scheme or schemes of voluntary retirement, 1/5th of the amount so paid shall be deducted…………."*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		these monthly pension, etc. by purchasing an annuity with LIC/any other insurance company. It is submitted that when the annuity is purchased for covering such payments, deduction @ 1/5th shall be allowed under Section 35DDA of the Income-tax Act, 1961.	
92.	***Rule 4 of Part C of Fourth Schedule***	The employer company contributing towards gratuity for the employees is required to make such contribution to the irrevocable trust. The said trust required to obtain approval under Part C of Fourth Schedule of Income-tax Act, 1961. The conditions for approval are prescribed under Rule 4 of Part C of Fourth Schedule of Income-tax Act. According to section 36(1)(v) read with section 40A(7) of Income-tax Act, 1961, any sum paid by the employer by way of contribution towards gratuity fund is allowable as expenditure if the gratuity fund is approved by the tax authorities. In practice, the employer files an application with tax authorities to obtain approval for the gratuity trust. However, there are cases where such applications are pending with tax authorities for even 10 years. The applications are neither approved nor rejected. Further, no objections are	***The time limit shall be set for disposals of application for approval of gratuity trust. Further, there shall be provision for deemed approval if the application for approval is not disposed of by tax authorities within specified time limit. Further, process be set to submit applications online not only for gratuity trust but even for all other approvals for which applications are required to be made like Section 12AA, Part A & B of Fourth schedule of Income-tax Act, 1961 etc.***

Sr. No	Section	Issue/Justification	Suggestion
		raised during the period of pendency. The same tax authority raises the question on allowability of contribution to such fund when the approval is pending. The employer carries unwarranted risk of disallowance though the required contributions are made towards the irrevocable gratuity fund. According to Rule 8 of Part C of Fourth Schedule of Income-tax Act, in case the application for approval is rejected then the employer may appeal within sixty days to the Central Board of Direct Taxes (CBDT).	
93.	**Due date for crediting the contribution of employees to the respective fund– Section 36(1)(va) read with Section 2(24)(x):**	Section 2(24)(x) of the Act, inter alia defines "Income", to include any sum received by the employer from its employees' as contribution towards certain specified funds. However, deduction for such income are available under section 36(1)(va), provided that the contributions collected by the employer are credited to the respective fund within the due date specified under the relevant legislation of the fund. The employee's contribution credited to the employees account in the relevant fund after the due date specified under section 36(1)(va) are disallowed to the employer.	***It is suggested that the due date defined under Explanation to Section 36(1)(va) shall be amended and accordingly the due date shall mean the due date for filing return of income under section 139(1), thereby bringing it at par with the due date specified for the Employer's contribution under Section 43B of the Act.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		Further, any payments made by the employer after the due date is also NOT allowed as a deduction in the year of payment. This causes undue hardship to the assessee especially during the economic turbulence. Further, the Employer's contribution made after the due date specified under the relevant social security legislation but deposited within the due date of filing return of income are allowed under the Act by virtue of Section 43B. It may be noted that the statutory laws under the respective contribution schemes have provisions to levy interest, penalty etc. for the delayed payment. Hence, disallowing a genuine business expenditure merely on the ground that it has been paid after relevant due date is not justified. On the subject there have various conflicting judgments. Where Honble Uttarakhand High Court and Honble Delhi High Court have considered the due date under section 36(1)(va) to be read in sync with the due date mentioned in section 43B, Honble Gujarat High Court has given a different view. To remove the hardship caused to the assessee and to reduce avoidable	

Sr. No	Section	Issue/Justification	Suggestion
		litigations, it is suggested that deduction be allowed on the employee's contribution made before the due date of filing the return of income.	
94.	**NPA calculation for NBFCs**	Under section 36(1)(viia) of Income-tax Act, only the banks and financial institutions (FIs) are allowed a deduction on provisions for bad and doubtful debt. A deduction of 7.5% of gross total income is allowed as expenses for banks, if provision for bad and doubtful debts is made as per RBI directions, and for FIs the figure is 5%. It is pertinent to note that even the foreign banks are allowed the benefits under this section of Income tax Act, but the NBFCs are excluded, and this despite the fact that both NBFCs and banks are regulated by similar guidelines and there is in fact no material difference between the businesses carried out by NBFCs and banks. In absence of specific inclusion of NBFCs in section 36(1)(viia), "provision for NPA" made in terms of RBI prudential norms does not constitute an expense for purposes of Income tax Act. So entire provisioning as per RBI prudential norms is disallowed for purposes of computing taxable income of	***NBFCs may also be include in Sec. 36(1)(viia) so that the benefits are also extended to infrastructure financing NBFCs.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		NBFCs. Thus, NBFCs are subjected to higher taxation, and hence are at a disadvantageous position vis-à-vis banks and other FIs. As the Government itself considers NBFCs to be a vital channel for credit delivery especially to the under-privileged segments of the society, it is essential that such discriminations between NBFCs and banks be eliminated. This inconsistency may be resolved by including NBFCs also in Sec. 36(1)(viia) so that the benefits are also extended to infrastructure financing NBFCs.	
95.	**Section 40(a)(ia) - Disallowance of expenditure for non - deduction of tax at source on payment made to resident**	Section 40(a)(ia) is amended via Finance (No. 2) Act, 2014 to restrict the amount of disallowance for non-deduction of tax to 30% of expenditure. The proviso is also amended to the effect that 30% of such sum shall be allowed as a deduction in computing the income of the previous year in which tax has been paid. However, the language of the proviso raises a doubt as to whether any expenditure disallowed 100% in earlier year(s) will be allowed fully on TDS compliance in the current year. The wordings of the said proviso indicate that only 30% of amount of	***Since the language of the present amended provision of section 40(a)(ia) does not allow full claim of the 100% disallowance made in earlier years, it is suggested that the said amendment may be brought by way of insertion of a separate sub-clause instead of amending the existing sub-clause (ia) to section 40(a). This will maintain status quo in respect of allowabilty of such expenditure (which was 100% disallowed under this provision during the Assessment year 2014-15 and before), in the subsequent year on TDS compliance.***

Sr. No	Section	Issue/Justification	Suggestion
		expenditure disallowed in the past year(s) will be allowed as a deduction.	
96.	**Section 40(a)(iib) - Disallowance of certain payments made by State Government Undertaking (SGU)**	Section 40(a)(iib) provides that SGU will not be entitled to deduction of certain payments in the nature of royalty, licence fee, service fee, privilege fee, service charge or any other fee or charge made to State Government in computing income from business or profession. Section 40(a)(iib) also defines the class of entities that will be considered as SGU. One of the classes covered within the definition of SGU is a company in which State Government holds more than 50% equity. Denial of deduction to such SGU, which has private participation, may create discriminatory treatment between two enterprises – one of which has 49% as compared to 51% private participation. While disallowance will be made only in the case of the SGU, though both the entities may make identical pay-outs to the State Government.	***In order to provide level playing field to different business units in matter of computation of business income, the amendment may be re-considered. The payments made by SGU to the Government are likely to be subject to transfer pricing regulation under section 92BA read with section 40A(2).*** ***In fact, the provisions of section 40A(2) may be suitably amended to ensure that the impugned expenditure is subjected to transfer pricing scrutiny, rather than disallowing the expenditure which may result in inequity between undertakings which have more than 50% State Government holding and those having less than 50% State Government holding.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
97.	**Required clarification in respect of applicability of section 40A(3)**	Payments made beyond Rs. 20,000 to a person in a day otherwise by an account payee cheque drawn on a bank or an account payee bank draft is a disallowed expense and is also required	***It is suggested that a clarification may be issued to clarify whether direct deposit into the account of the recipient in excess of Rs. 20,000/- by the debtor be subject to disallowance u/s***

Sr. No	Section	Issue/Justification	Suggestion
		to be specifically reported in the tax audit report by the auditor. Certain difficulties are being faced with regard to the applicability of Section 40A(3) in respect of payments directly deposited into the account of the recipient by the payer located at a far place, in excess of Rs. 20,000/-. The said deposit directly in the account by the payer is being disallowed and is being reported in the tax audit report. The Central Banking system (CBS) in India allows deposit and withdrawal from any place in India. As the amount is being deposited in the banking channel through proper source, the same should not be disallowed under section 40A(3). A clarification may be issued in this regard.	***40A(3) of the Income-tax Act, 1961.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***
98.	***Section 40A(3) – Payment to electricity companies***	Currently, bill payments related to electricity consumption made to electricity companies are not allowed through cheque in case payment is made after a certain date or delayed/late payment after due date. Assessee in such situations is left with no option but to pay in cash. The same is disallowed under section 40A(3) in case payment exceeds Rs 20,000 as Rule 6DD currently do not provide exception in such cases..	***It is suggested that the provisions of section 40A(3) be rationalized to exclude payments in cash to Electricity companies where the payment is not accepted beyond a date through cheque. Due to this genuine electricity payments made in cash due to commercial expediency are getting disallowed and hardship is caused to assessee.***

Sr. No	Section	Issue/Justification	Suggestion
99.	***Explanation 5 to Section 43(1) – “building” to be replaced by “assets”***	Section 43 deals with actual cost. There are 14 explanations provided in section 43(1) describing the method of computation of actual cost of asset under different situations. Explanation (5) deals with actual cost in respect of building previously used by the assessee for certain purposes & subsequently brought into business or profession. According to this explanation, the building so brought in should be notionally depreciated & the resultant WDV as at the date of introducing the building into business shall be deemed to be the actual cost. While all other explanations use the term “asset” or “capital asset”, Explanation 5 uses the term “building” instead of “assets”. It has therefore been held that this explanation would not apply to all other assets other than building.	***In line with the other explanations to section 43(1), it is suggested that the term “Assets” be used instead of the term “building” in Explanation 5 to section 43(1).***
100.	***Section 43(5) – Loss arising from trading in commodity derivatives***	Section 73(2) provides for carry forward and set off of losses of speculation business against the income of any speculation business. Further section 73(4) provides for the limit of four years upto which the speculation loss can be carried forward and set off against income from any	***It is suggested that a transition provision be introduced permitting carry forward and set off of speculation loss incurred prior to 1.4.2014 in respect of trading in commodity derivatives carried out in a recognized stock association from the income of the same business (which***

Sr. No	Section	Issue/Justification	Suggestion
		speculation business. With effect from 1.4.2014, the Finance Act, 2013 amended the proviso to section 43(5) to provide that an eligible transaction in respect of trading in commodity derivatives carried out in a recognized stock association shall not be considered as a speculative transaction. In effect, from 1.4.2014 a loss arising from an eligible transaction in respect of trading in commodity derivatives carried out in a recognized stock association which is chargeable to CTT, shall not be considered as a speculative loss. Prior to aforesaid amendment in proviso to section 43(5), loss arising from such transactions in respect of trading in commodity derivatives was treated as a speculation loss and was governed by the provisions of section 73. With effect from 1.4.2014, on account of insertion of clause (e) in proviso to section 43(5), the nature of transaction becomes non-speculative causing difficulty to those assessees who had brought forward speculation loss and had no other speculative business income for setting it	***is now considered as non-speculative) in case the assessee does not have income from any other speculative business. The set off may be allowed within the limit of four years (as per section 73).***

Sr. No	Section	Issue/Justification	Suggestion
		off. The lack of transition provision is causing genuine hardship to assessees.	
101.	**Section 43A - Exchange fluctuation loss due to sharp fall in Rupee value**	Section 43A was inserted in the Income-tax Act, 1961 by Finance (No. 2) Act 1967, which permitted Capitalization of Foreign Exchange Fluctuation Loss in the borrowing used for acquisition of assets outside India. The exchange fluctuation loss on borrowings used for domestically acquired assets is not permitted to be capitalized for tax purposes. Over the years Rupee has depreciated significantly against the US $ severely impacting the industry particularly those who have exposure to External Commercial Borrowings (ECBs) and Foreign Currency Convertible Bonds (FCCBs). The provisions of Section 43A are similar to the provision contained in Schedule III to the Companies Act, 2013. As per 'instructions in accordance with assets should be made out' as contained in Schedule VI, vide notification No. GSR 129 dated 3-1-1968, the following instructions were inserted:- *"Where the original cost aforesaid and additions and deductions thereto, relate to*	***It is suggested that Section 43A be amended to allow Capitalization of such foreign exchange loss even for domestically acquired asset.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		any fixed asset which has been acquired from a country outside India, and in consequence of a change in the rate of exchange at any time after the acquisition of such asset, there has been an increase or reduction in the liability of the company, as expressed in Indian currency, for making payment towards the whole or a part of the cost of the asset or for repayment of the whole or a part of moneys borrowed by the company from any person, directly or indirectly in any foreign currency specifically for the purpose of acquiring the asset (being in either case the liability existing immediately before the date on which the change in the rate of exchange takes effect), the amount by which the liability is so increased or reduced during the year, shall be added to, or, as the case may be deducted from the cost, and the amount arrived at after such addition or deduction shall be taken to be the cost of the fixed asset." The above provisions were deleted vide notification no. GSR 226(E), dated 31-03-2009 w.e.f. 31-03-2009. The Schedule VI has been amended vide Notification No. SO 447(E) dt. 28-2-2011	

Sr. No	Section	Issue/Justification	Suggestion
		w.e.f. 1-4-2011. In the revised Schedule VI (**as also the New Schedule III to the Companies Act, 2013)**, under the heading "General Instructions" Sr. No. 1 it is stated as under: "*Where compliance with the requirements of the Act including Accounting Standards as applicable to the companies require any change in treatment or disclosure including addition, amendment, substitution or deletion in the head/sub-head or any changes inter se, in the financial statements or statements forming part thereof, the same shall be made and the requirements of the this Schedule shall stand modified accordingly.*" The Accounting Standards have been notified vide notification GSR 739(E) dt. 7-12-2006. For the above purpose the relevant Accounting Standard is AS-11 'The Effects of Changes in Foreign Exchange Rates' Para 46 and Para 46A of AS-11 were inserted vide notification no G.S.R. 225(E) dated 31st March, 2009 and G.S.R. 914(E) dated 29th December, 2011 respectively. The effect of these notifications is that foreign	

Sr. No	Section	Issue/Justification	Suggestion
		exchange difference on foreign loans can be capitalized to the cost of the depreciable assets even if the assets are acquired in India. No distinction is made whether the assets are imported or are purchased within India.	
102.	**Provision for leave salary – Section 43B(f)**	Section 43B(f) provides for deduction in respect of any sum payable by the employer as leave salary on payment basis only. At the time of insertion of section 43B(f), Accounting Standard-15 "Employees benefit" was not into existence. As per the AS-15, leave salary can be differentiated as "short term benefit" and "long term benefit". Short term benefits are allowed to be expensed off during the year. However, long term benefits are treated as "defined benefits plans" and are valued on actuarial valuation. It may be noted that the said AS is also notified under the Companies Act by National Advisory Committee on Accounting Standards and is required to be mandatorily followed by all companies. Allowing deduction in respect of long terms benefits arising due paid leave only on payment basis may be inappropriate. Thus, it is	***Clause (f) of section 43B may be deleted. Further, deduction for provision made towards leave salary liability based on actuarial valuation may be allowed.*** ***Alternatively, on the lines of gratuity and pension funding, necessary provisions may be included in the Income-tax Act for funding of the leave salary liability and deduction should be allowed on such funding.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		suggested that the deduction for leave salary liability may not be linked to actual payment.	
103.	**Section 43CA - Special provision for full value of consideration for transfer of assets other than capital assets in certain cases.**	This section provides for adoption of stamp duty value in case of transfer of land or building or both held as stock-in-trade. Several issues have cropped up due to implementation of this section in its present form and suggestions thereof are as under: a) This amendment encourages structuring of real estate transactions in such a manner to circumvent increased tax liability arising on account of adoption of stamp duty value. For example- Having agreed to sell the property at Rs. 80 Lakhs, as against the value of Rs. 100 Lakhs considered for stamp duty purposes, the transaction may be structured to record the transaction value at Rs.100 Lakhs with a rebate of Rs. 20 Lakhs.	***a) The section in its present form may not be desirable and may lead to structuring of transactions. Thus, the provision of this section needs to be reconsidered.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
		b) This provision results in double taxation of income, since, the difference between the stamp duty value and actual consideration would be taxable in the hands of the seller. However, the buyer can claim only the actual cost as deduction while computing his business income or capital gains arising at a later	***b) Suitable provisions may be incorporated in the statute so that the same income is not subject to tax twice.***

Sr. No	Section	Issue/Justification	Suggestion
		point of time when he sells the asset.	
		c) This section provides for adoption of stamp duty value on the date of agreement, where the date of agreement is different from the date of registration, provided at least a part of the consideration has been received on or before the date of agreement by any mode otherwise than by way of cash. In this context, it may be clarified whether "otherwise than by way of cash" would include transfer by book entries, transfer by Hundi, promissory notes etc. and transfer by exchange agreement.	***c) It may be clarified as to whether the term "otherwise than by way of cash" would include transfer by book entries, transfer by Hundi, promissory notes etc. and transfer by exchange agreement.***
		d) Further, in a case where the year of agreement and the year of registration are different, a clarification is required as to whether the tax liability would arise in the year of agreement or year of registration or the year in which possession is obtained.	***d) It may be clarified as to whether the tax liability would arise in the year of agreement or year of registration or the year in which possession is obtained.***
		e) Since only capital assets are excluded from the applicability of this section, agricultural land which is not included in the definition of capital asset may fall within the scope of this section. Therefore, specific exclusion of agricultural land from the ambit of this provision may be provided for.	***e) It is suggested that agricultural land be specifically excluded from the ambit of this provision***

Sr. No	Section	Issue/Justification	Suggestion
		f) This section provides for adoption of stamp duty value in case of "transfer" of land or building or both held as stock-in-trade. It may be noted that the definition of term "transfer" in section 2(47) is in relation to a capital asset only. The intended scope of coverage of the term "transfer" for the purpose of section 43CA needs to be defined.	***f) It is suggested that the term "transfer" be specifically defined for the purposes of section 43CA.***
		g) Section 43CA provides that the stamp duty value may be taken as on the date of the agreement for transfer instead of the date of registration, provided at least a part of the consideration for transfer has been received by any mode other than cash on or before the date of agreement	***g) A similar provision for adopting stamp duty value on the date of agreement for transfer instead of the date of registration be inserted in section 50C also***
104.	**Amendment in Section 43D and Rule 6EA with reference to Non-Scheduled Co-op Banks**	Section 43D provides for taxability of interest on Bad and doubtful debts only when such interest is credited to Profit and Loss Account or when such interest is actually received, whichever is earlier. Section 43D is applicable only to public financial institutions, scheduled bank, State Financial Corporation, State Industrial Investment Corporation etc. As co-operative banks are not scheduled banks they are not covered by the provisions of this section. Further, Rule 6EA which is	***(i) The words "or Non-Scheduled Banks" be inserted in the section 43D of the Income-tax Act, 1961.*** ***Further, Rule 6EA of the Income-tax Rules, 1962 be amended suitably.*** ***(ii) In Rule 6EA(a)(i) the words 'six months' be replaced by "three months".*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		related to Section 43D talks about Scheduled banks only. Because section 43D and Rule 6EA do not take care of Non-Scheduled Co-operative banks, these banks are treated differently than Scheduled banks. Thus, is discriminatory to the Non-Scheduled Co-operative banks. Further, it may be noted that Rule 6EA recognises a borrowing as a Bad and Doubtful debt only if certain specified conditions are noticed in the accounts of the borrower for a period of six months or more. However, the RBI has changed this period of six months to 90 days i.e. three months. Rule 6EA should also be amended to be in line with the RBI guidelines in this regard.	
105.	**(a) Section 44AA-Monetary limits to be withdrawn**	a) Section 44AA provides for maintenance of accounts by certain persons carrying on business or profession to enable the assessing officer to compute his total income in accordance with the provisions of the Act. Sub-section (2) to section 44AA provides for certain monetary limits for income or turnover of business or profession (i.e. income exceeding Rs.1,20,000 or sales or turnover exceeding Rs.10 Lakhs) which triggers maintenance of books of accounts. Further, the	***Section 44AA may be amended appropriately and the limit of income of Rs.1,20,000 and turnover of Rs.10 Lakhs in any one of the three immediately preceding previous years may be withdrawn for the assessees carrying on business and declaring income as per the provisions of section 44AD and 44AE.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF THE INCOME TAX ACT, 1961)***

Sr. No	Section	Issue/Justification	Suggestion
		assessees which declare their income from business to be lower than deemed profits under section 44AE, 44AD, 44BB and 44BBB are also required to maintain books of accounts in accordance with the provisions of section 44AA. The Finance (No. 2) Act, 2009 made a major amendment in section 44AD and brought within its ambit all assessees carrying on businesses except the business covered under section 44AE, agency business, assessees having commission or brokerage income. As per the provisions of section 44AD read with section 44AA, only those assesses who declare their income lower than 8% of total turnover or gross receipts and whose income exceeds the maximum amount which is not chargeable to tax, are required to keep and maintain books of accounts. As a result the assessee having a turnover below 1 crore and declaring income on presumptive basis at 8% should not be required to maintain books of accounts as per the provisions of section 44AA. Since the monetary limits (as mentioned above) provided in section 44AA(2) are not in alignment with the limit of	

Sr. No	Section	Issue/Justification	Suggestion
		Rs.1 crore as provided in section 44AD, difficulty is being faced by assessees carrying on business as they are required to maintain books of accounts if their income from business or profession exceeds Rs.1,20,000 which is even below the maximum amount not chargeable to tax.	
	(b) Rule 6F - Upward revision of limit of Rs.1,50,000	b) Rule 6F of the Income-tax Rules, 1962 provides for books of accounts and other documents to be kept and maintained by persons carrying on certain professions. The proviso to Rule 6F(1) provides that this rule will not apply in relation to any previous year if the total gross receipts from the profession do not exceed Rs.1,50,000 in any one of the three years immediately preceding the previous year. This limit of Rs.1,50,000 was enhanced long back in the year 2000 considering the inflationary trends at that point of time. Considering the prevailing inflationary conditions in India, this limit needs an appropriate upward revision say Rs.5,00,000. Rule 6F may be accordingly amended.	***Considering the prevailing inflationary conditions in India, the limit of Rs. 1,50,000 provided in the proviso to Rule 6F(1) needs an appropriate upward revision, say Rs. 5,00,000. Rule 6F may be accordingly amended.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF THE INCOME TAX ACT, 1961)***
	(c) Rule 6F(2)(iv) – requires to be dispensed with	Rule 6F(2) provides the books and other documents to be maintained by the	***Clause (iv) to Rule 6F(2) clause was inserted in the year 1983. Since then, there***

Sr. No	Section	Issue/Justification	Suggestion
		professionals. Sub-clause (iv) of Rule 6F(2) requires maintenance of carbon copies of bills exceeding Rs 25.	***has been phenomenal change in the working of the businesses. Nowadays, the billing is computerized and the value of transactions being entered into has increased manifold times. Thus, this clause should be dispensed with.*** ***In case the same is continued, the value of minimum bill amount of Rs. 25 should be increased to Rs.1000.***
106.	**Section 44AD-Presumptive Income – Some Issues**	Section 44AD was repealed w.e.f. 01/04/2011 i.e. from AY 2011-12. According to the new provisions, in case of an eligible assessee engaged in eligible business, income shall be deemed equal to a sum @ 8% of the turnover or higher income as per books. Section 44AD is applicable to any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE, agency business, commission / brokerage income business and whose total turnover or gross receipts in the previous year does not exceed an amount of Rs. 1 crore.	
	a) Maintenance of Books of Account	The general interpretation taken from the reading of the section is that once a deemed income @8% is returned u/s 44AD, the assessee will not be required	***The section may be amended or suitable provision be inserted so as to clarify the intentions of the section. The erstwhile sub-section 4 read as under:***

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
		to maintain any accounts as required u/s 44AA. There is a provision u/s 44AD(5), that if the income is less than 8% then books will be required to be maintained and audited. Unlike the provision in the erstwhile 44AD(4), there is no direct positive provision in present section 44AD to the effect that section 44AA and section 44AB will not apply and that the turnover covered under section 44AD will be excluded for the purposes of calculating the turnover u/s 44AB. Such ambiguity has developed confusions and apprehensions in the minds of the assessees who are covered by the section.	***"The provisions of section 44AA and 44AB shall not apply in so far as they relate to the business referred to in the sub section (1) and in computing the monetary limits under those sections, gross receipts or as the case may be, the income from the said business shall be excluded."***
	b) Eligible Business	As per the section 44AD eligible business means: i) Any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and ii) Whose total turnover or gross receipts, in the previous year does not exceed an amount of one crore rupees.	***a) Section 44AD may be amended to clarify whether the receipts of Rs.1 crore under section 44AD intend to cover the receipts of a single business or aggregate receipts of all businesses. As singular includes plural, a clarification is required in this regard. The difficulty being faced can be illustrated by way of following example:*** ***Suppose an assessee "A" is engaged in four different businesses. The individual turnover of each his***

Sr. No	Section	Issue/Justification	Suggestion
			businesses are as under: *a) Business I (Retail trade of cloth) RS. 30 Lakh* *b) Business II (Manufacturing of tyres)Rs* *c) Business III (Running a sweet shop) Rs. 35 Lakh* *d) Business IV (Advertising agency) Rs. 15 Lakh* *The aggregate turnover of all four businesses amount to Rs. 105 Lakhs. In such a situation, if the assessee opts for section 44AD for all four businesses, a clarification is required whether or not he will be liable to get his accounts audited under section 44AB of the Income-tax Act, 1961.* *b) The provisions of section 44AD should not be made applicable for all businesses. The scope of section 44AD may be clearly defined to cover particular businesses only. Further, in such a case, the treatment regarding set off of unabsorbed depreciation of the non-eligible business against the profits of eligible business, also be clearly laid down.* *c) Further, it may also be clarified whether the provisions of section 44AD would be applicable for loss making business and businesses having income below taxable limit.*

Sr. No	Section	Issue/Justification	Suggestion
	c) Applicability of section 44AD	The Finance Act, 2012 had inserted sub-section (6) with retrospective effect from 1st April, 2011 to clarify that the presumptive tax provisions under section 44AD shall not be applicable to, inter alia, persons earning income in the nature of commission or brokerage or persons carrying on an agency business. Further, the section 44AD(6) apparently seems to exclude the applicability to persons carrying on profession, agency business and earning commission or brokerage. It is possible that such persons have other businesses eligible for presumptive taxation under section 44AD. Therefore, it is suggested that the definition of "eligible business" be amended to exclude professions, agency business and business in respect of which the earnings are in the form of commission or brokerage.	***It is suggested that instead of inserting sub-section 44AD(6), the definition of "eligible business" be amended to exclude professions, agency business and business in respect of which the earnings are in the form of commission or brokerage.***

PART E-CAPITAL GAINS

Sr. No	Section	Issue/Justification	Suggestion
107.	**Revision in date of determination of Fair Market Value**	As per the existing provisions of the Act, in case of specified capital assets acquired before 1st April, 1981, the cost of acquisition for such assets for the purpose of capital gain can be taken either the fair market value of such asset prevailing on 1st April, 1981 or the actual cost of such asset. The determination of fair market value as of 1st April, 1981 especially for land becomes arbitrary & leads to litigation. Hence, there is a need to revise the date for determination of fair market value.	***The date for determination of fair market value should be revised to a relatively recent time frame (such as 1st April, 2001) instead of 1st April, 1981.***
108.	**Limited Liability Partnership (LLP)-** **(a) Merger and Amalgamation of Limited Liability Partnership to be Revenue Neutral.**	LLP though named as Limited Liability Partnership but for all practical purposes it is a body corporate having perpetual succession. As business grows there will be merger, amalgamation, demerger of LLP's as well. At present merger and amalgamation of companies is Revenue neutral.	***It is suggested that similar provision need to be inserted for LLP allowing merger and demerger and amalgamation to be revenue neutral.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	(b) Taxability on conversion of firm into LLP-Clarification required	The Finance Act (No.2), 2009 introduced the taxation scheme relating to Limited liability Partnerships. It provided that a "limited liability partnership" and a general partnership be accorded same tax treatment. i.e. taxation in the hands of the entity and exemption from tax in the hands of its partners. Accordingly, the definition of the	***In view of the reasons provided, it is suggested that a specific provision be incorporated in the Income-tax Act, 1961 itself clearly specifying that the conversion from a general partnership firm to an LLP will have no tax implications.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE***

Sr. No	Section	Issue/Justification	Suggestion
		term 'firm' was amended to include within its meaning a limited liability partnership. The memoranda explaining the introduction of such taxation scheme for LLPs also provided the following: *"As an LLP and a general partnership is being treated as equivalent (except for recovery purposes) in the Act, the conversion from a general partnership firm to an LLP will have no tax implications if the rights and obligations of the partners remain the same after conversion and if there is no transfer of any asset or liability after conversion. If there is a violation of these conditions, the provisions of section 45 shall apply."* Although, the memoranda provided that the conversion from a general partnership firm to an LLP will have no tax implications, no specific provision clarifying the same has been incorporated in the Income-tax Act, 1961.	***PROVISIONS OF DIRECT TAX LAWS)***
	(c) Consequential amendment required in section 47(xiiib)	The existing section 47(xiiib) provides that no capital gains tax is payable on conversion of a private limited or unlisted public company into LLP subject to certain conditions. Proviso (e) states that this provision will not apply if the total sales, turnover or gross receipts in the business of any of the three preceeding years exceed Rs. 60 lakhs. Since this was an	***Many companies are now converting themselves to LLP. With a view to popularize the concept of LLP and also in view of the fact that such provision should apply to all cases of revenue neutral conversions from one form of entity to another form of entity, there should be no threshold on turnover, to avail the benefit under section***

Sr. No	Section	Issue/Justification	Suggestion
		amendment to facilitate conversion of private limited companies and unlisted companies into LLPs, ideally, there should be no restriction on the turnover to avail the benefit of section 47(xiiib). It may also be noted that the parent Act i.e. Limited Liability Partnership Act 2008, allows this conversion without any such restrictions.	***47(xiiib).*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
109.	**Section 49 - Cost of acquisition with reference to certain modes of acquisition**	Section 2(42A) defines the term 'short term capital asset'. Clause (i) (b) of Explanation 1 to Section 2(42A) provides that in case a capital asset becomes the property of the assessee in the circumstances mentioned on Section 49(1), there shall be included the period for which the asset was held by the previous owner. Further, Section 49(1) refers to certain modes of acquisition wherein the cost would be substituted by the cost of the previous owner. Section 49(1)(iii)(e) covers corporate restructurings such as amalgamations, but does not include a reference to a demerger. As a consequence, where a capital asset of the demerged company is transferred to a resulting company, the resulting company would not get the benefit of a period of holding of the demerged company. The government recognized the importance of demergers in the corporate sector and introduced various amendments to the Act vide Finance Act 1999 to	***Section 49(1)(iii)(e) to be amended to include reference to demerger which is exempt under Section 47(vib) and (vic).*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		facilitate corporate restructurings through demergers. The Memorandum explaining the provisions of the Finance Bill 1999 had specifically stated that the amendments have been made on the principles that the demergers should be tax neutral and should not attract any additional tax liability. However, the omission of Section 47(vib) and (vic) in Section 49(1)(iii)(e) would mean that when a capital asset is transferred to the resulting company in a scheme of demerger, holding period of the capital asset would commence from the date of demerger and period for which the capital asset was held by the demerged company would not be considered. Accordingly, the resulting company would not enjoy the holding period of the demerged company for the capital assets transferred in the demerger, as are available for other corporate restructurings such as amalgamations. To that extent, a demerger would not be tax neutral transaction. It seems that the omission of demerger sections in Section 2(42A) r.w. Section 49(1)(iii)(e) seems inadvertent and not in sync with the objective of the introduction of the amendments as stated in the Memorandum.	
110.	***Section 50C – Stamp value***	Section 50C provides for deeming fiction in case	***In order to overcome the recent situation where circle***

Sr. No	Section	Issue/Justification	Suggestion
	exceeding the actual consideration/fair market value	consideration received or accruing as a result of transfer of capital asset being land or building or both is less than the value adopted by Stamp Valuation authority for payment of stamp duty, then Stamp duty value is deemed as the full value of consideration. The assessee may approach the Assessing Officer in case he claims that the fair market value is less than the stamp duty value and in such a case Assessing Officer may refer the valuation to Valuation Officer for the purposes of determining the fair market value (FMV) of property as on the date of transfer. In recent years, the circle rates for the purpose of payment of stamp duty have been increased in almost all States. These rates are, however, much higher as compared the fair market value of land or building or both. Consequently, in majority of assessments, section 50C application is becoming automatic where the assessee has shown capitals gain income on transfer of land or building or both. More often, in such situations assessee approaches the Assessing Officer claiming FMV to be lower than the stamp duty value and Assessing Officer invariably referring the case to valuation officer. This leads to malpractices as well as delay in realization of tax revenue. Assessees unnecessarily face harassment	***rates have been increased to an amount which substantially higher than FMV of land or building transferred, appropriate amendments may be brought in section 50C to the effect that not all cases are covered under section 50C or call for reference to valuation officer be avoided. This may be done by providing a threshold say Rs 50 lakhs and a variance of 10% whereby application to section 50C may be ignored in those cases.***

Sr. No	Section	Issue/Justification	Suggestion
		considering the fact that the FMV of assets transferred on the date of transfer is lower than the stamp duty value in majority of cases.	
111.	***Section 54 and 54F - Capital gains exemption in case of investment in ONE residential house property in INDIA***	a) Section 54(1) has been amended by the Finance (No.2) Act, 2014 by substituting "constructed, a residential house", with "constructed, one residential house in India". Similar amendment is made in section 54F(1). Even though there is a positive intent to put to rest the controversy and the conflicting judgements on the meaning of 'a residential house', certain issues are still expected to continue. A doubt would still remain as to what constitutes one "RESIDENTIAL HOUSE" as most of the past litigations on Section 54(1) and 54F(1) is on this very issue. In *ITO vs. Sushila Jhaveri 292 ITR (AT) 1 (Mum)(SB)*, Hon'ble Special Bench of Mumbai ITAT held that where more than one unit is purchased which are adjacent to each other and are converted into one house for the purpose of residence by having common passage, common kitchen, etc., then, it would be a case of investment in one residential house and consequently, the assessee would be entitled to exemption. The assessee making	***It is suggested that an explanation be inserted in the sections 54 and section 54F clarifying the intent with regard to meaning of one RESIDENTIAL HOUSE in the context of the aforesaid sections.***

Sr. No	Section	Issue/Justification	Suggestion
		investment in two flats located at different localities in Mumbai will be entitled to exemption in respect of investment in one house only of her choice. It was further held that the expression "a residential house" in sections 54 and 54F means one residential house. In *Karnataka High Court in CIT v. D. Ananda Basappa [2009]* 180 Taxman 4 the taxpayer transferred a residential building and invested the long-term capital gain in acquisition of two residential flats situated side by side by means of two separate registered sale deeds and claimed exemption for both the residential units acquired. Both the units were in the occupation of two different tenants. The Court held that the apartments were situated side by side and the builder had made necessary modifications to make them one unit by fixing opening door in between those two apartments. The mere fact that when the Inspector visited the premises they were occupied by two different tenants was not a ground to hold that the apartments were not one residential unit. The aspect of one registered sale deed or more than one deed could not be determinative of the building being considered as one residential unit or otherwise. In the case of *CIT vs. Gita*	

Sr. No	Section	Issue/Justification	Suggestion
		Duggal [2013] 357 ITR 153 (Delhi), the Assessing officer disallowed the exemption in respect of one floor out of two floors constructed by the assessee through a developer since the floors were independent of each other and self-contained and therefore they cannot be considered as one unit of residence. Accordingly, he held that the assessee was not eligible for the exemption under Section 54. The Delhi High Court decided in favour of assessee on the ground that section 54/54F uses the expression "a residential house". The expression used is not "a residential unit". The Court felt that the fact that the residential house consists of several independent units cannot be permitted to act as an impediment to the allowance of the deduction under Section 54/54F since it is neither expressly nor by necessary implication prohibited. The above noted case laws clearly bring out the point on the confusion surrounding the definition of 'a residential house'. Even after the amendment made by the Finance (N.2) Act, 2014, doubts will persist as to what would constitute one RESIDENTIAL HOUSE.	
		b) A person may construct a house according to his plans and requirements. Most of the houses are constructed	***Considering India's prevailing social set up and for the reasons provided, it is thus suggested that the benefit of***

Sr. No	Section	Issue/Justification	Suggestion
		according to the needs and requirements and even compulsions. For instance, i) a person may construct a residential house in such a manner that he may use the ground floor for his own residence and let out the first floor having an independent entry so that his income may be augmented or commitment towards loan may be supported. It is quite common to find such arrangements, particularly post-retirement. ii) One may build a house consisting of four bedrooms (all in the same or different floors) in such a manner that an independent residential unit consisting of two or three bedrooms may be carved out with an independent entrance so that it can be let out. iii) He may even arrange for his children and family to stay there, so that they are nearby, an arrangement which can be mutually supportive. iv) He may construct his residence in such a	***section 54 and 54F be extended to at least in respect of two residential houses.***

Sr. No	Section	Issue/Justification	Suggestion
		manner that in case of a future need he may be able to dispose of a part thereof as an independent house. v) An individual may transfer a long term residential asset and acquire two residential units for distributing the same to his two children, so as to maintain family peace. There may be several such considerations for a person while constructing a residential house. The above are observed in the case of *CIT vs. Gita Duggal [2013] 357 ITR 153 (Delhi)*, considering India's social set up.	
112.	***Certification of deductions claimed under section 54, 54F, 54EC etc***	a) At present deductions u/s 54, 54F, 54EC etc. are not subject to any audit or certification. The possibility that the assessee claims inaccurate amount of deduction under such provisions cannot be ruled out. In order to reduce such possibility of furnishing of inaccurate particulars by the assessee and further to reduce the burden of the Department in scrutinising such claims made by the assessee in his return, it is suggested that such provisions may be amended to require the assessee to obtain a certificate from an Accountant certifying the accuracy of the claim. Further, a	***It is suggested that the assessee claiming deduction exceeding a specified amount under the provisions of section 54, 54F, 54EC etc may be required to obtain a certificate from a Chartered Accountant certifying the accuracy of the claim.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		ceiling may be created for deductions u/s 54, 54F, 54EC etc. that deduction amount in excess of Rs. 30 lakhs in aggregate may be certified by a Chartered Accountant.	
113.	**Section 54EC- Capital gains exemption on investment in Specified Bonds during the financial year**	In furtherance of the existing proviso to section 54EC, a new proviso has been inserted to clarify that the investment made by an assessee in the long-term specified asset, from capital gains arising from ***transfer of one or more original assets***, during the financial year in which ***the original asset or assets*** are transferred and in the subsequent financial year does not exceed fifty lakh rupees. The change is proposed to plug the revenue leakage and to clarify the real intent of the law. Since, the new proviso is in furtherance of the existing proviso; it may cause hardship in genuine cases where investment has to be made in long term specified asset in respect of two previous years in a single financial year. For example, an assessee selling a long term capital asset in February, 2015 (Previous year 2014-15) may invest in Section 54EC assets either in 2014-15 or 2015-16 (upto August,2015). However, in respect of any long term capital asset sold by him in the year 2015-16, he will not be able to invest in 54EC bonds since exemption will be available to him due to applicability of first proviso to	**a) Considering the fact that the new proviso takes care of the true intent of the law, and appears to be contrary to the existing proviso, thereby causing hardship to the genuine taxpayers, it is suggested that the act be amended to substitute the first proviso with the newly inserted proviso.** ***b) Considering the inflationary conditions in the economy, it is further suggested that the said limit of Rs.50 Lakhs may be raised to Rs. 1 crore.***

Sr. No	Section	Issue/Justification	Suggestion
		section 54EC.	
114.	***Withdrawal of deposit from capital gain scheme account***	Section 54, 54B, 54D, 54F 54G, 54GA and 54GB allows the assessee to deposit capital gain/sale consideration, as the case may be, not appropriated by the assessee for the purchase of a new asset as per the provisions of the respective section, in an capital gain scheme account with a bank/institution as may be specified by the Central Government. In order to claim exemption under the respective sections, the amount is required to be deposited before the due date of filing return of income under section 139(1). The amount so deposited is to be utilised within the specified period for the specified purpose. In case the same is not done, the exemption of capital gain so provided earlier is withdrawn and the amount becomes chargeable to tax after the expiry of the specified period. Since there is no check on the withdrawal from capital gain scheme account and utilisation of the amount so withdrawn for specified purposes, the provision is being misused and leading to avoidance of tax. In order to prevent the misuse, tax @1% should be deducted at source from any withdrawal from the capital gain scheme account. To avail the credit of the tax so deducted, the assessee should be required to make appropriate disclosures in the ITR form.	***Since there is no check on the withdrawal from capital gain scheme account and utilisation thereof for specified purposes, the provision is being misused and leading to avoidance of tax. In order to prevent the misuse, tax @1% should be deducted at source from any withdrawal from the capital gain scheme account. To avail the credit of the tax so deducted, the assessee should be required to make appropriate disclosures in the ITR form.*** ***(SUGGESTION TO INCREASE THE TAX BASE)***

Sr. No	Section	Issue/Justification	Suggestion
115.	***Issue on capital gain arising on the transfer of land in respect of joint development agreement***	Section 2(47) of the Act defines 'transfer' in relation to a 'capital asset'. Clause (v) to section 2(47) states that transfer includes ***"any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882".*** Accordingly, the transaction where, the land owner enters into a JDA with the developer, transferring the rights over the property to the developer in some cases [as held in *Chaturbhuj Dwarkadas Kapadia v CIT (260 ITR 491)*], falls under the definition of transfer u/s 2(47)(v) and capital gain arises in the year of transfer of property to the developer pursuant to entering of JDA. Instantly, this is an arrangement entered into which has the effect of handing over the possession, thus the transfer is said to have been taken place on the date of entering into such agreement. However, the same has caused a lot of hardship to the assessees due to following reasons: a. In many cases **projects are not even started** for several months or years and the landowner is required to pay the capital gain tax at the agreement stage itself.	***In view of the aforesaid, capital gains should be taxed in the previous year in which the constructed area is received by the land owner. In case of joint development agreement, the land owner is normally not entitled to receive any consideration at the time he hands over possession of land for development. Exception to this effect may be provided in section 2(47) or section 45 in the manner in which in case of conversion of capital asset into stock in trade, the capital gain is taxable in the Previous year in which the stock is sold and not in the Previous Year in which it is converted into stock in trade.*** ***Further, the period for making investment for availing exemption under sections 54EC etc should be reckoned from the date of handing over the possession and not the date of JDA.*** ***There should be no apprehensions that the assessees might take advantage of this method and delay obtaining letter of possession from the builder indefinitely. Safety rules can be placed by mentioning that occupancy certificate given by the municipal authorities can be treated as the date of handing over of possession.***

Sr. No	Section	Issue/Justification	Suggestion
		b. In some cases **builders have left the projects half way through** and landowners have suffered both ways- by not getting the built up area on time and ending up paying taxes at the time of handing over of possession of land. c. The landowner has **no choice of taking benefit of Section 54, 54F or 54EC** by investing in other properties or capital gain bonds as he receives no money at the time of handing over of possession of land. **d.** At the time of handing over of possession of land, the Landowner has **no money even if he wants to pay the taxes.** e. In some cases, Landowners have paid taxes and the projects have been stalled, and the time **for filing of revised returns is over.** Landowners have no remedy in such cases. f. At present, there is **no computation mechanism** for calculation of such capital gain. Should the Landowner compute the Sale consideration at Registration Value of the Land or should he calculate it by estimating the cost of construction for the Builder. Cost cannot be estimated correctly and this result in revision of the capital gain amounts at the time of	

Sr. No	Section	Issue/Justification	Suggestion
		scrutiny and it gives lot of room for reopening of cases. g. A situation may arise where the builder sells and registers a portion of undivided share in land in favour of buyers in relation to built up area falling to his share before the building is complete. The Landowner will not be able to postpone capital gain on the portion sold as conveyance deed is being executed. He will have to offer to tax capital gain arising out of the sale consideration mentioned in the Sale Deed. However, if the landowner sells undivided share in the retained area and registers a sale deed for undivided share in land or for semi-finished structure before the building is ready for occupation, capital gain arising on this transaction will have to be offered to tax separately as and when sale deeds are registered or property is handed over, whichever is earlier. This transaction has nothing to do with the capital gain arising out of the Development Agreement. h. Builder is handed over the possession only for the purpose of construction, which cannot be construed as transfer of title to him as long as the Landowner does not get possession of his	

Sr. No	Section	Issue/Justification	Suggestion
		built up area.	
116.	**Exemption under section 54 & 54F**	a) Under Section 54 of the Income-tax Act, if an assessee who has earned a Capital Gain on sale of a residential house, has, within the prescribed period, purchased or constructed another residential house, then, to the extent of the cost of the new residential house, no tax in respect of such Capital Gain is payable. There is a similar provision under Section 54F under which the Capital Gains arising on transfer of ANY long term capital asset will also be exempt from tax, if the assessee has, within the prescribed period, purchased or constructed a residential house, to the extent of the cost of such new residential house. A considerable volume of litigation has arisen in the past on the issue as to 'when' exactly an assessee can be considered to have purchased or constructed a new residential house and also on the issue as to whether the acquisition of the new residential flat in an Ownership Apartments Scheme (OAS) or a Co-operative Housing Society is "purchase" or "construction". This distinction is important because, the prescribed time limits for both are different. The above controversy has been set at rest by the CBDT in relation to the acquisition of a flat by an allottee under the self-financing scheme (SFS) of the	***a) In order to avoid avoidable litigation, a Circular on the said subject be issued clarifying that in a case where an assessee has entered into a Registered Agreement for Purchase of a residential flat in an "OAS" and the assessee has paid more than 50% of the cost of the residential flat within the period prescribed in Sections 54 and 54F and has, within a further period of three years obtained actual possession of the residential flat on payment of its full price, the assessee shall be deemed to have "constructed" a 'residential house' within the meaning of Sections 54 and 54F on the date on which the Agreement for Purchase has been registered and the exemption under the said Sections will be available to the assessee to the extent of the aggregate cost of the residential flat agreed to be purchased.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		Delhi Development Authority (DDA) by issuing the Circular No. 471 of 15.10.1986. The Circular has clarified that in case of allotment of a flat by the DDA under the SFS, the allotment by DDA will be treated as "construction" of a residential house and that the "construction" shall be deemed to have been made on the date of allotment of the flat on payment of the first installment of the price of the flat even though, full price of the flat has not been paid. It is submitted that acquisition of a residential flat in an Ownership Apartments' Scheme (OAS), the plans of which have been approved by all the authorities whose approval is necessary under the law, should be treated on par with acquisition of a flat under the SFS of the DDA. On a parity of reasoning, the exemption under Sections 54 and 54F should be available to an assessee who has entered into an agreement for purchase of a residential flat with a Real Estate Developer (RED) and he will be deemed to have 'constructed' the new residential house on the date on which the Agreement for Purchase has been registered with the Registering Authority after payment of the amount payable on signing the Agreement. To avoid misuse of the exemption, a further condition may be imposed that if the person has not paid to the RED more than	

Sr. No	Section	Issue/Justification	Suggestion
		50% of the purchase price of the residential flat within the period prescribed under Sections 54 and 54F for "construction" of a new residential house, and/or, has not got actual possession of the residential flat on payment of full purchase price of the flat within a further period of three years after the expiry of the prescribed period, the exemption shall be withdrawn. The exemption will be to the extent of the total cost of the residential flat as per the Agreement for Purchase. The presumption is that the RED constructs the Ownership Apartment on behalf of the flat owners. The preponderant view taken by many Tribunals and Courts in several decided cases supports the submission made in the precedent para. See "Shashi Verma V. CIT 224 ITR 106(MP), CIT V. R.L. Sood 245 ITR 727 (DEL), Hilla Wadia . CIT 216 ITR 376 (BOM). However, some Tribunals and Courts have taken a different view. As there have been conflicting Judgements on the issue, many Assessing Officers (AO) take the view that the exemption is available only if the actual possession of the new residential house has been taken after payment of the entire cost of the residential house within the prescribed period. Some have also taken a view that when an assessee joins an "OAS" he is "purchasing" a flat and not constructing a flat. Such a view	

Sr. No	Section	Issue/Justification	Suggestion
		causes considerable unjustified hardship to the assessees and has resulted in a lot of avoidable litigation. The aforesaid view taken by some Assessing Officers strikes at the very root of the intention of the Parliament in enacting the Sections 54 and 54F for giving the much needed relief to assessees who need to change a residential house for various genuine and valid reasons, and they have no option but to join on "OAS". It is evident that they do not earn a real capital gain on sale of the first residential house when they have to necessarily utilize that capital gain for acquiring the new residential flat. The real estate prices have been continuously on the increase. Therefore, the new residential flat will usually cost more than the sale price of the one sold. When a person books a flat in a large OAS, he cannot be sure that the scheme will be completed within the period prescribed in Sections 54 and 54F. In most case, large OAS take a longer period for completion than the one prescribed for 'construction' in Sections 54 and 54F. It has been an 'oft declared' policy of the Government to take all steps necessary to reduce litigation because of the very large number of pending cases with the Supreme Court and the High Courts. On this issue, there has been considerable avoidable	

Sr. No	Section	Issue/Justification	Suggestion
		litigation because of differing interpretations taken by AOs, Tribunals and Courts on the question whether acquisition of a residential flat in an OAS is 'purchase' or 'construction' and when the 'purchase' or 'construction' can said to have taken place.	
		b) The proviso to section 54F(1) provides that the nothing contained in this sub-section shall apply where (a) the assessee (ii) purchases any residential house, other than the new asset within a period of **one year** after the date of transfer of the original asset. Further, section 54F(2) provides that where an assessee purchases, within the period of **two years** after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (*a*), or, as the case may be, clause (*b*), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed. It may be noted that the proviso to	***It is suggested that the inconsistency in the sub-section (2) and proviso to the sub-section (1) may be removed to avoid unnecessary litigations.*** ***In fact, in order to promote construction of residential houses, the time limit of 3 years for completion of construction should be removed.***

Sr. No	Section	Issue/Justification	Suggestion
		sub-section (1) discourages the assessee to purchase a new house within a period of one year and sub-section (2) discourages the assessee to purchase a new house within a period of two years. There seems to be inconsistency between the two provisions of the same section.	
117.	**Capital gain on transfer of residential property to be taxed in certain cases-Section 54GB**	The Finance Act, 2012 had inserted a new section 54GB to exempt long-term capital gains on transfer of a residential property, being a house or a plot of land, owned by an individual or HUF, if the net consideration on sale of property, is invested in equity of a new start-up SME company in the manufacturing sector which is utilised by the company to purchase new plant and machinery. Since this section was introduced with a view to incentivise investment in the Small and Medium Enterprises (SME) in the manufacturing sector as per the National Manufacturing Policy announced by the Government in 2011, the benefit of exemption under section 54GB should not be restricted to capital gains from sale of residential house and plot of land alone, but should be extended to long term capital gains derived from other capital assets also. This exemption under section 54GB can be claimed subject to the following conditions. (i) The investee company	***It is suggested:*** ***a) The benefit under section 54GB may be extended to long-term capital gains on sale of any capital asset which is invested in the equity of a new start-up SME company for purchase of new plant and machinery within the prescribed time.*** ***b) Investment in existing SME company may also be considered for the purpose of such exemption.*** ***c) Further, investment in LLP which satisfies the condition of SME enterprises may also be permitted, subject to conditions as may be necessary. Restrictive clauses may be inserted in line with the appropriate clauses of the proviso to section 47(xiiib).*** ***d) The restricted time limit for acquiring new plant and machinery will create difficulties and, therefore, it is suggested that the SME company may be allowed to make such investment in new plant and machinery within a period of 2 years from the date on which the assessee makes***

Sr. No	Section	Issue/Justification	Suggestion
		should qualify as a Small or Medium SME under the Micro, Small and Medium Enterprises Act, 2006. (ii) The company should be engaged in the business of manufacture of an article or a thing. (iii) SME company should be incorporated within the period from 1st of April of the year in which capital gain arises to the assessee and before the due date for filing the return by the assessee u/s 139 (1). (iv) The assessee should hold more than 50% of the share capital or the voting right after the subscription in the shares of a SME company. Sometimes in case of capital intensive SME , a single co-owner may not be able to fund the said SME from his own share of sale proceeds of the property sold which will prevent formation of a new SME so as to achieve the desired objects. (v) The assessee will not be able to transfer the above shares for a period of 5 years. It may be noted that the lock-in period under section 54EC is only 3 years. (vi) The company will have to utilize the amount invested by the assessee in the purchase of new plant and machinery within a period of one year from the date of subscription in equity shares of an eligible company. If the entire amount is not so	***the investment in its equity shares.*** ***e) The period of 5 years for retaining the equity shares may be reduced to 3 years, in line with the requirement under section 54EC. Suitable exceptions for takeover/ merger/ amalgamations etc. may also be provided.*** ***f) Similarly, lock-in-period for plant and machinery acquired by the SME company may be reduced from 5 years to 3 years.*** ***g) It may be clarified that the net consideration after deduction of tax at source @1% may be required to be invested, so that there is no cash flow mismatch.*** ***h) In case of a Sale of joint property , the condition regarding holding of more than 50% of the share capital of the SME company by the assessee should be deemed to have been fulfilled if the co-owners of the said property hold more than 50% of the Share Capital of the SME company.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		invested before the due date of filing the return of income by the assessee u/s 139, then, the company will have to deposit the amount in the scheme as notified by the Central Government. Thereafter, Central Government issued Notification No 44/2012, Dt 25-10-2012 in this regard. (vii) The above new plant and machinery acquired by the company cannot be sold for a period of 5 years. (viii) The above scheme of exemption granted in respect of capital gains on sale of residential property will remain in force up to 31.3.2017.	

PART F-INCOME FROM OTHER SOURCES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
118.	**Definition of the term relative- Explanation to Section 56(2) (vii)**	Under the existing provisions of section 56(2)(vii), any sum or property received by an individual or HUF for inadequate consideration or without consideration is deemed as income and is taxed under the head 'Income from other sources'. However, in case of any individual, receipts from specified relatives are excluded from the purview and hence, are not taxable. The Explanation to section 56(2)(vii) was amended by the Finance Act, 2012 so as to provide that any sum or property received without consideration or inadequate consideration by an HUF from its members would also be excluded from taxation. The provisions of clubbing of income as contained in Chapter V of the Income-tax Act, 1961 are attracted in respect of income from any sum of money or value of assets transferred to a non-relative. Once the sum of money or value of assets are subject to tax under section 56(2) in the hands of the recipient, the income from such assets should not be subject to the clubbing provisions contained in Chapter V. Further, it may be noted that, in relation to an "individual", the term relative, as it stands at present, does not include nieces and	***Suggestions:*** ***(i) The provisions of clubbing of income as contained in Chapter V of the Income-tax Act, 1961 should not be attracted once the sum of money or value of assets are subject to tax under section 56(2) in the hands of the recipient.*** ***(ii) Lineal descendents of brothers and sisters of self and spouse may also be included in the definition of "relative" in line with the provisions of section 13(3).*** ***(iii) The application of the provision should also be extended to the relatives of the members of HUF.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		nephews. This may not be the legislative intent as they also form part of the close circle of relatives and accordingly have been considered as "relative" in the Direct Taxes Code Bill, 2010 and 2013.	
119.	***Section 56(2)(vii)(b) – Immovable property received for inadequate consideration***	This section was amended by the Finance Act, 2013 to bring within its scope immovable property received for inadequate consideration, where the difference between the stamp duty value of land or building or both and the actual consideration exceeds Rs.50,000. This amendment has lead to double taxation of the differential amount i.e. the difference between the stamp duty value and the actual consideration would be taxable in the hands of the buyer as "Income from other sources" under section 56(2)(vii) and "Capital Gains" in the hands of the seller on account of adoption of stamp duty value as full value of consideration for transfer of property as per section 50C.	***It is, therefore, suggested that immovable property transferred for inadequate consideration be kept outside the scope of section 56(2)(vii).*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
120.	***Exclusion of rights shares/ fresh issue of shares from the ambit of section 56 (2)(viia)***	Clause (viia) was inserted under sub-section 2 of section 56 of the Income-tax Act, 1961 by the Finance Act, 2010. The said clause provides that the transfer of shares of a company without consideration or for inadequate consideration would attract the provisions of section 56(2), if the recipient is a firm or a company. The purpose is to prevent the practice of transferring unlisted	***It is suggested that rights shares and fresh issue of shares be excluded specifically from the ambit of these provisions*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		shares at prices much below their fair market value. Though the intent of the legislature may not be to bring rights shares within the ambit of these provisions however, a strict interpretation of the provisions as inserted in the Act, brings rights shares within the mischief of these provisions.	
121.	**Valuation of shares- Section 56(2)(viib)**	The Finance Act, 2012 had inserted clause (viib) in section 56(2) to provide that if the consideration for shares is in excess of the fair value of the shares, the aggregate consideration received in excess of the fair value determined as per method prescribed or substantiated by the company to the Assessing Officer based on the value of its assets, would be taxable as the income of a closely held company. The detailed suggestions regarding the draft rule which prescribes for determination of fair market value of shares was submitted by ICAI to the Board. In furtherance to the same, it is submitted that the provisions of this clause should not apply to any such property received by way of a transaction not regarded as transfer under clause (via) or clause (vic) or clause (vicb) or clause (vid) or clause (vii) of section 47. Such exemptions have been provided in relation to section 56(2)(viia).	***(i) A proviso similar to the proviso to section 56(2)(viia) should be incorporated in section 56(2)(viib) as well. Further, the proviso should also cover transactions not regarded as transfer under sections 47(vi) and 47(vib).*** ***(ii) Valuation Report from an `Accountant' may be admissible so as to determine the fair market value of unquoted equity shares.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
122.	**Section 56(2)(ix) -**	Clause (ix) is inserted in section 56(2) by Finance (No. 2) Act,	**It is suggested that a suitable amendment may be made in the**

Sr. No	Section	Issue/Justification	Suggestion
	Taxability of forfeited advance for transfer of a capital asset	2014 to provide for taxability of any sum received as an advance or otherwise in the course of negotiations for transfer of capital asset. Since it is a capital receipt it was earlier allowed as a deduction from the cost of acquisition under section 51. The same is now taxed as a revenue receipt in the year of receipt under the head "Income from other sources". Making it taxable in the year of receipt is a good move and in the interest of the revenue. However, the other side of the same transaction also needs consideration i.e. from the payer's point of view whose money has been forfeited. Since the receipt is deemed to be revenue due to the enactment, it follows that the expenses in the hands of the payer would also be revenue in nature. Consequently, corresponding benefit needs to be provided to the payer.	**Act which allows the benefit of deduction of forfeited amount to the payer of such amount.**

CHAPTER VI

AGGREGATION OF INCOME AND SET OFF OR CARRY FORWARD OF LOSS

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
123.	**Onus of proof in respect of cash credits consisting of share application money, share capital, share premium etc- Section 68**	The Finance Act, 2012 had made amendments in section 68 to provide that in case the amount credited consists of share application money, share capital or share premium, then, the explanation offered by the assessee company shall not be deemed to be satisfactory, unless the resident shareholder also offers an explanation about the nature and source of such sum so credited to the satisfaction of the Assessing Officer. The Memorandum while explaining the amendments proposed by the Finance Bill, 2012, clearly mentioned that section 68 is amended to provide that the nature and source of any sum credited, as share capital, share premium etc., in the books of a closely held company shall be treated as explained only if the source of funds is also **EXPLAINED BY THE ASSESSEE COMPANY** in the hands of the resident shareholder. It may be noted that as per the memorandum, the intention of the lawmakers is to place onus of proving the source of funds in the hands of the resident shareholder is on the ASSESSEE Company. However, the language of the proviso to section 68 has been worded otherwise, placing the onus of explaining the source of funds in the hands of resident shareholder on the shareholder itself.	***First proviso to section 68 should be re-worded to provide that the source of funds in the hands of the resident shareholder is to be explained by the ASSESSEE Company or the investor to the satisfaction of the Assessing Officer.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
124.	***Rationalization of section 69C***	As per section 69C, if an assessee has incurred any expenditure for which he has offered no explanation, the same is deemed to be the income of the assessee, and is not allowed as deduction under any head of income.	***This provision results in double taxation. Therefore, it's suggested that the provision of section 69C may be reviewed & deleted in the interest of justice.***
125.	**Section 72- Carry forward and set off of business losses**	At present under the provisions of section 72 of the Income-tax Act, brought forward business loss can be set off against profits and gains of business or profession carried on by an assessee up to subsequent 8 assessment years. Where any surplus arises from sale of the capital asset forming part of block of assets in respect of which depreciation has been allowed (either because the block of assets ceases to exist or because the consideration received exceeds the value of block), such surplus is regarded as "short-term capital gain" under section 50 of the Income tax Act, 1961.	***It is suggested that the brought forward business loss may be allowed to be set off against short-term capital gain under section 50 in subsequent assessment years.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
126.	**Tax incentives under Section 72A in respect of Amalgamation or Demerger (to be extended to all businesses):**	The tax benefits under section 72A in respect of amalgamation or demerger are currently limited to industrial undertakings or a ship, hotel, aircraft or banking. It is suggested that in the current liberalized and buoyant environment where various new sectors are growing at a rapid pace, this benefit should now be extended to all businesses including financial services.	***It is suggested that:*** ***a) In the interest of the public at large, the benefit of section 72A may be extended to all businesses including financial services particularly NBFC's.*** ***b) Further, the provisions of section 72A may be simplified specially in respect of the conditions applicable for the amalgamating company like losses / depreciation being***

Sr. No	Section	Issue/Justification	Suggestion
			unabsorbed for at least three years and holding assets on the amalgamation date upto ¾ of the book value of fixed assets held two years prior to the said date. ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
127.	**Section 73A - set-off of losses of specified business against non-specified business**	All specified businesses eligible for investment based incentives u/s 35AD are capital intensive. Business houses commencing any specified business have to divert funds from other businesses to the specified business. When other businesses contribute towards the establishment of a specified business, it is imperative that the losses of specified business are allowed to be set off against profits of other business.	***It is suggested that section 73A should be modified to allow the losses of specified business under section 35AD to be set off against profits of other businesses.***
128.	***Review of section 78(1)***	Section 78 deals with the provisions of carry forward and set off of losses in case of change in the constitution of firm or on succession. Sub-section (1) does not allow the firm to carry forward and set off the share of loss attributable to the retired or deceased partner. Also, by virtue of provisions of section 10(2A) the income (which includes loss) is not allowed to be considered in the hands of the person being a retiring partner of the firm.	***It is suggested that the same shall be allowed to be considered either in the hands of the firm or the partner so as to remove the genuine hardship caused to such assessees.***

CHAPTER VIA

DEDUCTIONS TO BE MADE IN COMPUTING TOTAL INCOME

PART B-
DEDUCTIONS IN RESPECT OF CERTAIN PAYMENTS

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
129.	**Section 80CCG- Rajiv Gandhi Equity Linked Savings Scheme**	The deduction available in the first year for investment by a new equity investor, having gross total income of up to Rs.10 lakh, in listed equity shares or listed units of equity oriented funds under the Rajiv Gandhi Equity Savings Scheme, 2013, is extended to a new retail investor having gross total income of up to Rs.12 lakh, for a period of three consecutive assessment years beginning with the assessment year relevant to the previous year in which the listed equity shares or listed units of equity oriented fund were first acquired. Further, as per section 112(2), where the gross total income of an assessee includes any income arising from the transfer of a long-term capital asset, the gross total income shall be reduced by the amount of such income and the deduction under Chapter VI-A shall be allowed as if the gross total income as so reduced were the gross total income of the assessee. Similar provision is contained in section 111A as well. According to these provisions, the "gross total income" as reduced by such capital gains would be the "gross total income" for the purpose of all deductions under Chapter VIA. Since deduction under section 80CCG falls under Chapter VIA,	***Appropriate amendments may be made to clarify the real intent of the said section i.e. whether Long term capital gains taxable under section 112 and Short term capital gains taxable under section 111A needs to be excluded for determining the limit of Rs.12 Lakhs.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		this provision would also imply that for determining the threshold limit of Rs.12 lakh for availing the benefit under this section, the capital gains taxable under section 112 & 111A are to be excluded.	
130.	**Preventive health check up-Section 80D**	Section 80D was amended by Finance Act, 2012 to provide for deduction of up to Rs.5,000 in aggregate for preventive health check-up of the assessee, his family and parents. This is within the overall limit specified under section 80D. At present, there is a limit of Rs.15,000 in respect of medical insurance premium of self, spouse and dependent children and Rs.15,000 in respect of premium paid for parents. The above limit would be Rs.20,000 instead of Rs.15,000, where any of the persons insured are above the age of 60 years. With the rising cost of medical treatment, it is necessary to have an adequate insurance coverage for all members of the family. The cost of insurance coverage is also increasing, and with the increase in service tax with effect from 1.4.2012, the medical insurance products have become dearer. Therefore, the deduction of Rs.5,000 for preventive health check-up should be available in addition to the existing deduction for mediclaim premium.	***It is suggested that section 80D be appropriately amended to provide for a deduction of Rs. 5,000 for preventive health check-up of any member of the family, which is in addition to the existing limits under that section for medical insurance premium paid.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
131.	**Increase in limit of deduction u/s**	In view of the increase in following costs, maximum deduction in respect of medical	***It is suggested that the limit specified in section 80DD & 80U be enhanced suitably.***

Sr. No	Section	Issue/Justification	Suggestion
	80DD & 80U	treatment of a dependent who is a person with disability u/s 80DD and deduction for persons with disability like total blindness or mental retarded or physically handicapped person u/s 80U, should be enhanced suitably: (a) Increase in medical cost; (b) Increase in travelling cost; (c) Increase in minimum wages and difficulty in getting nurses/attendants who are charging not less than Rs. 10,000/- even in B/C type cities	***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
132.	**Section 80EE - Deduction in respect of interest on loan taken for residential house property**	Section 80EE provides for additional deduction of up to Rs. 1 lakh under Chapter VIA in respect of interest on housing loan sanctioned by a bank or housing finance company during the period between 1.4.2013 and 31.3.2014 for acquisition of residential house property. The issues emerging from the provision are as follows- ➢ It may be clarified that interest on loan taken for construction of residential house property also qualifies for the additional deduction i.e. the term "acquisition" includes "construction" as well. ➢ As per sub-section (2) of section 80EE, in case interest payable for the P.Y.2013-14 is less than one lakh rupees, the balance amount shall be allowed in A.Y.2015-16. It may be noted that deduction under section 80EE is an	***Therefore, ideally, the benefit under section 80EE may be extended to interest on the loan taken for the first house property acquired or constructed, irrespective of the whether the housing loan is sanctioned before or after 1.4.2013. In any case, the deduction of Rs.1,50,000 in respect of self-occupied property was introduced fifteen years back and keeping in mind the inflationary conditions, the additional deduction of Rs.1,00,000 should be extended in respect of all loans, albeit for the first house property. Further, instead of providing the same as a deduction under Chapter VIA only for A.Y.2014-15 and A.Y.2015-16, the same may be provided by way of insertion of another proviso to section 24(b) for the sake of consistency.*** ***Further, on lines the incentive provided through section 80EE,***

Sr. No	Section	Issue/Justification	Suggestion
		additional deduction, over and above the deduction allowable under section 24. Therefore, only if the total interest exceeds Rs.1,50,000, the benefit under section 80EE itself would be available. If the interest payable is less than Rs.1,00,000, as required in this sub-section, no benefit under section 80EE would be available even during the P.Y.2013-14. Since the entire interest would be deductible under section 24 itself. **Therefore, sub-section (2) of section 80EE may be reworded to provide that in case "<u>the deduction allowable under this section</u>" for the P.Y.2013-14 is less than one lakh rupees, the balance amount shall be allowed in the A.Y.2014-15.** ➢ Further, in case of extension of benefit to interest on loan taken for construction, whether interest on a new loan sanctioned during the said period to repay an earlier loan in respect of a house property under construction would be eligible for deduction is another issue requiring clarification. ➢ The section, in its present form, does not extend the benefit to interest on housing loans taken from employer, unless the employer happens to be a bank or financial institution. ➢ The restriction of eligibility for deduction under this section to housing loans sanctioned	***it is suggested the first time buyers of the residential property for self occupation should be allowed a deduction of Rs.3,00,000 in respect of which no capital gain exemption is provided.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		on or after 1.4.2013 results in inequity vis-à-vis persons whose home loans were sanctioned before 1.4.2013 in respect of the first house property. It is possible that in many cases where loan is sanctioned prior to 1.4.2013 in respect of the first house property, the amount is yet to be disbursed or even if the amount is disbursed, the person is yet to receive possession of the property. ➢ Considering the high cost of acquisition of house properties in metro cities, the threshold limit of Rs.40 lakhs and Rs.25 lakhs, respectively, for the cost of property and loan sanctioned, for availing the benefit of section 80EE is impracticable and non-workable. Further, since the banks generally give loan upto 85%-90% of the cost of property, the threshold for loan should be appropriately increased to at least Rs. 35 Lakhs. Further, the threshold limit of Rs.25 lakhs is in relation to loan sanctioned. Loan disbursed would be a more realistic criterion for fixing a threshold, since the entire loan sanctioned may not be disbursed in all cases.	
133.	**Deduction u/s 80G - to liberalise the exemptions by enhancing ceilings**	There are many charitable institutions all over India backed up by dedicated people serving the cause of poor, downtrodden, handicapped - both physically and mentally, deserted women,	***It is suggested that the ceiling of 10% on gross total income be withdrawn.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX***

Sr. No	Section	Issue/Justification	Suggestion
	specified	children, orphans, destitute and aged helpless people. Even though there are many magnanimous donors who are willing to contribute to these humanitarian causes after ensuring that their donations are properly utilised, the overall ceiling of 10% of gross total income u/s 80G impedes their way to contribute liberally and encourage more and more institutions. It is needless to mention that the Government alone cannot achieve the socialistic goal of upliftment of downtrodden. Hence, there is a need to encourage and nurture these dedicated, service minded institutions. Since hundreds of institutions of this kind are in the field and the willing donors with large heart being limited, it is but essential to remove the ceiling so that at least the donors who want to serve the cause of humanity will not be tied up with such artificial restrictions. This freedom may even induce them to be more generous in meeting the requirements of these institutions. In this context, it is pertinent to note that the Income Tax Department has enough scope to exercise control over these institutions while granting recognition, issuing and renewal of exemptions u/s 80G and lastly while assessing these institutions. The provisions of Section 11(5) relating to investment of their funds also work as a check to	***LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		avoid misuse etc. Also, the concept of Corporate social responsibility introduced by the Companies Act, 2013 reflects that welfare activities from private participation are being promoted. In light of the same, it is suggested that the ceiling of 10% under section 80G may be withdrawn.	
134.	**Donations made of any sum exceeding ten thousand rupees in cash- sections 80G and 80GGA**	Sub-section (5D) was inserted in section 80G and sub-section (2A) was inserted in section 80GGA to provide that no deduction shall be allowed under these sections in respect of donation of any sum exceeding Rs.10,000 unless such sum is paid by any mode other than cash. It is not clear from the language of these sub-sections as to whether the limit of Rs.10,000 is applicable in respect of each individual contribution or with respect to the aggregate contribution made by a person during a year to an institution or to all institutions covered under section 80G(2) or 80GGA(2).	***It may be clarified as to whether the limit of Rs.10,000 is applicable in respect of each individual contribution or aggregate contributions to an institution or to all institutions covered under section 80G(2) and section 80GGA(2), respectively*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
135.	***Limits of House Rent Allowance (HRA) &Section 80GG:***	As per the provisions of section 10(13A), **least** of the following is exempt from tax in case a salaried employee receives House rent allowance from his employer: i) House rent Allowance actually received ii) rent paid – 10% of salary iii) 40%/50% of salary and For non-salaried persons, the deduction for house rent paid is given under section 80GG	***Considering the prevailing inflationary conditions in India, it is suggested that the limits of both house rent deduction u/s 80GG and House rent allowance u/s 10(13A) be reviewed and enhanced accordingly.***

Sr. No	Section	Issue/Justification	Suggestion
		wherein rent paid over 10% of total income not exceeding Rs. 2000 p.m or 25% of total income for the year, whichever is less is allowed to an assessee. Considering the prevailing inflationary conditions in India, there is a need to review and enhance the limits of both house rent deduction u/s 80GG and House rent allowance u/s 10(13A).	

PART C-
DEDUCTIONS IN RESPECT OF CERTAIN INCOMES

DETAILED SUGGESTIONS

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
136.	**a) Section 80-IA – Unit-wise deduction should be allowed**	Plain reading of section 80-IA gives the impression that deduction under section 80-IA is available 'unit wise'. But, nowadays, losses of other units are clubbed to deny deduction under section 80-IA of the Income-tax Act, 1961 on the reasoning that all units constitute one single business. Since total income from eligible business is loss, deduction under section 80-IA is disallowed (Even when loss of other unit has been set off against profit of non eligible business income). This practice is discretionary in nature. An assessee/company who is claiming deduction under section 80-IA from one unit cannot start another unit of similar business as the initial losses of new unit will get adjusted with the profits of old unit However, if the new unit is started by another assessee/ company ,old unit will not suffer any disallowance under section 80-IA. This put existing assessee/company into disadvantageous position vis-à-vis new assessee/company. Many Tribunal benches (Bangalore, Mumbai etc.) have already rejected this practice.	***A specific clarification/ provision should be made in section 80-IA itself to provide that deduction under section 80-IA is 'UNIT SPECIFIC'. For each unit deduction under section 80-IA should be separately calculated.*** **(SUGGESTIONS TO REDUCE/ MINIMIZE LITIGATIONS)**
	b) Extension of sunset clause under	The terminal date for power sector undertakings to set up, start transmission or distribution	***In order to ensure clarity and certainty as regards the period within which the undertaking***

Sr. No	Section	Issue/Justification	Suggestion
	section 80-IA	or undertake substantial renovation is extended by one year i.e. from 31.3.2014 to 31.3.2017. In fact, the terminal date has been extended several times in the last few years	***should be set-up or within which it should start transmission etc. the terminal date may be extended till such time the country has acquired self-sufficiency in the supply of power i.e. the terminal date may be kept open-ended.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	c) Benefit u/s 80-IA shall be allowable to the resulting / amalgamated company in case of demerger / amalgamation	Section 80-IA of the Income-tax Act, 1961 provides exemption from income tax on infrastructure projects subject to specified conditions in order to encourage investment in these areas. Sub-section (12) provides that in case of demerger or amalgamation, the benefits to the undertaking under Section 80-IA will continue in the hands of the transferee company and will cease in the hands of the transferor company. However, as per sub-section (12A) inserted by the Finance Act, 2007 the benefits will cease, if there is a transfer in a scheme of amalgamation or demerger, on or after 1st April, 2007. The unfortunate result of this amendment is that neither the transferor nor the transferee company will enjoy the benefit of section 80-IA in case there is an amalgamation or demerger. The original position, under which the transferee company will enjoy the benefit in case of a demerger or amalgamation, needs to be	***The original position, under which the transferee company enjoys the benefit in case of a demerger or amalgamation, may be reinstated.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		reinstated based on the following reasons: (i) Incentives of this nature have been traditionally linked to a unit/undertaking/ investment, and not to an entity. It is logically so, because the objective is to incentivize an investment regardless of which entity houses that investment. (ii) Amalgamations or demergers are restricted forms of transfer which are also subject to (i) stringent guidelines as prescribed in the Income-tax Act, 1961 and (ii) Court supervision and approval. The benefits under 80IA used to be allowed in the hands of the transferee companies in such restricted forms of transfer. Such rationale remains valid even now and the benefits under Section 80-IA may therefore, continue to be available in the hands of the transferee, like in the past, prior to insertion of Sub-section (12A) by the Finance Act 2007. (iii) The benefits of this section, rightly, covers a long span of 15/20 years as infrastructure projects by nature take a long time to give economic returns corresponding to their risks. In such a long span of time, the dynamic and ever changing market	

Sr. No	Section	Issue/Justification	Suggestion
		place, especially in a growing economy like India, will necessitate a company to undergo many changes (amalgamation or demerger being some of these) in order to continue to operate efficiently. Removal of benefits like that of 80-IA would lead to economic inefficiencies by preventing necessary amalgamations or demergers. (iv) The amendment therefore is an undue constraint and may even defeat the original purpose of encouraging infrastructure projects (especially given the long span of time), which are necessary building blocks of our economy. The concept of an amalgamation or demerger deserving appropriate treatment is well recognized under the Income-tax Act, 1961 which rightly provides for several benefits for such transactions including exemption from capital gains tax. Further, fiscal benefits similar to 80-IA like those under Sections 80-IB, 80-IC or 10A of the Income-tax Act, 1961 continues to be available, rightly, even after any amalgamations or demergers, and these have not been deleted. Extending the timelines for some of these benefit years, in the Finance Act of 2011 clearly underscores and reiterates their importance.	

Sr. No	Section	Issue/Justification	Suggestion
137.	**Incentivizing investments in respect of agricultural infrastructure**	There is an urgent need to invest heavily in building up of a viable and efficient infrastructure in the agriculture sector in India. This would necessitate building up of proper computerized infrastructural facilities and electronic highways for procurement, dissemination of best agricultural practices, weather information, storage practices etc. as well as offering the best possible price to the farmers. Also, this would result in cutting down intermediaries/ middlemen and thereby reduce the transaction costs. Section 80-IA of the Income-tax Act, 1961 provides for deduction in respect of profits/ gains from industrial undertakings engaged in infrastructure development. This covers road, bridge or rail, highway projects, water projects, ports, airports, telecommunication services, industrial parks and power generation. The definition of infrastructure should be extended to include rural infrastructure like: • Village kiosks housing Information Technology infrastructure like computers, VSATs, Modems, smart cards, projectors, screens etc. • Support infrastructure like solar-panels, UPS, Batteries etc. at these locations. • Water harvesting facilities like check dams, wells ponds and other rain harvesting	***The tax incentives may take the following forms:*** ***i. deduction of proportionate profits for the total value of turnover arising from such computerized infrastructural facilities (in line with the provisions of section 80-IA read in conjunction with section 80HHC) for purposes of simplification and avoidance of disputes.*** ***ii. deduction of the total expenditure incurred, both capital and revenue, for creating such infrastructure (similar to the provisions of section 35).*** **(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)**

Sr. No	Section	Issue/Justification	Suggestion
		structures. • Storages including farmer facility center housing training centers, cafeteria, health clinic, pharmacy, bank counters and necessary parking area. • Green houses and poly houses.	
138.	**Section 80JJAA – Deduction in respect of employment of new workmen**	As per the current provisions, any Indian company engaged in the manufacturing of any article or thing, gets a deduction of 30% for new workmen employed during the given year for three consecutive years including the year of employment. After Finance Act, 2013 this deduction is restricted to only those companies who have a "factory" as defined under the Factories Act, 1948. Further any factory acquired by way of amalgamation or hive off, etc. would not be eligible for these benefits. This provision would harm software industry the most which is the largest earning foreign exchange sector amongst others. In the given scenario, the economy needs a boost from the corporate world and employment opportunities could assist in accelerating overall growth and development of the nation. Under such circumstances, restrictions on such employment opportunities is unfair and therefore this amendment be dropped in view of the below difficulties that may be faced:	***It is suggested that :*** ***a) the amendment so made by the Finance Act, 2013 be dropped in view of the aforesaid anomalies. It is recommended that the section should be modified to cover 'employees employed by the industrial undertaking'.*** ***b) a suitable clause be inserted in Form 3CD requiring the tax auditor to certify the particulars of new regular workmen employed and the additional wages paid to them to ensure the correctness of claim under section 80JJAA.***

Sr. No	Section	Issue/Justification	Suggestion
		• There should be clarity to the effect that what is the meaning of the term 'workmen' and the term 'employee' • Deduction perfected in terms of old section 80JJAA for and upto AY 2013-14 should be available for residual years even in absence of specific grandfathering • It is suggested that the blue collared employees who support the organization while being outside the factory premises may be considered as "employed in such factory" • Clarity is required where the taxpayer who is not registered under the Factories Act 1948, whether he may be granted deduction under this section	
139.	***Section 80P – Non applicability to certain co-operative societies***	Prior to AY 2007-08, all the cooperative societies registered in India were enjoying deduction under section 80P. However, w.e.f 1st April 2007, section 80P was amended via Finance Act, 2006 by introduction of sub – section (4) which provides as follows: *" The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. "* With this amendment the deduction under section 80P was withdrawn for all non-agricultural	***In order to avoid the undue hardship caused to co-operative societies, it is suggested that either:*** ***a) non-agricultural co-operative societies be exempted from provisions of section 80P(4). Alternatively, an appropriate threshold limit say of Rs 2,00,000 profit be provided; or*** ***b) that a basic exemption and slab benefits be provided to co-operative societies.***

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
		credit societies. Besides, the co-operative societies do not have slab benefits. So even a small society with a net profit of Rs 1,00,000 is paying income tax of Rs. 27000 plus education cess. The non-agricultural co-operative societies are also beneficial for the society as a whole since they give under-privileged class people credit facilities and also induce them to save. These people otherwise may not have access to commercial banks. It is pertinent to note that even an unregistered AOP enjoys slab benefits, however, the cooperative societies which are very well controlled and which contribute to the benefit of poor people are not.	
140.	**Deduction in respect of royalty on books – Section 80QQB**	Section 80QQB provides for a deduction of income up to Rs.3,00,000/- in respect of royalty or copyright fees or lump sum consideration in respect of a book. The term book is defined as, *inter alia,* not including commentaries. The intention appears to be to grant deduction in respect of all books of literary, artistic or scientific nature. It is possible that many books of scientific nature may be regarded as commentaries, and may not qualify for the deduction.	***Since this does not appear to be the intention, it is suggested that clause (b) of the Explanation to the section should be amended by deleting the word 'commentaries' from the list of exclusions.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

PART CA-
DEDUCTIONS IN RESPECT OF OTHER INCOME

DETAILED SUGGESTIONS

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
141.	***Deduction in respect of interest on deposits in savings account - Section 80TTA.***	Section 80TTA was inserted by the Finance Act, 2012 to provide deduction of up to Rs.10,000 in the hands of individuals and HUFs in respect of interest on savings account with banks, post offices and co-operative societies carrying on business of banking. However, it is unlikely that salaried individuals would keep their entire savings in a savings bank account, which earns a much lower rate of interest as compared to term deposits. They are likely to transfer some portion of their savings to several deposits to earn comparatively better returns. Therefore, since the money is anyway kept within the banking channels, it is suggested to include all types of deposit interest within the ambit of section 80TTA.	***Interest on all types of deposits may also be included within the scope of section 80TTA.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

CHAPTER IX

DOUBLE TAXATION RELIEF

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
142.	**Applicability of Education Cess and Secondary and Higher Education Cess -Double taxation Avoidance Agreement**	Under the Income-tax Act, 1961, Education cess and Secondary and Higher education cess are imposed on account of the provisions contained in sub-section (12) of Chapter III of the Annual Finance Act which provides the rates of income-tax. The education cess is to be calculated on the amount of income-tax as specified in sub-sections (1) to (10) of the said Chapter. However, none of these sub-sections deal with the rate specified in DTAA, which becomes leviable by virtue of the provisions of section 90A(2).Therefore, the moot issue is whether the Education cess and Secondary and Higher education cess would be applicable where the rates specified in the respective DTAA becomes applicable by virtue of the beneficial provisions contained in section 90A(2). It may be noted that at the time when a Double taxation avoidance agreement is entered, the intention is to arrive at an all inclusive fixed rate of tax.	***Appropriate amendment in the Act as well as ITR forms may be made to clarify that EC & SHEC should not be applicable on the rates specified under DTAA.*** **(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)**
143.	***Section 91 – Credit of taxes paid***	Often, Credit of Taxes paid in Foreign Country is not allowed in Resident Country on account of following reasons: (i) Loss incurred on Consolidated Basis. (ii) Lower Amount of provisioning on account of MAT provisions becoming applicable.	***In order to bring certainty in regard to Credit of Taxes paid in foreign countries, it is suggested that a provision may be made in regard to the same under Income-tax Act, 1961. Also, Provisions in relation to carry forward and Carry backward of Taxes paid should be incorporated to avoid loss of credit of Taxes***

		(iii) Mismatch of period under consideration.	***paid in Foreign Countries. To begin with, Credit of Taxes paid in the form of Withholding Taxes should be allowed. To sum up, following may be allowed:*** ***1) Allowance of Foreign Taxes paid as Normal Expenditure.*** ***2) Carry forward of unabsorbed Foreign Taxes.*** ***3) Carry backward of unabsorbed Foreign Taxes.***

CHAPTER X

SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
144.	***Section 92BA – Specified Domestic Transaction***	Companies, Limited Liability Partnerships and firms are subject to tax at a flat rate of 30% and therefore, there is no objective of shifting the profits from one entity to another entity in case of a normal domestic transaction. The CBDT, in Circular No.14/2001, had also given this rationale while introducing transfer pricing provisions for international transactions. Domestic transfer pricing provisions are prevalent in most countries with certain exceptions like Japan, Australia etc. However, in most of such jurisdictions there is a provision to exempt transaction, where there is no perceptible risk involved of tax erosion say e.g. both are in the same tax bracket, as there is no rationale in covering those assessees under these provisions. However, under the domestic transfer pricing provisions proposed to be introduced, there is no mention of such relief clause as yet. Such exclusionary provision would go a long way in reducing the compliance and administrative burden and saving lot of unnecessary litigation. Therefore, the transfer pricing provisions for domestic transaction may be made applicable only for the tax payers claiming deduction under section 10AA or Chapter VIA. The	***In view of the Landmark Apex Court judgement Commissioner of Income Tax-IV, Delhi & Anr. v M/s Glaxo Smithkline Asia(P) Ltd through which domestic Transfer Pricing provisions were introduced in India via Finance Act 2012, suitable amendments may be made in the current provisions relating to specified domestic transactions so as to exclude tax neutral transactions from its purview.***

Sr. No	Section	Issue/Justification	Suggestion
		expenditure covered in section 40A should not be subject to transfer pricing, since there would be no loss of revenue in such cases because there is no tax erosion. It is pertinent to note that the Supreme Court Ruling in *Commissioner of Income Tax-IV, Delhi & Anr. v M/s Glaxo Smithkline Asia(P) Ltd* [2010] 195 Taxman 35 (SC) was the basis to introduce the provisions of Domestic Transfer Pricing (DTP) in India. The Apex Court clearly explained that the DTP provisions would be irrelevant in case of tax neutral transactions and should be applicable in case where tax arbitrage would be possible. Relevant excerpt from the said judgement is produced below: *"In the case of domestic transactions, the under-invoicing of sales and overinvoicing of expenses ordinarily will be revenue neutral in nature, except in two circumstances having tax arbitrage—* *[i] If one of the related Companies is loss making and the other is profit making and profit is shifted to the loss making concern; and* *[ii] If there are different rates for two related units [on account of different status, area based incentives, nature of activity, etc.] and if profit is diverted towards the unit on the lower side of tax arbitrage. For example, sale of goods or services from non-SEZ area [taxable division] to SEZ unit*	

Sr. No	Section	Issue/Justification	Suggestion
		[non-taxable unit] at a price below the market price so that taxable division will have less profit taxable and non-taxable division will have a higher profit exemption. *All these complications arise in cases where fair market value is required to be assigned to the transactions between related parties in terms of Section 40A(2) of the Income Tax Act, 1961"*	
145.	**a) Domestic Transfer Pricing [DTP] – Sections 92, 92BA, 92C, 92CA, 92D & 92E**	The Finance Act 2012 has introduced DTP in spite of existing provisions under the Act which empower the Assessing Officer (AO) to disallow unreasonable expenditure incurred between related parties {Section 40A(2)} or re-compute the income of assessees availing profit-linked deductions if there are transactions with related parties or other undertakings of the same assessee (Sections 80A, sub section (8) and (10) of section 80-IA, certain sections under Chapter VI-A, or section 10AA). These transactions are presently benchmarked against fair market value. In this regard the following points require consideration: **Harmonization of the "related party" definitions**: Presently, three different sections referred to in section	***There is clearly a need for harmonization of the different thresholds for the related party definitions' in the sections 40A(2),92A(2) and 80A read with section 35AD(8). Necessary amendments in this regard may be appropriately made.***

Sr. No	Section	Issue/Justification	Suggestion
		92BA and section 92A of the Act have different thresholds for determination of the 'related party' definitions' which are as under: • Substantial Interest – Not less than 20% of voting power – ***Explanation (b) to Section 40A(2)*** • Associated Enterprises - Not less than 26% of voting power – ***Section 92A(2)(a) & (b)*** • Associated Person - Not less than 26% of voting power – ***Section 80A read with section 35AD(8)***	
	b) Guidance in respect of benchmarking of Directors remuneration	Presently, there is no guidance in respect of benchmarking of the Directors' remuneration.	***Since payment of directors' remuneration is subject to DTP provisions, it is suggested that there should be no restrictions on Directors' remuneration based on profits computed within the limits as specified under the Companies Act & also necessary guidance for benchmarking in respect of the same should be provided.***
	c) Arm's Length Price vs Ordinary Profits:	Section 80-IA(8) deals with "ordinary profits" whereas transfer pricing compliance refers to the "Arm's Length Price" of the transactions.	***Conceptually, 'price principles' cannot apply for benchmarking of 'profits'.***
	d) Increase in the threshold limit of Rs. 5 crore	The threshold limit of Rs. 5 crore is too low for applicability of the Domestic Transfer Pricing provisions	***In order to ensure that only substantial transactions are covered under the DTP provisions, the threshold limit should be raised to Rs. 50 crore.***
		Currently, APA provisions are being made applicable to only	***The same should also be made applicable to domestic***

Sr. No	Section	Issue/Justification	Suggestion
		international transactions.	***transactions covered by DTP provisions***
	e) Documentation Requirements:	Where the volume of specified domestic transactions is below the threshold limit, the maintenance of documentation as required for transfer pricing should not be applicable.	***It is suggested that the maintenance of documentation as required for transfer pricing should not be applicable. Alternatively a threshold limit of Rs. 25 crore be introduced for TP documentation requirements.***

CHAPTER X-A

GENERAL ANTI AVOIDANCE RULES

DETAILED SUGGESTIONS

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
146.	**Chapter X-A– Section 95-102–General Anti-Avoidance Rule**	The Finance Act, 2012 brought the provisions of GAAR within the ambit of the Income-tax Act, 1961. GAAR provisions were introduced in the Income tax Act, 1961 to act as a deterrent against aggressive tax planning. GAAR provisions whenever made applicable, will undoubtedly have far reaching implications and to ensure that, the extra ordinary powers are not exercised by revenue officers arbitrarily or de hors the key objects behind introduction of GAAR, it is very important that the apprehensions of the taxpayers are addressed at the earliest. Understandably, this will need further deliberation and consultations before the law/guidelines are enacted; however, keeping the above limitations in mind, one most important issue in hand is the applicability of GAAR from Assessment Year 2016-17. There are still a lot of unresolved issues on the implementation of GAAR. With the new government intent to calm the nerves of foreign investors and commitment to provide a stable and certain tax regime leading to growth, GAAR may prove to be an impediment in its present form if made applicable w.e.f Financial Year 2015-16 i.e., 9 months from now. Since the Finance (No.2)	***In view of the mentioned reasons, it is suggested that the implementation of GAAR be postponed to some future date say by 2 years at least instead of AY 2016-17. In the meantime, extensive discussions may be held with the affected stakeholders and the tax provisions be fine tuned so as to serve the true intention behind its introduction i.e. to curb aggressive tax planning.*** ***Further, to ensure that, the extra ordinary powers are not exercised by revenue officers arbitrarily or de hors the key objects behind introduction of GAAR, it is very important that the apprehensions of the taxpayers are addressed at the earliest.***

		Bill, 2014 did not mention anything about postponement of GAAR, it is suggested that applicability of the same should be postponed to a later date to give time for a stable tax regime to be set and investor confidence to be gained.	

CHAPTER XII-

DETERMINATION OF TAX IN SPECIAL CASES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
147.	***Removal of anomalies in sections 111A & 112***	At present, long term capital gain is taxed @ 20% in pursuance of the provisions of section 112. Whereas, in case of individual assessee having normal income, the rate of tax upto Rs. 5,00,000 is only 10%. This leads to a situation where in case if one's gain from transfer of long term capital asset is below Rs. 5,00,000 then also he is required to pay tax @ 20% plus cess as per section 112 whereas his tax liability otherwise would be much lesser. Similar is the situation in case of short term capital gain by way of sale of equity shares as provided u/s 111A, where the tax rate is 15% which is more than the minimum rate of tax payable by the individuals.	***It is suggested that appropriate provisions be made in the Act whereby the tax liability of an individual whose taxable income consists of only long term or short term capital gain, should not in any case, exceed the amount of tax liability calculated deeming the capital gain as regular income. This can be done by making the provisions of Section 111A & 112 optional.***
148.	**Section 115A- Rate of TDS on income by way of royalty or Fees for technical services**	The Finance Act, 2013 amended section 115A and substituted new sub-clauses (A) and (B) in clause (b) for sub-clauses (A), (AA), (B) and (BB), to increase rate of tax from 10% to 25% on payments made to non-residents towards income in the nature of Royalty and Fees for Technical Services ('FTS'). The above proposed unreasonable increase in rate of tax merits reconsideration for the reasons stated under: The Hon'ble Finance Minister in his budget speech had stated that the rate of tax on royalty in the	***It is recommended that the erstwhile tax rate of 10% on payments made to non-residents towards income in the nature of Royalty and Fees for Technical Services ('FTS') be retained as the same will also be in line with the rate which is provided in majority of the tax treaties.***

<table>
<tr><th>Sr. No</th><th>Section</th><th>Issue/Justification</th><th>Suggestion</th></tr>
<tr><td></td><td></td><td>Income Tax Act is lower than the rates provided in a number of Double Tax Avoidance Agreements ('DTAAs') and the above proposal is aimed at correcting this anomaly.

In this regard, it may be noted that India has entered into DTAAs with almost 84 countries and an analysis of the rate of tax on royalty/FTS in all these DTAAs are as below:

<table><tr><th>Sr. No.</th><th>Countries</th><th>Rate of tax</th></tr><tr><td>1</td><td>49</td><td>10%</td></tr><tr><td>2.</td><td>16</td><td>15%</td></tr><tr><td>3</td><td>5</td><td>20%</td></tr><tr><td>4.</td><td>2</td><td>22.5%</td></tr></table>
From the above table, it can be observed that in almost 60% of the countries with which India has a DTAA, the rate of tax on royalty/FTS is 10%. There are just 2 countries where the rate of tax is higher than 20%. It should also be noted that trade dealings with these countries is also very miniscule as compared to major trading partners where the rate of tax is 10% under the respective DTAA.

Therefore, increase of rate of taxation of Royalty/FTS on the premise of aligning the same with the rates under the DTAAs is not justifiable.</td><td></td></tr>
<tr><td>149.</td><td>Deputation of employees - [Taxability as fees for</td><td>An issue is under debate as to whether payments made by the Indian company to foreign company towards reimbursement</td><td>It is suggested that a specific clarification may be provided by the Government to the effect that as long as the employee</td></tr>
</table>

Sr. No	Section	Issue/Justification	Suggestion
	technical services/ Permanent Establishment issues]	of the salary costs of persons deputed to India would be treated as fees for technical services. Further, such deputations are often tested for a risk of creation of a PE for the foreign enterprise in India. Employees deputed to the Indian company work under the control and supervision of the Indian company and are essentially employees of Indian company. Any payments made by the Indian company towards the amounts cross-charged by the Foreign Company would be in the nature of re-imbursement of the salary costs and ought not to be taxable.	***works exclusively for the Indian company during the period of deputation and operationally works under the 'control and supervision' of the Indian company, payments made by the Indian company to the foreign company would not qualify as FTS. Further, it should be clarified that such an arrangement would not trigger a creation of PE for the foreign enterprise in India.***
150.	***Section 115BBC read with section 13(7) - taxation of anonymous donations***	The Finance (No.2) Act, 2014 had substituted Section 115BBC(1)(ii) w.e.f 1-4-2015 to provide income tax payable shall include the amount of income tax with which the assessee would have been chargeable had his total income been reduced by the anonymous donations received in excess of 5% of donations received or Rs.1,00,000 as the case may be. Further, section 13(7) provides that nothing contained in sections 11 and 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof, any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of that section.	***Section 13(7) may be reworded as follows:-*** ***"Nothing contained in section 11 and 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof, any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of <u>clause (i) of sub-section (1) of</u> that section.***

Sr. No	Section	Issue/Justification	Suggestion
		Section 13(7) refers to the anonymous donations on which tax is payable in accordance with the provisions of section 115BBC. Since the income tax payable under section 115BBC in aggregate of tax payable on such donations (115BBC(1)(i)) and tax payable on other income (115BBC(1)(ii)), the language of section 13(7) needs to be amended to include reference of tax payable in accordance with the provisions of section 115BBC(1)(i).	

CHAPTER XII-B

SPECIAL PROVISIONS RELATING TO CERTAIN COMPANIES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
151.	**Tax Credit u/s 115JAA & 115JD read with section 115JB & 115JC**	Minimum Alternate tax and Alternate Minimum tax is paid u/s 115JB & 115JC of the Act respectively. The amount of tax credit so determined under section 115JAA and 115JD is carried forward and set off in accordance with the provisions of these sections but such carry forward is not allowed beyond 10th assessment year immediately succeeding the assessment year for which tax credit becomes available. In case of an assessee who is entitled to claim the exemption u/s 10A to 10C and deduction u/s 80-IA to 80-ID, the said amount of tax credit is eligible for set off only after the expiry of the 10th Assessment year in which such exemption and deduction is allowed respectively. However, in effect the purpose of making available the tax credit gets defeated, as tax credit is not utilized by those companies up to 10 assessment years and carry forward of the Income tax paid on book profit under this section, is not allowed to be set off beyond 10th assessment year immediately succeeding the assessment year for which tax credit become available	***It is suggested that for setting off of MAT credit, a fresh period of 10 years be allowed after the completion of period of exemption in section 10A to 10C and deduction in section 80-IA to 80-ID under normal provisions of the Act provided it is the exclusive business of the assessee.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
152.	**Book Profit tax (MAT) on Scientific Research Expenditure**	Presently, while computing the 'Book Profit' under Section 115JB, the amount of weighted deduction u/s 35(2AB) is not deducted. In the past, similar adjustment in respect of export profits under Section 80HHC was permitted for purposes of computation of 'Book Profit' under Section 115JB.	***In order to promote in-house R&D in India, the amount of weighted deduction u/s 35(2AB) may be allowed to be deducted while computing tax under 115JB.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT***

Sr. No	Section	Issue/Justification	Suggestion
			TAX LAWS)
153.	**Section 115JB- Minimum Alternate tax**	a) Disallowance of provision for diminution in value of any asset for computation of "book profit", it appears, is to be made in every class of company. However, in case of banking companies, the Government may give a relook and consider applicability of the disallowance provision. This is because of the fact that in computation of business income under normal provision, deduction in respect of provision for bad debts is allowed under express provision contained in section 36(1)(viia) subject to the limit specified in the said section. If provision for bad debts is allowed as deduction in computation of business income under normal provision, there does not appear to be any cogent reason for disallowing the same in computation of "book profit" under section 115JB. Similarly, any special reserve created in accordance with the provisions of section 36(1)(viii) also does not require any disallowance in computation of book profit under section 115JB.	***Explanation 1 to section 115JB may be amended as follows-*** ***"(b) the amounts carried to any reserves, by whatever name called [other than a reserve specified under section 33AC and a reserve created and allowed in accordance with the provisions of section 36(1)(viii)]*** ***....*** ***(i) the amount or amounts set aside as provision for diminution in the value of any asset (other than provision for bad and doubtful debts allowed as a deduction under section 36(1)(viia))"*** ***(SUGGESTIONS TO REDUCE/ MINIMIZE LITIGATIONS)***
		b) The Government had notified Schedule III of in the Companies Act, 2013 providing new formats for presentation of Balance Sheet and Profit & Loss A/c. The changes in Revised Schedule which may be of relevance to MAT are omission of Part III, moving of 'below the line adjustments' to Balance Sheet and changes in certain disclosure items. The Finance Act, 2012 has omitted reference to Part III of Schedule VI since Schedule III of the Companies Act, 2013 does not contain Part III.	***Clauses (b) and (e) of Explanation 1 may be deleted.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		However, other consequential amendments are also necessary, which were not addressed in the Finance Act, 2012. As per o Schedule III of the Companies Act, 2013, the profit and loss account prepared as per Part II does not include appropriation to reserves and proposed dividend. These appropriations have to be disclosed by way of Notes to Accounts forming part of the Balance Sheet. Explanation 1 to section 115JB provides that the book profit means the net profit as shown in the profit and loss account for the relevant previous year, as increased by the amounts referred to in clauses (a) to (i) thereunder, if the same is debited to profit and loss account. Since as per Schedule III of the Companies Act, 2013, the profit and loss account prepared as per Part II does not include appropriation to reserves and proposed dividend, Clause (b) of Explanation 1 providing for adding back of amount carried to any reserves, by whatever name called, and Clause (e) of Explanation 1 providing for adding back of the amount or amounts of dividends paid or proposed may be deleted.	
		c) Manufacturing units in Special Economic Zone **:** The provisions of Minimum Alternate Tax (MAT) have been made applicable to Special Economic Zone (SEZ) Developers and Units in SEZ w.e.f AY 2012-13. The logic for MAT is to bring SEZ developers and units at par with other corporate entities in terms of sharing tax liabilities. This however, will work as	***In view of the reasoning provided, it is suggested that at least manufacturing units in SEZs be exempted from the applicability of MAT.***

Sr. No	Section	Issue/Justification	Suggestion
		a 'retrograde' step and goes against the spirit of promotion of SEZs in the country which contribute towards a major portion of country's export. SEZs were set up and promoted in order to upgrade the industrial infrastructure in the country and to have specialized and sector wise zones to sharpen competitive edge of Indian entrepreneurs. With applicability of MAT, at present there is no difference between SEZ units and other units and SEZs have lost their attraction and competitive edge. The government's objective is to increase the share of the manufacturing sector in the GDP.	
		d) Income of a member of AOP : As per section 86 of the Income-tax Act, 1961, the share of the member in the income of an AOP is not includible in total income of the member. However, such income is not excluded while computing the MAT liability of the member unlike in the case of a partner of firm whose share in the profits in the firm is exempt in the hands of the partner as per section 10(2A) of the Act and also no MAT is payable by the partner on such profits under section 115JB of the Act. The reference to section 86 in section 115JB of the Act is missing. It is unfair to have such a discriminatory tax treatment between a partner of a firm and a member of an AOP.	***It is suggested that section 115JB of the Act should be amended to specifically provide that the share of income of a member from an AOP which is otherwise exempt under the provisions of section 86 of the Act should be excluded while computing the liability of the member under 115JB of the Act.***
		d) In order to create ease of business in India and also to incentivize small and medium sector to grow and convert themselves into organized sector, it is suggested that MAT be abolished for	***It is suggested that MAT be abolished for companies having turnover not exceeding Rs.10 crores. Alternatively, the***

Sr. No	Section	Issue/Justification	Suggestion
		companies having turnover not exceeding Rs.10 crores. Alternatively, the provisions of Dividend distribution tax should be abolished for such small companies.	***provisions of Dividend distribution tax should be abolished for such small companies.***
154.	**Section 115JD- Tax Credit in case of succession**	Section 115JD provides for tax credit in respect of alternate minimum tax. The provisions of section 115JC are applicable to persons other than a company i.e. individual, HUF, Partnership firm including LLPs, AOPs etc. In this era of growth, the possibility of reorganisation of the assessee liable to pay AMT cannot be ruled out. A proprietor ship firm eligible to claim credit under section 115JD can convert itself into a Partnership firm or a LLP or AOP or any other person. However, as per the present provisions, once it will convert itself, the successor shall not be liable to claim AMT credit.	***Section 115JD needs to be amended so as to allow carry forward of AMT credit in the hands of the successor for remaining period of years.***
155.	***Section 115QA – Effect on foreign investments***	As per section 115QA of Income-tax Act 1961, (Chapter XII-DA), in the case of distribution of income by the unlisted company on Buy back of shares the law casts an obligation on the company to pay additional income tax @20% on the distributed income in addition to the corporate tax. In the case of foreign investor, the tax of 20% becomes payable even though the amount received by him in foreign currency works out to less than the amount which was brought in at the time of initial investment. To elaborate, the following illustration has been given: 1. Amount invested by foreign investor in unlisted company = USD 1 million 2. Amount for which shares were issued (Exchange rate USD 1 = INR 40) = INR 4 Crores	***In view of the concerns faced by foreign investors after introduction of section 115QA, suitable amendments may be carried out in the Income-tax Act, 1961 so that foreign investors do not have to pay tax when their holding results in losses only due to foreign exchange fluctuation.***

Sr. No	Section	Issue/Justification	Suggestion
		3. No. of shares issued @10 per share = 40,00,000 4. No. of Shares bought back by the company (25% of share issued) 10,00,000 5. Amount paid to foreign investor (buy back price INR 12.50 per share) = INR 1,25,00,000 6. Amount received by foreign investor {USD 1 = INR 60} = USD 208,333 7. Loss to foreign investor (i.e. 250,000-208,333) = USD 41,667 8. Additional tax payable by the company(125,00,000–100,00,000)*20% = INR 500,000 Tax to be paid by the company on Rs. 25,00,000 is the final tax in addition to corporate tax and the amount of tax so paid is nothing but tax paid by the foreign investor. The foreign investor is thus required to pay tax even when he makes losses. Private equity investor who had invested in India are facing double concern - firstly in the form of sharp depreciation in Indian Rupee and secondly in the form of tax amendment in the form of section 115QA. In this connection, it would be worthwhile to say that distributable income for foreign investor shall be worked out by making the foreign currency adjustment as per the provisions which exists in section 48 of Income-tax Act, 1961 used for computing capital gains, and tax should be levied only on the excess of amount received by investors over the amount brought in at the time of investment.	

Sr. No	Section	Issue/Justification	Suggestion
156.	**Section 115R – Grossing up of distributed income for calculating tax thereon**	Section 115R is amended via Finance (No. 2) Act, 2014 by insertion of sub-section (2A) which provides for grossing up the amount of distributed income for calculation of additional income tax payable on distribution of income by specified companies or mutual funds to its unit holders. Earlier income was distributed to unit holders net of taxes, however, after the said amendment applicable w.e.f 1st October, 2014 grossing up of the income so distributed is mandated for the purpose of computing the additional tax. It may be noted that section 115R provides for two different rates of taxes i.e. 25% and 30% depending upon the status of the recipient of such income. Since grossing up of these rates would effectively amount to a rate of tax (33.3% and 42.8% respectively) which is much higher than the existing maximum marginal rates of taxes, it is suggested that the provisions of grossing up may be revisited.	***It is suggested that the said amendment as introduced by Finance (No. 2) Act, 2014 should be reconsidered since the effective rates of tax, particularly in section 115R(2) i.e.* 33.3% *and* 42.8%, *would be much higher than the existing maximum marginal rates of taxes. The said amendment had made investment in mutual funds less lucrative now.***

CHAPTER XII-D

SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED PROFITS OF DOMESTIC COMPANIES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
157.	**Sec.115-O** **a) Inter Corporate Dividend Distribution Tax (DDT)**	The Finance Act, 2008 amended the provisions of section 115-O to eliminate the hardship of double taxation arising on account of cascading effect of DDT in case of inter-corporate dividend. This is a step in right direction. However, the same mitigates the hardship partially. The real objective should be to eliminate the cascading effect of DDT in case of inter corporate receipt & distribution of dividend. The amendment made in the section is very restrictive as it confines to receipt and distribution of dividend only at one level. It applies only to dividend received by holding company from its subsidiary and that too it applies to only one level. In view of this, the double taxation of DDT continues in all other situations of inter-corporate receipt and distribution of dividends. For commercial and other legitimate business needs, inter-corporate shareholding is almost unavoidable. Therefore, amendment in section 115-O is required to eliminate the double taxation arising on account of cascading effect of DDT in all such cases. Alternatively, the amendment should not be confined to one level of Holding - Subsidiary relationship. The same should cover all the levels. It may be noted that in view of the business requirements, which necessitate the formation of subsidiaries, the domestic tax system needs to be tuned in alignment with business requirements. In fact, this problem was recognized in the Income-tax Act itself in old Section 80M which	***For the reasons given, it is suggested that the system of tax credit for the dividend distribution tax paid by the subsidiary companies against the dividend distribution tax payable by the respective holding companies at all levels be introduced.***

<table>
<tr><td></td><td></td><td>provided mechanism to avoid double taxation in such cases.</td><td></td></tr>
<tr><td></td><td>b) Grossing up of rate of dividend distribution tax</td><td>Section 115-O was introduced via Finance Act, 1997 w.e.f 1.6.1997, with a view to reduce the hardship caused to the shareholders due to the procedural work for refund and a lot of paper work. It was provided that any dividend declared by an Indian company will be taxable in the hands of the company and it would be tax free in the hands of the shareholders. The rate of dividend distribution tax was increased over the years to 15% (plus surcharge and education cess).

However, the Finance (No. 2) Act 2014 provided for the rate of dividend distribution tax to be grossed up w.e.f. 1 October, 2014. Thus, the effective dividend distribution tax rate would increase to 17.647% (plus surcharge and education cess). Table below will illustrate the difference in cash outflow after the amendment:

<table>
<tr><th>Particulars</th><th>Pre-Budget</th><th>Post Budget</th></tr>
<tr><td>Dividend declared</td><td>500</td><td>500</td></tr>
<tr><td>DDT (Incl. of surcharge and education Cess)</td><td>84.975</td><td>99.95</td></tr>
<tr><td>Total Outflow for the company</td><td>584.975</td><td>599.95</td></tr>
</table>

If the company decides to keep the outflow constant i.e. Rs 584.975/-, then as per the amendment, dividend to be</td><td>In order to encourage small shareholders to invest in domestic companies, it is suggested to drop the requirement of grossing up the dividend distribution tax rate.</td></tr>
</table>

		received in the hands of shareholders would reduce to Rs 487.52/- [584.975*500/599.95] as compared to Rs 500/-. In other words shareholders would receive 2.499% less as compared to what they would have received under the current provisions. Even though dividend income is exempt in the hands of shareholders, it will mainly affect the large number of small shareholders, whose income is below exemption limit or whose taxable income falls within the tax bracket of 10%. (i.e. less than Rs 5 lakhs) as they would have paid tax on dividend received at a lower rate. Further, the total outflow for the company would also increase by 2.99% (including surcharge and education cess)	
	c) Abolition of dividend distribution tax (DDT)	Dividend Distribution Tax was introduced way back in 1997. It was introduced under the basic premise that it will restrict the exorbitant dividends paid by corporate sector. Further, it would give a push to the investments as the corporate sector would prefer to plough back the profits and put it for fruitful purposes. Also, it would put an end to the long drawn and cumbersome process of paper work done by dividend recipient assessees for refund purposes. The Finance (No. 2) Act, 2014 provided for the rate of dividend distribution tax to be grossed up w.e.f. 1 October, 2014. Thus, the effective dividend distribution tax rate has increased to 17.647% (plus surcharge and education cess). Such high rate of DDT has many problems associated with it as	***In order to do away with highly unjustified double taxation on corporate sector and to act as an incentive for investment in shares to retail investors, it is suggested that it is high time to do away with the additional income tax in the form of dividend distribution tax under section 115-O of the Income-tax Act, 1961.*** ***In case it is not possible to omit the dividend Distribution tax, a basic exemption limit say 10% be provided where the company distributing Dividend upto 10% is not made liable to DDT.***

		follows: ➢ DDT is a double taxation of the same income as it is calculated after the corporate tax has been paid by the company assessee which is highly unjustified. ➢ It acts as a disincentive for the retail investors to put their money in corporate stocks and shares. Most corporate sector in India do not prefer to declare dividend as high rate of DDT is an impediment and leaves them with limited resources after the distribution. As a result, the retail investors are not getting any regular returns even from profit making companies and hence are reluctant to invest their hard earned money in shares.	

CHAPTER XII-F

SPECIAL PROVISIONS RELATING TO TAX ON INCOME RECEIVED FROM VENTURE CAPITAL COMPANIES AND VENTURE CAPITAL FUNDS

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
158.	***Due date of furnishing statement in Form No. 64 under section 115U read with Rule 12C***	Section 115U(2) read with Rule 12C requires that the person responsible for crediting or making payment of the income on behalf of a Venture Capital Company (VCC) or a Venture Capital Fund (VCF) and the VCC/VCF shall furnish a statement in Form No. 64 to the person liable to tax in respect of such income by 30th November of the financial year following the previous year during which such income is distributed. Difficulty is faced by assessees who have to file their return of income by 31st July of the assessment year. Since income received by the investor is taxable in his hands, he has to declare his income in his return of income. However, the certificate is received by them by 30th November, which causes genuine difficulty to him.	***To enable the investor of VCC/VCF being an individual, to declare his income from VCC/VCF in his return of income bu 31st July, the due date of furnishing statement under Rule 12C should be changed to "30th June" from "30th November".***

CHAPTER XIII

INCOME TAX AUTHORITIES

PART C-POWERS
DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
159.	**Section 132- Search and seizure**	a) After search, as per amended provision by the Finance Act 2010, where assessee files application with Settlement Commission for settlement of his cases, the cash seized during search be permitted to be adjusted against the tax due as per the offer made by the assessee in the settlement application. It may be mentioned that as per the provision contained in this regard, the assessee has to make additional disclosure of income in the settlement petition and pay additional tax of Rs.50 Lakhs before filing the application with the Settlement Commission.	***Since cash is seized at the time of search and lying in PD account of CIT, such cash after adjusting existing tax liabilities, may be permitted to be adjusted against the tax due as per settlement petition. Suitable amendment / instruction are required to be given to the authorities in the matter since they are not permitting such adjustment for want of clarity.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***
160.	**Section 132B- Application of seized or requisitioned assets**	Section 132B provides for application of seized or requisitioned asset. The first proviso to section 132B(1)(i) provides that where the person concerned makes an application to the Assessing Officer within 30 days from the end of the month in which asset was seized, for the release of asset and the AO is satisfied about the explanation provided regarding the source of asset, the asset is released after recovery of the amount of any existing liability. Further, second proviso to section 132B(1)(i) provides that such asset or a portion thereof shall be released within a period of 120 days from the date on which last of the authorizations for search	***In view of the practical difficulty being faced, it is suggested that a provision like 132(5) [omitted by Finance Act, 2002] which provided for provisional assessment be introduced and the asset be released after releasing the amount due as per provisional assessment.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		under section 132 or for requisition under section 132A as the case may be, was executed. Even after release of Instruction No. 11/2006 dated 1-12-2006, practical difficulty is being faced by assessees as the asset is not released upto the completion of assessment.	
161.	**Section 133C- Power to call for information by prescribed Income tax Authority**	Section 133C is inserted vide Finance (No. 2) Act, 2014 to enable the prescribed Income tax authority to verify the information in its possession relating to any person. The said authority, may, issue a notice to such person requiring him, on or before a date specified therein, to furnish information or documents, verified in the manner specified therein which may be useful for, or relevant to, any enquiry or proceeding under the Act. **Hardships** Section 133(6) of the Act gives identical power to the authorities for seeking information etc relevant to any enquiry or proceedings. Where no proceedings are pending, information can be sought with the approval of a higher authority. The existing section 133(6) thus gives power to the authorities for seeking information etc but with sufficient safeguards. Section 133C seeks to grant the same power of enquiry etc to any Income-tax authority without seeking any sanction or approval from a higher authority. This	***It is suggested that:*** ***a)Section 133C needs to be reconsidered, or*** ***b)Section 133C must be preceded by a satisfaction,*** ***c)This section may be amended to require approval of a higher authority and recording of satisfaction, before invoking the power, and*** ***d) The assessee should not be required to attend office of the Assessing Officer in person and should be permitted to file the information by post/electronic form.***

Sr. No	Section	Issue/Justification	Suggestion
		provision will provide unbridled powers in the hands of the authorities with probability of abuse.	

CHAPTER XIV-

PROCEDURE FOR ASSESSMENT

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
162.	**(a) Due date of filing of return in section 139(1) for partners other than working partners**	As per the Explanation 2 to section 139(1), due date for filing return of income is 30th September of the AY in respect of a working partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force. While partners, other than working partners, are required to file return of income by 31st July of the AY. It has been observed that difficulties are being faced by partners other than working partners as their Income-tax return form requires them to mention the capital balance. It is imperative to note that it becomes quite difficult for the partner other than working partner to mention such capital balance on 31st March in the firm (liable to get its accounts audited and file its return by 30th September) in his return, until the audit of such firm is completed. Thus, it is suggested that said difficulty may be resolved. It may also be noted that Finance Act, 2005 brought the firms at par with companies by amending section 139(1)(a) making it mandatory for all firms to file their return of income before the due date. Since both of them are mandatorily required to file return of income irrespective of the quantum of income, the	***In order to resolve the difficulty being faced by partners other than working partners, it is suggested that wherever the firm is liable to get its accounts audited, the due date for filing return of income under section 139(1) of the Income-tax Act, 1961, may be extended to 30th September of the AY for all partners of the firm including non-working partners of the firm.*** ***Also, like Companies, all firms are mandatorily required to file return of income, thus the due date of filing return of income for all such firms should be in line with the companies irrespective of whether or not the accounts are required to be audited.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		due dates of filing return of income for both should also be at par.	
	(b) Section 139- Enlarging the scope	The scope of filing return of income should be widened.	***The scope of filing return of income should be widened so as to include in its ambit the persons entering into the following transactions:*** ➢ ***A person having foreign tour twice in a block of three years or thrice in a block of five years should file his/her return of income mandatorily.*** ➢ ***A person having huge agriculture income or is in a possession of large agriculture land should also come within a purview of return of income.*** ➢ ***A person paying electricity expense above certain limit (say Rs. 36000 pa)*** ➢ ***A person paying school fees above specified limit (say Rs. 72000 pa) should also come under the scope of return of income.*** ➢ ***If the aggregate amount deposited in the current account exceed certain limit (say Rs. 30,00,000) then provisions of filing of return should apply to that person mandatorily.*** ➢ ***The person has AIR transaction should also come under the scope of***

Sr. No	Section	Issue/Justification	Suggestion
			return of income, and if he/she does not file return of income then penalty u/s 271F should be levied instead of giving notice for filing return of income. ➢ ***Cash withdrawals from saving bank account above certain limits should also take place in the annual information return.*** ***(SUGGESTION TO WIDEN THE TAX BASE)***
163.	**Revised return -Section 139(5)**	a) Section 139(5) provides for filing of revised return in cases where return has been furnished under section 139(1) or in pursuance of notice under section 142. There is no provision of filing revised return in case where return is filed belatedly under section 139(4).	***It is suggested that section 139(5) may be amended to provide that the revised return can be filed even in the case of belated return.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
164.	**Guidelines for the empanelment of auditors under section 142(2A)**	For the purpose of conducting special audit under section 142(2A) of Income-tax Act, 1961 (corresponding clause 151 of the Direct Taxes Code Bill, 2010), the auditor is nominated by Chief Commissioner or Commissioner. Presently, no specific guidelines have been issued by the authorities to enable the Chief Commissioners or Commissioners to take an informed decision. Considering the fact, that the	***Specific guidelines for the appointment of auditor under section 142(2A) by Chief Commissioner or Commissioner may be issued.*** ***The said guidelines may provide for conditions like experience of the auditor in the relevant field, number of years of experience, number of partners etc. Further, in order to maintain quality of work and to provide equitable distribution of work, a restriction on the number of***

Sr. No	Section	Issue/Justification	Suggestion
		tasks involves auditing of complex accounts, some specific guidelines taking into account the experience of the auditor in the relevant field etc may be issued by CBDT. Further, in order to maintain quality of work and to provide equitable distribution of work, a restriction on the number of such audits in a particular year may be imposed.	***such audits by a particular auditor in a particular year may be imposed.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
165.	**Special audit - section 142(2A)**	Section 142(2A) was amended by Finance Act, 2013 apparently to amplify the scope of special audit i.e. the Assessing Officer now has the power to direct a special audit, having regard to volume of transactions, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee. So far, the "nature and complexity of the accounts" was the necessary and sufficient criterion for directing special audit. The new section 142(2A) appears to have the effect of enlarging the scope of special audit considerably. The scope of reasons for invoking the powers under section 142(2A) to direct the assessee to get the accounts audited by an accountant have been substantially increased. Empowering the Assessing	***It is suggested that :*** ***a) the amendment made by Finance Act, 2013 be reconsidered and withdrawn.*** ***b) The provision prior to amendment included within its ambit all cases of complexities and there is absolutely no need to give further powers to the AO to order a Special Audit on the reason such as doubts about the correctness of accounts and multiplicity of transactions etc.*** ***The amendment needs to be withdrawn to ensure that the wide powers entrusted upon the AO are not misused by way of directing special audit in a routine manner thereby defeating the very purpose.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		Officer to invoke tax audit under section 142(2A) merely due to the "volume of accounts" or "multiplicity of transactions" may have the effect of bringing each and every case within the ambit of special audit in case of large organisations. Each and every gas station, share broker, retailer, agency business and the like may fall within the purview of this section solely on account of the "volume of accounts" or "multiplicity of transactions". Also, as these expressions are highly subjective, they are prone to adoption of very low threshold to trigger the application of this provision. This may cause undue hardship to even those assessees who genuinely ensure compliance with the provisions of law. Further, the specialized nature of business activity of the assessee, like say electricity or insurance business, in our opinion, cannot be a standalone reason for directing special audit. Special audit, as the name suggests, should be invoked only in exceptional circumstances, which is the reason why the existing section aptly confines that it is the nature and complexity of accounts which has to be considered while directing such audit. There should be a	

Sr. No	Section	Issue/Justification	Suggestion
		distinction between regular audit and special audit. The scope of special audit cannot be increased to such an extent that majority of the assessees, whose accounts have already been audited, are once again subject to a special audit merely due to, say, volume of accounts being more in case of large enterprises. The special audit is more in the nature of investigation or due diligence, and therefore, needs to be directed only in exceptional cases having regard to the nature and complexity of accounts. Further, this may increase the possibility of some Assessing Officers resorting to special audit since it gives them an extended time for completing their assessment.	
166.	**Section 142A- Estimation of value of asset by Valuation Officer**	As per the provision prior to Finance (No. 2) Act, 2014 contained in section 142A, the Assessing Officer may, for the purpose of making an assessment or re-assessment require the Valuation Officer to make an estimate of the value of any investment, any bullion, jewellery or fair market value of any property. On receipt of the report of the Valuation Officer, the Assessing Officer may after giving the assessee an opportunity of being heard take into account such report for the purpose of assessment or re-assessment.	**Keeping in view the settled law on the subject, the legislature must specifically provide that satisfaction may be recorded before making any reference to the Valuation Officer.** **Alternately, sanction of a higher authority must be taken before any reference is made by the Assessing Officer**

Sr. No	Section	Issue/Justification	Suggestion
		Section 142A did not envisage rejection of books of account as a pre-condition for reference to the Valuation Officer for estimation of the value of any investment or property. Further, section 142A does not provide for any time limit for furnishing of the report by the Valuation Officer. As per the newly amended section 142A vide Finance (No. 2) Act, 2014, the Assessing Officer may, for the purpose of assessment or re-assessment, refer any asset, property or investment to a Valuation Officer, necessary for estimating its value. The Assessing Officer is not required to record any satisfaction about the correctness or completeness of the accounts of the assessee. Further, the report of the Valuation Officer may be accepted after giving the assessee opportunity of being heard. **Probable hardships after amendment by Finance (No. 2) Act, 2014** (a) As per the earlier section 142A, the Assessing Officer may refer to valuation for the purpose of estimating the value of any investment referred to in section 69 or 69A or 69B or 56(2). The law, as far as the trigger for valuation is concerned,	

Sr. No	Section	Issue/Justification	Suggestion
		was settled and permitted. The Assessing Officer was to resort to valuation only after he was satisfied that the books of account were not correct or were incomplete. Henceforth, as per the amendment made, the Assessing Officer need not record any reason for making a reference. In fact, as is the experience, the Assessing Officer may even fear an audit enquiry or objection if they do not refer cases for valuation. (b) The new amended section may open flood gates to valuation in each and every case resulting in unnecessary litigation and inappropriate use of valuable resources of the Department. (c) The Valuation Officer will become yet another authority who will sit over judgements on what should be the value of any property. As per the discretion available with him for valuation, it may also result in abuse. (d) The power and scope of reference to a Valuation Officer has been extended to any asset, property or investment, thus giving vast powers in the hands of the assessing authority without any check.	

Sr. No	Section	Issue/Justification	Suggestion
167.	**Hardship arising out of the Apex Court's decision in *Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC)***	a) In the case *Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC)* the assessee filed its return of income for the relevant assessment year without claiming a particular deduction. Later on, it sought to claim the deduction by way of a letter addressed to the Assessing Officer. The deduction was disallowed by the Assessing Officer on the ground that there was no provision under the Act to make amendment in the return of income by making an application at the assessment stage without revising the return. The assessee had relied upon the decision of the Apex Court in National Thermal Power Company Ltd. v. CIT (1998) 229 ITR 383, to contend that it was open to the assessee to raise the points of law even before the Appellate Tribunal. In that case, it was held that the Tribunal had jurisdiction to examine a question of law (raised for the first time), which arose from the facts as found by the income-tax authorities and which have a bearing on the tax liability of the assessee. The Supreme Court held that this decision does not in any way relate to the power of the Assessing Officer to entertain a claim for deduction	***Appropriate amendments may be made to enable the assessee to get relief during the assessment proceedings under section 143(1) and section 144 by methods otherwise than by way of filing a revised return.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		otherwise than by filing a revised return. Therefore, the assessee can claim deduction only by filing a revised return. The said decision of the Apex Court has unsettled many a case law and has caused unintended hardship to the assessees	
		b) No deduction is permitted to an assessee under section 10AA and Part C of Chapter VIA if the assessee fails to make a claim in the return of income. This provision is very harsh and disentitles the assessee to legitimately claim otherwise legally allowable due to technical reasons. In many cases, failure to make claim in return may be inadvertent and mere omission. There are wide powers given to the Income tax Authorities under the Income-tax Act to reopen / review / rectify assessment if any error prejudicial to the interest of the Revenue is found. Also in the case of Goetze (India) Limited Vs CIT (284 ITR 323) the Apex Court has held that it is necessary for an assessee to revise its return of income for raising any new claim which is not raised in the original return of income.	***Provisions of section 80A(5) should be modified to permit filing of new claim by the assessee in the course of assessment, even without filing of revised return of income. This will remove unintended hardship.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
168.	**Section 154 - Mistake apparent from record**	Even after due efforts taken by the Government to ensure compliance relating to filing of TDS returns by the deductors, the defaults on behalf of deductors continue for one or the other reason. This deprives the deductee from claiming the Tax so deducted in his return of income filed before due date of filing return. However, situations do arise where the returns are belatedly filed or a correction statement has been filed at a later date by the deductor resulting into a credit in Form No. 26AS of the deductee at a later date say after the time limit of filing a revised return has also expired. Considering the fact that such an omission in the return of income, duly supported by the entries of Form No. 26AS, is a mistake apparent from record, it is suggested that the Assessing Officers may be intimated to accept the rectification application under section 154 in such cases. This will surely be helpful in removing the administrative hindrances being faced by the assessees as well as the Government.	***The Assessing Officers may be given appropriate instructions to accept rectification applications under section 154 in cases where Form No. 26AS reflects the entries relating to TDS but the same has not been claimed in the return of income.*** ***(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***
169.	**Credit of Tax Collected at Source relating to earlier years (for which Assessments are already over & time period mentioned in**	Many government/semi-government authorities (viz. Mining Department) have been demanding TCS of earlier years for which assessments have already	***It is suggested that considering the hardship being faced by assessees in respect of cases mentioned above, the department should give credit for such TDS/TCS***

Sr. No	Section	Issue/Justification	Suggestion
	Sec 155(14) has elapsed) demanded by the Government authorities at a later date	been completed, since they had not collected the TCS in the those relevant years. After making payments of TCS the certificates for the same are issued in current year giving reference of expenditure incurred by payer for earlier financial years. As per the provision of section 155(14) "the credit of TDS/TCS certificates is available to assessee within 2 years from the end of the assessment year in which such income is assessable" but since the payment & certificates are received after the above mentioned period, it is difficult to get the credit for the same. The demand at such later date itself is causing undue hardship to the assessee and further the credit for the same is not available to the assessee because the assessments have already been completed. Hence, department should give credit for such TDS/TCS even if the assessments have been completed and also the period mentioned u/s 155(14) has expired.	***even if the assessments have been completed and also the period mentioned u/s 155(14) has expired.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
170.	***Section 167B – Indeterminate/unknown equivalent to nil share***	Section 167B provides that in case shares of members in Association of Persons (AOP) or Body of Individuals (BOI) is unknown or indeterminate, then tax on total income of such AOP or BOI is charged at maximum marginal rate or	***It is suggested that in order to reduce avoidable litigation, suitable amendment be made in the section so as to provide clarity that the nil share of members be treated as determinate/ known share and the AOP/BOI concerned***

Sr. No	Section	Issue/Justification	Suggestion
		specified rate whichever is higher. Currently, there are a lot of AOPs or BOIs assessees where the profits/surplus and/or income is not paid to its members. The same is made in writing through incorporation in bye laws or governing document of such AOPs/BOIs. It implies that the share of members is nil i.e. determinate or certain/fixed. However, the Department has taken a stand that in such situations, nil share of members will be treated at par with indeterminate/unknown share and hence is taxing them at maximum marginal rate instead of the individual slab rates applicable to them normally. Such assessees are facing genuine hardships and have to go through the lengthy, time consuming and costly litigation process.	***be taxed at individual slab rate normally applicable to it.***

CHAPTER-XVII

COLLECTION AND RECOVERY OF TAX

PART B-DEDUCTION AT SOURCE

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
171.	***Different Methods of accounting followed by the deductor and deductee***	One of the important reasons for mismatch of TDS claimed and TDS as per Form 26AS is adoption of different method of accounting (i. e. Cash or Mercantile) by the deductor and deductee. Various situations that may arise have been explained below by means of examples: **i) Deductor– Mercantile system of accounting** **Deductee–Cash system of accounting** If the deductor follows mercantile system of accounting, the tax would be deducted at source and deposited in the year in which provision is made. Whereas the deductee following the cash basis of accounting, would offer the income and claim TDS in the year in which the amount is actually received by him. For example audit fees paid to a Chartered accountant's firm by a company. In such a case it is difficult for the deductee to claim TDS as the TDS certificate is issued in respect of the year other than the year in which it is claimed. Also in some cases, the receipts may be spread over in two or more years. In such cases, there is difficulty in getting credit of TDS in second and subsequent year in which amount is actually received, as the physical Original	***TDS should not be linked with the year of income or the year of receipt. Credit for TDS may be given on the basis of the claim made by the assessee irrespective of the assessment year in which income is received or income is offered to tax. There should be a clear differentiation between amount deducted and amount claimed. The TDS not claimed in a particular year due to any reason may either be allowed to be claimed in the any other assessment year or to be refunded to the deductee. The total TDS claimed and the balance, if any, may be reflected in Form 26AS. Form No. 26AS should be made as a bank pass book where the unclaimed credit is allowed to be carried forward for claiming in the next year.***

Sr. No	Section	Issue/Justification	Suggestion
		copy of TDS certificate was already filed with the Department at the time of getting the TDS credit in 1st year and on subsequent receipts, the assessee would not be able to produce the Original TDS certificate. **(ii) Deductor– Cash system of accounting** **Deductee – Mercantile system of accounting** There is a provision to take the credit of TDS in the year in which income is assessable to tax. If for any reason, TDS certificate has not been furnished; such certificate can be produced within two years u/s 155 of the Income-tax Act. But issue generally arises when the following situation occurs: In case of a deductee who maintains books of accounts on mercantile basis. The amount due to him in respect of a government contract is accounted for in his books of accounts in a particular year and advance tax/ self assessment tax is paid by him in respect of that income. However, the government which maintains books of account on payment basis pays the amount after two years after deducting tax at source. In such a case, the assessee would neither be entitled to claim credit of TDS in the year of receipt as the income has already been offered to tax in an earlier year nor he would be able to get refund of tax paid by	

Sr. No	Section	Issue/Justification	Suggestion
		him as the time to file revised return may also have expired. This amounts to payment of tax twice to the government.	
172.	**Applicability of TDS on genuine provisions on estimate basis without bills**	Currently tax is deductible even in cases where payment is not made and the amount is credited in the books of the assessee as provision for expenses or as suspense account or by any other name. Very often, such provisions or credits are made by the assessees to follow accrual system of accounting so that true and fair state of affairs of the business is reflected in the books and to ensure that all revenues and expenses are appropriately matched. This does not necessarily mean liability has crystallized or the amount has become due. Very often exact numbers are not available and the provisions / credits are made based on best estimates available with the assessee. As per the current position, the assessee is required to deduct tax on such provisions even before the bill/invoice has been received. This often leads to excess deduction of tax, disputes with the vendor and extensive reconciliation. Further, this causes great amount of confusion between the assessee and the vendor if the provisioning by the assessee and invoicing by the vendor fall in two different financial years. The CBDT has through Circular No.-01/2012 dt-09.04.2012, made	***It is suggested that the provision of TDS should not be made applicable on entries made by assessees, which are merely provision for expenses for work completed/ services rendered but for which bills have not been received. TDS may be imposed only on such credit entries to the party accounts which are supported by bills / invoices.*** ***Alternatively,*** ***It is suggested that the deductor should be allowed to issue separate Form No. 16A for Provision made for expenses.*** ***Alternatively,*** ***A system on the lines of bank pass book be introduced in the Form No. 26AS, wherein the credit not taken in a particular year is carried forward to next year for claiming against the tax payable of next year.*** ***(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***

Sr. No	Section	Issue/Justification	Suggestion
		it mandatory for all deductors to issue TDS certificate in Form No. 16A generated and downloaded from TIN website for deduction of tax at source made on or after 01.04.2012. Since it has to be downloaded from the TIN website, all the data for entire quarter gets generated in a single certificate based upon TDS return filed by the assessee. Prior to this circular, most of the deductee, who were following cash system of accounting, used to get separate Form 16A from the deductor for Provision made for expenses and accordingly, they were getting TDS credit easily (that means, in the last quarter the deductee were getting two Form 16A, one for payment made and the other for provision). The problem arises when the deductor is following accrual method of accounting and the deductee is following cash method of accounting. In the last quarter, the deductor would deduct tax at source on Provision made for expenses and it would get reflected in Form 16A of the deductee. Now the deductor cannot issue separate Form 16A for provision made for expenses which he could issue earlier. Accordingly, it would create lot of hardship for deductees to claim the TDS credit of the same in the year when they receive the said amount.	
173.	***Synchronization of Section 192***	Section 192 relating to TDS on salary to be synchronized with the	***Section 192 relating to TDS on salary to be synchronized with***

Sr. No	Section	Issue/Justification	Suggestion
	& Section 15 of Income Tax Act	provisions of the charging section 15 of the Income-tax Act, 1961.	***chargeable section 15 so that TDS can be deducted at the time of accrual or receipt whichever is earlier.*** ***Alternatively section 15 can be amended to tax salary income at the time of receipt only.***
174.	**TDS under Section 194A- Interest payments to NBFC**	Section 194A(3)(iii)(a) provides that the tax on interest other than interest on securities is NOT required to be deducted by a person responsible for paying the same to a resident, if the income is credited or paid to any banking company to which Banking Regulation Act, 1949 applies or any co-operative society engaged in the business of banking (including a co-operative land mortgage bank). It may be noted that Section 194A does not treat Non- Banking Financial Institutions (NBFCs) at par with the Banking companies or Co-operative Banks. Due to this, the middle class businessmen who have borrowed money from NBFC's are disallowed interest paid on the same due to non-deduction of tax at source under section 194A of the Income-tax Act, 1961. It is suggested that section 194A should not apply to NBFCs as: (a) NBFCs principal business is of lending money under various products just like Banking Company or a co-operative Bank. (b) There is no mechanism for	***a) To provide relief to the genuine taxpayers paying interest to NBFC's, it is suggested that the section 194A(3)(iii)(a) be amended to treat NBFC's at par with other banking companies.*** ***b) Further, in order to ensure compliance of the provisions of the Act for timely collection of taxes, provisions of Tax collection at source be made applicable to NBFC's in respect of such interest.*** ***(SUGGESTION TO IMPROVE TAX COLLECTION)***

Sr. No	Section	Issue/Justification	Suggestion
		deduction of tax on interest paid by the assessees as the NBFCs collect cheques of EMI for the tenure of loan. (c) NBFCs are also regulated by RBI just like Banking Company and a Co-operative Bank. Considering the fact that there is no mechanism for deduction of tax on interest paid by the assessees as the NBFCs collect cheques of EMI for the tenure of loan, the non-compliance of the provisions of this section is inevitable. The said provision creates problem for the assessee who has borrowed money as he is unable to claim deduction in respect of said interest due to operation of section 40(a)(ia).	
175.	***Payment of hire purchase installments under a hire purchase agreement - applicability of tax deduction u/s 194A or 194-I***	Under the existing tax deduction provisions, it has not been specifically provided whether payment of hire purchase installments would attract tax deduction. The hire purchase installments comprise of principal & hire finance charge element.	***Specific amendment shall be made to exclude requirement of deduction of tax in the finance charge u/s 194A or 194-I.***
176.	***Amendment suggested in Section 194B and section 194BB***	Any income from winnings from lotteries, crossword puzzles, races including horse races , card games and other games as defined under section 2(24)(ix) are chargeable to tax under section 56 at the maximum marginal rate (Section 115BB). However, the related provisions of TDS provided in section 194B and	***Since, at present no such exemption is provided in section 56 or section 115BB with regard to such income from lotteries, puzzles etc, the sections 194B and 194BB may be amended to exclude the respective limit of Rs. 10,000/ Rs.5000 provided therein. This will no doubt increase the***

Sr. No	Section	Issue/Justification	Suggestion
		section 194BB contain a minimum amount of 10000/5000 respectively only beyond which, the tax is deducted at source. Since there is no such exemption provided in the section 56/115BB with regard to such income from lotteries etc, sections 194B and 194BB should be amended to exclude/delete the said limit of Rs. 10,000/ Rs.5000 respectively.	***collection of TDS.***
177.	***Section 194C- Definition of the term "work"***	As per the existing provisions of the Act, the 'work' for the purpose of deduction of tax at source on payment to contractors has been defined to include *"manufacturing or supplying a product according to the requirement or specification of customer by using material purchased from such customer"*. The above provision has resulted in deduction of tax by companies wherein even a small component is supplied on free of cost basis or otherwise to the supplier and supplier in turn supplies the final product along with the component supplied to the customer.	***In order to will avoid genuine and avoidable hardship to assessee for claiming refund of TDS, it is suggested that the definition of "work" under section 194C in the appropriate clause should be modified as :*** ***"manufacturing or supplying a product according to the requirement or specification of a customer by using <u>all/ significant</u> material purchased from that customer"***
178.	***Section 194C – Coverage of term 'Goods Carriage***	Section 194C(6) provides exemption to good carriage contractor/transporter on furnishing of PAN to deductor from TDS. The sub-section (6) of section 194C reads as under : - "*No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or*	***It is suggested to provide a suitable clarification to the issue raised ie whether or not auto rickshaws and/or buses used for transportation of goods are covered under the definition of goods carriage and hence is not liable to TDS under section 194C(6) upon furnishing PAN to the deductor.***

Sr. No	Section	Issue/Justification	Suggestion
		leasing goods carriages, on furnishing of his Permanent Account Number, to the person paying or crediting such sum". The issue that arises is that whether freight paid to auto-rickshaws for transport within city or freight paid to public buses for transport to some other city will be covered in the term "goods carriage" as defined in Explanation of Section 194C. Explanation to Section 194C reads as under: - *"goods carriage shall have the meaning assigned to it in the Explanation to sub-section (7) of section 44AE".* Explanation to sub-section (7) of section 44AE reads as under: - *"the expressions "goods carriage" and "heavy goods vehicle" shall have the meanings respectively assigned to them is section 2 of the Motor Vehicles Act, 1988"* Sub-section (14) of section 2 of the Motor Vehicles Act, 1988 reads as under : - *"goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.* The above definitions give rise to following views: - a) Auto-rickshaws and buses when used for transporting goods will be covered under the definition of goods carriage and	

Sr. No	Section	Issue/Justification	Suggestion
		will be liable to provide their permanent account number for non-deduction of tax at source. b) The sub-section (6) was introduced for transporters, and Auto-rickshaw driver and bus driver are not commonly known as transporter.	
179.	**Section 194H- Deduction of tax at source from income in the nature of commission or brokerage:**	In telecom industry, margins earned by the distributors on sale of recharge vouchers are very low and the distributors sustain only on account of volumes. Deduction of tax at source @ 10% u/s 194H leads to hardship, compliance burden and huge costs.	***It is suggested that the distributors of recharge vouchers should be exempted from compliance requirement u/s 194H provided (a) TDS is deducted on gross margin at the first level; and (b) Annual Information Return is filed by the person taking benefit of such an exemption.*** ***Further, the rate of TDS u/s 194H should be reduced to 1% in such cases.***
180.	**Clarification regarding TDS on Commission to a partner under section 194H read with section 40(b)**	In case of partnership firms Section 40(b)(i), provides that "remuneration" shall mean any payment of salary, bonus, commission or remuneration by whatever name called. Considering a partner and partnership firm as one entity, the provisions of tax deduction at source under section 192 have not been made applicable on payment of such remuneration, as the same is not taxable under the head "Salaries". Also, the provisions of TDS under section 194A are not applicable to interest (other than interest on securities) credited or paid by a firm to a partner of the firm. Section 194H provides for tax	***On the lines of the provision of section 194A, section 194H be amended to provide that Commission paid by the Partnership firm to its partners would not be liable to Tax deducted at source under section 194H.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		deduction at source in respect of commission or brokerage. On the lines of section 192 and 194A, there is a need to clarify that Commission paid by the Partnership firm to its partners would not be liable to Tax deducted at source under section 194H.	
181.	**Section 194-I : TDS on rental income**	As per the provisions of section 194-I, the tax is to be deducted at source @10% in respect of income by the way of rent for any use of land or building or furniture or fixture etc. The proviso to section 194-I further provides that no tax be deducted in case the total rent paid in a financial year does not exceed Rs.1,80,000/-. Considering the general basic exemption limit of Rs.2,00,000/- for the Assessment year 2014-15 and for Senior Citizens of Rs.2,50,000/- the present limit of Rs.1,80,000/- seems to be too low, especially for those Senior Citizens whose source of income is only rent. Hence, the limit of Rs. 1,80,000/- under section 194-I may be increased appropriately. Further, the provisions of section 197A should be made applicable only to those assessees who do not own more than one house property and whose total income does not exceed the maximum amount not chargeable to tax. This will prevent misuse of the provisions of section 197A and section 194-I.	***Considering the increase in the basic exemption limit for general assessees and senior citizens, it is suggested that the exemption limit of Rs. 1,80,000 in respect of TDS on rent under section 194-I be enhanced appropriately.*** ***Further, the provisions of section 197A should be made applicable only to those assessees who do not own more than one house property and whose total income does not exceed the maximum amount not chargeable to tax.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
182.	**Section 194-IA-TDS on transfer of immovable property**	As per the provisions of section 194-IA, tax is to be deducted @1% on consideration for transfer of immovable property, other than agricultural land. However, no tax is to be deducted if the consideration for transfer of immovable property is less than Rs. 50 lakhs. The issues emerging from this section are as under: a) In a large number of cases, loan is taken by the transferee from a bank or financial institution, employer etc. for purchase of immovable property. In such cases, the payment is not made directly by the transferee to the transferor, except for the down payment. The major part of the consideration is paid by the bank, financial institution etc. to the transferor, either in instalments or lump sum.	***It is suggested that either section 194-IA may be appropriately modified to require the transferee or the payee, as the case may be, to deduct tax at source from the consideration paid or credited to the transferor or appropriate clarification be issued in this regard.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
		b) Further, the provisions for tax deduction are causing hardship to those sellers who claim full capital gains exemption by investing the capital gains or the net consideration, as the case may be, in the manner provided in section 54, 54F, 54EC etc., since in such cases, there would be no tax liability on account of capital gains. Further, for the purposes of section 54F and 54GB, the entire net consideration is required to be invested, which poses a difficulty, since tax	***It is suggested that section 197 may be amended to permit the assessee to make an application to the Assessing Officer for issuing a certificate for no deduction of tax or deduction of tax at a lower rate. In the alternative, the seller may be permitted to give a declaration to the Assessing Officer and furnish a copy of the same to the buyer***

Sr. No	Section	Issue/Justification	Suggestion
		would already have been deducted from the net consideration.	
		c) Section 194-IA does not defines the term "transfer" which is posing genuine difficulty particularly in respect of those transactions which are not regarded as "transfer' as per the provisions of section 47 for example transfer in the scheme of amalgamation, transfer from subsidiary to holding company and vice versa and the like.	***It is suggested that the section be amended to provide for the definition of term "transfer". Alternatively, appropriate clarification may be issued in this regard.***
		d) Section 194-IA specifically provides that the provisions are applicable for transfer of immovable property (other than agricultural land). Thereafter, Explanation (b) providing for the definition of immovable property again excludes "agricultural land". Once the exclusion of "agricultural land" is provided in the main text of the section, providing the same in the definition of immovable property is not required.	***It is suggested that the definition of "immovable property" given in the Explanation to section 194-IA be amended to exclude the reference of agricultural land, since the said exclusion is provided in the main text of the section.***
		e) It is necessary to bring gradually to tax net all real estate transactions.	***It is suggested that the limit for applicability of TDS on Real estate transactions under section 194-IA may be reduced from Rs. 50 Lakhs to Rs 20 Lakhs. The suggestion is based on the banking norms followed by the banks, which requires that to avail a Housing loan of Rs. 15 Lakhs***

Sr. No	Section	Issue/Justification	Suggestion
			an applicant needs to be an assessee i.e. a taxpayer.
		f) The assessees may face practical hardship in applying the TDS provision, in case where the consideration is in kind (which is common practice in real-estate sector). e.g., a land-owner transfers development rights to a developer for agreed built-up area in consideration.Dual TDS implications on the same transaction in such cases may lead to practical difficulties as in the said case, both the land-owner as well as the developer would be liable for TDS on the same transaction. g) Hardship is also being faced in cases where the property is purchased jointly, as it is not clear whether the threshold limit of Rs. 50 lakhs is to be applied to each owner or to the total consideration for the property. h) If the payment is being made in installments, like in the case of construction linked payments, then the point of time when tax deduction and tax remittance should be made requires clarification. In such cases, there may be several installment payments based on the stage of completion. Consequently, if tax is required to be deducted in respect of each payment, whether a single remittance can be made at the stage of tax deduction in	***a) To ensure effective compliance of the provisions of section 194-IA, the aforesaid issues may be clarified at the earliest.*** ***b) Also, in order to overcome the difficulties in cases where remittance and taxability arises in different years, a system of pass book be introduced in Form No.26AS wherein the balance of unutilized credit be allowed to be carried forward.***

Sr. No	Section	Issue/Justification	Suggestion
		respect of the last payment or multiple remittances are required at each stage is an issue which needs to be addressed. i) In case of non-compliance due to non-furnishing of PAN, the provisions of section 206AA would be attracted. At present, credit for tax deducted under section 206AA is not being reflected in Form No. 26AS, even if deductee submits his PAN subsequently. This issue needs to be addressed so that credit of tax deducted and remitted is not denied to genuine assessees. j) The tax department may face the difficulty of relating different challans to the year of reporting of income by the transferor. For instance, the capital gains may be chargeable to tax in the year of transfer whereas deduction of tax at source may have taken place in a different year.	
183.	**Fees for professional or technical services - Section 194J**	The amendment to section 194J by the Finance Act, 2012 requires deduction of tax at source @ 10% on any remuneration or fees or commission, by whatever name called, to a director of a company, other than those on which tax is deductible under section 192. However, the independent limit of Rs.30,000 each provided for under section 194J in respect of other payments covered therein, namely, royalty, fee for technical	***It is suggested that section 194J be amended to provide an independent limit of Rs.30,000, above which remuneration or fees or commission to director may be subject to tax deduction at source.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		services, fee for professional services and non-compete fees, as a threshold, beyond which TDS @ 10% would be attracted, is not being provided in respect of director's remuneration. This unintended inequity may be removed.	
184.	**Section 194LC- Income by way of interest from Indian Company**	The Finance Act, 2012 inserted section 194LC to provide that the interest income paid by specified company or business trust to a non-resident shall be subjected to tax deduction at source at the rate of 5%. Section 115A was also amended to provide that such income will be taxed at the rate of 5%. Section 194LC(2)(ii) provides that for the purpose of deduction of tax at source at the rate of 5%, the interest payable by the specified company or business trust to a non-resident, not being a company or a foreign company, shall be the income payable by the specified company **TO THE EXTENT TO WHICH SUCH INTEREST DOES NOT EXCEED** the amount of interest calculated at the rate approved by the Central Government in this regard, having regard to the terms of the loan or the bond and its repayment. It is imperative to note that usage of the term "To the extent to which such interest does not exceed" may be interpreted to mean that in case the borrowings are made at a rate higher than the rate approved by the Central	***In order to bring out the real intent of the law, it is suggested that the section 194LC(2)(ii) may be reworded to provide that the interest referred to in sub-section (1) shall be the income by way of interest payable by the specified company or business trust "IF such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this regard, having regard to the terms of the loan or the bond and its repayment"*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		Government, the interest income on the difference will be chargeable to tax at the rate of 20%. As per the explanatory memorandum, this amendment was made in order to augment long-term low cost funds from abroad. It is felt that this is an inadvertent mistake and thus needs to be reworded.	
185.	**Section 194LC and Section 206AA - Scope of concessional rate of tax on overseas borrowings**	Currently as per the provisions of section 194LC of the Act, interest paid by an Indian company to a non-resident, in respect of approved borrowings made (during the period 1 July 2012 to 30 June 2015) in foreign currency from sources outside India (under a loan agreement or on issue of long-term infrastructure bonds) is taxable at a concessional rate of 5% (plus applicable surcharge and education cess). Further, as per section 206AA(7) of the Act, interest paid on the long-term infrastructure bonds would be subject to a concessional rate of tax irrespective of whether the lender has a Permanent Account Number (PAN) in India or not. In order to further augment low cost long-term overseas borrowings, the Bill proposes vide Clause 57 and Clause 61 amendments to section 194LC and section 206AA of the Act respectively ***w.e.f 1 October 2014***. Under the aforesaid proposed amendment, the benefit of lower withholding tax @5% for overseas borrowing is extended up to 1 July 2017 and it shall	***It is, therefore, suggested to make the aforesaid amendments to the Act effective from 1 April 2014 to enable corporates to use this rare window of opportunity to raise long term capital at competitive price, for their capital expenditure. There are quite a few proposals in the pipeline for raising long term capital from the international debt markets which could get adversely impacted if this amendment is implemented as per the currently enacted timeline of 1st October 2014. Therefore, there is an urgent need to make the amendment effective as suggested.***

Sr. No	Section	Issue/Justification	Suggestion
		apply to all long term bonds and not merely restricted to infrastructure bonds as is the case under the relevant provisions of the existing Income tax Act. Further, the benefit of section 206AA(7) of the Act, shall be extended to all types of long term bonds including infrastructure bonds, which means PAN of beneficial holders of bonds shall not be mandatory for all types of long term bond issues in the international market. **Hardships** While the fiscal measure taken by the Government to encourage the corporates to raise long term capital at competitive price for their capital expenditure are appreciated, there is an urgent need for making the proposed amendments effective from 1 April 2014 so that companies can take advantage of the prevailing opportune market conditions. In this connection, the global market conditions have been summarized below: ➢ The international debt markets are very strong and buoyant, with the Asia ex Japan G3 market seeing over US$116bn in 2014 till date in issuance volumes, nearly 83% of total issuance in 2013. ➢ Investor liquidity remains very strong, and there are consistent fund flows back	

Sr. No	Section	Issue/Justification	Suggestion
		into emerging market and Asian bonds for the past 14 consecutive weeks. ➢ US treasury yields remain significantly lower than at the start of the year, as the markets gauge the outlook for the global economy, geopolitical risks and the expected actions of the Central Banks. 2.55% / 3.37%. ➢ US rates at 2.55% for 10 years and 3.37% for 30 years remain conducive for issuers looking to extend duration, with the 30-year US Treasury currently close to a 9 month low. ➢ Global credit market conditions remain very strong with credit spreads having tightened sharply over the past year. ➢ The demand for Indian credits has been extremely strong, with Indian credit spreads having tightened by 30-40 bps since 1 April and 80-100 bps since 1 February 2014. This has been driven by supportive technicals, relative lack of supply and improved macro indicators. These favourable financial market conditions could get impacted in the short term by changes in the economic data emanating from the major economies as well as due to geopolitical factors such as the	

Sr. No	Section	Issue/Justification	Suggestion
		continued unrest in the Middle East.	
186.	***Section 195 –*** ***a) Scope and applicability***	Finance Act, 2012 extended the obligation to withhold taxes to non-residents irrespective of whether the non-resident has - (i) a residence or place of business or business connection in India; or (ii) any other presence in any manner whatsoever in India. The aforesaid amendment was introduced with retrospective effect from 1 April 1962. The amendment results in a significant expansion in the scope of withholding provisions under the Act and will cover all non-residents, regardless of their presence/ connection in India. The Supreme Court in the case of Vodafone International Holdings B.V. had observed that the provisions of Section 195 of the Act would not apply to payments between two non- residents situated outside India. The Supreme Court also referred to tax presence as being a relevant factor in order to determine whether a non-resident has a withholding obligation in India under Section 195 of the Act.	***Keeping in view the observations of the Supreme Court, it is suggested that the amendment should be modified to restrict the applicability of withholding tax provisions to residents and non-residents having a tax presence in India.*** ***At least, it should be clarified that the amendment will not have retrospective application.***
	b) Time limit for Issuance of "general or special order"	Section 195(2) provides where a payer considers that whole of the sum being paid to a non-resident is not chargeable to tax, he may make an application to the Assessing Officer to determine by general or special order, the	***It is suggested that an appropriate time limit say thirty (30) days may be imposed for passing such general or special order by the Assessing officer.*** ***Further, where an application***

Sr. No	Section	Issue/Justification	Suggestion
		appropriate portion of the sum so chargeable. It may be noted that no time limit of passing such order has been prescribed in the Act, which causes undue hardship in genuine cases.	***is rejected the Assessing Officer may be required to pass a speaking order after providing a reasonable opportunity of being heard to the applicant.*** **(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)**
	c) TDS on payment made to non-residents	a) Section 195(1) of the Income-tax Act, 1961 provides for the applicability of TDS provisions on "any person" responsible for paying to a "non-resident" subject to exceptions as provided in the section. Practically, the fact that every person including individuals, making any payment to non-residents, is liable to deduct tax at source is not known to many. There have been instances where the payment of rent is made to a non-resident through online banking by a salaried employee who is claiming HRA, without knowing that he is required to deduct tax. This not only leads to loss of revenue but also causes hardship to the assessee only due to ignorance of law, which but of course is not an excuse. b) Section 195(2) provides that where the person responsible for paying any sum chargeable under this Act to a non-resident considers that whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the Assessing officer to determine by	***It is suggested that*** ***a) the fact that any person including individuals, making any payment to non-residents, is liable to deduct tax at source should be widely publicized by the Department.b) To remove administrative hassles, the payer or the payee should be allowed to issue certificate for short or non-deduction of tax at source.c) Since a benefit has been extended to the assessees by way of the provisions of section 54 to 54F, the same should be taken into account by the Assessing officers while issuing certificate of lower deduction of tax at source or no deduction under section 195 and 197.***

Sr. No	Section	Issue/Justification	Suggestion
		general or special order, the appropriate portion of sum so chargeable. Further section 195(3) gives the recipient an option to make an application to Assessing Officer for the grant of certificate authorizing him to receive any sum without deduction of tax at source, subject to the rules notified in this regard. Making an application to the Assessing officer and follow ups thereafter leads to administrative hassles. c) The provisions of section 54 to 54F relating to investments allow the assessee to save tax on capital gains arising from transfer of property. However, such investments are made over the period of time i.e. within 6 months or 1 year. Certain assessees face hardship on this account since their income becomes non-chargeable to tax only after taking into consideration the proposed investments. The issue arises since the investments proposed to be made under sections 54 to 54F are not taken into account by the Assessing Officer while giving a certificate of lower deduction of tax at source or no deduction of tax.	
	d) Withholding tax on reimbursements [Section 195 of the Act]	Cross border transactions may result in reimbursements of expenditures / costs incurred on behalf of the Indian company by the foreign parent/group company. Contrary positions have been taken by various judiciaries on the	***It is suggested that a clarification, perhaps by way of a CBDT circular, stating that withholding tax would not be applicable for specific cases of reimbursements, would help reduce undue litigation in this regard.***

Sr. No	Section	Issue/Justification	Suggestion
		issue of withholding tax on reimbursements made by an Indian company to its foreign parent / group company. There is no clear view with respect to the same. Further, non-compliance with withholding tax provisions will attract disallowance under section 40(a)(i) of the Act including interest and penal proceedings.	
187.	**Validity of Certificate issued under section 197**	The Certificate under section 197 is at present issued with a validity date from the date of issue. Though the assessee is applying in the month of April, i.e., at the beginning of the financial year, the certificate is issued much later. The date of issue is taken as the validity date owing to which, the deductors are deducting the tax for the earlier part of income/payments. By any reasonable estimate, an assessee cannot have taxable income for some part of the financial year and exempt income for remaining part of the year.	**It is suggested that** ***a) the certificate should be issued / application should be decided atleast before 15th June of the financial year i.e. within three months of commencement of the financial year for before planning for advance tax.*** ***b) Such application should be disposed off within 30 days.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
188.	***Section 197A – Corresponding change in rule 29C***	Section 197(1C) provides that a resident individual who is of the age of 60 years or above may provide a declaration in form 15H to the deductor such that no tax would be deductible on its income as total income would be below the threshold limit as per individual slab applicable for that assessment year. Prior to 1st July, 2012 such age was 65 years as amendment was brought in by Finance Act, 2012. The same is	***It is suggested that Rule 29C(1A) be amended in line with section 197(1C) to remove the inadvertent error regarding change in age from sixty five years to sixty years.***

Sr. No	Section	Issue/Justification	Suggestion
		incorporated in form 15H as notified. But inadvertently, the consequent amendment has not been carried out in Rule 29C(1A).	
189.	***Section 200 - Furnishing of TDS returns***	Section 200 provides for the payment of TDS and filing of TDS Returns. The Income Tax Law requires payment of TDS every month by 7th of the following month and by 30th April of the Assessment year for tax deducted in the month of March of the Previous year. The said payment is to be made under various codes as per the sections under which the tax is deducted. Currently, the payment under each code is to be made under a separate challan which requires filling up the same PAN, TAN, name, address etc details over and over again. This is clubbed with the internet connection problems and it becomes a very cumbersome job especially for the small and medium assessees. Practically, for payment of tax so deducted details of parties with PAN and section under which it is to be deducted is maintained. However, except the section under which tax is required to be deducted, no other detail is required to be mentioned in the challan. The statement containing all such details is to be submitted for every quarter. This leads to duplication of work and also a cumbersome task of furnishing so many statements and challans.	***Since the details are already available with the deductor at the time of payment of taxes, the e-challan itself can be so designed that it captures all the details at that time. The details so submitted at that time may respectively be reflected in the Form 26AS of all deductees.*** ***(SUGGESTIONS TO REMOVE ADMINISTRATIVE DIFFICULTIES)***

Sr. No	Section	Issue/Justification	Suggestion
190.	***Mismatch on account of punching of data***	The non-government deductors majorly comprise of non-corporate sector which is not very organized. Approximately less than 6000 assessees are listed companies who take the help of professionals to file statements of TDS/TCS in time. Approximately, 6,60,000 assessees are private limited Companies, but majority of them are family organizations or organizations among the friends registered as Private Limited companies under Companies Act. Further, last year there were approximately 18,00,000 tax audit asseessees. This clearly reflects that more than 66% of the assessees who are liable to deduct TDS are non-corporate entities comprising of Individuals, HUFs, firms etc. In addition to above, certain non corporate and NGOs are also mandatorily liable to deduct TDS. The data entry in the non-corporate sector is majorly done by persons who are not even graduates. This has infact lead to the problem of huge mismatch of data of the deductees. There are clerical errors like wrong punching of name details, PAN details, Section under which data is punched and the like.	***In continuation of the above suggestion, the following is suggested :*** ***To avoid such data mismatch, it is necessary to have a PAN/TAN master file for each and every deductor. CPC(TDS) may prepare a software freely downloadable for all deductors wherein deductor may fill in the details like name, PAN and the applicable section/s for deduction (it may be one section or more than one).This temporary master file may then be uploaded back. The CPC(TDS) may verify the details so submitted and provide the deductor with error details, if any. The deductor may then rectify the errors and resubmit it. The process goes on unless the Department agrees with the data provided by the deductor. The final data so generated may be stored as a master file for that deductor in the database of the Department.*** ***The deductor while making payment every month through e-challan will click on the section for which payment is to be made. Once a particular section is clicked, all the parties registered under that section will appear. The deductor may accordingly, fill the details of amount and submit the same along with the payment of taxes. The deductees for which no tax***

Sr. No	Section	Issue/Justification	Suggestion
			has been deducted may be reflected/prefilled as "0". This will on one hand enable the deductor to save time on rechecking his details at the time of quarterly filing of TDS returns and on the other hand provide monthly credit details in the Form 26AS of the deductee. Since the data will be downloaded from TAN/PAN master verified by the Department, there will be "0" mismatch situation, which is the need of the hour. ***(SUGGESTIONS TO REMOVE ADMINISTRATIVE DIFFICULTIES)***
191.	***Time limit for TDS assessments of payments made to non residents***	Presently, there is no time limit specified by the Act for initiating & completion of TDS proceedings u/s 201 of the Act in respect of payments made to non- residents. Thus, the TDS returns are scrutinized by the assessing officers for past years without any limit, which has resulted into enormous difficulty for the assessee as it becomes practically difficult to store & retrieve data beyond four years of filing of TDS returns.	***It is suggested to fix a specific time limit for initiating & completing TDS proceedings u/s 201 of the Act in respect of payments made to non residents which should not be more than 4 years from the relevant financial year.***
192.	**Consequences of failure to deduct or pay TDS- section 201(1A)-:**	As per the provisions of section 201(1A), interest is charged on monthly basis. Even for delay in payment or deduction of tax at source by one day, interest is charged for the whole month. Under clause (ii) of section 201(1A), interest is payable at the	***It is suggested that interest u/s 201(1A) should be charged on daily basis and not on monthly basis or if the interest is to be charged on monthly basis then delay should be rounded off to the nearest month and the present system***

Sr. No	Section	Issue/Justification	Suggestion
		rate of one and one-half percent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid. Delay from the due date of payment to the date of actual payment is not considered. e.g. if the tax was deducted on 01/09/2014 the same has to be paid by 07/10/2014. If the tax was paid on 08/10/2014 i.e. only one day delay, interest for the two month will be charged i.e. from 01/09/2014 to 08/10/2014. It is suggested that the delay from the due date of payment to the date of actual payment should be considered for the purpose of calculating interest. Further, since all the returns of TDS are now days processed electronically and interest is calculated by the computer, there is no procedural hurdle in charging interest on daily basis, infact charging the same on daily basis will provide relief to the taxpayers. It may be noted that in all the indirect tax laws interest is charged on daily basis. Since the TDS is a routine business work, delay of one-two days in payment is not abnormal and punishing for such delay by charging interest for the whole month may not be appropriate.	***of considering fraction of month as full month should be dispensed with.*** ***It is further suggested that interest under clause (ii) of section 201(1A) should be charged for the delay FROM THE DUE DATE OF PAYMENT TO THE ACTUAL DATE OF PAYMENT.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
193.	**Section 206AA – Requirement of furnishing of PAN for**	Section 206AA provides that notwithstanding anything contained in any other provisions of this act, any person entitled to	***A proviso should be inserted in section 206AA to the effect that the provisions of this section shall not be applicable***

Sr. No	Section	Issue/Justification	Suggestion
	deduction of tax at source.	receive any sum or income or amount on which tax is deductible under chapter XVIIB, (hereinafter referred as deductee) shall furnish his PAN to the Deductor failing which tax shall be deducted at higher of three rates specified in section 206AA. This section however, does not take into account the situation where payee is not required to take PAN as per the provisions of Section 139A or such payment is not taxable in India (in case of Non -Residents). Due to applicability of this section, residents, who are not required to obtain PAN as per section 139A, will also have to take PAN. As this section has a non-obstanate clause, payer has no option but to deduct tax at a higher rate to comply with the provisions of the said section, though it may not be the intention of the legislature. As no exception has been made as regards the payments to a non-Resident, it is assumed that section 206AA is applicable to the payment made to a non-resident also. However, as per the provisions of Rule 114C(1)(b) of the Income-tax Rules, 1962, specifying the class or classes of persons to whom the provisions of section 139A (PAN) shall not apply, non-resident is not required to get PAN allotted in his name. Further, it may be noted that Section 195(5) of Direct Taxes Code Bill, 2013 reads as	***in respect of the assessee who is not required to obtain Permanent Account Number under section 139A.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		follows:- *"Notwithstanding anything in this Code, the appropriate rate referred to in subsection (1) shall, in a case where the deductee has failed to furnish his permanent account number to the deductor (except where the deductee is not required to obtain permanent account number under section 292), be the higher of following rates, namely:—* *(a) twenty per cent.; and* *(b) the rate specified in sub-sections (2), (3) or sub-section (4), as the case may be."* In line with the provisions of proposed section 195(5) supra, those assessees who are not required to obtain PAN should be exempted from the provisions of section 206AA of the Income-tax Act, 1961.	
194.	**Section 206C(1D)- TCS on sale of jewellery**	Section 206C(1D) provides for TCS @1% on sale of bullion or jewellery in cash, if such consideration for jewellery exceeds Rs. 5,00,000. This provision is however, not serving the intended purpose and various malpractices are being followed and the actual transactions are not being reported. It is thus suggested that the limit be imposed on the aggregate turnover of revised downwards.	***It is suggested that TCS @1% on sale of jewellery be made applicable for consideration exceeding Rs.2,00,000 instead of Rs. 5,00,000.***
195.	**Quarterly audit of TDS compliances**	Since a major part of the income tax revenue is collected through deduction of tax at source, errors committed at this point in time prove costly to the exchequer.	***In view of the aforesaid, it is suggested that a provision may be made whereby all transactions pertaining to TDS provisions are audited by a***

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
		Currently withheld tax is deposited monthly and TDS statements are furnished quarterly. Further there is no mechanism as on date to have a check on the correct deduction of tax and its payment. A lot of work related to TDS compliances in majority of the non organized sector is handled by either graduates or non professionals who may not be well versed with the applicable TDS provisions. The income tax department is having limited resources to check and cross verify all the TDS statements furnished quarterly. It is the need of the hour that the TDS statements filed quarterly are certified by a professional to enhance its accuracy and thereby minimizing the loss in revenue to the government.	***professional once every quarter before filing of TDS statement which will lead to early detection of errors and maximizing the revenue to the government.***
196.	**Auto fill of TDS data in Income Tax Returns(ITR)**	Currently an assessee filing his income tax return needs to fill all the data manually wrt the taxes paid by him/on his behalf (TDS) in **excel utility**. Since TDS returns are e-filed now days, an asseesee by manually punching the data relating to prepaid taxes like TDS is prone to committing errors. Also, there is an unnecessary effort in punching the data manually which can be automated as the data can be picked from TDS returns filed by deductors based on unique field ie PAN of the deductee assessee. This will lead to efficient use of technology and lesser errors in ITRs relating to data of prepaid	***Necessary changes may be made to the e-filed ITR forms using excel utility so that data relating to TDS deposited on behalf of assessee deductee is automatically picked from TDS statements filed by deductors based on unique field like PAN.***

Sr. No	Section	Issue/Justification	Suggestion
		taxes like TDS.	
197.	**Reconciliation of each payment made by deductor to avoid duplication of work of TDS return**	In order to make the process of claim of TDS error free, a system was devised some years ago in 2009 and published vide circular no 2/2009, dated 21.05.2009. The relevant excerpt from the said circular is as follows: *"12. With a view to enabling the implementation of the aforesaid decision, the TDS and TCS payment and information reporting system has been redesigned vide Notification No. 858(E), dated 25th March, 2009 published in Official Gazette. The salient features of the new TDS and TCS payment and information reporting system are the following :—* *(i) The new system has been harmonized for all deductors (including Central and State Governments). Therefore, like non-governmental tax deductors, every deductor in the Central and State Government have also been made responsible for making direct payment of TDS in the bank. They are no longer allowed to make payments of the TDS and TCS by making book adjustments or consolidated payments. As a result, the TDS payment and information reporting system will be uniform across deductors.* *(ii) Rule 30 and Rule 37CA of the Income-tax Rules, 1962 have been substituted to provide, inter*	***The mentioned circular is suggested to be implemented with appropriate modifications in light of the current technological advancements.***

Sr. No	Section	Issue/Justification	Suggestion
		alia, for the following :— *(a) All sums of tax deducted at source under Chapter XVII-B and of tax collected at source under Chapter XVII-BB shall, in general, be paid to the credit of the Central Government within one week from the end of the month in which the deduction, or collection, is made. Similarly, the same time-limit for payment will also apply for income-tax due under sub-section (1A) of section 192.* *(b) It is mandatory for all deductors (including Central Government and State Governments) to pay the amount by electronically remitting it into the RBI, SBI or any authorized bank.* *(c) It is mandatory for all deductors (including Central Government and State Governments) to make the payment by electronically furnishing an income-tax challan in Form No. 17.* *(iii) In the process of electronically furnishing the income-tax challan in Form No. 17, the deductor will be simultaneously required to furnish to the Taxpayer Information Network (TIN) system maintained by National Securities Depository Limited (NSDL) either through screen based upload or file upload, three basic information relating to the deduction i.e., PAN, name of the deductee and*	

Sr. No	Section	Issue/Justification	Suggestion
		amount of TDS/TCS. *(iv) Upon successful remittance of the TDS/TCS to Central Government account and the uploading of the basic information as mentioned above to the TIN system, every deduction record will be assigned a Unique Transaction Number (UTN).* *(v) NSDL will create a facility to e-mail the UTN file to the deductor if the e-mail address of the deductor is available with them. In addition, they will also create a facility for the deductor to download the UTN file.* *(vi) The UTN will be required to be quoted by the deductor on the TDS/TCS certificate issued by him to the deductee.* *(vii) NSDL will also create a facility to allow independent viewing of the UTNs by the deductee.* *(viii) With a view to enabling the Income-tax Department to monitor compliance by the deductor with the TDS provisions, every person (including Central Government and State Government) who has obtained a Tax Deduction or Collection Account Number (TAN) shall electronically furnish a quarterly statement of compliance with TDS provisions in Form No. 24C. It is mandatory for all TAN holders to furnish this form irrespective of whether any payment liable to TDS has been made or not. This form shall be*	

Sr. No	Section	Issue/Justification	Suggestion
		furnished on or before the 15th July, the 15th October, the 15th January in respect of the first three quarters of the financial year, respectively, and on or before the 15th June following the last quarter of the financial year. This e-form No. 24C has to be furnished at http://incometaxindiaefiling.gov.in. The first quarter in respect of which Form 24C is required to be furnished is the quarter ending on 30th June, 2009. *(ix) In order to enable the deductor to furnish the UTN to the deductee, the existing Form 16 and Form 16A have been appropriately modified.* *(x) The quarterly returns of TDS and TCS hitherto required to be filed in Form No. 24Q, Form No. 26Q, Form No. 27Q and Form No. 27EQ shall now be required to be filed for all quarters on or before the 15th June following the financial year. Effectively, the quarterly returns have now been replaced by an annual return."* As is clear from the above reproduced para from the said circular, the proposed method will automatically verify each payment of TDS made by deductor and will reduce the duplicacy done while filing quarterly TDS statements. The above method will effectively lead to an annual TDS return instead of quarterly TDS	

Sr. No	Section	Issue/Justification	Suggestion
		statements currently	
198.	**Master Circular on TDS-Need of the hour**	In order to support/clarify the provisions of Chapter XVII, various circulars have been issued from time to time. Further various court decisions, favourable or unfavourable for the assessees, have also clarified various provisions of Tax deduction at source or tax collection at source. These court decisions/circulars/notifications have been more or less accepted by both the Department and the assessees. However, the difficulty arises for the assessees since all circulars, which may have been issued way back in 1995, 1996 etc. (still applicable) are not available at one place. Even though ignorance of law is not an excuse, it is quite possible that due to non-availability of the clarifications issued so far at one place, some assessees inadvertently might not have deducted tax on particular transactions entered into by them. Since approximately 40% of total revenue is collected through TDS /TCS, it is essential to issue a master circular every year on the lines of circular on TDS on Salaries. Issuing a master circular, clearly laying down the well established Court decisions and circulars issued so far, would on one hand improve compliance of TDS/TCS provisions and on the other hand	***To improve compliance of TDS/TCS provisions it is suggested that a master circular exclusively on TDS be issued, within a period of 15 days of passing of Finance Act every year.***

Sr. No	Section	Issue/Justification	Suggestion
		act as easy reference for the assessees.	

PART C-ADVANCE PAYMENT OF TAX

DETAILED SUGGESTIONS

Sr. No	***Section***	***Issue/Justification***	***Suggestion***
199.	**Section 208 - Revision of Limit of advance tax**	The Finance Act, 2009 raised the limit to pay advance tax under section 208 to Rs. 10,000. Considering the inflationary conditions prevailing in the country, it is felt that the same limit needs to be revised upwards so that the amount payable in one instalment of the advance tax exceeds at least Rs. 5,000. The present amount of Rs. 3,000 is too low. Infact, any assessee whose advance tax payable does not exceed Rs. 30,000 should be allowed to pay full amount in the last instalment.	***The limit to pay advance tax under section 208 be raised appropriately/- Infact, any assessee whose advance tax payable does not exceed Rs. 30,000 should be allowed to pay full amount in the last instalment.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

PART F-INTEREST CHARGEABLE IN CERTAIN CASES

DETAILED SUGGESTIONS

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
200.	**Interest u/s 234C for newly formed Firms and Companies**	As per the provisions of section 207 and section 211, the assessee is liable to pay the advance tax on the `Current Income' of the assessee. This presupposes the existence of the assessee. In view of this, interest u/s 234C cannot be charged for the instalments of advance tax due before the date of coming into existence of a Firm or a Company. In spite of this, the Departmental Software processing the ITR does not take care of such a situation and interest u/s 234C is being charged in a routine manner.	***It is suggested that the Departmental Software needs to be suitably amended so that firm and companies are not required to pay interest on the short payment of instalment of advance tax u/s 234C for the period when they were not in existence.*** **(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)**

PART G-LEVY OF FEE IN CERTAIN CASES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
201.	***Fees under section 234E***	a) The matters relating to TDS/TCS in a government department is handled by persons with reasonably good education background. Appropriate computer training is also given by the Government to them for day to day functioning of the system. Accordingly, the records are well maintained and seemingly there should be no issues for them in timely furnishing the statement of TDS/TCS within 30 days from the end of the quarter. However, in comparison to the same, the non-Government deductor who is a business man may not necessarily be even a graduate. The non-government deductors majorly comprise of non-corporate sector which is not very organized. Approximately less that 6000 assessees are listed companies who take the help of professionals to file statements of TDS/TCS in time. Approximately, 6,60,000 assessees are private limited Companies, but majority of them are family organizations or organizations among the friends registered as Private Limited companies under Companies Act. Further, last year there were approximately 18,00,000 tax audit asseessees. This clearly reflects that more than 66% of the assessees who are liable to deduct TDS are non-corporate	***It is suggested that:*** ***a) the time limit to file quarterly TDS return for non-government deductors be also increased to 30 days as available to the government deductors. With this change there will be neither a revenue loss nor any hardship to the deductees.*** ***b) It is highly appreciable that the Government has taken an open mind while considering the problems of e-filing of statement of TDS /TCS and has extended the time only for Government deductors. In fact, considering the difficulties being faced by the government deductors, this circular (No. 7/2014 dated 4.3.14) was a step in the right direction. Since the above difficulty equally applies for other deductors also, one time amnesty is sought for all deductors with regard to all TDS statements pertaining to FY 2012-13 and FY 2013-14 to be submitted on or before a cutoff date to be decided appropriately.***

Sr. No	Section	Issue/Justification	Suggestion
		entities comprising of Individuals, HUFs, firms etc. In addition to above, certain non corporate and NGOs are also mandatorily liable to deduct TDS. It has been brought to the notice of ICAI that 15 days time limit is too short for the same causing genuine hardship to the deductor, who has to deduct tax, pay tax through challan, collect the same from the bank, prepare the TDS/TCS statements and thereafter submit the same to TIN Centre, which may not always be located in the near vicinity. Also, the levy of fees under section 234E has been a matter of great concern. It is highly appreciable that the Government has taken an open mind while considering the problems of e-filing of statement of TDS /TCS and has extended the time only for Government deductors. In fact, considering the difficulties being faced by the government deductors, the circular ***No. 7/2014 dated 4.3.14*** was a step in the right direction. Since the above difficulty equally applies for other deductors also, one time amnesty is sought for all deductors with regard to all TDS statements pertaining to FY 2012-13 and FY 2013-14 to be submitted on or before a cutoff date to be decided appropriately.	

<table>
<tr><th>Sr. No</th><th>Section</th><th>Issue/Justification</th><th>Suggestion</th></tr>
<tr><td></td><td></td><td>b) According to the provisions of section 234E, where a person fails to deliver or cause to be delivered a statement within the time prescribed then he shall be liable to pay, by way of fee, a sum of Rs. 200 for every day during which the failure continues. But the amount of fee shall not exceed the amount of tax deductible or collectible, as the case may be.

Considering the hardships being faced by the taxpayers due to various reasons, penal fees for late filing of TDS returns need to be changed to period wise/ slab of days instead of current system.</td><td>It is suggested to follow day wise slab system & it may be taken as:

<table>
<tr><th>Period of Default</th><th>Max. Fees u/s 234E</th></tr>
<tr><td>Upto 15 Days</td><td>Rs. 500/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.</td></tr>
<tr><td>From 15 Days to 1 Month</td><td>Rs. 1000/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.</td></tr>
<tr><td>From 1 Month Onwards</td><td>Rs. 1000/- + Rs. 200/- per day or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.</td></tr>
</table></td></tr>
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CHAPTER XIX-A

SETTLEMENT OF CASES

DETAILED SUGGESTIONS

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
202.	**Once in life time opportunit y - Settlement Commission**	Presently, for resolution of tax disputes government allows an assessee to approach the Settlement Commission only once and that too when the case is pending before the Assessing Officer (AO). If the case has escalated to a level above Assessing Officer, the once in a lifetime window also gets closed. This is leading to non settlement of disputes and delaying of revenue collection and costly litigation.	***Assessees should be given the freedom to settle disputes through this settlement commission without the restriction of this 'once in a lifetime' conditionality. Also the assessee should be given the freedom to settle at any point of time (i.e. at any level – AO and above) of the dispute. (SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***
203.	***Restoration of the provisions of erstwhile Section 245E***	Section 245E of the Act was inserted in year 1975, amended in 1984, 1987 and the provisions were made inapplicable for applications filed on or after 01-06-2007. The existing provisions of statute reads as under: *"If the Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under this Act by any income-tax authority before the application under section 245C was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit,*	***It is suggested that the provisions of erstwhile section 245E be restored in Chapter XIX-A Settlement of Cases for proper and justified disposal of cases of applicants.***

Sr. No	Section	Issue/Justification	Suggestion
		as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also. *Provided that no proceeding shall be reopened by the Settlement Commission under this section if the period between the end of the assessment year to which such a proceeding relates and the date of application for settlement under section 245C exceeds nine years.* *Provided further that no proceeding shall be reopened by the Settlement Commission under this section in a case where an* ***application under section 245C is made on or after the 1st day of June, 2007****."* The provisions of this section empowered the Settlement Commission to reopen the previously completed proceedings in respect of assessment year(s) other than the year(s) for which application was filed by the applicant where it is necessary or expedient for proper disposal of the case. The section also provided limitation to such powers of the Settlement Commission i.e. re-opening must be with the concurrence of the applicant and the power cannot extend to a period beyond nine years *(as amended in year 1987)* from the end of the assessment year to which such proceeding relates.	

Sr. No	Section	Issue/Justification	Suggestion
		However, with the insertion of new scheme of settlement before the Settlement Commission w.e.f. 01-06-2007, this section was made inapplicable for applications filed on or after 01-06-2007. The inapplicability of this section placed restriction on the Settlement Commission to limit the settlement to the year(s) in respect of which application has been filed by the applicant thereby depriving the applicant from relief in respect of other preceding completed assessment years(s) on the same issue or same modus operandi.	

CHAPTER XX

APPEALS & REVISION

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
204.	**Delay by Assessing Officer in issuing Order giving effect to Orders of higher Appellate authorities, and also delay in issuing refunds arising out of such Order:**	It has been experienced that when any order of higher appellate authorities is received, and moreover when the order is in favour of the assessee, the Assessing officer delays in issuing the Order giving effect to such appellate orders. Due to this delay, the refund arising from such appellate orders also gets delayed. Secondly, it is also observed that in most of the cases, the issuing of Refund Cheques/ Warrants are purposefully delayed and the interest on such refunds, as per the provisions of the Income-tax Act, 1961 is calculated only up to the date of issue of Assessment order / Order Giving effects to appellate orders. This results in, assessee being deprived of interest on the delayed refunds and also assessee does not earn any interest on the Interest on Refunds for the period of such delay of issuing of refund warrants by the Assessing officers.	***It is suggested that time limits for issuing the Order giving effects and Refund Orders should be stipulated in the Act. If the order provides for fresh modification of the assessment, the same should be given effect to within 12 months from the end of the month in which it is received by the Commissioner.*** ***Also the Interest on Refunds should be calculated up to the date of actual issuing of Refund warrants and not only up to the date of granting the refund/date of Order (as per the existing provisions of the Act)*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***
205.	***Low tax effect for Department Appeals should be enacted***	CBDT has issued circulars to department for preferring appeal only in those cases where the tax effect is more than specified limit however in contravention to such circular appeals are filed even in cases where the tax effect is less.	***It is suggested that the tax effect limit for Department appeal should be enacted in the relevant section itself which would help in reducing litigation.***

CHAPTER XX-B

REQUIREMENT AS TO MODE OF ACCEPTANCE, PAYMENT OR REPAYMENT IN CERTAIN CASES TO COUNTERACT EVASION OF TAX

DETAILED SUGGESTIONS

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
206.	**Section 269SS and 269T – Mode of taking or accepting and repayment of certain loans and deposits through banking channels**	Section 269SS of the Income–tax Act, 1961 requires that acceptance of any loan or deposit exceeding Rupees twenty thousand may be made only by an account payee cheque or an account payee bank draft or use of electronic clearing system. Further, Section 269T of the Income–tax Act, 1961 requires that the repayment of any loan or deposit exceeding Rupees twenty thousand may be made only by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account. Recently, the Finance Act (No. 2), 2014 provided to allow the other valid modes like "use of electronic clearing system through a bank account" w.e.f 01.04.2015. Extending the scope w.e.f Assessment year 2015-16 limits the purpose of the amendment. Several litigations are pending since transactions made through RTGS, NEFT, ECS and EFT was not covered within the scope of section 269SS and 269T.	**In order to clarify the intent of the law, it is therefore suggested that the beneficial amendment as made by Finance (No. 2) Act, 2014 extending the scope of payment modes by including electronic fund transfer should be effective for all pending cases instead of AY 2015-16, by inserting an explanation in both section 269SS and section 269T.**

CHAPTER XXI

PENALTIES IMPOSABLE

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
207.	**Initiation of penalty proceeding in every assessment order**	Assessing officers initiate penalty proceedings in each and every assessment order in view of Honble Supreme Court judgement in case of Dharmender Textile 306 ITR 277 [2008], irrespective of the fact whether or not there is any actual concealment of Income or furnishing of inaccurate particulars of income by the assessee. It has been noticed that even in cases where there is difference in interpretation of provisions or wherever there are two views arising, the penalty proceedings are initiated. This is causing undue hardship to the assessees who have to file separate appeal for dropping of such penalty proceedings leading to prolonged litigation	***(1) Suitable remedial measures should be incorporated in the Act providing relief to the genuine hardship faced by the assessees on account of imposition of penalty even where there is no concealment of income.*** ***(2) Further, in respect of pending case and, to reduce further litigations, it is suggested that a scheme on the lines of Kar Vivad Samadhan Scheme (KVSS) may also be introduced. (Details already mentioned earlier in this Pre-Budget)*** ***(3) Where unexplained money, income or expenditure is identified during the course of assessment or unidentified income not falling under section 68 and 69 is identified and added, it shall be chargeable to tax at maximum marginal rate.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***
208.	**Penalty where search has been initiated- Section 271AAB**	Section 271AAB provides for imposition of penalty @ 10% on undisclosed income found during the course of search and admitted at the stage of search. Undisclosed income not admitted at the stage of search but disclosed in the return of income filed after the search to attract penalty @ 20%. These are covered under clauses (a) and (b) of section 271AAB. In other	***Sub-section (3) may be amended to provide that the prosecution provisions under sections 274 and 275 would apply in relation to penalty levied only under clause (c) of this sub-section, and not in respect of cases covered under clauses (a) and (b).*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX***

Sr. No	Section	Issue/Justification	Suggestion
		cases, i.e. cases covered under clause (c), penalty to range from 30% to 90% of undisclosed income. Sub-section (3) provides that the prosecution provisions under sections 274 and 275 would apply in relation to penalty levied under this section. However, it may not be justified to execute prosecution proceedings where a person has disclosed such income in the course of search or before filing his return of income. Therefore, the prosecution provisions should be made applicable only in respect of cases covered under clause (c).	***LAWS)***
209.	***Section 271AAB – Relaxation in restrictions to claim the benefit of concessional rate of penalty @ 10%***	Section 271AAB provides for imposition of penalty at specified rates where search has been initiated. The rate of penalty varies from 10% to 90% depending on the time when the assessee admits the undisclosed income. Eg Penalty would be levied @ 10% in case assessee admits to undisclosed income during the course of search and makes a statement under section 132(4) along with other conditions like specifying and substantiating the manner of deriving such income at the time search proceeding is going on among other conditions. The benefit of reduced rate of 10% is mostly lost as the assessee is not in a frame of mind to specify and substantiate the manner of deriving such	***In order to provide the real benefit of imposition of penalty at the reasonably reduced rate of 10% as specified in section 271AAB(1)(a), the conditions as specified in its sub clause (i) w.r.t specifying the manner in which undisclosed admitted income has been derived may be suitably amended and sub clause (ii) w.r.t substantiating the manner in which undisclosed income has been derived may be done away with.***

Sr. No	Section	Issue/Justification	Suggestion
		undisclosed admitted income at the time of search. Most assessees are under a state of shock when search is initiated at their premises and turns out to be a drain on their mental well being. The pressures exercised during the course of search makes it impossible for majority of the assessees to comply with the conditions to have the benefit of reduced arte of penalty @ 10%. Further, this provision is in the nature of settlement provision so the harsh and difficult to meet conditions like the one noted above may surely be done away with.	
210.	***Rationalization of Section 271D & 271E***	As per section 271D & 271E, if a person accepts/repays a loan or deposit, as the case may be in contravention with the provisions of section 269SS/269T, he shall be liable to pay, by way of penalty, a sum equal to the amount of loan or deposit. The penal provisions of section 271D & 271E may be restricted to maximum marginal rate of tax i.e. 30% or the slab rate applicable to the assessee instead of 100% of the amount of loan or deposit taken or repaid in violation of provisions u/s 269SS & 269T.	***To restrict the levy of penalty to the maximum marginal rate of tax i.e. 30% or the slab rate applicable to the assessee instead of 100% of the amount of loan or deposit taken or repaid in violation of provisions u/s 269SS & 269T***
211.	**Penalty for failure to furnish TDS/TCS statements- Section 271H**	The Finance Act, 2012 had inserted the penalty provisions under section 271H providing for penalty ranging from Rs.10,000 to Rs.1,00,000 for failure to furnish quarterly statements of TDS and TCS within the time prescribed	***i. Sub-section (3) may be amended to provide that penalty provisions under section 271H would not be attracted if the person proves that after paying tax deducted or collected along***

Sr. No	Section	Issue/Justification	Suggestion
		under the Income-tax law. However, such penalty would not be levied if the person has paid the taxes deducted or collected along with fee and interest to the credit of the Central Government and has filed the statements within a period of one year from the respective due dates i.e., namely, 15th July, 15th October, 15th January and 15th May, respectively for the quarters ending 30th June, 30th September, 31st December and 31st March. The TDS/TCS statements form the basis of preparation of annual tax statement in Form 26AS. The deductee is required to confirm the exact tax deducted/collected at source and remitted to the Government by verifying Form 26AS online, and thereafter pay the remaining taxes by way of self-assessment tax. However, if TDS/ TCS statements are permitted to be filed within one year of the due date prescribed for each quarter on account of non-levy of penalty, then the same would extend beyond the due date of filing return of income of that assessment year in respect of the second, third and fourth quarters. It may cause genuine hardship to the deductees as they would not be able to verify the TDS/TCS credited to their account, for payment of self-assessment tax before the due date of filing of return of income. Therefore, it is felt that penalty provisions should be attracted if	***with the fee and interest, if any, to the credit of the Central Government, he has delivered or caused to be delivered the statement referred to in section 200(3) or the proviso to section 206C(3) before the expiry of due date of filing of return of income of the previous year in which the tax was so deducted or collected, irrespective of the quarter to which the tax relates.*** ***ii. Penalty may be prescribed having regard to quantum of default and the period of delay, and no discretion may be given to the Assessing Officer in this regard. In any case, it should not exceed the tax deductible or collectible at source, in respect of which the quarterly statement has not been filed.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		such statements are not filed at the latest before due date of filing return of income. Further, Section 271H provides for the minimum and maximum penalty, within which range, penalty can be imposed. The discretionary powers provided to the Assessing Officer in levying a penalty ranging from Rs.10,000 to Rs.100000 may lead to hardship to the assessee. Discretion element in levying penalty should be removed. Penalty may be prescribed having regard to quantum of default and the period of delay. In any case, it should not exceed the tax deductible or collectible at source, in respect of which the quarterly statement has not been filed.	
212.	**Section 276D – Ambiguity and Harsh provision for failure to produce accounts and documents**	Section 276D is amended by Finance (No. 2) Act, 2014 by replacing the words "*or with fine equal to a sum calculated at a rate which shall not be less than four rupees or more than ten rupees for every day during which the default continues, or with both*" with the words "*and with fine*". The issues arising out of it and related suggestion is as below: a) With this change, the discretion of having imposed either imprisonment OR quantified fine has been done away with. Now both the imprisonment and the fine (amount not specified yet) will	**It is suggested that the said amendment in section 276D may be withdrawn since it may provide discretionary powers in the hands of Assessing Officers which in turn may lead to harassment of tax payers.**

Sr. No	Section	Issue/Justification	Suggestion
		be imposed on the specified failure under the said section. The change seems to be unduly harsh and requires reconsideration. b) Due to the said amendment, quantum of fine is not specified as earlier. This may lead to discretion in the hands of Assessing Officers which may ultimately lead to harassment of genuine and honest tax payers.	

CHAPTER XXIII

MISCELLANEOUS

DETAILED SUGGESTIONS

Sr. No.	Section	Issue/Justification	Suggestion
213.	**Signing of notices under Section 282A**	Section 282A provides for issue of any income tax notice or other document without it being signed by the requisite authority. Although, the said section has been provided in the context of computerized generation of notices and other documents, this can result in widespread misuse of powers and harassment. The assessees who are willing to receive communications through email should be given notices or any other document in this form. In such case also, the signed hard copy should be sent subsequently.	***It is suggested that the computerized notice / document should have a separate control like provision for a digital signature because these are legal / statutory documents and this aspect should specifically be incorporated in section 282A. The signed hard copy should in any case be sent subsequently. In respect of manual notices/documents the section should also provide that signatures will be mandatory.*** **(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)**
214.	**Omission of section 282B - Document Identification Number**	In order to improve the standards of service and transparency in the functioning of the Income-tax Department, a computer based system of allotment and quoting of Document Identification Number (DIN) in each correspondence sent or received by the Income-tax Department was proposed to be introduced with effect from 1st October, 2010 to facilitate tracking of documents and alleviate the taxpayers grievances. Accordingly, section 282B was inserted by the Finance (No.2) Act, 2009, to provide that every income-tax authority shall allot a computer generated Document Identification Number in respect of every notice, order, letter or any correspondence issued by him to any other income-tax authority or	***Section 282B may be reinstated and the date of implementation of DIN may be postponed till the availability of requisite infrastructure on all-India basis.*** **(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)**

		assessee or any other person and such number shall be quoted thereon. Further, it was provided that every document, letter or any correspondence, received by an income-tax authority or on behalf of such authority, shall be accepted only after allotting and quoting of a computer generated Document Identification Number. Since it is essential to have the necessary infrastructure to cover the full range of services specified in section 282B on pan-India basis, the date for implementation of the DIN was extended by the Finance Act, 2010 to 1st July, 2011. However, the Finance Act, 2011 omitted this section, on account of the practical difficulties due to non-availability of requisite infrastructure on an all India basis. It is largely opined that introduction of this provision would increase the accountability of the tax administration. For proper discharge of responsibilities, accountability is a necessary counter balance. Therefore, the provision for implementation of DIN should be reinstated.	
215.	***Section 285BA read with Rule 114E – Payment exceeding Rs 20,000 against credit***	Currently, every bank issuing credit card is required to report through its AIR, data related to all persons making payment exceeding Rs 2,00,000 through credit cards. Large number of banks operating in India issue credit cards. Reporting all such transactions through AIR	***It is suggested that the information provided through AIR w.r.t credit card payments exceeding Rs 200000 currently provided by banks be provided by Payment Gateway service providers (i.e. visa, master card, RuPay, American express) by making a suitable***

	card	becomes a time consuming task for such banks who also have to comply with other requirements like TDS returns etc. Banks have to put in lot of efforts to provide such type of data as the data needs to be compiled first as it is not readily available. Credit card transactions are done through payment gateway services provided by certain vendors. As of now, there are 4 payment gateway service providers as follows: 1. Visa 2. Mastercard 3. RuPay 4. American Express (AmEx) Since all the transactions related to credit card transactions are recorded by the above mentioned vendors, it would be much easier for them to provide the required information much accurately and timely. It would also help the department to scrutinize such information using the latest information technology tools. In case the information is called from payment gateways rather than banks, it will reduce the workload on banks and they can concentrate on their core services related to banking. Further, if some lesser number of entities can report such requisite data, it would easy for both the AIR information provider as well as the government to control and utilize the data/information.	***amendment in the Act/Rule.***

216.	**Section 285BA(3) - Information to be furnished in the Annual Information Return**	Section 285BA may appropriately be amended to require information regarding the following financial transactions involving an amount over and above specified sums: (a) Payment received by tour operators exceeding a specified sum. (b) Information regarding Government tenders where the value exceeds a specified amount. This information may be provided by the concerned Government Department. (c) Sales and purchases of shares exceeding a specified amount respectively in the case of day traders. This information can be filed by the concerned brokers who are dealing with the day traders. (d) Receipt of donations by trusts or Institutions exceeding a specified sum. Such information may be filed by the concerned trusts or institutions. (e) Educational fees paid in excess of a specified sum. The concerned educational institution should furnish the relevant information to the Department. (f) Compulsory PAN on air-ticket bookings for foreign overseas package tours Information to form part of annual information return under section 285BA. Persons booking	***The meaning of "specified financial transactions' under section 285BA(3) may be widened to include within its ambit the aforesaid transactions.*** ***Further, in respect of the afore-mentioned transactions, where the PAN is not provided by the payer, the provisions like TCS may be made applicable to the payee. Accordingly, the payee should be allowed to collect tax at an appropriate rate. Later, in case the deductee provides PAN within a specified period to the deductor, the deductee should be provided with a certificate like TCS certificate for claiming the same in the return of income. In case the deductee does not provide PAN within the specified period, the tax so collected would be added to the revenue of the Government.*** ***(SUGGESTION TO IMPROVE TAX COLLECTION)***

		international air-tickets should be required to give their PAN while booking tickets when such foreign travel is organized as foreign package tours. This step will bring many high value transactions into the data system, which can be scrutinized for expanding the tax base. Alternatively, the person who is funding the package tour may be required to give his PAN. Those persons who are not having PAN can be asked to give a suitable declaration. To begin with, this requirement may be in respect of those persons who incur expenditure on air travel above a prescribed ceiling limit. Further, the airline companies should be required to forward such declarations to their respective Assessing Officers. This information can be included as part of the return under section 285BA.	
217.	***Date of filing Annual Information return (AIR) to be preponed***	As per the current law, the due date for filing AIR information under section 285BA is 31st August of the Assessment Year. However, the due date as per section 139 for filing income tax return of majority of assessees is 31st July of the assessment year. As per the current reporting of information in the form 26SAS the data of AIR is also reflected in the 26AS of the respective assessees as long as the same is being reported by the entities covered	***In view of the fact that due date of filing AIR information (31st August) is after the due date of filing of ITR in majority of assessees (31st July) it is suggested that the due date to file AIR information may be pre-poned to say 30th June or any earlier date of the assessment year. The information reported in AIR if made available to the assessee at the time of filing of return will make the assessee more cautious of his tax***

		under section 285BA. Since majority of the ITR is filed in July and consequently Form No. 26AS is also downloaded at the same time and as result, the AIR information is not reflected at that time in Form No. 26AS. Thus, the purpose of reflecting the AIR information in Form No. 26AS to deter assessees from misreporting in ITR is completely defeated.	***obligations and enable him to report correct income.***

PART III

SUGGESTIONS RELATING TO THE PROVISIONS OF WEALTH-TAX ACT, 1956

DETAILED SUGGESTIONS

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
218.	**Taxable Wealth - to exempt motor cars**	The definition of "assets" was amended in the year 1992. The then Honble Finance Minister in his Budget speech had mentioned : *"67. The Wealth-tax Act, 1957 has far too many exemptions making its administration enormously complicated. The valuation of certain assets such as shares also presents problems, since very high market values reflecting speculative activity can lead to a heavy burden on shareholders who are long term investors. There is also no distinction at present between productive and non-productive assets. The Chelliah Committee has suggested that, in order to encourage the taxpayers to invest in productive assets such as shares, securities, bonds, bank deposits, etc. and also to promote investments through Mutual Funds, these financial assets should be exempted from wealth tax. Wealth tax should be levied on individuals, Hindu undivided families and all companies only in respect of non productive assets such as residential houses including farm houses and urban land, jeweller, bullion, motor cars, planes, boats and yatchs which are not used for commercial purposes. The Committee has further suggested that such tax should be at the rate of one*	***The amendment in the definition of "assets" was made by the Finance Act, 1992 with a view to promote investment in productive assets. In line with intention of the lawmakers, motor cars used for all commercial purposes i.e. whether in business or profession should be excluded from the definition of "assets" since they are productive assets.***

Sr. No	Section	Issue/Justification	Suggestion
		percent. , with a basic exemption of Rs.15 Lakhs. I propose to accept this recommendation and I hope this change will encourage investments in productive assets and discourage investment in ostentatious non-productive wealth." Accordingly, the definition of "assets" under section 2(ea) of the Wealth-tax Act comprises inter alia motor cars other than those used by the assessee in the business of running them on hire or as stock-in-trade. As intended by the abovementioned speech of the then Finance Minister, motor cars "used in the business of running them on hire or as stock-in-trade" were not treated as assets as they were considered as productive assets. The motor cars comprised in business assets are meant for efficient and smooth operation of the business. Since the motor cars used in business or profession directly or indirectly contribute to the productivity of the business or profession, they should be exempted from the definition of "assets" under section 2(ea) of the Wealth tax Act.	
219.	***Increment in Cash Limit***	As there is tremendous rise in the cost of living since last few years, it is therefore required to enhance the basic exemption limit of cash in hand.	***Cash in hand limit should be increased from Rs. 50,000 to Rs. 2, 50,000.***

Sr. No	Section	Issue/Justification	Suggestion
220.	***Enhancement of the Basic Exemption limit***	The basic exemption limit under the Wealth tax is Rs. 30,00,000. There has been a tremendous rise in the value of properties in last few years, it is therefore, suggested that the basic exemption limit, beyond which wealth tax is charged be enhanced.	***The basic exemption limit, beyond which wealth tax is charged, be enhanced to Rs. 1 Crore or any other higher amount as appropriate.***
221.	***Corresponding amendment in Wealth tax Act required***	The Finance (No.2) Act, 2014 amended section 276D of the Income-tax Act, 1961. Corresponding amendment is required to be made in Wealth tax Act also.	**Section 35C of Wealth-tax Act, 1957 corresponding to section 276D of the Income-tax Act, 1961 needs to be amended in the Wealth-tax Act, 1957 also.**

ANNEXURE I

S. No.	Section	Limit (A) (Rs.)	Year of introduction/ last modification	Suggestive limit as per current CII (Rs)
1.	**Workmen compensation-10(10B)**	500,000.00	April,1976 (notification no. 10969 dt. 25-6-1999)	**10,00,000**
2.	**Leave encashment-10(10AA)**	300,000.00	May,2002	**5,00,000**
3.	**Voluntary Retirement or termination-10(10C)**	500,000.00	April,2001(amended)	**10,00,000**
4.	**Entertainment Allowance 16(ii)**	Exempt least of the following: i)5000 ii)20% of Basic salary iii)amount actually received	April,2002(amended)	**12,000**
5.	**Sec: 10(14) read with Rule 2BB**			
6.	**i) Hilly Area Compensatory all.**	Rs. 800 p.m.		**3,000**
	ii) Children education allowance	Rs. 100 p.m	April, 89 (Amended)	**500**
	iii) Hostel allowance	Rs. 300 p.m		**1500**
	iv)Transport allowance	Rs. 800 p.m		**3,000**
7.	**Section 17**	**Motor car (perquisite) :** **(A) Car owned by employee:** If car is partly used for official & partly for private purpose: Actual expenditure Less: Amount of office use (ie 1800 pm if engine does not exceed 1.6 lt or Rs. 2400 pm if exceeds 1.6 ltr and Rs. 900 pm	Circular 15/2001, dated Dec 12,2001	**A)3,968/5,290**

		if chauffeur is provided) **(B) Car owned or hired by employer:** **(i) If car is partly used for official & partly for private purpose:** 1800 pm if engine does not exceed 1.6 lt or Rs. 2400 pm if exceeds 1.6 ltr and Rs. 900 pm if chauffeur is provided. **(ii)If car is partly used for official & partly for private purpose & maintenance expenses (private use) borne by employee:** Rs.600 pm if engine does not exceed 1.6 lt or Rs. 900 pm if exceeds 1.6 ltr and Rs. 900 pm if chauffeur is provided.		**B)(ii) 1,323/1,984**
		Lunch/refreshment (perk): Cost to employer in excess of **Rs.50 per meal** Less: recovered from employee	Circular 15/2001, dated Dec 12,2001	**110**
		Interest free or concessional loans: Small loans upto Rs. **20,000** in the aggregate are exempt. Loans for medical treatment specified in rule 3A are also exempt, provided the amount of loan for medical reimbursement is not reimbursed under any medical insurance scheme.	Circular 15/2001, dated Dec 12,2001	**50,000**
		Gift, voucher or token in lieu of gift: **Rs.5000**	Circular 15/2001, dated Dec 12,2001	**11,021**
8.	**Section 64(1A) [Deduction u/s 10(32)]**	Income of minor: Rs. 1500	April,1993	**5,000**
9.	**Section 80D**	Rs. 15,000 : others Rs. 20,000 : in case of senior citizen	April,2009 (substituted) Inserted by income	**20,000** **SC 40,000**

			tax (amendment) act,1986	
10.	**Section 80DD**	Rs.1,00,000: if disability is 80% or above Rs.50,000:other cases	April,2004 (inserted by finance act 1990	**i)1,00,000 ii)1,50,000**
11.	**Section 80DDB**	Rs.40,000 or actual expenditure} whichever is lower (others) Rs.60,000 or actual expenditure} whichever is lower (senior citizen)	April,2004 (inserted by finance (no.2) act 1996	**i)1,00,000 ii) 1,50,000**
12.	**Section 80GG**	i)Rs.2000 pm ii)25% of total income iii)excess of actual rent paid over 10% of total income whichever is lower	April,1998(reintroduced)	**5,000 pm**
13.	**Section 80QQB**	Rs.3,00,000 or whole of such income whichever is lower	April,2004	**5,00,000**
14.	**Section 80RRB**	Rs.3,00,000 or whole of such income whichever is lower	April,2004	**5,00,000**
15.	**Section 80TTA**	10,000.00 **All Deposits**	April,2013	**15,000**
16.	**Section 80U**	Rs.1,00,000 (severe disability ie 80% or above) Rs.50,000 (other cases)	April,2004	**i)1,00,000 ii) 1,50,000**
17.	**Section 80P**	Interest Income -Rs.20,000 Profit-Rs.50,000/Rs.1,00,000 (Consumer cooperative)	April,1968 April,1999(Substituted)	**i) 48,278 ii)3,00,000/1, 50,000**

ANNEXURE II

Contents

Introduction

The clear definition of software product R&D activities and accounting of costs associated is unavailable in current scenario. The R&D recognition is of high value for the growing number of software product startups as it acts as a channel into many government funding schemes.

Also, tax benefits which can be carried over even if the startup is at a loss or fails, which is highly likely, the founders still have an option to be acquired by a bigger company for the technology or the team. Hence, the company is incentivised to do the same because it would get the benefit of the tax deduction from losses being carried forward. This will be a huge step in creating parity between Indian product startups and the startups in US or Canada which have these advantages.

To nurture the potential of Indian Product startups it becomes highly critical to revise the policies to compete globally. The first step towards influencing government bodies to revise the policies is to articulate a concise definition of R&D for software products.

Definition of R&D for software products

(as defined by UK government)

R&D includes developments leading to:

- New or improved products, new or improved solutions, efforts to changing customer requirements, cost reduction
- Development of new technologies, solutions, architectures, integration designs, protocols, specialized components and packages
- Noticeable and quantifiable improvements to existing systems/processes affecting security, scalability and availability
- Redesign of existing systems with fundamentally new technologies or re-architecture of systems to enable use of new technologies (such as cloud)
- New or improved data processing solutions, risk management solutions, scalable engines to automate work flows, message-oriented middleware are some of the examples/ categories of new solutions developed under R&D umbrella

Definition of R&D for software products

(as defined in FASB Statement No. 2)

As general definitions from FAS 2 section 8, research is planned search or critical investigation aimed at discovery of new knowledge. Development is the translation of research findings into a plan or design for a new product or process. Development deals more with the initial application of knowledge, often to determine technological feasibility

- The translation of research findings or other knowledge into a plan or design for a new product or process or for a significant improvement to an existing product or process whether intended for sale or use. It includes the conceptual formulation, design, and testing of product alternatives, construction of prototypes, and operation of pilot plants

  - It does not include routine or periodic alterations to existing products, production lines, manufacturing processes, and other ongoing operations even though those alterations may represent improvements and it does not include market research or market testing activities

- For example, engineering activity required to advance the design of a product to the point that it meets specific functional and economic requirements and is ready for manufacture

- Efforts to develop a new or higher level of computer software capability intended for sale (but not under a contractual arrangement) would be a research and development activity

- Developing or significantly improving a product or process that is intended to be sold, leased, or otherwise marketed to others is a research and development activity. Similarly, developing or significantly improving a process whose output is a product that is intended to be sold, leased, or otherwise marketed to others is a research and development activity

- All costs of planning, designing, and establishing the technological feasibility of a computer software product would be research and development costs

- Research and development activities should be considered incomplete until technological feasibility has been objectively established and that research and development activities in the software product process include:

  - All planning and designing (both product design and detail program design

  - Any coding and testing necessary to establish technological feasibility

- All software creation costs incurred prior to establishing technological feasibility are to be charged to expense when incurred as research and development costs

- The research and development classification of Statement 2 would apply only to the costs of designing the product and determining the availability of proven technology for product development

- All software creation costs incurred subsequent to establishing technological feasibility are capitalized and reported at the lower of cost or net realizable value

- The technological feasibility of some products cannot be established with completion of the detail program design because high-risk development issues remain. Resolution of all uncertainties related to identified high-risk development issues is therefore included as a requirement for establishing technological feasibility

- Both establishing technological feasibility of the software component and completing research and development activities for the hardware component are necessary for beginning of capitalization of software costs

Summary of FASB Statement No. 2: This Statement establishes standards of financial accounting and reporting for research and development (R&D) costs. This Statement requires that **R&D costs be charged to expense when incurred**. It also requires a company to disclose in its financial statements the amount of R&D that it charges to expense.

Qualification as R&D Costs

(As per UK government)

- Salary costs of technical and other employees directly involved in R&D work, and of those indirectly involved in eligible R&D projects
- Costs of consumable items employed in the R&D process
- 65% of contract staff costs
- Cost of software licences, power and fuel used in the R&D project
- R&D subcontracted to individuals or universities can be claimed but not if sub contracted to a corporate third party entity
    - Specifically for small and medium enterprises, R&D relief can be claimed for 65% of the costs of subcontracting to third party

Activities that cannot be classified as R&D

- Statement 2, with its mandatory expensing requirement, extends a range of routine production activities to the classification of research and development because it assigns the bulk of computer programming activities (detail program design, coding, and testing). Certainly, much research and development type activity does take place in the computer software industry. However, most detail program design and coding activities are not discovery or design-oriented in the sense of Statement 2, they are just the meticulous execution of a plan with skilled employees applying proven methods as in any production process
- Costs incurred to purchase computer software are not research and development costs unless the software is for use in research and development activities

Capitalization of R&D costs

- Increasing the capitalization rates reduce operating expenses and lead to better EPS results in a tough quarter, while during strong quarters management teams recognize a little bit more R&D expenses to balance things back out

- Companies that provide software as a service will capitalize R&D expenses associated with the software that supports those SaaS efforts as they are developing software to be used internally, and it is only the service that is being provided to the customer

- Change in the ASC rules causes some software companies to have to capitalize a portion R&D expenses

The old rule: ASC 985-20 guided majority of software companies

- ASC 985-20. ASC 985-20 states that R&D costs must be expensed on the income statement until "technological feasibility" is established. Technological feasibility is defined as completion of all planning, designing, coding, and testing necessary foe the product to be produced to meet its designed functions, features, and performance. Then the company may capitalize the remaining costs until the product is released to market
- By capitalizing these costs and amortizing them over a (subjective) time period, companies are able to boost their EPS by spreading R&D costs incurred in a quarter over a long period of time. The capitalization rate could periodically be changed, allowing management to subjectively fluctuate the levels
- In late 1990's, many software companies chose to move to a practice of expensing 100% of R&D costs as the time between the establishment of technological feasibility and commercial release of software was minimal. It resulted in insignificant or no capitalization of internally developed software costs.

The new rule: ASC 350-40 impacts companies offering SaaS

- However, as per the new rule, companies with SaaS model have the software developed internally and is never available as a product to be acquired or purchased, it is delivered as a service (Software-as-a-*Service*)

- Majority of the new age companies capitalize some portion of the R&D budget. The largest amounts of capitalization are observed from SaaS (or Infrastructure as- a-Service (IaaS)) companies such as Akamai, RackSpace, Verisign, and Neustar
  - Since the software is used internally for the company to deliver that service, they are covered by ASC 350-40
- According to the new rule, ASC 985-20, the length of time you may amortize is the greater of:
  - The ratio of revenue in the current period to the total estimated revenue of the product over its entire life or
  - The estimated economic life of the product

- For example,
    - if a company decides that the revenue over the life of the product is expected to be \$50M but only \$10M in revenue in the current period, they can amortize the R&D costs over a 5-year period (\$50M/\$10M) at \$2M per year (\$10M in capitalized costs/5-year period)
    - Holding the current revenue constant at \$10M but raising the expected future revenue to \$60M or \$75M means that they can amortize over a 6 and 7.5 year, respectively
    - Similarly, extend the estimates of the useful life of the product, the amount amortized in each period is reduced. By extending the estimated useful life of the product from, 2 years to 3 years one can reduce the annual amortized R&D costs of the product by 33% from \$5M per year (\$10M of capitalized costs/2 year economic life) to \$3.3M per year (\$10M of capitalized costs/3 year economic life)
    - A company has some subjectivity in its estimations, and the effects have a direct impact on how much the company realizes in expenses on its income statement
- Example - EMC
    - Research and development ("R&D") costs are expensed as incurred
    - R&D costs include salaries and benefits, consultants, facilities related costs, material costs, depreciation and travel
    - Software development costs incurred subsequent to establishing technological feasibility through the general release of the software products are capitalized
    - Technological feasibility is demonstrated by the completion of a detailed program design or working model, if no program design is completed
    - Capitalized costs are amortized over periods ranging from eighteen months to two years which represents the products' estimated economic life
- Example – Microsoft
    - It must expense all costs until it has completed the activities (planning, designing, coding, and testing) necessary to establish that it can produce the product to meet its design specifications
    - It should capitalize subsequently incurred costs and amortize them to current and future periods
    - Software purchased for alternative future uses can be capitalized

- The rule applies to only the development of software that is to be sold, leased, or otherwise marketed to third parties

- **ASC 350-40 defines three stages of internal use software development, which are preliminary project, application development, and post-implementation/ operation**

ASC 350-40 treatment of R&D cost

Stage	Preliminary Project	Application Development	Post-Implementation/Operation
Activities within stage	Concept formulation	Design path	Training
	Evaluation of alternatives	Coding	Maintenance
	Final selection	Installation	
		Testing	
Treatment of costs	Expense as incurred	Capitalize	Only capitalize costs associated with upgrades or enhancements, otherwise expense as incurred

- **An example following the new rule:**
    - On page 7 of its 2012 10K, Akamai says, "In addition, for the years ended December 31, 2012, 2011, and 2010, we capitalized $50.6 million, $40.4 million, and $31.1 million, respectively, of external consulting and payroll and payroll-related costs related to the development of internal-use software used by us to deliver our services and operate our network." Akamai considers the software it develops that is the Akamai network to be for internal use in order for the company to deliver its content delivery network (CDN) and related services. That is why it falls under the newer rule

Accounting for R&D costs

- All costs incurred to establish the technological feasibility of a computer software product to be sold, leased, or otherwise marketed are research and development costs. Those costs shall be charged to expense when incurred as required by FASB Statement No. 2, Accounting for Research and Development Costs

- For purposes of this Statement, the technological feasibility of a computer software product is established when the enterprise has completed all planning, designing, coding, and testing activities that are necessary to establish that the product can be produced to meet its design specifications including functions, features, and technical performance requirements. At a minimum, the enterprise shall have performed the activities in either (a) or (b) below as evidence that technological feasibility has been established:

- If the process of creating the computer software product includes a detail program design:
  - The product design and the detail program design have been completed, and the enterprise has established that the necessary skills, hardware, and software technology are available to the enterprise to produce the product
  - The completeness of the detail program design and its consistency with the product design have been confirmed by documenting and tracing the detail program design to product specifications
  - The detail program design has been reviewed for high-risk development issues (for example, novel, unique, unproven functions and features or technological innovations), and any uncertainties related to identified high-risk development issues have been resolved through coding and testing.
- If the process of creating the computer software product does not include a detail program design with the features identified in (a) above:
  - A product design and a working model of the software product have been completed
  - The completeness of the working model and its consistency with the product design have been confirmed by testing

Production Costs of Computer Software

- Costs of producing product masters incurred subsequent to establishing technological feasibility shall be capitalized. Those costs include coding and testing performed subsequent to establishing technological feasibility. Software production costs for computer software that is to be used as an integral part of a product or process shall not be capitalized until both:
  - Technological feasibility has been established for the software and
  - All research and development activities for the other components of the product or process have been complete
- Capitalization of computer software costs shall cease when the product is available for general release to customers. Costs of maintenance and customer support shall be charged to expense when related revenue is recognized or when those costs are incurred, whichever occurs first

Amortization of Capitalized Software Costs

- Capitalized software costs shall be amortized on a product-by-product basis. The annual amortization shall be the greater of the amount computed using:
    - The ratio that current gross revenues for a product bear to the total of current and anticipated future gross revenues for that product or
    - The straight-line method over the remaining estimated economic life of the product including the period being reported on. Amortization shall start when the product is available for general release to customers

Disclosures

The disclosure requirements for research and development costs in Statement 2 apply to the research and development costs incurred for a computer software product to be sold, leased, or otherwise marketed

Conclusion

It is critical that the government works with the industry and facilitates the growth of the software product startups in India. To realize the potential opportunities, startups need to be able to define clear value and enhance their attractiveness in order to get funding and competitive valuations in the global market.

ABOUT ICAI AND DIRECT TAXES COMMITTEE OF ICAI

The Institute of Chartered Accountants of India (ICAI) is a statutory body established under the Chartered Accountants Act, 1949 to regulate the profession of Chartered Accountants in India. During its more than six decades of existence, ICAI has achieved recognition as a premier accounting body not only in the country but also globally, for its contribution in the fields of education, professional development, maintenance of high accounting, auditing and ethical standards. ICAI now is the second largest accounting body in the whole world.

The Council of ICAI functions through various Standing and Non-Standing Committees. Direct Taxes Committee is one of the most important non-Standing Committee's of ICAI. The main function of the Direct Taxes Committee is to examine the direct tax laws, rules, regulations, circulars, notifications, etc., which may be enacted or issued by the Government from time to time and to send suitable memoranda containing suggestions for improvements in the respective legislation. The Direct Taxes Committee is actively involved in the process of formulation of budget by offering pre-budget and post-budget suggestions/comments to simplify tax laws and their administration for the purpose of making it more responsive to tax payers.

Direct Taxes Committee
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
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