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Pre-Budget Memorandum 2019

Suggested Amendments in respect of Direct Taxes for Finance Bill, 2019

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Annexure to Pre Budget Memorandum 2019

Note on suggestions on Section 56

We are of the strong view, that section 56(2)(x) as it stands today, needs serious thought about being removed from the statute per se or complete restructuring/ remodelling/ overhauling so as to withstand the constitutional limitations. We are afraid that if the same is not done, then the provisions of section 56(2)(x) runs the risk of being constitutionally invalid. The reasons for the same are brought out hereunder:

History and background of section 56(2)(x)

56(2)(v)

Taxation of receipts without consideration was first started by Finance Act (No. 2), 2004. The said Finance Act, amended the definition of the term income u/s 2(24) by inserting sub-clause (xiii). Said sub-clause included any sum referred to in section 56(2)(v) in the definition of the term 'income'. Further, the said Finance Act, inserted clause (v) in sub-section (2) of section 56.

The said clause levied tax on any sum of money exceeding Rs. 25,000/- received without consideration by an individual or a Hindu undivided family from any person on or after 1.9.2004 but before 1.4.2006. Thus, the said clause was a blanket provision to tax all receipts without consideration, in the hands of individual or HUF. Certain limited exclusions were provided for in the proviso to the said clause.

56(2)(vi)

Thereafter, vide Finance Act, 2006, the Legislature increased the limit of exemption. This was achieved by inserting a new clause (vi). Corresponding insertion was made in section 2(24) by insertion of sub-clause (xiv). Thus, the provision of clause (v) and (vi) is identical except for the fact that clause (v)

levied tax on gift exceeding Rs. 25,000/- whereas clause (vi) levied tax on gift exceeding Rs. 50,000/-. Apart from the above, the list of exemptions is also same as in case of clause (v). Also the definition of the term 'relative' is also same.

56(2)(vii)

Section 56(2)(v) and 56(2)(vi) levied tax on individuals and HUF and that too in respect of monetary receipts. Vide Finance Act (No. 2) of 2009, the ambit of taxation of gifts was expanded to included non-monetary items also. It taxed receipt of any sum of money without consideration, immovable property without consideration or for inadequate consideration or any movable property without consideration or for inadequate consideration. Limited exemptions were provided for in the proviso to said clauses.

56(2)(viia)

Finance Act, 2010 inserted section 56(2)(viia). Section 56(2)(viia) taxed receipt of shares of company in which public are not substantially interested in the hands of a firm or company in which public are not substantially interested in certain cases. Certain limited exceptions were provided for.

56(2)(x)

Section 56(2)(vii) and 56(2)(viia) are merged into 56(2)(x) w.e.f. 1.4.2017.

Accordingly, now the gift provisions apply, to all persons, where they receive either any sum of money without consideration, immovable property without consideration or for inadequate consideration or any movable property without consideration or for inadequate consideration. Certain limited exceptions are provided from the applicability of the said provision.

Purpose behind insertion of the said section

Circular No. 5/2005 dt. 15.7.2005[1] explaining the insertion of section 56(2)(v), stated as follows:

"*In order to curb bogus capital-building and money-laundering, a new sub-clause has been inserted in section 56 to provide that any sum received without consideration on or after the 1st day of September, 2004, by an individual or a Hindu undivided family from any person, shall be treated as income from other sources. A threshold limit of twenty-five thousand rupees has also been*

[1] (2005) 197 CTR (St) 1

provided. If the amount so received exceeds this limit, the whole of the amount shall become taxable.

In order to avoid hardship in genuine cases, certain sums have been excluded. The sums which shall not be included in the income are : (a) the sums received (i) from any relative, or (ii) on the occasion of marriage of the individual, or (iii) under a will or by way of inheritance, or (iv) in contemplation of death of the payer. The expression relative has also been defined for the purposes of this clause"

The logic behind the insertion of section 56(2)(vii) mendment by Finance Act (No.2), 2009 was explained by Circular No. 5/2010 dt. 03.06.2012[2] in the following manner:

"24.1The previous provisions of sub clause (vi) of section 56 provided that any 'sum of money' (in excess of the prescribed limit of rupees fifty thousand) received without consideration by an individual or HUF would be chargeable to income tax in the hands of the recipient under the head 'income from other sources'. However, receipts from relatives or on the occasion of marriage or under a will were outside the scope of the provisions of clause (vi) of sub-section (2) of section 56 of the Income-tax Act. Similarly, anything which is received in kind having 'money's worth' i.e. property were also remained outside the purview of these provisions.

24.2 The above section being an anti-abuse measure, in view of the above, section 56 of the Income-tax Act, 1961 has been amended by inserting a new clause (vii) in sub-section (2) to provide that the value of any property received without consideration or for an inadequate consideration will also be included in the computation of total income of the recipient as income from other source. Such properties will include immovable property being land or building or both, shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures or any work of art."

Circular No. 1/2011 dt. 06/04/2001[3] explained the rationale behind the insertion of section 56(2)(viia) in the following terms:

"*13. Taxation of certain transactions without consideration or for inadequate consideration*

13.1 Under the previously existing provisions of section 56(2)(vii), any sum of money or any property in kind which is received without consideration or for

[2] (2010) 232 CTR (St) 289
[3] (2011) 240 CTR (St) 1

inadequate consideration (in excess of the prescribed limit of Rs. 50,000/-) by an individual or an HUF is chargeable to income tax in the hands of recipient under the head 'income from other sources'. However, receipts from relatives or on the occasion of marriage or under a will are outside the scope of this provision. The existing definition of property for the purposes of section 56(2)(vii) includes immovable property being land or building or both, shares and securities, jewellery, archeological collection, drawings, paintings, sculpture or any work of art.

13.2 <u>These are anti-abuse provisions</u> which were applicable only if an individual or an HUF is the recipient. Therefore, transfer of shares of a company to a firm or a company, instead of an individual or an HUF, without consideration or at a price lower than the fair market value was not attracted by the anti-abuse provision In order to prevent the practice of transferring unlisted shares at prices much below their fair market value, section 56 was amended to also include within its ambit transactions undertaken in shares of a company (not being a company in which public are substantially interested) either for inadequate consideration or without consideration where the recipient is a firm or a company (not being a company in which public are substantially interested). It is also provided to exclude the transactions undertaken for business reorganization, amalgamation and demerger which are not regarded as transfer under clauses (via), (vic), (vicb), (vid) and (vii) of section 47 of the Act."

Circular No. 2 of 2018 dated 15.2.2018, has explained the rationale behind the insertion of section 56(2)(x) in the following manner:

"Widening scope of Income from other sources

Under the existing provisions of section 56(2)(vii), any sum of money or any property which is received without consideration or for inadequate consideration (in excess of the specified limit of Rs. 50,000) by an individual or Hindu undivided family is chargeable to income-tax in the hands of the resident under the head "Income from other sources" subject to certain exceptions. Further, receipt of certain shares by a firm or a company in which the public are not substantially interested is also chargeable to income-tax in case such receipt is in excess of Rs. 50,000 and is received without consideration or for inadequate consideration.

The existing definition of property for the purpose of this section includes immovable property, jewellery, shares, paintings, etc. These anti-abuse provisions are currently applicable only in case of individual or HUF and firm or

company in certain cases. Therefore, receipt of sum of money or property without consideration or for inadequate consideration does not attract these anti-abuse provisions in cases of other assessees.

In order to prevent the practice of receiving the sum of money or the property without consideration or for inadequate consideration, it is proposed to insert a new clause (x) in sub-section (2) of section 56 so as to provide that receipt of the sum of money or the property by any person without consideration or for inadequate consideration in excess of Rs. 50,000 shall be chargeable to tax in the hands of the recipient under the head "Income from other sources". It is also proposed to widen the scope of existing exceptions by including the receipt by certain trusts or institutions and receipt by way of certain transfers not regarded as transfer under section 47.

Consequential amendment is also proposed in section 49 for determination of cost of acquisition"

Conclusion on purpose

From the above given interpretations, what can be discerned, is that the main purpose of insertion of all the provisions was to curb bogus capital building and money laundering transaction. It is in the nature of anti-abuse provisions.

Such receipts are not otherwise chargeable to tax and therefore, the necessity to insert the above mentioned clauses and the amendment in section 2(24). In respect of such casual receipts and receipt of gifts, the law was fairly settled as to its non-taxability. The same is brought out hereunder:

The Apex court of this Country has on many occasions laid down a fundamental principle that all receipts cannot be termed as income and therefore, cannot be taxed under the Act. Only those receipts which in common parlance be understood as income can be subject to tax under the Act. One such item of receipt which was subject matter of dispute was casual receipt/ receipt of money without consideration/ gift receipt. The Hon'ble Supreme Court in case of Mahesh Anantrai Pattani & Anr. vs. CIT[4] held that any amount received as a personal gift or as a token of personal esteem was not chargeable to tax. The above judgment was followed by the Hon'ble Bombay High Court in case of Dilip Kumar Roy vs. CIT[5] wherein the Court held that an amount paid as a personal gift for the personal qualities of the assessee and as

[4](1961) 41 ITR 481(SC)
[5] (1974) 94 ITR 1(Bom)

a token of personal esteem and veneration cannot be subjected to tax as income arising out of business, profession or vocation under s. 10.

In fact, the CBDT itself clarified the issue by way of Circular No. 158 dt. 27th December, 1974[6]. The said clarification was in context of section 10(3) which hitherto allowed exemption in respect of casual receipts. The CBDT clarified that "*Receipts which are of a casual and non-recurring nature will be liable to income-tax only if they can properly be characterised as "income" either in its general connotation or within the extended meaning given to the term by the IT Act. Hence, gifts of a purely personal nature will not be chargeable to income-tax, except when they can be regarded as an addition to the salary or when they arise from the exercise of a profession or vocation".*

Thus, from the above it is clear that earlier, receipt of gift or casual receipt was held not taxable unless the same was attributable to exercise of profession, vocation or employment.

However, now, the section under question i.e. 56(2)(x), brings into tax fold, carte blanche, receipt of either sum of money or property either without consideration or for inadequate consideration. Such receipt may or may not be considered as income under the law. However, now the same would be treated as income as a result of the deeming fiction of section 56(2)(x).

Insertion of such a widely worded section has led to a divorce from the main purpose itself i.e. anti-abuse provision. There is neither any need for the department nor any room to the assessee to prove that the transactions are anti-abuse or not. If the conditions of the section are fulfilled, then without going into the motive/ rationale behind insertion of the section, the transaction is brought to tax. Thus, something which is not chargeable to tax, as accepted by the Department, is brought to tax just because the section has been inserted as an anti-abuse measure, without the need for demonstration of the fact that the transaction is really for evasion purpose or not.

The off shoot of the above discussion is that, as a result of such a widely worded provision, firstly, a capital receipt which is not otherwise chargeable to tax is brought to tax and secondly, many (without any exaggeration) genuine transactions are getting caught under its ambit and there is no way for the assessee to prove the bonafide of the transactions as there is nothing in the section to enable the Departments officer to give an ear to the assessee.

[6] (1974) 98 ITR 97(St.)

Thus, the first and foremost thing which we want to convey is that section 56(2)(x) as it stands today, far exceeds its jurisdiction and taxes even the genuine, bonafide transaction entered into purely commercial terms between two party at arm's length distance. There is no way to come out of the tax net. This is surely not the purpose behind insertion of the section as is brought out above. Secondly, because of such wide wordings, immense hardships are caused to the assessees in general in carrying out any commercial, business or personal transaction. No doubt the section has provided for certain limited exemptions from the applicability of the section, however, the same is under no circumstance sufficient to make the section constitutionally viable. It is well known and settled that the Legislature is not expected to imagine future contingencies and make provisions in advance. Same thing has happened in case of section 56(2)(x), as a result of the such widely worded provision, some unintended consequences and results have occurred causing immense hardships to the assessees. The same are brought out hereunder:

Hardships to the assessees

1. Where an agreement to transfer shares of a company (listed or unlisted) has been entered into to transfer shares at an agreed price at a future date, the Fair market value of such shares as on such future date may be less thereby attracting provisions of section 56(2)(x)
2. A perfectly legitimate transaction for sale of shares between two independent parties on commercial terms based at such value determined based on the peculiarities of the business etc. would come within the ambit of section 56(2)(x) because such section read with Rules prescribe only one method.
3. A distressed sale of any asset taking place in arm's length environment would attract the provisions of section 56(2)(x) as there is no provision to take into account the factor of distressed sale.
4. Receipt from brother of the parent of the individual is not taxable however, vice versa is taxable.
5. Transfer of shares amongst group companies only for the sake of restructuring and streamlining so as to increase effectiveness and efficiency, without any change of the ultimate beneficial owner, would now attract the provisions of section 56(2)(x).
6. Purchase of shares of minority shareholders or where there is bulk deal for purchase of shares of either quoted or unquoted equity shares, the consideration need not necessarily match with the fair market value as

determined in accordance with the Rules, thereby inviting provisions of section 56(2)(x).

7. Issue of right shares and equity shares would also invite provision of section 56(2)(x) inspite of the fact that such issue is a bonafide and legitimate transaction.
8. Conversion of partnership firm into LLP or a private company into LLP would attract the provisions of section 56(2)(x).
9. As held by many Courts including Apex Court, Fair market value of any property is a subjective thing and there may be different values ascribed by different valuers to a same property. In such cases, there would not be any motive to evade tax, however, would still be covered by section 56(2)(x).
10. Receipt by HUF from members is taxable, however, vice versa would come within the ambit of section 56(2)(x).
11. Receipt from relatives of member of HUF who is a relative of all the members of HUF, would come within the tax ambit.
12. Receipt of any property under any family arrangement, would fall under the provisions of section 56(2)(x), inspite of there be
13. Payment of any gratuitous sum of money to a person in dire need of funds, not being a relative as defined under the section, would fall within the ambit of section 56(2)(x). Whereas receipt by a person from a charitable institution is not taxable.
14. Conversion of bonds, debentures or preference shares into equity shares would fall within the ambit of section 56(2)(x)
15. Receipt of a property of shares of the company in which public are not substantially interested, would attract tax at the fair market value in the hands of both the transferor and transferee thereby attracting the provisions of double taxation.
16. When a person receives a property without consideration or for inadequate consideration, the person would be charged to tax on notional income, without having any means to pay tax, as he may not be having any liquidity at his disposal for payment of tax.

The above are only an illustrative list of the transactions, where there is no motive either to evade tax or to introduce unaccounted money as accounted one, however, still the same would come within the ambit of section 56(2)(x). To add to the misery, the assessee would also not have any right/ power / opportunity to demonstrate that the transaction is a genuine and bonafide transaction entered into purely on legal and commercial terms without any ill motive.

However, there would be many transactions which would be without any ill motive of tax evasion or which would not be in the nature of bogus capital building transaction, however would have to face music u/s 56(2)(x).

As a result of such vague, wide and ambiguous provisions, many legitimate and genuine commercial transactions have been dropped as a result of wide tax exposure under section 56(2)(x). Such provisions therefore, has to be treated as infringing the rights of a person under Article 14 and 19(1)(g) of the Constitution of India.

Rules- Rule 11U and 11UA

In the foregoing part we are dealing with the hardships faced in respect of the Rules viz. Rule 11U and Rule 11UA.

1. In so far as the valuation to immovable property is concerned, the Stamp Duty Value is taken as the benchmark for the purposes of section 56(2)(x). Such value need not necessarily reflect the correct fair market value. Further, a particular transaction may be entered into at a particular price for variety of reasons, including distressed sale, presence of slum dwellers on the property etc. however, such factors are not considered in the SDV nor can be taken into consideration as a result of no speck provisions in this regards. Even when the matter is referred to DVO, still he may not look into such factors before determine the fair market value as there is no clear provision in law.
2. In so far as valuation of unquoted shares are concerned, the Rules prescribe only one method, which means that if the transaction is not taking place at the value determined in accordance with the Rules, then the transaction would invite provisions of section 56(2)(x). This is very harsh and unreasonable. It is well known to all that for determining of value of shares, there are many methods available apart from the net asset value method or the books value method like Capitalisation of Earnings Method, Price to Earnings Multiple Method, Comparable Company Method, and Price to Book Value Multiple Method etc. The law itself recognises two other method u/s 56(2)(viib) like the DCF method etc. Application of a method defers from case to case. Also, there may be certain factors as already discussed earlier like distressed sale, sale of minority interest or bulk deal, non-marketability, restrictions on transfer etc, which would have a bearing on the fair market value of the shares. However, there is no room for applying any other method.

3. In fact, section 56(2)(viib) which taxes a company on issue of shares itself prescribes three different methods, whereas for the shareholder receiving same shares, would be benchmarked based on some different methods.
4. Further, for arriving at the fair market value of unquoted equity shares, one has to take into consideration the audited balance sheet of the company as on the valuation date which is the date when the shares are received. It is practically impossible to get an audited balance sheet as on the date of receipt of shares if the same does not fall on the year end.
5. The formula would fail if there is a circular holding or cross holding.
6. There is no provision to appeal or dispute the value determined as per such method, as even the Courts would be bound by such rigid valuation rules with no leeway available.

Again the above is an illustrative list of the problems faced by an assessee while applying such rigid rules.

Thus, it is submitted that the section 56(2)(x) read with the Rules, have many unintended consequences and that the same is not the purpose for which it is created. There is no room for one to argue the bonafide of the transaction and to demonstrate the fact that the transaction has been entered into on commercial terms without any tax evasion purpose. There is no room for one to justify the transactions fair market value based on any other methods except for one prescribed. Many hardships are faced by the assessees as a result of such a wide, vague and ambiguous provision which stands at the peril of being ultra vires Article 14, 19(1)(g) and 265 of the Constitution of India.

In light of the above, it is suggested that:

a. The section is removed per se or that it me completely restructured/ overhauled so as to give effect to the purpose for which the same is enacted.
b. The assessee should be empowered with the right to prove that the transaction in question is not a bogus capital building transaction or not a transaction with a motive to evade tax in a clandestine manner and that the additions cannot be made automatically on proving that the receipt of property or sum of money is without consideration or for inadequate consideration.
c. That the assessee be empowered to use any other method to arrive at the fair market value and not only the value as has been prescribed in the Rules.

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5th May, 2019

Respected Sir,

Subject: Pre-Budget Memorandum 2019-2020 – Suggestions on Direct Tax

We are pleased to submit our suggestions on Direct Taxes for the Budget of 2019. We have concentrated on only few suggestions which, we are sure, will meet with your approval. Each of the suggestions has been necessitated on account of the serious hardship or inconsistency in the law.

Thanking you,

Yours Sincerely,

For THE CHAMBER OF TAX CONSULTANTS

Sd/-	Sd/-	Sd/-
HINESH R. DOSHI	MAHENDRA SANGHVI	APURVA SHAH
PRESIDENT	CHAIRMAN	CO-CHAIRMAN
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INDEX

1. SALARIES

REPRESENTATION ON DIRECT TAX BEFORE MINISTRY OF FINANCE

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles/ Hurdles either Interpretative, Administrative orotherwise	Suggestion or new clause Suggested
1.1	Standard deduction of Rs. 50,000/- is allowed.	There are various expenses that employees incur during the course of employment which they cannot claim as deduction and the present limit does not adequately capture the same.	**Justification:** Employees during the course of their employment incur various expenses, including for upgrading skill for rendering their services as employees, which are much more in the case of employees having higher salary – a higher deduction for such expenses should be allowed. For avoiding leakage of revenue, such deduction may be certain percentage of salary, say 25% of the salary, and maximum amount may be restricted to Rs 3,00,000/-. This would ensure that an employee who gets a salary is not put to any disadvantage compared to someone who draws the same amount as a freelancer professional. Similar deductions are available under House property (standard deduction) and capital gains (cost inflation index).

2. HOUSE PROPERTY

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles/ Hurdles either Interpretative, Administrative orotherwise	Suggestion or new clause Suggested
2.1	Section 23- Explanation to Second Proviso: Interest on housing loan taken during construction period is allowed in five equal installments commencing from year of completion of construction.	Though the assessees have to pay Pre EMI interest to banks/ housing financial institution every year the deduction is postponed to future years putting more financial burden on borrower during construction period during which he may already be incurring rent	The deduction for interest payable during construction period may be allowed in the year of payment itself. **Justification:** This will ease financial burden of the assessees who may been staying in rented accommodation during construction period and also promote ease of compliance as no need to keep track of interest paid during construction period to claim the same during further five years.
2.2	Amendment was made to S. 23(5), to tax the notional annual value of inventory wherein the developer is	The concept of deemed annual value is made applicable on house property which is held as stock in trade. This provision being a deeming fiction has lead to undue burden on the builders and developers. The builders and developers are being liable to pay tax	Provision of house property income should not be made applicable to house property held as stock in trade. Alternatively. Appropriate relief must be granted in genuine cases where the developer can demonstrate that he has made sufficient efforts to dispose of unsold inventory. However due to market / other conditions same are not getting sold.

	unable to sell within a period of 2 years from receipt of Occupation certificate.	on deemed annual value of flats held in stock beyond two years after the completion of construction. The builders / developers have tried to load the said cost into the price either directly or indirectly for recovering from the proposed flat buyers. The deemed provision is a counterproductive measure to provide affordable housing in metro cities.	**Justification:** Considering the current slump in real estate market, this has resulted in undue hardship to developer who inspite of sufficient efforts to sell its inventory is required to discharge the tax on notional basis on unsold inventory

3. BUSINESS INCOME AND EXPENDITURE

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles/ Hurdles either Interpretative, Administrative orotherwise	Suggestion or new clause Suggested
3.1	The Finance Act, 2014 has added new Explanation in sub-section (1) of section 37 providing that any expenditure incurred by an assessee on the activities relating to CSR Referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an Expenditure incurred by the assessee for the purposes of the business or profession and deduction shall not be allowed		There is a need to revisit this provision and the companies should be allowed 100 per cent deduction of CSR under section 37 with such safeguards as may be needed. **Justification:** As per the Companies Act, 2013, it is mandatory for specified companies (As per Section 135) to spend 2% of their average profits towards Corporate Social Responsibility. These expenses are all connected to social and charitable causes and not for any personal benefit or gain. It is therefore fair to allow the same as business expenditure. There is no bar on allowability of CSR expenditure falling under other sections like 35, 35AC etc. These expenses are statutorily required to be incurred under the Companies Act 2013 and hence ought to be allowed as a deduction. These expenses are incurred towards CSR and go towards nation building.

3.2	Certain expenses being of revenue nature or of deferred revenue nature are considered as capital in nature and are Disallowed. They are not allowed even by way of amortization /depreciation. (1) Fees for increase in authorized capital after initial incorporation, (2) Amortization of Lease premium for Land & Building. (3) Factory shifting expenses		Expenditure which is incurred in the course of business may be allowed either as revenue or, if treated as capital, then, such expenditure is to be allowed in deferred manner or by way of depreciation. Hence, specific provision may be inserted. **Justification:** Presently, expenditure of the nature described in first column suffers permanent disallowance. Most of these are incurred during the process of expanding business and are in the nature of statutory expenses rather than discretionary and hence ought to be allowed at least to be amortized over a 5 year period. Though there are several decisions allowing depreciation on some of such expenses, but in the absence of a clear legislative framework, it leads to litigation. In order to simplify the computation of business income, such expenditure requires to be allowed either as revenue or in deferred manner or by way of depreciation.

	(4) Expenditure for setting up separate & dependent unit		
3.3	Depreciation Allowance – Sec. 32 Restoration of Depreciation Allowance in respect of cost of small items of assets.	In the past, with a view to avoid litigation on the point of nature of expenditure (i.e. capital or revenue) in respect of purchase of small items of assets, provisions had been introduced to treat cost of such assets as depreciation allowance. Earlier, the limit on cost of such assets was Rs. 750/-. This was then increased by the Finance Act, 1983 to Rs. 5,000/- again for the same reasons. These provisions have been omitted w.e.f. Asst. Year 1996-97. The omission of the above provisions has created unnecessary hardship of keeping records in respect of purchases of such small items. This was a useful provision to maintain simplicity and to avoid possible litigation on such small items of assets, based on principles of materiality.	The above provisions should be reintroduced, with a limit of cost of such asset being below Rs. 50,000/- **Justifications:** Such a provision will only ease the record keeping requirements for insignificant value items which are written off even in financial statements in the year of acquisition.

3.4	Section 44AD relating to presumptive taxation which also covers income of Speculation and derivatives (F&O) business.		Income or losses from speculation or futures & options business, as specified under section 43(5), should be excluded from the purview of section 44AD. **Justification:** Speculation and F&O income, by their very nature, cannot have a net profit ratio of 8% of the total turnover or gross receipts. In fact, the turnover in such business is taken as profit and loss figures added up together. Applying a profit rate of 8% on such figure is absurd. It would ease the process if F&O income was excluded from the requirements of Section 44AD.
3.5	Section 44AD(5) requires a person opting out of 44AD (presumptive taxation) to maintain books of accounts and get his accounts audited for subsequent five years. Section 44AD(5) is triggered if the total	Opting out of a beneficial provision should not have such a stringent requirement i.e. to maintain books of accounts and get them audited for five years. The provision is deterrent to small assessee, who in changing times and regulatory overhaul might have lower income in one of the year. Such a provision is not promoting ease of doing business. Rather it is causing hardship to small assessee.	To provide relief to the small assessee and promote ease of doing business it is suggested that – The basic threshold limit provided in Section 44AA and Section 44AB for Maintenance of accounts and Audit of accounts respectively should not be applied to the assessee opting out of Section 44AD.

	income of the assessee is more than the maximum amount not chargeable to tax. i.e. couple of lacs for an individual and zero for a partnership.		
3.6	Sub section (1) of Section 44ADA and section 44AD provides that the section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed including the salary and interest paid to Partners in case of Firms.		It is suggested to reduce the profit percentage to 25% for sec 44ADA. And, interest and salary to the partners should be allowed to all partnership firms including firm of professionals out of the Presumptive NP of the firm. **Justification:** Disallowance of salary and interest paid to partners would be unfair for partnership firms, where huge amount is a large sum is eligible to be drawn as salary by working partners in accordance with the partners' remuneration limits as suggested u/s 40(b) which is shown in the below examples and is taxable in their hands:

Section 44AD	Earlier Provision (Up to AY 2016-17)	New Provision (From AY 2017-18 onwards)
Turnover	80,00,000	80,00,000
Deemed Income @ 8%	6,40,000	6,40,000
Allowable Remuneration	4,74,000	-
Total Income of Firm	1,66,000	6,40,000
Tax Payable by firm @ 30%	49,800	1,92,000
Tax payable by two partner	NIL	NIL
Section 44ADA	NO 44ADA	Under 44ADA
Gross Receipt of Firm	30,00,000	30,00,000
Deemed Income 50%	-	15,00,000
Regular Income (Say 50%)	15,00,000	-
Remuneration to partners	9,90,000	-
Income of Firm	5,10,000	15,00,000
Tax of Firm @ 30%	1,53,000	4,50,000
Tax by partners	49,000	-
Total Tax Incidence	2,02,000	4,50,000

4. CAPITAL GAINS

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles/ Hurdles either Interpretative, Administrative or otherwise	Suggestion or new clause Suggested
4.1	Section 45(5A) intends to provide special taxation regime for transfer of land or building or both by an Individual or HUF under a specified agreement and charges the capital gains in the year in which the completion certificate in respect of the project is received based on the stamp duty value on that day.		Provision should be extended to all assessee. For e.g. Section 50C and section 43CA are applicable to all assessee

4.2	S. 54 / 54F These sections provides for time limit of 3 years for investment of capital gain in new house, by way of construction. Further in case of purchase, even a property purchased within one year before the sale of the asset is allowed for the purpose of deduction. The same is not allowed for construction of a new house.		1. The time limit for construction of new house property should be increased from 3 years to 5 years. Further a house the construction of which is completed within one year before the sale of the asset should also be given the benefit. Justification: Considering the current scenario, there arise situations where it takes more than 3 years to construct a house property because of high storey buildings being constructed, which requires more time to complete the construction. Ideally a person would either purchase or construct a new house before selling the old one. Therefore such a benefit should be given on construction of a new house also. 2) Amendments should be made in line with 2nd provision to section 24 of Finance Act 2017.
4.3	Sec. 112 provides scheme of concessional tax on long term capital gains. For an individual and HUF normal tax rate for income up to Rs 500,000 is five percent. However, in case of such assessee who has long term capital gain and his total income is up to Rs 500,000, he is required to pay tax on long term capital		Rate of tax on long term capital gain should be five per cent in case of total income including long term capital gains is between maximum amount not chargeable to tax and Rupees Five lacs. **Justification:** Scheme of taxation provides concessional rate of tax for long capital gains. However, as per the current provisions the rate of tax in case of assessee who has long term capital gain is

	gains at the rate of 20 per cent.		four times.
4.4	Demerger in accordance with Section 2(19AA) is not eligible to Capital Gains Tax. Section 2(19AA)(iii) requires that the property and the liabilities of the undertaking transferred pursuant to the demerger should be recorded at book value.	The Companies to whom IND-AS is applicable are required (IND-AS 103) to account for assets and liabilities acquired pursuant to a demerger at fair value. Therefore, it is not possible for the Company to comply with condition stipulated u/s 2(19AA).	Provisio should be inserted to Section 2(19AA) to provide that, Section 2(19AA)(iii) will not apply to a Company governed by Companies (Indian Accounting Standards) Rules, 2015 notified under the Companies Act, 2013. Adequate provisions are already in the statute to consider the book value in erstwhile company for computation total income under the normal provisions as well as MAT (Section 115JB(2C)).

4.5	Merger of LLPs: Current set provisions does not provides for tax neutrality to LLPs in case there is any business restructuring amongst the LLPs		Provision similar to sections 47(vi), 47(vib), 47(vid), 47(vii), carry forward of losses may be introduced for business reorganization of LLPs **Justification:** a. Considering the importance of hybrid form of organization doing business in the form of LLP was introduced. b. LLP Act provided for business re-organisation amongst the LLP similar to that Companies allowed under Companies Act 1956 & Companies Act 2013. c. Various provisions under Income-tax Act has been introduced to provide for tax neutrality in case of merger, demerger etc. of Companies. d. However similar provisions are not available for LLPs Business entity in the form of LLPs provides greater easy of doing business in India.
4.6	Clause (xiiib) to section 47 excludes the conversion of private limited companies to LLP from the definition of transfer. However there are certain conditions prescribed to be complied for being excluded from the definition of 'transfer'. One Of the conditions is that the total sales, turnover or gross receipts in the business of the company in any of the		The said limits should be removed or else increased substantially. Turnover limit may be increased to Rs. 10 crores and the total assets limit may be increased to Rs. 20 crores. **Justification:** Such a small limit is a big hindrance on the conversion of the company into a LLP. Provisions of the Companies Act 2013 have created various anomalies as well as

	three preceding previous year should not exceed Rs. 60 Lakhs. Further a new condition is inserted wherein the total assets during the previous 3 years exceeds Rs. 5 crores		complication for doing business FDI restrictions in LLPs have also been relaxed by Central Government. Continuing restriction of turnover is against the concept of ease of doing business in India. They should be exempted u/s 47 or the shareholders/partner's should be exempted.

5. INCOME FROM OTHER SOURCES

NOTE: A detailed note on section 56(2)(x) and rules thereunder is being submitted separately.

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles/ Hurdles either Interpretative, Administrative or otherwise	Suggestion or new clause Suggested
5.1	Under section 56 (2)(x)- Explanation the definition of the term "relative" inter alia, covers the following: "spouse of the person refer to in items(B) to (F) In case of relative of an HUF only the members of the HUF are considered as relative.		1. The word "spouse" should be substituted with the word "spouse or children" and clarify that relative includes maternal grandparents. 2. To provide similar exception qua Companies and Firms. **Justification:** Gift from uncle is exempt. However converse is not true, as gift from nephew is taxable. This does not seem to be intended. 2. In case of HUF, relatives of the Karta should also be considered as a relativeof HUF. Justification: In case a relative wants to give gift to the HUF, the same is taxable as against the gift to an individual by the same person is not considered as income.

5.2	Valuation of Shares Section 50CA has introduced a presumptive tax based on intrinsic value of shares – computed based on Rule 11U.		A threshold needs to be provided beyond which this rule will apply. It is very cumbersome to obtain valuations based on intrinsic value of property and securities held. The options that may be evaluated are as under: i) To apply this rule only in a case where the transfer contemplated is of 50% or more of the equity of the company, regardless of the number of transferors – and the onus of providing a valuation report must be placed on the company. ii) To apply this rule only where the consideration received exceeds a sum of Rs. 1 crore. In such cases, the valuation should be as per book value only. **Justification** For sale of smaller stakes in shares of unlisted companies, including investments outside India, it is very cumbersome to obtain such a valuation. The relevant data is often not available to a small investor. Book value is known but intrinsic value is not.

6. DOCUMENT IDENTIFICATION NUMBER (DIN)

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles/ Hurdles either Interpretative, Administrative orotherwise	Suggestion or new clause Suggested
6.1	282B-Allotment of Document Identification Number:- Omitted by Finance Act, 2011 w.e.f.1- 4-2011.		To reintroduce this section **Justification:** As per the justification given during the introduction of this section in the Finance (no.2) Act, 2009 w.e.f. 1-10-2010.

7. INTEREST

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles/ Hurdles either Interpretative, Administrative or otherwise	Suggestion or new clause Suggested
7.1	Calculation of the Interest u/s 201(1A) of the Act for the delay in deposit of TDS	• The current provision u/s 201(1A) states that interest is payable for the period of delay from the date of deduction to the date of payment. Even a part of the month is to be considered as a month. • Even in a situation where the delay is of 1 day (i.e. TDS deposited on 8th of the succeeding month instead of 7th). Under this situation the delay period will be calculated as 2 months, since the date of deduction is of preceding month.	Sec 201(1A) of the Act be amended to clarify that interest is leviable from the due date of payment and not from the date of deduction. **Justification:** Interest being compensatory in nature ought to be charged only for the period of delay and for the compensation for the period of delay. Levy of Interest is not penal provision.

7.2	Calculation of the Interest u/s 201(1A) of the Act for the delay in deposit of TDS	Proviso to section 201(1A) provides that if a person is not to be treated as an assessee in default under first proviso to section 201(1), then interest is to be paid from the date on which tax was deductible till the date of furnishing return of income by the recipient. If the recipient of the sum is having Nil or negative income or if the recipients income is exempt, then there is no question of levy of any tax on such person, in which case, no interest should be levied on the deductor. However, there is no such provision in this regard.	Sec 201(1A) of the Act be amended to clarify that interest cannot be levied if the recipient has nil tax liability for the concerned year. **Justification:** Interest being compensatory in nature ought to be charged only where tax was otherwise recoverable from the recipient of the sum. Levy of Interest is not penal provision.

8. TDS

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles/ Hurdles either Interpretative, Administrative orotherwise	Suggestion or new clause Suggested
8.1	Fresh scheme of tax collection instead of TDS		Large size Companies including PSU, may be allowed to pay the taxes quarterly/monthly in lieu of TDS from their customers, on granting of no tax to be deducted u/s 197. These Companies may be given an option. The taxes to be deposited quarterly/monthly will be based on TDS claimed in the return of Income in last two A.Y's. this will reduce avoidable and unnecessary hardship caused to the deductor and the deductee (for taking credit). **Justification:** Reducing compliance burden and reducing rectification applications

8.2	Exemption of TDS on certain payments There is no specific exemptions from tax deduction at source in case of payments of personal nature, the cases covered in Sec. 194A (interest), Sec. 194 H (brokerage), in respect of individuals & HUF's who are subject to tax audit		The exemption from tax deduction at source on the payments made for personal purposes should be extended to the payments covered u/s 194A and 194H of the Act, in line with the provisions made in section194J. **Justification:** There does not seem to be any logic to deduct tax at source on payments made on personal account. Merely because an assessee happens to be a proprietor of a concern which is liable for tax audit u/s 44AB of the Act, he should not be made liable for tax deduction on the payments made for personal purposes. He should be treated at par with other individuals and HUF

8.3	Credit for Tax Deducted at Source a) As per the current scenario, the credit for tax deducted at source is allowed on the basis of TDS reflected in Form 26AS, whereas, the assessee claims the TDS on the basis of the income offered to tax by him. This results to mismatch of credit for TDS, requiring rectification and submissions of various details by the assessee. The reasons for mismatch are many, e.g, the deductor following mercantile system of accounting, therefore TDS is deducted at the time of credit and on the other hand deductee following cash system	In respect of mismatch in year or other reasons, Assessee is unable to get credit of tax deducted and larger infructuous demands are raised	a) It is suggested that rule 37BA(3) should be amended, to provide that the credit for tax deducted at source should be allowed in the assessment year immediately following the financial year in which the tax has been deducted at source. In other words, it also means that the credit to the deductee should not be denied on account of mistake in data uploaded by the deductor or non- payment of TDS with the Treasury of the Government by the deductor as the deducteehas no control over the Deductor. b) Rule 37BA(3) of the Income Tax Rules should be amended to the extent that in case of default on the part of the deductor for non-deposit of tax deducted at source, the deductee should not be denied the credit of such tax deducted and future refunds should not be adjusted against demands arising out of non-payment by deductor.

	of accounting and claiming credit for TDS in the year in which the income is actually received by him and vice-versa. As per the Finance Act, 1987, effective from 01/06/1987, the requirement for giving credit for TDS in the assessment year in which the income is assessable was introduced and has been applicable since then. Sec. 199 r.w. rule 37BA(3) states that credit for tax deducted and paid to the Central Government shall be given for the assessment year in which the income is assessable. b) In case deductor does not upload the details of tax deducted of the payee correctly, credit of the tax deducted is not allowed to the deductee thereby causing undue hardship to the deductee.		Justification: a) The assessee should not be denied credit for tax deducted at source merely because of different methods of accounting followed by the deductor and the deductee. Or because of mistake of the deductor. This will reduce unproductive and unnecessary work of the department as well as the assessee b) In many cases, the demand remains outstanding in the department's records on account of non deposit of TDS by the deductor and the same are incorrectly adjusted against subsequent refunds due to the deductee, resulting in unnecessary hardship to the assessee from whom the tax is wrongly recovered. There are sufficient provisions in the law to recover the amount not deposited by the deductor who is an assessee indefault.

8.4	Section 194 J Subsection (1) clause (ba) newly inserted Any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company		Threshold limit of Rs. 30,000 should be made applicable which is applicable to all other payments covered insec.194J. **Justification:** The other payments like professional fees etc. on which TDS is required to be deducted u/s. 194J has threshold limit of Rs.30,000/-. However, no such threshold limit is provided in case where TDS is required to be deducted from payments to Directors under new proposed provision.

9. MAT

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles/ Hurdles either Interpretative, Administrative or otherwise	Suggestion or new clause Suggested
9.1	Income declared under Income tax disclosure scheme should be excluded from provision u/s 115JB		i) Section 185 of Finance Act, 2016 states as follows –The amount of undisclosed income declared in accordance with section 180 shall not be included in the total income of the declarant for any assessment year under the Income-tax Act, if the declarant makes the payment of tax and surcharge referred to in section 181 and the penalty referred to in section 182, by the date specified under sub-section (1) of section 184. ii) Section 115JB of the Income Tax Act, 1962 states as follows – Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2012, is less than eighteen and one-half per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of

			eighteen and one-half per cent. To avoid disputes and unnecessary litigations it is suggested that a provision be made to exclude the Income declared under IDS and on which taxes are duly paid to exclude from the bookprofit.

10. RECTIFICATION

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles/ Hurdles either Interpretative, Administrative orotherwise	Suggestion or new clause Suggested
10.1	Section 154 – Rectification of Mistakes Sub-section (8) of section 154 provides that where an application is made by an assessee or a deductor, the authority shall pass an order within a period of six months from the end of the month in which the	Inspite of the specific provisions of subsection (8), it is observed that the authorities take unusually long time in deciding the rectification application either way. Many a times in fact the rectification orders are never passed for years and in the meantime the department keeps on the recovery proceedings and also adjusts the subsequent refunds against the demand for which the rectification applications are pending disposal. This results in tremendous hardship to genuine tax payer.	It is humbly suggested that the sub-section (8) shall be modified so as to provide that if the authority concerned do not decide the rectification application of the assessee or the deductor within the prescribed period of six months, then the application should be deemed to have been allowed and the tax liability will be deemed to have been reduced in accordance with the rectification application of the assessee. **Justification:** Such provision will result in easing the hardship caused by the assessee. It will also bring in the sense of responsibilities amongst the authorities to adhere to the statutory time limit provided by the legislation and will ultimately result in better and efficient administration of the provisions of the Act.

	application is made by either (a) making the amendment or (b) refusing to allow the claim.		
10.2	Rectification of Intimations processed at CPC	Intimations u/s. 143(1) of the Act is now processed at the CPC, Bangalore. Further as per the current procedure all the intimations which are processed at CPC are also subject to rectification at CPC only. The initial rectification application is to be made electronically to CPC. The rectification powers are transferred to the jurisdictional assessing officer if and only if the CPC transfers the same by an internal order and allows the jurisdictional assessing officer to rectify the order. Some of the errors are of such a nature that they cannot be explained by way of an electronic rectification request put in the system. The errors can be easily explained	It is suggested that once the intimation is processed at CPC, the assessee shall be given an option to decide whether he wants to get the rectification processed at CPC or at the level of jurisdictional assessing officer. The assessee shall be allowed to select the option on the website of the department and if the assessee opts for rectification at the level of jurisdictional assessing officer, the powers shall be immediately available to the assessing officer to take up such rectification proceedings further. **Justification:** This will result in better tax friendly administration and the assessee will be able to get his wrong demands deleted sooner. The same will also result in avoiding the issue of adjustment of wrong demands against future refunds which is a big problem in the system of processing of returns at CPC

		to the jurisdictional assessing officers and can also be supported by production of relevant supporting documents for the same. Say for Example: Non-granting of Credit of TDS in a case where the credit is claimed in a latter year than the year of deduction by the deductor.	

11. LOSSES

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles/ Hurdles either Interpretative, Administrative orotherwise	Suggestion or new clause Suggested
11.1	Explanation1to Section115JB: In Explanation 1 to Section 115 JB, meaning of "book profit" is explained, stating the items that should be added or deducted while computing the "book profit". It is provided that while computing "book profit, the amount of brought forward loss or unabsorbed depreciation,	Because of this restriction, companies which are asset light are unable to claim deduction even though they have huge brought forward business loss	1. The word 'or' to be substituted with 'and'. 2. The words 'whichever is less' should be removed. This will result in allowance of both, brought forward loss and unabsorbed depreciation while computing the "book profit". **Justification:** Current trend in the industry is that of assets light model. Companies now a days procure assets on lease or with the help of technology they try have tie up, Current restriction causes genuine hardship to companies, especially service industries recovering from losses - they are liable to pay MAT despite huge brought forward losses. Further, unabsorbed depreciation as well as loss are allowed to be carried forward and set off against normal provisions of computation of income without any restriction. In other words, there is no restriction on the extent of brought forward loss / unabsorbed depreciation to be set off. Therefore, there is no logic for such differential treatment while computing MAT for

	whichever is less, as per the books of accounts be allowed to be reduced. By way of clause (iii) to Explanation 1 to sub section(1) inserted by Finance Act, 2002, it is provided that no reduction benefit shall be available if either of the brought forward loss or unabsorbed depreciation is nil.		example, in case of service companies, depreciation is much lesser as compared to losses.
11.2	Chapter VI of the Act *inter alia* permits carry forward and set-off of losses and that to the same assessee	Many regulations especially in infrastructure sector require formulation of SPV for each individual project. Also, due to changing business scenarios and regulatory hurdles a company expected to make profits at	Entities may be permitted to carry back losses as permitted by many nations worldwide. Permit group taxation policy, which gives importance to substance rather than legal form i.e. separate SPV for each project which is required by regulators.

		the end of the contract ends up having a loss. The SPV pays taxes on percent completion method in the initial years and ultimately incurs a loss. SPV may not have any future profit to set-off the losses	

12. RATE OF MAT

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles/ Hurdles either Interpretative, Administrative orotherwise	Suggestion or new clause Suggested
12.1	Rate of tax on MAT		Apart from the above, rate of MAT is 20.38885% or 21.3416% depending upon income less than or more than Rs. 10 Crores, which is too high. It started with the rate of 7.5%. Therefore, this rate should be reduced to 10%.

13. OTHER PROVISIONS AND PROCEDURAL ISSUES

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles/ Hurdles either Interpretative, Administrative orotherwise	Suggestion or new clause Suggested
13.1	Currently person having only exempt income is not required to file return of income	Persons earning huge tax exempt income and not filing return of income are not subject to verification whether income is exempt or not and it leads to abuse of Law.	Every person earning income which is not chargeable to tax e.g. agricultural income, exceeding Rs 10,00,000 should be mandatorily required to file return of income. As of now this applies only to capital gains.
13.2	Only a person having total income of more than Rs 50 lacs is required to disclose assets held by him. There is no provision that requires government employees if he	• It is difficult to implement benami transaction law with its full rigor. • Reduce corruption, black money in the Indian System and transparency in the system.	It is proposed that, a government employee having taxable income should be mandatorily be required to disclose assets by him and his immediate relative. The clerical staff generally does not have taxable income so the lowest income group would automatically be excluded from application of aforesaid disclosure requirement.

	earning less than Rs 50 lacs to disclose his total assets.		
13.3	CBDT has issued Citizen's Charter 2014. Various time frame has been laid down for disposal of the tax payer's application	It is observed that time framed specified in citizen's charter, is not adhered in cases like • order giving effect to appeal, decision on rectification application, • issue of lower or nil TDS certificates etc. CBDT has also issued instruction from time to time viz. INSTRUCTION NO 1/2014, Dated: January 15, 2014 for adhering the prescribed time frame.	Time frame specified in the citizens charter should be specified in the Income-tax Act itself. Time frame for certain matters like disposing of application for compounding of offence and prosecution should also be introduced. Further alternate procedure for filing various such applications through the income-tax e-filing portal should be introduced.
13.4	There is no specific provision in the Act providing for Assessment / Re-assessment of Shell Companies struck-off by the Registrar	Technically, once the name of the Company has been struck-off from the register of company, such company ceases to exist and it a settled law that a non-existent person / dead person cannot be assessed / re-assessed	A deeming fiction should be created u/s 2(31) of the Act, to provide that, Companies whose name has been removed from the register of companies pursuant to the order passed by Registrar u/s 248 of the Companies Act, such company shall be deemed to be in existence for the purpose of Income Tax Act.

	of Company u/s 248 of the Companies Act, 2013		
13.5	There is no specific provision providing relief / benefit to the Companies which are being revived pursuant to a resolution plan passed by NCLT under the Insolvency and Bankruptcy Code.	Taxing a company which otherwise would be liquidated on waiver of loans/due by the creditors is unfair	Reference of Resolution Plan under the Insolvency and Bankruptcy Code should be added where relief has been provided in the erstwhile regime of Board for Industrial and Financial Reconstruction (BIFR). Section 35AD(7C), 47(xii) and 115JB refer to the BIFR regime. In addition to that Section 41(1) (cessation of liability) should be amended to provide that the section will not apply to the aforesaid companies.
13.6	**Section 171** Section 171(3) requires Assessing officer to pass order recording partition of HUF. However, there is no time limit under the Act for the same.	It should provide for time limit of say six months otherwise it should be presumed that the application is accepted as submitted.	Assessees cannot be expected to chase Assessing officer for such order.
13.7	**Section 207 to 211** It Deals with payment of advance tax. Exemption u/s. 207 is available to senior	It should be clarified that the senior citizen having exempt income like share of profit from partnership firm/LLP will be treated as an assessee who does not have any taxable income under the	At present, CPC is charging interest u/s 234B and 234C for non-payment of advance tax in case of senior citizen having exempt income of share in profit in partnership firm.

	citizen if he does not have any taxable income under the head "Income for Business"	head "Income for Business and will not be required to pay advance tax.	
13.8	**Section 149** It deals with time limit for re-opening of assessment u/s.147.	At present there is no monetary limit for issue of notice u/s 148 for income escaping assessment in a case where four years have not elapsed from the relevant assessment year. It has been observed that at times notice u/s 148 is issued for very small amounts. No tax payer will intentionally evade tax on small sums of income. Issue of notice for such small amounts not only causes undue hardship to the tax payer but also involves administrative time and cost which is not warranted for such small amounts of income.	Threshold limit should be set of Rs.100,000 or more for income escaping assessment for issue of notice u/s 148 in a case where four years have not elapsed from the relevant assessment year. Further it is recommended that the threshold limit for income escaping assessment for issue of notice u/s 148 where four years have elapsed but not more than 6 years from the relevant assessment year should be revised to Rs. 500,000 or more.
13.9	**Prosecution** Chapter XXII covers various provisions wherein prosecution can be initiated for failure to comply with certain provisions of Income Tax Act, 1961.	At present there is no monetary limit set for invoking the provisions of Chapter XXII of the Income Tax Act, 1961. Prosecution for small amounts causes undue hardship to the tax payers.	Threshold limit should be set for tax evaded of Rs. 100,000 or more to invoke the provisions of Chapter XXII of the Income Tax Act, 1961.

14. Threshold Limits

Sr. No.	PRESENT PROVISION/PRACTICE			SUGGESTED MODIFICATION	RATIONALE FOR CHANGE
	Section / Rule	Provision	Present Limit		
I	**Monetary limits**				
	GENERAL				
5	10(32)	Exemption limit for clubbing of minor's income	1,500	10,000	Since 1993
	SALARIED EMPLOYEES				
11	10(10B)	Exemption limit for retrenchment compensation	500,000	1,000,000	Since 1997
12	10(10C)	Exemption for amount received on voluntarly retirement or termination in accordance with a scheme of voluntary seperation	500,000	1,000,000	Since 2001
13	10(14)(ii) Rule 2BB	Children Education Allowance	100 p.m.	2,000 p.m.	Since 1997. It is so miniscule that if relief is intended then it should be increased OR removed altogether.
14	10 (14) (ii) r.w. Rule 2BB	Children Hostel Expenditure Allowance	300 p.m.	2000 p.m.	Since 1997. It is so miniscule that if relief is intended then it should be increased OR removed altogether.

16	17(2)(vi)	Medical Treatment outside India is subject to condition that gross total income does not exceed Rs 2,00,000	2,00,000	500,000	Since 1993
17	17 (2)(viii) r.w.Rule 3	Perquisite in respect of the following a) perquisite for interest free loan in excess of b) lunch / refreshment c) Value of any gift etc. on ceremonial occasions or otherwise	20,000 50 5,000	1,00,000 200 25,000	} Since 2001
	TAX DEDUCTION AT SOURCE				
19	193	TDS on Interest on Securities	5,000	20,000	Since 1989. Will reduce hardship to many.
21	194-J	TDS on Professional Fees etc.	30,000 and there is no separate aggregate limit	30,000 per contract and aggregate limit of Rs. 1,00,000	To align with limits u/s. 194C
II.	**Monetary Ceilings**				
24	208	Applicability of payment of advance tax when tax payable exceeds	10,000	20,000	Since 2009
25	285 BA	Second Proviso of sub-section (2) states that the value of aggregate transactions to be furnished shall not be less than Rs.50,000/-	50,000	500,000	since 1-4-2004

14. INTERNATIONAL TAX

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties faced – Procedural, Interpretational or otherwise	Suggestion or new clause Suggested
A) Significant Economic Presence Section 9			
1	"Significant Economic Presence" (SEP) was introduced by Finance Act 2018 in Explanation 2A 9(1)(i). We appreciate that this was required for taxation of e-commerce business which is currently escaping taxation in India.	The definition however is confusing and can lead to avoidable litigation. For example, meaning of "transaction" is not defined. It is defined for Transfer Pricing, but not for section 9. Further, carrying out transaction "in India" can lead to litigation. For example, a transaction is a continuous process and can be carried out partly in India and partly abroad. How do we bifurcate it? Similarly "interaction in India" needs to be	We suggest that the new terms should be defined or explained properly. Once it is defined, CBDT should come out with a circular explaining these terms.

		explained. These new terms can become subjective and can lead to litigation.	
B) Residence under section 6			
1	For **persons other than companies and individuals (i.e. for firm etc.)** if even part of C&M is in India it is an Indian resident. (Ss. 6(2))	This becomes quite harsh. If a part of control is in India, the entire firm is treated as Indian resident. Global income becomes taxable.	We suggest that residence test be on similar lines as in case of companies. i.e. If Place of Effective Management is in India, then it will be considered as Indian resident. This will also be in line with the DTAs which India has signed. This alignment has been done for companies but not for other entities.
2	**Individuals** – There is a controversy on the meaning of "visit" to India under explanation (b) to section 6(1). E.g. In a previous year (FY 2018-19), an NRI visits	As the term "visit" is not explained, it leads to litigation.	We suggest that reference to "visit" may be removed to remove any controversy. Alternatively, the term "visit" may be explained.

	India once for 30 days. In the second visit he settles down in India. In that previous year he is in India for a period exceeding 59 days but less than 182 days. Will he be considered as resident or non-resident?		
3	Section 6(1) Explanation (a): It provides that if a person leaves for employment in any previous year, he can get the relief of 182 days "in relation to that year". (i.e. he can be a non-resident	This creates a situation where a person may be in India for say 150 days "in the year" in which he leaves for employment, he will be a non-resident. But in the subsequent year, where he may be in India for just 100 days, he will be a resident. (There are some tribunal decisions to this	It may be clarified that if a person leaves India for employment, then he will get the relief for that previous year, or "any subsequent previous year". The intention is that once a person leaves India for employment, he will get the relief of being in India for 182 days in any subsequent year.

	even if he stays in India for 182 days). Say a person leaves India for employment in Nov 2018. In FY 2018-19, he is in India for more than 182 days. Therefore he will be an Indian resident. In FY 2019-20, he continues his employment and comes to India for only 80 days. Will he be considered as non-resident? (In FY 2019-20 he did not leave for employment.)	effect.)	

C) Shipping income – Section 44B and 172			
1	The provisions of the above sections are almost similar, although both sections apply to different manners of doing businesses. (Section 172 applies to non-residents undertaking occasional shipping activity. Section 44B applies to non-residents undertaking regular shipping activities.)	This difference in section creates some difficulties in operations of other provisions of Income-tax Act – e.g. payer of shipping freight is exempt from TDS if shipping company is covered under section 172 (**Circular:** *No. 723, dated 19-9-1995.)* ; whereas if the shipping company is covered under section 44B, there is no exemption from TDS. Further the recipient may be liable to advance tax provisions or not depending under which section it is covered.	For the payer, a similar exemption from TDS may be provided u/s. 44B as u/s. 172.

D) Transfer Pricing			
1	Transfer pricing provisions apply to international transactions without any threshold.	Transfer pricing provisions are very subjective. Determination of ALP cannot be objective. Even if there is a transaction of a small amount, the compliance is burdensome. For small businessman it is a costly exercise.	We suggest that there should be a threshold above which the provisions should apply. No threshold creates difficulties for small transactions. A threshold will go a long way to reduce compliance costs and burden for small assessees. We suggest that aggregate international transactions below Rs. 5 crores should not be covered within transfer pricing rules.
2	Under 2nd proviso to section 92C(4), if any adjustment is made to the payment on which tax has been deducted or was deductible, there will be no corresponding	We believe that the provision is unfair. In effect it amounts to taxing the same income twice. If one person's expenditure is disallowed due to Transfer pricing adjustment, the other person's income should be	We suggest that corresponding adjustment should be provided in such cases.

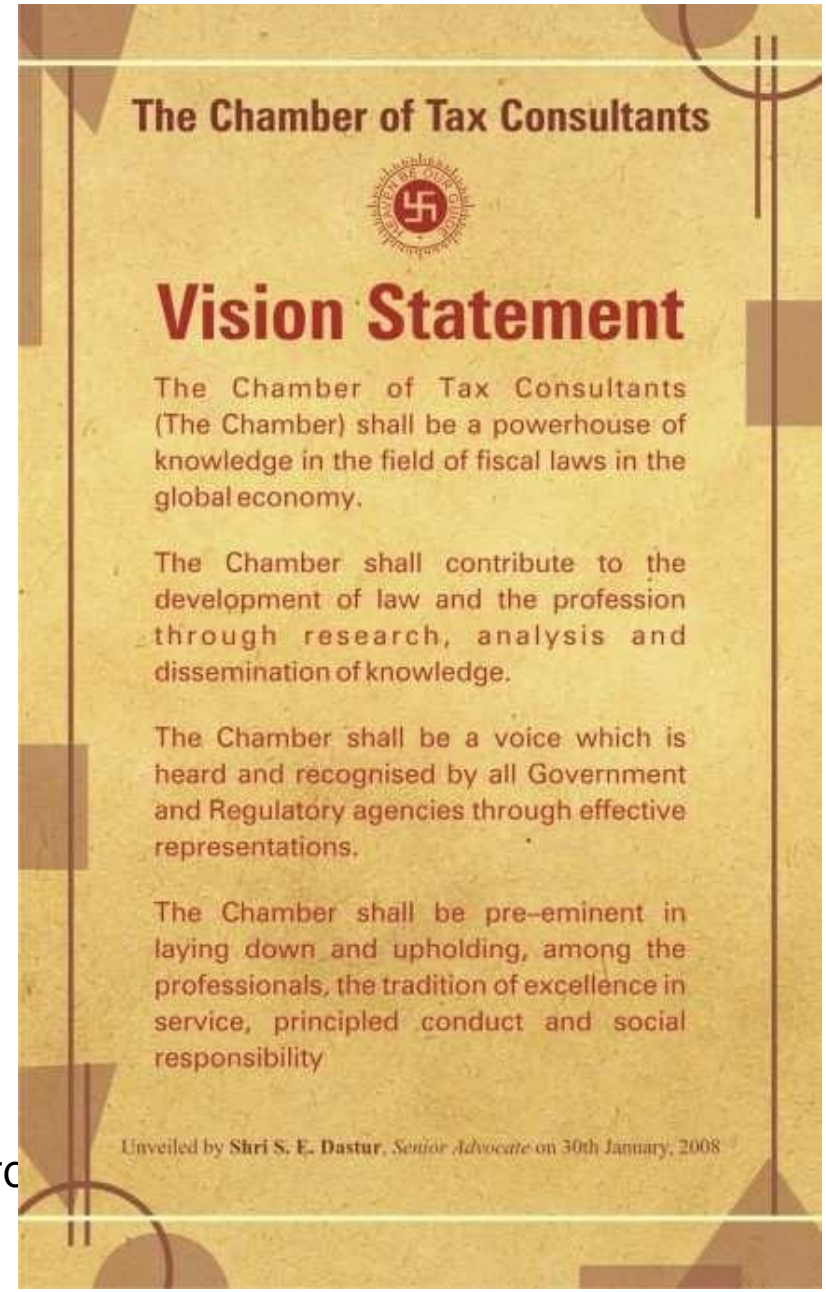
	adjustment to the recipient's income.	reduced. The person whose income is increased, will be liable to interest and penal consequences. Government will get its due taxes. But collecting double tax is in-principle unfair.	
E) Indirect transfers Indirect transfer provisions have fairly reasonable clarity to avoid tax in unintended situations. A few exemptions for group restructuring appear to have been missed out. These are submitted below.			
1	**Section 47(viab) and 47(vicc)** Indirect transfers are excluded from the definition of transfer (i.e. it does not give rise to tax in India) in an amalgamation and	Taxation of indirect transfers, and exemption of indirect transfers in case of mergers and demergers are not in line with each other.	This provision should be modified to remove the condition of value derived only from shares of an Indian company. It can simply be restricted to shares of a foreign company referred to in Explanation 5.

	demerger. However exemption is limited to those transfers which derive their value **only from shares of an Indian company (not any other asset)**. Whereas as per Explanation 5 to Section 9(1), indirect transfer provisions apply to shares which derive their value substantially from any Indian assets (shares of an Indian company plus any other asset). Thus, there is no exemption if assets in		

	India comprise of assets other than shares. This can affect foreign companies who have direct assets in India such as infrastructure projects in India. (Infrastructure projects are directly owned by foreign companies rather than through Indian companies.)		
2	Present proposal for exemption of indirect transfer in case of amalgamation referred to in clause (viab); and in case of a demerger referred to in clause (vicc); provide	Taxation of indirect transfers, and exemption of indirect transfers in case of mergers and demergers are not in line with each other.	An exemption may be available to **shareholder** of amalgamating foreign company or demerged foreign company. This will be in line with exemption available for shareholders of amalgamations or demergers where the amalgamated

	exemption only for the transfer of the **capital asset** deriving its value substantially from shares of an Indian company. Similar exemption is not available to **shareholder** of amalgamating foreign company or demerged foreign company.		company or resulting company is an Indian company. (Section 47(via) and 47(vic))
3	Exemption u/s. 56(2)(x) – Exemption in specified situations of mergers and demergers has been granted to companies receiving shares of another company at a value which is less than the fair value. The exemption is in case of		We submit that a similar exemption be provided for indirect transfer.

	Indian situations (i.e. where the amalgamated company, resultant company, etc. is in India). Similar exemption is not available to indirect transfers.		
4	**Explanation 2 to section 2(47) – meaning of "transfer":** The explanation was inserted vide Finance Act 2012 to take care of Vodafone transaction. As explained Memorandum to the Finance Bill this amendment was a part of Rationalisation of International Tax provisions. This meaning was not meant to apply to domestic transfer.		We suggest that it may be clarified that the explanation 2 applies to "transfer by a non-resident".


The Chamber of Tax Consultants
Vision Statement
The Chamber of Tax Consultants (The Chamber) shall be a powerhouse of knowledge in the field of fiscal laws in the global economy.
The Chamber shall contribute to the development of law and the profession through research, analysis and dissemination of knowledge.
The Chamber shall be a voice which is heard and recognised by all Government and Regulatory agencies through effective representations.
The Chamber shall be pre-eminent in laying down and upholding, among the professionals, the tradition of excellence in service, principled conduct and social responsibility
Unveiled by Shri S. E. Dastur, Senior Advocate on 30th January, 2008

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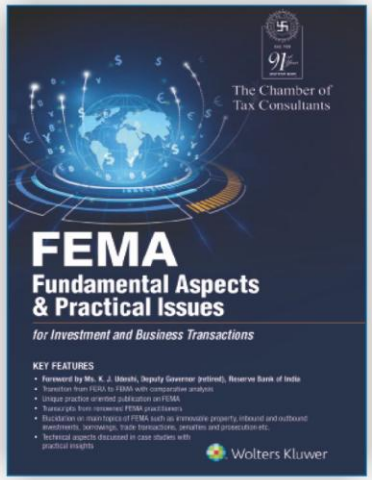

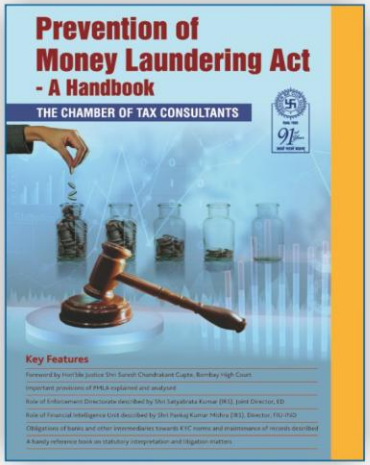

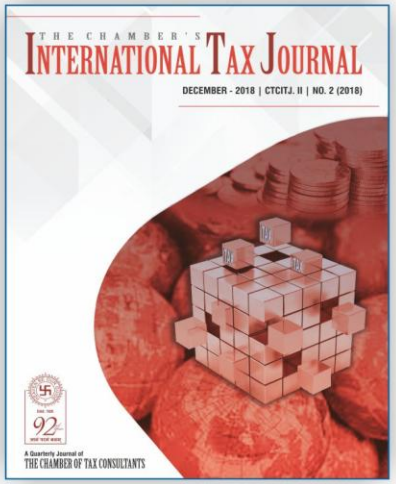

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THE CHAMBER OF TAX CONSULTANTS

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The Chamber of Tax Consultants **(CTC)** was set up in 1926 and is one of the oldest voluntary non- profit making professional organisations. It is the voice of more than 4000 professionals on PAN India basis which comprises of Advocates, Chartered Accountants, Company Secretary, Cost Accountants, Corporates, Tax Consultants and Students.

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