Estd. 1926
ज्ञानं परमं बलम्

The Chamber of Tax Consultants

3, Rewa Chambers, Ground Floor, 31 New Marine Lines, Mumbai 400 020
Tel.: 2200 1787 / 2209 0423 / 2200 2455 | E-mail : office@ctconline.org
Visit us at: www.ctconline.org

Pre-Budget Memorandum 2020

Suggested Amendments in respect of Direct Taxes for Finance Bill, 2020

Dated: 7th June, 2020

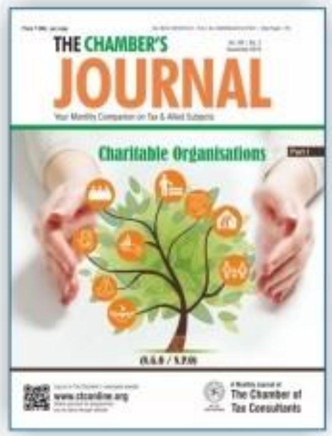
The Chamber's Journal

(A Monthly Journal of The Chamber of Tax Consultants)

HEAVEN BE OUR GUIDE

Estd. 1926

ज्ञानं परमं बलम्



THE CHAMBER OF TAX CONSULTANTS

<table>
<tr><th>MANAGING COUNCIL</th><th>LAW & REPRESENTATION COMMITTEE</th></tr>
<tr><td>PRESIDENT
VIPUL K. CHOSHI

VICE PRESIDENT
ANISH M. THACKER

HON. JOINT SECRETARIES
KETAN L. VAJANI
HARESH P. KENIA

TREASURER
PARAG S. VED
IMM. PAST PRESIDENT
HINESH DOSHI

MEMBERS
BHADRESH DOSHI
DEVENDRA JAIN
HENEEL PATEL
MAITRI SAVLA
MEHUL SHETH
PRANAV KAPADIA
RAHUL HAKANI
RAJESH L. SHAH
RAJESH L. SHAH
VARSHA GALVANKAR

CO-OPTED MEMBERS
ASHOK SHARMA
HITESH R. SHAH
K. GOPAL KISHOR VANJARA
MAHENDRASANGHVI
NILESH VIKAMSEY
PARAS K. SAVLA
PARESH P. SHAH
VIPUL JOSHI
YATIN DESAI</td><td>CHAIRMAN
MAHENDRA SANGHVI
CO-CHAIRMAN
APURVA SHAH
VICE CHAIRMAN
NEHA GADA
EX-OFFICIO
VIPUL K. CHOKSI
ANISH M. THACKER
CONVENORS
DEEPAK JAIN
NARENDRA SONI
PAST PRESIDENT
HITESH R. SHAH
PARAS K. SAVLA
ADVISORS
Y.P. TRIVEDI
VIPUL JOSHI
OFFICEBEARER
KETAN L. VAJANI
MANAGING COUNCIL MEMBER
PRANAV KAPADIA
MEMBERS
ABHITAN MEHTA, AMAR GAHLOT,
ANIKIT SHAH, ASHOK MEHTA,
ATUL SURAIYA, AVINASH
RAWANI, CHARMI G. SHAH,
DEVENDRA JAIN, DHARAN
GANDHI, FENIL BHATT,
GAUTAM THACKER, JANHAVI JHAVERI,
KIRAN SHAH, KRISH DESAI,
MAKRAND JOSHI, NARESH AJWANI,
NISHTHA PANDYA, NIYATI MANKAD,
RAHUL THAKAR, RAHUL HAKANI,
RAJESH L. SHAH, RAJIV LUTHIA,
VYOMESH PATHAK</td></tr>
</table>

Summary of Representation by Chamber of Tax Consultants towards Pre Budget memorandum 2020

Para	Issue	Purpose
1.1	Increase Standard Deduction for Salaries to 25% of Salary subject to a cap of Rs. 300,000.	Relief to Smaller Tax Payers
2.1	Allow deduction of Interest of Housing Loan even prior to construction completion.	Encourage Housing / Real Estate
2.2	Taxing Income from Stock held by a Real Estate Developer on notional basis – relaxation needed	Encourage Housing / Real Estate
3.1	Allowing CSR spend as an expense	Relief to Business
3.2	Allowing certain non-depreciable capital expenditure as revenue or deferred revenue.	Encourage Capital Investment in Business
3.3	Depreciation at 100% for smaller items up to Rs. 50,000	Ease in compliance procedures
3.4	Presumptive Tax – to exclude transactions in Derivatives	Encourage Securities Market growth
3.5	Presumptive Tax – for professionals at 25% and allowing remuneration paid as a deduction	Relief to Smaller Tax Payers
3.7	Allowing Scientific Research and Development expenditure u/s 115BAA	Relief to Business
4.1	Taxing Development Agreements – extend the system to persons other than Individuals also	Encourage Housing / Real Estate
4.2	54/54F – extend time for purchase / construction of houses	Encourage Housing / Real Estate
4.3	Taxing Long Term Capital Gains on Securities for individuals of up to Rs. 500,000 at 5% instead of 20%	Relief to Smaller Tax Payers
4.4	Taxing Demergers – extend to demerger schemes under Fast Track Route / approved otherwise than by the NCLT	Encourage restructuring of operations
4.5	Merger of LLPs – set off of losses be allowed	Encourage restructuring of operations
4.6	Conversion of Private Companies into LLPs – thresholds to be reduced to encourage such conversions	Encourage restructuring of operations
4.1	Taxing Development Agreements – extend the system to persons other than Individuals also	Encourage Housing / Real Estate
4.2	54/54F – extend time for purchase / construction of houses	Encourage Housing / Real Estate
4.3	Taxing Long Term Capital Gains on Securities for individuals of up to Rs. 500,000 at 5% instead of 20%	Relief to Smaller Tax Payers

5.1	Rationalise definition of relative u/s 56(2)(x)	Simplification of concepts
5.2	Section 50CA – to prove an exemption threshold for valuation in case of smaller transactions	Ease in compliance procedures
5.3	Taxing Share Premium received u/s 56(2)(viib) and benefit received u/s 56(2)(x) – Rule 11U to be applied in a similar manner	Removal of an unintentional hardship
5.4	Transfer of Securities at a price negotiated earlier to be recognised u/s 56(2)(x) in a manner similar to 50C	Removal of an unintentional hardship
5.5	Movement of assets of stressed companies under IBC etc. to be exempted from rigours of 50C / 50CA / 56(2)(x)	Encourage restructuring of operations
6.1	interest u/s 201(1A) – TDS – from due date of payment	Removal of an unintentional hardship
6.2	interest u/s 201(1A) – TDS – exempt where recipient has no tax liability	Removal of an unintentional hardship
7.1	Exempt Large sized companies and PSUs from having to subject their income to TDS in return for paying a predetermined sum every month as advance tax	Ease in compliance procedures
7.2	Exempt Individuals and HUF with no tax audit from TDS for personal payments of interest and brokerage/ commission	Removal of an unintentional hardship
7.3	Simplify system of allowing credit for TDS done – especially based on different system followed by payer and payee	Removal of an unintentional hardship
7.4	Prescribe a threshold for directors remuneration like in other cases	Removal of an unintentional hardship
8.1	115JB – rationalise for IndAS dealing with Business Combinations	Removal of an unintentional hardship
8.2	115JB – to rationalise for IndAS115/ 116 dealing with revenue recognition and transitional provisions	Removal of an unintentional hardship
9.1	Provide for auto acceptance of a rectification application u/s 154 if not dealt within a finite time of 6 months	Tax friendly administration
9.2	CPC intimations – allow assesse to determine whether a particular adjustment is to be done by CPC or transfer to AO	Tax friendly administration

9.3	Extend time period for filing returns in cases under IBC	Encourage restructuring of operations
10.1	115JB – allow asset light companies the benefit of set off of cash losses rather than restricting it to unabsorbed depreciation	Removal of an unintentional hardship
10.2	Permit carry backward of losses and appropriate treatment to SPVs	Ease of doing business
11A	Significant Economic Presence – to be clarified further	Simplification
11A	Test of Residence for non-corporates to be rationalised	Removal of an unintentional hardship
11B	Clarify various issues 'in definition of residence for individuals	Removal of an unintentional hardship
11C	Shipping income on Non Residents – provide TDS exemption even for 44B cases	Ease of doing business
11D	Transfer Pricing – threshold be provided for compliance and for testing	Ease of doing business
	In case a TP adjustment is made, corresponding adjustment should be allowed to the counter party as well	Ease of doing business
11E	Indirect transfers –needs rationalisation	To encourage cross border transactions and remove undue hardships
12.1	Mandate return foiling even for persons with agricultural income beyond a threshold	Increase base of tax payers
12.2	Require government employees to disclose assets even if income is below 50 lakhs threshold	Encourage transparency
12.3	Adhere to Citizens Charter on time lines	Tax payer friendly administration
12.4	Provide for reassessment of shell companies / struck off entities	
12.5	Provide relief to companies revived under IBC	
12.6	Orders u/s 171 on partition if HUF – dispense with or fix a time line	Tax payer friendly administration
12.7	Payment of advance tax – clarify that earning tax free business income by senior citizens does not attract advance tax provisions	Removal of an unintentional hardship

12.8	Change thresholds for reassessment of income	Tax payer friendly administration
12.9	Extend time for revising a return till the due date of filing next year's tax return	Removal of an unintentional hardship
13	Increasing various thresholds that were set earlier	Relief to Smaller Tax Payers

The Chamber of Tax Consultants
Estd. 1926
ज्ञानं परमं बलम्
Mumbai | Delhi

4th December, 2019

Shri Modassar Shafi
Budget Officer (TRU) Government of India,
Ministry of Finance, Department of Revenue,
Tax Research Unit,
New Delhi –110001

Respected Sir,

<u>Subject: Pre-Budget Memorandum2019-2020 –Suggestions on Direct Tax</u>

We are pleased to submit our suggestions on Direct Taxes for the Budget of 2020. 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/-
VIPUL K. CHOKSI	MAHENDRA SANGHVI	APURVA SHAH
PRESIDENT	CHAIRMAN	CO-CHAIRMAN
	LAW & REPRESENTATION	COMMITTEE

INDEX

1. SALARIES

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
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

			Free lancer 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 or otherwise	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 assesses 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 assesses 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 where in the developer is unable to sell within a period of 2 years from receipt of Occupation certificate.	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 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.	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. Justification: Considering the current slump in real estate market, this has resulted in undue hardship to developer who in spite of sufficient efforts to sell its inventory is required to discharge the tax on notional basis on unsold inventory. Alternatively, the period of 2 years needs to be extended to at least 5 years under current situation of real estate markets.

3. BUSINESS INCOME AND EXPENDITURE

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
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	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 allow ability 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.	There is a need to revisit this provision and the companies should be allowed 100 percent deduction of CSR under section37 with such safeguards as may be needed.

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 (4) Expenditure for setting up separate & dependent unit	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	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.
3.3	Depreciation Allowance – Sec. 32Restoration 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	The above provisions should be reintroduced, with a limit of cost of such asset being below Rs. 50,000/-

		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.	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.	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.	Income or losses from speculation or futures & options business, as specified under section 43(5),should be excluded from the purview of section44AD.

3.5	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 partner 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:

Section44AD	Earlier Provision (UptoAY 2016-17) onwards)	New Provision (From AY 2017-18
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	

				NILSection44ADA	
				NO44ADA	Under 44ADA
			Gross Receipt of Firm	30,00,000	30,00,000
			DeemedIncome50%	-	15,00,000
			Regular Income(Say50%)	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

3.7	Taxation Laws (Amendment) Act, 2019 would inter alia introduce Section 115BAA which provides reduced effective tax rate of 25% to domestic companies on compliance with the specified conditions.	S. 115BAA vis-à-vis Expenditure dealt by S. 35(2AB), 35AD etc Section 115BAA(2) inter alia restricts deduction of expenditure incurred on scientific research under various different clauses of Section 35 and also deduction u/s 35AD. The primary reason of this restriction is to prohibit any weighted deduction (150% or 200% of the actual expenditure incurred) or upfront deduction of capital expenditure. S. 37(1) of the Act permits deduction of revenue expenditure incurred for the purpose of business other than expenditure of the nature described in sections	Explanation is inserted to S. 37(1) to provide that, For the removal of doubts, it is hereby declared that for a domestic company that has exercised option under sub-section 4 of Section 115BAA 'expenditure of the nature described in sections 30 to 36' will not include the expenditure specified in sub section 2 of Section 115BAA. Proviso is inserted to S. 35AD(4) to provide that, nothing contained in this sub-section shall apply to capital expenditure incurred by a domestic company that has exercised option under sub-section 4 of Section 115BAA.

		30 to 36 of the Act (which includes S. 35(2AB) & S. 35AD). Further, S. 35AD(4) provides that, No deduction in respect of the expenditure referred to in sub-section (1) shall be allowed to the assessee under any other section in any previous year or under this section in any other previous year. The language uses the phrase 'expenditure referred' and not 'expenditure allowed'. Generally, scientific research expense is incurred for the purpose of business. The prohibition u/s 115BAA(2) would not permit the claim of scientific research expense u/s 35(2AB). S. 37(1) applies to expenses not dealt by S. 30	

		to 36. As scientific research expense is dealt by S. 35(2AB), S. 37(1) may not apply. Consequently, a genuine business expenditure won't be allowed (even at 100%) for computation of taxable income of domestic company. Similarly, a view is possible that, because of the language of S. 35AD(4) (reproduced above) depreciation will also not be allowed for capital expenditure covered u/s 35AD.	

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	Section45(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 5years. 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 rise 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 andhistotalincomeisuptoRs500,000 is required to pay tax on long term capital gains at the rate of 20 per cent.		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 four times.

4.4	De-merger is defined u/s 2(19AA) of the Act – which stipulates the requirement for a de-merger to avail the statutory exemption under the Income Tax Act and for the acquirer to be entitled to the benefit of carry forward of loss the acquire company. Section 2(19AA) inter alia requires that the demerger should be pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956	When the Section 2(19AA) was introduced vide Finance Act, 1999 demerger was permissible only pursuant to a High Court approved Scheme u/s 391 to 394 of the Companies Act, 1956. Companies Act, 2013 in addition to permitting a de-merger pursuant a court (NCLT instead of High Court) approved scheme of arrangement permits a fast track de-merger u/s 233 of Companies Act, 2013, which would only require an approval of the Central Government (Regional Director under the Companies Act) and not NCLT. Similarly, Section 234 of the Companies Act, 2013 inter alia permits de-merger of a foreign company into an Indian Company, which was not permitted under the Companies Act, 1956. Further, a Resolution Plan to be	Section 2(19AA) should be amended to remove the requirement for a de-merger to be pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956i.e. to bring the definition of de-merger in line with definition of amalgamation u/s 2(1B) of the Act.

		approved by the NCLT under the Insolvency and Bankruptcy Code for revival of the Corporate Debtor can also provide for de-merger of the Corporate Debtor (the company under Insolvency) which would not require a separate approval of NCLT u/s 230 to 232 of the Companies Act, 2013. It would be unjust to restrict the benefits (statutory exemption, carry forward loss) of Section 2(19AA) compliant de-merger to only a de-merger approved u/s 230 to 232 of the Companies Act, 2013 and not to grant benefit to the new method for de-merger. The issue is peculiar in the context of de-merger and is not relevant for merger – as no similar restriction of the scheme being approved u/s 230 to 232 of the Companies Act, 2013 is incorporated in the Sections dealing with merger.	

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-organization amongst the LLP similar to those Companies allowed under Companies Act 1956 & Companies Act2013. 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 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. 5crores		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 an LLP. Provisions of the Companies Act2013 have created various anomalies as well as 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 Share holders/partner's should be exempted

5. INCOME FROM OTHER SOURCES

Section 56(2)(x) - Refer Annexure for detail note

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	Undersection56(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.	Justification: 1. 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 relative of 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.	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.

5.2	Valuation of Shares Section50CAhas introduced a presumptive tax based on intrinsic value of shares – computed based on Rule 11U.	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.	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.
5.3	Section 56(2)(viib) would levy a tax on specifiedcompaniesifthe consideration received on issue of shares is more the	Interplay of Section 56(2)(viib) and Section 56(2)(x)	The valuation method for Section 56(2)(x) and Section 56(2)(viib) should be the same. The valuation method for

	fair value of securities determined as per Rule 11UA Similarly, a tax officer would apply Section 56(2)(x) on the shareholder if fair value of shares determined as per Rule 11UA is more than the consideration paid for issuance of shares.	In substance both Section 56(2)(viib) and Section 56(2)(x) are in line and requires a comparison of fair value as per Rule 11UA and the consideration for issue of shares. However, Rule 11UA prescribed different fair valuation method for S. 56(2)(x) and S. 56(2)(viib) – S. 56(2)(viib) – Rule 11UA requires fair value of equity shares to be determined based on book net worth of the company that to on the date of last audited balance sheet. S. 56(2)(x) – Rule 11UA requires fair value of equity to be determined based on book net worth adjusted to the fair valuation of immovable property, securities etc owned by the Company on the date of transfer. The key difference in both the valuation technique are –	Section 56(2)(viib) should be modified to bring it in line with the valuation method of S. 56(2)(x). [Stamp duty value of land owned by the Company considered for S. 56(2)(viib) – India Convention and Culture Centre (P.) Ltd. v. ITO [2019] 75 ITR(T) 538 (Delhi - Trib.)]

		Requirement to consider fair value of specified asset (immovable property, securities etc) for S. 56(2)(x) and not for S. 56(2)(viib). Balance Sheet on the date of transaction has to be considered for S. 56(2)(x) and the last audited balance sheet has to be considered for S. 56(2)(viib). Due to the aforesaid difference in valuation technique, there is a difference between the fair value of same securities for S. 56(2)(x) and S. 56(2)(viib). Consequently, it becomes impossible to satisfy both the requirements of both the Section simultaneously. For example, the fair value of equity shares as per Rule 11UA for S. 56(2)(x) is Rs. 200/share and the fair value of equity shares as per Rule 11UA for S. 56(2)(viib) is Rs. 150/share. If the shares are issued for Rs. 150/share	

		– the shareholder would pay tax on Rs. 50 (Rs. 200 – Rs. 150) u/s 56(2)(x) for receiving a share having fair value of Rs. 200 for a consideration of Rs. 150. Similarly, if a share is issued for Rs. 200/ share – the company would pay tax on Rs. 50 (Rs. 200 – Rs. 150) u/s 56(2)(x) for receiving Rs. 200 for a share having fair value of Rs. 150. This dichotomy needs to be addressed. Presently, the only practical way out is to adopt Discount Cash Flow (DCF) method, the alternative method for valuation of shares u/s 56(2)(viib). However, to apply DCF the company needs to have regular cash flows which can be discounted to arrive at the fair value of the company. It is not possible to apply Section 56(2)(viib) in all the cases. For example, the DCF method would fail in case of an investment company or a holding company which does not have regular cash flow.	

5.4	Section 56(2)(x) & Section 50CA would treat the difference between the transaction price of the securities and fair value of securities on the transfer date the as income of the transferor (S. 50CA) and transferee (S. 56(2)(x))	Link of fair value computation to the date of transfer Many times the transfer price of securities is fixed pursuant to a Shareholders Agreement, Memorandum of Understanding etc i.e. prior to the actual date of transfer. Time lag between the date of agreement and the date of transfer is primarily because of various regulatory approvals which are required for undertaking the transaction – for example – approval of Competition Commission of India if the value of the transaction above a specified threshold, approval of SEBI for exemption from making an open offer under the takeover code alternatively to comply with all the requirements of the Takeover Code and make an open offer etc.	Similar to the dispensation given u/s 56(2)(x) and Section 50C in the context of immovable property i.e. the value on the date of agreement for fixing the consideration is considered relevant for determining fair value of immovable property and not the fair value on the date of actual transfer of immovable property. Section 56(2)(x) and Section 50CA should provide that, for determining the fair value of securities, the date of agreement fixing the consideration for transfer of securities is relevant and not the date actual transfer of securities. As an additional safeguard the department can provide a disclosure form which has to be filed by the transferor/transferee with the income tax department bringing out key terms

		Depending on the number of approvals and procedure involved seeking approval the time lag between the date of agreement to acquire securities and actual date of acquisition would normally range from 2 months to 6 months. It is possible that, the fair value as per (Rule 11UA) is different on the date of actual transfer is different from the price agreed pursuant to the share purchase agreement. Classic case would be in case of listed companies where the fair value as per Rule 11UA is the price on stock exchange. It is impossible to predict with certainty the price movement in 6 months and consequently it is not possible to comply with Rule 11UA. The intention of Section 56(2)(x) and Section 50CA is to curb black money and is not intended to cause hardship is case of genuine business transaction.	of the agreement to acquire securities like. Number of Securities to be transferred, price/formula for determining the transfer price. Form could be uploaded on the Income Tax Portal or should be sent to the jurisdictional assessing officer within 7 days from the date of execution of the agreement to acquire securities. This would be a better safeguard than the requirement of the agreement being stamped and would adequately address the concern of ante dating of the agreement to acquire securities.

5.5	Section 56(2)(x) & Section 50CA would treat the difference between the transaction price of the securities and fair value of securities as income of the transferor (S. 50CA) and transferee (S. 56(2)(x))	Structuring takeover of a Corporate Debtor (Insolvent Company) under Insolvency and Bankruptcy Code Section 56(2)(x) and Section 50CA are intended to curb money laundering activities and are not intended to cause hardship is case of genuine business transaction. Under IBC the company is transferred pursuant to the resolution plan approved by NCLT to an independent 3rd party. The promoters of the Company under IBC are not even entitled to bid for the company. The bidding process for acquisition of the company under IBC is carried on committee of creditors with an objective of value maximisation for all the stakeholders. To avoid the trigger of Section 56(2)(x) and Section 50CA to takeover under IBC unnecessary structuring has to be built-in the resolution plan. This causes the	Anti abuse provisions to curb money laundering like Section 56(2)(x), Section 50CA and Section 50C should not apply to any transfer pursuant to a Resolution Plan approved by NCLT under the Insolvency and Bankruptcy Code

		Resolution Plan being complex, which in turn delays the implementation of the resolution plan and consequently, hampers the valuation of the company under IBC.	

6. 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
6.1	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.

6.2	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 o f 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.

7. TDS

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	Fresh scheme of tax collection instead of TDS	Reducing compliance burden and reducing rectification applications.	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)

7.2	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. 194H (brokerage),in respect of individuals & HUF's who are subject to tax audit	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/s44AB 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	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.

7.3	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. These 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 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	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 withthe Treasury of the Government by the deductor as the deductee has no control over 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

	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 there by causing undue hardship to the deductee.		Arising out ofnon- payment by deductor. 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 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 in default.
7.4	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	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.	Threshold limit of Rs. 30,000 should be made applicable which is applicable to all other payments covered insec.194J.

8. 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
8.1	Section 115JB levies MAT on the 'book profit' of the Company. Book profit is derived from adjusting the Profit as per Statement of Profit and Loss with the specified additions and deletions stated in the Explanation 1 to Section 115JB, S. 115JB(2A), S. 11JB(2B) and S. 115JB(2C).	Common Control Business Combination For a specified class of companies the books of accounts are to be maintained as per Ind-AS. Accounting for common control business combination is governed by Ind-AS 103 (Appendix C). Example a holding company has sold one of its business undertaking pursuant to a slump sale to its subsidiary company on October 1, 2018. Though the subsidiary has legally, beneficially & contractually acquired the business undertaking from the holding company from October 1, 2018 – Ind-AS 103 would require the subsidiary to account for the profits of the business undertaking from April 1, 2017 (i.e. 1st day of earlier period). Consequently, for the Financial Year of the business combination – FY 2018-	Section 115JB(2A) deals with a similar issue in the context of Ind AS accounting for demerger and mandates to ignore notional profit to be recorded in the Statement of Profit and Loss of the Transferor Company. Therefore, the suggestion to amend Section 115JB(2A) to also provide for adjusting the profit as per Statement of Profit and Loss to ignore the profit/loss recorded in the Statement of Profit and Loss recorded by the transferee company (acquirer company) pursuant a common control business combination prior to the date of business combination.

		19 – the profits business undertaking transferred from holding company to the subsidiary company would be accounted as follows – - Holding Company – April 1, 2018 to September 30, 2018 - Subsidiary Company – April 1, 2018 to March 31, 2019 Therefore, the profits of the business undertaking for the period April 1, 2018 to September 30, 2018 are accounted by both the holding company and the subsidiary company. Consequently, on strict interpretation of Section 115JB – along with Holding Company, the subsidiary company is also liable to pay MAT for the profit of the business undertaking for the period April 1, 2018 to September 30, 2018 – the profit for the said period is neither earned nor belongs to the subsidiary company. The profit of the business undertaking so transferred for the period April 1, 2018 to September 30, 2018 would be reduced in the Notes to Balance Sheet – from the balance of Retained Earnings of the subsidiary company. Therefore, the said profits are not captured	

		in the balance sheet of subsidiary company and consequently are not available for declaration of dividend to the subsidiary company. The accounting of earlier period profit in the Profit and Loss Statement of the subsidiary company is solely to make the Statement of Profit and Loss of both the years (current year and earlier year) presented in the financial statement comparable. The Ind AS accounting of recognising earlier period is same for a common control business combination – whether pursuant to a slump sale, merger, de- merger etc.	
8.2	Section 115JB levies MAT on the 'book profit' of the Company. Book profit is derived from adjusting the Profit as per Statement of Profit and Loss with the specified additions and deletions stated in the Explanation 1 to Section 115JB, S. 115JB(2A), S.	Adoption of Ind AS 115 and Ind AS 116 Ind AS 115 is the new Ind AS on revenue recognition – earlier Ind AS 11 and Ind AS 18. On adoption of Ind AS 115 from April 1, 2018 – a company is required to adopt Ind-AS 115 retrospectively i.e. as if Ind AS 115 has been adopted since the inception of the Company and adjust the difference in Revenue recognised as per earlier Ind AS (Ind AS 11 and Ind AS 18) and the revenue ought to be recognised if Ind AS 115 was applicable since the inception of the Company in the	Section 115JB(2C) already deals with adjustment in Other Equity (Reserves and Surplus) on transition to Ind AS. The scope of Section 115JB(2C) to be expanded to also deal with adjustment done directly to Other Equity on adoption of new Ind AS – like Ind AS 115 and Ind AS 116. Alternatively, the definition of book profit provided under Explanation 1 to Section

	11JB(2B) and S. 115JB(2C).	opening balance of Retained Earnings. The accounting is similar to the accounting mandated on adoption of Ind AS from earlier accounting standard – i.e. to adopt Ind AS retrospectively and adjust the difference in the opening balance of retained earnings. The accounting on adoption of Ind AS 115 would result is recognising the same profit/loss for the second time in the Statement of Profit and Loss. For example – earlier Ind AS permitted a real estate developer to follow percentage completion method – whereas it is likely that a developer would be required to follow projection completion method under Ind AS 115. Therefore, if a project is completed 70% and the attributable profit to the 70% of the project is recognised in the Statement of Profit and Loss – on adoption of Ind AS 115 – the 70% profit would be reversed in the opening balance of retained earnings and 100% profit of the project would be recognised on completion of the project. Therefore, the same profits/loss (70% profit) would be recognised for the second time in the Statement of	115JB can incorporate adjustments to ignore the profit/loss recognised for second time in the Statement of Profit and Loss on adoption of a new Ind AS.

		Profit and Loss would be taxed/allowed as deduction in computation of Book Profit.	

9. RECTIFICATION

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	Section 154 – Rectification of Mistakes Sub-section (8)of section 154provides 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 application is made by either (a) making the amendment or (b) refusing to allow the claim.	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 mean time the department keeps on the recovery proceedings and also adjusts the subsequent refunds against the demandfor which the rectification applications are pending disposal. This results intremendous 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.

9.2	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.	
9.3	A tax payer is permitted to carry forward loss only if the Income tax return is filed before the due date of filing of return u/s 139(1) of the Act. Further, Section 139 permits filing of belated return only by end of the assessment year.	Return filing of a Corporate Debtor (Insolvent Company) under Insolvency and Bankruptcy Code Once a company is admitted for resolution process under IBC the board of the company is suspended and the management and administration of the company is transferred to the interim resolution professional appointed by NCLT. After that, in the first meeting of the committee of creditors, the committee would appoint a resolution profession and the management and administration of the company would be transferred from the interim resolution professional to the	Both the requirements – - Filing return within the time prescribed u/s 139(1) for claiming tax loss; and - Restriction of filing belated return by the end of the assessment year, Should be relaxed for a company under IBC and the successful bidder should be given six months from the date of taking control and management of the company to file income tax return and consequently, be entitled to carry forward of losses.

		resolution professional. Subsequently, bids are invited for takeover of the corporate debtor and the successful bidder after receiving the approval of NCLT of its proposed resolution plan would get the control over management and administration of the corporate debtor. The time line fixed for the entire process by the IBC Code is 330 days. In other words in a span of 330 days the control of a company changes hands from – Original management to interim resolution professional From interim resolution profession to resolution professional From resolution profession to the successful bidder In all probabilities the erstwhile management of the company would not share complete date with the resolution	

		professionals which would enable them to file income tax return on time. Further, with incomplete date, the resolution professionals are not in the position to get the accounts audited and obtain a tax audit report. Consequently, there is a delay in filing of the income tax return or the income tax return is not filed within the stipulated time. In turn the successful bidder is not entitled to set-off earlier year loss and also provide complete information to the tax department relating to income & expense of earlier periods.	

10. LOSSES

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
10.1	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, 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.	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 day's 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 example, in case of service companies, depreciation is much lesser as compared to losses.

10.2	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 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	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.

11. 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 explained.	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.

		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 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	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 effect.)	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.

	non-resident? (In FY 2019-20 he did not leave for employment.)		
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 under taking occasional shipping activity. Section 44Bappliestonon- 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, dated19-9-1995.)* ; where as 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 adjustment to the recipient's income.	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 reduced. The person whose income is increased,	We suggest that corresponding adjustment should be provided in such cases.

		will be liable to interest and penal consequences. Government will get its due taxes. But collecting double taxis 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 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).	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 Explanation5.

	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 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.	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 share holder 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 company or resulting company is an Indian company. (Section 47(via) and 47(vic))

3	Section 47(via), 47(viab), 47(vic) and 47(vicc) provides for exemption from capital gains tax in the context of foreign merger/demerger.	Foreign merger / demerger – continuity of shareholders Section 47(via), 47(viab), 47(vic) and 47(vicc) inter alia requires that the shareholders of the amalgamating company / de-merged company should continue as the shareholder of the amalgamated company / resulting company as the case may be. Section 2(1B) dealing with domestic amalgamation and Section 2(19AA) dealing with domestic de-merger also stipulates similar requirement of continuity of shareholders of the amalgamating company or the de-merger company. However, S. 2(1B) and S. 2(19AA) provides a relaxation that the condition would not apply to the shares of the amalgamating company / de-merged company that are held by the amalgamated/resulting company or its subsidiary. This is a logical carve out – for example if a subsidiary company is	Section 47(via), 47(viab), 47(vic) and 47(vicc) be amended to provide that the requirement of continuity of shareholders will not apply to the shares of the amalgamating company / de-merged company that are held by the amalgamated/resulting company or its subsidiary.

		merged into a holding company – the holding company cannot allot shares to itself on merger – therefore, it cannot satisfy the requirement of continuity of shareholders post amalgamation. It is logical that, similar carve out is also provided for exemptions relating to merger/de-merger of foreign companies.	
4	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 Indian situations (i.e. where the amalgamated company, resultant company, etc. is in India). Similar exemption is not available to indirect transfers.		We submit that a similar exemption be provided for indirect transfer.

5	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".

12. OTHER PROVISIONS AND PROCEDURAL ISSUES

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
12.1	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.
12.2	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 earning less than Rs 50 lacs to disclose his total assets.	• 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 a foresaid disclosure requirement.

12.3	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 certificate etc. CBDT has also issued instruction from time to time viz. INSTRUCTION NO 1/2014, Dated: January 15, 2014 for adhering the prescribed timeframe.	Timeframe 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.
12.4	There is no specific provision in the Act providing for Assessment / Re-assessment of Shell Companies struck-off by the Registrar of Company u/s 248 of the Companies Act, 2013	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 the Act

12.5	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.
12.6	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.

12.7	Section 207 to 211 It Deals with payment of advance tax. Exemption u/s. 207 is available to senior citizen if he does not have any taxable income under the head "Income for Business"	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 head "Income for Business and will not be required to pay advance tax.	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.
12.8	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.

12.9	Section 139(5) permits filing of revised return before the end of the Assessment Year.	Time limit to file revised return Practically once a return of income is filed, the tax payer would re-look at the return of income at the time of filing the income tax return for the next year. If any error/mistake is noticed on subsequent scrutiny of the return of income, the tax payer would not be in the position to file revised return as the time limit to file revised return would have expired. This limitation of filing revised return only by the end of the year would cause genuine hardship to the small taxpayers and may also result in certain income being untaxed.	The time limit to file revised return should be extended till the time limit of filing next year's return u/s 139(1).

13. Threshold Limits

Sr. No.	PRESENT PROVISION/PRACTICE			SUGGESTED MODIFICATION	RATIONALE FOR CHANGE
	Section / Rule	Provision	Present Limit		
I	Monetary limits				
	GENERAL				
1	10(32)	Exemption limit for clubbing of minor's income	1,500	10,000	Since 1993
	SALARIED EMPLOYEES				
2	10(10B)	Exemption limit for retrenchment compensation	500,000	1,000,000	Since 1997
3	10(10C)	Exemption for amount received on voluntary retirement or termination in accordance with a scheme of voluntary separation	500,000	1,000,000	Since 2001
4	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.
5	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.
6	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
7	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				
8	193	TDS on Interest on Securities	5,000	20,000	Since 1989. Will reduce hardship to many.
9	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				
10	208	Applicability of payment of advance tax when tax payable exceeds	10,000	20,000	Since 2009
11	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

Annexure to Pre Budget Memorandum 2020

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 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) amendment 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.

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

[2](2010) 232 CTR (St) 289

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*

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 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.

These are anti-abuse provisions 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

[3](2011) 240 CTR (St) 1

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 AnantraiPattani&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 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

[4](1961) 41 ITR 481(SC)
[5] (1974) 94 ITR 1(Bom)
[6] (1974) 98 ITR 97(St.)

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.

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 assesses

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.

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.

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

THE CHAMBER OF TAX CONSULTANTS

NOTES

THE CHAMBER OF TAX CONSULTANTS

THE CHAMBER OF TAX CONSULTANTS

NOTES

THE CHAMBER OF TAX CONSULTANTS

....

....

....

....

....

....

....

....

....

....

....

....

....

....

....

....

....

....

....

THE CHAMBER OF TAX CONSULTANTS

ABOUT THE CHAMBER OF TAX CONSULTANTS

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.

The Chamber is in its 91st year and is a young dynamic organisation which has a glorious past and undisputedly ambitious future. The Chamber is a great institution with a tradition of high integrity, independence and professionalism.

The Chamber acts as power house of knowledge in the field of fiscal law, always proactive in contributing to the development of law and profession through research, analysis and dissemination of knowledge and by tendering suggestions to authorities. The Chamber provides networking platforms to professionals through interactive meetings and seminars

Some of the renowned personalities like Shri Soli Dastur, Shri Y. P. Trivedi, Shri V. H. Patil, Shri S. N. Inamdar have led the Chamber as President.

The Chamber shall preeminent in upholding among the professional, tradition of excellence in service, principal conduct and social responsibility.