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Pre-Budget Memorandum 2024

Suggested Amendments in respect of Direct Taxes for Finance Bill, 2024

Dated: 22nd June 2024

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22nd June, 2024

To,
Smt. Nirmala Sitharaman,
Hon'ble Finance Minister of India
North Block,
New Delhi – 110 001

To,
Shri Nitin Gupta,
Chairman,
Central Board of Direct Taxes,
Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi –110001

Respected Madam / Sir,

Subject: **Pre-Budget Memorandum 2024-2025–Suggestions on Direct Tax**

We are pleased to submit our suggestions on Direct Taxes for the Budget of 2024. 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/-
HARESH P. KENIA **PRESIDENT**	**KETAN L. VAJANI** **CHAIRMAN** **LAW & REPRESENTATION COMMITTEE**

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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. Employees during the course of their employment incur various expenses, including for upgrading skill for rendering their services as employees, which are much more in the case of employees having higher salary – a higher deduction for such expenses should be allowed.	For avoiding leakage of revenue, such deduction may be certain percentage of salary, say 25% of the salary, and maximum amount may be restricted to Rs. 3,00,000/-. This would ensure that an employee who gets a salary is not put to any disadvantage compared to someone who draws the same amount as a Freelancer professional.
1.2	Section 10(13A) r.w.r 2A provides an exemption of allowance from the employer received towards rent payment (commonly known as HRA). Rule 2A provides for the computation of the eligible HRA which is primarily dependent on the salary of the employee and the quantum of rent paid by the employee.	Presently, from income tax perspective it would be better to stay in rented premises rather than buy a house. Both the options (buy or rent) should be at par from tax perspective and in any case renting should not be incentivized.	To extend the benefit of HRA (exemption u/s 10(13A) even to EMI payment on home loan taken for acquisition of the first house by an employee. It may be clarified that double deduction of the same EMI payment would not be permitted i.e. same EMI cannot be claimed as an expense under the head house property or u/s 80C. This suggestion would also promote residential housing projects and also incentivize buying of property instead of paying rent.

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 instalments 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 also be bearing the brunt of rent expenses. Many times, when the projects are delayed, this adds further burden on the assessee. To 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 following suggestions are proposed	The deduction for interest payable during construction period may be allowed in the year of payment itself.
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 led to undue burden on the builders and developers. The builders and developers are being liable to	Provision of house property income should not be made applicable to house property held as stock in trade. Alternatively, if the above suggestion is not acceptable then the period of 2 years be extended to at least 5

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		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 this cost into the price either directly or indirectly for recovering from the proposed flat buyers. The deemed provision is a counter-productive measure to provide affordable housing in metro cities. Considering the current slump in real estate market, this has resulted in undue hardship to developers who despite of sufficient efforts to sell its inventory is required to discharge the tax on notional basis on unsold inventory.	years considering the real estate industry and current situation of real estate markets.

3. BUSINESS INCOME & 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	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. Example : Amortization of long term Lease premium on Land & Building, Factory shifting or relocation expenses	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.	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.
3.2	Depreciation Allowance – Sec. 32 Restoration of Depreciation Allowance in respect of cost of small items of assets.	In the past, with a view to avoid litigation on the point of nature of expenditure (i.e. capital or revenue) in respect of purchase of small items of assets, provisions had been introduced to treat cost of such assets as depreciation allowance. Earlier, the limit oncost 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 resulted in undue hardship and complexities. This was a useful provision to	The above provisions should be reintroduced, with a limit of cost of such asset being below Rs. 25,000/- Justifications: Such a provision will provide simplicity and avoid possible litigations.

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		maintain simplicity and to avoid possible litigation on such small items of assets, based on principles of materiality.	
3.3	Section 44AD relating to presumptive taxation which also covers income of Speculation and derivatives business. (F&O).	Speculation and F&O income, by their very nature, cannot have a net profit ratio of 6% 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 6% 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 section 44AD.
3.4	Section 44ADA provides for income of a professional to be deemed to be 50% of the gross receipts of the assessee.	The net income of any professional cannot be as high as 50% considering the present day overheads which are necessary to earn the income. Rent cost, Staff cost and various such other costs are increasing year after year and normally a professional will be able to earn net income of about 25 to 30% of the gross receipts. Prescribing a higher percentage for the purpose of presumptive tax scheme is a discouraging factor for any assessee to avail the benefit of the presumptive tax scheme.	It is suggested to reduce the profitpercentage to 25% for sec 44ADA.
3.5	Both section 44AD and Section 44ADA provide that all the deductions allowable under section 30 to 38 shall be deemed to	Disallowance of salary and interest paid to partners would be unfair for partnership firms, where a large sum is eligible to be	It is suggested that interest and salary to the partners should be allowed as deduction to all partnership firms including partnership firms of professionals out of the

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	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.	drawn as salary by working partners in accordance with the partners' remuneration limits as suggested u/s 40(b).	presumptive net profit of the firm as it was allowed under the provisions upto assessment year 2016-17 under section 44AD of the Act.
3.6	Section 43B provides for allowing certain deductions only on actual payment made during the financial year. Clause (h) has been inserted in the section by the Finance Act, 2023 with effect from 1st April, 2024. Clause (h) provides that any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in section 15 of the Micro, Small and Medium Enterprises Development Act, 2000 shall be allowed only on actual payment. The proviso to the section however relaxes the time period in relation to various payments as specified in the section to provide that no disallowance will be made in a case where the payment is made on or before the due date of filing the Return of Income as specified u/s. 139(1) of the Act. , However the extended time period as specified in the proviso is not applicable in relation to the payments covered by clause	The effect of section 43B(h) read with section 15 of the MSMED Act is that the buyer is required to make the payment to the supplier registered under MSMED Act, 2000 within maximum 45 days of the transaction. If the payment is not so made within the period of the 45 days, the buyer will suffer disallowance. The payment made within the same financial year, however, does not suffer the disallowance since the deduction gets allowed on account of the payment. The object of section 15 of the MSMED Act is laudable i.e to protect the interests of the Micro, Small and Medium Enterprises, insertion of clause (h) in section 43B has resulted in some challenges and is counter-productive to an extent. Due to this clause, many buyers have stopped doing business with the Micro and Small Enterprises due to the fact that the delay in payment is likely to result in disallowance in their case which	It is suggested that the clause (h) of section 43B shall be omitted. If at all, the above suggestion is not found acceptable, it is suggested that the proviso to section 43B may be made applicable to clause (h) of the section on similar lines with the other clauses. As a last alternative, we suggest that the clause (h) may be suitably amended to provide that the disallowance will be made in case of failure to make the payment to micro or small enterprise beyond the time limit as agreed between the supplier and the buyer. Since the object of the proposed amendment is to give relief to the Micro and Small Enterprises, we suggest that the amendment shall be made effective from 1st April, 2024.

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	(h) of the section. Section 15 of the MSMED Act makes it obligatory for the buyer of any goods or services to make the payment to the supplier registered under the said Act, on or before the date agreed between the buyer and the supplier. The proviso to the section 15 however provides that the time limit agreed between the buyer and the supplier cannot be more than 45 days from the date of supply.	will ultimately result in higher tax liability. Many of the Micro and Small enterprises are also feeling it worth to cancel their registration under the MSMED Act with the purpose of not losing the business. The Micro and Small Enterprises are happy to get delayed payment as compared to loss of business which might be fatal for their survival. Further in so far as the protection of the interests of Micro and Small Enterprises is concerned, the same is partially taken care of by the fact that in a case where the payment to such enterprises are delayed beyond the time specified, section 16 of the MSMED Act makes it mandatory for the buyer to pay compound interest with monthly rest to the supplier at the rate which is three times the Bank rate as notified by the RBI. The payment of such interest is not an allowable expense in accordance with the provisions of section 23 of the MSMED Act. These provisions act as sufficient deterrent against the buyer who delays the payment to the Micro and Small Enterprises. Accordingly, it is felt that insertion of section 43B(h) results in more difficulties rather than solving the	

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		difficulties of the Micro and Small Enterprises.	

4. CAPITAL GAINS

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4.1	2nd proviso to section 54F (1) provides: "Provided further that where the cost of new asset exceeds ten crore rupees, the amount exceeding ten crore rupees shall not be taken into account for the purpose of this sub-section. (Inserted by Finance Act, 2023, with effect from 01-04-2024)	The intention of the legislation, during the budget, was to impose the limit on maximum deduction that can be claimed by the assessee of INR 10 Crore (Refer para 3 on page 29 of Memorandum). However, the language of the second proviso deviates from the intent of the legislation. Below example will explain as to how the proviso deviate from the intent of the legislation: An Individual, sold his long-term shares for INR 25 Crore (net consideration), the cost of the said shares is INR 5 Crore. The individual will have a Long-Term Capital Gain of INR 20 Crore. The individual purchases a Residential house (new asset) for INR 25 Crore by investing the net consideration and complies with section 54F. Amount of Exemption = Cost of New Asset x Capital gain Net Consideration	A cap on the amount of Exemption & not a cap on the cost of New Asset of INR 10 Crore be made with effect from 01-04-2024. We believe that this amendment aligns with the principles of fairness, equity, and pragmatism that underpin our tax system.

		Thus, the Amount of Exemption = 10 x 20/25 = 8 Crore (this is because of the amendment made as per FA 2023 restricting the cost of new asset to 10 Crore) If the amendment was done as per legislature intent, the deduction u/s 54F should have been: 25 x 20/25 = 20 Crore (Restricted to Max. Limit Rs. 10 Crore) Thus, the spirit of second proviso shall never be achieved if cost of new asset is taken as restricted to INR 10 Crore.	
4.2	There are various provisions under the Act which provide for reference to the Departmental Valuation Officer in relation to immovable properties in cases where the assessee believes that the fair market value of an immovable property is less than its stamp duty value. For Example section 50C, section 43CA, section 56(2)(x) etc. There are few more such sections where the income is computed in relation to fair market value of an immovable property. However, there is no mechanism available for reference to the Departmental Valuation Officer. These are discussed hereunder :	Reference to DVO is considered to be an appropriate method of arriving at the FMV of the immovable property in cases where the assessee contends that the value adopted by the stamp duty authority does not indicate the correct FMV of the immovable property. The provisions of section 50C, section 43CA and section 56(2)(x) are on the basis of this sound principle. Considering this, it seems that the absence of mechanism to refer the matter to DVO in section 45(5A) and section 50B read with Rule 11UAE seems to be unintentional. Moreover, it will be appropriate to have uniformity in relation to all the provisions dealing with taxation of immovable property across all the provisions of the Act.	Mechanism should be provided in section 45(5A) and Rule 11UAE to provide for reference to DVO on similar lines with section 50C, section 43CA and section 56(2)(x)

	Section 45(5A) inter-alia provide for considering the stamp duty value on the date of issue of the certificate of completion of the project to be the non-cash element of the consideration in respect of a specified agreement. There is no provision to make a reference to the Departmental Valuation Officer if the assessee believes that the stamp duty value is higher than the FMV of the constructed area. Section 50B of the Act provide for computation of capital gains in case of slump sale. Clause (ii) of sub-section (2) provide that the fair market value of the capital asset on the date of transfer, to be calculated in the manner prescribed by Rule 11UAE shall be deemed to be the full value of consideration received or accruing as a result of transfer of the undertaking or division. One of the element of the formulae prescribed in Rule 11UAE i.e. D in the formulae is the value adopted or assessed or assessable by the stamp duty authority in respect of the immovable property. Here also,		

	there is no mechanism to refer to the DVO where the stamp duty value is believed to be higher than the FMV.		

5. BUSINESS RESTRUCTURING

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	**Non-Compliant conversion of Company into LLP** The Act provides exemption to a specified company (i.e. a private company or unlisted public company) in an event of transfer of any capital asset or intangible asset by a company to an LLP upon conversion of such company into LLP. Consequently, exemption is also available to the shareholders of the company from capital gains who receives interest in LLP against the shares in converting company. The said exemption is condition ridden. Amongst other conditions, the exemption is available only to conversion of a company having turnover less than INR 60 lac and	For large companies, virtually the benefit of exemption under the Act upon conversion into LLP is not available. There is no clarity on computation of any capital gains in the hands of converting company and/or in the hands of its shareholders. It is often contended that Tax Authority may levy taxation in the hands of company and as well as on the shareholders. Though there are equally good arguments to be made that neither of them should be taxed in case of conversion. Even from economic perspective there is no particular gain, except the gain of saving of tax on dividend, if and when any funds are withdrawn by the partners from the LLP. Rather than arguments being made on both the sides for taxation and non-taxation of the transaction. A specific single tax regime would reduce the risk of such conversion and also improve the tax collection.	To provide clarity to the stakeholders, it is recommended that legislature may introduce a separate provision in the capital gains chapter for single taxation of non-compliant conversion of company into LLP either in the hands of converting company or in the hands of its shareholders. Our recommendation would be to levy a tax on the shareholder as capital gains considering the fair value of shares as full value of consideration.

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	asset base of INR 5 crore of last 3 financial years.		
5.2	**Increase thresholds for Conversion of Company into LLP** As stated above, Clause (xiiib) to section 47 exempts conversion of unlisted companies into LLP from the levy of capital gains. The said exemption is condition ridden. Amongst other conditions, the exemption is available only to conversion of a company having turnover less than INR 60 lac and asset base of INR 5 crore of last 3 financial years.	The above limits of 60 Lakhs for Turnover and asset base of 5 Crores is provided by the Finance Act, 2010 w.e.f. 1-4-2011. The limits prescribed as of now are negligible considering the present day situation of the Indian Economy. Further, it may also be appreciated that the limit of Rs. 60 Lakhs was introduced when the limit for applicability of Tax Audit was also Rs. 60 Lakhs. The limit for applicability of Tax Audit has been substantially increased and effectively the same is at Rs. 10 Crores at present.	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. 50 crores.
5.3	**Merger of LLPs** Current set of provisions do not provide for tax neutrality to LLPs in case there is any business restructuring amongst the LLPs	Considering the importance of hybrid form of organization doing business in the form of LLP was introduced. LLP Act provided for business re-organization amongst the LLP similar to those for Companies allowed under Companies Act 1956 & Companies Act 2013. Various provisions under Income-tax Act has been introduced to provide for tax neutrality in case of merger, demerger etc. of Companies. However similar provisions are not available for LLPs. Business entity in the form of LLPs provides greater easy of doing business in India.	Provision similar to sections 47(vi), 47(vib), 47(vid), 47(vii), carry forward of losses may be introduced for business reorganization of LLPs.

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5.4	Section 72A of the Act provides that in certain categories of entities like industrial undertakings, banking companies and public sector companies, in case of amalgamation, the accumulated losses of the amalgamating company shall be deemed to be the loss of the amalgamated company in the previous year in which amalgamation takes effect. The definition of "Industrial Undertaking" is provided in clause (aa) to sub-section (7) to Section 72A of the Act to mean certain businesses only.	The provision of section 72A was introduced by the Finance Act 1977 and was subsequently amendment from time to time with the intent to adapt to the changes in the business environment. For example, with a view to accelerating economic development, the definition of industrial undertaking was updated by Finance Act 2002 to include telecom sector in the beneficial provision of section 72A. The provision was last amended by the Finance Act 2008. It should be appreciated that the business dynamics have significantly changed over the past couple of decades and new business models have emerged. For example, NBFCs are also into the banking business but the amalgamation of a NBFC is not eligible for the benefit of section 72A. Further, the new age business models, especially start-ups, sometimes drown terribly in terms of business, and those being private companies, cannot even explore the benefit of amalgamating into another company to save their business. Resultantly, in case of amalgamation of such companies, the benefit of carry forward and set off of losses of these companies is not available to the amalgamated entities. With the increasing development of various sectors of business and amalgamation of entities, being an important mechanism to save a loss-making business, the benefit of the	Definition of "industrial undertaking" under section 72A should be widened to include within its ambit new age businesses, NBFCs, the service sector and trading companies as well.

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		provision should be extended to other sectors and dynamics of business as well.	

6. TDS & TCS Provisions

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	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)
6.2	Sub-section (1H) has been inserted in Section 206C by Finance Act, 2020 for collection of TCS by the seller on sale of any goods. Though collection of TCS on sale of certain goods were already covered under different sub-sections of Section 206C, however, all the remaining goods, which we're not so covered under other provisions of section 206C, have now been brought under the ambit of TCS by inserting sub- section (1H) in Section 206C.The new	The compliance burden under TDS and TCS has been substantially increased and any default results into interest / penal consequence etc. Further section 194Q has been introduced for deduction of tax at source on purchases made by the buyer. This creates confusion, complexity and unnecessary burden on the deductor as well as deductee.	This sub-section needs to be deleted for the reasons stated as under: 1) Considering the threshold of Rs. 50 lakhs sales per buyer, the relevant sales data is already reflected in the GST return filed by the seller, in fact the exemption threshold is lower i.e. Rs 40 lakhs in aggregate in case of Goods and Service Tax Act. Thus, the data relating to the sale of goods is already available with the Government through the GST administration and the construct of GST Number is such that sales data can be

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	TCS levy is resulting in a significant compliance burden. We believe that TCS @ 0.1% is not likely to result in significant increase in revenue base (offset by lower payment of advance tax) but results only in increasing compliance burden by reporting of sale of goods above Rs. 50 lakhs and thereby increase in cost of such Compliance.		easily collated for each PAN. Accordingly, the objective of sub-section (1H) of section 206C, which is to "widen and deepen the tax net" is already achieved by the Government. 2) Further section 194Q has been introduced where the buyer who is responsible for paying any sum to the resident for purchase of goods of the value or aggregate of such value exceeding Rs. 50 lakhs is required to deduct TDS. As a result of which the purpose of the government is achieved for capturing relevant data of purchase and sales of buyer and seller.
6.3	Disallowance u/s.40(a)(ia) in respect of non-deduction of TDS u/s. 194Q	Disallowance u/s.40(a)(ia) in respect of non-deduction of TDS u/s. 194Q is disproportionate. In case of failure on the part of assessee for deduction of merely 0.1% u/s.194Q, will lead to disallowance of 30% of purchase amount on which tax is not deducted.	Percentage of Disallowance u/s. 40(a)(ia) in respect of default under section 194Q should be reduced to 1% as against 30% in case of other sections to avoid undue hardship to taxpayers. There is no revenue loss in the above proposal considering the fact that section 40(a)(ia) provides for allowance of the amount disallowed in the year of payment of TDS.

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6.4	Section 197 enables a deductee to make an application for obtaining a certificate for lower rate of deduction of tax in respect of specified sections.	Section 194Q is inserted by Finance Act, 2021w.e.f. 01/07/2021. The corresponding section 197 for obtaining a certificate at lower rate of tax is not amended. Undue hardship is caused to the deductee wherein the cash flow is affected by block of fund on which tax is deducted u/s.194Q.	To amend section 197 so as to permit lower deduction or Nil deduction in respect of TDS under section 194Q
6.5	Section 206C(1G) (a) – TCS on remittance out of India: Section mandates an authorised dealer, who receives an amount, for remittance out of India from a buyer of foreign exchange, being a person remitting such amount out of India under the Liberalised Remittance Scheme of the Reserve Bank of India, to TCS @ 5% if such amount exceeds Rs. 7.50 lakhs in a financial year. Sec.194N: Tax at Source to be deducted by Bank or Co-operative Society and post office @ 2% on the withdrawal of cash exceeding Rs.1 crore.		(a) As per the basic tenet of Income Tax Law, income tax shall be levied on the Income of a person. TDS and TCS provisions are mechanism to collect income Tax in advance from a person and it does not travel beyond section 4 of the Income Tax Act. It means if there is no income there is no Income tax and therefore there is no question of TDS and TCS. Thus the provisions of section 206C(1G) (a) is against the basic principle of Income Tax Act , TDS and TCS as well. The TDS and TCS provision are applicable only when there is any income element is involved. The person remitting money outside India from his taxable income (his own money) should not be subject to TCS as there is no element of income involved. By any stretch of imagination such remittances made by person under LRS can be brought within the purview of TCS.

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			(b) Secondly the person sending the remittance outside India under LRS needs to file necessary forms (A2) with the authorised dealers where he makes necessary disclosures and provide his PAN number etc. and such information can be submitted to the Income Tax Department through the AIR reporting. Therefore, the provisions of section 285BA and Rule 114E shall be amended to capture said information in AIR. One should not resort to the TDS provisions on transactions which are otherwise not taxable for the sake of capturing the data. There are other means are available for capturing the data/information Section 194N: Similarly, if a person withdraws cash from his own account out of his taxable income, there is no question of income element involved. When there is no income, there is no question of payment of income tax or deduction of Tax at Source as stated above. Hence provisions of Sec.194N requires to be deleted. The intention of the legislature is to capture such transaction. However, the said information can be

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			submitted by the concerned person under AIR reporting to the Income Tax department.

7. CASH CREDITS AND RELATED PROVISIONS

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	Section 68 of the Act provides that if an assessee does not offer an explanation with respect to any sum credited in its books or the explanation offered is not satisfactory in the opinion of the Assessing Officer, then such sum shall be chargeable to tax. First proviso to Section 68 requires the assessee to prove the source of source in respect of loan / borrowings or any such amount.	It is almost impossible for a borrower to insist on an explanation of source of funds of the lender. On account of availability of information with the Department through their information tools, they already have an alternate remedy to seek information from the Lender and hence any action required should lie against the lender and not against the assessee.	The first proviso to Section 68 should be deleted with retrospective effect from 1 April 2023.
7.2	In the second Proviso to the said section, it is provided that the explanation provided by a closely held company with respect to certain credits being share capital / share premium money or any such amount, shall be deemed to be non-satisfactory unless the resident person in whose name such credit appears in books of such company, also	In light of the rapid growth of start-ups in India, there are genuine difficulties faced by start-ups in India during the course of income-tax assessments wherein the Assessing Officer has invoked Section 68 of the Act requiring such start-ups to furnish ITRs, Bank Statements and financial statements of their investors whether	Recognised Start-ups should be excluded from the applicability of second proviso to Section 68.

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	provides an explanation about nature and source of sum so credited.	resident or non-resident. It is irrespective of the fact that the second proviso to Section 68 is applicable only to resident persons. Practically, it becomes tediously difficult for start-ups who have raised money from several investors including HNIs, to prove the source of the source of the investments made in these start-ups. It is practically cumbersome for the investor to provide nature and source for every start-up they have invested into and is extremely discouraging for those investors to invest money in a start-up. Thus, despite of the fact that in many recognised start-ups, investments received by them is from genuine investors, but due to practical issues faced by them in obtaining adequate documentation to prove source of source, the huge sums of share capital or share application money received by them is added to their total income which results into huge tax demand. This in turn hampers their business plans including raising of funds and growth.	

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		It is also worthwhile to note that there are specific beneficiary provisions in the Act providing relief or benefit to the recognised start-ups. Section 56(2)(viib) of the Act provides for taxation of consideration received for issuance of shares which is in excess of fair market value of the said shares. The provision was inserted by the Finance Act, 2012 w.e.f. 01.04.2013. However, the Government vide letter dated 06.02.2018 notified that the provisions of Section 56(2)(viib) shall not be applicable to recognized start-ups.	
7.3	The third Proviso to Section 68 provides that the first and second proviso to Section 68 shall not apply to venture capital fund or venture capital company defined u/s 10(23FB) of the Act.	The third proviso to Section 68 exempts Venture Capital Funds / Companies since they are "well-regulated entities". Banks / NBFCs / ARCs, etc. should also be covered under this proviso as they are also regulated by their respective regulators.Secondly, it is impossible for the Borrower to comply with the first and second proviso to Section 68.	The third Proviso to Section 68 be amended to include and provide that the provisions of first and second provisos to Section 68 shall not apply to the Banks / NBFCs / ARCs, etc.
7.4	Section 115BBE of the Act levies tax on the income taxable u/s 68/ 69/ 69A/ 69B/ 69C / 69D at the rate of 60% plus surcharge and cess.	The rate of tax u/s 115BBE of the Act, before substitution by the Taxation Laws (Second Amendment) Act, 2016, was 30%. Further, the Taxation Laws (Second Amendment) Act, 2016 specifically	Clause (i) of section 115BBE should be amended to change the rate of tax to 30%. Alternatively, at least where the additions are made on

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		amended the rate of tax to 60%. Such an amendment was brought in the backdrop of demonetization. The purpose of the said amendment was to specifically tax the amount of cash deposited in the bank account post demonetization at a higher rate of tax. As a result, the rate of tax should now be brought down to 30% as it was prior the said substitution. Also, the rate of tax at the rate of 60% is leading to great difficulties. This is because, u/s 68 and other sections, an addition is made based on preponderance of probabilities. The Department has to discharge primary/ initial onus and thereafter the onus shifts on to the assessee. After the insertion of first and second proviso u/s 68 of the Act, an assessee is required to prove even source of source. If the same is not discharged, then the credits are subject matter of tax u/s 68 of the Act, without anything further. It is a known fact that the creditors, many a times, refuse to divulge their source. This, therefore, amounts to an impossibility of performance on the part of an assessee. This may lead to	account of first and second proviso to S. 68, the tax rate should be restricted to 30%.

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		an addition u/s 68 of the Act. However, merely because an assessee has not been able to prove source of source for reasons beyond its control, the same should not lead to any higher rate of tax of 60%.	

8. PENALTIES

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	S. 269T provides that repayment of loan or deposit should only be through account payee cheque or prescribed electronic modes	The objective of the section is to curb cash transactions. The section is not meant to impact or regulate other modes of settlement of loans – like conversion of debt into equity where transfer of funds is not involved. However, the same has been a subject matter of litigation. Therefore, to bring an end to the ongoing litigation it would be advisable to amend the section (or a common explanation for the entire Chapter XXB) and clarify the same.	It should be clarified that the section (or entire Chapter XXB) applies only in case of repayment through the transfer of funds and does not apply to modes of repayment where the movement of funds is not involved like conversion of debt into equity

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8.2	Section 270A of the Act provides for levy of penalty in cases of (a) under-reporting of income and (b) misreporting of income by an assessee. Section 270AA of the Act grants an immunity from levy of penalty u/s. 270A subject to certain conditions as specified. The primary condition is that the tax and interest payable as per the order of assessment or reassessment is paid within the period specified in the notice of demand and no appeal is preferred against the assessment or reassessment order. Further as per sub-section (6) of section 270AA, no appeal or revision petition is permissible in a case where immunity is allowed to the assessee. Sub-section (3) of section 270AA provides for grant of immunity from penalty and prosecution. However, such immunity can be claimed only where the case of the assessee pertains to under-reporting of income. Immunity is not permissible in cases where the assessment order considers the concerned addition / disallowance as misreporting of income as per sub-section (9) of section 270A.	It is seen on many occasions that the assessment order passed considers a particular addition / disallowance to be on account of misreporting of income though as a matter of fact the same is not getting covered by any of the clauses of sub- section (9) of section 270A. This results in tremendous hardship to the concerned assessee on various counts as explained hereunder : Once the concerned addition / disallowance has been classified as misreporting of income, the rate of penalty which the assessee has to pay is 200% of tax amount as against 50% which is to be paid for the cases of underreporting of income. The bigger difficulty is that the assessee is not permitted to take the benefit of the immunity as provided in section 270AA. Difficulties arise merely due to wrong classification of the concerned addition / disallowance by the assessing officer. For getting the classification altered from misreporting of income to underreporting of income also the assessee has to prefer an	We recommend that the provisions of section 270AA shall be suitably amended to provide as under : (A) In a case where the assessee has to prefer an appeal only challenging the incorrect classification of the addition / disallowance from misreporting of income to the correct classification being underreporting of income as confirmed by any of the appellate forums, the immunity shall also be available to the assessee in such a situation once the order of the appellate authority is passed. (B) In such a case, the time limit to file an application for immunity from penalty shall be provided with reference to the date of receipt of the order of the appellate authority instead of the date of the assessment order as at present. Alternatively, we also recommend that at least the filing of Revision petition before the CIT u/s. 264 should not result in denial of the immunity. The CIT being a senior person would understand the correct classification of the addition / disallowance. This will provide an opportunity for the assessee to avoid the litigation. The assessee can take recourse to revision proceedings u/s. 264 of the Act and avoid the appeal route. At the same time the assessee will be able to get

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		appeal before the appellate authorities. However, once the appeal is filed, the assessee loses the chance to get the immunity u/s. 270AA. Effectively therefore, the assessee is left with no choice but to indulge in litigation not only for the assessment but also for the penalty which is levied subsequently. This is against the basic intent of provisions of section 270AA and also the broad objective of the government to reduce the litigation to a considerable extent.	the addition /disallowance correctly classified by a senior officer of the department namely the CIT. In such a situation, the time limit for filing immunity application shall be reckoned from the revision order passed u/s. 264 of the Act instead of the assessment order. Since no further litigation is provided against the order of the CIT u/s. 264, the revenue should also not have any grievance if the matter is looked into by a senior officer.

9. GAAR PROVISIONS

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	The provisions of Chapter XA of the Act provide for General Anti Avoidance Rules having a wide applicability. Section 96 of the Act provides that an arrangement shall be considered as an impermissible avoidance agreement if the main purpose of the arrangement was to obtain tax benefit.	India is developing the GIFT City IFSC set-up mainly to bring financial transactions from offshore businesses like Banking, Capital Markets, Insurance, Asset Management and other ancillary services. The Income Tax Act provides various tax incentives to units set up in GIFT City IFSC to attract foreign investors to shift their	A proviso be inserted in Section 95 of the Act on the following lines : [Provided that the provisions of this chapter shall not apply to any entity or units set-up in the International Financial Service Centre.]

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	The provisions of GAAR are drafted in wide manner and confers wide discretionary powers on the Indian Revenue Authorities.	offshore businesses to GIFT City in India. Hence, it is very much possible that investors may move to GIFT City and form IFSC Units with the main and sole purpose and intention to obtain tax exemptions and benefits. The exposure of GAAR provisions invoked against foreign investors brings uncertainty to them and is discouraging the policy decision of the government to promote GIFT City IFSC and foreign investments. To bring certainty and an element of assurance, it is suggested that a specific clause be inserted in the relevant section of Chapter XA to exclude GIFT City IFSC units from the provisions of GAAR.	

10. UPDATED RETURN, REVISED RETURNS & RECTIFICATION OF RETURNS

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	Sub-section (8A) of section 139, as inserted by the Finance Act, 2022 provides for updated Return. It permits an assessee to file an updated Return within 24 months from the end of the relevant assessment year. The updated Return can be filed with an additional tax liability of 25% if the updated Return is filed within 12 months from the end of the assessment year and 50% if the updated Return is filed beyond 12 months from the end of the assessment year.	The first proviso to sub-section (8A) of section 139 prohibits the filing of updated Return in cases where the Return is a Return of Loss or has the effect of decreasing the total tax liability determined on the basis of Return filed earlier or results in refund or increases the refund due on the basis of the return furnished earlier. The following difficulties are envisaged : The effect of the first proviso is that the updated Return works only to the advantage of the revenue and an assessee can no way take benefit by filing an updated Return. The time limits for filing the belated returns and Revised Returns have reduced considerably in recent past. Further following the ratio of the judgment of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC), any claim missed out by an assessee has to be made only by way of filing a Return. At times, it is seen that a genuine claim by the assessee is missed out	(A) We recommend that the time available for filing revised return be extended to the end of the assessment year, so that any claim can be made in the revised return. As such filing of revised return within 2-3 months of filing original return has no material meaning. (B) We recommend that the updated Return shall also be permitted to be filed where the assessee has genuinely missed out to make a claim for an eligible deduction in the Return of Income. We also appreciate that there has to be some back-up provision for discouraging assessees to have a complacent approach and keep on updating the Return as and when they wish to. To overcome such a situation, there can be a provision of a lumpsum filing fees for filing such updated Return where the updated Return has the effect of reducing the income of the assessee. This will give a level playing field vis-à-vis two assessees – one who wants to show a higher income and another who wants to make a genuine claim for a legally supported reduction in income. The filing fees will take care of administrative costs which the revenue has to incur for processing of such Returns. An assessee has to pay a fee of Rs. 500 for filing an application of revision u/s 264 of the Act. Similar fees can be proposed.

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		and the same is noticed beyond the period where the Return can be revised by the assessee. Due to this difficulty, an assessee is deprived of the right to make genuine claim. One more difficulty which is arising is that the updated Return cannot be filed in a case where it is a Return of Loss. Please consider a situation that the loss as per original Return was Rs. 10 Crores and the assessee wants to file an updated Return of loss declaring a reduced loss say Rs. 8 Crores. In such a situation also, due to the language of the first proviso, since the updated Return will continue to be a Return of Loss, the assessee is not permitted to file an updated Return.	Further, any Return filed by an assessee can always be subjected to an assessment where the claim of the assessee will be evaluated and will be allowed if it is legally sustainable. As such, there is no question of any assessee taking undue advantage of such updated Return and at the same time allowing an assessee to raise a genuine claim with a nominal cost. This will be leading to a good governance of tax laws and will be highly appreciated by the tax payers of the country As regards the cases of reduction of loss in the updated Return, we feel that there should not be any objection against the same since it ultimately serves the purpose for which the provisions of updated Return have been introduced. We are merely seeking a corrective action for an unintended and inadvertent lapse in drafting the provision of the first proviso to sub-section (8A) of section 139
10.2	Section 154 – Rectification of Mistakes Sub-section (8) of section 154 provides that where an application is made by an assessee or a deductor, the authority shall pass an order within a period of six months from the end of the month in which the application is made by either(a) making the amendment or(b) refusing to allow the claim.	a) Inspite of the specific provisions of subsection (8), it is observed that the authorities take unusually long time in deciding the rectification application either way. Many a times in fact the rectification orders are never passed for years and in the meantime the department keeps on the recovery proceedings and also adjusts the subsequent refunds against the demand for	1. 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. And all rectification applications shall be made online and

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		which the rectification applications are pending disposal. As a result the provisions of Sec.154(8), providing the time limit of six months for carrying out rectification has become redundant.b) It is also seen that the rectification applications to the CPC Bangalore is rejected without giving any opportunity to assessee to explain his case before rejecting the application. Rectification in most cases are rejected without considering the submissions made.This results in tremendous hardship to genuine taxpayer.	pending status of such application can be tracked online and it should show the period of delay.2. It is submitted that though the law provides for an opportunity of being heard the same is not being provided in the online system. We suggest that the law be amended to say that no order against the assessee is valid unless an opportunity of being heard is provided. It is also recommended that the file be transferred to the JAO if the application is being rejected so as to give an opportunity of being heard before disposal of the application.3. The order passed by CPC under 143(1) or the order passed by the NFAC be transferred to the JAO within a short period, so that the rectification can be filed with the JAO and the same can be rectified if there are errors in the order passed.

11. ASSESSMENT & REASSESSMENT

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
11.1	Section 149 of the Act provides for time limit for issue of notice under section 148 for the purpose of reassessment. Clause (b) of sub-section (1) provide for time limit of 10 years from the end of the assessment year in a case where the income chargeable to tax is represented in the form of (i) an asset or (ii) expenditure in respect of a transaction or in relation to an event or occasion or (iii) an entry or entries in the books of account and which has escaped assessment amounts to or is likely to amount to Rs. 50 Lakhs or more.	The time limit of 10 years from the end of the assessment year is a very long time frame. It will be absolutely for any assessee to maintain the books of accounts and records for 11 years so as to enable him to explain his case if his case is taken up for reassessment on the basis of the time limit specified in clause (b) of section 149(1) of the Act. It must be appreciated that such a long time results in continuing uncertainties for a long period which is not advisable for any good taxation system. It is absolutely contrary to the concept of ease of doing business. Prior to the amendments made by the Finance Act, 2021, the maximum time available under section 149 of the Act for initiating the reassessment proceedings was six years from the end of the assessment year. Further, the provisions of erstwhile section 153A, which dealt with search related assessments, also permitted assessment for maximum six assessment years prior to the year of search. Considering this it must be appreciated that the time limit of six years was found reasonable and was serving the purpose in an effective manner.	The time specified under clause (b) of section 149(1) of the Act may be restricted to six years from the end of the assessment year as against the time of ten years from the end of the assessment years as prescribed at present. If at all the above suggestion is not found acceptable, we alternatively suggest that the time limit of ten years may be made applicable only in cases where the reassessment is required on account of search and seizure action and in all other cases the time is restricted to maximum six years from the end of the assessment year.

12. CHARITABLE TRUSTS

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	Section 12A(1)(ac)(ii) and (iii) The new system of registering all trust was introduced by Finance Act 2020 so as to regulate the charitable trusts. The date of registration is extended from time to time to help the trusts/NGO's to comply with the registration requirement. The recent being the circular 7/ 2024 extending the date to 31-06-2024 The clause (ii) provide for renewal of registration granted within six months before the expiration of registration The clause (iii) provides for trusts having provisional registration to apply for registration within 6 months from the date of commencement of activity.	The trust / NGO's take registration and the same is given for a period of 5 years. The trust/ NGO's sometime unintentionally miss out on applying within the time period provided , that is six months prior to the expiration of registration. Similarly sometimes the application is not made within six months of the commencement of the activities. The law currently does not provide powers to the Commissioner of Income Tax to condone the delay or consider genuine difficulty. The application is rejected and the trust and NGO's have to file an appeal and in all cases the ITAT has set aside these orders and asked the Commissioner to consider the application ignoring the delay. This leads to the trouble to trusts to file an appeal and thereby indulge into unwanted litigation. The dates have been regularly extended the latest being he	The law can include an inbuilt clause to allow commissioner to condone the delay so as to avoid the rejection of the application and asking the trust to spend charity money on litigation. One need not have to make application to the CBDT in case of condonation of delay. In past, law allowed such condonation. Considering the fact that more stringent provisions are in place, condonation power must be delegated to the Commissioner Of Income Tax (Exemption) This would also avoid the bringing about regular extensions. Further Similar Power should also be delegated to CIT(E) for delay in filing various forms including 10/10B/10BB etc ,

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		circular 7/2024. This is due to the fact that there is no doubt about the genuineness about the activities of the trust.	
12.2	Section 10(23C) Under section 10(23C) (iiiad) and (iiiae) of Income-tax Act, it is provided that the income of University / Educational institutions / hospitals / other institutions specified therein will be exempt provided they comply with the conditions stipulated therein. Also, it is provided that "aggregate annual receipts" of such institutions shall not exceed the amount of annual receipts as may be prescribed. Annual receipts have been prescribed at Rs. 5 crores (from AY 2022 – 2023).	(a) What constitute "annual receipts" for educational / hospital institutions has not been specified which results into controversies; (b) There is no clarity whether the casual receipts, other income received, voluntary contribution, donation in kind and capital gains etc. which are not operational income will form part off of the annual receipts or not? (c) The amount of Rs. 1 crore has been specified in the rule 2BC of the Income tax Rules which creates confusion.	Considering the operations of university / hospital / other associations the limit of Rs. 5 crores as specified in clause 3(iiiad) and (iiiae) is still lower. We seek that the limit shall be suitably increased to 50 crores. An explanation may be inserted to include only fees received to be included in the calculation of annual receipt. It may provide clarity that Gross receipt should exclude donations (voluntary or corpus or with special direction).
12.3	Section 2(15) defines " Charitable purpose". The said definition includes the following items 1. Relief for poor 2. Education 3. Yoga 4. Medical relief 5. Preservation of Enviorment and Monuments or places or objects of artistic and historical interest 6.	The Hon'ble Supreme Court in *New Noble Society 143 Taxmann.com 276* had interpreted the term "education" while interpreting the term "solely for educational purpose" in section 10(23C). The Supreme Court in this judgment has interpreted the term "education" in a very narrow manner to include only	We recommend that definition of education be made broad base so as to include other educational activities as well, providing knowledge in various different areas such as, education on health, spiritual education, education with respect to art, culture , taxation laws etc and need not be restricted to only formal education. Further educational institution providing incidental or

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	Advancement of any other object of general public utility.	formal education. The said interpretation is likely to cause a lot of hardship for all educational institutions and the allied activities run by an educational institution which go to reduce the cost of education. The said interpretation is not as per the intent of the legislature which had till date looked at education from the point of holistic education of a person. This narrow interpretation would cause difficulties in operation of allied activities which are not formal education like a dance and art class for the students. Sometimes the courses are not formally approved by an institution and are developed for the specific need of students this will not be treated as "education" and would go under "General Public Utility"	ancillary activities need not be considered as object of general public utility (activities) so as to avoid hardship to the trusts and NGO's operating and supporting the government efforts.

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12.4	Section 12AB – Registration / renewal of registration	The Finance Act 2020 inserted a new section 12AB providing for procedure for fresh registration for charitable trust after every 5 years. The trusts are charitable in nature and does not have necessary wherewithal or infrastructure and object are always charitable in nature from the date it comes into existence. So, registration after every 5 years creates unnecessary burden on the charitable trust. Further the charitable trusts are also subject to income tax scrutiny year on year basis. So, this creates unnecessary burden on the charitable trust.	We request that the provisions of obtaining fresh registration every 5 years may please be dropped atleast for small trust having corpus below 1 crores as it results in increasing the compliance burden on such small trusts where they not have the wherewithal to cope of up with same, further these trust are established more than 40 years back and are still continuing for the betterment of humanity. Further power is available with the Commissioner of Income Tax Exemptions to cancel registration in appropriate cases. We plead that at least the small trusts having total corpus below Rs 1 crore in last three years be exempted from renewing their 12AB registration every five years. These small trusts cater to the extremely poor class of the society and the administrative cost will lead to the money for the charity being used for administrative cost. Appropriate amendment may be brought about.
12.5	Section 12A (1)(ac):The said section sets the time limit for a new charitable trust to file application for registration at least one month prior to the commencement of previous year relevant to the assessment year from which registration is sought	As per sub -clause (vi) of section 12A(ac) requires the trusts/ institutions wanting to register for the first time under section 12A of the Income Tax Act, needs to make an application at least one month prior to the commencement of the previous year relevant to assessment	The condition of making application one- month prior to commencement of the previous year shall be dropped as it affects the claim of trust which are formed in the last month of the financial year. It is suggested that the condition that the application be made by the year end of the financial year viz. 31st March.

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		year for which the registration is sought. Though it is welcome step, but it is difficult to comprehend why the condition of making application one-month prior to commencement of previous year relevant to assessment year, is required. Such condition has been diluted due to Covid for AY 2022-23, by bringing amendment in the sub rule (7) to rule 17A. However, it is not so for subsequent assessment years, in that case if the Trust in between the year makes an application, its applications shall be valid only for the subsequent previous year. On the contrary rather than facilitating the trusts/institutions by issuing provisional certificate, it will create more delays and hence the purpose will be lost.	
12.6	Explanation 3 to clause (23C) of section 10 and Explanation given below the section 11(7) which is effective from 01/04/2022:"Explanation. —For the purposes of this section, any sum payable by any trust or institution shall	The explanation envisages claiming of expenses on cash basis.This results into lot of difficulties and undue hardship to trusts following accrual basis of accounting. Larger Trusts are maintaining accounts on accrual basis of	We humbly submit that it is not appropriate to insist on cash basis for the purpose of expenses incurred by the trusts considering various difficulties as explained. We alternatively plead that the amounts paid before the due date of filling

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	be considered as application of income in the previous year in which such sum is actually paid by it (irrespective of the previous year in which the liability to pay such sum was incurred by the trust or institution according to the method of accounting regularly employed by it)"	accounting for e.g. Hospitals, for their internal control and for reporting purpose. Also, trust registered under section 8 of Companies Act, 2013 or section 25 of Companies Act, 1956, needs to maintain account on accrual basis as per the Companies Act. Further Accounting Standard mandates them to follow accrual basis of accounting . As per Technical Guide on Accounting for Not-for-Profit Organisations issued by the Institute of Chartered Accountants of India, "Accrual is the scientific basis of accounting and has conceptual superiority over the cash basis of accounting. It is, therefore recommended that all NPOs, including non-company NPOs, should maintain their books of account on accrual basis." Further, trusts need to make provision for expenses which are actually payable, there can be non-recovery of income, non-payment to suppliers in a particular year, etc. and making all such adjustments for arriving at the amount of application on cash basis, is a difficult task. The trust needs to maintain two separate accounts which	return may be allowed as deduction on similar lines with the proviso to section 43B of the Act.

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		further drain on the resources of the trust where they are pursuing charitable objects.	
12.7	Section 13(1)(c) and 13(2) prohibits transaction with person specified under section 13(3) of the Income tax Act 1961 which includes the trustees and the relatives, It also specifies "any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees;" Further Form 10B / 10BB also requires the details of the specified persons who has provided donation to the trust right from the inception of the trust It is suggested that 1. Limit be increased considering lower of the following a) 20% of corpus amount or b) Rs.25,00,000/-	The limit of Rs. 50,000/- as specified in 13(3)(b) is meagre and needs to be enhanced . Further it requires the details to be provided right from the inception / formation of trust. The amount of Rs. 50,000/- is minuscule and in today's scenario generally people donate more than Rs. 50000/-. In this situation every donor who has donated benevolently also becomes a specified person or interested person who infact has no interest in the activities of the Trust and hence this limit needs to be enhanced keeping in mind the volume and activities of the trust . Further this conditions shall be made applicable only for the people who fits in the criteria suggested for the past 8 previous years and from inception of the trust.	We suggest that the specified person who has donated shall include in last 8 years based on the following criteria 1. 20 percent of the Corpus of the trust OR 2. Rs. 25,00,000/- Whichever is lower Further in Form 10B / 10BB The list of such specified person who has donated in last 8 years be required to be provided.

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	2. This criteria to be applied for donations made in past 8 previous years		
12.8	Section 11(1)(d) of the Income Tax Act Amount received towards the Corpus of the trust needs to be invested in modes specified u/s 11(5) of the Act otherwise the same shall be considered as income of the Trust . Section 11(5) prescribe the modes of investment which inter alia includes investment in Immovable Asset. We suggest that investment made in movable asset be also included in section 11(5) of the Income Tax Act	Many time donor gives corpus donation with specific direction that amount donated be used for acquiring certain movable asset. For Eg Hospital receives donation for Dialysis machine, MRI machine, Ambulance etc which are fixed asset in nature and needs to be acquired as per the direction of the donor which binding on the Trust. Hence this being a corpus donation can not be treated as Income of the Trust. Hence requires amendment in prescribe mode of investments as specified in section 11(5) of the Act .	It is suggested that prescribe mode of investment specified in section 11(5) of the Income Tax Act, should also include investments in movable asset which are in the nature of fixed assets.

13. TRANSFER PRICING AND INTERNATIONAL TAXATION

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
	A. TRANSFER PRICING		
	A.1. Exemption for filing of Form no 3CEB filing for taxpayers exempt from filing return of income as per section 115A of the Income-tax Act, 1961		
13.1	As per the amendment vide the Finance Act, 2020 in section 115A(5)(a), a non- resident taxpayer is not required to file a return of income in India if it is assessable to tax in India for dividend, interest, royalty or fee for technical services, and the taxes have been appropriately withheld on such taxable income as per the provisions of section 115A of the Income-tax Act, 1961 (“the Act”). The resident payer will file Form 3CEB.	Section 92E has not been amended consequent to the above exemption under section 115A(5) of the Act, thus raising a question about the taxpayer’s obligation for filing Accountant’s Report in Form no 3CEB. Non-reporting of international transaction in Form no 3CEB attracts multiple penalties under sections 271AA, 271BA, 271G and 270A of the Act. Consequently, a situation arises where a non-resident need not file a return of income in India but would still need to file Form no 3CEB to avoid any penalty for non-reporting of the international transaction.	Considering the above inconsistency in the provisions and the fact that resident tax payer will file Form 3CEB, it is recommended that section 92E be amended to provide exemption to non- resident taxpayer from filing Form no 3CEB, where they are exempted under section 115A(5) from filing a return of income in India.
	A.2. Statutory provisions for filing revised Accountants Report in Form no 3CEB as per section 92E		

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13.2	Section 92E of the Act provides that every person who has entered into an international transaction or specified domestic transaction during a previous year is required to file an Accountant's Report in Form no 3CEB on or before the due date specified under section 92F. However, there is no provision in the Act for revising Form no 3CEB as in the case of return of income [under section 139(5) of the Act] even though the income-tax e-filing website allows filing of revised Form no 3CEB.	There may be situations of an inadvertent omission or misreporting in filing Form no 3CEB for which the taxpayer may require to revise the Form no 3CEB in bona-fide cases. Misreporting/inaccurate reporting in Form no 3CEB are subject to penal consequences. Hence, the taxpayers do revise Form no 3CEB in such cases. However, since there is no statutory provision in this regard and often the tax authorities question the legality and timeline for filing revised Form no 3CEB.	It is recommended that statutory provisions allowing filing of revised Form no 3CEB be introduced under the Act to avoid any genuine hardship to the taxpayers.
	A.3. Interquartile Range to determine Arm's Length Price ("ALP") be allowed		
13.3	The third proviso to section 92C(2) of the Act read with Rule 10CA of the Income-tax Rules, 1962 provides for the range concept from 35th percentile to 65th percentile for 6 or more comparables and arithmetic mean for less than six comparables. However, most of the tax administrations around the world follow interquartile range for determining the ALP.	International groups confront challenges to substantiate the arm's length standards across different jurisdictions for the same / similar international transactions.	It is recommended that the interquartile range (25th percentile – 75th percentile) be allowed to justify the arm's length standards to be consistent with various other tax administrations.

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	A.4. Applicability of plus / minus 3 percent range as per second proviso to section 92C(2) even in case of a single comparable company		
13.4	As per the proviso to section 92C(2) of the Act, where more than one price is determined by the most appropriate method, the ALP shall be taken to be the arithmetical mean of such prices. Further, the second proviso to section 92C(2) states that if the variation between the ALP so determined and price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed such percentage not exceeding 3 percent of the latter, as may be notified by the Central Government in the Official Gazette, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the ALP.	The Assessing Officer ("AO") and TPO have been interpreting that the second proviso to section 92C(2) of the Act is dependent on the first proviso, to conclude that the advantage of the plus / minus range prescribed under the second proviso to section 92C(2) of the Act is only available in a case where the first proviso is applicable, i.e., more than one price is determined by the most appropriate method. Consequently, the range benefit is disallowed to the taxpayers in a case where there is only one price determined by the most appropriate method, thereby expecting the taxpayer to transact at an identical price as that of the comparable without any flexibility which is extremely unreasonable. Courts have also been passing contrary decisions in this matter.	It is recommended that a clarification be issued by way of an explanation allowing the applicability of plus / minus 3 percent range even in case of a single comparable company.

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	A.5. Definition of Associated Enterprise ("AE") under section 92A(2) should cover Limited Liability Partnership ("LLP") firms		
13.5	The constitution of AE is defined under section 92A of the Act, which provides the basic test for determination of AE relationship. Section 92A(2) provides thirteen conditions by virtue of which two or more enterprise would be deemed to be AEs. These conditions primarily relate to the participation in capital, management and / or control of one enterprise into other.LLP firms are extensively used forms of enterprises that are being constituted in recent times. However, a majority of the conditions for determination of AE relationship as provided in section 92A(2) does not apply to a LLPs. Section 92A(2)(a)/(b) cover direct, indirect, or common holding of enterprises involving 'shares carrying not less than 26 percent of the voting power'. However, LLPs are constituted by partnership interest and consequently do not issue shares carrying any voting power.Section 92A(2)(l) covers AE relationship in case of firms (which include LLPs). However, as per section	Due to current provisions of section 92A(2), there is a risk of litigation regarding the coverage of persons as AE in the case of LLPs.	It is recommended that the provisions of section 92A be amended to cover newly constituted form of organisations like LLPs.

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	92A(2)(l), the two enterprises can be said to be AE where one enterprise is a firm, Association Of Persons ("AOP") or Body Of Individuals ("BOI") and the other enterprise holds not less than 10 percent interest in such firm, AOPs or body of individuals. Therefore, the section only provides AE relationship for direct holding. It does not cover persons holding indirect participation in capital, management, or control of a person, which is not in alignment with the basic test provided in section 92A(1). Also, a provision similar to section 92A(2)(b) constituting an AE with a fellow subsidiary is not covered by any of the clauses involving an LLP.		
13.6	Absence of minimum threshold for TP applicability and increasing the threshold of TP documentation obligation	Transfer pricing provisions do not stipulate any threshold above which they become applicable and thereby the underlying compliances are burdensome and expensive especially for small and new companies and businessmen. Similarly, the documentation obligation threshold at Rs. 1 crore is too low Also, the maintenance of TP documentation obligation at Rs. 1 crore is too low	It is suggested that a minimum threshold be introduced in transfer pricing provisions and the provisions of Chapter X of the Act should apply only when it is exceeded. This threshold can be in the range of Rs. 10 to 15 crores in any financial year. It is also suggested that the minimum threshold for maintenance of TP documentation be increased to Rs. 5 crores.

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13.7	Correlative adjustment to be allowed for other Associated Enterprises (AE)	Under second proviso to Section 92C(4) of the Act, if any adjustment is made to the income of AE for payment to another AE on which tax has been deducted / deductible, no corresponding recomputing of recipient's AE's income is permitted.	It is submitted that the restriction by the second proviso to Section 92C(4) of the Act is unfair and be deleted as it results in taxing the same income twice for the payer and the recipient. It is therefore requested that if an AE's expenditure is disallowed due to TP adjustment, then the other AE's (recipient's) taxable income be allowed to correspondingly be reduced.
13.8	Secondary Adjustments: Section 92CE of the Act in case of Non- Residents	Sub-section (2) of Section 92CE of the Act stipulates repatriation into India of the excess money as stipulated or levy of interest as deemed advance in the manner prescribed. Further sub- section (2A) provides an alternative to pay additional tax at the rate of eighteen percent on such excess money if not repatriated to India.There is no relaxation for these provisions for non-resident who only have India source taxable income and no other formal / legal presence in India.Further, the provisions of the Foreign Exchange Management Act 1999 and its applicable Rules/ Regulations do not have any mechanism for such repatriation to India followed by remittance back to outside India.	It is suggested that when transfer pricing adjustments are made in cases of non-residents, especially those having no legal presence in India, they should be exempted from the obligation to repatriate the excess money under Section 92CE(2) as well as from the rigors of paying additional tax under Section 92CE(2A) of the Act.

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13.9	No exemption / relaxation of Limitation of interest deduction under Section 94B of the Act in bonafide cases	The provisions of Section 94B of the Act are applicable in all scenarios (except banks /insurance companies as stipulated) and do not consider situations such as large gestation period in case of capital-intensive projects or infrastructure projects, initial years of set-up / operations, etc. Thus, they operate irrespective of underlying business conditions and even the carried forward period is subject to eight-year limitation	It is suggested that Section 94B of the Act be made applicable only after completion of gestation period in case of capital intensive and infrastructure project (i.e. five to ten years) and in other cases post initial years of set-up / commencement of business operations say 3 to 5 years. Further, the carried forward of excess interest needs to be allowed indefinitely on par with unabsorbed tax depreciation as there is no case to subject it to the limitation period of eight years.
13.10	Computation anomaly in disallowance of interest deduction under Section 94B of the Act	The formula for computing excess interest considers total interest paid by the borrower including interest paid to non-AEs and even on borrowing not guaranteed or supported by non-resident AEs. This creates a situation of interest paid to or guaranteed or supported by non-resident AE being disallowed first.	This rigor is requested to be relaxed and only the proportionate interest with respect to AE and non-AE borrowing in excess of 30 percent should be subject to interest limitation provisions.
13.11	Secondary adjustments obligation to make adjustment in the books of account of the AE	The Section 92CE(3)(v) of the Act in a case where taxpayer brings the funds into India then the taxpayer and its AE are required to make an entry in their books of accounts to reflect the actual allocation of profits.	It is suggested that the obligation with respect to the accounting entry in the books of the AE is unwarranted as the accounting norms in that jurisdiction may request such payments / entry to be reflected in different shape and forms as per local transfer pricing and accounting rules / standards prevalent and would be beyond the control of the taxpayer in India.Accordingly, it is requested that thisrequirement

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			of accounting in AE's books be accordingly done away with.
	B. APA AND DISPUTE RESOLUTION		
	B.1. Removal of restriction under section 92(3) for unilateral APAs		
13.12	Section 92(3) of the Act is a restrictive tax provision. Under this provision, the taxable income of the taxpayer already reported in the return of income cannot be reduced or the losses cannot be increased on account of TP adjustment.	There are circumstances when the ALP agreed in an APA is lower than the price at which the international transaction has actually been undertaken in the past covered years and/or the rollback years which may result in lowering of the taxable income of the taxpayer.Due to restrictions imposed by section 92(3) of the Act, benefit of lower ALP and taxable income for past covered years or roll back years are not allowed to the taxpayer. This often results in substantial tax cost to the taxpayer for the past APA years/rollback years and denies the benefit of independent thinking in determination of A]LP by the tax department. The taxpayer ends up paying higher tax even when the agreed ALP is lower which is prejudicial to the taxpayers.	APA is a dispute prevention mechanism. It should be kept independent of the regular income-tax provisions since it involves a negotiation between the taxpayer and the tax department, which can ensure that the outcome of APA is beneficial to both, the taxpayer, and the tax department. Accordingly, the provisions of section 92(3) of the Act
	B.2. Keeping regular assessment in abeyance till APA conclusions		
13.13	As per Rule 10T of the Income-tax Rules, 1962, mere filing of an application for an	For the taxpayer who has applied for an APA, two procedural tracks - APA process	Assessment process can be suspended for a reasonable period (say for 2 years or so) or till the APA has either

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	APA shall not prevent the operation of Chapter X of the Act for determination of ALP under that Chapter till the APA is entered into.	as well as regular TP assessment and litigation end up running in parallel, leading to time and resource wastage at the taxpayer's end. Once an APA is concluded, all pending appeals are required to be withdrawn. This leads to inefficiencies and resource wastage at the tax department's end as well without any revenue gain.	been concluded or withdrawn, whichever is earlier. This will relive the taxpayers of large compliance work and will make the APA process more attractive. This will also incentivize the taxpayers and the tax department to conclude the APA proceedings at a quicker pace. Mature tax jurisdictions like Japan, the US, the UK keep the assessment proceeding on hold, till the conclusion or withdrawal of the APA. Indian tax law could be aligned with such global best practices.
	B.3. Clarity on the implications of High Court proceedings where Mutual Agreement Procedure ("MAP") are closed based on Income-tax Appellate Tribunal ("ITAT") order		
13.14	CBDT issued MAP guidance on MAP on 7th August 2020 (MAP Guidance). It has been categorically mentioned in the MAP Guidance on page 10, that if the ITAT order is issued on merits with respect to the same dispute that is subject matter of MAP, the Competent Authority of India will follow the order of the ITAT and will not deviate from that position. In such cases, the Competent Authority will only request the Competent Authority of the other country	In cases where MAP is resolved after negotiations between the two competent authority, Rule 44G provides a detailed procedure for giving effect to MAP resolution by the AO once it is accepted by the taxpayer. As per Rule 44G(11) of the Income-tax Rules, 1962, after the submitting of the proof of payment by the taxpayer, the AO shall withdraw all the pending appeals pertaining to the dispute resolved under MAP.	Rule 44G should provide for withdrawal of all pending appeals after the resolution of MAP under domestic appeal if the taxpayer accepts the ITAT order. This would create parity in the MAP resolution in both circumstance ie. when resolved by the negotiations between the Competent Authority and when resolved through domestic remedy. Ultimately, in both the situations, it is the position adopted by the Competent Authority. If accepted by the taxpayer, it cannot be appealed further by any of the parties to the dispute.

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	to provide correlative relief based on the ITAT order. These MAP cases shall be closed as having been resolved through domestic remedy.	However, in cases where MAP is closed by domestic remedy as mentioned above, pursuant to the ITAT order; there is no clarity about the pending appeals before the High Court or Supreme Court. Practically, in many instances, the Indian Competent Authority is closing the cases where ITAT orders are received on merits while the appeal continues in the High Court or Supreme Court. In these situations, there is no clarity whether MAP fails in these situations, or the taxpayer can again request for MAP negotiations after these appellate proceedings.	
	B.4. Penalty protection under MAP		
13.15	The Hon’ble Karnataka High Court recently dismissed a writ petition filed by Toyota Kirloskar1 against the levy of concealment penalty on TP adjustment under MAP under the relevant tax treaty. In this case, the High Court held that unless a specific provision is made in the Double Taxation Avoidance Agreement (“DTAA”) with respect to penalty, provisions of section 271(1)(c) would continue to apply to TP adjustment under MAP.The Hon’ble High Court held	Under MAP, the competent authorities of the two countries discuss, negotiate, and finally decide the TP adjustment to the international transaction to avoid double taxation under article 25 of the DTAA. The two competent authorities review the case and resolve the dispute as an alternative dispute resolution procedure.Considering that the decision on TP adjustment in MAP is arrived at by two sovereign countries based on negotiations, any levy of penalty in	An explanation may be added in section 271(1)(c) to state that no penalty for concealment of income for TP adjustments under MAP be levied unless there are reasons to say that the taxpayer has not acted in good faith and with due diligence, and thereby concealed facts or furnished inaccurate particulars.Effective MAP program in a country is one of the minimum standards under BEPS. Unless exceptions are created for such implementation issues, it would render the MAP program less effective.

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	that the onus lies on the taxpayer to establish that the TP adjustment arrived under MAP is not due to concealment of income or furnishing of inaccurate particulars.	a routine manner should not be availed unless the taxpayer has not acted in good faith and with due diligence	
	B.5. Streamlining Safe Harbour to reduce APA filings		
13.16	The Indian Government tried to streamline the safe harbour rates in June 2017 to make it reasonable and closer to comparable benchmarks. However, even after 2017, not many taxpayers have adopted the benefit of safe harbour to avoid litigation. The safe harbour benefit has been restricted to very small companies thus making it inaccessible to medium-scale and large-scale companies. Safe harbour rates are still higher than the comparable benchmark which make it commercially unviable for taxpayers to adopt. Moreover, only few safe harbour applications are filed by the taxpayers, which are mainly consisting of IT and ITeS. There is hardly any taxpayer for most of the other transactions covered in Safe harbour.	Due to present safe harbour regime, many taxpayers have to apply for APA to attain tax certainty. Generally, APA should only involve cases with complex transactions and business models that require in-depth business and economic analysis for agreeing on the transfer prices.	In view of the above, the Government may re-evaluate the safe harbour provisions on the following three aspects - Reduce the class of transactions from the safe harbour and restrict it to only simpler transactions like IT, ITeS, business support etc; - Provide the safe harbour rates closer to comparable benchmarks with a little premium for certainty; and - Increase the threshold to cover almost 75 percent of the companies under this spectrum. This can serve dual purpose of providing tax certainty to taxpayers and easing the burden of the APA.

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	B.6. Dispute Resolution Panel ("DRP") to provide speedy and judicial dispute resolution; Alternative and innovative mechanisms of speedy appellate procedure in the faceless assessment scheme		
13.17	DRP has been empowered to reduce, enhance, or confirm the variation proposed by the TPO/AO. However, DRP does not have power to set aside any proposed variation or issue any direction for further enquiry. The orders of DRP are not appealable by the tax department.	The legislative intent for constitution of DRP was to provide speedy resolution to the taxpayers. However, since the orders of the DRP are not appealable by the tax department, it is often noticed that the DRP does not provide any relief to the taxpayer and generally confirms the order of the TPO/ AO. Thus, effectively, and practically, the DRP has become a fast-track channel for reaching Income tax Appellate Tribunal in a period of 9-10 months and deferring the payment of taxes. This has led to extended TP audit cycle and pendency of a high number of TP cases before the ITAT on routine matters.	The DRP should be made an effective mechanism to settle disputes by critically reviewing the proposed variation by the TPO and AO and pass order based on the merits of the case so that large number of cases do not clog before the ITAT. The government should re-work the DRP scheme to make it more effective in line with its purpose and intent.In the new regime of faceless assessment with no personal interaction between the AO and taxpayers, the assessment orders are expected to be more critical and independent. In such a case, the DRP route may even be abolished with a new mechanism for speedy appeal process.The Government may also introduce an Alternate Dispute Resolution (ADR) body may be constituted which may comprise of members from Revenue and industry experts. This can be in the form of a mediation mechanism between the taxpayers and tax authorities, which once agreed cannot be litigated further by either party. The Vivad se Vishwas scheme is an example of a successful ADR scheme.
	B.7. Mandatory timeline for CIT(A) to pass the order		

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13.18	The Act does not provide any mandatory timeline for CIT(A) to pass the order. It only suggests a timeline of one year from the year in which appeal is filed.	Though there are timelines for AO and DRP to pass their order / directions, there are no similar timelines prescribed for the CIT(A). It is seen that in many cases, appeals are pending before the CIT(A) for over 4 to 5 years, thus delaying the litigation process, and making the entire CIT(A) route ineffective.	The above snag can be cleared by introducing a concept for time barring appeals which can be brought at CIT(A) stage as well. CIT(A) is an administrative appellate mechanism and imposing a timeline for disposal at CIT(A), will help in reducing the time gap withing which the taxpayer can get certainly in relation to dispute resolution. This concept is already prevailing under the DRP route and hence there should not be any difficulty for CIT(A) route as well. A time limit should be introduced, say, 12 months, extendable to further 3 months depending upon the complexity of the case.
	C. INTERNATIONAL TAX		
	C.1 Equalization Levy operational from FY 2020-21		
13.19	EL to apply only to pure E- commerce Marketplace activities and digital trading platforms	Section 164(ca) of the Finance Act 2020 defines “e- commerce operator" means a non-resident who owns, operates, or manages digital or electronic facility or platform for online sale of goods or online provision of services or both.Today all business has online transaction element. In view of same, the wide definition of ‘e-commerce operator’ inadvertently seems to covers traditional brick and mortar businesses and many other businesses	The term ‘ecommerce operator’ should be defined and aligned to tax pure e- commerce marketplace as is understood in normal parlance where multiple sellers interact with multiple buyers like any open-market and not to two or more parties who know each other and chose to communicate using digital means.Alternatively, it can be clarified that Parties involved in traditional brick and mortar businesses, banking and financial services, payment platforms, cloud service providers and inter-group goods and services type transactions should not be construed as

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		which are not e- commerce platform or marketplace in nature. These businesses included service providers such as banking or insurance companies, payment processing / payment facilitation companies, telecom, online education, healthcare and such other companies who are providing their services through a website or portal or even a cloud service provider ('CSPs') and use them as an infrastructure to do business like a physicalcomputer / office, etc.	e-commerce operator as they are engaged in traditional business using digital tools.
13.20	Rationalization of the definitions for the purposes of EL	For the purpose of levy of EL, there are various terms which have not been defined in the provisions, such as 'digital facility' or 'electronic facility' or 'platform', 'data' etc. The standard and general use of emails, telecommunications, digital conferences, website and all of forms electronic communication with basic and need based customization cannot be considered as "online" for applicability of EL but there is no specific clarity in EL provisions. This could lead to unwarranted interpretation issues and litigation.	The standard and general use of email/ telecom/ internet, etc. be kindly clarified to fall outside the ambit of platform/ facility, etc. The term platform for EL should be clarified to mean a highly customized electronic or digital platform or facility for online sale of goods or online provision of services or both as deployed by e- commerce marketplace operators and similar trading platforms. Similarly, the various internal and multi-purposes close ended platforms (e.g. ERP) especially in the context of inter-group transactions should not be construed as digital or electronic facility or platform for levy of EL.

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			It is also suggested that the meaning of services for levy of EL to be restricted to "Automated digital services" as outlined in the draft Article 12B proposed to the UN Model convention.
13.21	Preparatory activities not to be treated as online sale of goods and online provisions of services forpurposes of EL	The Explanation to 164(cb) of the Finance Act 2020 added by the Finance Act 2021 has expanded the ambit of online sale of goods and online provision of services significantly. It includes preparatory / auxiliary activities done online such as acceptance of offer, placing of purchase order, acceptance of purchase order, payment of consideration, supply of goods / services (fully or wholly).The above coverage for purpose of EL is very unreasonable as goods may not have been even manufactured or delivered or services may have been entirely rendered physical form but EL still gets attracted for minor activities which are preparatory / ancillary in nature which countries vide tax treaties have always agreed not to tax in country of source due to their minimalcontribution to the business profits.	It is suggested that only the proper and actual online sale of goods and online provisions of services entirely provided / facilitated by the non- resident e-commerce operator through its online platform should be liable to ELIt is therefore requested that the said Explanation to Section 164(cb) be deleted / modified suitably.
13.22	Adjustment of taxes between income- tax and EL	There is a possibility of disputes on whether a payment is liable to EL or to	It is requested that the taxpayer be allowed to offset the EL liability against any income-tax withheld / paid

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		income-tax as royalty or FTS. The payers generally deduct tax on payments to non-residents as royalty / FTS on conservative basis. Thereafter, the non-resident file their income-tax return in India and claim refund. In such cases, EL may be attracted or asserted in tax assessment. There is currently no mechanism for adjustment of taxes on income of non-resident withheld / paid as royalty/FTS to be adjusted against EL applicable or asserted to be applicable at assessment stage. This anomaly creates double outflow of taxes in India for a non-resident on the same income.	on the same income as royalty / FTS. No interest should be charged on EL till the amount is so adjusted against subsequent tax demand. Further, where taxes are withheld on gross basis as Royalty/FTS and taxation is claimed and accepted under EL provisions, then on the consequential refund, interest should be granted till the refund of EL considering taxes withheld / paid as royalty / FTS as payment of EL.
13.23	Appeal/ grievance mechanism with respect to grievances emanating from EL provisions	While the right to appeal before the Commissioner of Income-tax (Appeals) against penalty order issued under the EL provisions is provided under Section 174 of Finance Act, 2016, there seems to be no mechanism provided under the existing EL provisions for the non-resident e-commerce operator to file an appeal against any other grievance arising under these provisions.	It is suggested that an expressed appeal/ grievance mechanism be provided for non-resident e-commerce operator with respect to assessment and other issues emanating from the EL provisions, including the applicability and charge of EL. These provisions of appeal, rectification, revisions, etc., to be on the same line as currently existing in the Income-tax Act.

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
13.24	**Liable to Tax** Anomaly surrounding the definition of liable to tax	Section 2(29A) defines liable to tax – "liable to tax" in relation to a person and with reference to a country, means that there is an income-tax liability on such person under the law of that country for the time being in force and shall include a person who has subsequently been exempted from such liability under the law of that country;] The current definition of 'liable to tax' talks about income-tax liability only on such person under the law of that country. It is submitted that in several countries such as US, UK and Germany, partnership firms and other form of corporate are pass through entities. In such cases, the income is liable to tax in the resident country but not on such entity but its shareholders / partners. In such cases, the pass-through entities should be eligible for tax-treaty benefits as all that is happening is all the income of such partnership firm is taxed in country of residence but the charge and liability is on the partners.	It is suggested that the criteria for liable to tax be expanded to include cases where there is an income-tax liability on all income of such person or on such income, the liability is on any other person (e.g. partners) under the income-tax law of the resident country. In other words, in the context of person, it should also include all forms and mechanism of taxing and the person directly or taxing its partner or anyone else (say its shareholders) pursuant to pass- through status or any other such reason. Further, the tax residency certificate issued by the Income Tax Authorities of that jurisdiction even if issued in any modified form or with different name or those issued for the taxable partners be notified as satisfying the 'liable to tax' definition for such entity /partnership.
	C.2 Residence under Section 6		

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
13.25	Control and Management for persons other than companies	Under Section 6(2) of the Act, for persons other than companies and individuals (i.e., for partnership firm, etc.), even if part of their Control and Management is in India then it is considered as an Indian tax resident. This provision is quite harsh and is not in accordance with global principles surrounding tax residency.	It is requested that the residence test for partnership firm / other entities be placed on similar lines as in case of companies. i.e., tax residence in India only if Place of Effective Management is in India. This change will also be in line with the provisions of existing Indian DTAAs.
13.26	Meaning of the term 'visit' for individuals	With respect to individuals, there is a controversy on the meaning of "visit" to India under explanation 1(b) to section 6(1).As the term "visit" is not explained, it may and is likely to leads to unwarranted litigation.	It is suggested that the term "visit" be deleted to eliminate any controversy and making the applicable criteria only of physical presence in India.(It is difficult to lay down guidelines in rules for rare situations. I believe we should delete this.)
	C.3. Significant Economic Presence provisions under Section 9(1) of the Act		
13.27	Attribution of profits to SEP in India of non-resident not specified	The SEP provisions are applicable for FY 2021- 22 and are still pending enactment of Rules on how profits/incomes are to be attributed to an SEP of Non-Resident in India. In the absence of clear detailed rules, divergent approach can be adopted by different tax officers and taxpayers alike,	It is requested that the rules for attribution of profits to SEP of NR in India be notified at the earliest.

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		which would lead to unwarranted uncertainty and litigation.	
13.28	Increasing SEP threshold	The revenue thresholds for triggering SEP are currently set at INR 2 crores which is a very low threshold. Further, threshold is independent of the criteria of soliciting of business activities or engaging in interaction with such number of users in India. Thus, SEP gets triggered for all non-resident irrespective of the criteria of soliciting business or number of users which consequence.	It is suggested that SEP monetary be matched with the those under the OECD Pillar 1 at EUR 1 million. The above value threshold to be also made conjoint with the other criteria to constitute SEP i.e., soliciting of business activities or engaging in interaction with prescribed number of users in India.
13.29	Relaxation of deduction of tax at source under Section 195	In case of a non-resident, where SEP provisions are triggered, there is an obligation to withhold tax thereon under Section 195 of the Act and currently no computation rules have been enacted.In most cases, the payer in India may not have any ability to obtain the required data from the non-resident at the transaction stage or it is likely that the threshold for the non-resident are met after the transaction of the resident with the non-resident.It is also possible that the non-resident is unable to compute such income when the accounting / tax year has not ended and profits/ income are not determined.Further, many	It is requested that until the computational rules are enacted, the provision of Section 195 of the Act be relaxed for SEP transaction with non-resident and in all such cases, the income-tax liability should be discharged directly by the non-resident.

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		of the customers of the non- residents may be consumers (B2C) and not businesses (B2B) and would not be in position to obtain details / information forwithholding tax purposes.	
	D. Overseas Mergers / Demerger – Direct and Indirect Transfer		
13.30	Absence of carve out with respect to exemption from capital gains tax in the context of foreign merger/demerger – direct transfer as well as indirect transfer.	Sections 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 maybe) for constituting transactions not regarded as transfer to qualify for exemption from taxation as capital gains. There are however no carve out for cases where amalgamated / resulting company is the shareholder of amalgamating / demerged company as in domestic cases as under: Section 2(1B) of the Act dealing with domestic amalgamation carves out an exception for shareholding continuation condition which does not apply to the shares of the amalgamating company that	The logical carve out for Parent- Subsidiary be incorporated in the existing exemptions relating to merger/de- merger of foreign companies – direct transfer as well as indirect transfer cases. This will bring clarity to all such cases rather than relying on general principles / judicial precedents for such conclusion. It is therefore requested that the Sections 47(via), 47(viab), 47(vic) and 47(vicc) of the Act be amended to provide that the requirement of continuity of shareholders will not apply to the shares of the amalgamating company / demerged company that are held by the amalgamated company (or its subsidiary) in the case of amalgamation and resulting company in the case of demerger.

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		are held by the amalgamated/resulting company or its subsidiary. This is because when the subsidiary is merged into the Holding company, the Holding company cannot allot shares to itself under the merger. Similarly, Section 2(19AA) of the Act provides for an exception from this condition where the resulting company itself is the shareholder of the demerged company.	
	E. Easing Compliance burden on non-residents		
13.31	Relaxation from filing of income-taxreturn for non-residents in India	Sub-section 5 of Section 115A of the Act was amended by the Finance Act 2020 w.e.f. 1 April 2020 to provide relief to non-residents fromfiling income-tax return in India if their income in India consists of items covered therein (interest, royalty, fees for technical services,etc.) and tax has been deducted in accordance with the provisions of Part B of Chapter XVII of the Act. No such relief seems to be directly available if tax is withheld in accordance with the provision of the tax treaty. Many of the Indian tax treaties provide for the	It is suggested that the relief from filing of income-tax return to non-resident under Section 115A(5) of the Act be extended to cases wheretaxes have been deducted at the tax treaty rate if they are same as thebasic rate stipulated in Section 115A/Part B of Chapter XVII of theAct (basic rate is the rate excluding the surcharge / education cess).The tax department can in any case consider the Indian resident payer as assessee in default and recover the tax from the Indian resident payer.

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		withholding tax rate in respect of income earned by way of royalty or FTS (i.e., not effectively connected to a permanent establishment) at 10%. The difference between Treaty rate in such cases and those stipulatedunder provisions of the Act is the surcharge and additional surcharge in the form of education cess (considered subsumed / included in the taxtreaty rate). This by itself should not or should not be construed to disentitle the non-residents from the benefit of non-filing returnof income under Section 115A(5) of the Act or make adoption of such position as ambiguous and litigative.	
13.32	Reduction in basic corporate tax rate for non-resident/foreign company from 40% to 30%	The basic corporate tax rate for Indian Company has been reduced gradually over a period of time and it can now be opted at 22% (Section 115BAA) or at 15% (Section 115BAB). On the other hand, the basic corporate tax rate for non- resident has remained the same at 40% is very high and has not been reduced for several years.	It is suggested that basic corporate tax ate for foreign company be reduced from 40% to 30% and pass on the benefits of ease of doing business in India to foreign entity setting up branch office, or project offices in India especially in the infrastructure projects.
13.33	Introduction of presumptive taxation regime for non-residents having permanent establishment in India.	There are various types of presumptive schemes for taxation of residents but very few for non- resident foreign companies especially regular companies constituting	An alternative and optional presumptive taxation regime taxing such onshore income of foreign company constituting a permanent establishment in India on gross basis say at 10 percent on gross basis for

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		permanent establishment in India on account of services PE, etc.The computing of income attributable to the PE is complex, subjective and enshrined with lot of issues and options. It is onerous for smaller projects and foreign companies. Thus, there is a strong need of presumptive taxation for non- residents having PE in India and wanting to tax their income on presumptive basis	services and 2% for goods be introduced. This would eliminate the uncertainties and compliance burden significantly especially on small and mid-size projects of foreign company. It will promote ease of doing business and also contribute to the revenue.

14. 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

Sr. No.	PRESENT PROVISION/PRACTICE			SUGGESTED MODIFICATION	RATIONALE FOR CHANGE
	Section / Rule	Provision	Present Limit		
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

Sr. No.	PRESENT PROVISION/PRACTICE			SUGGESTED MODIFICATION	RATIONALE FOR CHANGE
	Section / Rule	Provision	Present Limit		
7	17 (2)(viii) r.w. Rule 3	Perquisite in respect of thefollowing a) perquisite for interest freeloan in excessof 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 thereis no separate aggregate limit	30,000 per contract and aggregate limit of Rs.1,00,000	To align with limitsu/s.194C

Sr. No.	PRESENT PROVISION/PRACTICE			SUGGESTED MODIFICATION	RATIONALE FOR CHANGE
	Section / Rule	Provision	Present Limit		
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

The Chamber of Tax Consultants

Estd. 1926

Vision Statement

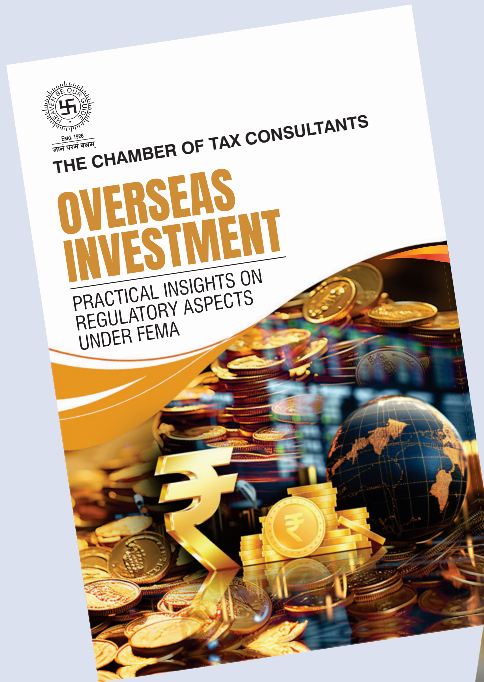
The Chamber of Tax Consultants (The Chamber) shall be a powerhouse of knowledge in the field of fiscal laws in the global economy.

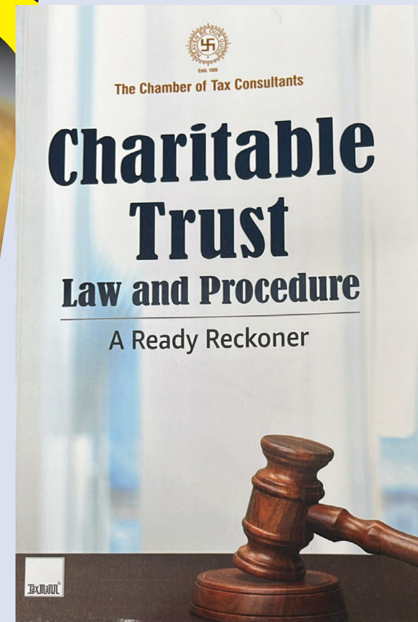
The Chamber shall contribute to the development of law and the profession through research, analysis and dissemination of knowledge.

The Chamber shall be a voice which is heard and recognised by all Government and Regulatory agencies through effective representations.

The Chamber shall be pre-eminent in laying down and upholding, among the professionals, the tradition of excellence in service, principled conduct and social responsibility.

Unveiled by **Shri S. E. Dastur**, Senior Advocate on 30th January, 2008.





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ABOUT THE CHAMBER OF TAX CONSULTANTS

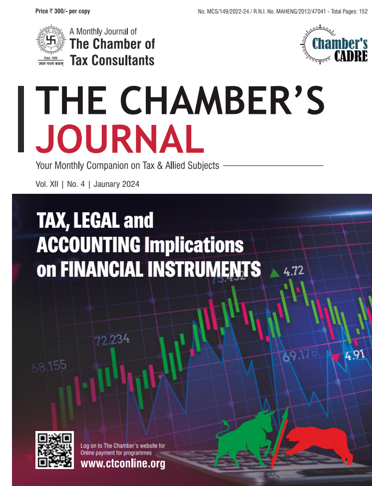
The Chamber of Tax Consultants (CTC) was set up in 1926 and is one of the oldest voluntary non- profit-making professional organisations. It is the voice of more than 4000 professionals on PAN India basis which comprises of Advocates, Chartered Accountants, Company Secretary, Cost Accountants, Corporates,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



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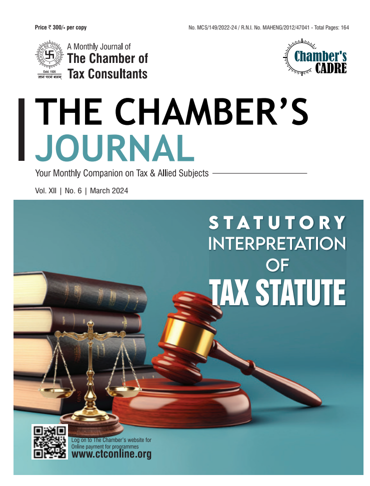

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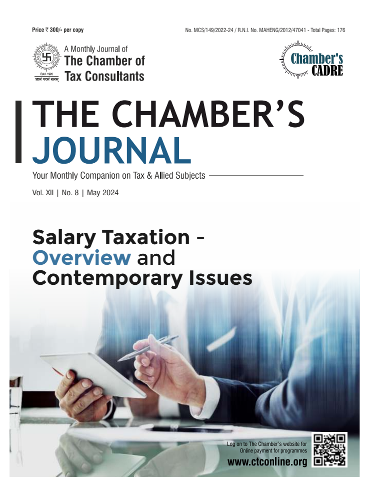

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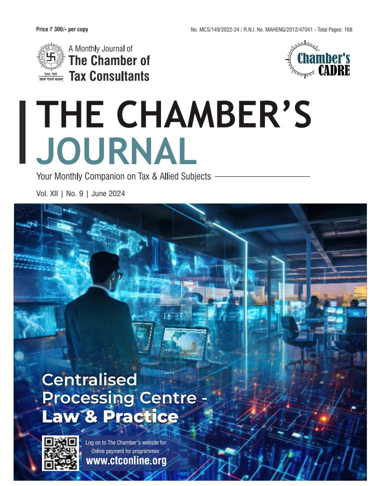

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