CIMSME

Chamber of
Indian Micro Small & Medium Enterprises

PRE BUDGET MEMORANDUM FOR UNION BUDGET 2017-18

CHAMBER OF INDIAN
MICRO SMALL & MEDIUM ENTERPRISES

FORM THE DESK OF PRESIDENT….

I would like to extend my gratitude to Hon'ble Finance Minister, Shri Arun Jaitley ji for giving an opportunity to the Chamber of Indian Micro, Small & Medium Enterprises to participate in Pre-Budget Consultation Meeting for the Union Budget 2017-18.

Chamber of Indian Micro Small & Medium Enterprises (CIMSME) is committed to promote and protect the interest of MSMEs in India. CIMSME represents more than 1.30 Lakhs members, across country.

First of all, I would like congratulate Modi Government and Hon'ble Finance Minister for the recently launched Demonetization Scheme as well as the GST Bill, being passed by the both the houses of Parliament this year. Chamber is confident that demonetization and GST will be favorable steps taken by our Government for the MSMEs and Small Traders, which will support the GDP Growth of the country. We are confident that with these steps many Micro units will grow to Small units, Small will become Medium units and many Medium will go to Large category business enterprises.

Our Chamber is our firm belief that with the demonetizing, MSME sector will be benefitted in the following ways, in days to come: -

i. Since all MSMEs and Small Traders will be bound and able to transact their entire sales through proper tax paid bills and payment through cheques which they were not able to do in past due to various reasons, they will be able to have healthy Balance Sheets.
ii. With the strong financial of these MSMEs and Small Traders, Bankers will be in better position and will rather aggressive in financing to these MSMEs and Small Traders to whom they were finding it difficult to lend due to their poor financials.
iii. These MSMEs and Small Traders will be able to expand their businesses due to proper support from Banking channels.
iv. This will be a win-win situation for our banks also who will have lots of liquidity as a result of demonetization and may find difficult to get large corporates so quickly.

India has been able to improve its world ranking of Ease of Doing Business and I trust that the initiative being proposed under this Union Budget will further improve our rank of Ease of Doing Business.

We have incorporated suggestions and expectations received from the members of the Chambers.

I am very thankful to the members of the Advisory Board of the Chamber specially Sh. S S Kohli, Former Chairman & Managing Director, Punjab National Bank, Punjab & Sind Bank, Indian Infrastructure Finance Limited, Dr. H P Kumar, Former Chairman & Managing Director, NSIC Limited, Sh. N K Maini, Former Dy Managing Director Small Industrial Development Bank of India and present Director MUDRA Ltd, Sh. S Chandrasekharan, Former Executive Director, UCO Bank, Sh. Anil Khaitan, Vice President, PHD Chamber of Commerce and Industry and Sh. Gajendra Singh, Director, Pricewaterhouse Coopers Limited, on my behalf and on behalf of the chamber for their laudable contribution in terms of their valuable suggestions and inputs.

I am also thankful on behalf of the Chamber for its members for their active participation in submitting their valuable suggestions.

I heartily appreciate the laudable efforts of the secretariat and the highly dedicated team of the Chamber of Indian Micro Small & Medium Enterprises particularly Mr. Sandeep Bisht without whom it would have not been possible to compile these suggestions, for their hard work in preparing and compiling the Pre Budget Memorandum for the FY 2017-18.

New Delhi
25.11.2016

Mukesh Mohan Gupta
President

METHODOLOGY

We have received the invite for Pre Budget Consultation Meeting by Ministry of Finance vide their letter no. D.O. No.10(5) /Ec.Dn./16 dated November 11, 2016.

Suggestions were called from members of the Chamber for incorporating the same in Pre Budget Consultation meeting for the Union Budget 2017-18.

We thereafter compiled the suggestions received from members and discussed the same in the meeting of the Advisory Board of the Chamber.

Very detailed discussions during the meeting of advisory board and the inputs received from the members are incorporated in the final suggestions.

For better understanding we have divided Pre Budget Memorandum in three parts: -

i. Budget Related Matters specifically pertaining to MSME Sector
ii. Budget Related Matters specifically pertaining to Banking Sectors
iii. Budget Related Matters specifically pertaining to Taxation

In addition to above, we have also incorporated some very important suggestions which are Operational / Procedural Matters and will play very important role in Ease of Doing Business.

CRUX OF THE SUGGESSTIONS

i. More Judiciary Powers to be given to MSME Facilitation Council
ii. Incentives needs to be given to Large Corporates / PSUs for using the TReDS platform
iii. MSME dues should be paid before disbursement of loans to Large Corporates / PSUs
iv. Single Registration for all Government schemes
v. Tax holiday of three years for new MSMEs
vi. SME Rating to be approved under Basel-II norms
vii. Additional 2% Interest subvention to MSME Exporters
viii. Different NPA norms for MSMEs
ix. Different Tax rates for MSMEs
x. Digitisation Incentives to MSMEs
xi. Limit of CGTMSE to be increased to Rs. 250 Lakhs
xii. Loan to NBFCs to be covered under PSL with certain stipulations
xiii. Scheme for Restructuring / Revival of Stressed Assets between Rs. 25 cores to Rs. 500 crores

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BUDGET RELATED ISSUES PERTAINING TO MSME SECTOR

MICRO SMALL & MEDIUM ENTERPRSIES

SOLUTION FOR DELAYED PAYMENTS

The biggest problem before MSMEs is the delayed payments from Large corporates/ PSU against their supply of goods and services. Government is well aware of this issue and has made provision under Section 17 of the MSME Development Act 2006.

01. We propose to add following points / information may under Section 17 of the MSME Development Act 2006:-

    i. MSME Facilitation Council should be constituted in every district as compared to current State level MSME Facilitation Council.
    ii. Judiciary Power need to be vested with MSME Facilitation Council for effective and faster resolution of the MSMEs problems similar to Fast Track Courts.
    iii. The manner and time frame for scheduling the meeting may be introduced in the Act.
    iv. External Independent Expert should be a permanent member of the Facilitation Council.
    v. At least one meeting should be held on Fortnightly basis and the minutes be forwarded to the Secretary, Ministry of MSME for his kind perusal.
    vi. The decision should be pronounced not later than three months of the lodging of a complaint.
    vii. Appellate Authority to the Facilitation Council should be High Court of the respective States.
    viii. Under Digital India, the complaint at Facilitation Council should be filed online and the status should be available online.

02. **Government has further launched the Trade Receivable Discounting System (TReDS) platform as a solution of delayed payments by Large Corporates / PSUs to MSMEs. We propose that the large corporate / PSUs should be allowed some incentives by making payments to MSMEs through the TReDS platform. This will help in successful implementation of TReDS platform. With this incentivization, the corporates would also be attracted and inspired to join this platform.**

03. **We propose that loans to large corporates/ PSUs by Banks / Financial Institutions should be sanctioned with the condition that the disbursement will be made only on confirmation from their Statutory Auditors that there are no overdue payments due to MSMEs.**

SINGLE REGISTRATION FOR ALL GOVERNMENT SCHEMES

Government has launched various schemes for the MSMEs. However, to avail some of the services like Exemption from EMD and Free of cost Tender documents, a registration with NSIC is required. This leads to an additional certification conditions for MSMEs which is an additional cost burden as well as time consuming exercise for MSME entrepreneurs.

We propose that there should be only one registration for MSMEs to be able to get various Government Schemes under "Ease of Doing Business".

ADDITIONAL EXPORT SUBVENTION TO MSME EXPORTERS

Keeping the current Economic situation in mind and to boost the exports from India, we propose that additional interest subvention of 2% should be given to Micro, Small and Medium Entrepreneurs for Export by them for the FY 2017-18, which may be reviewed thereafter.

TAX HOLIDAY FOR NEW MSME

To boost the Industry, Employment and Economy, we propose that the Tax Holiday of three years should be given to Micro, Small & Medium Enterprises which will start their businesses on or after 01.04.2017. This will also promote "Make In India" mission.

REQUIREMENT OF COLLATERAL SECURITIES

Banks normally insist for additional collateral security at the time of additional credit facilities to MSME borrowers.

The MSME borrowers normally have no option but to divert their cash accruals to purchase the assets to be offered to the banks as additional collateral securities, which adversely affect their cash accruals.

We propose that for the MSME borrowers with satisfactory track record of three years, additional collateral security should not be called for during enhancement of credit facility and it should be need based.

DIFFERENT NPA NORMS FOR MSME

Due to Global meltdown, the Indian Economy is passing through tough time. The major Industries like Real Estate, Cement, Steel, Power, Textiles, Automobile, and Solar etc. are facing slowdown, due to various global and other issues.

As a result, suppliers to these Industries are not getting their payment on time. The suppliers to these industries are majorly Micro, Small and Medium Enterprises (MSMEs.) Due to the delayed payment/non-payment form these Large Corporates MSMEs are facing challenges to survive, hence the units are turning sick/ non-operational.

Hence, we propose that the Asset Classification norms for Micro, Small and Medium Enterprises (MSMEs) from existing 90 days should be increased to 150-180 days for the Financial year 2017-18 which may be reviewed thereafter, so that these MSMEs are able to survive.

SME RATING

To promote the SMEs Government has introduced the concept the SME Rating. Government through NSIC provides subsidy of 75% of the fees for SME Ratings.

However, SME Rating is not eligible under Basel II rating. Thus these MSMEs having credit facilities of more than Rs. 5 crores are bound to again get the Bank Loan Rating under Basel-II, though Bank Loan Rating and SME Rating both might have been done by the Same Rating Agencies.

Thus there is no use of heavy subsidy of 75% by the government.

We propose that SME Rating should be approved under Basel II norms for MSMEs. This will be best utilisation of the subsidy provided by the Government and will also helpful in "Ease of Doing Business"

DIFFERENT TAX RATES FOR MSME

In the current economic conditions, we propose that the Micro, Small and Medium Enterprises (MSMEs) should be taxed at some concessional rate, so that they may able to survive, expand and be able to create more and more employment.

DIGITISATION INCENTIVES TO MSME

For the successful implementation of Digital India and to move towards Cashless economy, we propose to provide reasonable incentives/ subsidies to MSME Entrepreneurs for adopting various tools to convert them towards digital mode.

DEFINITION OF MSME

The Micro, Small and Medium Enterprises (Amendment) Bill, 2015 was introduced in the Lok Sabha on April 20, 2015. The bill has not been passed by the house so far.

We propose that the investment limit prescribed under MSME Amendment Bill 2015, for Micro, Small and Medium Enterprises (MSMEs) in the country, should immediately be implemented. The revised limit of investment in Plant & Machinery and Equipment's for Manufacturing and Service Sector, respectively are as under: -

MANUFACTURING SECTOR

Enterprises	Investment in Plant & Machinery
Micro Enterprises	Does not exceed Fifty Lakh Rupees
Small Enterprises	More than Fifty Lakh Rupees but does not exceed Ten Crore Rupees
Medium Enterprises	More than Ten Crore Rupees but does not exceed Thirty Crore Rupees

SERVICE SECTOR

Enterprises	Investment in Equipments
Micro Enterprises	Does not exceed Twenty Five Lakh Rupees
Small Enterprises	more than Twenty Lakh rupees but does not exceed Five Crore Rupees
Medium Enterprises	More than Five Crore Rupees but does not exceed Fifteen Crore Rupees

PRESEMPUTIVE TAXATION OF INCOME TAX ACT 1961

SECTION 44 (AD)

Further, to cover large number of professional under presumptive taxation scheme and to reduce the burden on tax authorities as well, companies having income marginally over and above the threshold limit by 10% should be covered under the Presumptive taxation scheme provided they agree to pay Maximum Marginal Tax on the income over and above the threshold limit.

SECTION 44 (ADA)

We propose that Section 44 (ADA) limit for professionals should be increased to Rs. 1.00 crore.

We further propose that the Presumptive Income should be 33.33% in line with the recommendation of "INCOME TAX SIMPLIFICATION COMMITTEE" chaired by Justice R.V. Easwar, Former Judge, Delhi High Court and former President ITAT.

Further, to cover large number of professional under presumptive taxation scheme and to reduce the burden on tax authorities as well, professional having income marginally over and above the threshold limit by 10% should be covered under the Presumptive taxation scheme provided they agree to pay Maximum Marginal Tax on the income over and above the threshold limit.

CGTMSE SCHEME

CGTMSE was launched in the year 2000. We have observed that over a period of last 8 years, this scheme of collateral free loans to MSEs has played a very important role in getting the financial assistance to them from the banking channel.

The limit of CGTMSE was increased to Rs. 100 lacs during the year 2008.

We propose that considering the inflation over a period of last 8 years and the proposed increase in the definition of MSMEs, the threshold limit of CGTMSE should be increased to Rs. 250 lacs.

Thus, the CGTMSE fund should also be suitably augmented accordingly.

GOODS & SERVICE TAX (GST)

We propose that the Exemption threshold limit should be Rs. 50 lakhs as against the current proposed exemption limit of Rs. 20.00 Lakh under GST.

BUDGET

RELATED ISSUES

PERTAINING TO

BANKING SECTOR

BANKING

LENDING TO NBFC BY BANKS/ FINANCIAL INSTITUTIONS

Most of the NBFCs are financing to MSE Sector. Bank loans are the major source of the funds to these NBFCs for such on-lending to MSEs.

We propose that the finance to MSEs by NBFC should be covered under Priority sector lending of Banks as was covered before 2011 as per the guidelines of Reserve Bank of India.

However, in the interest of MSEs, this classification of Priority Sector should be available subject to charging of interest at a reasonable cap over & above the Average cost of Funds of these NBFCs, to MSEs, as is applicable in case of MFIs. The reasonable cap over and above the Average cost of Funds of NBFCs may be 5 to 6%.

FINANCE TO MICRO-FINANCE INSTITUTION

Micro Finance Institutions lend the money to the people who are at the bottom of the pyramid. The rate of interest charged by these MFIs from the borrowers varies 24%-26%. The main reason of charging the high rate from the MSMEs is the high cost of interest charges by the Banks from MFIs. We recommend the following for financing to MFIs:-

i. **MFIs should get funds from the Bank at the MCLR, so that the people belonging to the lower stratum could actually be benefited.**
ii. **Service tax should be waived off from the processing fee on loan sanctioned by MFIs, so that the burden on the poor people can be reduced.**
iii. **Loans by MFIs should be covered under CGTMSE.**

However, MFIs are still disbursing the loans to its borrowers in cash. It is very difficult for the Lending Bank to monitor the end use of funds. Opening an account is a very easy process under PM Jan Dhan Yojna. Most of the people in remote areas have already opened their Bank Account under PM Jan Dhan Yojna. PMJDY has become a vehicle for channelizing for routing the funds released by MFIs to the needy poor.

We propose that MFIs should be encouraged to disburse the loans to their borrowers through Bank Account ONLY. This will promote the FINANCIAL INCLUSION on one hand and will be helpful for LENDERS to closely monitor the advances made by them to MFIs, on other hand.

RESTRUCTURING / REVIVAL OF STRESSED ASSETS

Reserve Bank of India issued the guidelines for "Framework for Revival and Rehabilitation of Micro, Small & Medium Enterprises (MSMEs) vide its notification no. FIDD.MSME & NFS.BC.No.21/06.02.31/2015-16 dated March 17, 2016. Accounts having exposures upto Rs. 25.00 crores are covered under this scheme.

Reserve Bank of India has also come up with S4A scheme; on June 13, 2016 vide its circular no. DBR.No.BP.BC.103/21.04.132/2015-16. This scheme is available for the accounts having aggregate exposure of more than Rs. 500 crores from the Banking System.

However, Accounts having exposure of more than Rs. 25.00 crore and less than Rs. 500.00 crores are neither covered in S4A nor in Rehabilitation for MSME scheme. There in no other rehabilitation scheme available for these MSMEs.

We propose that all stressed MSMEs, without any exposure limit should be Rehabilitated under Framework for Revival and Rehabilitation of Micro, Small & Medium Enterprises (MSMEs) of RBI.

OPERATIONAL & PROCEDURAL ISSUES

COMPANIES ACT

INDEPENDENT DIRECTORS

Section 149 (4) of the Companies Act 2013 is as under:-

Every listed public company shall have at least one-third of the total number of directors as Independent Directors and the Central Government may prescribe the minimum number of Independent Directors in case of any class or classes of Public companies.

We propose the same may be amended as under:-

Every company shall have at least one-third of the total number of directors as Independent Directors except the following companies (Both conditions are mandatory):

i. ***Companies having turnover not more than Rs. 100 crore and***
ii. ***Companies having exposure not more than Rs. 25 crores***

By doing this, more and more companies will be covered in this section. This will bring more Board Room Transparency and Corporate Governance. MSME companies will take the advantage from the experience of the Independent Directors and able to manage professionally.

SECTION 150 (MAINTENANCE OF DATABANK)

Section 150 of the Companies Act 2013 defines the manner of selection of Independent Directors and Maintenance of Databank of Independent Directors.

After lapsing more than three years of applicability of section 150 of Companies Act 2013, Ministry of Corporate Affairs could not approve any databank due to various operational issues. Some organisations have already taken the proactive action and started the databank of Independent Directors.

Ministry of Corporate Affairs may thus approve the databank, who comply the requirement of section 150 and are in existence of more than one year.

TRAINING OF INDEPENDENT DIRECTORS

Companies Act 2013 has increased the Role and Responsibilities of the Independent Directors. The Civil and Criminal liabilities have also been imposed on the Independent Directors. Many Independent Directors are not updated about their Roles and Responsibilities.
We propose that a new section 149 (6) (a) may be inserted as under:

Independent Directors should undergo the training program of minimum 10 hours before appointment as Independent Director/ within three months of insertion of this clause.

Companies / Firms / Portals who are so authorized by Ministry of Corporate Affairs to maintain the databank under section 150 of Companies Act 2013, should be authorised to conduct the Training program.

REGISTRATION OF PARTNERSHIP FIRM

Registration of Partnership firm should be made online. The database of the firm should be centralized. State may collect their stamp duty for registering the firm online, as is applicable with Registrar of Companies.

This will help in controlling the corruption to a great extent, which is the main agenda of the Government. Further, the Registrar of Firm will be able to check the name already registered in any other state.

The complete details should be available online for verification as is available in case of Companies. All Stakeholders will thus be able to verify the genuineness and other details of the firms and its partners, meaning thereby better transparency.

This will also promote "Ease of Doing Business in India"

DUE DILIGENCE PROCESS BY BANKS

Money Laundering is one of the major problems, for which banks and government both are concerned. Government and Regulators have already taken very bold steps to discourage the Black economy in the country and the process in this regard is going on. We propose that regulators should issue following guidelines of Due Diligence for the Bank:-

i. **CENTRALISED KYC OF ALL ACCOUNT HOLDERS FOR ALL BANKS**:
There should be centralized KYC database of all the accountholders for all the Banks. The centralized database should be integrated with the Government database.

ii. **VERIFICATION OF INCOME TAX RETURNS:**
Income Tax Act should be amended and new provision for verification / inspection of Tax Audit Report / Income Tax Return should be inserted on payment of the requisite fee by the Bank/ FIs, similar to the Companies Act / CIBIL. This step will help the Banks to take their Lending Decision on one hand and also increase the Government Revenue on other hand.

iii. **VERIFICATION OF AUDITED FINANCIALS:**
Data of the members of the Institute of Chartered Accountants of India, Institute of Company Secretaries and Institute of Cost Accountants of India with their signature card should be available for verification and inspection to various stakeholders.

MEETING OF MSME WITH BANKERS

There should be at-least one day during a month as a public day for MSME sector, where the Higher Authorities at respective Regional / Zonal/ Head office should be available for meeting with MSME clients without any prior appointment.

VALUATION OF THE ASSETS

Under Basel-II, Reserve Bank of India is encouraging the Banks to develop the Internal Rating System for their Credit Risk Management. Similarly, RBI should encourage the Banks to develop an internal scoring system for valuation of the assets taken as primary / collateral security, which will help in avoiding various frauds through valuation mechanism by outsiders.

ONLINE LOAN APPLICATION

Many Banks have implemented the online Loan Application for MSMEs. However, the system has not yet stabilized because the applicants are not able to view the status of their application on real time basis. Bank to issue the Login and Password to the applicant to Track its Loan Application online. With the help of this applicant can know the status of their Loan Application and also know at which level of the bank it is pending? It will also help the applicant to know, if it is pending due to the non-submission of reply by the applicant or otherwise. It will help the Banks to reduce the TAT and strengthen their relationship with applicant.

RELAXATION IN PROCESSING FEE ON TERM LOANS TO MSME

Processing fee in case of Term Loan is approximately 1% even for MSMEs, which is on higher side.

We propose that the processing fee for MSMEs in case of Term Loan should be charged @0.25% of the Loan Amount.

CONVERSION OF POWER OF ATTORNEY PROPERTIES TO REGISTERED PROPERTIES

i. Very large numbers of immovable properties are on Power of Attorney and/or Agreement to Sale, majorly on stamp paper of Rs 100 or so.

ii. There should be a scheme that all the Power of Attorney properties should be got registered with proper stamp duty at current circle rates within next 3 months. The properties which remain unregistered within next 3 months should vest in the government.

iii. In many cases the seller will not be available. Hence special scheme should be drafted to take care of this problem.

iv. With this scheme the property owners will also be more than happy as the title of the property will become clear and marketable in much better way.

v. Another benefit if this scheme will be that the owners of the properties will be able to get the funds by mortgaging their properties to bank for the growth of their businesses, which they are not able to mortgage now as the Power of Attorney properties can't be mortgaged to banks.

vi. Circle Rate should be equal to Market value so that the property can be registered without any corruption.

SOCIAL SECTOR

WASTAGE OF FOOD

In India daily lots of foods got wasted in Hotels, Restaurants, Canteens and Homes. Lots of people in our country sleeps without having food even in a single day.

There should be a provision to penalize the people for wasting the food in the country.

To reduce the wastage of Food in the country a program called "**Anna Bachao Bhukmari Mitao**" or "**PM Anna Daan Yojna**"

AGRICULTURE RELATED SUGGESSTIONS

i. There is a need for establishing Planned Agriculture Regional Kendra **(PARK)** on the basis of the major agricultural outputs of those regions in various parts of the country. The state/central governments will set-up these **PARK** to provide all agriculture related assistances to the farmers starting from the farm to the marketing.

ii. Induction of "**E-Agri-Choupal**" as a part of Digital India will also have a positive impact on this agriculture sector.

iii. Mobile App can be developed by Government which can guide the farmers regarding weather, crops, market etc.

iv. **"Agri-Schools"** can be opened by governments in each city where farmers can learn new, innovative and smart ways of farming. Short term courses based on various crops can be conducted for farmers. At the end of the course, they need to do a project on the field by cultivating it and then should be awarded the certificate/ degree. The degree will help them in getting loans.

v. **"Agri-Clinic**" can be opened by governments in each Talukas where farmers can test their soils and get proper guidance from the experts so that they may get more Return On Agricultural Investments (ROAI).

BUDGET

RELATED ISSUES

PERTAINING TO

INCOME TAX

INCOME TAX ACT 1961

S NO	ISSUE	RECOMMENDATION	JUSTIFICATION
CORPORATE TAXATION			
1.	Road map for reduction in corporate tax rate to 25%	It is recommended that in the Union Budget, 2017, a distinct roadmap be provided in relation to reduction of corporate tax rates, as this will ensure stability in the tax environment and will enable companies to plan their business accordingly.	The Finance Minister had mentioned in the Union Budget 2015 that the Corporate Income Tax rate would be reduced to 25% over 4 years, however no schedule has been prescribed for the same
2.	Surcharge and cess to be withdrawn	Surcharge and cess on income tax should be abolished.	Surcharge and cess should be imposed only under exceptional circumstances and for limited time frame. However, a new tax called Army welfare tax may be introduced on the companies having turnover exceeds Rs. 100.00 crores in the previous financial year. The rate of this cess may be at 0.10% or any other rate of the Tax amount. The cess may be used only for the welfare of family and Education of the children of the deceased / disabled Army Man.
3.	Reduction of 1% in rate of taxation in case of domestic company assessees with total turnover / gross receipts of upto Rs. 5 crore – Reduction in rate should be made applicable to Firms/ Limited Liability	It is suggested that the benefit of reduction of rate of tax to 29% of total income for small domestic companies may also be extended to firms and Limited Liability Partnerships as well since most of the deductions and exemptions phased out by sunset clause of FA 2016 are applicable to both companies as well as firms/LLPs. Further, if the rate of 29% is also made applicable to firms and LLPs, it would facilitate ease of doing business in any form and not particularly restrict such facility to the small corporates and also provide a level playing field amongst	The FA 2016 introduced tax rate of 29% of total income for a domestic company provided its total turnover or the gross receipts in the previous year 2014-15 does not exceed five crore rupees. This reduction in corporate tax rate is a step in the direction of implementing the proposal in Finance Minister's Budget Speech during the Union Budget 2015-16 on 28 February, 2015 wherein he had indicated reduction in rate of corporate tax along with gradual phasing out of deductions and exemptions.

S NO	ISSUE	RECOMMENDATION	JUSTIFICATION
	Partnerships also	these forms of business	It may be noted that the rate of tax applicable to firms including limited liability partnerships is 30%. Most of the deductions and exemptions where phasing out has been introduced by provision of sunset clause as per the FA 2016 are applicable to both companies as well as firms/LLPs. Therefore, the benefit of reduction of 1% in rate of tax may be passed on to such assessees as well.
4.	Principle of taxing real income - Levying tax on purely notional income due to ICDS deviates from this principle New taxation regime for Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (INVIT):	• ICDS should be scrapped altogether. • In levying MAT, the notional and unrealised "profit" entries necessitated by Ind AS first time adoption requirements should be neutralised.	• Conceptually, tax should be paid on income; logically, income should be as per the books of accounts, especially if they are audited and maintained in accordance with generally accepted accounting principles, except to the extent of fair value accounting adjustments that neither cause income nor create losses in a recognised sense, as required under IFRS or Ind AS. • ICDS introduces a significant element of complexity and, more importantly, it is inconsistent with the concept of real income (deferment of 1 year has been announced). • Insofar as Ind AS *vis-a-vis* MAT is concerned, a report dated 18 March 2016, by a Committee under chairmanship of MP Lohia has been issued, has made recommendations. One related to the year of transition, i.e., where adjustments made in retained earnings (not being routed through P&L account) on first time adoption, are required to be added to book profit in the year of transition. This seems to tax notional profit, and needs to be

S NO	ISSUE	RECOMMENDATION	JUSTIFICATION
			addressed. A follow-on report of Committee dated 23 July, 2016 which also involves taxing notional profits. Here too, we recommend that such amounts should not be included in book profit for MAT purposes in the year of transition, but only on monetisation events. Levying tax on purely notional income due to ICDS deviates from the principle of taxing real income.
		Business Trusts should be accorded complete pass-through benefits; and the tax pass-through status presently available to grandfathered venture capital funds and venture capital sub-category of Category I Alternative Investment Funds (AIFs) should be extended to other sub-categories of Category I and II AIFs, and for all streams of income (including income not earned from a venture capital undertaking).	With a view to promoting socio-economic growth, new provisions relating to taxation of Business Trusts i.e. REITs and INVITs were inserted a couple of years back. However, the absence of complete pass-through benefit to Business Trusts has prevented growth of these Trusts even after considerable period of time.
		It is suggested that the transfer of real estate property by way of contribution to a REIT be specifically exempt from capital gains tax as well.	Finance Act 2014 provided an exemption to sponsors on contribution of shares of an SPV to a REIT. However, there is no specific exemption from tax on contribution of real estate by the sponsor to a REIT.

5.	Deputation of employees	Since employees deputed to the Indian company work under the control and supervision of the Indian company, and hence are essentially 'employees' of the Indian company, amounts paid by the Indian company to the foreign company are merely 'cost reimbursements' for salaries paid on the Indian company's behalf. However, despite various rulings, the issue is still not free from litigation. To put an end to this litigation, a specific clarification may be inserted to the effect that as the employee reports and works directly for the Indian company, and operationally works under the 'control and supervision' of the Indian company, payments made by the Indian company to the foreign company towards reimbursement of the salary cost would be treated as 'pure reimbursement' and would not be taxable under the Act.	Increasing globalisation has resulted in fast growing mobilisation of labour across various countries. Typically, the company deputing the personnel initially pays the salary and other costs on behalf of the company to which such personnel are deputed, which are thereafter reimbursed by the latter company. The issue which had cropped up before the Indian tax authorities due to the increasing deputation agreements being entered cross-border is, whether such reimbursements made by Indian entity to an overseas entity towards salary and other costs in relation to the deputed employees should be taxable in India as being payment in the nature of service fees.
6.	Deemed dividend – Clarification w.r.t amounts repaid within a specified period not to attract deemed taxability.	Existing provisions should be suitably amended to provide for relaxation of deeming taxation in genuine cases to avoid hardships. The government may consider some time frame, for instance, 2 years, within which, if the amount or loan advanced to shareholder or concern in which it is substantially interested, is repaid, it shall not be taxable as 'deemed dividend' in the company's hands, i.e., if such advance or loan remains outstanding at the end of, say, 2 years, only then would it be chargeable to tax as deemed dividend.	S.2(22)(e) has the effect of bringing to tax as dividend payment of any sum – (a) by way of advance/ loan to shareholder; or (b) on behalf of shareholder; or (c) for the individual benefit of the shareholder. When a loan is deemed to be dividend, the amount when repaid and lent again, cannot again attract the fiction and again deemed to be dividend. S.2(22)(e)(ii) provides an exception to the above rule, when the loan has been made in the ordinary course of a money lending business. There are genuine cases where funds may be required at the shareholder level for a shorter duration, and the

			amount is actually repaid within the same year. Currently, in absence of any exception, in such cases, it creates compulsion on the shareholder to borrow from outside sources. Such cases are different from normal dividend payout cases as, under dividend, there is no requirement to repatriate funds, unlike loans. Further, the lending entity also has to factor an income computed on the basis of arm's length rate of interest.
7.	Revenue Equalization Reserve – S.5	Necessary explanation should be added to s.5 that only real income should be charged to tax.	As per s.5, total income of a person in any previous year includes all income, from whatever source derived, which accrues or arises, or is deemed to accrue or arise to him during such year. As per AS 19, Lease Revenue with respect to assets given on operating lease should be credited to the Profit and Loss Account on straight line basis over the lease term. Thus, even though the income is not contractually due during the year (since such income will become due only in future years), the accounting standard mandates recognition of income on straight line basis.
8.	Amendment in s.6(3) – Place of Effective Management (POEM)	The meaning of "management and commercial decisions" should be clarified to aid understanding of both, taxpayers and tax authority. Due consideration should be given if the overseas entity carries on business operations, infrastructure, license for carrying on business, employees, CEO, office space etc., to avoid any potential litigation. In absence of guidelines, the implementation of	Finance Act, 2015 has brought a fundamental shift in determination of residential status of companies by introducing the concept of POEM *vide* amendment in s.6(3) w.e.f. Financial Year 2016-17. With introduction of POEM in the Act, overseas subsidiaries of Indian companies will be considered as being resident in India if they satisfy POEM provisions during the year

		POEM should be deferred to next financial year to facilitate smooth implementation and compliance with POEM provisions	
9.	S.9(1)(i) – Clarification regarding transfer of minority stake within same group, which does not entail transfer of controlling stake outside the group Indirect Transfer of Assets	Explanation 6 to s.9(1)(i) should incorporate relaxations for transfer of minority stakes which do not result in transfer of control of underlying Indian asset, and where the transfer of stake is within the same group, thereby permitting group re-organisation.	Finance Act 2012, amended s.9(1)(i) retrospectively w.e.f. 1 April 1962, to insert an Explanation that seeks to clarify that the **situs of capital assets being shares/ interests in** foreign entity, directly or indirectly deriving value **substantially** from the assets located in India, shall be deemed to be in India. Further *vide* amendments by Finance Act 2015, **Explanation 6** was inserted, which provides that if the transferor does not hold the right of management or control of such company; nor does he hold share capital or voting power in excess of 5% of the total capital or voting power of the foreign company, the deeming provision shall not apply. Presently u/s.47, transactions of transfer of capital assets between holding and subsidiary company are not regarded as transfer, and consequently no capital gains tax is levied. In recent rulings, HCs have held that s.79 will not be triggered where there is a change in shareholding, and where 51% of the shares or voting power is beneficially held by the same group of shareholders. In both the above scenarios, in case the control of the asset ultimately lies in the hands of the same controlling group, it is not regarded as a transfer. It is important to ensure uniformity with the legislative intent behind the

			amendment, and the tax treatment provided to domestic entities under the existing provisions (s.47; s.79), which in turn will build strong investor confidence.
		A specific exemption should be granted to P-Note holders from applicability of indirect transfer tax provisions on gains arising from sale of P-Notes.	Taxability of Participatory Notes (“**P-Notes**”) – indirect transfer tax provisions
		A specific exemption for transfer of shares of foreign company listed in overseas stock exchange should be given.	Transfer of shares of a foreign company listed in overseas stock exchange is not exempt
		The requirement of reporting of transactions by the Indian company should be dispensed with, since the Indian company may not even be aware of a change in shareholding.	Indian companies are required to furnish information or documents under s.285A of the IT Act
10.	S. 9 – Clarity required in PE Definition	• Permanent Establishment (PE) should be clearly defined in the Act itself to avoid unnecessary litigation. A mechanism could be introduced to ensure that all non-resident assessees dealing with an Indian company are statutorily required to give their PE status to Indian companies for ensuring deduction of tax at correct rates..	S.9 and various treaties require deduction of tax in India where non-resident/ foreign companies have a business connection/ PE in India. Though various definitions of PE exist in various treaties, ambiguity still remains, and clarity is required.
11.	S.10(12A) - Proposed 40% exemption for withdrawal from (NPS)– Extend benefits to withdrawals by any person, not just employees.	S.10(12A), which provides for exemption of 40% of payment from NPS Trust to “an employee” on closure of account or opting out of pension scheme, should be modified to allow such exemption to payment from the NPS Trust to “an individual”, since exemption thereunder is available in respect of withdrawals by self-employed individuals also.	In effect, the substitution of the words, “an employee” in the clause by “an individual” would help to bring within its fold, exemption to self-employed individuals as well, who have NPS savings.

12.	Tax exemption to Infrastructure Capital Cos./ Fund – 10(23G)	Exemption to Infrastructure Capital Co./ Fund should be reinstated. Withdrawal of tax exemption for interest and long term capital gains will result in a higher cost of lending to the Infrastructure Capital Company/ Fund, which would ultimately increase overall cost of infrastructure project, making them unviable. Further, Long Term Capital Gains should also be tax exempt. Major infrastructure projects are executed by Special Purpose Vehicles (SPV) floated in accordance with Government requirements while awarding the contracts. Transfer of the SPV shares would not qualify for tax exemption u/s.10(38) as the SPVs would not be listed on Stock Exchanges.	S.10(23G), which was there on the Statute Book till AY2006-07, provided for exemption of interest and Long Term Capital Gains in the hands of Infrastructure Capital Cos./ Fund derived from lending/ investment made in approved eligible infrastructure projects, development of SEZs, Housing Projects, etc. This provision was deleted *vide* Finance Act, 2006 on the logic that interest rates had reduced at that time. Considering that now, interest rates have peaked, the earlier logic for withdrawal of this proposal ceases to exist. There is an urgent need for infrastructure projects to reduce interest burden so as to attract more investments in this sector. Also, infrastructure development has been identified by the Govt. as one of the thrust area and a lot of initiatives have been taken in this area. Restoration of the tax exemption is therefore required.
13.	Exemption u/s 10(38) to cover the transfer of shares by Issuing Company (parent entity) under FCEB scheme	The government should suitably extend the existing exemption u/s 10(38) so as to ensure *pari materia* taxation basis. Further, the Ministry of Finance can also recommend/ suggest to the Ministry of Corporate Affairs to suitably devise a mechanism, and hence permit such transfer of shares *via* recognised stock exchanges.	Foreign Currency Exchangeable Bonds (FCEB) Scheme offers an opportunity for Indian promoters to raise money overseas to fund their new projects, by leveraging a part of their shareholding in listed group entities, and thus unlock value in group companies. Any Indian company ('Issuing Company') may, with prior RBI approval and subject to ECB guidelines, issue FCEBs convertible into shares held by it of another listed company having the same promoter group.

			The Income Tax Act currently provides, from the bondholders' perspective, that exchange of FCEB into shares of listed entity shall not give rise to any capital gains tax. Likewise, transfer of FCEB outside India by a non-resident investor to another non-resident investor shall not give rise to capital gains liable to tax in India. These provisions do not address the situation of taxability at the time of transfer of listed company shares by the parent entity, which otherwise, upon transfer on recognised stock exchange to any person for consideration, would have been exempt u/s 10(38). Unless tax treatment applicable on conversion of bonds into shares is brought on par with the tax treatment applicable to sale of such listed shares in the ordinary course, the option of raising forex borrowing cheaply would not be meaningful to Indian companies.
14.	S.14A, Rule 8D to not be made applicable to dividend income as it has already been subjected to dividend distribution tax in company's hands.	S.14A should not be made applicable to dividend income since it has already suffered an economic tax in the form of dividend distribution tax.	The amendment recommended is on grounds of economic rationale, to simplify section 14A, and also to reduce litigation on account of interpretative differences between assessees and the Department.
15.	Disallowance u/s.14A r.w. Rule 8D	(i) Sec. 14A, requiring the AO to mandatorily determine the disallowable expenditure by applying Rule 8D of I T Rules should be removed, since the dividend is received after suffering dividend	Currently, s.14A of the Act r.w. Rule 8D of the Rules lead to *ad hoc* disallowance of expenses alleged to have been incurred by an assessee for earning any income not includible in total income,

		distribution tax (as also suggested in the Justice R.V. Easwar Committee's Report) (ii) No disallowance u/s.14A/ R.8D should be made if the assessee has not earned any exempt income; (iii) It should be clarified that no disallowance u/s.14A/ R.8D should be made if the assessee's intention is not to earn dividend income but to make investment in subsidiaries, or a strategic investment for acquiring controlling interest in any companies, or for complying with any statutory requirement and/ or in respect of investments held as stock-in-trade; (iv) The Circular No. 5/2014 dated 11th February, 2014 issued by CBDT should immediately be withdrawn. (v) Without prejudice to above, the quantum of disallowance under sec. 14A read with Rule 8D should not exceed the quantum of exempt dividend income claimed by an assessee.	irrespective of actual expenditure incurred. Expenses are mechanically disallowance by AOs by applying Rule 8D without establishing nexus of such expenses alleged to have been incurred by the assessee with the exempted income. In some cases, disallowances are being made even where the assessee has earned no income. Circular No. 5/2014 dated 11th February, 2014 issued by CBDT clarifying that 'the disallowances as per Rule 8D prescribed u/s.14A should be made even if the taxpayer has not earned any exempt income' has further complicated the matter. This clarification is against well-established canons of taxation that no tax should be levied on notional income and/ or expenditure. Considering that CBDT Circulars are binding on AOs, the mechanical disallowance mandated under Rule 8D is causing tremendous hardship. They have already led to judicial controversies across the country. Most recent judicial pronouncements are in favour of assessees. The Supreme Court, in CIT v. Walfort Share & Stock Brokers (P) Ltd. [(2010) 326 ITR 1 (SC)] has settled the principle that to attract disallowance u/s 14A, there has to be a proximate cause for disallowance, which is the relationship of expenditure incurred with earning of tax exempt income. If such a relationship does not exist, or there is neither exempt income nor any expenditure in relation thereto, there cannot be any disallowance of expenditure u/s. 14A read with Rule

			8D, is being upheld by various Judicial Authorities across the country. Circular No. 13 dt. 21-09-2015 issued by CBEC has clarified that a law declared by the SC has a binding effect in terms of Article 141 of the Constitution of India, and any Board Circular contrary to an SC judgment becomes *non est* and should not be followed by Departmental Officers. Rule 8D as well as CBDT Circular No. 5/2014 dated 11th February, 2014, which have a binding effect on AOs across the country is against the SC judgment in the afore-mentioned Walfort case and is leading to large number of disputes pending pan-India before appellate authorities.
16.	Infrastructure Capital Companies should be exempted from disallowance u/s.14A	Interest expenditure on investments by Holding Co in group companies/ subsidiaries through which it executes projects should be excluded while computing disallowance u/s.14A.	As per NHAI guidelines, project development has to be undertaken by separate SPVs incorporated for each project. Investments in these SPVs are made by promoter companies, combining own as well as borrowed funds. The Department is disallowing interest expenditure incurred by holding company/ developer on investments in SPVs, arguing that investment in equity shares has potential to earn "exempt" dividend income, and is disallowing all expenditure related to investments which have potential to declare dividends. This creates serious hardship for promoter companies, as it results in denial of deduction for genuine interest expenditure though investments in SPVs are of long gestation period and are not held with intent of earning dividend income. In fact, most infrastructure

			projects do not declare dividend for most part of the concession.
17.	S.28(iv) – Income chargeable under 'Profits and Gains of Business or Profession'	The scope of s.28(iv) should be clarified so as to particularly exclude receipts of capital nature (arising out of transfer of capital assets), since s.45 is the applicable charging section for such cases.	S.28(iv) seeks to tax certain incomes under the head 'Profits and Gains of Business or Profession'. S.28(iv) only refers to 'income' which can be charged under the head, 'profits and gains of business or profession' and therefore, when a particular advantage, perquisite or receipt is not in the nature of income, there cannot be any occasion to bring the same to tax u/s.28(iv). It is settled law that a capital receipt, in principle, is outside the scope of income chargeable to tax. It has been seen that the Revenue is widely interpreting this s.to charge to tax even receipts of purely capital nature, which do not arise in the course of the assessee's regular business dealings.
18.	Depreciation rates - S. 32	Depreciation rate on General Plant & Machinery is at present 15%. This rate is too low. Depreciation rate should be fixed at 25%. Further, depreciation on plant & machinery costing less than Rs.25000/- should be allowed at 100%.	
19.	S. 32AC – extend investment allowance benefit to service and infrastructure companies	• Benefit of investment allowance to be extended to service companies as well as infrastructure companies, with a threshold for amount of investment. If exemptions and profit linked deductions such as 80-IC are phased out, then allowance brought in for WB, Bihar and AP ought to be extended to other Eastern Indian states.	• Presently, investment allowance is available only to manufacturing companies and not to service companies and infrastructure companies. The Finance Minister, in his 2015 Budget Speech, had mentioned that the Government would remove several tax exemptions and incentives for corporate taxpayers, and also reduce corporate tax rate

			from 30% to 25% over 4 years. Last year, however, the Government introduced special investment allowance only for West Bengal, Bihar and Andhra Pradesh.
20.	Exemption in case of sale of Carbon Credits – S. 35 and S. 10	It is suggested that in order to settle the controversy and avoid unnecessary litigation on the issue, the said amendment be made effective from 1st April 2014 i.e. from the date when section 32AC became effective.	Section 32AC was introduced by the Finance Act, 2013 with effect from 1st April 2014. It provides for deduction of 15% of the cost of plant and machinery acquired and installed. There has been a controversy as to whether, in order to be entitled to this deduction, acquisition and installation of the new plant and machinery should be in the same previous year. The amendment by the FA 2016 effectively provides that where the acquisition and installation of the plant and machinery is not in the same year, the deduction under this section shall be allowed in the year of installation.
21.	Section 35 – Weighted Deduction for contribution to Scientific Research and expenditure on scientific research to be phased out – Weighted deduction should continue for providing impetus to scientific research and development in	Scientific research is the lifeline of business in all countries of the world. Indian residents are paying huge sums by way of technical services, fees to foreign technicians to upgrade their products and give the customers what latest technology gives globally. Like make in India, ease of doing business and encouragement to start up initiatives of the government, innovation & scientific research initiative should be given equal weightage. If In-house research is continuously encouraged, outgo on account of FTS will reduce and this will help indigenous businesses to grow. Withdrawal of weighted deduction in	In respect of a) contribution to an approved scientific research association, approved university, college or other institution, b) contribution to an approved scientific research company, c) contribution to an approved research association or university or college or other institution to be used for research in social science or statistical research, d) any sum paid to a National Laboratory or a University or an Indian Institute of Technology or a specified person for the purpose of approved scientific research programme, e) expenditure incurred by a company, engaged in the business of Bio-technology or in the

	India	respect of scientific research expenditure will be a retrograde step. Therefore, it is suggested that weighted deductions allowed at present to various modes of Scientific Research expenditure to be continued. Alternatively, benefits in the form of research tax credits which can be used to offset future tax liability (similar to those given in developed economies) could also be introduced.	business of manufacture or production of any article or things on in-house research and development facility as specified in the above section, weighted deduction ranging from 125% to 200% is allowed. As per FA 2016, in cases where the weighted deduction is currently more than 150%, the same is reduced to 150% with effect from P.Y.2017-18 and 100% with effect from P.Y.2020-21. Further, in cases where the weighted deduction is less than 150%, it is to be reduced to 100% from P.Y.2017-18.
22.	Section 35AC - Deduction in respect of Expenditure on Eligible Projects to be withdrawn – Deduction should continue to provide impetus to rural sector and weaker sections of the economy	The expenditure incurred on eligible projects or schemes are for the development of the backward and weaker sections thereby focusing on development of rural areas. Further, all the projects are approved by the National Committee which is set up by the Central Government to ensure that the funds are utilized for the said purpose. Therefore, this deduction which is serving a useful purpose for which it was enacted so well, should be continued to be allowed atleast for 3 more years. As an alternative, CSR spending may be considered as deductible business expenditure, in keeping with the fact that it is a charge on the profits of the corporate. In any case, the disqualification for CSR contributions in Notification approving s.35AC projects should be immediately withdrawn and it should	Any expenditure incurred on any project or scheme for promoting the social and economic welfare of the society or for the upliftment of the public, is allowed 100% deduction on such expenditure. Rule 11K of the Income-tax Rules, 1962 provides the list of projects which are eligible for deduction under section 35AC of the Act. The projects as mentioned in Rule 11K are for the development of the economically and socially weaker sections of the society. Eg: construction of school for economically weaker sections of society, conservation of natural resources; etc. As per FA 2016, no deduction shall be available for any expenditure incurred on certain eligible social development project or scheme from AY 2018-19 and onwards. (i.e. expenditure on or after 1 April 2017) Recently, the Government also

		be clarified that CSR contributions to s.35AC approved projects are allowable as deduction u/s. 35AC.	issued a Press Release that no approvals u/s. 35AC shall be granted beyond 31 March 2017. Corporates contribute huge sums for this cause under their responsibility towards the society and the environment as also to fulfil conditions relating to CSR funding. The whole initiative for the rural development and the upliftment of the poor may take a backseat, if no deduction is allowable in computing the income. Further, it is also seen that while notifying projects u/s. 35AC, recent Notification No. 3/2016 dated 15 March 2016 carries an exclusion that contributions received pursuant to CSR obligation shall not be eligible for s.35AC deduction. This is contrary to provisions of s.35AC and Rule 11K which do not contain any such restriction. As per CBDT Circular No. 1/2015 dated 21 January 2015 explaining the amendments by Finance (No. 2) Act 2014, CSR expenditure falling u/s. 30 to 36 which comply with conditions therein shall be allowed as deduction. Hence the exclusion provided in Notification conflicts with CBDT Circular and creates ambiguity and uncertainty for taxpayers.
23.	S.35D - Amortisation of certain preliminary expenses	There is no plausible reason for not allowing these expenses as deduction either as revenue or on a deferred basis in 5 equal instalments. Therefore, s.35D should be suitably amended to include all expenses incurred by companies post- incorporation, but	S.35D provides deduction to Indian companies for certain expenditure incurred before the commencement of business or after the commencement, in connection with extension of the undertaking or in connection with setting up a new

		during the course of setting up its business, as eligible for deduction.	unit. The benefit of deduction under S.35D is limited to the expenditure in the nature of legal charges and registration fees etc. incurred for incorporating the Company. Further, deduction of this expenditure is restricted to 5% of cost of project or capital employed, at company's option. However, legitimate expenditure incurred post- incorporation for, and until, setting up of business, which are neither covered within s.35D nor can be capitalised to actual cost of fixed assets, gets permanently disallowed under any of the provisions of the Act, though they are incurred for setting up the business and become sunk cost. Some of this expenditure could be office/ sales employees' salary, audit fees, ROC filing fees, advertisement and business promotion expenditure incurred prior to setting up of business, etc. This is more in case of companies having longer gestation period for setting up their business, such as manufacturing entities, insurance business requiring multiple licenses, etc. This affects the company's cash flow and spending capacity.
24.	Deduction for expenditure u/s. 35E on prospecting, etc., for certain minerals	The present section requires major change, so that revenue expenditure is allowed in full in year of incurring the expenditure, and the capital expenditure is allowed within a specified period of, say, 5 years.	As per existing provisions, expenditure incurred for prospecting or development of minerals is allowed over 10 years commencing from the year in which commercial production of the mineral commences. Expenditure incurred does not include capital expenditure on which depreciation is eligible

			u/s.32 of the Act, as well as cost of acquisition of site etc., containing the mineral deposit. Thus, the existing provisions, instead of promoting development of mineral industry, is in fact working towards negating development of minerals, as it restricts even revenue expenditure incurred, to be eligible for deduction over a period of 10 years. In a country like India, which has huge mineral resources that can be exploited for the benefit of the economy as a whole, major expenditure is required for prospecting and developing various mineral resources. Since prospecting of minerals involves huge expenditure, both in terms of revenue and capital, 100% of revenue expenditure should be allowed, along with a fair amount of capital expenditure, so that those who are willing to take the risk of prospecting minerals are adequately rewarded.
25.	Deduction in respect of "Special Reserve" u/s.36(1)(viii):	It is suggested that – (i) the definition of the term "eligible business" given in Explanation (b) to 36(1)(viii) should be amended to include "development of hospitals/ clinics/ diagnostic centres" within the definition of "eligible business"; and (ii) the definition of "long term finance" in Explanation (h) to s.36(1)(viii) should be suitably amended to include "renting of equipment", and to reduce the minimum period for loan repayment, or lease period (in case of renting of equipment) from 5 years to 3 years.	U/s.36(1)(viii), "Specified Entities" are allowed deduction for creation and maintenance of "Special Reserve" of an amount not exceeding 20% of profit derived by eligible business, including the business of providing long-term finance for development of infrastructure facility in India, for which the re-payment period should not be less than 5 years (Explanation (h) to s.36(1)(viii)). Assessees in leasing business also provide various equipment for development of "infrastructure facilities". Rental income earned by

			such assessees is in *pari materia* with interest earned on providing long term finance for development of "infrastructure facilities". Also, long term finance (both loan and leasing of equipment) for various types of medical equipment used in hospitals/ clinics/ diagnostic centres etc. are important, keeping in mind 'health for all' objective of our Government. Accordingly, the interest/ rental income earned out of such business activities should also be made eligible for deduction u/s.36(1)(viii) of the Act. Period of loan of at least 5 years also is too long a period.
26.	Allowability of Corporate Social Responsibility (CSR) expenses as deduction – S. 37	It is suggested that s.37 be amended by withdrawing "Explanation 2", so that a company can claim deduction of its CSR expenses ad being incurred wholly and exclusively for the purpose of its business.	Under the Companies Act, 2013 certain companies are mandated to spend a certain percentage of their profit on Corporate Social Responsibility (CSR) activities. Explanation 2 to s.37 provides that any expenditure incurred by an assessee on CSR activities referred to in s.135 of the Companies Act, 2013 would not be deemed to be an expenditure incurred by companies for the purpose of their Business or Profession. In the Explanatory Memorandum explaining provisions contained in the Finance Bill, 2014, it is explained that the Bill seeks to provide for "C - Measures to Promote Socio-economic Growth"; and that "the objective of CSR Expenditure is to share the burden of the Government in providing Social Services by Companies having net worth/

			turnover/ profit above a threshold". Considering that CSR expenses are statutorily required to be incurred they should be allowed unconditionally as expenditure incurred wholly and exclusively for the company's business like any other statutory payments.
27.	Disallowance u/s. 40(a)(ia)	Suitable amendment should be made in s.40(a)(ia) to restrict disallowance of expenditure in cases where no TDS assessment has been initiated, or proceeding having been initiated, the assessee is not treated as an assessee-in-default u/Ch. VIIB. Order u/s.201 holding an assessee to be an 'assessee-in-default' should be made a condition precedent before invoking penal provisions of disallowing expenditure u/s.40(a)(ia).	S.40(a)(ia) of the Act provides for disallowance of any sum payable to a resident on which tax is deductible at source under Chapter VIIB and same has not been deducted. The provisions of s.40(a)(ia) are in the nature of penal provisions, triggering harsh consequence of disallowance of expenditure. The Assessing Officer during the course of assessment proceedings is disallowing the expenditure under s.40(a)(ia) even in cases where the proceeding under S.201(1) has not been initiated or proceeding having been initiated but the assessee is not treated as an assessee in default under Chapter VIIB.
28.	Disallowance under s.40(a)(i)	It is recommended that similar amendment should also be brought in S.40(a)(i) for payments to non-residents so as to bring parity.	Finance Act, 2015 had brought an amendment in S.40(a)(ia) where in case TDS is not deducted on expenditure, such expenditure is disallowed to an extent of 30% while computing taxable income for the year. This amendment was a beneficial amendment as it reduced the disallowance from 100% to 30%. The provision is however applicable only to a situation where the payment is made to resident assessee and has not been extended to payment made to non-resident.

29.	Depreciation on assets acquired in satisfaction of debts – S. 43	A suitable Explanation should be inserted in the definition of the term, "actual cost" in s.43 (1) of the Act	In many cases, assessees engaged in financing assets acquire such assets which were used by the borrower for his business or profession. After acquisition of such assets, the finance companies lease these out to another person under an operating lease. Acquisition of assets in satisfaction of debt often exceeds WDV of the assets on date of acquisition. The existing definition of "actual cost" in s.43 (1) does not allow financing companies to claim depreciation at the price/ cost at which the assets are acquired from the borrower. Considering that an asset financing company is acquiring the depreciable asset from the borrower for a particular price and using it for its business by leasing it out, it should be allowed depreciation on "actual cost" at which it is acquired from the borrower.
30.	Exchange differences on money borrowed in foreign currency for acquisition of assets within India – S. 43A	S.43A should be extended to allow for adjustment due to foreign exchange fluctuations in "actual cost" even where asset is acquired in India from foreign currency. This will not only bring parity between assets acquired from outside India and assets acquired within India but will also be in sync with "Make in India" concept. Alternatively, s.43(1) should be amended to specifically provide for adjustment in "actual cost" on account of exchange difference on loan obtained from outside India, but utilised to acquire assets in India.	S.43A allows an assessee to make adjustments in "actual cost" of an asset after acquisition of assets from a **country outside India** on account of exchange rate fluctuation arising either on liability payable towards such foreign asset or on account of money repayable in foreign currency utilised for acquiring such foreign asset. The adjusted "actual cost" becomes the base for claiming depreciation. S.43(1) allows adjustment in actual cost with respect to exchange differences on account of loan taken from outside India but utilised for acquisition of assets in India. However, the section does not

			specifically provide for such adjustment where the asset is acquired in India out of funds borrowed in foreign currency.
31.	Foreign Currency Liability – S. 43A	To simplify the process, there is an urgent need to restore the earlier provision of Sec. 43A.	Foreign currency loan liability for import of plant and machinery are required to be re-stated at the foreign exchange rate prevalent at the end of the relevant previous year, and adjusted against the cost of assets as per the ICAI Accounting Standards. This was also in accordance with s.43 A. However, as per amendment in Finance Act, 2002, such foreign exchange fluctuations are allowed to be adjusted only when payment is made. This has brought about unnecessary deviation between the financial accounts and income tax records, necessitating separate and complex compiling of information and documentation. Also, this has resulted in moving away from mercantile system to cash accounting, which is both illogical and unnecessary.
32.	Disallowance of Provision For Leave Encashment under s.43B	U/s.43B of the Income Tax Act, statutory payment like tax, duty, cess, interest payment to banks, etc., are disallowed if these expenses are not actually paid. Since leave encashment is not a statutory due, provision on that account should not be disallowed u/s.43B.	

33.	Section 44AB - Clarification for assessees with gross receipts exceeding Rs.1 crore regarding maintenance of account books.	Clause (a) of s.44AB should be appropriately modified to increase the threshold limit specified thereunder from Rs.1 crore to Rs.2 crores.	This amendment is suggested to avoid any ambiguity in interpreting the true intent of the law regarding maintenance of books of account and their audit, where total turnover/ gross receipts is between Rs. 1 crore and Rs. 2 crore. Further, the current limit took effect from 1 April 2013. Factoring the impact of CPI inflation for the past four years and the next two years, the increase sought is fair.
34.	Section 44AD – partner's salary and interest	• This provision should be deleted as s.40(b) does not mandate allowance of expenditure, but only restricts deduction amounts. S.36 should eb amended to specifically provide that partner's salary and interest is deductible, to avoid unintended consequences.	Presently, partner's salary and interest is allowed as deduction [subject to limits u/s.40(b)] from presumptive profits determined @8% of the turnover. This rationale to delete this provision may be misconstrued and partner's salary and interest may not be allowed as deduction even under normal provisions of the Act.
35.	Restructuring – changes needed to facilitate Ease of Doing Business without loss to Revenue – S. 47	• The definition of 'demerger' should be made less restrictive, and 'undertaking' should include shares held in a subsidiary (because it is simply a way of holding a business). Conversion of company into LLP should be tax-neutral if conditions (primarily commonality of economic interest) as already exist in other forms of restructuring are prevalent.	Conceptually, any form of entity restructuring with virtually the same economic interest needs to be tax-neutral. This concept exists in the context of amalgamation, demerger, conversion of firm into company, but there are still several changes which need to be made to facilitate Ease of Doing Business without loss to the Revenue.
36.	Business reorganisation/ M&A: Other issues	Capital gains tax payment should be triggered as and when consideration is received by sellers, and not on date of transfer itself.	In numerous M&A deals, a part of the consideration is deferred, and may be contingent on future factors such as the future revenues of the target company. The deferred amount (in part or full) may in reality never be received by the seller, if milestones are not met. There is no provision in the Act for the taxpayer to claim back excess capital gains tax paid upfront on the higher amount.

		Amalgamations where the amalgamated foreign company is a parent/ holding company of the amalgamating company, should be specifically brought within the purview by s.47(via) of the IT Act. While the Act provides an exemption in s.47 (subject to certain conditions) from capital gains on amalgamation of two foreign companies which hold shares in an Indian company, similar exemption is not provided for cases where amalgamation/ merger takes place between overseas subsidiaries of Indian companies. Clarification in this regard should be provided.	Under s.47(via), a transfer of shares of Indian company in the course of amalgamation of amalgamating foreign company to an amalgamated foreign company is exempt from capital gains in hands of amalgamating foreign company, subject to the following 2 conditions: • At least 25% of shareholders of amalgamating foreign company continue to be shareholders amalgamated foreign company; and • Such transfer in the course of amalgamation is exempt from capital gains tax as per the local tax laws of amalgamating foreign company. In a case where the amalgamated foreign company is the parent company of the amalgamating foreign company, the first condition of s.47(via) cannot be complied with, as 25% of the shareholders of amalgamating foreign company (being amalgamated foreign company) will not become shareholders of amalgamated foreign company, since the amalgamated foreign company cannot become its own shareholder.
37.	Joint Development Agreements ("JDAs")	A clarification should be provided that in case of JDAs, gains from transfer of land would be taxed in the year of receipt of consideration; merely giving up possession of land to the developer should not constitute a "transfer" for the purposes of the IT Act.	In case of JDAs, capital gains tax is levied when the landowner gives up possession of land to the developers, though the consideration for transfer may be received at a later stage of the project, or on upon final completion.

38.	Characterisation of income from transfer of unlisted shares	• Transfer of control and management has no direct bearing on characterisation of income from transfer of the shares. It is necessary to address this anomaly by providing that even in cases where transfer of shares results in transfer of control and management of underlying business, gains should be assessed under 'Capital Gains'. • Also, the definition of 'capital asset' specifically includes management and control rights *qua* an Indian company. The purpose of this carve-out is therefore unclear, as no reason is given for the exclusion, and could lead to unnecessary litigation. • The current Circular deals only with sale of unlisted shares. It should be extended to all unlisted securities, including debentures/ bonds of public and private limited companies. Similar to earlier Circular dated 29 February 2016, which was issued in the context of listed securities, an option should be provided to assessees to treat income as business income where shares of unlisted companies are consistently held as stock-in-trade.	To ensure a consistent view in assessments pertaining to income from transfer of unlisted shares, the CBDT has clarified that income arising from transfer of unlisted shares would be considered under 'Capital Gains', irrespective of holding period. However, it is also provided that this principle would not necessarily apply in situations where transfer of unlisted shares is made along with control and management of the underlying business. In such cases, the AO would take an appropriate view.
39.	Section 47(xiiib) – Conversion of company to LLP	• The condition of asset base being less than Rs. 5 crores should be rationalised. • Clarify that provision may apply prospectively to conversion proposals initiated on or after 1 April 2016. Also, scope of 'total value of assets as appearing in the books of accounts' should be clarified.	Clarifications are required in respect of additional condition.

40.	S.56(2)(viia) – Taxation of share transfers within closely held companies	Existing provisions of s.56(2)(viia) should be amended to exempt share transfers within same group, i.e. entities which are ultimately held by the same company, as no real income accrues to the transferor by transacting with group companies, since the ultimate parent or holding company is the same for both, the transferor and the transferee.	S.56(2)(viia) provides that if an assessee, being a closely held company, receives shares of another closely held company without consideration, or for a consideration lower than its FMV (calculated in accordance with method prescribed u/Rule 11UA), then such difference should be considered as taxable income under "Income from Other Sources". Exception is provided only for amalgamations and demergers. After introduction of this section, the normal structural realignment between two sister concerns which are ultimately controlled by the same entity also attracts deemed taxation, and thus has led to the hardships in genuine cases. Since the Act, *vide* other sections, provided relief, i.e., s.47 – transactions between Holding and Subsidiary cos and s.79 – benefit of losses to be provided till the time ultimate or beneficially, the control lies with the same entity or person, similar relaxations on transfer within the same group entity should be provided u/s.56(2)(viia).
41.	Transactions without consideration or for inadequate consideration – s.47/ s.56(2) of the IT Act	Since s.56(2)(viia) of the IT Act is an anti-abuse provision intending to curb tax avoidance, it should be applicable to transactions liable to tax and not otherwise. Thus, this section should be applicable to receipt of shares not covered u/s.47. Further, it should be clarified that the following transactions would be excluded from its ambit: o Issue of Shares inclusive of:	S.56(2)(viia) is applicable to receipt of shares without consideration or with inadequate consideration. S.47 of exempts certain transactions from capital gains tax. However, proviso to s.56(2) (viia) excludes only some of such exempted transactions from its applicability. Consequently, those transactions which may otherwise be exempt u/s.47 are still liable to tax under s.56(2)(viia).

		▪ Right issue; ▪ Preferential allotments; ▪ Conversion of financial institution; ▪ Bonus shares; ▪ Split/ Subdivision/ Consolidation of Shares; ▪ Receipt under stock lending scheme; ▪ Receipt by Trustee company; ▪ Buyback of shares; ▪ By offshore investors where purchase price is determined by Indian laws (such as FEMA guidelines, etc.); Genuine business/ commercial transactions.	
42.	S.56(2)(vii)(b)(ii) to be deleted	Delete s.56(2)(vii)(b)(ii).	According to existing provisions, where any property is received for a consideration that is less than the stamp duty value of the property by more than Rs.50,000, the stamp duty value as exceeds such consideration, will be taxed in the hands of individuals/ HUFs as income from other sources. This presumes that the buyer would have paid a consideration higher than the stated consideration. This presumption deserves to be deleted. Stamp duty values are invariably lower than the mkt value. It is an anti-avoidance measure to take care of payment in black. There is a provision for a referral to a Valuation Officer where the taxpayer disputes the stamp duty value.

43.	S.68 – Clarification w.r.t scrutiny examination of funds infused by non–residents	The government should suitably clarify and restrict scope and depth of examination/ scrutiny to be exercised by the AO w.r.t financial affairs of non-resident investors. Moreover, the government may also clarify that in-depth examination of financial affairs relating to source of funds of a non–resident investor by the AO should be allowed only with pre-approval of CIT/ Pr. CIT on the basis of tangible material/ evidence brought on record by AO.	S.68 provides that if any sum is found credited in an assessee's books, and the assessee fails to offer an explanation about the nature and source of money, or if the explanation offered is found unsatisfactory, then such income can be taxed as unexplained income in the assessee's hands. Judicial pronouncements, while recognising the pernicious practice of conversion of unaccounted money masquerading as investment in share capital of a company needs to be prevented, have advised a balance to be maintained regarding onus of proof on the company. Therefore *vide* Finance Act 2012, s.68 was amended to provide that the nature and source of any sum credited, as share capital, share premium etc., in the books of a closely held company shall be treated as explained only if the source of funds is also explained by the assessee-company in the hands of **resident shareholder.** But AOs have been using the amended provisions against non–resident investors of International Repute also. Despite providing sufficient evidence as to the identity and creditworthiness of non-resident investors, AO's deep dive, without reasonable basis, and after having necessary information as to identity and creditworthiness of the non-resident investor, to examine even source of source of funds of such non-resident investors. Non-resident investors are compelled to submit even such information to AO's

			during scrutiny assessment proceedings of Investee Companies, over which AO has no jurisdiction, or is totally irrelevant from the assessment perspective.
44.	Carry forward of business losses on merger under s.72A of the Act	The definition of 'Industrial Undertaking' should be either done away with, so all mergers are eligible for carry forward of losses; or else, it should be widened to include infrastructure/ capital intensive service sectors such as Telecom Infrastructure Service Provider (TISP) and Direct-to-Home (DTH) operators. Further, e-commerce sector should also be included in this provision as such businesses require acquisition/consolidation for growth and expansion/diversification This section should be not restricted to only specific types of companies; it should be amended to allow benefits to all companies, irrespective of their line of business. Further, the section should be amended to replace stringent conditions with liberal ones, such as reducing period of holding assets and carrying on of business from 5 years to 3 years.	Carry forward of business losses on merger is limited to companies owning 'Industrial undertakings". The definition of Industrial Undertaking is extremely narrow and restricted. Several sectors are impacted, as their ability to carry forward losses is significantly compromised. Reasons as listed for amendment in section 79 for e-commerce companies;
45.	Carry forward of losses u/s.79 in case of change in shareholding	In such cases of business re-organisation, s.79 should not be made applicable, as effectively, there is no change in shareholding as envisaged by the section. There are conflicting decisions of the judiciary, some holding that the immediate change in shareholding should be tested, and others holding that the ultimate change in shareholding should be tested, to invoke rigors of s.79. Necessary	In the event of a business re-organisation by which a holding company transfers shares of its 100% subsidiary to another subsidiary, the first subsidiary will not be in a position to carry forward and set-off its losses (if any) as there is a 100% change in its shareholding. However, the holding company continues to hold 100% of the shares of the second subsidiary, which in turn

		explanation should be inserted in s.79 to settle the controversy and bring certainty.	holds 100% of the shares of the first subsidiary. Likewise, there are many instances where shareholding of ultimate foreign holding company is transferred to another foreign company, but the foreign subsidiary continues to hold shares of its 100% Indian subsidiary. In such a situation, the subsidiary will not be in a position to set-off its losses (if any), as there is a 100% transfer of voting rights which were beneficially held by the first- mentioned holding company, though the intermediate subsidiary company continues to hold 100% of shares of the second subsidiary.
		To provide certainty, s.79 may be suitably amended to explicitly state that its provisions are not attracted if the beneficial shareholding of the company remains intact.	In determining 'change in shareholding' in case of a multi-tier holding structure, where the parent company ('Hold Co.') wholly owns a subsidiary ("Sub Co. 1"), which in turn wholly owns another step-down subsidiary ('Sub Co. 2"); an interpretational issue arises in case of sale of equity shares of Sub Co. 1 by Hold Co. to its another wholly owned subsidiary company ('Sub Co. 3'), in excess of 51% threshold limit; or in case Sub Co. 1 merges with Hold Co.. The issue is whether s.79 will still be triggered if there is change in the immediate shareholding of Sub Co. 2 beyond the threshold limit of 51%, even where the beneficial shareholding of the Hold Co. in Sub Co. 2, remains intact. The Karnataka HC has recently held that s.79 will not be triggered if the beneficial shareholding of 51% or more of the

			company remains intact, which means that as long as Hold Co. continues to beneficially hold shareholding of 51% or above, Sub Co. 2 will not be hit by s.79.
		S.79 be suitably amended to exempt cases of such amalgamation or demerger.	Another issue may arise in case of amalgamation or demerger of a company when shares are issued to shareholders of amalgamating/demerged company in the course of amalgamation /demerger. As a result of the issue of shares, the shareholding of the original shareholders/ promoters of the amalgamated company/ resulting company may be diluted to under 51% so as to potentially attract s.79. This may well have been an unintended consequence since amalgamation/ demerger has been made tax neutral under the IT Act, subject to certain conditions.
		S.79 be suitably amended to exempt cases of change in shareholding pursuant to amalgamation of two Indian Company shareholders	Proviso to section 79 provides exemption to Indian Companies whose shareholding is changed pursuant to amalgamation or demerger of a foreign company subject to condition that 51% of shareholders of the amalgamating or demerged foreign company continue to be the shareholders of the amalgamating or resulting foreign company; Such exemption should be allowed to Indian Companies also on account of change in shareholding pursuant to Indian amalgamation/demerger;

		S.79 be suitably amended to exempt cases of transfer of shares of companies engaged in 'e-commerce' activities;	India is the world's second largest Internet market in terms of numbers and is adding 100 million users on average every year. Internet is a huge enabler - creating thousands of digital business enterprises catalysing development of new products and business ideas and at the same time digitizing traditional offline businesses which is also one of main thrust of 'Digital India' initiative of government. Typically, such businesses need significant investment for growth and market penetration and the industry is the highest FDI seeker in the last year. While growth story continues, these businesses usually take longer to break even because of significant investment in initial year for creating an enabling ecosystem. In addition to various structural and regulatory challenges faced by young businesses, the rigours of section 79 of the Act are adding to the woes of the e-commerce sector as a large part of investors are financial investors and do not stay invested resulting in withdrawal of losses. Further, the preservation of losses for set off and carry forward period of eight years under the current law may also prove to be insufficient for the utilisation of entire losses. This sector has also witnessed consolidation which has been taking place in the form of larger e-Commerce companies acquiring smaller companies to either diversify the offerings or to enhance their business operations.

			Section 79 application is one of the limitation in seeking strategic investment for the fastest growing e commerce sector as it is one of the factors which contributes to discounting of value.
46.	Deduction u/s.80G - delete ceilings specified therein	S.11(5) relating to investment of their funds also work as a check to avoid misuse etc. In view of the above, we respectfully submit that: (a) The ceiling of 10% on gross total income be removed. (b) Donations to Chief Minister's Relief Fund be allowed 100% exemption as in the case of Prime Minister's Relief Fund, by deleting provisos a, b and c to S.80G(2)(iiihf).	Even though there are many magnanimous donors to numerous charitable organisations, the overall ceiling of 10% of gross total income u/s.80G impedes more liberal contributions. If this ceiling were removed, the freedom may even induce companies to be more generous.
47.	S.80IA - Unit-wise deduction should be allowed	Many Tribunal benches have already rejected this practice. A specific clarification/ provision should be made in s.80 IA itself to provide that deduction u/s.80IA is 'UNIT SPECIFIC'. For each unit, deduction under s.80IA should be separately calculated. This will save our 'judicial capital' which is already in short supply, and save unnecessary litigation.	Plain reading of s.80IA gives the impression that deduction thereunder is available 'unit-wise'. But, nowadays, losses of other units are clubbed to deny deduction u/s.80IA on the pretext that all units constitute one single business. Also, an assessee/company claiming deduction u/s.80IA from one unit cannot start another unit of similar business and claim deduction u/s.80IA, as the initial losses of the new unit are adjusted against the profits of the old unit However, if the new unit is started by another assessee/company, the old unit will not suffer any disallowance u/s.80IA. This puts existing assessees/ companies in a disadvantageous position vis-à-vis new entities.

48.	Section 80IAC	The condition should be that if turnover exceed the specified limit assessee not eligible for deduction in that year and subsequent year. There must not be any impact on the earlier years.	The consequence if turnover crossed the limit specified is that the assessee held as not eligible to claim deduction and if deduction claimed and in subsequent year turnover exceeds the limit specified the deduction will be withdrawn in the year in which same was claimed and not only tax will be charged but also interest and penalty will also be levied.
49.	General Anti-Avoidance Rules (GAAR), esp. for FIIs and FII Investors – S. 95 to S. 113	The notified GAAR Rules in 2013 had addressed some concerns of taxpayers. While exceptions carved out for Foreign Institutional Investors (FII) and investors in FIIs have alleviated some concerns, it is further recommended that the following should also be covered in Guidelines or Rules, or in the law itself:- • As an overarching principle, GAAR should apply only to abusive or highly aggressive/ contrived arrangements; • As per press release of Jan 2013, the Government had accepted the Expert Committee on GAAR's major recommendations, including one that suggested that where GAAR and SAAR are both in force, only one of them will apply. Guidelines and clarifications in this regard should be issued; • The Expert Committee had recommended that where the treaty itself has anti-abuse provisions in the form of a Limitation of Benefit clause (LOB), the GAAR provisions shall not override the treaty.	GAAR is to be effective from FY 2017-18. The deferral of GAAR provisions to FY 2017-18 was indeed welcome. As stated in the Explanatory Memorandum to the Finance Bill, 2015, GAAR provisions would be implemented as part of a comprehensive regime to deal with Base Erosion and Profit Shifting (BEPS) and aggressive tax avoidance. Considering the current economic environment and efforts of the Government to attract FDI, GAAR should be further deferred. This will provide certainty to the investors and help accomplish the Government's efforts to bring tax certainty. If the Government decides not to defer GAAR, then the points needing to be addressed on immediate basis are listed in the "Recommendations" Column.

		Thus, GAAR should not substitute SAAR. It should be invoked only as a residual, to fortify SAARs, and only in case of abusive transactions. Therefore, clear examples should be provided, confirming that where LOB exists in a tax treaty, GAAR won't be invoked. Also, it may be clarified that where SAARs exist in the tax treaties and/or domestic tax laws, they should prevail over GAAR. • Illustrative examples of situations where GAAR can/ cannot apply should be formulated to provide clarity to taxpayers. The final report of the Shome Committee had illustratively captured instances where GAAR may/may not be applicable. • The current threshold limit of INR 3 crores of tax benefit in a year for invoking GAAR is low, and needs to be enhanced to INR 10 crores. In determining aggregate threshold of INR 3 crores, it is not clear whether the quantum is to be determined on 'gross' or 'net' basis. The tax benefit should be considered on a 'net' basis, i.e, considering benefits as well as losses arising to all parties to the arrangement, and threshold limit be computed accordingly.	
50.	Multiple levy of income tax on dividend – S. 115-O	(i) Tax on distribution of dividend is outside the purview of the charging Section of the Act, since it is a tax not on income but on application of income; (ii) Without prejudice to the above, the Grossing-up Provisions resulting into Additional Tax outgo of approx. 3%	As per existing Sec. 115-O, any Domestic Company distributing dividend out of its already taxed profit is required to pay tax @ 20.358% on Dividend distributed to its shareholders. Considering that a Domestic Company has already paid tax @

		should be withdrawn since it is causing undue hardship to assessees; (vi) It is recommended that an appropriate explanation be inserted clarifying that the benefit of DDT paid by a subsidiary is available at each company level in a multi-tier corporate structure so as to avoid the cascading impact of DDT. This will go a long way in boosting investors' confidence and improve the ease of doing business in India. (vii) The existing provision should be amended to provide uniform and simplified taxation regime so as to provide for the DDT credit, irrespective of the stipulating condition that one company should hold 51% or more of the share capital of the company declaring, distributing or paying the dividend.	34.608% on its total income, further payment of DDT @ 20.358% is excessive. After introduction of "Grossing-up Provisions", the effective tax on dividend distribution is higher by 3%. A question arises as to whether distributable profits qualifies as 'income' under the Act. 'Income' is defined inclusively u/s. 2 (24) but 'distributable profits' are not specifically mentioned in the extended arm [Clauses (i) to (xviii) of s.2 (24)]. Considering that Income Tax is a tax on income of the previous year, and would not cover something which is not the income of the previous year but an application of already taxed income for the same or earlier years, the distributable profits out of which dividends are paid cannot constitute the company's "income" by any stretch of imagination [see SC (larger bench) decision in CIT vs Khatau Makanji Spinning & Weaving Co. Ltd.- 2002-TIOL-1156-SC-IT-LB]. Accordingly, levy of Dividend Distribution Tax (DDT) on tax paid income u/s.115-O is invalid. Even expenses incurred for earning the exempted dividend income are disallowable u/s.14A r.w.Rule 8D and consequent taxable. Furthermore, with introduction of levy of tax on dividend received by Individual, HUF, firm in excess of Rs.10 lacs, tax is effectively levied on dividend for the third (3rd) time.

51.	S.115-O – Clarification on absolute removal of cascading effect of Dividend Distribution Tax (DDT)	The existing provision should be amended to provide uniform and simplified taxation regime, providing for DDT credit irrespective of the stipulation that the recipient company should hold 51% or more of the share capital of the company declaring, distributing or paying the dividend.	S.115-O provides that the tax base of DDT, i.e., dividend payable in case of a company, is to be reduced by the amount of dividend received from its subsidiary, if such subsidiary has paid the DDT payable on such dividend. This ensured removal of cascading effect of DDT in a multi-tier structure, where dividend received by a domestic company from it's subsidiary company (in which it holds equal to or more than 51% of the nominal value of equity share capital). The principle applied for removing the cascading effect of DDT is 'tax should be paid only once on the same income'. But this has been applied in a limited context, as, when a company holding only 20% shares in another company receives and pays dividend has to pay DDT on both, the receipt and payment separately, though to the extent of the receipt, it is the same dividend (income). One can refer to s.80M (as it stood before its deletion) which provided for deduction of dividend received to the extent of dividend paid from such company. In s.80M, there was no stipulation prescribed as to the minimum threshold of shareholding percentage to be held in the declaring company by the recipient company.

52.	Business reorganisation/ M&A: Issues relating to Buyback Tax u/s. 115QA	Buyback Tax should not apply if the company does not have accumulated profits; In case of non-residents, the Buyback Tax may result in double taxation of income. Hence, appropriate mechanism for availability of tax credit to shareholders should be introduced; In case of shares issued to employees under an ESOP scheme, the fair market value considered for perquisite taxation should be considered as issue price	
53.	Provisions related to special audit under S.142 (2A) should be restricted to avoid undue hardship to assessee	Provisions related to special audit should be watered down, and only under exceptional circumstances, when there is clear evidence of revenue exposure due to complexity, or if the assessee's accounts are not audited under the new Companies Act, should Special Audit provisions be triggered.	Scope of s.142(2A) (related to Special Audit) has been enlarged to enable tax authorities to initiate Special Audit even in situations where assessee has fully cooperated, and provided all information sought by the tax officer.
54.	Enlarged scope of Special Audit u/s.142(2A) – should be dropped	The amendment to s.142(2A) should be withdrawn. The original scope of the section, which permitted special audit under specific circumstances, should be restored	The amendment to s.142(2A) *vide* Finance (No.2) Act, 2014, has enhanced scope of Special Audit and empowers the AO to conduct special audit in cases involving volume of accounts, doubts about correctness of the accounts, multiplicity of transactions in accounts, or specialised nature of the assessee's business activity. This power is in addition to existing provisions wherein the AO can ask for a special audit, considering the nature and complexity of accounts. The test of volume and multiplicity of transactions will result into special audit in almost all circumstances. All big corporates are already subject to Statutory Audit and Tax Audit. Hence, enlarging the coverage of cases for special audit is not warranted.

55.	Power of AO to ask for Valuation Report u/s. 142A to be restricted to exceptional cases	i) The power of reference to the Valuation Officer should be available in the following manner: a) The power to the AO should be restricted to specific exceptional circumstances/ conditions. b) AO should record reasons for invoking power u/s.142A and assessee should be able to get access to these recorded reasons. c) AO should take prior approval of higher authority not below rank of Commissioner. ii) Valuation Report submitted by the Valuation Officer should be binding on AO. iii) Specific guidelines/ rules should be brought to define "any asset, property or investment".	The scope of s.142A has been enlarged enormously *vide* Finance (No. 2) Act, 2014, to give blanket powers to the AO to make reference to Valuation Officer to estimate the value, including fair market value, of "any asset, property or investment" as against the earlier scope restricted to unexplained investments, cash credits, etc. This reference is for the purpose of "assessment or reassessment". Also, AO can resort to valuation whether or not he is satisfied about the correctness or completeness of the assessee's accounts. The provisions also empower the AO to disregard the report from the Valuation Officer. Such blanket powers will increase the litigation and hardship to assessees.
56.	**Compulsory processing of return u/s 143(1)**	S.143(1D) should be scrapped and the erstwhile provision requiring processing of return within 1 year from the end of the financial year in which return of income is filed should be retained, irrespective of whether notice u/s.143(2) has been issued to the assessee or not. Further, processing of return of income u/s.143(1) should be made mandatory for all assessees, including corporates. Without prejudice to the above, S.143(ID) should be amended suitably allowing the A.O to process refund cases smoothly in cases where notice has been issued.	S.143(1D) introduced by Finance Act, 2016 provides that an intimation can be processed until the issuance of an order u/s.143(3). This condition puts the assessee at a disadvantage, by unnecessarily extending processing of return till the date of issuance of order u/s 143(3).

57.	S.144C – Reference to the Disputes Resolution Panel	It is recommended that government should amend the existing constitution of Dispute Resolution Panel, to include at least one member (retd.) from ITAT, so that panel should be making assessments or passing orders independent of the apprehensions of tax consequences. This shall ensure speedy justice and relief to the taxpayers in the genuine cases.	The Finance (No.2) Act, 2009 introduced an alternate dispute resolution mechanism by constituting Dispute Resolution Panel to facilitate expeditious resolution to disputes on a fast track basis, as it was realized that "flow of foreign investment is extremely sensitive to prolonged uncertainty in tax related matter. The Disputes Resolution Panel means a collegium of three Commissioners of Income Tax. The panel was expected to decide disputes in a judicial manner regardless of the tax implications. But these panels have not functioned as independently as they should have and almost every dispute has to be taken up before the Tribunal.
58.	Specific recognition to be accorded to IND AS in S.145(1)	IND AS must be explicitly recognised by S.145(2) to be in consonance with statutorily prescribed accounting standards for determining taxable income under normal tax provisions. Reference to ICDS in S.145(2) needs to be dropped.	At present, s.145(1) states that the income of the assessee shall, subject to ICDS provisions, be computed according to cash or mercantile system of accounting regularly employed by the assessee. Despite this, AOs disregard accounting treatment made in accordance with methods of accounting prescribed by recognised Accounting Standards. IND AS are mandatorily required to be followed on or after 1st April, 2016. MAT computation provisions state the starting point of computation as net profit as per the P&L. Accordingly, profit determined as per IND AS will now become the basis for MAT calculation for future years. However, there is no specific mention of IND AS in s.145(1) to make that possible.

59.	Rationalization of S.145A method of accounting	Method of accounting consistently followed as per the AS should be accepted to remove hardship, as there is no deviation in profit as per AS-2 or method prescribed in s.145A.	Various assessees are mandatorily required to follow method of accounting as per the Accounting Standards (AS) applicable in India, which is prescribed by the ICAI. However s.145A deviates from the AS to certain extent. As per Guidance Note issued by ICAI in respect of method of accounting with regards to inclusive method as per S.145A, or exclusive method as per AS-2, there is no impact on the assessee's profit. Though there is no impact on profit and loss account, whether the assessee follows inclusive method or exclusive method, to comply with s.145A, the assessee needs to prepare profit and loss account following inclusive method, which is duplication of effort.
60.	S.148 – Reasons for reopening to be sent along with notice for reopening of assessment	The government should suitably clarify, either by issuing a circular or by issuing internal instruction to AOs, that 'reasons for reopening' have to be sent along with the notice for reopening of assessment. This will simplify the reassessment proceeding procedure.	S.147 empowers an AO to reopen an assessment if he has "reasons to believe" that income has escaped assessment. The section does not have any procedural requirements, but a practice has developed and been laid down by the SC in GKN Drive Shafts' case, to be mandatorily followed while reopening assessment. Presently notice is issued u/s.148. Later, the assessee has to request for the 'reasons for reopening' from the AO.

61.	Prescribing statutory time limits for passing OGE to Appellate Orders from date assessee receives CIT(A) Order/ hosting of Order on ITAT website – s. 153	A statutory time limit should be prescribed for AOs to pass OGE, like the time limits prescribed for passing of assessment order, rectification order, filing of appeals, etc.	The Act does not specifically prescribe the time limit for passing Orders Giving Effect (OGE)to Appellate Orders. As such, passing of OGEs is at the AO's sole discretion . Assessees are required to continuously follow-up with AOs for seeking orders, especially where they have been decided in assessee's favour.
62.	S.153- time limit for completion of assessment	Time limit for completing assessment should be reduced to 15 months.	Presently, the AO has 21 months, further increased by 12 months where case has been referred to TPO. Now that all filling and arithmetical processing are happening online, period of 21 months to complete assessment is too long. The long period of assessment is becoming a tool in the AOs' hands to harass assessees through multiple hearings. It is also a tool for unscrupulous assessees.
63.	Office Memorandum dated 29 February 2016 (Guidelines for stay of demand at first appeal stage) – S.156	• It should be clarified that this relaxation should also apply if appeal is pending before ITAT for taxpayers who have opted for the Dispute Resolution Panel (DRP) route (as, for such taxpayers, ITAT is their first appellate authority). • In matters that are covered in assessee's favour (by virtue of favorable ITAT/ HC orders), it should be clarified that o Such demand should not be adjusted u/s.245 against refunds of other years. This proposition has upheld by the Bombay HC in HDFC Bank Ltd. (**354**	In a welcome step, the CBDT has modified Instruction No 1914 to provide that where a demand is disputed before the CIT(A)/ first appeal stage, the AO shall grant stay of demand till disposal of first appeal on payment of 15% of disputed demand. However, there are situations that warrant consideration and clarification. This will provide much needed relief to taxpayers who are generally hard pressed by field officers for recovery of demand despite the fact that the issue is covered in their favour in earlier

		ITR 77). The relevant extracts are reproduced below:- *"...**Once an issue has been covered in favour of the assessee in respect of another assessment year on the same point, it was wholly arbitrary on the part of the department to proceed to make an adjustment of the refund. If the adjustment was not made, there can be no manner of doubt that the assessee would have been entitled to a stay on the recovery of the demand.** ..."* The Delhi HC ruling in Maruti Suzuki India Limited vs. DCIT (**347 ITR 43**) also holds a similar view. Relevant extracts reproduced below:- *"...**conduct and action of the respondent-Revenue in recovering the disputed tax in respect of additions to the extent of Rs.96 crores on issues which are already covered against them by the earlier orders of the ITAT or CIT (Appeals) is unjustified and contrary to law**. ...".* o Merely because the Department has filed an SLP before the SC should also not be a ground for not allowing stay of demand (where issues are covered in favour of taxpayer by HC orders). Alternatively, AO should grant stay of demand till disposal of appeal on payment of 5 or 10% of disputed demand.	years. Some clarifications that would be welcome are listed in the "Recommendations" column.

64.	Change due dates for payment of advance tax – S. 211	The provision requiring payment of 15% as advance income tax on or before 15th June in each year be scrapped. The schedule for payment of advance tax should be fixed in such a way that not more than 75% is payable as advance income tax on or before the 31st March each year, and 100% by 15th June of next financial year. This will save interest for assesees, as they can predict and pay correctly. Revenue collection of government will not be affected, as government will receive last instalment of advance tax in June, instead of first instalment. We suggest I instalment (25%) in Sept, II instalment in Dec (30%), III instalment in March (30%) and IV instalment in June (15%).	U/s. 211, Companies have to pay 15% advance income tax on or before the 15th June each year. This causes unnecessary hardship, since it is extremely difficult to compute taxable income within 75 days from the commencement of the financial year - projections for depreciation (due to new acquisition or sell), TDS certificates that may be received, for example, cannot be ascertained accurately. Moreover, projections of profitability tend to vary from month-to-month. Also, the requirement to pay 100% of the amount computed as income tax on or before 15th day of March each year results in curtailing cash inflows of companies.
65.	Section 220(6) -	• Assessee should be allowed automatic stay of demand on payment of 7.5% of the demand. The stay will remain in operation till first appellate order is passed. • Assessees should be given the liberty to approach the Commissioner (Appeals) and request for stay without mandatory payment of 7.5% of the demand. Recovery of the demand arising from the levy of penalty after the order of the Commissioner (Appeals) should be stayed till one month after disposal of quantum appeal by Tribunal.	• Under the existing regime for recovery of demand, Assessing Officers insist upon collecting disputed demands even when they are in appeal. The situation is aggravated when revenue collection targets are ambitious. In practice, this leads to serious hardships and cash flow problems. • The procedure for collection of disputed demands needs to be streamlined to balancing the need to meet revenue targets with fair treatment to taxpayers. • In high-pitched assessments, payment of 7.5% of demand also could be onerous for the assessee. Undue hardship is caused to the assessee when penalty is levied and sought to be collected even when appeal against the quantum addition is pending before Tribunal.

66.	Interest u/s 244A	• The rate of interest charged on the assessee as well as the rate of interest payable to the assessee should be the same. • Interest shall be granted to the assessee on amount of refund due (tax plus interest) which is due the assessee on each order date but not granted by the department in full. For delay in payment of tax, government charges interest @1% p.m. (i.e.12%p.a.) u/s.234A, 234B, 234C, & 220(2). But for refund to assessees, government pays interest @0.5% (i.e. 6%p.a.). Interest rate for delay in payment & refund should be the same. Rate of interest should be fixed @ 9% p.a. (roughly Bank FD rate) for both, delay in payment & refund.	Rate of interest payable to assessee by the Income Tax Department is only 6% while interest charged by the Department is 12%. Interest is compensatory in nature and not penal; the loss of interest for the Income Tax as well as the assessee is the same due to non-payment of dues in time. There is a need for equity. Further, the computation of interest on amount due to the assessee is an area of litigation. The assessee is not given interest on "total amount due" (Tax *plus* interest thereon) to the assessee as per the last order.
67.	Section 245 - Adjustment of refunds due to assessees against erroneous demands shown as outstanding	S.245 should be amended to provide that no set-off of refund under this section shall be made by any income-tax authority without giving intimation in writing to such person of the action proposed to be taken under this section, and without dealing with the objections, if any, filed by such person in response to such intimation served on him. Systems should be amended/ put in place to stop assessees' funds being adjusted without authority of law.	Adjustment of refunds due to assessees against erroneous demands shown outstanding in their cases causes great heartburn. Even where the assessee lodges his objection on the CPC portal, pointing out that the demand sought to be adjusted against the refund is not outstanding, and therefore is being erroneously adjusted, there is no remedy by which the CPC can take note of the same. It is settled by several judicial pronouncements that where any demand outstanding against the assessee relates to a point which stands squarely covered by a decision in the assessee's favour, such demand cannot be adjusted against any refund due to the assessee. Courts have logically

			explained that the assessee in such a case would have been undisputedly entitled to stay on recovery of such demand, and merely because the Department is in possession of the assessee's funds due to him as legitimate refund, it cannot be adjusted against such a demand. The Revenue cannot defend such erroneous adjustments merely on the ground that the system does not provide for any such mechanism.
68.	Amendment to S.263 relating to revision of orders prejudicial to revenue	Explanation to s.263(1) should be withdrawn.	The amendment to s.263(1) by insertion of an Explanation provides that an order passed by an AO shall be deemed to be erroneous insofar as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner, the order i. is passed without making inquiries or verification which should have been made; ii. is passed allowing any relief without inquiring into the claim; iii. has not been made in accordance with any order, direction or instruction issued by the CBDT u/s.119; or iv. has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional HC or SC in the case of the assessee or any other person. Such broad rights and powers to invoke s.263 defeat the purpose of simplifying the law and reducing litigation.

69.	S.270A dealing with levy of penalty for under-reporting & misreporting should be rationalised	These needs to be suitably modified to restrict scope of under-reporting or misreporting to only *mala fide* cases and to ensure that genuine assessees are not harassed. At a minimum, the earlier provisions for levy of concealment penalty or furnishing inaccurate particulars can be retained. Also, the onus to prove *mala fide* intention should be on the AO, before levying the penalty.	S.270A, newly introduced by Finance Act, 2016, prescribes situations under which income is considered to be under- reported or misreported. One instance of under-reporting is mere excess of income assessed over income returned, for which a 50% penalty is applicable. This implies that any disallowance made by the AO will be a case for levy of penalty, regardless of whether the disallowance is on account of a false or genuine claim, capable of different interpretations. This gives absolute powers to AOs to levy penalty without going into merits of the disallowance. It also creates a perception of the effective tax rate being much higher. There is no clear-cut explanation/ definition of what constitutes misrepresentation or suppression. Further, no obligation has been cast upon AOs to prove the *mala fide* intention of assessees, though they have the power to levy the penalty.
70.	Interest & penalty not to be levied if arising due to retrospective amendments	A provision needs to be introduced to provide that in the event of retrospective amendment pertaining to withdrawal of deduction, claim, incentive, etc., no interest/ penalty should be levied on the assessee if the demand is on account of such retrospective amendments. Also, it is good legislative practice to eschew retrospective amendments.	We have witnessed several amendments with retrospective effect in the past 3-4 years. The amendments have affected basic concepts such as definition of royalty, transfer, MAT provisions, deductions u/Ch. VIA, TDS provisions u/s.195, capital gains, etc. Most of these retrospective amendments were made to neutralise decisions of ITAT/ HC which were in favour of the assessee. As a result of these amendments, AOs reopen assessments which often result into tax demands since claims

			already allowed to the assessee will be withdrawn. The demand will also trigger interest u/s.234B; and AOs also initiate penalty proceedings. Such levy of interest is a clear violation of principles of natural justice, since no assessee can ever envisage a retrospective amendment. For the same reason, no penalty should be levied arising out of such retrospective amendments.
71.	Ss.273A, 273AA and 220(2A) – time limit for disposing petitions for waiver of penalty, and for waiver of interest u/ss.220, 234A/B/C	Ss.273A, 273AA and 220(2A) should be suitably amended, and CBDT should issue suitable directions u/s.119(2)(a), providing for time limit for disposal of petitions, for waiver of interest thereunder, and providing for time limit for disposal of petitions for waiver of interest u/ss.234A, 234B and 234C.	A time limit of 1 year has been prescribed for disposal of an assessee's revision petition u/s.264, but there is no such time limit for disposal of petitions for waiver of penalty u/ss.273A and 273AA and for waiver of interest u/ss.220, 234A/B/C. As a result, assessees' petitions on these points remain unattended to for long. It is desirable that a limit of 1 year from the end of the financial year in which the petition is filed, be prescribed in all these cases.
72.	S.273B – enlarge scope of section to prohibit levy of concealment penalty where disallowance made without evidence or on estimate basis, or where AO takes view different from assessee's *bona fide* view supported by ruling	The scope of section 273B should be suitably enlarged to provide that penalty for concealment of income, or furnishing inaccurate particulars thereof, should not be imposed where any addition or disallowance is made without any evidence, in a routine manner, or on estimate basis, and in cases where the Assessing Officer takes a view different from the *bona fide* view adopted by the assessee on any issue involving interpretation of any provision of the Act or any other law in force, and which is supported by any judicial ruling.	The almost automatic initiation and consequent levy of penalty by Assessing Officers for additions or disallowances made under scrutiny assessment has led to proliferation of litigation. Often, penalty is imposed for concealment of income u/s. 271(1)(c) to forestall any audit objection or departmental action. In respect of penalties u/ss.271 to 272BBB (other than penalty u/ss.271AAA and 271AB for cases where search has been initiated), several situations arise where an assessee, despite acting *bona fide* by relying on an interpretation of law supported by a Tribunal, High Court or Supreme Court ruling, invites a

			penalty. These penalties inflict hardship upon assessees despite their claim being *bona fide*, or because their viewpoint on a question of law or interpretation of the statute was not accepted by the Assessing Officer. It has also given rise to wasteful litigation where penalties have mostly been cancelled by appellate authorities. The proposed amendment will cut wasteful litigation and infuse a sense of responsibility and accountability both, upon the assessee and the revenue.
73.	S.276B – Clarification w.r.t initiation of prosecution proceedings where tax and interest paid in full	An explanation should be inserted to S.276B, clarifying that no prosecution will be initiated in cases where assessee has made good the default by depositing the amount with interest as prescribed under the relevant provisions of the Act, and also clarifying that in cases where assesses are not repeat defaulters, prosecution provision shall not be applicable. This will encourage compliance with the law in a time bound manner and reduce litigation.	Retention of government dues beyond due date is an offence liable for prosecution u/s.276B. The defaulter, if convicted can be sentenced to rigorous imprisonment for 3 months to 7 years. As per revised guidelines, defaulters who have retained TDS deducted and failed to deposit it in government account within due date shall be liable for prosecution, irrespective of the period of retention. Though the offence can be compounded by the Chief Commissioner having jurisdiction over the assessee, the initiation of prosecution leads to hardship in genuine cases where assessees have *suo moto* discovered the default and made payments of TDS along with interest (even before show cause notice for initiation of prosecution is issued to them). Once the assessee has made good the default with interest (since default only causes temporary financial loss to the exchequer), he should not face punitive measures twice (i.e. once penalty and subsequently prosecution) for the same default.

74.	Annual Contribution to an Approved Gratuity Fund by the employer	Rule 103 should to be amended to grant flexibility in ordinary annual contribution to approved fund by employer as per the actuarial valuation, or alternatively, it should provide for a window once in 2/3 years to make good the shortfall in the Gratuity Fund.	AS 15 requires that provision for gratuity should be made on the basis of actuarial valuation, which is a scientific method of computing estimated liability by considering various yardsticks. S.40A (7) provides for deduction of provision made for contribution to an approved Gratuity fund. However, Rule 103 of the Income Tax Rules 1962 restricts the ordinary annual contribution to 8.33% of the salary of each employee each year. **Issue**: Gratuity payable on balance sheet date as per Actuarial Valuation usually exceeds 8.33% of an employee's current salary, as it is computed based on various factors considering length of service, increase in salary, retirement age, mortality, discounting rate, etc. However, employer will not get deduction for payment to an approved gratuity fund in excess of 8.33% of each employee's salary. This restriction acts as deterrent to contribution to approved gratuity fund, leading to short funding.
75.	Authority for Advance Rulings	It should be ensured that the time limit prescribed for passing orders should be adhered to by the AAR.	The Authority for Advance Rulings (AAR) has a significant backlog of cases. Getting an advance ruling within a reasonable time has become extremely difficult.
76.		Considering that the objective behind AAR is to provide faster dispute resolution mechanics, mere filing of income tax return should not debar the taxpayer in approaching the AAR.	Certain contrary recent judicial precedents (including of AAR rulings) has created ambiguity regarding maintainability of AAR in case return of income has been filed.

77.	Toll Collections during construction period should be exempt from income tax	Clarification needs to be provided, classifying collections during construction period as capital receipts to the extent they are utilised for funding the project, and not be taxed. If not, there could be extensive and expensive, though avoidable, litigation.	Certain road concessions which involve widening of existing carriageway permit toll collections from users of existing carriageway to part-finance the construction. With more large concessions expected to come out in widening of 2-lane to 4-lane and 4-lane to 6-lane, the issue of taxability of such income has gained importance.
78.	Income from temporary investments during construction period should be exempt from Income Tax	The main objective of such investments is not to earn income but to reduce the construction cost. Therefore, these incomes should be exempt from income tax.	All Infrastructure projects are setup by SPV companies, which have no other business/ assets apart from the project itself, which takes 3 to 5 years, if not longer. SPVs have temporary cash surpluses when they receive funds raised but have not yet deployed them to meet project capital costs. These temporarily idle funds are invested in liquid avenues like fixed deposits, mutual funds, etc. Income earned on such investments are ploughed back and go to reduce the project cost.
79.	Carry forward of excess foreign tax credit	In case of continued business operations with that foreign country, • Assessees should be permitted to carry forward (say for 5 years) such unutilised credit (in USA, such relief is granted *vide* s.904(c) of Federal Tax Act), if there is any further business generated from that country. In case of non-continuance of business operations with that country • Some mechanism for recovery of taxes from foreign country should be negotiated into the DTAAs. For example, DTAAs should specify clear procedure to be followed to claim	In respect of Foreign Tax Credit (FTC) there are no clear guidelines available. For example, Canada has clearly defined FTC in IT-270R3 of its Income Tax Act. The Income-tax Act, 1961 allows for set off in respect of foreign taxes paid on overseas income. However, in case of losses/inadequate profits, no set-off is possible. In the current volatile global economic scenario, more clarification is required on claiming FTC. ***Say for example:*** Value of foreign project is 100m USD

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<td>81.</td>
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<td>refund from that country's revenue authorities.</td>
<td>Withholding tax at, say, 3.5% as per country's regulations

Net Remittance = 97m USD

1USD= INR 65

WHT in INR=100m*65= 650 cr *3.5% =21.125 cr

Project profit & set off procedures
<table>
<tr><th>Particulars</th><th>Amt (Rs. Cr)</th></tr>
<tr><td>Income</td><td>650.00</td></tr>
<tr><td>Expenses</td><td>617.00</td></tr>
<tr><td>Margin</td><td>33.00</td></tr>
<tr><td>Tax in India @32.245%</td><td>10.64</td></tr>
<tr><td>WHT in foreign country</td><td>21.125</td></tr>
<tr><td>Maximum set-off that can be claimed in India</td><td>10.64</td></tr>
<tr><td>Cost to company (Unutilised FTC)</td><td>10.485</td></tr>
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<td>80.</td>
<td>Quantitative details under Form 3CD</td>
<td>Companies following AS-7 valuation, for example, EPC companies, should be exempted from providing quantitative details on raw materials and finished goods in Form 3CD under clause 28(b).</td>
<td>Mandating provision of such details would be extremely cumbersome and costly.</td>
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<td>81.</td>
<td>Equalisation Levy</td>
<td>Suitable amendments should be carried out to address concerns listed in next column.

There could be a situation when Indian entities receive a cross charge from their overseas parent for various group services, inter alia, including the Indian entity's share of online advertisement spending. There is no clarity on applicability of this Levy on such cross charges. This could lead to confusion amongst payers as to the manner in which the Levy should be deducted.</td>
<td>Equalisation levy @ 6% is leviable on consideration for any "specified service" received or receivable by a non-resident from, inter alia, a person resident in India carrying on business or profession.

Further, the term "specified service" is defined to mean:
• online advertisement
• any provision for digital advertising space
• any other facility or service for purpose of online advertisement; and</td>
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			• any other service as may be notified by the Central Government in this behalf. The scope of "specified service" is very wide. This leaves scope for ambiguity and interpretation issues. Comprehensive examples and suitable clarifications ought to be provided as to the types of situations which can/ cannot be covered within the purview of this levy. Also, as Equalisation Levy is not part of India's tax laws, a non-resident may not be able to get treaty protection and credit for this levy in his home country. To this extent, the Equalisation Levy regime marks a departure from OECD recommendations in Action Plan 1, which stated that existing treaty obligations ought to be respected to ensure consistency with existing international legal commitments.
82.	Group taxation regime should be introduced	• Concept of group taxation relief mechanism should have the following features – ◦ Taxability of the consolidated profit of the Group as a whole ◦ Allow transfer of losses incurred by eligible entities in the Group to profit making group entities for set-off ◦ No scrutiny of intra-group transactions • Entities to be considered for group taxation (Eligible entities in the Group) – ◦ For listed companies, all entities in which holding company owns or controls over 51% equity	• In the current Indian tax regime, losses of a business carried on by subsidiaries/ group entities are not allowed to be offset against profits of a business carried on by the holding entity or by other subsidiaries/ joint venture entities in the group. This leads to inefficiency and immobility in conduct of business operations, resulting in complex business structures. • In many situations (e.g., infrastructure sector or financial services sector), commercial imperatives (e.g., requirement of separate Special Purpose Vehicles for bidding for infrastructure

		◦ For unlisted companies, all entities in which the holding company owns or controls more than 60% equity • Anti-abuse provisions – ◦ Restriction on divestment of entities aggregated under group taxation for a period of time, say, 3 years • MAT provisions – MAT should be applied on consolidated basis.	projects), or regulatory requirements (e.g. SEBI regulations requiring a separate entity for Asset Management Company), necessitate set- up of separate companies; however, it is more rational to look at this as an integrated operation, which is the underlying rationale for group taxation. • Group taxation exists in many countries, including Australia, Germany, Japan, Netherlands, UK and USA. To harmonise the Indian tax system with global best practices, group taxation regime should be introduced. Implementation of Group Taxation regime in India would increase competitiveness of Indian groups in the global market, where other global players benefit from such a regime. This would also increase business focus and boost economic participation.
83.	Issues related to International tax – clarifications needed	The following examples need to addressed – • Non applicability of retrospective amendments in the Act to provisions of DTAAs; • Clarification on taxability of the following under DTAA: ◦ Sale of shrink wrapped software ◦ Payment made for use of standard facility with no human intervention Treaty benefit to airlines operating on code sharing basis	There are various concerns in interpretation of provisions contained in the Double Taxation Avoidance Agreements (DTAAs) which need to be clarified.

84.	All refunds should be done through bank transfers	**The current system of issuing refund cheques should be switched in its entirety to direct online fund transfers.** This change should be implemented on a priority basis as it will also end many taxpayers' grievances regarding refunds. Making refunds online will also reduce/ eliminate manipulations and corrupt practices.	**All income tax refunds to be put directly through online transfer in bank accounts** The Income Tax Department is currently sending refunds over Rs.50,000 *via* cheques only dispatched through the postal department for all assessees.

MINIMUM ALTERNATE TAX			
85.	Rate of MAT	Rate under MAT should be reduced in line with reduction in rate under regular provisions of the Act. Further, MAT credit should be allowed to be carried forward indefinitely to avoid lapse of MAT credit, thereby putting a burden on industry.	Book profits are subject to MAT at effective rate of 21.34% Recently, the Government has proposed to reduce the rate of tax under the regular provisions of the Act. As a result, not only would the MAT credit increase, but the utilisation of accumulated MAT credit would get prolonged, thereby resulting in lapse of MAT credit. MAT was introduced more as a measure to advance tax collection, akin to advance payment of tax. A company was required to pay MAT as taxes on book profits exceeded taxes under regular provisions. However, MAT was never intended to be a final tax liability.
86.	MAT on foreign dividend	Higher tax rate under MAT provisions would be a disincentive for repatriating funds to India, and partially defeat the purpose for which s.115BBD was introduced. Foreign dividend should be exempt from MAT, like domestic dividend.	Finance Act 2011 introduced s.115BBD, which provided that dividend paid by a foreign company to an Indian company, in which the Indian company holds 26% or more of the equity share capital, would be taxed in the hands of the Indian company at 15% (*plus* applicable surcharge and cess). Further, to remove the cascading effect of dividend received by an Indian company from a foreign company, s.115-O was amended. Where an Indian company pays tax on dividend received from a foreign company u/s.115BBD and thereafter, the Indian company distributes dividend to its shareholders, dividend on which tax has already been paid by the Indian company, i.e., u/s.115BBD, shall be reduced from the dividend on which Dividend Distribution Tax ("DDT") is payable by the Indian company.

			Domestic dividend is specifically exempt from applicability of MAT u/s.115JB but similar exemption is not available u/s.115JB on foreign dividend. The consequence would be that Indian companies will pay an effective tax of 21.34% on foreign dividend due to MAT provisions, as against effective rate of 17.30% stipulated u/s.115BBD. Further, since Indian companies have made outbound investments through investment companies which generally do not have any other source of income, these companies would not be able to utilise MAT credit.
87.	Explanation 4 to s.115JB – Applicability of MAT to foreign companies	• A suitable amendment should be made to provide that foreign companies having PE in India and covered under the presumptive tax regime may be kept outside the purview of MAT. • To avoid any controversy, it should be clarified that for foreign companies having PE/ Place of Business in India, computation of book profits should be based on India profits, not global profits.	Benefit may be extended to foreign companies having PE and covered under presumptive tax regime in India.
88.	MAT removal for enterprises engaged in Infrastructure Development & SEZ	Minimum Alternate Tax should be removed for enterprises engaged in Infrastructure Development & SEZs as this would enable them to attract investment. Alternatively, period of MAT credit should be raised to 15 years.	The intention of ss.10AA & 80-IA is to provide incentive to companies *via* tax benefit to engage in infrastructure development and providing infrastructure facilities. Keeping in mind the subdued economic growth and the need to revive manufacturing sector, the infrastructure sector, and SEZs should be provided a fresh impetus by bringing them out of the purview of MAT provisions. The revenue foregone will compensate by re-igniting the economy's growth engine.

			MAT credit can only be claimed by an SEZ unit after the tax holiday period. SEZ units can, u/s.10AA, claim exemption for 15 years (100% for initial 10 year and 50% for next 5 years), but the MAT credit can be claimed u/s. 115JAA for only 10 years. MAT levy on SEZ has undermined tax benefit to units operating under SEZ, but MAT credit is a silver lining. Period of MAT credit should be aligned with period of tax holiday. It will boost confidence of getting tax benefit to units operating in SEZs.
89.	Set off of MAT Credit from Tax on Total Income before charging surcharge and education cesses	Set-off of brought forward MAT Credit should be allowed u/s.115JAA against tax on total income before charging any surcharge and education cesses.	Income tax e-filing return Form ITR 6 allows deduction for credit under S.115JAA from the gross tax payable excluding surcharge and education cesses, and specifically instructs an assessee to compute surcharge and education cess on tax payable after reduction of MAT Credit brought forward u/s 115JAA. The manner of set off of brought forward MAT Credit is not prescribed in the Act, but the issue is covered by the Allahabad HC decision in CIT v. Vacment India (2014) 349 ITR 304.
90.	Exclusion of Capital Profit/ Loss & Profit & Loss on Sale of Fixed Assets & Investments in computing Book Profit for levy of MAT u/s.115JB	By including capital receipts & profit on sale of investments in the MAT computation, the objective of introduction of ss.115J, 115JA & 115JB would be defeated; i.e., it would levy tax on receipts which do not fall within the definition of income at all. Also, including it would not result in arriving at a company's real working results. Therefore, capital profit/loss and Profit & Loss on Sale of Fixed Assets & Investments should be excluded in computing Book Profit u/s.115JB. Also, the 1st proviso to s.10(38) of the Act should be deleted.	The charging section and the computation provisions together constitute an integrated code. A case to which the computation provisions cannot apply is presumed to not be intended to fall within the charging section. 'Income' has been defined in s. 2(24) of the Act inclusively. The definition has been expanded from time to time. Only receipts that are revenue in nature are chargeable to tax. Capital receipts are not income, and accordingly, not subject to income tax. This view has been fortified by the SC in Padmaraje R. Kadambande v. CIT (1992) 195 ITR

			877 (SC), wherein it held that capital receipts were not income within s.2(24). This SC decision clearly lays down that a capital receipt, in principle, is outside the scope of income chargeable to tax. When accounts are prepared in accordance with Parts II and III of Schedule VI of the Companies Act, 1956, while making adjustments as per ss.115JA/115JB to compute book profits, non-taxable or exempt items are to be excluded, because such amounts do not reflect receipts of income nature.

PERSONAL TAXATION			
91.	Leave Travel Concession u/s. 10(5)	Benefit should not be limited to 2 journeys in a block of 4 calendar years, but should be allowed every year. The exemption should be made available in respect of at least one journey in each calendar year. To avoid confusion, "Calendar Year" should be substituted with "Financial Year" or "Previous Year". LTC should be extended for journeys to foreign countries.	S.10(5) allows exemption for assistance or concession received from employer for employee and his family on leave to any place in India. There is no provision in the Act which covers the travel outside India.
92.	Section 10(10)(iii)	We propose that the Gratuity for all the employees shall be fully exempt in line with employees on Civil or Defence Services of Government of India.	This will bring equality between Civil or Defence Employees and Other Employees. Deferential treatment among the employees needs to be avoided.
93.	Section 10(10AA) (b)	We propose that leave salary should be exempt of all employees in line with employees of Central Government & State (section 10(10AA)(a).	Deferential treatment among the Private Employees and Government Employees needs to be avoided.
94.	Valuation of rent-free accommodation	Valuation in such a case should be computed as '*Nil*'.	Often, factories are established in remote areas, where no other accommodation is available and hence employer provides accommodation to its employees on the factory campus. The perquisite value of such accommodation to the employee should be taken at '*Nil*'.
95.	Specific, clear provision under Profits & Gains of Business & Profession for deduction of ESOP Expenditure	Specific provision is needed in the Act for allowing ESOP Expenses. A separate s.for such allowance is suggested which is in line with VRS provisions dealt with u/s 35DDA of the Act. If the intent of the Legislature is to provide deduction for payments made for retirement of employees, there should also be a provision to provide for deduction of payments made to motivate & retain employees.	ESOPs are granted to employees to reward/ remunerate them for their contribution and to retain talent. SEBI guidelines prescribe charging of ESOP discount in books of accounts. This charge to P&L account has, however, been disallowed in majority of the cases. ESOP Discount cost is normally disallowed by AOs on the ground that it is capital expenditure, and is contingent in nature.

96.	S.36(1)(va) – disallowance for even few days of delay in depositing employees' PF contributions	For the purposes of disallowance under section 36(1)(va) of the Act, the due date for depositing employees contribution to PF, shall be considered to be the due date of filing the income-tax return.	There is a lot of litigation revolving around disallowance for even few days' delay in depositing employees' contribution to provident fund (PF). The due date for other contribution/ payments provided for u/s.43B have been extended to due date of filing of return of income. However, no such extension is provided for depositing employees' contributions to PF.
97.	Deduction u/s 80C	Limit of deduction u/s.80C should be raised from Rs.1,50,000 to Rs. 3,00,000.	
98.	Perquisite of rent-free accommodation provided in campus where factory located in remote areas	Where accommodation is provided by the employer in factory campus, and staying there is a need of employment, such accommodation should be valued at *Nil* or a lower rate of 5% of salary for perquisite valuation.	
99.	Children Education Allowance	The exemption limit should be raised from Rs. 100 per month to Rs.1,000 per month per child for maximum 2 children, or actual expenses, whichever is less.	
100.	Revision of Leave Encashment Exemption limit	The maximum exemption limit of Leave encashment for non-government employees may be revised from Rs. 3 lacs to Rs. 10 lacs in view of lack of social security support to retiring non-government taxpayers.	
101.	Reintroduction of s80L in place of s.80TTA	S.80L should be reintroduced to boost savings and curb conspicuous consumption. The new exemption limit should be fixed at Rs.25,000 p.a. Alternatively, interest on time deposits should also be included within s.80TTA, and limit should be increased to at least Rs.15,000.	S.80TTA grants deduction of interest of Rs.10,000 on interest earned in savings bank accounts. There is no deduction for interest earned on other instruments like Fixed Deposits, NSC, Company deposits, etc.
102.	Income of minors - to increase exemption limits	It is suggested that this should be raised to at least Rs. 10,000/- for each minor child	At present u/s 64(1A) income of minors included in the hands of parents is exempt to the extent of Rs.1,500/- for each minor. The average expenditure to meet cost of a minor's education / health / living

			expenses which has gone up considerably in recent years, limit of Rs.1,500/- fixed is woefully inadequate
103.	Basic exemption limit needs to be raised	Considering the inflation over the years, tax exemption limit should be increased from Rs. 250,000 to Rs. 500,000. The Government should consider bringing similar change in the tax rate for other assessees in sync with the proposed reduction in tax rate for domestic companies.	The exemption limit for individuals and HUFs has not been increased since past three years. The Finance Minister, in his Budget speech for 2015, had mentioned that the Government will reduce the tax rate for domestic companies from 30% to 25%. However, no reduction of tax rate was considered for individuals, HUFs, Partnership Firms and LLPs.
104.	Reinstatement of standard deduction from salaries –	To bring in the necessary parity amongst salaried and non-salaried tax payers, it is desirable that standard deduction be reinstated in the statute. Approximately 20% of the gross salary subject to a maximum limit of, say, Rs.1,00,000 could be considered for the purpose of standard deduction.	There is a disparity between the salaried employees and those carrying on business/ profession, resulting in higher tax being paid by the salaried employees. One may note that it is equally essential for the salaried individuals to keep abreast with the latest developments in their area of work/ specialisation and hence have to necessarily incur expenses for the same.
105.	Section 17(2)(vi) -	• The question whether ESOPs are granted at a concessional rate is being determined with reference to the ‘fair market value’ on date of exercise of options. • Technically, this is incorrect. If ESOPs are issued at the prevailing market price on the date of grant, their issue should be treated as ‘non-concessional’. This would be in line with SEBI guidelines. Any subsequent gain accruing to employee due to favourable market movements by the date of vesting or exercise of option cannot be treated as a ‘perquisite’. Since actual sale of shares will attract capital gains tax, if applicable, it is unnecessary to subject the employee to perquisite tax. The perquisite tax	• Section 17(2)(vi) states that ESOPs issued free of cost or at concessional rates will be taxed on the date of exercise on the difference between the ‘fair market value’ and the amount actually paid by the employee. It seeks to tax a notional benefit when the actual gain is not realized by the employee, and is not certain either. It is possible that the actual sale of shares could result in a loss for the employee. Since tax paid earlier cannot be set off against the capital loss, the employee suffers a double loss, namely tax outgo and loss on sale of shares.

		should be removed, and it should be subject only to capital gains tax at the time of sale.	
106.	S.17(2)(viii) – limit should be increased; benefit should also be given to reimbursements post retirement.	• The limit could be increased to Rs. 50,000 per annum to provide genuine relief to the employees. Similar exemption should also be granted to former employees where an employer provides medical reimbursement post retirement.	The non-taxable medical reimbursement to salaried employees by employer is currently limited to Rs. 15,000 per annum for self and dependents.
107.	Age limit for “very senior citizens” should be lowered	Age limit for this category of “very senior citizens” should be reduced to 70 years and above, and not 80 years as currently provided.	The current life expectancy of males in India (as per Census of India for 2011) is 67.3 years; for females, it is 69.6 years. Keeping this demographic data in mind, there is a need to revise this age limit.
108.	S.80CCF deduction should be made available for future years	• It is desirable that the benefit under this section is not limited for only two years, as the intent behind introduction of this section is to promote raising of funds for infrastructural development. Suitable amendments be made so that this deduction is available in future years.	• Finance Act 2010 had introduced section 80CCF w.e.f. 1 April, 2011 which stipulates that deduction would be available to the individuals in respect of subscription in notified long-term infrastructure bonds. This deduction is available only for investments made in previous years relevant to AYs 2011-12 and 2012-13.
109.	Section 80GG –	Due to escalation in rentals, the limit should be increased to at least Rs.10,000 per month.	Deduction u/s.80GG is given for rent paid by non-salaried employees not in receipt of House Rent Allowance, to the extent of Rs. 2,000 per month.
110.	Crèche allowance – exemption should be introduced	A specific provision should be introduced, allowing exemption for crèche allowance of up to, say, Rs.1,000 per month.	As per current provisions, crèche allowance is taxable in the employee’s hands. In these days of diversity and gender rights, this is a worthy exemption.
111.	Time limit for disposal of appeal by	Such provisions in relation to the disposal of appeals should be incorporated in the Act so as to make it	In this regard, Instruction No. 20/2003 [file no. 279/Misc 53/ 2003- ITJ],

	CIT(A)	for effective.	Dated 23.12.2003 provides that the CIT(A) shall dispose off the appeal within a period of one year from the end of the financial year in which appeal is filed and that the order should be issued within 15 days of the last hearing There is a significant delay in disposal of appeals by CIT(A) since there is no prescribed time limit for disposal of the same.
112.	Rule 114 – accept address given by Indian company for which person works	To reduce such hardships, a certificate from the Indian company for whom such individual is coming to India to work for, certifying his/ her identity and foreign address may be accepted as address proof.	Currently, a foreign national is required to submit a national ID duly attested/ apostilled from the Indian Embassy in his home country as an address proof while filing application in Form 49AA for obtaining PAN.
113.	Section 208 (Advance Tax)	We propose that for individuals the limit of Advance Tax should be increased to Rs. 20,000/-.	As this section imposes additional compliance on many small individuals.

TRANSFER PRICING			
114.	Review of domestic transfer pricing provisions	(i) Domestic Transfer Pricing provisions should be removed since both parties to transaction are taxpayers in India; (ii) In no case should Transfer Pricing provisions be applied to transactions covered by ss.80-IA/ 80A. (iii) Without prejudice to the above, the limit should be increased to Rs.50 crores. This will help minimise excessive documentation and administrative costs for most companies. (iv) We recommend that the threshold of Rs.20 crores should be increased to Rs.100 crores or 2% of turnover, whichever is less, for each related party, considering large transaction volumes.	There already existed provisions dealing with disallowance of any expenditure claimed by an assessee which in the AO's opinion were excessive or unreasonable having regard to fair market value of the goods/ services. The mechanical application of International Transfer Pricing provisions to "Specified Domestic Transactions" u/s. 92BA is causing undue hardship to assessees. Application of Domestic Transfer Pricing provisions to transactions referred to in ss.80-IA(8) and 80A(6), wherein special meaning are already assigned to the terms "Market Value" and "Fair Market Value", will increase controversies and litigations in coming years.
115.	S.92BA-Clarification w.r.t corresponding adjustment of disallowance to be allowed in hands of an Associated Enterprise.	Correlative adjustment should be allowed in the hands of the associated enterprise in respect of adjustment in the hands of a domestic enterprise.	S.92BA provides that domestic transfer pricing provisions apply to expenditure incurred by the assessee with respect to related parties. The existing provision does not provide for a corresponding correlative adjustment in the recipients' hands, which leads to double taxation and hence increases tax cost of the Group as a whole.
116.	Safe Harbor Rules	Safe harbor rates should be brought in line with rates being negotiated in APAs so as to bring parity in Safe Harbor Rules vis-a- vis APA. This would make the safe harbor rules attractive, and reduce burden on APA authorities who are grappling with disposal of more than 500 applications pending with them. The scope of the Safe Harbor Rules should be extended to reduce litigation by covering other major sectors like	The safe harbor rules were notified by the CBDT to ease the compliance burden for taxpayers, curtail disputes and reduce administrative burden. There have been hardly any takers of Safe Harbor rules and the facts, figures and data speak of itself. The intended objective has not been achieved as the rates prescribed in Safe Harbor Rules are way too high and nowhere near the arm's length rate.

		Pharma, Engineering, Automobile, etc.	One wing of the CBDT viz. the APA authorities are concluding APAs at a rate which is closer to the arm's length rate and much lower than the rates prescribed under safe harbor rules, thus there are few takers for the safe harbor rules.
117.	Applicability of Transfer pricing provision to Specified Domestic Transaction be restricted to areas where one of the entity is tax exempt	Alternatively Advance pricing mechanism shall be introduced for Specified Domestic Transaction, so assessee know in advance that what fair price should be opted for.	Transfer Pricing provisions now apply to specified domestic transactions (SDT) u/s.92BA, i.e. transactions between persons mentioned in s.40A(2)(b) and transactions between the separate businesses of an assessee, and those between the assessee and its close connections as specified in s.80A and u/s.80-IA(8) & (10) and similar provisions, and other prescribed transactions. Domestic Transfer Pricing (DTP) has no relevance as any adjustment due to domestic transfer pricing provisions should, logically have offsetting effect and should have no material revenue impact, as both the assessees would be resident in India. Further, the documentation requirements in case of transfer pricing are quite onerous, and will result in substantial compliance costs for domestic taxpayers. As there is no base erosion from domestic transfer pricing perspective, it should not be applicable for 40A(2) parties, as held by the SC in CIT v. GLAXO SMITHKLINE ASIA (P) LTD (2010) 236 CTR (SC) 113. Domestic Transfer Pricing should be applied only if there is tax arbitrage. Therefore s.92BA needs to be re-defined as per SC's direction in case GlaxoSmithkline (*supra*).
118.	Clarification required for	The CBDT should clarify this in detail and end this controversy. Assessees	SDT provisions cover payments for expenditure, which means capital as

	reporting of capital expenditure transactions u/s.40A(2)(b) under SDT	are resorting to specific disclosures to avoid penal provisions that the Department may invoke, in view of this ambiguity.	well as revenue expenditure. The revised ICAI Guidance Note suggests that the provisions are applicable to capital expenditure ranking for 100% deduction under provisions such as ss. 35, 35(2AB) or 35AD. Judicial precedents suggest that capital expenditure eligible for depreciation are not covered u/s.40A(2). Further, depreciation is not a deduction, but an allowance. Alternatively, s.92(2A) read with s.92BA of the Act covers 'allowance for expenditure' which could be interpreted to include 'depreciation' for capital expenditure.
119.	Benchmarking Directors' Remuneration should be removed from scope of SDT	Director's remuneration should be deleted from SDT provisions to avoid unnecessary litigation	Payments to directors including, *inter alia*, remuneration, sitting fees, commission, perquisites, etc. are covered under SDT provisions. To clarify, a director includes any director of a company, regardless of the nature of directorship. Applying any of the transfer pricing methods to director payments poses a challenge, since payments vary across companies and depend on a combination of factors. These factors include subjective ones like role, functions and qualification of a particular director, each company's ability and capacity to pay, etc.

TAX DEDUCTED AT SOURCE			
120.	*Nil* TDS For Non-Banking Financial Institutions/ Companies	Since NBFCs are supplementing banks and are also regulated by the Reserve Bank of India, NBFCs (including those which have been accorded Public Financial Institution status) should be treated at par with banks and the benefit of '*Nil* TDS' should be extended to them as well under Sec. 194A.	S.194A provides for TDS at 10% on payment of interest to a resident. S.194A(3) provides for non-applicability of S.194A to, inter alia, banking companies to which the Banking Regulation Act applies. Such exemption has not been extended to NBFCs. As a result, in contrast to the *nil* TDS rate for banks on their interest payments, NBFCs have to deduct tax at 10%. NBFCs have the option to apply for a lower withholding certificate u/s.197, but in practice, it is difficult to obtain this certificate, given the large number of customers. EMIs on loan instalments receivable by NBFCs also have an interest component subject to TDS. Extensive paper work and administration burden coupled with high collection costs in issuing large number of TDS certificates, filing quarterly returns, etc., make TDS collection cumbersome and costly. Also many a times, TDS estimated for advance tax computations actually turns out to be much lower than what is actually deducted by the customers, resulting in huge refund claims. Getting refund can often become a time-consuming affair affecting the cash flow and working capital requirement of NBFCs. The additional limitations of the existing system are: a) Follow up with every customer for TDS certificates every quarter (details of which are mandatory for claiming the same in the I.T. Return)

			becomes almost impossible. NBFCs have clients who number in thousands and it is practically very difficult to collect details from everyone. b) Even if TDS certificate is issued by the customer, if TDS return has not been filed or not filed properly, the credit for such TDS would not be granted to the NBFC as details of such TDS would not appear in NSDL system. c) Once TDS credit is disallowed, NBFCs have a hard time following up with the customers and the exchequer has a hard time clearing outstanding demands against NBFCs which, in reality, do not exist. While most Banks are unable to reach the MSME sectors for their financing needs, Asset Finance and Infrastructure Finance NBFCs (AFCs & IFCs) bridge the gap and act as an extended arm of the banking system in India. Hence it is very important that these NBFCs are provided level playing field with the Banks. Such differentiation severely constrains these Non-Banking Financial Institutions / Companies in conducting their duties which essentially goes against Government's national goal of financial inclusion & Ease of Doing Business.

| 121. | TDS on International Interconnect Charge (IUC) paid to foreign telecom operators- Position under Income Tax Act | It is recommended that government should clarify by appropriately amending Explanations 5 & 6, that they would not have any bearing on standard services agreements, by giving some examples which will not fall within purview of royalty even after insertion of Explanations 5 & 6. For instance telecommunication service agreements between two telecom operators who are pooling their networks/ services to provide end-to-end seamless connectivity by rendering telecommunication service to respective subscribers on reciprocal basis.

Further, in any case, the government should clarify that the retrospective amendment does not apply to transactions which were entered into before the amendment. | Finance Act 2012 brought in a retrospective amendment by introducing Explanations 5 and 6 to S.9(1)(vi).

Royalty is defined in Explanation 2, which connotes exclusivity and the exclusive right in relation to an asset, which should be with the grantor (be it physical or intellectual property for which royalty is paid). In case of an intellectual property, it is generally associated with some discovery, invention, creation, specialised knowledge, etc., emanating from the human mind, and is payable to the inventor/ grantor for allowing usage of his invention or creation and having an exclusive right over it. "Process" needs to have an IPR.

Payment made for anything which is widely available in the open market to all those willing to pay cannot constitute 'royalty', and is essentially in the nature of business income.

Further, when a service provider uses its own equipment/ process to render services, it cannot be said that service recipient or any other person uses such equipment/ process at the same point in time. The two situations are mutually exclusive.

Explanations 5 & 6 should not be construed so as to bring a service rendering agreement within the ambit of royalty u/s.9(1)(vi). Such an interpretation will erase all distinction between service rendering agreement and a royalty agreement. It would then mean that payment by a person hiring a taxi is paying royalty for indirectly using the |

			process of running of an engine in a taxi, or a person availing laundry services is paying royalty for indirectly using the process of running of washing machines … the list is endless. The Legislature, in its wisdom, has provided two separate provisions relating to 'royalty' (u/s 9(1)(vi)) and 'fees for technical services (u/s 9(1)(vii)) and these provisions are mutually exclusive and do not overlap. The distinction made by legislature between these concepts has to be maintained and given the intended effect. It is but obvious that even where services are not 'technical', the distinction between a service contract and a royalty contract is still required to be maintained. The contention of tax authorities that standard service agreements are royalty by applying Explanations 5 & 6 is leading to absurd results not intended by lawmakers.
122.	TDS on International Interconnect Charge (IUC) paid to foreign operators-Impact under DTAA	The government should clarify by amending Explanations 5 & 6, that these explanations would not have any bearing on the interpretation of treaty; and that the definition of "process" as defined in domestic tax law should not be imported into treaty, as the terms "process" and "secret process" are not in *pari materia*.	Finance Act 2012 brought in a retrospective amendment to the definition of the term 'Royalty' by introducing Explanation 6 to S.9(1)(vi) whereby the term 'process' used in the existing definition of 'royalty' is elaborated to include transmission by satellite, cable, optical fibre or other similar technology, whether or not such process is secret. The amended provisions (including Explanations 5 & 6 to s.9(1)(vi)) have no relevance insofar as the definition of 'royalties' contained in treaties is concerned.

			Under a treaty, the process has to be a 'secret process' in form of IPR in order to fall within the purview of royalty, and there has to be a direct usage of such 'secret process' by payer for the payment to qualify as 'royalty' under the treaty. The term 'royalty' is defined in all treaties. There is no dispute that provisions of DTAA will prevail over the Act to the extent they are more beneficial to the assessee. The treaties are binding on both countries and have to be interpreted in good faith. Tax authorities are, however, taking a position that since the term 'process' has not been defined in the treaty, its meaning can be imported from the domestic law for interpreting tax provisions relating to treaty.
123.	Rule 37BC read with S.206AA – rule should be made effective retrospective, being curative in nature.	Amendment should be made retrospectively w.e.f. 01.10.09 when s.206AA was first introduced. A clarification should also be issued to provide that if tax residency certificate is not available at the time of credit or payment, but was made available subsequently, the same should be made applicable to the earlier payments, and tax should not be deducted at higher rate.	Rule 37BC was inserted w.e.f. 24th June 2016 specifying details to be furnished by non-resident payee to payer for relaxation from deduction of tax at higher rate under s.206AA of the Act. One of the documents mentioned is the tax residency certificate to be furnished by payee, in order to have relaxation from higher rate of tax. Courts have held that where the amendment is curative in nature, the same is to be applicable retrospectively.

124.	Rule 31ACB – hindrance in granting relief under first proviso to s.201(1)	Notification should be issued providing that jurisdictional AO should be authorised u/Rule 31ACB(1) to accept Form 26A for verification, since he is empowered to issue order u/s. 201(1) & 201(1A), and can provide due relief during assessment proceedings.	U/Rule 31ACB, certificate from an accountant under first proviso to s.201(1) shall be furnished in Form 26A to the DGIT(Systems) or to the person authorised by the DGIT(Systems), to avail benefit of proviso to s.201(1). Till date, no person has been authorised in this regard, and nor any procedures, formats and standards prescribed for furnishing and verification of Form 26A, due to which assessee-companies are not able to avail the benefit of proviso to s.201(1). In absence of any clarification, assessees are unable to get relief of the tax already paid by the recipient on its income and are being treated as assessees-in-default.
125.	Withholding Tax	To bring certainty for taxpayers, limitation period of 7 years from end of FY for proceedings relating to non-withholding of tax on payments made to non-resident should be incorporated, as applicable in case of payments to residents.	Currently, there is no limitation period under the Act for proceedings relating to non-withholding of tax on payments made to non-resident.
126.		There is no timeline obligating the AO to give lower/ *nil* withholding tax certificate under s.195/ 197	Introduce timelines within which a lower/*nil* withholding tax certificate under S.195/197 must be granted/denied by an AO.
127.	Extension of time provided under s.194LC and s.194LD	Providing lower rate of TDS is a welcome change to encourage foreign long term debts in India. It is therefore necessary that the benefit of lower TDS be extended beyond July 1, 2017 for another 5 years.	Under both sections, the benefit is available in respect of interest income earned for period ending on July 1, 2017, irrespective of the period of investment.

128.	Generation of TDS certificate from TRACES	To simplify the process, TDS certificate generation, currently based on PAN, of the deductee, be made based on PAN and TAN of the deductee.	Now in the electronic era, TDS Certificates are generated from the TRACES website based on PAN of the deductee. In case of multi-location companies, it is difficult to match common TDS certificate received and allocation of the same to various locations and its accounting.
129.	S.194H: Deduction of tax at source from commission/ brokerage	This exemption limit of Rs.5000/- should be increased to Rs.25, 000/-.	U/s. 194H, no deduction need be made from payments of commission or brokerage, where the aggregate amount of payments in a financial year do not exceed Rs.5,000/-. This exemption threshold is very low, and has unnecessarily increased workload of assessees.
130.	Number of TDS/ TCS returns and payment schedule should be curtailed	Nowadays, an assessee has to file 12 quarterly returns for TDS (4 for TDS on salary, 4 for other TDS and 4 for TCS) apart from 1 Annual Income tax return . This is too cumbersome. Government should curtail number of returns and payment schedule.	
131.	Filing fees –e-TDS	Assessee is required to pay for filing of E-TDS returns. E-TDS intermediary works on behalf of the government. It is the government's duty to pay them. Hence, no charges should be collected in this regard.	
132.	S.194IA - TDS applicable @ 1% on payment/ credit of consideration to a resident-transferor for transfer of any	• The threshold limit of Rs.50 Lakhs must be raised significantly – to at least Rs.1 crore. TDS should be deductible only on the sum exceeding the threshold limit, and not on the entire value of the property.	S.194IA has come into effect from 1 June 2013, to provide that tax should be deducted at source from amount paid to the seller/ transferor of any Immovable Property (other than rural agricultural land), where total consideration paid/ payable is over Rs.50 Lakhs. The person buying the property is liable to deduct tax at

	immovable property		source; but is not required to furnish any TAN details. The provisions clarify that, "Any person responsible for paying to a resident transferor any sum by way of consideration for transfer of any immovable property (other than rural agricultural land), is liable to deduct tax at source u/s.194-IA". This provision was intended to eliminate undervaluation or under-reporting of property transactions. The current threshold limit, viz., Rs. 50 Lakhs, is too low.
133.	S.195(6), Rule 37BB & s.271-I – S.195(6) should not apply to Individuals; S.271-I should be made less rigorous	Existing s.195(6) and Rule 37BB may be continued without amendment but s.271-I should be made less rigorous by exempting non-business entities, and by providing a threshold, beyond which the penalty will be levied on business entities.	The amendment proposed to s.195(6) extends reporting requirement to all payments to non-residents by any person, whether chargeable to tax or not, howsoever small it may be, and for whatever purposes. Further, this requirement would apply to even individuals, even for payments made towards education, maintenance of children or medical treatment etc. Section 271-I is also sought to be introduced to provide for a penalty of Rs. 100,000/- if there is a failure or inaccuracies in furnishing of such information. The proposed amendments to s.195 and new s.271-I seriously militate against 'Ease of Doing Business' in India. It would be extremely burdensome for non-business assessees like individuals to comply. Further, in any case, banks collect information in respect of all such payments.

134.	Validity of certificate issued under S.197	Some suggestions in this regard: • application may be allowed to be made at least 30 days before FY commences. • Such application should be disposed off within 30 days. Certificate u/s.197 should mention that it would be effective from 1 April, i.e., the first day of the previous year.	The certificate u/s.197 is at present issued with a validity date from the date of issue. Even if the assessee makes an application in the month of April, i.e., at the beginning of the FY, the certificate is issued later. The date of issue is taken as the validity date, due to which deductors are obliged to deduct tax at full rates from earlier payments.
135.	Allowability of TDS credit in relation to income earned by merging company, post the Appointed Date of merger, to the merged company	Since tax deduction is done by the payer in the name of the merging entity, the tax department denies credit in respect such TDS to the merged entity in absence of any specific provision in the Act in this regard.	Income earned by merging entity post the appointed date till the effective date of merger belongs to and is taxed in the hands of the merged entity and hence, credit in respect of taxes deducted at source from such income/ revenue should also be allowed to the merged entity.
136.	Section 234E(1)	Since this offence has no deleterious impact on the Revenue, there is a case for eliminating the harsh impact of this provision, especially considering that separate penalty is levied on grave defaults of delays over a year. Without prejudice to above, the fee under section 234E should be reduced from Rs.200/- per day to no more than Rs.100/- per day.	Prior to introduction of mandatory levy, penalty for similar defaults as provided u/ss.272A(2)(k) was imposable at Rs.100/- per day. In cases of any default by a Government Office, while there is no provision for levy of fee under section 234E, the penalty for similar defaults under section 272A(2)(m) is prescribed at Rs.100/- per day. - The levy of mandatory fee under section 234E at Rs.200/- per day for default in furnishing of statements of TDS under section 200(3) and TCS under section 206C(3) has been a matter of debate ever since it came to be introduced with effect from 1 July 2012. While in principle, courts and tribunals have justified the levy as being constitutional, it is widely believed that this levy is harsh, keeping in view the fact that a person committing defaults of delayed deduction or payment of tax is already inflicted with non-deductible penal interest of 12% or 18% per

			annum. Moreover, in cases of grave default of non-furnishing of such Statements beyond one year, there is also a provision for levy of penalty of Rs.10,000/- to Rs.1,00,000/-.
137.	TDS – changes needed to reduce onerous compliance burden placed on deductors	• It should be clarified that TDS provisions will not be attracted on monthly estimated provisions made for MIS purposes; • No penalty should be levied, or disallowance made, where characterisation of payment is disputed for TDS purposes; • It should be clarified that TDS does not apply to reimbursements; • TDS credit should be allowed on the basis of Form 26AS (irrespective of whether it has been claimed in return or not), and the requirement obtaining TDS certificate in Form 16A should be dispensed with; • Alternatively, deductees should be given facility to electronically download TDS certificates (Form 16/ 16A) from the TRACES system, instead of the deductor having to download Form 16/ 16A and send it to the deductee. In some cases, AOs link the issue of lower/ no deduction certificates with outstanding demand against the assessee. These issues are independent. Correlating them causes undue hardship to the assessee. It should be clarified that issue of no TDS certificates should be decided only based on independent merit of the assessee's application.	When considering TDS provisions, conceptually, the key aspect that needs to be borne in mind is that the deductor is doing the Government's job, acting as its agent, and discharging a very onerous responsibility. While he may not be getting compensated for that work, it is unfair to put such an onerous burden with stringent penalties and prosecution. The least that can be done is to make it less cumbersome.

138.	S.194A	Limit should be increased to Rs. 50,000 from Rs.5,000	Threshold limit for this TDS provision need to be reset and increased, to reduce cost and effort of paperwork for low value transactions.
139.	S.194H	Limit should be increased to Rs.50,000 from Rs.15,000/-	Threshold limit for this TDS provision need to be reset and increased, to reduce cost and effort of paperwork for low value transactions.
140.	S.194J	Limit should be increased to Rs.50,000 from Rs.30,000	Threshold limit for this TDS provision need to be reset and increased, to reduce cost and effort of paperwork for low value transactions.

TAXATION OF TRUSTS			
141.	Investment pattern prescribed for charitable trusts	Trusts covered u/s.11/ 10(23C) should be permitted to invest their funds in the manner they deem fit. Else, at least 20% of each year's income may be permitted to be invested in a pattern other than as required u/s. 11(5).	Charitable trusts covered u/ss.10 (23C) (iv), (vi), (via) and s.11 are required to invest their funds in the manner prescribed u/s.11(5). In view of amendments to the Income Tax Act, such institutions cannot hold equity shares/ preference shares or invest in any manner other than that prescribed. The Government has constantly been stating through the media and political/ international fora that several liberalisation/ globalisation measures were being brought about in India. Prohibiting institutions covered by s.11/ s.10(23C) from investing in equity/ preference shares or other lucrative modes of investment would suppress cash inflows of such institutions.
142.	To increase limit for "Annual Receipts" u/s. 10(23C) (iiiad)/ (iiiae) read with Rule 2BC	The term, 'Annual Receipts' should be re-defined to clarify how donations in kind can be valued for the purpose of the limit. This will clarify matters and reduce possible litigation. Donations in kind should, wherever possible, be valued at cost to previous owner. The limit of "Annual Receipts" of Rs.1 crore is meagre, and needs to be enhanced to at least Rs.5 crores, particularly as this limit was fixed 18 years back in October, 1998.	U/s.10(23C)(iiiad)/(iiiae), income of an educational institution existing solely for educational purposes/ hospital/ other institutions existing solely for philanthropic purposes and not for profit are exempt, if their aggregate Annual Receipts respectively do not exceed Rs.1 crore p.a. as specified u/Rule 2BC. The term "Annual Receipts" has not been defined in either s.10(23C) or the Rules. In case of receipt of donations in kind, it is unclear how the value is to be calculated. There are circumstances when these institutions have to lose their exemption for no fault of their own because of this rule, for which the solution is to raise the limit.

			Examples of such situations: • Where such an institution receives land, equipment and other movable assets like shares as donation, and the market value of such assets is high. • When such institutions do not receive timely assistance from donors, they may be forced to dispose of their assets to raise liquidity for meeting recurring expenses or expansion projects.
143.	Accumulation period: Trusts covered by S.11	Maximum period for which income can be accumulated should be changed back to 10 years.	Until amendment made *vide* Finance Act 2001, for trusts covered by s.11, income from property held under a trust and used for charitable/ religious purposes was exempt from tax to the extent the income was applied for charitable or religious purposes, or was accumulated (subject to conditions specified in s.11(2)). Such income could be accumulated for upto 10 years. S.11(2) was amended and the maximum period for which accumulation was permitted was reduced to 5 years from 1 April 2001. This amendment creates lot of hardship to charitable trusts, since it may not be possible to complete projects for which funds were accumulated within 5 years.
144.	Trusts covered by 10 (23C)	The 5-year limit for accumulation of income should be withdrawn, and the position before 1 April 2001, viz., no time limit, should be restored.	Until amendment made *vide* Finance Act 2001, income of educational institutions and hospitals covered by sub-clauses (iv), (v), (vi) and (via) of clause (23C) of s.10 was entirely exempted. Such educational or medical institutions were required to

			apply their income or accumulate it (with no time limit) for application wholly or exclusively for the purpose for which they were established. Finance Act 2001 has amended this to set a maximum period of accumulating income after 1 April 2001 of 5 years only. There is no need to put such a restriction on accumulation period as it will hinder their growth.

NON BANKING FINANCIAL COMPANY			
145.	Special Reserve under RBI Act, 1934	Since the company does not have control over the amount transferred to Special Reserve, it is a diversion of income by overriding title, or alternatively, a charge against profit (though termed as 'Reserve') and not appropriation out of profit. Therefore, statutory transfer to Special Reserve should not be added back while calculating Book Profit.	An NBFC registered under the Companies Act, 1956/2013 is required to comply with all the Accounting Standards notified under Companies Act and follow all applicable RBI Guidelines. An NBFC has to transfer not less than 20% of its profits to a Special Reserve as per s. 45IC of the RBI Act, which overrides all other laws (s.451Q of RBI Act). This provision was meant to protect the NBFC's depositors. This transfer reduces the company's profits. No appropriation out of Special Reserve is possible for any purpose other than those to be specified by the RBI. The SC, in TRO v. Custodian, Special Court Act, 1934 [(2007) 293 ITR 369 (SC)] held that where an Act makes a provision with a *non obstante* clause, it would prevail over Income Tax Act provisions.
146.	Debenture/Debt Redemption Reserve (DRR) under the Companies Act, 1956/2013	Suitable Explanation should be inserted in s.115JB of the Act, so that an Assessee Company can get the benefit of Deduction on Account of Statutory Transfer to any Debt/ Debenture Redemption Reserve while computing its taxable book profit.	DRR is neither ''Reserve'' nor 'Provision for unascertained liability'' under clauses (b)/ (c) of Explanation 1 to s.115JB of the Act. Every company issuing debentures, as per s.117C /71 of the Companies Act, 1956/2013 read with Rule 8 of Companies (Share Capital and Debenture) Rules 2014, is mandatorily required to transfer/ appropriate every year adequate amounts to the DRR, by debiting its Profit and Loss account for meeting the ascertained liability of repaying the debentures. DRR, though termed as Reserve, is not a reserve – it is a provision for an ascertained liability.

			When a company issues debentures, the obligation to repay debentures is still an obligation *in presenti*, being monies set apart to meet a known liability. DRR should not, therefore, be regarded as "reserve" within clause (b) of Explanation to s. 115JB. DRR cannot be considered as a provision for an unascertained liability under clause (c) of Explanation to s.115JB, as the SC has accepted it as monies set apart to meet a known liability. (National Rayon Corporation v. Commissioner of Income Tax [(1997) 227 ITR 764 (SC)]. Further, in Vazir Sultan Tobacco Co. Ltd. v. CIT [132 ITR 559], while referring to Part III of Schedule VI to the Companies Act, 1956, the SC explained the distinction between "provision" and "reserve", saying that "if any retention or appropriation of a sum falls within the definition of ‘’provision " it can never be a reserve, but it does not follow that if the retention or appropriation is not a provision it is automatically a reserve".
147.	Statutory provision for Non-Performing Assets (NPAs)	Since provision for NPA is not covered under ‘Provision for diminution in the value of Assets’ as per Clause (i) of Explanation to s.115JB, it should not be added back while computing book profits thereunder.	On 31 Jan 1998, RBI introduced a new regulatory framework for disclosure and prudential norms for non-deposit-taking NBFCs to ensure that they function on sound and healthy lines. These were updated on 30-06-2006. Pursuant to that notification, every NBFC has to provide for sub-standard/ doubtful assets, and disclose this provision in the balance sheet as prescribed therein. This is a statutory provision, required to be made to arrive at the

			NBFC's true business profit. Violation of prudential norms invite severe punishment. The SC held in Southern Technologies Ltd. v. JCIT (2010) 321 ITR 577 (SC) that reduction in NPA takes place in two ways, viz. by recoveries and by write off. Hence, making a Provision for NPA does not diminish the value of assets.
148.	Extension of benefit of special provision prescribing treatment of Bad or Doubtful Debts as taxable income in hands of Banks, PFIs etc., to NBFCs	Existing provisions of s.43D should be made applicable to NBFCs, since their main business comprises of giving loans and/or advances, like banks and PFIs.	

ELECTRONICS SECTOR			
149.	Weighted deduction for finance, energy and logistics cost	It is recommended that weighted deduction of 150-200% of the actual cost be allowed on specified components.	The costs pertaining to finance, energy and logistics/ transportation constitute major portion of the consumer electronics sector. Further, these costs are auditable and duly included in the financial statements of a company.
150.	Venture Capital Fund for Electronics Sector	Venture Capital pool may be initiated and coordinated by a bank/ SPV/ PPP mode. Contributors may be offered tax incentives on the dividend. Manufactures may be provided with tax exemptions.	In order to boost availability of capital funds to the sector, it is imperative that a venture capital pool be created and allied tax incentive provided. Funds of such pool shall be used by genuine private players through a stringent mechanism.
151.	Taxation of software integral to equipment	In line with global principles for taxation of software and judicial pronouncements of Hon'ble Supreme Court in the case of customs and service tax, it should be clarified that distribution of copyrighted articles being software forming integral part of the hardware would not fall within the ambit of 'royalty'.	There is currently dispute with respect to taxability of royalty in case of software (being copyrighted article) that forms part of hardware.
152.	BPO Scheme offered by Govt. can be further linked with direct tax benefit	Govt. should allow assessees to claim depreciation on assets funded by Govt. subsidy under IBPS scheme.	Department of Electronics and IT (DeitY), Ministry of Communications and IT, Government of India, has notified the "India BPO Promotion Scheme (IBPS)" under Digital India Programme,. This offers subsidy of up to 50% of capital expenditure or Rs 1 lakh per seat, whichever is lower, for setting up BPO units in small towns and villages and to create employment there. As Govt. has offered Capital Support: up to 50% of one time capital expenditure incurred, this expenditure will be reduced from the cost of capital

			assets which will, in turn, reduce depreciation amount as per ICDS VII. This will increase the direct tax burden on such assessees. The Govt. did not receive expected response under this scheme - one reason could be that overall benefit under this scheme will be reduced by 33% as assessee cannot claim depreciation on assets funded by Govt. subsidy.

Income Tax Slabs for the individuals / HUF may be as under:-

Net Income (Amount in Rs.)	Tax Rate
Upto Rs. 3,00,000/-	Nil
Rs. 3,00,000/- to 6,00,000/-	10%
Rs. 6,00,000/- to Rs. 10,00,000/-	20%
Above Rs. 10,00,000/-	30%

Or

Net Income (Amount in Rs.)	Tax Rate
Upto Rs. 3,00,000/-	Nil
Rs. 3,00,000/- to 4,00,000/-	5%
Rs. 4,00,000/- to 7,50,000/-	10%
Rs. 7,50,000/- to Rs. 10,00,000/-	20%
Above Rs. 10,00,000/-	30%

*Revenue collection from both the bifurcation will remain same. We propose that Government may adopt the option 2 as this will encourage small people also to file their income tax return, after the demonetization scheme.

Income Tax slabs for other than Individuals / HUF:-

Particulars	Tax Rates
Micro Small & Medium Enterprises	25%
others	30%

ABOUT CHAMBER

Chamber of Indian Micro Small & Medium Enterprises (CIMSME) is floated by a group of professionals to promote and protect the Trade & Commerce of MSME in India.

Chamber represents interest of units in MSMEs sector with Banks, Financial Institutions, concerned Ministries and organizations to promote bilateral dialogue for the benefit of the sector. The Chamber's agenda includes organizing Seminars, Conferences, Workshops, Training Programs and other Trade promotional activities to educate and create awareness amongst the MSMEs.

Chamber gives platform to MSMEs from a broad spectrum of activities to share their experiences and discuss, for mutual benefit, common issues and challenges facing them. Chamber also exemplifies star performers from Banking Industry for emulation of their best practices by other members. The main purpose of the chamber is to induce traits amongst the members which spell success for Micro, Small and Medium Enterprises.

The focus of the Chamber is on helping MSMEs grow and improve their bottom lines. Towards this end we are committed to nurturing our members by offering a variety of benefits and services to help them grow.

MSME sector has grown as a vibrant and dynamic sector of the Indian economy over the last many years. MSMEs play a crucial role in providing large employment opportunities at very low cost than large industries and they also help in industrialization of rural areas. MSMEs are complementary to large industries as ancillary units and this sector contributes enormously to the socio-economic development of the country. This sector's contribution is 38% approx. in the GDP of the country and it also provides employment to over 111 million people. The MSME sector has the capability to spearhead the Industrial & Innovation Revolution in the country and is a major partner in the process of country's growth.

MSMEs face lot of hurdles right from inception stage till stable growth stage. CIMSME comes as a helping hand to them as we help in reducing their burden to a great extent by hand-holding and consulting them for Company formation, getting statutory registrations, access to finance from Banks & Financial Institutions and Rating from the credit rating agencies etc.
CIMSME provides various benefits to its members, like:

MOU with Banks for Faster Credit to MSMEs

An initiative unique to the Chamber is of entering into MOUs with banks for ensuring speedy credit to MSMEs. Under this arrangement, CIMSME undertakes to do due-diligence on credit proposals of the applicant units and ensuring that all the required information are furnished at one go to the bank. Banks on their part, undertake to dispose-off the member's application in a time bound manner. This initiative is helpful to the Banks in that they get all required documents and information at one go, vetted by experts and the applicant is benefitted by faster processing of his application, through expert handholding by the CIMSME.

Business Networking & Grievance Redressal Cell

CIMSME provides an excellent opportunity to MSMEs to have a one-to-one interaction with various Government officials, bank chiefs, corporate captains, other entrepreneurs along with various stakeholders to discuss their issues and concerns. CIMSME also enables their suggestion and concerns. CIMSME also enables their suggestions and concerns reach the appropriate decision making authority in the Government, Banks and other organizations. CIMSME has been invited by the Ministry of Finance for Pre Budget Consultation meeting.

Marketing

It is critical segment of MSME survival and growth in today's stiff competitive market. The Chamber facilitates the MSME members to promote their products and services by listing them without any cost on portal www.msmehelpline.com, thus increasing their reach and profitability. MSME Helpline Mobile App is available for download from Google Play Store as well as Apple App Store.

Some of the features of MSME Helpline are as under:-

i. Formation of Proprietorship
ii. Formation of Partnership Concern
iii. Formation of Limited Liability Partnership
iv. Formation of One person Company
v. Formation of Private Limited Company
vi. Formation of Public Limited Company
vii. Formation of Section 8 Company
viii. Import Export Code
ix. Service Tax Registration
x. Trademark, Patent, Copyright
xi. VAT Registration
xii. ISO Certificate
xiii. FSSAI
xiv. Consultancy on MSME Registration
xv. Consultancy on NSIC Registration
xvi. Consultancy on Loan
xvii. Consultancy on External Credit Rating

AND MANY MORE…

CIMSME

Chamber of
Indian Micro Small & Medium Enterprises

CHAMBER OF INDIAN MICRO SMALL & MEDIUM ENTERPRISES

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