PRE-BUDGET MEMORANDUM 2013

Direct Taxes

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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 - 2013 on Direct Taxes to the Government. The memorandum contains suggestions for the consideration of the Government while formulating the tax proposals for the year 2013-14.

1.2 Since Direct Taxes Code Bill, 2010 has already been introduced in the Parliament; the ICAI has not given suggestions which require significant policy changes. The suggestions are given under following heads:-

I. Suggestions to improve tax collection.

II. Suggestions to reduce/minimize litigations

III. Suggestions for rationalisation of the provisions of direct tax laws.

IV. Suggestions for removing administrative and procedural difficulties relating to Direct Taxes

V. Suggestions relating to Wealth Tax

EXECUTIVE SUMMARY

I. SUGGESTIONS TO IMPROVE TAX COLLECTION

1. Information to be furnished in the Annual Information Return

In respect of the transactions (mentioned in detailed memorandum), 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 with the specified period, the tax so collected would be added to the revenue of the Government.

2. TDS in respect of maturity of insurance policies which are taxable under section 10(10D)

In respect of maturity of insurance policies which are taxable under section 10(10D) it *is suggested:*

(a) that a provision relating to TDS should be inserted in Chapter XVIIB to cover such payments where the exemption under section 10(10D) is denied to the recipient of income from insurance companies.

(b) that where the premium paid is above 10% 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%/20% as the case may be, of capital sum assured.

c) 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.

3. **TDS under Section 194A-Interest payments to NBFC**

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 and also, provisions of Tax collection at source be made applicable to NBFC's in respect of such interest.***

4. **Re-introduction of TDS u/s 194C on Transporters:**

It is suggested that provisions relating to TDS on transporters u/s 194C may be reinserted by appropriately amending section 194C.

5. **Real estate transactions – Uniformity and reduction in stamp duty rates**

In order to reduce the wide variations in the rates of stamp duty the Central Government should take the initiative and bring about a consensus among the State Governments for prescribing uniform stamp duty rates in accordance with a general agreement between the State Governments and the Central Government. This will go a long way in simplifying capital gains taxation and would also encourage disclosure of the correct consideration received from the transfer of capital assets.

6. **Verification of all income-tax returns**

In order to thoroughly check the filed returns and cross-verified with the information collected through AIR and other sources by the Department, the same may be out-sourced preferably to the professionals understanding the law better and who are in a position to identify the grey areas. This will be just on the line of desk review presently being carried out by the Excise Department. This process once started will ensure better voluntary compliance as every taxpayer filing the return would be aware that the return being filed would be subject to a verification process and those persons who are filing income tax returns but are not declaring their income properly cannot afford to take the liberty of making adjustments which are legally permissible.

II. SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS

1. Leave Travel Concession/Assistance -Replacement of "Calendar year" by "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)

2. "Annual receipts" under section 10(23C)

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.

3. Section 32 - Depreciation in case of slump sale

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. Section 32 may be amended to clarify the legal position.

4. Additional Depreciation u/s 32(1)(iia)

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.

5. **Section 35AD-Deduction in respect of expenditure on specified business**

a) *(i) 'New Plant' and 'newly installed capacity in an existing plant' may be defined objectively to ensure clarity and avoid litigation.*

(ii) The threshold for expansion of existing plant may be provided on the lines of 'substantial expansion' as defined for the purposes of sections 80-IC and 80-IE.

b) *In order to prevent unnecessary litigations, the term "agricultural produce" may be clearly defined.*

6. **Amendment in Section 40A(3)**

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 40A(3) of the Income-tax Act, 1961.

7. **Section 50C**

It is suggested that the provisions of section 50C should be reviewed with reference to the following:

- *In case where 50% or more has been paid as registration money, the date of agreement may be considered for the purpose of valuation and not the date of actual registration of the property.*
- *In order to avoid litigation, it may be clarified that in respect of the assets which are invested into the common pool of the partnership whether section 56 or section 50C, would be applicable.*
- *Section 50C(2) provides that subject to fulfillment of certain conditions, the Assessing officer may refer the valuation of capital asset to the Valuation officer. It is suggested that the word "may" be substituted with "shall".*

8. **Exemption under section 54 & 54F**

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.

b) *It is suggested that the inconsistency in the sub-section(2) and proviso to the sub-section(1) and may be removed to avoid unnecessary litigations.*

9. Section 94A-Special measures in respect of transactions with persons located in notified jurisdictional area

Section 94A and/or section 206AA may be suitably amended to clarify that section 94A would prevail in case tax is to be deducted with respect to any payment to a person located in a NJA.

10. Section 115JB-Minimum Alternate tax

(a) *Clause (i) of Explanation 1 to section 115JB may be amended as follows-*

"(c) 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 u/s 36(1)(viia))"

(b) *Clauses (b) and (e) of Explanation 1 may be deleted with effect from 1st April, 2012.*

11. Special provisions for payment of tax by certain persons other than companies-section 115JC

It is suggested that the provisions should be amended appropriately to clarify that the specified persons are entitled to set-off AMT credit even when their adjusted total income falls below 20 lakhs in the year of set-off.

Further, even if the tax payer has discontinued the business, he should be allowed to set-off AMT credit, in line with the set-off of business losses allowed even after discontinuance of business.

The benefit of carry forward and set-off of AMT credit should be permitted also in case of conversion of private limited, sole proprietorship to LLPs and vice versa. Corresponding amendment should also be made in section 47(xiiib).

12. Section 147 read with section 149

(i) It is suggested that the Explanation proposed to be inserted after section 149(3) be deleted so that effect of this provision is made applicable with effect from a prospective date.

Alternatively, it may be provided that assessments for A.Y.2007-08 or thereafter may be reopened on the basis of the amended provisions of section 149(3).

(ii) Reassessment proceedings initiated for a period prior to six years should be restricted to only income arising out of assets located outside India.

(iii) Further, appropriate amendments may be made to address the genuine hardship which assessees who are subject to presumptive tax provisions may face on account of such provision.

(iv) The term "financial interest" may be defined to ensure clarity.

(v) Giving way forward for the accountability of the revenue, the provisions of section 147 deeming income to have escaped assessment in the hands of a resident having an asset located outside India may be replaced by provisions vesting the onus on the Assessing Officer to provide that the income from such foreign asset has actually escaped assessment.

13. TDS on Fixed Deposit interest:

The taxability of interest income on FDR in case of FDR's in Joint names may be specifically provided for. The old CBDT Circular No. 256, dated 29.05.1979 be revised appropriately.

14. Section 206AA – Requirement of furnishing of PAN for deduction of tax at source.

A proviso should be inserted in section 206AA to the effect that the provisions of this section shall not be applicable in respect of the assessee who is not required to obtain Permanent Account Number under section 139A.

15. Hardship arising out of the Apex Court's decision in *Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC)*

(i) *Appropriate amendments may be made to enable the assessee to get relief during the assessment proceedings by methods otherwise than by way of filing a revised return.*

(ii) *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.*

16. Introduction of Advance ruling for residents

It is suggested that the same scheme should be introduced for resident's tax purposes also. In case of residents also, it has been observed that assessee takes one interpretation of law and executes the transactions which is denied by the department causing hardship of paying taxes which he thought is not actually payable.

Further, in order to avoid unnecessary application, the scheme can be so framed that only transactions involving certain threshold of investment can be applied or fee for advance ruling can be fixed in a way that small and unnecessary applications are avoided.

17. Clarification regarding TDS on Commission to a partner under section 194H read with section 40(b)

A clarification should be provided to the effect that Commission under section 194H would not include commission paid by the partnership firm to its partners.

18. **Signing of notices under Section 282A**

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. In respect of manual notices/documents the section should also record that signatures will be mandatory applicable.

19. **Applicability of Education Cess and Secondary and Higher Education Cess - Double taxation Avoidance Agreement**

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.

20. **Section 194LC- Income by way of interest from Indian Company**

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 "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"

21. **Delay by Assessing Officer in giving Order giving effects to Orders of higher Appellate authorities, and also delay in issuing refunds arising out of such Order giving effects:**

It is suggested that time limits for issuing the Order giving effects and Refund Orders should be stipulated in the Act and 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)

22. **Initiation of penalty proceeding in every assessment orders:**

    (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 for pending cases, to reduce litigations, it is suggested that a scheme on the lines of Kar Vivad Samadhan Scheme (KVSS) may also 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.

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.

23. Section 132 - Search and seizure

a) An *amendment is required under section 132B clarifying the amount of cash seized to be permitted for adjusting against the advance tax liability of the assessee where specific request is made for such adjustment. This would help in early realization of tax, avoid litigation and save the assessee from mandatory interest charged under sections 234B and 234C.*

b) *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 is required to be given to the authorities in the matter since they are not permitting such adjustment for want of clarity.*

c) *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.*

24. Desirability to bring back block assessment system

The continuance of earlier block assessment procedure is desirable. The above approach would assist in

(a) reducing controversy over the year of taxability of income;

(b) providing suitable incentive for a person to make the necessary disclosure without indulging in litigation and

(c) removing administrative difficulties such as multiplicity of appeals, bunching together of assessments etc.

25. Section 80IA – Unit-wise deduction should be allowed

A specific clarification/provision should be made in section 80 IA itself to provide that deduction under section 80IA is 'UNIT SPECIFIC'. For each unit deduction under section 80IA should be separately calculated.

26. Section 245A-Settlement Commission

(a) *It is suggested that (i) Proviso of section 245(b) along with the Explanation (i) be omitted.*

(b) *In order to further reduce litigations, it is suggested that the said limit of Rs. 10,00, 000 may be reduced to Rs. 5,00,000.*

III. SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS

1. Books of accounts in electronic mode-Section 2(12A)

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 available only in digitized form.

The permission to maintain the books in electronic form should be given to companies beyond a 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.

2. **Section 2(15)- Definition of charitable purpose**

(a) *Rs.25 lakhs may be the basic exemption limit, and receipts in excess of Rs.25 lakhs may be subject to tax at maximum marginal rate after deducting the related expenditure.*

(b) *A clarification by way of Explanation may be inserted to clarify that receipts of such nature should be not be considered for determining the limit of Rs.25 Lakhs.*

(c) S*uitable amendment may be made in section 11 to provide relaxation to genuine cases by considering such application of income outside India as application towards charitable purpose. This provision however, may be made subject to some approval mechanism.*

(d) *Section 10(23C) should be amended to specifically exclude 'corpus donations' from the requirement of mandatory application of income by such trusts/ institutions.*

(e) *It is suggested that a one-time scheme may be framed or a time slot may be allowed so that such unregistered charitable organisations may obtain registration u/s 12AA/12A with condonation of delay.*

3. **Amendment by the Finance Act, 2012 in sections 2(19AA)(iv), 47(vii) and 49**

(*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).

4. **Amendment by the Finance Act, 2012 in Section 9(1)**

(a) ***It is suggested that Explanations 4 and 5 to section 9(1)(i) and other consequential amendments in sections 2(14) and 2(47) may be given effect to prospectively, i.e. with effect from A.Y. 2013-14, to avoid undue hardship to tax payers consequent to which penalty proceedings may be attracted for –***

a. ***non-payment of tax by the person whose income is deemed to accrue or arise in India and***

b. ***non-deduction of tax at source and disallowance of expenditure on account of non-deduction of tax at source in the hands of the person on whom the obligation to deduct tax at source is vested on account of the retrospective amendment.***

(i) Further, it is suggested that the words "derives directly or indirectly, its value substantially from the assets located in India" may be subject to different interpretations. The scope of "indirectly" may be defined to clarify the true intent of law. Further, the term "substantially" also need to be defined by specifying exact parameters like a specific percentage, as in section 2(32) of the Income-tax Act, 1961 or clause 314(185) of the Direct Taxes Code Bill, 2010 to avoid scope for any disagreements / litigation.

(ii) Furthermore, the liability to tax in India should be restricted to the extent of value derived from the assets located in India and not the value of the entire transaction.

(iii) The definition of royalty under section 194J may be delinked from the definition of royalty in section 9(1)(vi). There should be an independent definition of royalty under section 194J, since otherwise purchase and sale of software may fall within the definition of royalty, whereas the intent of proposed royalty definition is cover exploitation of intangible assets.

(b) *It is suggested that these Explanations should be inserted with effect from 1.4.2013 and made applicable from A.Y.2013-14 onwards to avoid undue hardship to tax payers consequent to which penalty proceedings may be attracted for-*

(i) non- payment of tax by the person whose income is deemed to accrue or arise in India and

(ii) non-deduction of tax at source and disallowance of expenditure on account of non-deduction of tax at source in the hands of the person on whom the obligation to deduct tax at source is vested on account of the retrospective amendment.

(c) *It is suggested that the proposed Explanation 6 to section 9(1)(vi) may be suitably re-worded.*

5. **Section 10(13)- Payment from approved superannuation fund**

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 resignation, to the extent the same is already taxed at the initial contribution stage under Section 17(2)(vii).

6. **Section 10(23FB)**

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."

7. **Income of minors - to increase exemption limits under section 10(32)**

It is suggested that this should be raised to at least Rs.10,000/- for each minor child.

8. **Section 10(47) and section 115A(BA)-Income of infrastructure debt fund**

(i) A condition may be prescribed that the infrastructure debt fund notified under section 10(47) should be denominated in Indian Rupees.

(ii) Any distribution from the debt fund to the non-resident investors, whether characterized as interest or not, may be subjected to the concessional tax treatment.

(iii) *The benefit of concessional rate of tax of 5% on income received from such fund may be extended to residents also.*

9. **Re-introduction of standard deduction for salaried employees:**

The standard deduction under section 16 should be restored.

Alternatively,

Since the cost of living has increased manifold, ever since the limit of Rs. 800/- p.m. and Rs. 15000/- p.a. w.r.t. transport allowance and medical reimbursement, the said limits may be increased to Rs. 5000/- p.m. and Rs. 50,000/- p.a. respectively.

10. **Deduction to salaried assesses- Payment for notice period**

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.

11. **Medical reimbursements for 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.

12. **Perquisite of rent free accommodation provided as a campus accommodation where factory is located in remote areas**

It is suggested that where accommodation is provided by the employer in factory campus and staying there is a precondition of employment, such accommodation should be valued at NIL.

13. **Taxing of ESOPS:**

It is suggested that the taxation of ESOPs as perquisite at the time of allotment / exercise should be avoided for the reasons explained above. If at all it is taxed, it should be based on the fair market value i.e. the market price prevailing on the date of grant. Any

subsequent appreciation should only be taxed at the time of realization/sale as capital gains.

14. **Valuation of Company owned Accommodation provided to employee:**

It is suggested that in case of company owned accommodation the concept of fair value be introduced to ensure that the right amount of perquisite is determined for income tax purposes.

15. **Deduction u/s 24(a) of the Income-tax Act, 1961**

a) *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"*

b) 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".

16. **Interest on borrowed Capital**

It is suggested that the deduction in respect of interest on housing loan in case of self occupied property should be increased from Rs. 1.5 Lakhs to Rs. 3 Lakhs.

17. **Depreciation**

(1) **Depreciation on books used by professionals**

It is suggested that the depreciation on books purchased by professionals be restored to its original rate of 100 per cent.

(2) **Restoration of 100% allowance for small items of assets**

It is suggested that the proviso should be reintroduced, with a condition that the same would not apply where the total value of such additions during the year exceeds 2% of the written down value of the block of depreciable assets or Rs.1,00,000/-, whichever is higher. Such a provision will act as a check on the temptation to abuse, but at the same time, will serve the purpose of simplicity. A similar provision exists under the Companies Act, 1956.

18. Incentive for installation of Solar Power generating devices

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. A deduction of the amount so invested may also be given to Individuals and HUFs who install such devices including salaried class.

19. Capital raising expenses

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.

20. Amortization of Capital expenditure

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.

21. Deduction for payments under Voluntary Retirement Scheme –Section 35DDA:

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…………..*"

22. Due date for crediting the contribution of employees to the respective fund–Section 36(1)(va) read with Section 2 (24)(x)

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.

23. NPA calculation for NBFCs

NBFCs may also be include in Sec. 36(1)(viia) so that the benefits are also extended to infrastructure financing NBFCs

24. **Section 36(1) (viii)**

It is suggested that Asset Reconstruction Companies (ARC) should be included in the definition of specified entity to be eligible for deduction under section 36(1)(viii).

25. **Amendment by the Finance Act, 2012 in Section 40 and Section 201**

The provisions of section 40(a)(ia) and section 201(1) may be amended retrospectively with effect from 1.4.2005 in order to clarify the real intent of law **and to remove hardship, thereby reducing further litigations.**

The later part of the second proviso may be suitably amended to provide that it shall be deemed that the assessee has deducted tax **_in the relevant previous year_** ***and paid the tax on such sum on or before the due date of furnishing the return of income.***

26. **Provision for leave salary – Section 43B(f)**

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.**

27. **Amendment in Section 43D and Rule 6EA with reference to Non-Scheduled Co-op Banks:**

    (i) The words "or Non-Scheduled Banks" be inserted in the section 43D of the Income-tax Act, 1961 and Rule 6EA of the Income-tax Rules, 1962 be amended suitably w.e.f. 01.04.2006 and relevant to A.Y. 2007-08.

    (ii) In Rule 6EA (a)(i) the words 'six months' be replaced by "three months".

28. **Section 44AD-Presumptive Income – Some Issues**

    a) Maintenance of Books of Account

    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:

"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

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 businesses are as under:

a) Business I (Retail trade of cloth)	RS. 30 Lakhs
b) Business II (Manufacturing of tyres)	Rs. 25 Lakhs
c) Business III (Running a sweet shop)	Rs. 35 Lakhs
d) Business IV (Advertising agency)	Rs. 15 Lakhs

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.***

c) ***Applicability of section 44AD***

a) The provisions of sub-section (6) of section 44AD should be made effective from A.Y.2013-14, since the persons earning income in the nature of commission or brokerage and persons carrying on agency business who had opted for presumptive taxation for A.Y.2011-12 and A.Y.2012-13 in the absence of specific exclusion in the definition of "eligible assessee" or "eligible business" would face genuine hardship on account of such retrospective amendment.

b) Further, instead of inserting sub-section (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.

29. Conversion of stock-in-trade into capital asset

It is suggested that the said transaction should be regarded as a transfer and consequently section 2(47) may be amended. A section may be drafted on the lines similar to section 45(2) to provide that the difference between the fair market value on the date of conversion and the cost price or market price of stock in trade which has been considered for the purpose of valuation of closing stock is to be deemed as business profits to be taxed in the year in which capital asset is sold. The fair market value on the date of conversion should be deemed as cost of acquisition of the capital asset.

30. Limited Liability Partnership (LLP)

(a) Merger and Amalgamation of Limited Liability Partnership to be Revenue Neutral.

It is suggested that similar provision need to be inserted for LLP allowing merger and demerger and amalgamation to be revenue neutral.

(b) Transfer of capital asset by a Limited Liability partnership (LLP) to Private Company or unlisted public company on account of conversion

Any transfer of capital asset or intangible asset by LLP to a private company or unlisted public company due to conversion subject to fulfillment of certain conditions, may also not be considered as transfer for the purpose of capital gains.

(c) **Taxability on conversion of firm into LLP-Clarification required**

I*t 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.*

(d) **Consequential amendment required in section 47(xiiib)**

The limit of total sales, turnover or gross receipts in the business of a company for availing the benefit under section 47(xiiib) on conversion to an LLP may be suitably increased to Rs.1 crore, in line with the limits in section 44AB and section 44AD. In fact, 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 47(xiiib).

31. Section 49 - Cost of acquisition with reference to certain modes of acquisition

Section 49(1)(iii)(e) to be amended to include reference to demerger which is exempt under Section 47(vib) and (vic).

32. Section 50C - Fair Market Value

It is suggested that for the purpose of Section 50C, Fair Market Value should be the circle rate as on the date of Banakhat (date of agreement to sell) if the Banakhat is a registered document (and not the circle rate as on the date of registration of final sale deed) and the actual value as per the sale document, whichever is higher.

33. Forfeiture of Advance Money u/s 51

In order to provide relief to the assessee, any forfeited money in respect of any long term capital asset should be allowed to be deducted after Indexation, if any, from date of forfeiture to the date of sale.

34. ***(i) Section 54- Investment in residential house***

It is suggested that a provision be introduced whereby acquisition of more than one house be eligible for exemption u/s 54.

(ii) Certification of deductions claimed under section 54, 54F, 54EC etc

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 if the claim.

35. Section 54EC- Capital gain not to be charged on investment in certain bonds

a) ***As the financial year may differ from assessee to assessee, it is suggested that the term "financial year" be substituted with the term "previous year".***
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.***

36. Exemption under Section 54 & 54F

It is suggested that the section 54F(1) may be re-worded as follows:

"In the case of an assessee being an individual or a HUF the capital gain arises from the transfer of any long term capital asset, not being a residential house and the assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period one year before or three years after that date constructed, a residential house, the capital gain shall be dealt with in accordance with the provisions of this section."

37. Capital gain on transfer of residential property to be taxed in certain cased-Section 54GB

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 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.*

38. Definition of the term relative- Section 56(2)(vii)

(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".*

(iii) *The application of the provision should also be extended to the relatives of the members of HUF.*

39. Exclusion of rights shares/ fresh issue of shares from the ambit of section 56 (2)(viia)

It is suggested that rights shares and fresh issue of shares be excluded specifically from the ambit of these provisions.

40. Valuation of shares- Section 56(2)(viib)

(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.

41. Onus of proof in respect of cash credits consisting of share application money, share capital, share premium etc-Section 68

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.

42. Tax incentives under Section 72A in respect of Amalgamation or Demerger (to be extended to all businesses):

a) *The benefit of section 72A may be extended to all businesses including financial services, entertainment/ sports, information technology (IT) and IT enabled services.*

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 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.

43. Section 72-Carry forward and set off

It is suggested that the brought forward business loss may be allowed to be set off against such short-term capital gain in subsequent assessment years.

44. Deduction for Education expenses

It is suggested that the deduction should be available for purchase of all kinds of books, CD's, computers, internet connection etc. the deduction should also be available in

respect of part time course for vocational training etc by all universities and approved institutions.

45. **Introduction of new section for deduction in respect of PPF:**

It is suggested that a separate section may be introduced for allowing deduction in respect of amount invested in Public Provident Fund upto Rs. 1 Lakh.

46. **Preventive health check up-Section 80D**

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.

47. **Increase in limit of deduction u/s 80DD & 80U**

It is suggested that the limit specified in section 80DD & 80U be enhanced suitably.

48. **Deduction u/s 80G - to liberalise the exemptions by enhancing ceilings specified**

It is suggested that the ceiling of 10% on gross total income be enhanced appropriately.

49. **Section 35(1)(ii) and 35(1)(iii)- Removal of discrimination u/s 80GGA**

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.

50. **Benefit u/s 80IA shall be allowable to the resulting / amalgamated company in case of demerger / amalgamation**

The original position, under which the transferee company enjoys the benefit in case of a demerger or amalgamation, may be reinstated.

51. **Deduction in respect of royalty on books – Section 80QQB**

a) 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.

b) In order to ensure that the deduction really benefits those for whom it is intended, it is suggested that the benefit should not be restricted to income derived from the exercise of a profession, but should be available to any author of such books.

52. Donations made of any sum exceeding ten thousand rupees in cash- sections 80G and 80GGA

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.

Further, since deductions under section 80GGB and 80GGC are also in respect of donations, the above limit should be made applicable in respect of such contributions to political parties and electoral trusts as well, to dissuade cash payments.

53. Deduction in respect of interest on deposits in savings account- Section 80TTA.

Interest on time deposits may also be included within the scope of section 80TTA.

54. Revival of section 80VV – Deduction for professional fee

It is suggested that deduction for such fees upto a sum of Rs. 25,000 may be allowed by re-introducing a section under Chapter VI-A on the lines of earlier Section 80VV.

55. Double taxation avoidance agreements- Section 90 and 90A

It is therefore suggested the aforesaid amendment should be deleted.

56. Meaning of International Transaction - Section 92B.

(i) It is suggested to substitute the definition of "international transaction" prospectively w.e.f. 1.4.2013 so that persons who have entered into such transactions in the past, which are now affected due to the proposed changes, do not face undue hardship on account of penal consequences which are attracted due to non-maintenance of prescribed books of account and non-furnishing of report of an accountant and any other associated requirement.

(ii) ***Transfer Pricing provisions should not be made applicable to marketing intangibles, inter corporate guarantees etc unless a payment is made.***

(iii) ***Due to lack of comparables in case of intangibles, appropriate safe harbor provisions may be introduced. Though the enabling provisions for making rules for safe harbour have been conferred on the Central Board of Direct taxes three years back vide Finance (No.2) Act, 2009, the rules in this regard are yet to be notified. It is suggested that the rules may be notified at an early date so that the tax payers are able to avail the benefit intended by the legislature.***

(iv) ***Further, the requirement of obtaining a Valuation Report from an accountant may also be provided for.***

57. Meaning of specified domestic transactions- Section 92BA

(1) ***Transfer pricing provisions should not be made applicable in respect of domestic transactions, particularly in respect of transactions in the nature of expenditure under section 40A(2). In any case, payment of director's remuneration in compliance with Schedule XIII of the Companies Act, 1956 and partners remuneration within the limits prescribed under section 40(b)(v) should not be included in the scope of "specified domestic transaction". In case, such provisions are to be made applicable to domestic transactions, the threshold limit may be increased to atleast Rs.50 crores in respect of transactions covered under section 40A(2)(b).***

Alternatively, the amount of expenditure allowed as deduction in the hands of one enterprise as per the arm's length price determined should be treated as income of the other enterprise, and vice versa. Also, Advance Pricing Agreements should apply for domestic transactions as well.

(2) ***The Finance Act, 2012 has made transfer pricing provisions applicable to specified domestic transactions. As per the amendment, the existing Transfer pricing provisions would be applicable to domestic transactions covered by sections 40A(2), 80-IA(8)/(10) and 10AA and that domestic concerns would have to comply with the rigours of Rule 10D. This would mean that the provisions of section 92CA(1) w.r.t. reference to the TPO would also apply. The existing***

administrative machinery of Transfer Pricing (i.e. TPO and DRP) are already over burdened and any further workload without a corresponding increase in the infrastructure will jeopardise the quality of the work.

(3) The penalty for non-disclosure in the certificate by Accountant should be much lower and not 2% of the value of international transaction.

58. Computation of Arm's length price- Section 92C

It is suggested that as it is possible that there may be more than one arm's length margin possible and to bring the Indian TP provisions more in line with international practices, the concept of arm's length range like the inter quartile range instead of specifying the tolerance band for each industry may be introduced.

Alternately, the existing provision on 5% tolerance band should be extended till such time the government announces the specific industry percentages as was provided by the Finance Act, 2011.

59. Advance Pricing Agreements (APAs)-Section 92CC and 92CD

In line with the recommendations of the Parliamentary Standing Committee on the Direct Taxes Code Bill, 2010, it is suggested that an independent agency appointed by the CBDT consisting of technical and judicial Members, should be entrusted with task of framing APAs, specifying the manner in which ALP is to be determined in respect of an international transaction. The independent agency will advise the Board on APAs in order to ensure that the APAs reflect current commercial practices.

(1) An appropriate guidance to the assessees as well as to the TPOs is required, laying the appropriate steps and filtration process under all the recommended methods for transfer pricing by way of case studies which is internationally prevalent.

(2) A mechanism for a review of an APA on account of change in law or facts should be formulated.

(3) Appropriate procedure for withdrawal of application made by a tax-payer for APAs should be provided for in the scheme.

(4) *The APAs should also provide for renewal of APAs after the expiry of initial period of applicability, where the business model as well as the law remains the same.*

(5) *Further, APAs should include a clause to provide that if any DTAA is entered into in future, and the provisions of the DTAA are more beneficial, the same would be applicable to the tax-payer.*

(6) *For bilateral APA, the APA and MAP negotiation between the two Competent Authorities should commence simultaneously.*

60. General Anti Avoidance Rule (GAAR)

It is suggested that in tandem with applicability of Chapter X-A relating to GAAR the provisions of sections 90, 90A, 144C, 153, 153B, 246A etc. be made effective from 1.04.2014 rather than 1.04.2013.

61. Anonymous donations under section 115BBC

To clarify the intention of the statute, it is suggested that section 115BBC(1)(ii) may be re-worded as follows:-

" the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the ~~aggregate amount of~~ anonymous donations ~~received~~ WHICH ARE SUBJECT TO TAX IN CLAUSE (i) ABOVE."

62. Section 115BBE ought to be amended:

It is suggested section 115BBE be amended so as to provide that it shall be applicable only to the cases where sums are added during the course of assessment proceedings. In other words, the income offered in the regular return of income of an assessee and voluntarily subjected to tax shall not be brought within its ambit.

63. Tax Credit u/s 115JAA & 115JD read with section 115JB & 115JC

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 80IA to 80ID under normal provisions of the Act.

64. Increase of threshold of maximum amount not chargeable to tax in the case of NRI & POIO

It is suggested that the benefit of increased basic exemption limit allowed to senior citizens/super senior citizens be extended to the Non-Resident Indians and Persons of Indian Origin who are senior citizens/ super senior citizens provided they opt for being taxed under the normal provisions of Income tax Act, 1961 by virtue of the provisions of section 115I.

65. Amendment in section 139(1)

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.

66. Section 139(5)

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.

67. Guidelines for the empanelment of auditors under section 142(2A)

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 such audits by a particular auditor in a particular year may be imposed.

68. Credit of Tax Collected at Source relating to earlier years (for which Assessments are already over & time period mentioned in Sec 155(14) has elapsed) demanded by the Government authorities at a later date:

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 even if

the assessments have been completed and also the period mentioned u/s 155(14) has expired.

69. Suggestions relating to Tax Deducted at Source

(a) Non-deduction of TDS on Service Tax

It is suggested that no tax at source be deducted on service tax component of professional fees and other services. The benefit for the exclusion of service tax for calculating TDS should be given for other income also.

(b) Audit of TDS returns

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 TDS returns. This will enable the Department to rest be 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.*

70. Section 193-Interest on Securities

i) The interest on Debentures issued by companies either Listed or Non-Listed may be given threshold limit under clause (v) of Proviso to section 193.

ii) The threshold limit under clause (v) of Proviso to section 193 regarding non-deduction of TDS may be increased to minimum Rs. 10000.

71. Section 194H-Deduction of tax at source from income in the nature of commission or brokerage:

The exemption limit of Rs. 5000 under section 194H be appropriately revised upwards.

72. Section 194I- TDS on rental income

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 194I be enhanced appropriately.

73. **Fees for professional or technical services- Section 194J**

a. ***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.***

b. ***Section 40(a)(ia) be amended to include within its scope payment to a director on which tax deductible at source has not been deducted .***

74. **Section 194J- Claim of TDS on income declared on cash basis:**

In order to overcome the above situation and the inconsistency, it is suggested that the 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.

75. **Section 195-Time limit for -Issuance of "general or special order"**

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 is rejected the Assessing Officer may be required to pass a speaking order after providing a reasonable opportunity of being heard to the applicant.

76. **Validity of Certificate issued u/s 197**

a) ***the application may be allowed to be made atleast 60 days before the commencement of the financial year.***
b) ***Such application should be disposed off within 30 days.***
c) ***The certificate under section 197 may be issued to be effective from the 1st day of previous year.***

77. **Provision for rectification and appeal of intimation under section 200A**

The provisions amending section 154, 156 and 246A to provide for rectification and appeal of intimation under section 200A and deeming such intimation as notice of demand may be given effect to RETROSPECTIVELY.

78. Amendment in section 201(1A)- Consequences of failure to deduct or pay TDS:

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 delay should be rounded off to the near month and the present system 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.

79. Clarification sought for generation of TDS certificates in case TDS is deducted @20% u/s 206AA

A clarification regarding the procedure for providing TDS Certificate especially in above mention issue to make the process easy and smooth and better compliance of the Act may be provided.

80. Section 208-Revision of Limit of advance tax

The limit to pay advance tax under section 208 be raised appropriately.

81. Computation of advance tax - Section 209

Interest under section 234C may be waived off in such cases. In the alternative, the liability to pay interest should arise only in respect of instalments which fall due after such non-deduction or non-collection.

82. Dispute Resolution Panel (DRP)

The enhancement powers given to the Dispute Resolution Panel (DRP) will create more legal disputes than resolve. The primary task of finding a dispute is that of the AO and the DRP is supposed to resolve the dispute. The proposed powers will lead to creation of disputes at the DRP level.

83. Interest u/s 234C on Firms and Companies

(i) It is suggested that the Departmental Software needs to be suitable 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.

(ii) It is suggested that interest under section 234C should not be charged in respect of abnormal income (not being business income) in case tax on such income is paid on or before 31st March of the previous year.

84. Section 239 - Limitation for filing return for claiming refund

It is suggested that the time limit under section 239 for claiming of refund be restored to `Two years' from the end of the relevant assessment year.

85. Inclusion of payments and receipts made through the modes like RTGS, NEFT, EFT and ECS as valid modes of fund transfers under sections 269SS and 269T of the Income-tax Act, 1961

It is suggested that mode of transfers like RTGS, NEFT, EFT, ECS etc. be included as valid modes of fund transfers under section 269SS and 269T of the Income –tax Act, 1961. Alternatively, section may provide for any mode of payment other than cash on the lines of section 80D.

86. Case for Exemption to NBFCs registered with RBI from the purview of Sec. 269T of the Act

Since loan portfolio of NBFCs is similar to that of banks and considering the same regulatory environment under which NBFCs are operating, NBFCs registered with RBI be exempt from the applicability of Section 269T of the Income-tax Act.

87. Penalty where search has been initiated- Section 271AAB

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).

88. Penalty for failure to furnish TDS/TCA statements- Section 271H

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 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.*

89. Omission of section 282B-Document Identification Number

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.

90. Increase in Ceiling Limits

The following suggestions are made in this regard.

Section	*Existing ceiling*	*Suggested ceiling*
40A(3)	*Rs.20,000*	*Rs.50,000*
269SS	*Rs.20,000*	*Rs.50,000*
269T	*Rs.20,000*	*Rs.50,000*

91. CER Sale to be treated as Capital Receipt

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.

92. **Corporate Social Responsibility Costs**

It is suggested that:

a) *a deduction of the 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.*

b) *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.*

c) *Such expenses, however, should be subject to a limit say 5% of total income.*

93. **Carry forward of excess foreign tax credit**

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.

94. **Incentivizing investments in respect of agricultural infrastructure**

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 80IA 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).*

95. **Gaps in electricity generations**

It is suggested that concessions or additional tax benefits may also be provided where a new building (resident/ commercial/ hotel etc) installs a solar energy devices & rain harvesting instruments.

96. **Procedure for surrender of PAN**

It is suggested that procedure for surrender of PAN & exemption from filing of return of income in respect of Firms whose business discontinued, may be prescribed. With this, firms may be saved from penalty u/s 271F.

97. Differential Stamp duty charges being paid by CA's and Advocates on letter of authority for representing the client

In order to bring uniformity in Court fees for both Chartered Accountants & Advocates for their representing the client before Income-tax Authorities, section 288 which provides "appearance by authorized representative" should be amended to provide for the fees to be charged for authorisation.

98. Book Profit tax (MAT) on Scientific Research Expenditure

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.

99. Deduction for Employee Stock Option Cost

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.

100. Annuity for Professionals

The professionals may be allowed to deposit certain sum not exceeding 15% of the Professional income subject to a specified limit in a separate Superannuation Fund and get the deduction for the same from the total income liable to tax. The Annuity received after the age of 65 or 70, at the option of the assessee should be taxed as an income.

IV. SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES

1. TDS demand u/s 200A

a) *Some mechanism may be developed to check the quoting of wrong PAN in TDS quarterly statement at the time of validation of the TDS return, i.e. the moment the return is being filed.*

b) *In respect of TDS demands pertaining to earlier years, the process of obtaining the FUV files for verification should be made user friendly. The FUV file should be*

mandatorily provided to the deductor at his registered email id so that the deductor does not have to visit the Income tax office for the same.

2. **Applicability of TDS on genuine provisions on estimate basis without bills:**

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,

As suggested earlier , 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.

3. **Issues relating to Refunds**

   a) **Difficulties in obtaining old paper refunds**

   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.*

   b) **Refunds not delivered due to change in address**

   To handle such cases, it is suggested that once the return has been processed by CPC, the file should be transferred to respective Assessing Officer, with whom the assessee can interact to resolve the issues in the processing of return, non receipt of refund cheque and so on.

   c) **Issue of Refunds in case of legal heirs**

   It is suggested that in case of refunds of an amount not exceeding Rs.50,000 which are payable to legal heirs of deceased assessee, the condition of obtaining

Court Order be relaxed and refund be given as per the discretion of the Assessing Officer.

d) **Refund amount to be directly paid into the bank accounts of the**

It is suggested that the refunds in respect of all returns (e-filed returns as well as manual returns) be mandatorily deposited directly into assessee's bank account within maximum time limit of 6 months from filing of returns

4. **Challan correction mechanism**

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.

5. **Extension of last date of Payment of tax due to Public holiday - Circular No. 676 dated 14.01.1994 read with Section 10 of the General clauses Act, 1897**

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 extended by one day if the last date is a public holiday.

6. **Extension of time limit for filing of TDS Return**

It is suggested that due date for furnishing of the TDS returns may be extended to 30 days the end of the quarter instead of 15 days.

7. **Carry forward of excess foreign tax credit**

It is suggested that assesses 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.

8. **Number of Returns and payment schedule should be curtailed**

For the convenience of the tax payers it is suggested that the number of returns and payment schedule to be filed by the assessee should be curtailed appropriately.

9. Once in life time Settlement Commission

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.

10. Mistake apparent from record

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.

V. SUGGESTIONS RELATING TO WEALTH TAX

1. Taxable Wealth - to exempt motor cars

It is suggested that the motor cars should be excluded from the definition of "assets"

2. Valuation of residential house

This limit should be increased appropriately.

DETAILED SUGGESTIONS

I. SUGGESTIONS TO IMPROVE TAX COLLECTION

1. 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 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.

Suggestion:

In respect of the above 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 with the specified period, the tax so collected would be added to the revenue of the Government.

2. TDS in respect of maturity of insurance policies which are taxable under section 10(10D)

Section 10(10D) provides for non-taxability of sum received from maturity 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.

The Finance Act, 2012 has further amended the said section and has inserted the following clause:

(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.

Any sum received by the beneficiary on maturity of insurance policies in above-mentioned cases is taxable. However, there are no provisions under chapter XVIIB to deduct tax at source from the sum being paid to the beneficiaries in such cases due to which many policy holders getting maturity from insurance companies without payment of taxes.

Suggestion:

It is suggested:

(a) that a provision relating to TDS should be inserted in Chapter XVIIB to cover such payments where the exemption under section 10(10D) is denied to the recipient of income from insurance companies.

(b) that where the premium paid is above 10% 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%/20% as the case may be, of capital sum assured.

c) 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.

3. 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 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. This however, does not affect the revenue collection, but leads to postponement of the same as the tax on that interest received by it the NBFC. However, 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).

Suggestion:

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 and also, provisions of Tax collection at source be made applicable to NBFC's in respect of such interest.

4. Re-introduction of TDS u/s 194C on Transporters:

Ever since the insertion of provisions relating to tax deduction at source and also of section 194C, the intention of legislature was to collect, at least, some part of the sum so paid as tax, from the payments made to the transporters. This has gained more importance, when was observed that a large fraction of the transporters are complying with the provisions of the Income-tax Act, 1961. However, the Finance Act, 2009 amended section 194C to provide that 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 leasing goods carriages, on furnishing of his permanent account number, to the person paying or crediting such sum. The said amendment does not seem to be in line with the intention of the Government and thus the provisions of erstwhile section 194C be reinstated.

Suggestion:

> ***It is, therefore, suggested that provisions relating to TDS on transporters u/s 194C may be reinserted by appropriately amending section 194C.***

5. Real estate transactions – Uniformity and reduction in stamp duty rates

Real estate business is an area where streamlining the tax laws would yield a large amount of revenue to the Government. It is common knowledge that much unaccounted money is involved in real estate transactions. One of the reasons for understatement of sale consideration is the high stamp duty rates levied by the various State Governments. There are wide variations in the rates of stamp duty levied by various States.

In this context, it worthy of note that the Central Government took a major initiatives in the matter of implementation of State-Level VAT in India. An Empowered Committee of State Finance Ministers was formed and consensus was obtained from the State Governments for the introduction of a uniform State VAT legislation. Accordingly, a White Paper was brought by the Central Government and the various State Governments introduced VAT legislations in their respective States which conformed with the principles of State VAT enunciated in the White Paper.

In the matter of Stamp Duty rates also the Central Government can take the initiative and bring about a consensus among the State Governments for prescribing uniform stamp duty rates in accordance with a general agreement between the State Governments and the Central Government. This will go a long way in simplifying capital gains taxation and would also encourage disclosure of the correct consideration received from the transfer of capital assets.

6. 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 scrutinise each and every return. Taking into consideration this aspect the person filing the return takes a calculated risk. 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. This process once started will ensure better voluntary compliance as every taxpayer filing the return would be aware 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.

II. SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS

1. 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. 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)

Suggestion:

> ***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)***

2. "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";

(c) In certain cases where such charitable institutions receive donations in in kind in the form of land, movable assets etc. whether "annual receipts" would exclude such receipts since they are not received annually.

Suggestion:

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.

3. 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 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.

Suggestion:

> ***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. Section 32 may be amended to clarify the legal position.***

4. Additional Depreciation u/s 32(1)(iia)

As per Section 32(1)(iia), additional depreciation is admissible @ 20% on the cost of the additions to the Plant & Machineries used for the manufacture of articles. 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 express provision for the allowance of the remaining 10% in the next year.

Suggestion:

> ***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.***

5. Section 35AD-Deduction in respect of expenditure on specified business

a) The Finance Act, 2011 has extended the benefit of investment-linked tax deduction to two new specified businesses i.e., the business of (a) developing and building affordable housing project as per notified scheme and (b) production of fertilizers in India.

With regard to production of fertilizers, the benefit would be available if the specified business commences its operations in a 'new plant' or 'newly installed capacity in an existing plant'.

Suggestions:

(i) ***'New Plant' and 'newly installed capacity in an existing plant' may be defined objectively to ensure clarity and avoid litigation.***

(ii) ***The threshold for expansion of existing plant may be provided on the lines of 'substantial expansion' as defined for the purposes of sections 80-IC and 80-IE.***

b) The Finance Act, 2012 has expanded the definition of "specified business' to provide the benefit of investment linked deduction to certain more businesses. Further, it had also introduced the concept of weighted deduction in respect of certain specified businesses.

Section 35AD(8)(c)(ii) provides that setting up and operating a warehousing facility for storage of agricultural produce is one of the specified business. As per section 35AD(1A), the said business is eligible for weighted deduction of 150% of the eligible expenditure. Considering the fact that the term "agricultural produce" may have varied interpretations, it is suggested that a clear definition of the same may be provided. This will in turn reduce the probable litigations.

In common parlance, the products like edible oil, sugar etc.are considered to be agricultural produce. However, the amendment in the definition of specified business to specifically and separately include setting up and operating a warehousing facility for storage of sugar has clarified that inclusion of sugar as an agricultural product was not the intention of the legislature.

It may further be noted that section 65B(5) of the Finance Act, 1994 has provided a definition of "agricultural produce" to mean "*any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or*

producer which does not alter its essential characteristics but makes it marketable for primary market."

Suggestion:

> ***In order to prevent unnecessary litigations, the term "agricultural produce" may be clearly defined.***

6. Amendment in 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 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. 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.

Suggestion:

> ***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 40A(3) of the Income-tax Act, 1961.***

7. Section 50C

Section 50C being a special provision for considering full value of consideration in certain cases was inserted by Finance Act, 2002 w. e. f. assessment year 2003-2004. Accordingly, where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or buildings or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall be deemed to be the full value of the consideration received or accruing as a result of such transfer.

Section 50C which provides for adopting value for stamp duty in the place of actual consideration is similar to section 52(2) withdrawn earlier due to Supreme Court decision in KP Varghese case, 131 ITR 597. Our reservations in regard to this provision are for the following reasons:-

(a) Guideline value is not fixed in a scientific manner by the State Government authorities.

(b) Guideline value is fixed for a particular survey number or division number encompassing several properties whose market value can never be the same.

(c) The concept of real income gets affected and capital gains will be computed on basis of notional figure.

(d) Guideline value is periodically increased in some States even though there is no corresponding increase in the market value.

(e) Even under Chapter XXC, guideline value never influenced the decision to purchase any property as the Appropriate Authority always appreciated that market value is different from guideline value. Guideline value is one of the indicative factors but not conclusive as to the fair market value of a property.

(f) Any understatement of consideration should be tackled by investigation mechanism and not by such an amendment.

(h) Reference to Valuation Officer and the value so estimated can be subject matter of prolonged litigation without ultimate increase in revenue.

(i) Computation of capital gain on the basis of unrealized notional value will lead to difficulty in availing exemption by making eligible reinvestment.

(j) Even in cases where transactions are approved by public charity commissioner, Reserve Bank of India, Appropriate Authority (up to1.7.2002) invoking guideline value will lead to anomalous situations.

(k) This provision is prone for subjective assessment and prolonged litigation on complex issues/disputes.

Suggestions:

It is suggested that the provisions of section 50C should be reviewed with reference to the following:

- ***In case where 50% or more has been paid as registration money, the date of agreement may be considered for the purpose of valuation and not the date of actual registration of the property.***
- ***In order to avoid litigation, it may be clarified that in respect of the assets which are invested into the common pool of the partnership whether section 56 or section 50C, would be applicable.***
- ***Section 50C(2) provides that subject to fulfillment of certain conditions, the Assessing officer may refer the valuation of capital asset to the Valuation officer. It is suggested that the word "may" be substituted with "shall".***

8. 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 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 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 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 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.

Suggestion:

> ***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.***

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 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.

Suggestion:

It is suggested that the inconsistency in the sub-section(2) and proviso to the sub-section(1) and may be removed to avoid unnecessary litigations.

9. Section 94A-Special measures in respect of transactions with persons located in notified jurisdictional area

One of the tax consequences of a country or area being notified as NJA is that payments to persons located in that NJA would be subject to a higher withholding @ 30%. The relevant provision which provides for this implication i.e., section 94A(5), would be applicable notwithstanding anything to the contrary contained in the Act.

Section 206AA which provides for higher withholding @ 20% in absence of PAN of payee is also applicable notwithstanding anything to the contrary contained in the Act.

Though the intent appears to be that section 94A would override section 206AA, there may be some difficulties in interpretation.

Suggestion:

Section 94A and/or section 206AA may be suitably amended to clarify that section 94A would prevail in case tax is to be deducted with respect to any payment to a person located in a NJA.

10. 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 to a banking company. This is because 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.

Suggestion:

Clause (i) of Explanation 1 to section 115JB may be amended as follows-

"(c) 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 u/s 36(1)(viia))"

(b) The Government has notified revised Schedule VI in the Companies Act providing new formats for presentation of Balance Sheet and Profit & Loss A/c. The changes in Revised Schedule VI 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 Revised Schedule VI does not contain Part III. However, other consequential amendments are also necessary consequent to notification of Revised Schedule VI, which have not been addressed in the Finance Act, 2012.

As per Revised Schedule VI, 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 Revised Schedule VI, 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 with effect from 1st April, 2012 i.e. Assessment Year 2012-13, being the date of applicability of Revised Schedule VI.

Suggestion:

Clauses (b) and (e) of Explanation 1 may be deleted with effect from 1st April, 2012.

11. Special provisions for payment of tax by certain persons other than companies section 115JC

The provisions governing applicability of AMT has been expanded to include every person other than a company by the Finance Act, 2012. The provisions would not apply to individual, Hindu Undivided Family ('HUF'), Association of Person ('AOP') or Body of Individuals ('BOI') if the adjusted total income is less than 20 lakhs. All other conditions as applicable earlier remains unchanged including availability of AMT credit for set off in future

years (up to 10 years). The said provisions are to be implemented with effect from 01 April, 2013

Based on the current phrasing of the provision, an anomaly arises at the time of claiming the AMT credit as follows:

In year 1, an individual, HUF, AOP or BOI has paid AMT in accordance with the provisions of section 115JC; and is also entitled to claim AMT credit for set-off in future years

In year 2, if the income of the specified person is less than 20 lakhs, the provisions pertaining to AMT would not be applicable [on account of proposed section 115JEE(2)] and the person would not be entitled to claim the set-off of the carried forward AMT credit.

This does not appear to be intended by legislature.

Suggestions:

It is suggested that the provisions should be amended appropriately to clarify that the specified persons are entitled to set-off AMT credit even when their adjusted total income falls below 20 lakhs in the year of set-off.

Further, even if the tax payer has discontinued the business, he should be allowed to set-off AMT credit, in line with the set-off of business losses allowed even after discontinuance of business.

The benefit of carry forward and set-off of AMT credit should be permitted also in case of conversion of private limited, sole proprietorship to LLPs and vice versa. Corresponding amendment should also be made in section 47(xiiib).

12. Section 147 read with section 149

Section 139 has been amended by the Finance Act, 2012 to provide that every resident having any asset (including financial interest in any entity) located outside India is required to file return of income compulsorily, even if he does not have taxable income. Further, section 147 has been amended to provide that income shall be deemed to have escaped assessment where a person is found to have any asset located outside India. Also, section 149 has been amended to

provide an extended time limit of 16 years for issue of notice for reopening an assessment, in respect of persons whose income in relation to such assets located outside India has escaped assessment.

An Explanation is also inserted after section 149(3) to provide that the amended provisions of section 149 shall also be applicable for assessment year A.Y.2012-13 and earlier assessment years.

The Explanation, in effect, conveys that assessments for last 16 years can be subject to reassessment in case of persons who have any asset located outside India. This would cause undue hardship to persons who have any asset outside India, since as per the existing provisions of law, books of account are required to be maintained only for six years. Such persons may not be able to provide the information for the last 16 years.

Therefore, reassessment proceedings in such cases beyond a period of six years prior to the current assessment year should be restricted to only income arising out of such assets located outside India. A provision may be incorporated to clarify the same so that the tax payers are not subject to undue hardship.

Further, in cases of tax payers who are covered under presumptive taxation provisions of section 44AD or erstwhile section 44AF and are exempt from maintenance of books of account, these provisions would cause genuine hardship in case they have any asset outside India, since their income would have been deemed to have escaped assessment and subject to reassessment under section 149.

The provisions in section 147 deeming income to have escaped assessment in the hands of a resident having an asset located outside India may be harsh in the case of genuine tax payers. Giving way forward for the accountability of the revenue, the deeming provisions may be replaced by provisions vesting the onus on the Assessing Officer to provide that the income from such foreign asset has actually escaped assessment.

Suggestions:

(i) ***It is suggested that the Explanation proposed to be inserted after section 149(3) be deleted so that effect of this provision is made applicable with effect from a prospective date.***

Alternatively, it may be provided that assessments for A.Y.2007-08 or thereafter may be reopened on the basis of the amended provisions of section 149(3).

(ii) ***Reassessment proceedings initiated for a period prior to six years should be restricted to only income arising out of assets located outside India.***

(iii) ***Further, appropriate amendments may be made to address the genuine hardship which assessees who are subject to presumptive tax provisions may face on account of such provision.***

(iv) ***The term "financial interest" may be defined to ensure clarity.***

(v) ***Giving way forward for the accountability of the revenue, the provisions of section 147 deeming income to have escaped assessment in the hands of a resident having an asset located outside India may be replaced by provisions vesting the onus on the Assessing Officer to provide that the income from such foreign asset has actually escaped assessment.***

13. TDS on Fixed Deposit interest:

The Interest on fixed deposits is taxable under the head "Income from other sources" and is chargeable to tax at the rate of tax applicable to the assessee. Further, as per the provisions of section 194A, tax is deductible at source in case such interest income exceeds a specified amount. In a country like India, the Fixed Deposits are treated as the safest mode of investment and thus, in majority of cases the amount is invested in joint names be it husband and wife or child and parent and so on. Genuine hardship is being faced by the joint account holders as there are no clear guidelines with regard to the applicability of the provisions of deduction of tax at source in respect of interest income earned jointly. Although Circular no. 256 dated 29.05.1979 provides some guideline in this regard, the same are neither very clear nor very specific. Considering the fact that there has been a change in the working methodology of the TDS Wing of the Department, it is felt that the said circular needs to be revised and clear instructions regarding applicability of provisions of tax deduction at source to the interest income earned jointly are to be provided.

Suggestion:

> ***The taxability of interest income on FDR in case of FDR's in Joint names may be specifically provided for. The old CBDT Circular No. 256, dated 29.05.1979 be revised appropriately.***

14. Section 206AA – Requirement of furnishing of PAN for deduction of tax at source.

Section 206AA reads as "*Notwithstanding anything contained in any other provisions of this act, any person entitled to receive any sum or income or amount on which tax is 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 takes 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 TDS at a higher rate to comply with the provisions of the said section, though 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, 2010 reads as 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.

Suggestion:

A proviso should be inserted in section 206AA to the effect that the provisions of this section shall not be applicable in respect of the assessee who is not required to obtain Permanent Account Number under section 139A.

15. Hardship arising out of the Apex Court's decision in *Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC)*

(i) In the above-mentioned case 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 otherwise than by filing a revised return. Therefore, the assessee can claim deduction only by filing a revised return.

The above-mentioned decision of the Apex Court has unsettled many a case law and has caused unintended hardship to the assessees.

Suggestion:

Appropriate amendments may be made to enable the assessee to get relief during the assessment proceedings by methods otherwise than by way of filing a revised return.

(ii) 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 deductions 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.

Suggestion:

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.

16. Introduction of Advance ruling for residents

In order to provide the facility of determining the tax liability of non- residents in advance and with a view to avoid disputes in respect of assessment of income tax liability in the case of non-residents, a scheme of advance ruling was introduced by Finance Act, 1993.The scheme enables the non-resident to obtain, in advance, a binding ruling from the authority for advance ruling on issues which could arise in determining their tax liabilities. Time consuming and expensive litigation can, then be avoided. Such issues may relate to transactions undertaken or

proposed to be undertaken by the non-resident applicant. The Scheme has been very successful in avoiding tax-litigation in case of non- residents.

Suggestion:

> ***It is suggested that the same scheme should be introduced for resident's tax purposes also. In case of residents also, it has been observed that assessee takes one interpretation of law and executes the transactions which is denied by the department causing hardship of paying taxes which he thought is not actually payable.***
>
> ***Further, in order to avoid unnecessary application, the scheme can be so framed that only transactions involving certain threshold of investment can be applied or fee for advance ruling can be fixed in a way that small and unnecessary applications are avoided.***

17. 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".

Further, section 194H provides for tax deduction at source in respect of commission or brokerage. The issue which arises here is whether, the Commission referred to in section 194H would cover commission paid by the Partnership firm to its partners and be liable to Tax deducted at source.

Suggestion:

> ***A clarification should be provided to the effect that Commission under section 194H would not include commission paid by the partnership firm to its partners.***

18. 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.

Suggestion:

> **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. In respect of manual notices/documents the section should also record that signatures will be mandatory applicable.**

19. 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.

Suggestion:

> ***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.***

20. Section 194LC- Income by way of interest from Indian Company

The Finance Act, 2012 has inserted a new section 194LC to provide that the interest income paid by specified company to a non-resident shall be subjected to tax deduction at source at the rate of 5%. Section 115A has also been 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 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 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.

Suggestion:

> ***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 "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"***

21. Delay by Assessing Officer in giving Order giving effects to Orders of higher Appellate authorities, and also delay in issuing refunds arising out of such Order giving effects:

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 effects 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, 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.

Suggestion:

> ***It is suggested that time limits for issuing the Order giving effects and Refund Orders should be stipulated in the Act and 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)***

22. Initiation of penalty proceeding in every assessment orders:

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.

Suggestion:

> ***(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 for pending cases, to reduce litigations, it is suggested that a scheme on the lines of Kar Vivad Samadhan Scheme (KVSS) may also 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.

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.

23. Section 132 - Search and seizure

a) In the case of search under section 132, when cash is seized, it is kept in P.D. account of CIT. This cash is not adjusted against the advance tax inspite of specific request made by the assessee for such adjustment. Even in cases when assessee makes declaration of undisclosed income, the amount of cash seized is not adjusted against the tax liability relating to undisclosed income to be paid by the assessee.

The provision of clause (i) of section 132B (1) regarding application of seized assets is not very clear in this regard. It requires seized assets to be applied first towards the amount of the existing tax liability, if any, and thereafter towards the amount of the tax liability to be determined on completion of the assessment relating to search years including any penalty levied or interest payable in connection with such assessment. The provision is not clear as to what would happen to cash seized till completion of assessment or penalty proceedings.

The provision of sub section (4) of section 132B regarding payment of interest is also not clear as to whether interest is payable on surplus money after adjusting the liability arising on assessment under section 153A or on the total amount of cash seized from the date of seizure till adjustment of the same towards tax liability arising on assessment.

Suggestion:

In view of the above, amendment is required under section 132B clarifying the amount of cash seized to be permitted for adjusting against the advance tax liability of the assessee where specific request is made for such adjustment. This

would help in early realization of tax, avoid litigation and save the assessee from mandatory interest charged under sections 234B and 234C.

b) Further 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 the taxes (which is proposed to be minimum Rs. 50 lakhs per case) before filing the application with the Settlement Commission.

Suggestion:

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 is required to be given to the authorities in the matter since they are not permitting such adjustment for want of clarity.

c) Section 132B provides for application for 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 it 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 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.

Suggestion:

> ***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.***

24. Desirability to bring back block assessment system

Since block assessment has been discontinued there is litigation in regard to the year of taxability of certain income/assets discovered in search. If it is provided that an assessee can agree to subject the whole of sums/assets to the taxed in the year of search at a flat rate of 60% (tax which is equal levy of 100% penalty on today's maximum marginal rate). No further proceedings/assessments would become necessary. Taking into consideration the ground reality such voluntary compliance at every stage should be encouraged. By closing the option of voluntary compliance in search cases at higher cost, the defaulting tax payers will be compelled to opt for litigation for the income, which he had otherwise readily agreed to offer for taxation. In this process he may or may not succeed but can definitely prolong the litigation.

Suggestion:

> ***The continuance of earlier block assessment procedure is desirable. The above approach would assist in***
>
> ***(a) reducing controversy over the year of taxability of income;***
>
> ***(b) providing suitable incentive for a person to make the necessary disclosure without indulging in litigation and***
>
> ***(c) removing administrative difficulties such as multiplicity of appeals, bunching together of assessments etc.***

25. Section 80IA – Unit-wise deduction should be allowed

Plain reading of section 80IA gives the impression that deduction under section 80IA is available 'unit wise'. But, nowadays, losses of other units are clubbed to deny deduction under section 80IA 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 80IA 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 80IA 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 80IA. 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.

Suggestion:

> ***A specific clarification/provision should be made in section 80 IA itself to provide that deduction under section 80IA is 'UNIT SPECIFIC'. For each unit deduction under section 80IA should be separately calculated.***

26. Section 245A-Settlement Commission

(a) Section 245A defines "case" to mean any proceeding for assessment under the Act, of any person in respect of any assessment year(s) which may be pending before an Assessing Officer on the date on which application for settlement of case is made. It further provides that a proceeding for assessment or reassessment or re-computation under section 147, shall not be a proceeding for assessment.

Before the enactment of Finance Act, 2007, no such exclusion was provided for in this sub-section and the proceedings for assessment or reassessment or re-computation under section 147 were also considered as a proceeding for assessment.

There are large number of cases which fall under section 147. In order to further reduce further litigations, it is suggested that the proceedings under section 147 may not be excluded from the definition of "case".

Suggestion:

> ***It is suggested that (i) Proviso of section 245(b) along with the Explanation (i) be omitted.***

(b) Section 245A was amended w.e.f. 1.6.2010 to provide that the proceedings for assessment or reassessment resulting from search/ requisition would fall within the definition of a "case" which can be admitted by the Settlement Commission. Consequently, section 245C was amended to provide that the additional amount of income-tax payable on income disclosed in the application should not exceed Rs. 50 Lakhs, for an application to be made before the Settlement Commission in such cases.

In other cases, the additional amount of income-tax payable on income disclosed in the application should exceed Rs. 10 Lakhs, for an application to be made before the Settlement Commission.

Further, the Finance Act, 2011 provided that an application can also be made, where the applicant is related to the specified person (Mentioned in (iii) above) and in whose case also proceedings have been initiated as a result of search, provided the additional income-tax payable on the income disclosed in the application exceeds Rs. 10 Lakhs.

Suggestion:

In order to further reduce litigations, it is suggested that the said limit of Rs. 10,00, 000 may be reduced to Rs. 5,00,000.

III. SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS

1. 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 increase in size, the volume of documents generated has increased manifold and there are logistic issues is 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.

Suggestion:

> ***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 available only in digitized form.***
>
> ***The permission to maintain the books in electronic form should be given to companies beyond a 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.***

2. 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 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 Bill, 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 rate after deducting the related expenditure i.e., the net receipts over and above Rs.25 lakhs may be subject to maximum marginal rate.

Suggestion:

> ***Rs.25 lakhs may be the basic exemption limit, and receipts in excess of Rs.25 lakhs may be subject to tax at maximum marginal rate after deducting the related expenditure.***

(b) A charitable trusts or Institution having its main object “Advancement of any other object of general public utility”, would lose its charitable status, 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 exceeds Rs.25 lakh in the previous year. However, in some cases, there is a very thin line of distinction between the said commercial receipts and charitable receipts, owing to which there can be increased litigations. For example receipts from the sale of candles by a trust, sale of milk by a gaushala, although charitable in nature may be treated as business receipts and be included while considering the limit of Rs.25 Lakhs. This may cause genuine hardship to such trusts and institutions.

Suggestion:

A clarification by way of Explanation may be inserted to clarify that receipts of such nature should be not be considered for determining the limit of Rs.25 Lakhs.

c) Sometimes the funds of a charitable trust are utilized for medical treatment outside India, due to absence of similar facilities in India. The object of the trust may be to provide relief to the poor and medical treatment may be that of a poor person. However, it may still not qualify for benefit under section 11 since it has not applied its income for charitable purposes in India.

Suggestion:

Therefore, suitable amendment may be made in section 11 to provide relaxation to genuine cases by considering such application of income outside India as application towards charitable purpose. This provision however, may be made subject to some approval mechanism.

d) **Mandatory application of income by charitable trusts/ institutions under section 10(23C)**

The amendment by the Finance Act, 2002 requires mandatory application of income 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 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.

Suggestion:

> ***Section 10(23C) should be amended to specifically exclude 'corpus donations' from the requirement of mandatory application of income by such trusts/ institutions.***

(e) **Charitable Trusts– Registration - Condonation of Delay– Amnesty**

After the amendment in section 12A, there is no provision in the Act to provide for condonation of delay in applying for registration u/s 12A/12AA. Many charitable organisations are still unregistered and do not apply for registration just because delay will not get condoned. Only because these charitable organisations are not registered they are not coming forward in the main stream of the taxation.

Suggestion:

> ***It is suggested that a one-time scheme may be framed or a time slot may be allowed so that such unregistered charitable organisations may obtain registration u/s 12AA/12A with condonation of delay.***

3. Amendment by the Finance Act, 2012 in sections 2(19AA)(iv), 47(vii) and 49

The Finance Act, 2012 has 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 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.

Suggestion:

(*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).

4. Amendment by the Finance Act, 2012 in Section 9(1)

(a) The Finance Bill, 2012 introduced clarificatory amendments in sections 2(14), 2(47), 9(1)(i) and 195(1) to tax gains from off-shore transactions where the value is attributable to the underlying assets located in India. These amendments reassert the source rule of taxation wherein the state where the actual economic nexus of income is situated has a right to tax the income irrespective of the place of residence of the entity deriving income. These provisions are proposed to be introduced retrospectively with effect from 1.4.1962.

Under section 9(1)(i), all income accruing or arising, whether directly or indirectly, inter alia, through the transfer of a capital asset situated in India, would be deemed to accrue or arise in India.

Explanation 4 is inserted to clarify that “through” shall mean and include and shall be deemed to have always meant and included “by means of”, “in consequence of” or “by reason of”. Effectively, if the income has accrued by means of or by reason of or in consequence of a transfer of a capital asset situated in India, the same would be deemed to accrue or arise in India.

Explanation 5 is inserted in section 9(1)(i) to clarify that if any asset or capital asset being any share or interest in a company or entity registered or incorporated outside India derives, directly or indirectly, its value substantially from the assets located in India, such asset or capital asset shall be deemed to be and shall always be deemed to have been situated in India. This amendment is proposed retrospectively from 1st April, 1962.

Suggestions:

(i) ***It is suggested that Explanations 4 and 5 to section 9(1)(i) and other consequential amendments in sections 2(14) and 2(47) may be given effect to prospectively, i.e. with effect from A.Y. 2013-14, to avoid undue hardship to tax payers consequent to which penalty proceedings may be attracted for –***

a. non-payment of tax by the person whose income is deemed to accrue or arise in India and

b. non-deduction of tax at source and disallowance of expenditure on account of non-deduction of tax at source in the hands of the person on whom the obligation to deduct tax at source is vested on account of the retrospective amendment.

(ii) ***Further, it is suggested that the words "derives directly or indirectly, its value substantially from the assets located in India" may be subject to different interpretations. The scope of "indirectly" may be defined to clarify the true intent of law. Further, the term "substantially" also need to be defined by specifying exact parameters like a specific percentage, as in section 2(32) of the Income-tax Act, 1961 or clause 314(185) of the Direct Taxes Code Bill, 2010 to avoid scope for any disagreements / litigation.***

(iii) ***Furthermore, the liability to tax in India should be restricted to the extent of value derived from the assets located in India and not the value of the entire transaction.***

(iv) ***The definition of royalty under section 194J may be delinked from the definition of royalty in section 9(1)(vi). There should be an independent definition of royalty under section 194J, since otherwise purchase and sale of software may fall within the definition of royalty, whereas the intent of proposed royalty definition is cover exploitation of intangible assets.***

(b) The Finance Act, 2012 has inserted Explanation 4 in section 9(1)(vi) to include within the scope of definition of royalty, transfer of all or any right to use a computer software (including granting of a licence).

In effect, where the computer software is used for the purpose of a business or profession carried on in India, or for making or earning any income from any source in India, the payment for the same to the non-resident/foreign company would be treated as royalty income which is deemed to accrue or arise in India. Consequently, the requirement of deduction of tax under section 195 would arise. If tax is not deducted at source, the assessee would be deemed to be an assessee-in-default, and the penal consequences under the Income-tax Act, 1961 would be attracted.

Further, *Explanation 5* has been inserted in section 9(1)(vi) to clarify that the royalty includes and has always included consideration in respect of any right property or information, whether or not the possession or control of such right, property or information is with the payer, such right, property or information is used directly by the payer or the location of such right, property or information is in India.

Furthermore, *Explanation 6* is inserted in section 9(1)(vi) to clarify that the expression "process" includes and shall be deemed to have always included transmission by satellite, cable, optic fibre or by any other similar technology, whether or not such process is secret.

These Explanations have been inserted with retrospective effect from 1st June, 1976.

Insertion of the Explanations with retrospective effect from 1st June 1976 have caused undue hardship to the payer and the payee, since the payer has to face the penal consequences and disallowance for non-deduction of tax at source under section 195 and the payee would be subject to additional tax burden consequent to applicability of deeming provisions under section 9(1)(vi).

Suggestions:

Therefore, it is suggested that these Explanations should be inserted with effect from 1.4.2013 and made applicable from A.Y.2013-14 onwards to avoid undue hardship to tax payers consequent to which penalty proceedings may be attracted for-

(i) ***non- payment of tax by the person whose income is deemed to accrue or arise in India and***

(ii) ***non-deduction of tax at source and disallowance of expenditure on account of non-deduction of tax at source in the hands of the person on whom the obligation to deduct tax at source is vested on account of the retrospective amendment.***

(c) Further, the Finance Act, 2012 has inserted Explanation 6 in section 9(1)(vi) to clarify that the expression "process" includes and shall be deemed to have always included transmission by satellite, cable, optic fibre or by any other similar technology, whether or not such process is secret.

It appears that this amendment, clarifying the meaning of term 'royalty', was done in connection with satellite payments, transponder payments, etc. However, the the Explanation in its current form have far reaching impact especially in connection with the withholding tax provisions u/s 194J.

The Explanation in its current form and shape, also covers routine telephone/ cellular/ internet services provided by various service providers**.** In other words, the amendment would result in the payer being under an obligation to withhold taxes u/s 194J of the Act (as 'royalty') for payments for routine telephone, cellular and internet service provided (such as payments to MTNL/ BSNL/ various cellular service providers and internet service providers).

This probably does not seem to be intended especially because in such a case, there would be no line of distinction between 'services' and 'royalty'. Further, the retrospective amendments may trigger section 40(a)(ia) disallowances for the assessee in existing cases as well as penal consequences for non-deduction of tax at source under section 194J.

Suggestions:

It is suggested that the proposed Explanation 6 to section 9(1)(vi) may be suitably re-worded.

5. Section 10(13)- Payment from approved superannuation fund

The contributions on behalf of the employees to a superannuation scheme in excess of Rs 1 lakh per annum per employee is taxable under section 17(2)(vii) in the hands of the employee. The employees may withdraw vide receipt of annuities or a lumpsum value in the form of commutation of the annuities, at the time of events such as retirement or resignation.

Section 10(13) of the Act provides for exemption in the hands of the employee in respect of the amount received on commutation of the annuity only in case of :

- retirement at or after a specified age or
- becoming incapacitated prior to such retirement.

Accordingly, it appears that amount withdrawn on the event of resignation is not specifically exempted under Section 10(13).

In view of the same, when an employee receives the commuted value of annuity at the time of resignation, it appears that the same would not be specifically exempt under Section 10(13). As the employee was already taxed for the contribution in excess of Rs. 100,000 at the initial stage, taxing the commuted value on resignation would tantamount to double taxation of the same income.

The principle that the same income cannot be taxed twice over in the hands of the same person is now well settled. The broad scheme of the Act is to charge income to tax but only once in the hands of the same person.

Further, once the amount is taxed in the hands of the employee, the amount taxed can effectively be regarded as payment of chargeable salary to the employee which is applied back by the employee for the purposes of contribution to the fund.

The above incidence of double tax is merely on account of an anomaly post the abolition of the FBT regime when the sections liable to FBT were verbatim moved to Section 17(2). Accordingly, the same is not the intention of the legislature and is a mere anomaly which may be rectified

Suggestion:

> ***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 resignation, to the extent the same is already taxed at the initial contribution stage under Section 17(2)(vii).***

6. Section 10(23FB)

Earlier under Sec. 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 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 Sec. 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.

Suggestion:

> ***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."***

7. 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.

Suggestion:

It is suggested that this should be raised to at least Rs.10,000/- for each minor child.

8. Section 10(47) and section 115A(BA)-Income of infrastructure debt fund

Clause 10(47) was inserted by the Finance Bill, 2007 to exempt any income of an infrastructure debt fund, set up in accordance with the prescribed guidelines and notified by the Central Government.

A condition may be prescribed that such fund should be denominated in Indian Rupees to safeguard against exchange rate fluctuations.

Interest received from such fund is taxed at a concessional rate of 5% (on gross basis) in hands of a non-resident investor.

Since the constitution of the special purpose vehicle for garnering low cost funds for infrastructure sector appears to be in the form of a 'fund', there may be ambiguity regarding the characterization of the income from the fund in the hands of the investor as 'interest'.

Further, the benefit of this concessional rate of tax on income received from such fund may be extended to residents also.

Suggestions:

(i) ***A condition may be prescribed that the infrastructure debt fund notified under section 10(47) should be denominated in Indian Rupees.***

(ii) ***Any distribution from the debt fund to the non-resident investors, whether characterized as interest or not, may be subjected to the concessional tax treatment.***

(iii) The benefit of concessional rate of tax of 5% on income received from such fund may be extended to residents also.

9. Re-introduction of standard deduction for salaried employees:

Up to A.Y. 1974-75 the Income-tax Act had a provision for allowing to the salaried persons deductions for purchase of books, car maintenance, etc incurred wholly, exclusively and necessarily for the purpose of employment. From A.Y. 1975-76 a composite deduction at certain percentage of salary (changed from time to time) was introduced. Thus, the standard deduction permissible under section 16 was intended to cover the expenditure incurred for the purpose of employment and it does not constitute a personal allowance.

The Finance Act, 2005 had withdrawn standard deduction allowed to the salaried taxpayer. The withdrawal was made as part of the restructuring of the tax rates apparently on the assumption that the standard deduction is an allowance rather than a deduction on account of the expenditure incurred by the employee in the performance of his duties for which he gets paid by way of salary.

Under section 4, the charging section, the taxable base is the "total Income". "Total Income" as defined in 2(45) is income computed in accordance with the provisions of the Act. The total income is to be computed under Chapter IV of the Act under various heads of income. The main objective of the requirement that income should be computed under each specific head is to ensure that the specified deductions permissible under each head of income can be availed by the assessee. Thus, the basic philosophy underlying the computation of income is that only the "net income" and not the "gross income" should be charged to tax.

Unlike an assessee carrying on business, a salaried person does not get any deduction for expenses incurred for the purpose of employment, though he necessarily incurs expenses for the purpose of employment. It is felt that withdrawal of standard deduction from the statute has amounted to taxing gross income as against the concept of taxing net income.

Suggestion:

> ***The standard deduction under section 16 should be restored.***
>
> ***Alternatively,***
>
> ***Since the cost of living has increased manifold, ever since the limit of Rs. 800/- p.m. and Rs. 15000/- p.a. w.r.t. transport allowance and medical reimbursement, the said limits may be increased to Rs. 5000/- p.m. and Rs. 50,000/- p.a. respectively.***

10. 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, 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 60days.

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 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.

Suggestion:

> ***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.

11. 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.

Suggestion:

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.

12. Perquisite of rent free accommodation provided as a campus accommodation where factory is located in remote areas

Rent free accommodation provided to an employee is taxable perquisite as per section 17(2). Normally, factory is established in the remote area where there is no other accommodation available. Factory campus accommodation is provided to technical staff to attend emergency work at odd hours. Factory campus accommodation cannot be equated with accommodation provided in the posh city area. There is no perks for the staff staying in the factory campus accommodation.

Suggestion:

It is suggested that where accommodation is provided by the employer in factory campus and staying there is a precondition of employment, such accommodation should be valued at NIL.

13. Taxing of ESOPS:

The current Income Tax Law, provides for the inclusion of ESOPs under section 17(2) to be taxed as a "*perquisite*", consequent to the abolition of FBT.

The section states that ESOPs issued free of cost or at concessional rates will be taxed on the date of exercise on the difference between the "*fair market value*" and the amount actually paid by the employee. The "*fair market value*" is to be determined based on stipulated methods which will be separately prescribed by the CBDT.

This suffers from the following drawbacks:

(a) It seeks to tax a notional benefit at a time when the actual gain is not realised by the employee. In fact, it is possible that the actual sale of shares could result in a loss for the employee. Since the perquisite tax paid earlier cannot be set off against the capital loss, the employee suffers a double loss, namely tax outgo and loss on sale of shares.

(b) The question whether the ESOPs are granted at a concessional rate is being determined with reference to the "*fair market value*" on the date of exercise of the options. Technically, this is an incorrect approach. If the ESOPs are issued at the prevailing market price on the date of grant, the issue should be treated as "*non concessional*". This would be in line with the guidelines issued by SEBI. Any subsequent gain accruing to the employee due to favourable market movements by the date of vesting or exercise of option cannot be treated as a "*perquisite*" granted by the employer.

(c) Further, if such subsequent gains are a perquisite in the hands of employers, it would stand to reason that the value equivalent of such a perquisite should have been a deductible expenditure in the hands of the company issuing the ESOP. Since the tax law does not contemplate such a deduction, the taxation of the perquisite would result in double taxation.

(d) Also, from the strictly legal angle, there are a number of differences between ordinary shares and ESOP shares. Therefore, they are not comparable. The taxation principles currently existing, result in discrimination. The market value is also strictly not applicable since there are lock-in periods applicable.

Since the actual sale of shares will attract capital gains tax, if applicable, it is unnecessary to subject the employee to perquisite tax. In fact, before FBT was imposed on ESOPs, specific provisions existed in the Income Tax Act for exempting the same from perquisites and subjecting it only to capital gains tax

It may be noted that ESOPs have emerged over the years as a critical, motivational and retention tool for companies in a highly competitive market for talent. It is a very effective instrument for encouraging employees to perform and excel and is a win-win proposition for the employers / shareholders on one hand and the employees on the other.

Suggestion:

> ***It is suggested that the taxation of ESOPs as perquisite at the time of allotment / exercise should be avoided for the reasons explained above. If at all it is taxed, it should be based on the fair market value i.e. the market price prevailing on the date of grant. Any subsequent appreciation should only be taxed at the time of realization/sale as capital gains.***

14. Valuation of Company owned Accommodation provided to employee:

Presently, the company owned accommodation provided to employees is taxable @ 15% of salary in cities having population exceeding 25 lakhs. In other cases, it is taxable @ 10% of salary in cities having population between 10 lakhs and 25 lakhs and 7.5% of salary in other places. In case of leased/rented accommodation, value of the accommodation is taken at the stipulated percentages or lease rent, whichever is lower.

However, the above method of determination of the perquisite suffers from various inequities. Following situations may exist in respect of accommodations provided by the employer:

a) Similar accommodation is provided to all employees irrespective of the designation and salary

b) Accommodation is provided on the basis of the designation and salary of the employee

c) Accommodation provided depends on the availability of the accommodation i.e. in case the accommodation to which a particular person is eligible as per norms of the organisation is not available, he is provided with a smaller accommodation.

Strictly speaking the perquisite value in all such cases if linked fair market value can only provide the correct perquisite value. However, presently the perquisite value is linked with salary which leads to situations where employees with different salaries staying in similar accommodation are charged with different perquisite value

Suggestion:

> ***It is suggested that in case of company owned accommodation the concept of fair value be introduced to ensure that the right amount of perquisite is determined for income tax purposes.***

15. 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 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.

Suggestion:

> ***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"***

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.

Suggestion:

> ***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".***

16. Interest on borrowed Capital

Keeping in mind the prices of the house properties and also the rate of interest on housing loan, it is felt that the deduction under section 24(b) in respect of Interest on borrowed capital for self-occupied property is very less.

Suggestion:

Therefore, it is suggested that the deduction in respect of interest on housing loan in case of self occupied property should be increased from Rs. 1.5 Lakhs to Rs. 3 Lakhs.

17. Depreciation

(1) 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 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.

Suggestion:

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.

(2) Restoration of 100% allowance for small items of assets

Earlier, assets costing upto Rs.5,000/- were not required to be included in the block of assets for the purpose of claiming depreciation. Instead, the cost of such asset was treated as the amount of depreciation allowance.

The above provision had been introduced with a view to avoid litigation on the point of nature of expenditure (i.e. capital or revenue) in respect of purchase of small items of assets. Earlier, the limit on cost of such assets was Rs.750/. This was then increased by the Finance Act, 1983 to Rs.5,000/-, again for the same reasons.

The omission of this *proviso* has created unnecessary hardship. This was a useful provision to avoid possible litigation on such small items of assets, based on principle of materiality. It is also practically not possible to maintain records for such small purchases.

Suggestion:

> ***It is suggested that the proviso should be reintroduced, with a condition that the same would not apply where the total value of such additions during the year exceeds 2% of the written down value of the block of depreciable assets or Rs.1,00,000/-, whichever is higher. Such a provision will act as a check on the temptation to abuse, but at the same time, will serve the purpose of simplicity. A similar provision exists under the Companies Act, 1956.***

18. 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 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.

Suggestion:

> ***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. A deduction of the amount so invested may also be given to Individuals and HUFs who install such devices including salaried class.***

19. 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.

Suggestion:

> ***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.***

20. 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 ass there is no provision for claiming these expenses in computing the income. As a result there is a difference between real income & taxable income.

Suggestion:

> ***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.***

21. 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 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.

Suggestion:

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…………."*

22. 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. 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.

In order to bring parity and also to remove the hardship caused to the assessee, it is suggested that deduction be allowed on the employee's contribution made before the due date of filing the return of income.

Suggestion:

> ***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.***

23. 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. 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.

Suggestion:

> ***NBFCs may also be include in Sec. 36(1)(viia) so that the benefits are also extended to infrastructure financing NBFCs***

24. Section 36(1) (viii)

Section 36(1)(viii) provides for deduction (upto a prescribed limit) in respect of any special reserve created and maintained by a specified entity. A specified entity does not include Asset Reconstruction Companies.

Suggestion:

> ***It is suggested that Asset Reconstruction Companies (ARC) should be included in the definition of specified entity to be eligible for deduction under section 36(1)(viii).***

25. Amendment by the Finance Act, 2012 in Section 40 and Section 201

The Finance Act, 2012 has amended section 40(a)(ia) to provide that disallowance under that section would not be attracted where the tax deductible at source has been paid by the resident payee and he has furnished his return of income disclosing such payment within the prescribed time. This amendment is proposed to be made effective only from A.Y.2013-14.

Section 201 has also been amended with effect from 1st July, 2012 to provide that in such a case, the payer would not be treated as an assessee-in-default.

It is suggested that since this a genuine difficulty being faced by the payer since the introduction of section 40(a)(ia) w.e.f. 1.4.2005, therefore, this provision should be given effect to retrospectively with effect from that date of introduction of the provision, so that in cases where the tax was paid directly by the payee, there should be no disallowance of the expenditure in the hands of the payer. Further, above all, since the amendment clarifies the real intent of law, it should be given effect to retrospectively.

Also, since disallowance under section 40(a)(ia) would be attracted when tax is not deducted at source during the relevant previous year, therefore, a provision needs to be incorporated to provide that in such cases where tax is paid by the resident payee, the payer is deemed to have deducted at source *at the time when it was so deductible*.

Suggestion:

> ***The provisions of section 40(a)(ia) and section 201(1) may be amended retrospectively with effect from 1.4.2005 in order to clarify the real intent of law*** **and to remove hardship, thereby reducing further litigations.**
>
> ***The later part of the second proviso may be suitably amended to provide that it shall be deemed that the assessee has deducted tax <u>in the relevant previous year</u> and paid the tax on such sum on or before the due date of furnishing the return of income.***

26. 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 suggested that the deduction for leave salary liability may not be linked to actual payment.

***Suggestion*:**

> **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.**

27. 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 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.

Suggestion:

(i) The words "or Non-Scheduled Banks" be inserted in the section 43D of the Income-tax Act, 1961 and Rule 6EA of the Income-tax Rules, 1962 be amended suitably w.e.f. 01.04.2006 and relevant to A.Y. 2007-08.

(ii) In Rule 6EA (a)(i) the words 'six months' be replaced by "three months".

28. Section 44AD-Presumptive Income – Some Issues

Section 44AD was introduced w.e.f. 01/04/2011 i.e. from AY 2011-12. According to the 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 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 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.

Suggestion:

> ***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:***
>
> ***"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.

Suggestion:

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 businesses are as under:

a) Business I (Retail trade of cloth)	***RS. 30 Lakhs***
b) Business II (Manufacturing of tyres)	***Rs. 25 Lakhs***
c) Business III (Running a sweet shop)	***Rs. 35 Lakhs***
d) Business IV (Advertising agency)	***Rs. 15 Lakhs***

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.***

c) Applicability of section 44AD

The Finance Act, 2012 has 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.

Since the definition of "eligible business" under section 44AD does not exclude the above businesses, such persons were eligible for opting for presumptive taxation under section 44AD subject to fulfilment of the conditions prescribed therein, for the assessment years 2011-12 & 2012-13. Consequently, they were exempt from maintaining books of accounts and getting the same audited. Accordingly, the above persons who have opted for presumptive taxation in those years were not maintaining books of account under section 44AA.

Therefore, these persons would face genuine hardship if the benefit of presumptive taxation is withdrawn retrospectively with effect from A.Y.2011-12, since they would not have maintained any books of account. Thus, it is suggested that this clarificatory amendment be given prospective effect regarding these two businesses.

Further, the proposed amendment 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.

Suggestion:

a) ***The provisions of sub-section (6) of section 44AD should be made effective from A.Y.2013-14, since the persons earning income in the nature of commission or brokerage and persons carrying on agency business who had opted for***

presumptive taxation for A.Y.2011-12 and A.Y.2012-13 in the absence of specific exclusion in the definition of "eligible assessee" or "eligible business" would face genuine hardship on account of such retrospective amendment.

b) ***Further, instead of inserting sub-section (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.***

29. Conversion of stock-in-trade into capital asset

Section 45(2) covers the situation where capital asset is converted into stock in trade. There is no provision in law which deals with a situation where stock in trade is converted into capital asset of a business. Nowadays there are a large number of instances where stock in trade gets converted into capital asset.

Suggestion:

It is suggested that the said transaction should be regarded as a transfer and consequently section 2(47) may be amended. A section may be drafted on the lines similar to section 45(2) to provide that the difference between the fair market value on the date of conversion and the cost price or market price of stock in trade which has been considered for the purpose of valuation of closing stock is to be deemed as business profits to be taxed in the year in which capital asset is sold. The fair market value on the date of conversion should be deemed as cost of acquisition of the capital asset.

30. 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.

Suggestion:

> ***It is suggested that similar provision need to be inserted for LLP allowing merger and demerger and amalgamation to be revenue neutral.***

(b) Transfer of capital asset by a Limited Liability partnership (LLP) to Private Company or unlisted public company on account of conversion

Section 47(xiiib) provides that any transfer of capital asset or intangible asset by a private company or unlisted public company to a LLP due to conversion into a LLP subject to fulfillment of certain conditions shall not be considered as transfer for the purpose of capital gains. It may be noted that similar provision has not been provided in a case transfer of such assets where LLP is converted private company or unlisted private company.

Suggestion:

> ***Any transfer of capital asset or intangible asset by LLP to a private company or unlisted public company due to conversion subject to fulfillment of certain conditions, may also not be considered as transfer for the purpose of capital gains.***

(c) 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 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.

Suggestion:

In view of the above, 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.

(d) Consequential amendment required in section 47(xiiib)

The turnover limit for compulsory tax audit of accounts under section 44AB as well as for presumptive taxation under section 44AD has been raised from Rs. 60 lakhs to Rs. 1 crore, in the case of persons carrying on business by the Finance Act, 2012.

However, no corresponding amendment has been made in the limit of total sales, turnover or gross receipts in the business of a company for availing the benefit under section 47(xiiib) on conversion to an LLP.

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 lacs. The turnover limit may be increased to Rs.1 crore to bring it in line with the amendments made by the Finance Act, 2012 in u/s 44AB and 44AD where the turnover limit is being increased from Rs. 60 lacs to Rs.1 crore.

In fact, since this is an 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).

Suggestion:

> ***The limit of total sales, turnover or gross receipts in the business of a company for availing the benefit under section 47(xiiib) on conversion to an LLP may be suitably increased to Rs.1 crore, in line with the limits in section 44AB and section 44AD. In fact, 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 47(xiiib).***

31. 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 recognised the importance of demergers in the corporate sector and introduced various amendments to the Act vide Finance Act 1999 to facilitate corporate restructurings through demergers. The Memorandum explaining the provisions of the Finance Bill 1999 has 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 no in sync with the objective of the introduction of the amendments as stated in the Memorandum.

Suggestion:

> ***Section 49(1)(iii)(e) to be amended to include reference to demerger which is exempt under Section 47(vib) and (vic).***

32. Section 50C - Fair Market Value

Under section 50C of the Income-tax Act, the Fair Market Value is to be taken on the basis of the Stamp Duty Valuation adopted by the Stamp Duty Officer and the Stamp Duty is being levied on the basis of the prescribed `Jantri Value' (Circle rate) on the date of registration of the document of Sale Deed. Many a times, it happens that after the "Agreement to Sell" popularly known as `Banakhat' is registered, some dispute is raised by outside party or payment is made as per construction linked plans and final execution of document is prolonged by which time, the circle rate is increased by the State Govt. Therefore, at the time of the registration of the final Sale Deed, stamp duty becomes payable on a higher circle rate which is sometimes more than the "Banakhat Value" also. Naturally, the banakhat value will not be increased by the buyer. This results in disputes as to what value should be adopted for the purpose of the income tax.

Suggestion:

> ***It is suggested that for the purpose of Section 50C, Fair Market Value should be the circle rate as on the date of Banakhat (date of agreement to sell) if the Banakhat is a registered document (and not the circle rate as on the date of registration of final sale deed) and the actual value as per the sale document, whichever is higher.***

33. Forfeiture of Advance Money u/s 51

Section 51 provides for deduction of actual amount (without indexation) of advance or other money received and retained by the assessee on previous occasions of negotiating the sale of capital asset, from Cost of Acquisition and indexation is done thereafter based on the CII for the year in which the asset was acquired/ first held by the assessee . The assessee in effect is deprived of the full benefit of indexation which may not be correct intent of the law.

Suggestion:

> ***In order to provide relief to the assessee, any forfeited money in respect of any long term capital asset should be allowed to be deducted after Indexation, if any, from date of forfeiture to the date of sale.***

34. *(i) Section 54- Investment in residential house*

Several disputes are in existence as to whether an assessee can buy more than one house under provisions of section 54 of the Income-tax Act, 1961. In the recent times High Courts and ITAT have taken a consistent view that in order to avail the exemption u/s 54 of the Act, investment in a "residential house" is required to be made. Here a residential house means a "dwelling unit", which may encompass more than one flat or living places, if all of them together are meant for one family for living together. It is submitted that permitting investment of the sale proceeds in more than one house properties when the need of housing is increasingly felt due to increase in population, would be a step in the right direction. Even otherwise, investment upto Rs. 50, 00, 000 is encouraged and allowed u/s 54EC of the Act.

Suggestion:

> ***It is suggested that a provision be introduced whereby acquisition of more than one house be eligible for exemption u/s 54.***

(ii) Certification of deductions claimed under section 54, 54F, 54EC etc

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 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.

Suggestion:

> ***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 if the claim.***

35. Section 54EC- Capital gain not to be charged on investment in certain bonds

Section 54EC provides that the capital gains arising from the transfer of a long term capital assets will be exempt, if the whole or part of the capital gain, is invested in the long term specified assets at any time within a period of six months after the date of transfer. Further, proviso to this section provides exemption shall be available only when investment made in long term specified asset by an assessee during any financial year does not exceed Rs. 50,00,000/-.

Suggestion:

a) ***As the financial year may differ from assessee to assessee, it is suggested that the term "financial year" be substituted with the term "previous year".***
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.***

36. Exemption under Section 54 & 54F

Section 54F provides for the exemption from tax on capital gains arising on transfer of any long term capital asset not being a residential house, provided the assessee purchases a residential house within a period of one year before or two years after the date on which the

transfer took place, or constructs a house property within a period of three years after date of transfer. It is suggested that in order to cover all possible situations, the money spent on construction of house property before one year of sale should also be allowed under section 54F.

Suggestion:

> ***It is suggested that the section 54F(1) may be re-worded as follows:***
> ***"In the case of an assessee being an individual or a HUF the capital gain arises from the transfer of any long term capital asset, not being a residential house and the assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period one year before or three years after that date constructed, a residential house, the capital gain shall be dealt with in accordance with the provisions of this section."***

37. Capital gain on transfer of residential property to be taxed in certain cased-Section 54GB

The Finance Act, 2012 has 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 proposal has been 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 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 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 to be notified by the Central Government.

(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.

Suggestions:

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 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.***

38. Definition of the term relative- 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 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.

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".***

(iii) ***The application of the provision should also be extended to the relatives of the members of HUF.***

39. Exclusion of rights shares/ fresh issue of shares from the ambit of section 56 (2)(viia)

Clause (viia) has been 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 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 proposed to be inserted in the Act, would bring rights shares within the mischief of these provisions.

Suggestion:

> ***It is suggested that rights shares and fresh issue of shares be excluded specifically from the ambit of these provisions.***

40. Valuation of shares- Section 56(2)(viib)

The Finance Act, 2012 has 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 has already been submitted 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).

Suggestion:

(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.***

41. 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 proposed to be 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 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.

Suggestion:

> ***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.***

42. 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, entertainment/sports, information technology (IT) and IT enabled services.

Suggestion:

a) ***The benefit of section 72A may be extended to all businesses including financial services, entertainment/ sports, information technology (IT) and IT enabled services.***

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 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.

43. Section 72-Carry forward and set off

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".

Suggestion:

It is suggested that the brought forward business loss may be allowed to be set off against such short-term capital gain in subsequent assessment years.

44. Deduction for Education expenses

Section 80C allows a deduction in respect of education expenses. The deduction covers only the tuition fees.

Suggestion:

It is suggested that the deduction should be available for purchase of all kinds of books, CD's, computers, internet connection etc. the deduction should also be available in respect of part time course for vocational training etc by all universities and approved institutions.

45. Introduction of new section for deduction in respect of PPF:

Considering the fact that the there are inadequate social security measures in India, it is suggested that a separate section may be introduced for allowing deduction in respect of amount invested in Public Provident Fund upto Rs. 1 Lakh. As the return on PPF is tax free, it would be beneficial for both individuals & Government. Further, this would not only provide additional tax benefits to those who have the capacity to save but would also provide more money to the Government, since there is a lock in period of 15 yrs, thereby enabling the generation of huge funds for development of infrastructure.

Suggestion:

> ***It is suggested that a separate section may be introduced for allowing deduction in respect of amount invested in Public Provident Fund upto Rs. 1 Lakh.***

46. 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 would 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.

Suggestion:

> ***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.

47. Increase in limit of deduction u/s 80DD & 80U

In view of the increase in following costs, maximum deduction in respect of medical 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;

Suggestion:

It is suggested that the limit specified in section 80DD & 80U be enhanced suitably.

48. Deduction u/s 80G - to liberalise the exemptions by enhancing ceilings specified

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, 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 avoid misuse etc.

Suggestion:

In view of the above, it is suggested that the ceiling of 10% on gross total income be enhanced appropriately.

49. 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 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.

Suggestion:

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.

50. Benefit u/s 80IA 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 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 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 80IA may therefore, continue to be available in the hands of the transferee, like in the past, prior to insertion of Sub-section (12A) in 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 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 80IA 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.

v. 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 80IA like those under Sections 80IB, 80IC 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 benefits years, in the Finance Act of 2011 clearly underscores and reiterates their importance.

Suggestion:

The original position, under which the transferee company enjoys the benefit in case of a demerger or amalgamation, may be reinstated.

51. Deduction in respect of royalty on books – Section 80QQB

a) 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.

Suggestion:

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.

b) The benefit appears to be restricted to persons carrying on the profession of an author. This would deny the benefit of the deduction to most authors of literary, artistic, or scientific books, since it is not always possible for a person to sustain himself merely by writing books. Even some of the leading authors and poets may not get the benefit due to this restriction.

Suggestion:

> ***In order to ensure that the deduction really benefits those for whom it is intended, it is suggested that the benefit should not be restricted to income derived from the exercise of a profession, but should be available to any author of such books.***

52. Donations made of any sum exceeding ten thousand rupees in cash- sections 80G and 80GGA

Sub-section (5D) is inserted in section 80G and sub-section (2A) is 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).

Further, since deductions under section 80GGB and 80GGC are also in respect of donations, the above limit should be made applicable in respect of such contributions to political parties and electoral trusts as well, to dissuade cash payments.

Suggestions:

> ***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.***
>
> ***Further, since deductions under section 80GGB and 80GGC are also in respect of donations, the above limit should be made applicable in respect of such contributions to political parties and electoral trusts as well, to dissuade cash payments.***

53. Deduction in respect of interest on deposits in savings account- Section 80TTA.

Section 80TTA has been 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.

It may be noted that persons with income under the head “Salaries” and interest of upto Rs.10,000 from savings bank account are being exempted from filing of return of income. 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 term deposits to earn comparatively better returns. Therefore, since the money is anyway kept within the banking channels, it is suggested to include time deposit interest within the ambit of section 80TTA. Notification No.9/2012 dated 17.2.2012 conferring exemption from filing return of income to salaried taxpayers with interest upto Rs.10,000 from savings bank account may also be amended to include interest from term deposit within the said limit. This will enhance the utility of exemption given to salaried taxpayers from filing return of income.

Suggestion:

Interest on time deposits may also be included within the scope of section 80TTA.

54. Revival of section 80VV – Deduction for professional fee

Deduction u/s 80VV from total income in respect of expenses incurred in connection with certain proceedings under the Act was inserted w.e.f 1.4.1976. The said deduction was withdrawn by the Finance Act, 1985 w.e.f. 1.4.1986. Prior to its omission section 80VV read as under:

“In computing the total income of an assessee, there shall be allowed by way of deduction any expenditure incurred by him in the *previous year in respect of any proceedings before any income- tax authority or the Appellate Tribunal or any court relating to the determination of any liability under this Act, by way of tax, penalty or interest: Provided that no deduction under this section shall, in any case, exceed in the aggregate five thousand rupees*”

Even after 1986 the assessees having business income are enjoying deduction in respect of such expenses, while the other assessees stand to disadvantage on this account. Now-a-days, the fees payable to the professionals for preparing and filing Income tax returns and handling the income tax matter have increased very much looking to the inflationary pressure. The assessees having Business/Professional income do get the deduction for such fees but other assesses are deprived of the same.

Suggestion:

> ***It is suggested that deduction for such fees upto a sum of Rs. 25,000 may be allowed by re-introducing a section under Chapter VI-A on the lines of earlier Section 80VV.***

55. Double taxation avoidance agreements- Section 90 and 90A

The amendments made by the Finance Act, 2012 to Sections 90 and 90A, so as to provide that a term not defined in the Act or agreement can be assigned meaning through a notification, which shall be effective from the date of coming into force of the agreement, in fact amounts to rewriting of the DTAA. This is not an established international norm of treaty interpretation and also is not in line with the principles of Vienna Convention of Law on Treaties.

Suggestion:

> ***It is therefore suggested the aforesaid amendment should be deleted.***

56. Meaning of International Transaction - Section 92B.

The definition of "international transaction" is has been substituted by the Finance Act, 2012 with effect from 1st April, 2002 to amplify the scope of "intangible property" and to include a transaction of business restructuring or reorganization, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has a bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or any future date.

Since this is a change in the provisions of substantive law, the same should be given effect to by an amendment to section 92B explaining the meaning of international transaction and not by way of an Explanation.

Further, in case of intangibles there are generally no comparables, due to which it may be difficult to compute the arm's length price for such transactions.

Transfer Pricing provisions should not be made applicable to marketing intangibles, inter corporate guarantees etc unless a payment is made. Since "bright line concept" which is directly imported from USA is controversial and a subject matter of litigation, marketing intangibles etc. should be kept outside the scope of transfer pricing.

Since the transfer pricing provisions are attracted in respect of international transactions entered into between associated enterprises, consequently the said amendment would require that persons who have entered into such transactions to maintain the books of account prescribed under section 92D and to obtain the report of an accountant and furnish such report under section 92E on or before the specified date being the due date of filing return of income under section 139(1). Non-compliance with such provisions would attract penalty @ 2% of the value of the international transaction under section 271AA and Rs.1 lakh under section 271BA.

The persons who have entered into such transactions are facing undue hardship on account of retrospective amendment of the definition of international transaction with effect from 1.4.2002 as they would have to face the penal consequences for non-maintenance of books of account and non-furnishing of report of an accountant. Further, comparable data for the earlier years may also not be available, which may cause difficulty in determining arm's length price.

Suggestions:

(i) ***It is suggested to substitute the definition of "international transaction" prospectively w.e.f. 1.4.2013 so that persons who have entered into such transactions in the past, which are now affected due to the proposed changes, do not face undue hardship on account of penal consequences which are attracted due to non-maintenance of prescribed books of account and non-furnishing of report of an accountant and any other associated requirement.***

(ii) ***Transfer Pricing provisions should not be made applicable to marketing intangibles, inter corporate guarantees etc unless a payment is made.***

(iii) ***Due to lack of comparables in case of intangibles, appropriate safe harbor provisions may be introduced. Though the enabling provisions for making rules for safe harbour have been conferred on the Central Board of Direct taxes three years back vide Finance (No.2) Act, 2009, the rules in this regard are yet to be notified. It is suggested that the rules may be notified at an early date so that the tax payers are able to avail the benefit intended by the legislature.***

(iv) Further, the requirement of obtaining a Valuation Report from an accountant may also be provided for.

57. Meaning of specified domestic transactions- Section 92BA

The Finance Act, 2012 inserted section 92BA to define "specified domestic transaction" for applicability of transfer pricing provisions. Transfer pricing provisions, including procedural and penalty provisions, are proposed to be extended in respect of specified domestic transactions, exceeding a monetary threshold of Rs. 5 crores in aggregate entered into by the assessee during the year. The transfer pricing provisions would be made applicable to transactions entered into by domestic related parties or by an undertaking with other undertakings of the same entity for the purposes of section 40A (2), Chapter VI-A and section 10AA.

1) The percentage threshold specified to come within the purview of "related party" is 20% under section 40A and 26%. under current international transfer pricing .Further, in case of tax holiday units, no such threshold is specified, rather a subjective phrase "Close Connection" has been used. A harmonization of definition in this regard shall bring more objectivity.

2) 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 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.

3) (A) The transaction in which any payment is to be made to the person referred to in section 40A(2)(b) is covered within the meaning of "specified domestic transaction" under section 92BA. Person referred to in section 40A(2)(b) includes in the case of a company, any director of the company. A literal interpretation of domestic transfer pricing provisions would also include application of ALP for determination of managerial remuneration of directors. The moot issue is the manner in which such transactions would be benchmarked in the absence of any comparable data available and comparable standards and methods in place. Also, payment of director's remuneration in compliance with Schedule XIII of the Companies Act, 1956 should be kept outside the scope of "specified domestic transaction". Likewise, remuneration to partners within the limits specified in section 40(b)(v) should also be kept outside the scope of "specified domestic transaction".

(B) It may be noted that the scope of persons referred to in section 40A(2)(b) is far wider than the scope of persons covered under the definition of "associated enterprise" under section 92A(2). In fact, reference may be made to section 90A(2) rather than section 40A(2)(b).

4) Further, in case the transfer pricing officer identifies a case of excessive cost or under invoicing of sales and resultantly makes adjustment enhancing the tax liability of the concerned assessee, there is no provision to provide corresponding benefit to the other party to the transaction. This will result in double taxation (Countries like UK provide a mechanism of set off to the other party in such circumstances). Also in international taxation, such cases are covered by the treaty which invariably has the provisions to arrest the instances of double taxation.

5) The applicability of transfer pricing provisions to domestic transactions particularly those covered under section 40A(2). will substantially increase compliance burden for tax

payers. Therefore, such transactions should be outside the scope of transfer pricing provisions. In any case, if such provisions are to be made applicable to domestic transactions, the threshold limit should be increased to atleast Rs.50 crores in respect of transactions covered under section 40A(2)(b).

6) A co-relative adjustment may also be allowed similar to proviso to section 28(v) i.e. the amount of expenditure allowed in the hands of one enterprise should be treated as the income of the other enterprise, and vice versa. This principle is accepted in all the developed countries.

7) Further, if the proposal to apply transfer pricing provisions to domestic transactions is to continue, then the proposed provisions for advance pricing agreements should include within its scope such domestic transactions as well.

8) Section 271AA provides for levy of penalty @ 2% of the value of international transaction for failure to keep and maintain any such information and document as required under section 92D(2), failure to report such transaction which he is required to do so or maintains or furnishes incorrect information or document. The levy of penalty @ 2% of the value of international transaction would be very harsh. Therefore, the levy of penalty may be kept at 2% of the profit sought to be evaded from such transactions.

Suggestions:

(1) Transfer pricing provisions should not be made applicable in respect of domestic transactions, particularly in respect of transactions in the nature of expenditure under section 40A(2). In any case, payment of director's remuneration in compliance with Schedule XIII of the Companies Act, 1956 and partners remuneration within the limits prescribed under section 40(b)(v) should not be included in the scope of "specified domestic transaction". In case, such provisions are to be made applicable to domestic transactions, the threshold limit may be increased to atleast Rs.50 crores in respect of transactions covered under section 40A(2)(b).

Alternatively, the amount of expenditure allowed as deduction in the hands of one enterprise as per the arm's length price determined should be treated

as income of the other enterprise, and vice versa. Also, Advance Pricing Agreements should apply for domestic transactions as well.

(2) ***The Finance Act, 2012 has made transfer pricing provisions applicable to specified domestic transactions. As per the amendment, the existing Transfer pricing provisions would be applicable to domestic transactions covered by sections 40A(2), 80-IA(8)/(10) and 10AA and that domestic concerns would have to comply with the rigours of Rule 10D. This would mean that the provisions of section 92CA(1) w.r.t. reference to the TPO would also apply. The existing administrative machinery of Transfer Pricing (i.e. TPO and DRP) are already over burdened and any further workload without a corresponding increase in the infrastructure will jeopardise the quality of the work.***

(3) ***The penalty for non-disclosure in the certificate by Accountant should be much lower and not 2% of the value of international transaction.***

58. Computation of Arms's length price- Section 92C

The Finance Act, 2012 ahs made certain amendments to the second proviso to Section 92C(2). These changes are:

The proviso to Section 92C prior to its amendment by the Finance (No. 2) Act, 2009 does not provide for a standard deduction and recourse to it is only applicable in case the difference between the arm's length price and transfer is within the range of 5%.

The amendment to the proviso to Section 92C made by the Finance (No. 2) Act, 2009 will be applicable for assessment/re-assessment proceedings pending as on 01.10.2009.

Apart from these retrospective amendments, the Finance Act, 2012 also made a prospective amendment to the tolerance band. It also provided that the existing proviso (as per Finance Act, 2011) be amended to provide for an upper cap of 3% to the tolerance band that can be notified by the Central Government as per the enactment in 2011. This amendment has been made w.e.f 01.04.2013.

These changes may not provide any relief to the taxpayer as these are not in line with the interpretation already adopted by many of the Tribunal rulings. In as much as transfer pricing is not an exact science, this may lead to hardship for the taxpayers. In most countries, like in OECD, a concept of arm's length range is followed. Hence, allowing for a narrow band in a scenario where current year data is used may require a very strict degree of compliance.

It may also be noted that if at all one were to specify an industry specific tolerance band, then it will have to periodically examine to ensure that the percentages/bands specified are as per contemporaneous data for all such industries. If the percentages are not updated contemporaneously, then, it may lead to severe hardship for the taxpayers.

Suggestions:

It is suggested that as it is possible that there may be more than one arm's length margin possible and to bring the Indian TP provisions more in line with international practices, the concept of arm's length range like the inter quartile range instead of specifying the tolerance band for each industry may be introduced.

Alternately, the existing provision on 5% tolerance band should be extended till such time the government announces the specific industry percentages as was provided by the Finance Act, 2011.

59. Advance Pricing Agreements (APAs)-Section 92CC and 92CD

New sections 92CC and 92CD have been introduced by the Finance Act, 2012 to empower the Board to enter into an Advance Pricing Agreement (APA) with any person undertaking an international transaction to determine the arm's length price (ALP) of an international transaction or specify the manner in which ALP shall be determined. APA to be valid for a period, not exceeding five consecutive previous years, as specified in the agreement. APA to be binding on the person and the Commissioner and his subordinate authorities in respect of the specific transaction. However, APA will not be binding if there is any change in law or facts having a bearing on the APA.

This is a welcome step towards reduction of litigation in the current transfer pricing regime. However, litigation is generally on account of confusion and uncertainty as regards right procedure of selection of comparables and application of filters to bring out the true uncontrolled comparable transaction. An appropriate guidance to the assessees as well as to the TPOs is required, laying the appropriate steps and filtration process under all the recommended methods for transfer pricing by way of case studies which is internationally prevalent. This would go a long way in building transparent transfer pricing regime.

Suggestions:

In line with the recommendations of the Parliamentary Standing Committee on the Direct Taxes Code Bill, 2010, it is suggested that an independent agency appointed by the CBDT consisting of technical and judicial Members, should be entrusted with task of framing APAs, specifying the manner in which ALP is to be determined in respect of an international transaction. The independent agency will advise the Board on APAs in order to ensure that the APAs reflect current commercial practices.

(1) An appropriate guidance to the assessees as well as to the TPOs is required, laying the appropriate steps and filtration process under all the recommended methods for transfer pricing by way of case studies which is internationally prevalent.

(2) A mechanism for a review of an APA on account of change in law or facts should be formulated.

(3) Appropriate procedure for withdrawal of application made by a tax-payer for APAs should be provided for in the scheme.

(4) The APAs should also provide for renewal of APAs after the expiry of initial period of applicability, where the business model as well as the law remains the same.

(5) Further, APAs should include a clause to provide that if any DTAA is entered into in future, and the provisions of the DTAA are more beneficial, the same would be applicable to the tax-payer.

(6) ***For bilateral APA, the APA and MAP negotiation between the two Competent Authorities should commence simultaneously.***

60. General Anti Avoidance Rule (GAAR)

The Finance Act, 2012 provided that the General Anti Avoidance Rules introduced in the Income Tax Act to deal with aggressive planning shall be effective from 1.04.2014. The GAAR provisions are majorly contained in the Chapter X-A of the Income-tax Act, 1961 but certain corresponding amendments were made in other sections like sections 90, 90A, 144C, 153, 153B, 246A etc.

Even though the Finance Act, 2012 made the provisions of Chapter X-A relating to GAAR effective from 1.04.2014, the changes in the above mentioned corresponding sections are still effective from 1.04.2013. Thus, the anomaly so created needs to be resolved.

Suggestion:

It is suggested that in tandem with applicability of Chapter X-A relating to GAAR the provisions of sections 90, 90A, 144C, 153, 153B, 246A etc. be made effective from 1.04.2014 rather than 1.04.2013.

61. Anonymous donations under section 115BBC

Section 115BBC taxes anonymous donations at a flat rate of 30%. The Finance (No.2) Act, 2009 has introduced an exemption limit for taxation of anonymous donations received by charitable trusts and institutions. Accordingly, the total tax payable by such trusts/institutions would be:

(i) Tax @30% on anonymous donations exceeding the exemption limit as calculated above; and

(ii) Tax on the balance income i.e. total income as reduced by the aggregate of anonymous donations received.

The exemption would be the higher of the following:

(i) 5% of total donations received by the trust/institution or

(ii) Rs.1,00,000

Thus a clarification is required as to whether the intention of the statute is to altogether exempt this amount from income-tax or to bring it to tax at normal rates of income-tax.

The issue is explained by way of an illustration:

Total donation = Rs.10 lacs

Anonymous donations = Rs.3 lacs

Exemption under section 115BBC = Rs.1 lac (i.e. higher of Rs.1 lac or 5% of Rs. 0.50 lacs)

Balance anonymous donations = Rs.3 lacs – Rs.1 lacs

= Rs.2 lacs is taxable@ 30% under section 115BBC.

Balance taxable income = Rs.10 lac – Rs.3 lac = Rs.7 lacs would be subject to normal rates of tax. The balance income of Rs.7 lakhs would be exempt only of it is applied for specified charitable purposes.

The language of the section, as it reads at present, exempts Rs.1 lakh unconditionally i.e. no application is required for the purposes of total exemption from tax.

It is felt that this may not reflect the correct intention of the legislature. The amount of Rs.1 Lakh, exempt under section 115BBC, should also be required to be applied for specified purposes for claim of total exemption from tax.

Suggestion:

> ***To clarify the intention of the statute, it is suggested that section 115BBC(1)(ii) may be re-worded as follows:-***
>
> ***" the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the ~~aggregate amount of~~ anonymous donations ~~received~~ WHICH ARE SUBJECT TO TAX IN CLAUSE (i) ABOVE."***

62. Section 115BBE ought to be amended:

Section 115BBE provides to tax the income under sections 68, 69, 69A, 69B, 69C and 69D at the rate of 30%. This section ought to be amended so as to provide that it shall be applicable only to the cases where sums are added during the course of assessment proceedings. In other words, the income offered in the regular return of income of an assessee and voluntarily subjected to tax shall not be brought within its ambit. This is because of the reason that it will have huge impact on the tax liability of small assessees than large tax payers who are already paying tax at maximum marginal rates; in many cases small assessees' would not be in a position to explain the cash credits or source of investments to the satisfaction of the AO due to lack of knowledge or otherwise.

Suggestion:

> ***It is suggested section 115BBE be amended so as to provide that it shall be applicable only to the cases where sums are added during the course of assessment proceedings. In other words, the income offered in the regular return of income of an assessee and voluntarily subjected to tax shall not be brought within its ambit.***

63. 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 become available.

In case of an assessee who is entitled to claim the exemption u/s 10A to 10C and deduction u/s 80IA to 80ID, 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 allowed accordingly. 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.

Suggestion:

> ***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 80IA to 80ID under normal provisions of the Act.***

64. Increase of threshold of maximum amount not chargeable to tax in the case of NRI & POIO

Presently, Senior citizens and super Senior citizens enjoy a higher exemption limit of Rs. 2,50,000 and Rs. 5,00,000 provided they are resident of India. Since section 115I gives an option to the non-residents for being taxed under the normal provisions of law, the higher

exemption limit should also be made available to the Non-Resident Indians and Persons of Indian Origin who are senior citizens/ super senior citizens provided they opt for being taxed under the normal provisions of law.

Suggestion:

> ***It is suggested that the benefit of increased basic exemption limit allowed to senior citizens/super senior citizens be extended to the Non-Resident Indians and Persons of Indian Origin who are senior citizens/ super senior citizens provided they opt for being taxed under the normal provisions of Income tax Act, 1961 by virtue of the provisions of section 115I.***

65. Amendment in section 139(1)

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.

Suggestion:

> ***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.***

66. Section 139(5)

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).

Suggestion:

> ***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.***

67. 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 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.

Suggestion:

> ***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 such audits by a particular auditor in a particular year may be imposed.***

68. Credit of Tax Collected at Source relating to earlier years (for which Assessments are already over & time period mentioned in Sec 155(14) has elapsed) demanded by the Government authorities at a later date:

Many government/semi-government authorities (viz. Mining Department) have been demanding TCS of earlier years for which assessments have already 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.

Suggestion:

> ***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 even if the assessments have been completed and also the period mentioned u/s 155(14) has expired.***

69. Suggestions relating to Tax Deducted at Source

(a) Non-deduction of TDS on Service Tax

TDS provisions should be amended to exclude service tax charged on all services. As per CBDT Circular No. 4 /2008 this benefit is given only in respect of rental income even though the reasoning contained therein would apply to all services.

Suggestion:

> ***It is suggested that no tax at source be deducted on service tax component of professional fees and other services. The benefit for the exclusion of service tax for calculating TDS should be given for other income also.***

(b) Audit of TDS returns

A major portion of the revenue by way of income-tax is recovered through deduction of tax at source. The infrastructure available with the Department is not sufficient for an in-depth

verification of all the TDS returns. Further, for furnishing the information required under revised clause 27 of Form No.3CD, an in-depth verification of the TDS returns is necessary.

Suggestion:

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 TDS returns. This will enable the Department to rest be 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.

70. Section 193-Interest on Securities

Clause (v) of proviso to Section 193 provides that no tax is to be deducted on interest payable to a resident individual on debentures of a company in which public is substantially interested and subject top fulfilment of other conditions. However, there is no exemption or even a threshold limit for the applicability of TDS provisions in respect of the interest on Debentures issued by companies either Listed or Non-Listed. This causes undue hardship to the unlisted companies as they have to deduct TDS even on Rs. 1 Interest Paid to Debenture holders irrespective of the fact that debenture holders income is having very small income.

Suggestion:

i) The interest on Debentures issued by companies either Listed or Non-Listed may be given threshold limit under clause (v) of Proviso to section 193.

ii) The threshold limit under clause (v) of Proviso to section 193 regarding non-deduction of TDS may be increased to minimum Rs. 10000.

71. Section 194H-Deduction of tax at source from income in the nature of commission or brokerage:

Section 194H of the Income-tax Act was introduced w.e.f. 1.6.2001 for deduction of tax at source from payment in the nature of commission or brokerage. No such deduction will be

made where the amount of payment or the aggregate amount of payments, in a financial year, do not exceed Rs.5000/-. The exemption slab of Rs.5000/- is very low and it has unnecessarily increased the work load of the assessee who are responsible for making such deduction. It is suggested that this exemption limit of Rs.5000/- should be suitably increased.

Suggestion:

The exemption limit of Rs. 5000 under section 194H be appropriately revised upwards.

72. Section 194I- TDS on rental income

As per the provisions of section 194I 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 194I 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 2013-14 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 194I may be increased appropriately.

Suggestion:

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 194I be enhanced appropriately.

73. 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 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.

Further, corresponding amendment is required in section 40(a)(ia) to provide for disallowance in case of non-deduction or short-deduction of tax at source.

Suggestion:

a. ***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.***
b. ***Section 40(a)(ia) be amended to include within its scope payment to a director on which tax deductible at source has not been deducted .***

74. Section 194J- Claim of TDS on income declared on cash basis

Under Section 194J of the Income-tax Act, 1961, tax is deductible and payable at the time of credit or payment, whichever is earlier. TDS is one of the modes of recovery of tax. It is well known that most of the professionals follow `Cash Basis' of accounting. As per the provisions of Section 199 read with Rule 37BA, the credit for TDS is allowable to the deductee in the year in which the corresponding income is offered for taxation. Rule 37BA further provides that if the receipts of the fees are spread over more than one year, the credit for TDS will also be spread over such years in which the income is received and taxed. In view of this, it is absolutely incorrect and against the provisions of Section 199 read with Rule 37BA to claim the credit for T.D.S. on the basis of Form No. 26AS. The Departmental Software developed for the processing of ITR does not take care of the provisions of section 199 read with Rule 37BA in case of assessees following Cash Basis of accounting and there is a clear inconsistency. This results in credit for prepaid taxes not being given correctly and fully as per the claim made which are, otherwise, as per the provisions of law.

Suggestion:

In order to overcome the above situation and the inconsistency, it is suggested that the 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.

75. Section 195-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 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.

Suggestion:

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 is rejected the Assessing Officer may be required to pass a speaking order after providing a reasonable opportunity of being heard to the applicant.

76. Validity of Certificate issued u/s 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 late. 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, any assessee cannot have taxable income for some part of the financial year and exempt income for remaining part of the year.

Suggestion:

a) ***the application may be allowed to be made atleast 60 days before the commencement of the financial year.***
b) ***Such application should be disposed off within 30 days.***
c) ***The certificate under section 197 may be issued to be effective from the 1st day of previous year.***

77. Provision for rectification and appeal of intimation under section 200A

Under section 200A, an intimation is generated specifying the amount payable or refundable after processing of the TDS statement. However, there was no provision for appeal or rectification of such intimation and such intimation was also not deemed as a notice of demand.

Therefore, the Finance Act, 2012 had provided that such intimation would be deemed as a notice of demand under section 156. Further, the intimation generated after processing TDS statement shall be subject to rectification under section 154. Such intimation is also appealable under section 246A. However, these amendments were made effective only from 1st July, 2012.

Since these amendments were necessitated on account of the genuine hardship being faced by the assessees, the provisions incorporated to remove such hardship should be given retrospective effect.

Suggestion:

> ***The provisions amending section 154, 156 and 246A to provide for rectification and appeal of intimation under section 200A and deeming such intimation as notice of demand may be given effect to RETROSPECTIVELY.***

78. Amendment in section 201(1A)- Consequences of failure to deduct or pay TDS:

As 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 at the 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. For e.g. if the tax was deducted on 01/09/2012 the same has to be paid by 07/10/2012. If the tax was paid on 08/10/2012 i.e. only one day delay interest for the two month will be charged i.e. from 01/09/2012 to 08/10/2012. 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.

Suggestion:

> ***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 delay should be rounded off to the near month and the present system 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.***

79. Clarification sought for generation of TDS certificates in case TDS is deducted @20% u/s 206AA

As per current instruction and configuration at TIN system without PAN Number entries cannot be filed in TDS return unless and until there should higher deduction flag with the entries. Right now for banks/ Companies, it is mandatory to generate TDS Certificate online. For deductee's where in the absence of PAN Number TDS was deducted as per the provision of Sec 206AA of the Act. For these entries TDS Certificate are not generated online through TIN system.

Suggestion:

> ***A clarification regarding the procedure for providing TDS Certificate especially in above mention issue to make the process easy and smooth and better compliance of the Act may be provided.***

80. 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.

Suggestion:

The limit to pay advance tax under section 208 be raised appropriately/-

81. Computation of advance tax - Section 209

The provisions of section 209 have been amended by the Finance Act, 2012 to provide that for computing advance tax liability, only taxes which have been deducted or collected at source and remitted to the Government can be reduced. This implies that tax deductible or collectible at source cannot be reduced if the same has not been actually deducted or collected and remitted to the Government.

This can lead to burden of interest under section 234C on the payee owing to the default of the payer.

Suggestion:

Interest under section 234C may be waived off in such cases. In the alternative, the liability to pay interest should arise only in respect of instalments which fall due after such non-deduction or non-collection.

82. Dispute Resolution Panel (DRP)

The Finance Act, 2012 had proposed that the DRP should be granted the powers to examine issues not referred to it by the taxpayer. The intention behind introduction of the DRP mechanism may be defeated by introducing such provisions, which may, in fact, prolong the litigation, instead of resolving disputes.

Suggestion:

The enhancement powers given to the Dispute Resolution Panel (DRP) will create more legal disputes than resolve. The primary task of finding a dispute is that of

the AO and the DRP is supposed to resolve the dispute. The proposed powers will lead to creation of disputes at the DRP level.

83. Interest u/s 234C on Firms and Companies

i) 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.

Suggestion:

It is suggested that the Departmental Software needs to be suitable 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.

ii) Section 234C computes the interest for deferment of advance tax calculated on the basis of tax chargeable on income declared in the return of income. The said interest is charged quarterly for any deferment of tax liability. Section 234C also provides that such interest shall not be calculated if the shortfall is on account of underestimate or failure to estimate the amount of capital gains or the income from lotteries, cross words , puzzles etc. However, it does not takes care of the special situations where due to unavoidable circumstances abnormal income (not being income arising in the normal course of business) become chargeable to tax like deemed income which becomes taxable due to non fulfilment of certain conditions.

Suggestion:

It is suggested that interest under section 234C should not be charged in respect of abnormal income (not being business income) in case tax on such income is paid on or before 31st March of the previous year.

84. Section 239 - Limitation for filing return for claiming refund

As per the provisions of section 239, no claim for refund shall be allowed after the end of one year from the end of the relevant assessment year for which the refund is being claimed. The said time limit was initially "two years". However, the Finance Act, 1992 reduced the same to "one year". Considering the complexities involved in the exiting e-filing system and the issues arising due to mismatch of Form No.26AS, it is suggested that the time limit under section 239 be restored to "Two years" from the end of the relevant assessment year.

Suggestion:

> ***It is suggested that the time limit under section 239 for claiming of refund be restored to `Two years' from the end of the relevant assessment year.***

85. Inclusion of payments and receipts made through the modes like RTGS, NEFT, EFT and ECS as valid modes of fund transfers under sections 269SS and 269T of the Income-tax Act, 1961

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.

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.

However, now-a-days many banking transactions take place by way of Net banking facilities that include Real Time Gross Settlement (RTGS), National Electronic Funds Transfer (NEFT), Electronics Funds Transfer (EFT) and Electronic Clearing Service (ECS). Use of payment gateways for online transactions as well as credit cards is also on the rise. In fact section 80D which provides for deduction in respect of medical insurance premium permits any mode of payment other than cash. Similar provision may be incorporated in section 269SS and section 269T.

Suggestion:

> ***It is therefore suggested that mode of transfers like RTGS, NEFT, EFT, ECS etc. be included as valid modes of fund transfers under section 269SS and 269T of the Income –tax Act, 1961. Alternatively, section may provide for any mode of payment other than cash on the lines of section 80D.***

86. Case for Exemption to NBFCs registered with RBI from the purview of Sec. 269T of the Act

Section 269T of the Income-tax Act, 1961was amended by the Finance Act 2002 to make it obligatory on the part of all persons including individuals to repay any loan or deposit only by an Account Payee Cheque or Account Payee Bank draft drawn in the name of the person who has made the loan or deposit if the aggregate amount of loan or deposit together with interest thereon is Rs. 20,000 or more. However, transactions with banking company are exempt from the operation of this provision.

Like banks, NBFCs are also extending loans to various categories of persons including individuals in large number. However, NBFC transactions are not exempted from the operation of this provision.

Suggestion:

> ***Since loan portfolio of NBFCs is similar to that of banks and considering the same regulatory environment under which NBFCs are operating, NBFCs registered with RBI be exempt from the applicability of Section 269T of the Income-tax Act.***

87. 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 cases, i.e. cases covered under clause (c), penalty to range between 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).

Suggestion:

> ***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).***

88. Penalty for failure to furnish TDS/TCA statements- Section 271H

The Finance Act, 2012 has inserted the penalty provisions under section 271H providing for penalty ranging between Rs.10,000 to Rs.1,00,000 for failure to furnish quarterly statements of TDS and TCS within the time prescribed under the Income-tax Rules, 1962.

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 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.

Suggestion:

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 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.***

89. 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 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.

Suggestion:

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.

90. Increase in Ceiling Limits

The existing monetary ceiling limits in various sections have been fixed long ago and needs revision upwards. In view of the fact that the corresponding limits in the Direct Taxes Code Bill, 2010 have been increased upwards, it is suggested that the said limits in the Income-tax Act, 1961 may also be increased.

Suggestion:

The following suggestions are made in this regard.

Section	***Existing ceiling***	***Suggested ceiling***
40A(3)	***Rs.20,000***	***Rs.50,000***
269SS	***Rs.20,000***	***Rs.50,000***
269T	***Rs.20,000***	***Rs.50,000***

91. CER Sale to be treated as Capital Receipt

Carbon credit is an incentive available to the Industries reducing CO2 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.

Suggestion:

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.

92. 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 Costs is proposed to be introduced under Companies Act. Providing suitable tax incentives in respect of such Corporate Social Responsibility Costs to accelerate the process and to ensure that the country can reach the goal of being a developed nation in the near future is the need of the hour.

Suggestion:

It is suggested that:

a) a deduction of the 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.

b) ***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.***

c) ***Such expenses, however, should be subject to a limit say 5% of total income.***

93. 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.

Suggestion:

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.

94. 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 80IA 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 IT 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 structures.
- Storages including farmer facility center housing training centers, cafeteria, health clinic, pharmacy, bank counters and necessary parking area.
- Green houses and poly houses.

Suggestion:

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 80IA 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).***

95. 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 more by way of additional exemptions/incentives if, the project gets completed on time.

Suggestion:

It is suggested that concessions or additional tax benefits may also be provided where a new building (resident/ commercial/ hotel etc) installs a solar energy devices & rain harvesting instruments.

96. 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.

Suggestion:

> ***It is suggested that procedure for surrender of PAN & exemption from filing of return of income in respect of Firms whose business discontinued, may be prescribed. With this, firms may be saved from penalty u/s 271F.***

97. Differential Stamp duty charges being paid by CA's and Advocates on letter of authority for representing the client

For representing the client, an advocate is being charged a fee of Rs.5/- per Letter of Authority while a Chartered Accountant has to pay Rs.100/- per Letter of Authority. In Maharashtra, in respect of representing the client by Chartered Accountants, the Court fees is governed by the provisions of Bombay Stamp Act, according to which the Letter of Authority must be accompanied by a Court fee of Rs.100/- or a stamp paper valued Rs.100/-

Suggestion:

> ***In order to bring uniformity in Court fees for both Chartered Accountants & Advocates for their representing the client before Income-tax Authorities, section 288 which provides "appearance by authorized representative" should be amended to provide for the fees to be charged for authorisation.***

98. 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.

Suggestion:

> ***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.***

99. 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. Recently, 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.

Suggestion:

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.

100. Annuity for Professionals

The imperative social security measure is the need of the hour and thus several steps like National Pension scheme etc taken by the Government are being appreciated. Considering that the long journey has just begun, certain other measures are also required to be taken to provide social security for all classes of assesses.

Securing the future retirements needs is comparatively easier for salaried employee than a person in any other occupation. Professional persons do not get any benefits like Retiring Benefits nor do they get any Annuity in the unfortunate event of inability to work at an early age. In order to encourage professionals to work more and safeguard their future, it is desirable that the professionals are allowed to deposit certain sums not exceeding 15% of the Professional income subject to a specified limit in a separate Superannuation Fund and get the deduction for the same from the total income liable to tax. The Annuity received after the age of 65 or 70, at the option of the assessee, should be taxed as an income.

Suggestion:

> ***The professionals may be allowed to deposit certain sum not exceeding 15% of the Professional income subject to a specified limit in a separate Superannuation Fund and get the deduction for the same from the total income liable to tax. The Annuity received after the age of 65 or 70, at the option of the assessee should be taxed as an income.***

IV. SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES

1. TDS demand u/s 200A

a) It has been observed that intimations are being served under section 200A on deductors, stating demands due to short deduction of tax at source. In majority of cases these demands arise due to wrong quoting of PAN in TDS quarterly statements filed by deductor/DDO. These demands involve a huge amount on penalty has also been levied.

Suggestion:

> ***Some mechanism may be developed to check the quoting of wrong PAN in TDS quarterly statement at the time of validation of the TDS return, i.e. the moment the return is being filed.***

b) With regard to demand raised in respect of earlier years, the notice of demand so raised only specifies the amount of demand raised without any details. In case the deductor requires the details of the demand he is required to obtain a FUV file from the Department office. The file so received is then verified by the deductor and thereafter the discrepancies, if any, are brought to the notice of the Department. This is a cumbersome process and is required to be made user friendly.

Suggestion:

> ***In respect of TDS demands pertaining to earlier years, the process of obtaining the FUV files for verification should be made user friendly. The FUV file should be***

mandatorily provided to the deductor at his registered email id so that the deductor does not have to visit the Income tax office for the same.

2. 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 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 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.

Suggestion:

> ***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,***
> ***As suggested earlier , 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.***

3. Issues relating to Refunds

a) Difficulties in obtaining old paper refunds

Presently, the refund, if exceeds Rs. 1 lacs 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 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.

Suggestion:

> ***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.

b) Refunds not delivered due to change in address

The assessees frequently change their addresses due to several reasons like change in job, marriage etc. However, in majority of cases they are unable to get their refund cheque due to changed address. Even if they disclose the current address in the Income-tax return, the refund cheque often goes to the older address and thus remains undelivered.

Suggestion:

To handle such cases, it is suggested that once the return has been processed by CPC, the file should be transferred to respective Assessing Officer, with whom the assessee can interact to resolve the issues in the processing of return, non receipt of refund cheque and so on.

c) Issue of Refunds in case of legal heirs

New set of guidelines can be issued for granting refund of tax to the legal heirs of deceased assesses. Most of the refund claims are pending for several months as the department software (AST) requires Court Order for payment of refund. Minimum period of disposal of order by Court is about 2 years. Obtaining Court Order can be relaxed for refunds not exceeding Rs.50,000/- and refund can be given as per the discretion of the Assessing Officer.

Suggestion:

It is suggested that in case of refunds of an amount not exceeding Rs.50,000 which are payable to legal heirs of deceased assessee, the condition of obtaining Court Order be relaxed and refund be given as per the discretion of the Assessing Officer.

d) Refund amount to be directly paid into the bank accounts of the

The speed and the amount of refunds that have been granted by the Department in last few years have been commendable. In order to be further be effective and assessee friendly, it is suggested that the refunds in respect of e-filed returns as well as manual returns be issued directly into

assessees accounts within maximum time limit of 6 months from filing of returns. This would solve the problem of undelivered refund cheques and also save on interest which is paid by the Government on delayed refunds.

Suggestion:

> ***It is suggested that the refunds in respect of all returns (e-filed returns as well as manual returns) be mandatorily deposited directly into assessee's bank account within maximum time limit of 6 months from filing of returns***

4. Challan correction 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 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.

Suggestion:

> ***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.***

5. Extension of last date of Payment of tax due to Public holiday - Circular No. 676 dated 14.01.1994 read with Section 10 of the General clauses Act, 1897

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 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.

Suggestion:

> ***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 extended by one day if the last date is a public holiday.***

6. 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 become all the more difficult to file returns within a short span of time.

Suggestion:

> ***It is suggested that due date for furnishing of the TDS returns may be extended to 30 days the end of the quarter instead of 15 days.***

7. Carry forward of excess foreign tax credit

The Income-tax Act 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.

Suggestion:

> ***It is suggested that assesses 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.***

8. 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 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.

Suggestion:

> ***For the convenience of the tax payers it is suggested that the number of returns and payment schedule to be filed by the assessee should be curtailed appropriately.***

9. Once in life time 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.

Suggestion:

> ***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.***

10. 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.

Suggestion:

> ***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.***

V. SUGGESTIONS RELATING TO WEALTH TAX

1. Taxable Wealth - to exempt motor cars

The definition of "assets" under 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. The motor cars comprised in business assets are meant for efficient and smooth operation of the business. Hence, it is submitted that such motor cars should also be excluded from from the definition of "assets".

Suggestion:

> ***It is suggested that the motor cars should be excluded from the definition of "assets"***

2. Valuation of residential house

Residential house allotted by a company to an employee or an officer getting annual salary of less than Rs.5 lakhs, is exempted from wealth tax. This limit has not been changed for many years.

Suggestion:

> ***This limit should be increased appropriately.***

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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.

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