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PRE-BUDGET MEMORANDUM 2021-22 ON DIRECT TAXES

General

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
1	Simplification of Tax Laws	The current Income Tax Law is extremely complex. Every area, whether in respect of Personal Taxation, Capital Gains Tax and Corporate Taxation, requires the help of Tax Practitioners/Experts. For example, the Capital Gains Tax Laws stipulate a variety of tax rates, holding period etc for equity shares, debt mutual funds, immovable properties etc. and it becomes extremely difficult to understand the complexities without the aid of Tax Experts.	There is a dire need today to redraft and simplify the Income Tax Law. In fact, this will definitely help in increasing the number of tax payers and broadening the tax base in the country. This would also help in improving the "*ease of doing business*" in the country as propagated by the Government. A definite positive impact of the simplification would be in respect of the reduction in tax disputes / litigation.	The Income Tax Law should be simplified.

Corporate Tax

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
2	Corporate Social Responsibility Costs – To be allowed as deduction	Section 135 of the Companies Act 2013 and The Companies (Corporate Social Responsibility Policy) Rules, 2014 (CSR Rules) as notified make CSR expenditure a statutory requirement for all practical purposes (as per the spirit of the law), in respect of companies falling under the ambit of such regulations. In this connection, it may also be noted that the CSR expenditure under law is in effect calibrated to the average Pre-tax profits (as computed under Section 198 of the Companies Act 2013, akin to managerial remuneration) earned during the preceding three years and is therefore a charge on profits (just like managerial remuneration) and not an appropriation thereof (which is a shareholder prerogative). In the Finance (No.2) Act, 2014 it was mentioned that under section 37(1) Explanation 2, all CSR expenditure shall not be deemed to be an expenditure for the purpose of business on the rationale that it is an application of income.	It may be noted that every expenditure represents application of income and not an appropriation, if the charge/debit is made before determination of the PBT. In that context, CSR is an item of expenditure similar to any other standard item like rent, repairs and insurance. Moreover, such expenditure which is to be incurred under the new Companies Act and determined @2% of the pre-tax profits, is automatically an expenditure for business purpose even though it may not be incurred in the normal course of business. Also, statutorily sharing the burden with the Government *"in providing social services"* under law cannot be termed as getting subsidy from the Government through the said deduction since it is a statutory expenditure and is not in the nature of any tax or dividend. In fact, the alternative argument of it not being an expenditure for tax computation purposes is itself not sustainable since it then becomes a "tax" which cannot be introduced under the Companies Act. The industry therefore expects that such CSR expenditure would be allowed as a deduction under the Income Tax Act and Rules and all the more so, as certain elements of eligible CSR expenditure such as those covered under sections 30 to 36 are fully deductible even under the present tax laws, as explained in the Memorandum. In fact, the High Level Committee on CSR formed by the Ministry of Corporate Affairs had observed that certain items of CSR are allowable under the Income Tax Act, whereas other items are not	It is therefore recommended that the amendment made under section 37(1), Explanation 2 be dropped and the Income Tax Act expressly stipulate that all expenditure incurred by companies in accordance with Section 135 of the Companies Act 2013 and the CSR Rules be allowed as a deduction under law. Also, specific provision should be made in respect of allow ability of CSR expenditure, even in respect of items covered under section 80G (including contributions to the PM Cares Fund) 35(1)(ii) etc.. This will bring about fairness and uniformity in tax treatment and eliminate potential disputes & litigation that

			allowable and this has resulted in inconsistencies and lack of uniformity in the treatment for tax purposes and this has to be corrected.	would otherwise arise in this regard.

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3	MAT Credit availability to Companies Opting for Lower Tax Rate u/s. 115BAA (Section 115JAA/115JB/ 115BAA)	As per the provisions of section 115JAA of the Income Tax Act, 1961, a company can avail the credit of the taxes paid (MAT Credit) under the provisions of section 115JB (Minimum Alternate Tax). MAT credit is the difference between the tax the company pays under MAT and the regular tax. If, for a subsequent financial year, the company pays regular tax (as opposed to tax computed under MAT), it can set off its MAT credit from the earlier year to the extent of the difference between the regular tax and the tax computed under MAT for that year. This MAT credit is allowed a carry forward for a period of 15 financial years. The Government has brought in the Taxation Laws (Amendment) Act, 2019. The provisions of this Act are effective from FY 2019-20. The Act has introduced a new section 115BAA, which allows any domestic company an option to pay income tax @ 25.17 % subject to the condition that they will not avail any exemption/incentive. Such companies shall not be required to pay Minimum Alternate Tax. .	The accumulated MAT credit is as a result of higher taxes paid in earlier years under MAT. Therefore, the credit of such accumulated MAT credit (which is in the nature of advance tax) must be allowed to the companies opting for the option provided u/s 115BAA. Since, no MAT is payable by these companies, the entire tax liability under the provisions of section 115BAA should be allowed to be set off with the available MAT credit.	It is recommended that a specific clarification be introduced allowing the adjustment of such accumulated MAT credit, with the tax payable under section 115 BAA.

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	MAT Credit availability to Companies Opting for Lower Tax Rate u/s. 115BAA (Section 115JAA/115JB/ 115BAA) …***contd. from previous page***	A company may have unadjusted MAT Credit as on 31.03.2019. There is no specific provision which clarifies that whether or not such MAT credit can be utilized by the companies choosing the option of section 115BAA. CBDT vide circular dated 2nd October 2019 has clarified that the existing MAT credit will not be allowed to be carried forward on exercising the option under section 115BAA.		
4	Deduction in respect of Expenditure on Brand Building	In India, there is an over abundance of foreign brands. These range from run-of- the- mill to high-end luxury products. Even for items of daily consumption, the brands consumed by millions of household are predominantly owned by overseas enterprises. Be it baby food, home care, personal care products, tooth pastes, shaving creams, breakfast cereals, tea, coffee, ice creams, confectionary, chocolates, washing machines, laptops, personal computers, refrigerators, mobile phones, televisions, air conditioners, motor cars, etc., the leading brands in the Indian market are the property of foreign enterprises. Every time these products are consumed, value flows out of the country to pay for trademarks used, licenses provided, services consumed and so on.	This unenviable situation is indeed a disheartening reflection of the competitive capabilities of India's home grown brands which are few and far between. However, instead of bemoaning the huge outgo in terms of royalty and other payments, it is much more important to align national and corporate energies to create world class Indian brands. World class brands lend a huge intangible value to products and services enabling them to command a premium and loyalty from consumers. Moreover, successful brands reflect the innovative capacity of their countries and they enrich their national economies. For example, the net sales of Samsung is equivalent to 20% of GDP of South Korea. In fact, a successful global brand is a sustained source of wealth creation. Also, world class brands can contribute increasingly to import substitution, value added exports as well as larger value capture from global markets. In fact, this can transform the country from one dominated by foreign brands to a player of substance in the global arena.	Therefore, it is vital that the policy environment incentivises the creation of Indian brands. . For example, since foreign brands entail a royalty outflow, a similar percentage (say 5%) of turnover of Indian brands should also be admissible as a "standard deduction" for income tax purposes.

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	Deduction in respect of Expenditure on Brand Building…***contd. from previous page***	Until December 16, 2009, the Government had imposed a cap on royalty payments for technological collaboration which was 5% on domestic sales and 8% on exports. Lumpsum royalty payments were capped at US $ 2 million. For use of a brand name, royalty could be paid at upto 1% of sales and 2% of exports. Beyond these levels, approval of the Foreign Investment Promotion Board (FIPB) was required. However, royalty payments have increased sharply since December 2009, when the caps were withdrawn and everything was put under the automatic route. In 2009-10, about US $ 4.44 billion was paid as royalty by Indian companies which was 13% of the Foreign Direct Investment (FDI) inflow into India that year. In 2012-13, Indian companies royalty payments increased to US $ 6.99 billion or 18% of India's FDI inflows that year. These pay-outs have increased 57.43% in the space of four years.	The creation of world class brands demands tremendous staying power with substantial investment commitments over the long run. It requires deep consumer insight, continuous nurturing of R & D, differentiated product development capacity, brand building capability, cutting edge manufacturing and an extensive trade marketing and distribution network. This will also result in job creation and retention of value in the country.	Moreover, a larger deduction of say 10% of turnover should be admissible for new brands for the first 10-15 years of their commercial launch. Alternatively, a weighted deduction of 200% of the relevant deduction. This will create a level playing field for domestic enterprises. Moreover, this will help in making the Indian brands globally competitive and thereby control the current account deficit problem on a sustainable basis.

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5	Place Of Effective Management (POEM)	The Finance Act 2016 introduced the concept of POEM applicable with effect from 1st April, 2016. However, the exhaustive circular of CBDT was issued on 24th January, 2017 and subsequently the detailed draft notification was issued on 15th June, 2017 for necessary comments and feedback. In fact, the detailed notification prescribing exceptions, modifications and adaptations to various provisions of the Act for taxing foreign companies treated as resident in India on account of their place of effective management (POEM) was issued finally in 22nd June 2018.	As obvious from the earlier column, a number of clarificatory circulars and notifications have come out. Moreover, there is always a time lag in the Income Tax processes in respect of determination of residency status which may only get determined during the assessment proceedings. The detailed operating guidelines issued are not comprehensive and fail to clarify certain aspects. Excessive focus on the form as opposed to substance is one of the main problems with the circular / notification (e.g. excessive importance given to the criteria on place of holding of Board meetings etc.). This militates against the latest concepts in international taxation where the primary focus is on substance. The concept of POEM as introduced in the Income Tax Law read along with the circulars / notifications would also make the tax laws excessively complex. This would severely dent the Government's professed policy of simplification, and ease of doing business in India with the consequential impact on uncertainty and high compliance costs. Further, in the context of the fall outs relating to the pandemic, the imposition of POEM should definitely by avoided to the extent possible till financial year 2020-21.	Therefore, it is imperative that POEM should be deferred to the financial year 2021-22 and all the operating issues should be given serious consideration. Further, the applicability of POEM should be restricted only to shell companies abroad not involved in active business and accordingly the CBDT notification should specifically focus on this aspect. A detailed representation in this regard is enclosed. (**Annexure 1).**

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6	"Make in India": Encouraging Innovation to Deliver Corporate Initiatives for larger societal value creation	In line with the Hon'ble Prime Minister's call for qualitative and sustainable industrial growth in the form of "Make in India : Zero Defect and Zero Effect", there is a strong need to encourage and incentivize the immense transformational capacity of corporates in innovating business models that can synergistically deliver economic and social value simultaneously.	Sustainability in Business Development in its truest sense can only take place when economic growth fosters social equity. Growth must translate into the creation of sustainable livelihoods and replenishment of scarce environmental resources. Limits to future growth will be defined more by vulnerabilities flowing from social inequities, environmental degradation, and climate change than by any other economic factor.	Government can support the development of a Responsible Business "Trustmark" Rating System that could be used to convey to the consumer a company's environmental and social performance. An enterprise could be awarded credits by way of "Trustmark Rating", based on an objective evaluation of its triple bottom line performance. An accumulation of such credits could earn the enterprise Trustmark ratings on a progressive scale. These Ratings could then be displayed on products and services of the company to help consumers make an informed choice.

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	"Make in India": Encouraging Innovation to Deliver Corporate Initiatives for larger societal value creation...***contd. from previous page***			Government must consider the provision of a differentiated and preferential set of incentives, fiscal or financial, to companies that demonstrate leadership in sustainability performance. Companies with high "Trustmark" ratings should be provided with incentives like priority fast track clearances, purchase preferences, lower levies of central excise duty for manufacture of "green", eco-friendly products, weighted deduction for the expenditure under the Income Tax Law and so on. This would spur powerful market drivers that will incentivise innovation for larger triple bottom line impact.

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	"Make in India": Encouraging Innovation to Deliver Corporate Initiatives for larger societal value creation…***contd. from previous page***			Banks and Financial Institutions could also factor in the Trustmark Ratings in their lending operations providing benefits to more responsible corporations. Going forward, it may even be possible to trade in these "Trust marks", if a system similar to carbon credits or energy efficiency certificates can be developed so that organisations with surplus credits are able to monetize their efforts.

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7	Hotel Industry	(i) *Depreciation and Additional Depreciation : Hotels were eligible for the depreciation allowance of 20% on their building till 31st March, 2002. The depreciation allowance for hotels buildings was, however, scaled down to 10% vide Notification No. 291/2002 dated 27.09.2002.* *(ii) Hotel charges for long stays are currently subject to TDS (rent) under section 194I ;*	Hotel Buildings constitute the 'plants' for the hotel industry as their usage is round the clock for 24 hours. The industry has to make very heavy investments in renovation, upgradation and upkeep of the hotel buildings Payments made to hotels are not the payment of rent, per se and hence hotels should be excluded from the purview of section 194I for the purpose of Tax Deduction at Source. CBDT may issue appropriate circular in this regard.	Section 32 of the Income Tax Act should therefore be amended to restore the depreciation rate to 20%. Payments made to hotels are not the payment of rent, per se and hence Hotels should be excluded from the purview of Section 1941 for the purpose of Tax Deduction at Source. CBDT may issue appropriate circular in this regard.

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	Hotel Industry…***contd. from previous page***	*(iii) Claim for additional deduction on expenditure incurred on civil construction (maintenance and upkeep of Hotels more than 30 years old)*	The main revenue generating asset of any Hospitality Industry i.e. a Hotel, essentially relates to its property - buildings. Though the Income Tax Act had granted certain relief on profits generated by Hotels set up in a backward State with the intention of improving Tourism, no benefit is extended to existing Hotels including Heritage Hotel buildings, which needs continuous updation and construction. Due to various local laws and the laws relating to Heritage buildings several Hotels have to undertake various construction and strengthening projects which ensures the compliance of various laws. However this is only at the cost of stopping the business for the entire hotel or a section thereof. However such Hotels do not get any benefit in taxation and it takes quite a number of years to recoup the cost of capital and investments.	To allow additional or accelerated deduction from business profits on preservation of Heritage Hotels on entire civil construction expenditure (irrespective of capitalization in books of accounts).

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8	Disallowance of expenses relating to exempt income under section 14A	As per section 14A of the Income Tax Act, 1961, no deduction is allowed in respect of expenditure incurred in relation to exempt income. In the context of the same, the Government has prescribed rule 8D as per which the disallowance will be determined as below : (i) The amount of expenditure directly relating to exempt income. (ii) 1% of the annual average of the monthly averages of the opening and closing value of investments.	The stipulation regarding the disallowance of 1% of the monthly averages of the value of investment is very harsh since it has no relationship with the earning of exempt income. In fact, this could result in ad hoc and excessive disallowance and in some instances, there could be cases of the disallowance exceeding the total exempt income. This is even worse when investments are made at the end of the accounting year, say on 31st March. Also, as per current accounting systems, corporates are not required to do any book closing on a monthly basis and therefore this would result in additional work for the sole purpose of determination of disallowance. The system of disallowance under Rule 8D does not distinguish between an assessee investing from own funds and assessee borrowing money for investments, since the disallowance in both the scenarios is the same. As a result, the assessee investing from own funds is at a disadvantage since it suffers a higher disallowance despite lower cost of investment.	Therefore, it is suggested that rule 8D be amended and should be restricted to the following : Expenditure directly attributable to earning of exempt income be disallowed. Interest expenditure to be disallowed in line with the existing law based on the proportion of average value investments to total assets after excluding the interest expenditure specifically related to the business of the company.

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	Disallowance of expenses relating to exempt income under section 14A…***contd. from previous page***			The disallowance for administrative expenditure should be made by estimating the time of the personnel and resources involved for undertaking the activities which result in earning of the exempt income. The aforesaid estimation to be done on a reasonable basis after considering the facts of each case and this should be certified by the Tax Auditor. In case this is not feasible then the disallowance be restricted to 0.5% of the exempt income.

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9	Deduction in respect of employment of new employees – 80JJAA	The amended provision u/s 80JJAA effective from AY 2017-18 allows the companies (including existing companies) to claim additional deduction @30% of the additional cost of the employee joining employment. The said deduction is available over subsequent years as well. The term “employee” however excludes employees with salary more than Rs 25,000 per month; retainers and contractual employees (without retiral benefits) and employee employed for less than 240 days (apparel, footwear and leather industry less than 150 days). Incidentally hotel industry is also seasonal and similar benefit should be extended to hotel industry as well. Further the requirement spells out whole-time employees of the company leaving aside a large spectrum of employees who are contractually engaged by hotel industry and such hotels are legally liable to pay their salary and the contribution to PF & ESI. In such cases the effective employment is with the Hotel as the manpower supplier merely enjoys the profit margin as well as the tax deduction on the salary paid under this section.	The section should be corrected and improved since employment generation is a key issue for the country.	The ceiling of salary for employee eligible should be increased from Rs 25,000 pm to Rs 50,000 pm with the total deduction spread over 2 years instead of 3 years All whole time retainers and contractual employees who are employed with the company and who fall under the above salary ceiling should be included All payments to man-power supply agencies (excluding the PF and a profit margin of 20%) should be included in the computation if the total days of engagement exceed 150 days.

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	Deduction in respect of employment of new employees – 80JJAA…***contd. from previous page***	Finance Act, 2018 made an amendment stating that where an employee is employed during the previous year for a period of less than 240/150 days, but is employed for a period of 240/150 days, in the immediately succeeding year, he shall be deemed to have been employed in the succeeding year. However, it has not been clarified that in which year the said employee should be considered for the purpose of determining the total number of employees.		In case of an employee completing specified days employment in the subsequent year, it should be clarified that though the deduction for the said employee will be available from the succeeding year, but the employee should be considered for the purpose of determining the total number of employees in the previous year in which he is employed.
10	Tax Incentives under section 72A in respect of amalgamation or demerger (to be extended to all businesses**)**	The tax benefits under section 72A in respect of amalgamation or demerger are currently limited to industrial undertakings or a ship, hotel, aircraft or banking.	It is suggested that this should now be extended to all businesses including financial services, entertainment/sports, information technology (IT) and IT enabled services.	The provisions of section 72A should be simplified specially by the withdrawal of the conditions applicable for the amalgamating company like losses / depreciation being unabsorbed for at least three years and holding assets on the amalgamation date upto ¾ of the book value of fixed assets held two years prior to the said date.

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11	Tax deduction for the employee remuneration cost incurred due to grant of employee stock options (ESOP) to the employees	a)As per the Guidance Note issued by Institute of Chartered Accounts of India ('ICAI'), the SEBI Guidelines and the IndAS the main objective to issue shares under an Employee Stock Option Plan (ESOP) is to remunerate the employee for his services. The SEBI guidelines and the IndAS requires a company to recognise the charge incurred for issue of ESOPs as an employee compensation in the Financial Statements/Books of Account of the Company over the vesting period. For computing the related employee cost, the IndAS mandates companies to adopt the Fair Value valuation of the share options granted to the employee unless that fair value cannot be estimated reliably. Thus, under the IndAS regime, even if the companies have granted the options at the prevailing market prices on the date of grant, they have to do a fair valuation of the options granted to the employees using option pricing models (which essentially calculates the difference between the exercise/grant price and the	a)The issue with respect to deductibility of employee cost incurred for grant of options to employee has been a matter of debate before the Courts/Tribunal. The Income Tax Authorities are not allowing such employee compensation expense as an allowable business expenditure u/s 37 of the Act, inspite of the various judicial precedents, as mentioned above, to the contrary. b)Further, since the Income tax Law has not expressly specified , there is also a debate on the amount to be allowed as employee compensation expense, the method used for calculating the value of the stock options granted , the year in which the cost should be allowed etc. c)Without prejudice to the above, it may kindly be noted that deduction for ESOP to employers is provided even by the developed nations: United States of America Sec. 83(h) of Internal Revenue Code (IRC) allows the companies deduction for ESOP Expenditure equal to the amount offered to tax by employee in the year it is offered to tax by the employees. United Kingdom Part 12, Chapter 2 of the Corporation Tax Act, 2009 allows companies deduction for ESOP expenditure as excess of market value of shares over the amount recovered by the employer in the period when the shares are acquired.	-To put an end to the litigations, it is recommended that the CBDT comes out with clear guidelines on the allowability, calculation and treatment of these employee compensation expenditure/cost incurred on account of issue of shares options to employees under ESOP for income tax purposes. Under the Ind AS the companies are required to account for the such employee cost for grant of ESOPs under fair value method which is a fair method used internationally to account for such cost. Hence, CBDT should also allow companies to claim deduction for the employee remuneration

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	Tax deduction for the employee remuneration cost incurred due to grant of employee stock options (ESOP) to the employees...***contd. from previous page***	expected price of the underlying shares on the date of vesting) and recognise the charge in the profit and loss account over the entire vesting period. (b)Such share - based payments to employees is construed, both by the employees and the company, as a part of package of the remuneration. There is no difference in two situations viz. (i) when the company issues shares to public at market price and a part of the premium is given to the employees in lieu of their services (ii) when the shares are directly issued to employees at a reduced rate. c)Further, it is pertinent to note that under the Income Tax Act too, under section 17(2)(vi) the difference between the fair market value of the ESOPs allotted and exercise price is treated as a perquisite ie. part of salary given to the employees, on which tax is payable by the employees. Hence, income tax itself cognizes the difference i.e value of the share options granted to the		cost on the basis of fair value method, to ensure less complication and hassles in the calculations and to avoid unnecessary litigation and dispute on this subject. ESOP cost charged by the parent company to the group companies should be allowed as a deduction to the group companies.

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	Tax deduction for the employee remuneration cost incurred due to grant of employee stock options (ESOP) to the employees…***contd. from previous page***	employees as part of employee remuneration, taxable in the hands of the employees. (d)Thus, it is evident that the legislature contemplates this to be an employee cost i.e. a consideration for employment, which entails giving the employees the shares of the company at a particular exercise price and therefore, the same should be treated as an allowable business expenditure u/s 37 of the Income Tax Act. **(e)It is an ascertained liability and not a contingent liability, since the employer incurs obligation to compensate the employees over the vesting period, notwithstanding the fact that the exact amount of related cost is quantified only at the time of the exercising the options**. The company becomes liable to issue shares at the time of the exercise of option and it is in lieu of the employees-compensation liability which it incurred over the vesting period to obtain their services.		

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	Tax deduction for the employee remuneration cost incurred due to grant of employee stock options (ESOP) to the employees…***contd. from previous page***	Therefore, the company incurs the liability only during the vesting period, which is neither incurred at the stage of the grant of options nor when such options are exercised. **Reference to the decisions of the Supreme Court in the case of Bharat Earth Movers vs CIT [245 ITR 428] and Rotork Controls India (P) Ltd [314 ITR 62] also indicate that a definite business liability arises in an accounting year which qualifies for deduction even though the liability may have to be quantified and discharged at a future date.** Thus, following the decision of the Supreme Court, the employee cost incurred during the vesting period on account of fair valuation of the share options granted to the employees during the year, cannot be treated as a contingent liability and hence should be allowed as a deduction u/s 37 of the Act, as and when it accrues over the vesting period, as per the Guidelines of SEBI and Accounting Standards and Principles.		

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	Tax deduction for the employee remuneration cost incurred due to grant of employee stock options (ESOP) to the employees…***contd. from previous page***	**(f)Further, the Supreme Court in the case of Woodward Governor India (P) Limited [312 ITR 254] had also held that the term ‘expenditure’ in certain circumstances can also encompass ‘loss’ even though no amount is actually paid out.** Following the rationale of this Apex Court decision, the employee cost accruing on account of issue of ESOPs should be treated as an allowable expenditure u/s 37(1) of the Act, since by undertaking to make share-based payments, the company does not pay anything to its employees but incurs obligation of issuing shares at the determined exercise price on a future date(s) in lieu of their services. **(g)Reliance can be placed on the following decisions which have upheld the allowability of the employee cost incurred on issue of ESOPs to employees as a business deduction during the vesting period-** ***-Special Bench , ITAT Bangalore, in the case of Biocon Limited v DCIT –[TS 322]***		

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	Tax deduction for the employee remuneration cost incurred due to grant of employee stock options (ESOP) to the employees…*contd. from previous page*	***-Madras High Court in the case of CIT vs PVP Ventures Limited [211 Taxman 554]*** ***-Chennai Tribunal in the case of S.S.I. Ltd vs DCIT [85 TTJ 1049] [211 Taxman 554]*** ***-Chandigarh Tribunal in the case of ACIT vs Spray Engineering Devices Limited [53 SOT 70]***		
12	Allow ability of Payment of Premium of Leasehold Land as a Revenue Expenditure	a)Under the IndAS 16, the upfront premium paid on leasehold land held under operating lease are being treated as prepaid expenses and would need to be charged to the Profit and Loss statement under the head “rentals” on a proportionate basis over the life of the lease period. Under the current Accounting Standards, these premium payments leasehold land, are charged to the statement of profit and loss account as amortisation of leasehold land on a proportionate basis over the life of the lease period.		The CBDT should come out with instructions clarifying that these upfront premium payments for leasehold land, should be allowed for income tax deduction in the year of debit in the statement of Profit and Loss.

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	Allow ability of Payment of Premium of Leasehold Land as a Revenue Expenditure…*contd. from previous page*	b. These upfront lump sum premium lease payments for leasehold land are essential business expenditure and do not generate any capital asset and hence are purely revenue in nature. c. These are just like payments made under any operating lease to utilise the leased property for the purposes of the business of the lessee and hence should be allowed just like any business expenditure for tax purposes. Further, under the IndAS, these upfront premium paid on leasehold land, held under operating lease are being classified as rentals. Therefore, these expenditures should be treated as tax-deductible expenses.		
13	Retirement Funds	As per rule 87 of the Income Tax Rules, the employer is permitted to make a total contribution not exceeding 27% of the employee’s salary in respect of Provident Fund and Superannuation.	In the context of the current rates of interest and the high cost of annuities and considering that pensions are in any case taxable in the hands of the employees at the time of receipt, it is suggested that the limit of 15% for Superannuation should be done away with.	In fact, employers should be encouraged to increase the quantum of contributions to ensure proper annuity / pension for the employees.

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	Retirement Funds..***contd. from previous page***.	Further, as per schedule IV of Part A rule 6 of the Income Tax Act, the employer is permitted to contribute upto 12% of the employee's salary in respect of Recognised Provident Fund. In other words, the Income Tax Law permits contribution upto 15% for Superannuation and 12% for PF.		The law should only stipulate that the annuities should be purchased from recognized and approved Life Insurance agencies. Moreover, the stipulations under section 36(1)(iv) and consequential limits fixed on initial contributions should be totally done away with. In fact, if there are gaps / deficits in the Retirement Funds in terms of the total fund position in relation to the actuarial value, the employer should be under a strict obligation under law to pay up the same for bridging the deficit and thereby avoiding a default.

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	Retirement Funds..***contd. from previous page***.			As an alternative, if the Government still wants to continue with an overall limit for PF and Superannuation contributions (in line with the current stipulations in the Income Tax Rules), then it should be increased to 35%.
14	Taxability issues for gratuity, leave encashment and other terminal benefits for legal heirs of a deceased employee	There is a lot of confusion in respect of TDS/taxability of various payments like gratuity, leave encashment and other terminal benefits to the legal heirs of a deceased employee. The existing circulars are very old and needs to be updated based on the current Income Tax Law. Detailed note is enclosed (**Annexure 2)**.		This matter needs to be clarified urgently.

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15	Confusion in respect of TDS on payment for Telephone Bills (including mobile bills), telephone bills, internet charges, electricity charges etc. consequent to amendments in section 9(1)(vi) explanations 2 and 6	Consequent to the amendment to the explanations to section 9(1)(vi) of the Income Tax Act in the Budget for 2012, it could be construed that TDS is applicable in respect of payments for telephone bills, mobile bills, internet charges, payment to cable operators, broadband charges, electricity charges and wheeling and transmission charges. However, it should be noted that the said amendment to the definition of "royalty" is ambiguously worded and is inconsistent with the industry understanding as well as in conflict with the established position internationally that the right to use of any service does not result in "royalty" *per se* without the right to use the concerned equipment or process. The characterization of such payments as royalty would be dependent on the terms of use and degree of control over the industrial, scientific or commercial equipment. Indian Courts have consistently maintained this position. Detailed note is enclosed (**Annexure3).**		Therefore, it is absolutely necessary for the CBDT to give a detailed circular explaining the applicability of this new explanation 6 to section 9(1)(vi) and specifically confirm that no TDS is applicable for payment of telephone bills including mobile bills, payment of internet charges, payment to cable operators, service providers for viewing television channels, payment of broadband charges, electricity charges, wheeling/transmission charges etc. where the payment is only for the right to use the service without any payment for the right to use/control on the equipment / apparatus.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Confusion in respect of TDS on payment for Telephone Bills (including mobile bills), telephone bills, internet charges, electricity charges etc. consequent to amendments in section 9(1)(vi) explanations 2 and 6...***contd. from previous page.***	Further, companies like BSNL have given internal instructions that no TDS is applicable for payment of telephone bills. In fact, if TDS deduction is made by the subscriber, then telephone lines are being disconnected.		
16	Appeals to CIT appeals under section 246A to include interest under section 220(2)	In the last few years, the list of sections under section 246A has been revised in the context of appeals with CIT(Appeals). However, interest under section 220(2) has been missed out and this is currently creating unnecessary harassment for all assessees.	CIT Appeals should have the authority to decide on all assessment matters including interest.	It is recommended that section 246A should be amended to include all issues [including section 220(2)]

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
17	Reassessment - section 147/section 148 :	-Nowadays, reopening notices under section 147/section 148 have become a very common occurrence and such notices are being served in large nos. all over the country. It appears that there is no consideration in following the principles on the subject laid down by the Hon'ble Supreme Court and High Courts over the years. Simple audit observations, even on points of law, are frequently being used as grounds for re-opening leading to extreme harassment to all assessees. In fact, the position has become so bad that even for legislations which have become obsolete like Interest Tax (withdrawn in Finance Act, 2001) re-openings are being done for very old years since the relevant law permitted re-openings without any time limit.	In the context of the changing scenario, it is imperative that reassessments should be restricted to only exceptional cases since the normal assessment process is undergoing a very major change at the current juncture.	-It is suggested that exceptional/detailed stipulations be laid down for any reopening and the period of reopening be also reduced to 3 years from the end of the assessment year. -The new proviso to section 147 should also state that all matters which have been examined in the original assessment should not be reassessed.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Reassessment - section 147/section 148….***contd. from previous page***	-Proviso to section 147 has been inserted to provide that the Assessing Officer may assess or reassess other than matters which are the subject matter of any appeal, reference or revision. However, in respect of matters which have already been examined at the time of original assessment, the current law as laid down by the various courts categorically stipulates that reassessment of the same cannot be done since it will result in change of opinion. Moreover, it does not make sense to keep on assessing/reassessing the same matter again and again. The annual income tax assessment/reassessment procedure should be normal and routine and should not provide for excessive powers to harass assesses. -Further, in the context of the introduction of Faceless Assessment system, the Government should redraft the provisions of section 148 since the normal assessment process would get verified and re-verified by the numerous groups involved in the National Assessment Centre and Regional Assessment Centres (for example by the Verification Unit, Technical Unit etc.).		

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
18	Tax Refund Procedure	Currently, there is no statutory time limit for grant and payment of refund by the tax authorities. Further, the challenge faced by tax payer in obtaining tax refund creates an unfavourable scenario since the tax payer would look to pay advance tax on a most conservative basis. Having a time based procedure for grant and payment of refund would help in re-building tax payer's confidence on the tax system.	These areas need to be codified since the current situation requires a lot of improvement.	Prescribe time limit for issuance of tax refund and giving of appeal effect.
19	Tax on Income from Transfer of Carbon Credits	Finance Act 2017 inserted section 115BBG to provide concessional tax @ 10% on income from transfer from carbon credits. The Memorandum stated as under: *"Carbon credits is an incentive given to an industrial undertaking for reduction of the emission of GHGs (Green House gases), including carbon dioxide which is done through several ways such as by switching over to wind and solar energy, forest regeneration, installation of energy-efficient machinery, landfill methane capture, etc…….*	Though the memorandum seeks to cover a wide array of instruments, which fulfil the above mentioned criteria, section 115BBG restricts the benefit only to carbon credit units validated by the United Nations Framework on Climate Change (UNFCC). The market for carbon credits is no longer an active market.	It is suggested that suitable amendments must be made in Section 115BBG to ensure that the benefit is not restricted only to carbon credit units validated by the United Nations Framework on Climate Change. It must be extended to all the instruments issued under the Indian regulations, which meet the desired objectives of environment protection as envisaged in the Memorandum.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Tax on Income from Transfer of Carbon Credits….*contd. from previous page*	*……. to encourage measures to protect the environment, it is proposed to insert a new section 115BBG".* As per the present section 115BBG, the concessional rate of 10% will not be available for such instruments, which genuinely encourage measures to protect the environment as envisaged in the Memorandum.	Alternative initiatives on similar lines as UNFCC have been developed under Indian regulations viz. Renewable Energy Certificates, Energy Saving Certificate which are governed by Central Electricity Regulatory Commission, Bureau of Energy Efficiency and other statutory Indian regulations.	
20	Tax Collection at Source under section 206C(1H)	Finance Bill, 2020 introduced the provisions of 206C(1H) whereby TCS is required to be collected @ 0.1% (0.075% till March 2021) at the time of receipt of sale consideration exceeding Rs. 50 lakhs from the buyer. When the Finance Act 2020 was passed, the applicability of provisions was deferred till 30th September 2020. The above provisions which are now effective from 1st October 2020 have wide ramifications and will have applicability to a huge number of assessees.	The provisions are ambiguous and there are practical challenges in implementation. CBDT has given some clarifications at the very last moment (one day before the provisions were effective) without giving any time to the assessees to make systems to implement the provisions. Some issues still need clarification which are enclosed as **Annexure 5.** Further, the implementation of these provisions will result in huge compliance cost for the assessees as well as various reconciliation issues between parties. As per the Budget Memorandum, the intention in inserting the provisions of sub-section (1H) of section 206C of the Act is to widen the tax net. It is stated in this regard that it is very unlikely that a seller or a buyer of the level provided in the section will not be filing return of income or would not be having PAN number.	These provisions are against the government's professed policy of ease of doing business. It is therefore recommended that the government must withdraw these provisions. Alternatively, the organized sector, wherein the entire data is available in the GST returns, should be exempted from these provisions. in this regard.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Tax Collection at Source under section 206C(1H)… ***Contd. from previous page.***		It is also important to note that presently PAN is compulsory for many transactions, including on sale and purchase of goods exceeding Rs. 2 lacs etc. Purchase consideration cannot be paid by the buyer in cash as per provisions of section 40A(3) exceeding 10,000/-.Similarly, buyer cannot accept payment in excess of Rs.2 lacs otherwise than though banking system as per section 269ST of the Act. Moreover, under Goods and Service Tax any dealer having turnover exceeding Rs.40 lacs is required to be registered and data of sales and purchases made by a registered dealer is duly available on the system. Therefore, it is emphatically stated that provisions of sub-section (1H) of section 206C are not going to effectively serve any purpose whereas, it is going to raise number of difficulties and issues in implementing the provision and establishing due compliance by the sellers.	Without prejudice, the board must come out with the guidelines or appropriate changes must be incorporated in the Act itself, to clarify the ambiguities in the TCS provisions. This will bring about fairness and uniformity in tax treatment and eliminate potential disputes & litigation that would otherwise arise
21	Tax Collection at Source under section 206C(1G)	TCS on Overseas tour package	In the context of the current emergency like situation due to COVID – 19 outbreak, the travel and tourism industry is in complete doldrums. This new TCS provision will severely impact the already downtrodden travel and tourism sector.	It is recommended that the provisions of TCS on overseas tour package must be withdrawn.

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Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Tax Collection at Source under section 206C(1G)…..***contd. from previous page***		As per the provisions, seller of an "overseas tour programme package", shall collect from the buyer, 5% TCS. "Overseas tour programme package" has been defined as under: "overseas tour program package" means any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto." The above definition does not clarify what is a "tour package". Therefore, the revenue authorities may take an interpretation whereby standalone services viz. booking of tickets, arranging the hotel accommodation etc. may be said to liable for TCS. Further, the present provision is applicable to all buyers. Therefore, no exemption has been provided for non-resident buyers. Since as per the memorandum the objective of the section is to deepen the tax net, it should not be applicable to non-residents who are not liable for tax in India.	Without prejudice, a)To avoid disputes and litigation, it must be clarified that tour package must include not just travel or accommodation but a combination of both which has been arranged by the same person. b)A specific exemption must be provided for non-residents from the applicability of TCS provisions for overseas tour programme package.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
22	TDS on Dividends paid by companies	Finance Act 2020 has abolished Dividend Distribution Tax and, with effect from April 1, 2020, dividends declared by Indian companies are taxable in the hands of shareholders. Companies will have to deduct or withhold tax for dividends paid to the shareholders.	The requirement of withholding tax on dividend paid to the shareholders has resulted in a huge compliance burden on the Companies. There are various classes of shareholders (individuals, trusts, government companies, mutual funds, insurance companies, FPIs FIIs, other non-resident shareholders etc.) each having different withholding tax implications. The Company needs to analyse all classes of shareholders and apply appropriate TDS rate. For non-resident shareholders there are additional requirement of examining tax treaties, tax residency certificates, beneficial ownership, MLI impact, filing of Form 15CA/CB on the income tax portal etc. With different tax rates and surcharge applicable, the compliance of withholding taxes for non- residents is very burdensome, particularly for large listed companies having lakhs of shareholders. This results in lot of paperwork and time and efforts on the part of the Indian companies. Further, the dividend payout happens with 4-5 days on AGM. Within this short duration large companies need to file thousands of Form 15CA/CBs in respect of dividend payment to non-residents.	The government should look into this issue and provide for a simplified process, including the possibility of prescribing a uniform rate of say 20% for payments of dividends by listed companies to all non - residents. Relaxations must be provided in filing of Form 15CA/CBs particularly in cases where full tax has been deducted.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
23	Processing of Return of Income – Section 143(1)	Section 143(1) provides for processing of return by computation of income/loss after making certain adjustments as prescribed, which, inter-alia, includes disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return. Debatable issues cannot be the subject matter of adjustment in 143(1) order.	CPC unit of the Income Tax department is making additions on issues which are debatable. One such particular case is the adjustment in case of employee contributions u/s. 36(va) (viz. PF, ESIC etc.) deposited beyond the due date prescribed in the respective act. However, there are various judgements of the courts which have held that contribution from employees deposited beyond the due date under respective act but before the due date of filing return of income will be allowed as deduction. While processing the Return of Income u/s. 143(1), adjustments are being made in respect of such employee contribution beyond due dates under their respective acts.	Appropriate changes must be brought in the Act to ensure no additions on debatable issues are done in 143(1).
24	Verification of details of Specified Financial Transactions-Section 285BA	Section 285BA requires a specified person to furnish a statement in respect of certain specified financial transaction which is registered or recorded or maintained by him and information relating to which is relevant and required for the purposes of this Act. Specified financial transaction inter-alia includes transaction by way of an investment made or an expenditure incurred. The Income Tax Department has launched a Compliance portal on the e-filing website where data reported u/s. 285BA by the specified person is now required to be verified by the assessees in respect of which the data is furnished.	The data for which the compliance is being asked for is in the nature of sale and purchase of securities. It has also been observed that the data has various errors. For e.g. for certain securities the purchase and sale value is being considered as the face value which is often not the transaction value. Large companies which undertake huge transactions (in thousands of crores) on sale and purchase of securities are now being asked to check line item wise sale and purchase data as furnished on the compliance portal. It is a very cumbersome compliance and requires a lot of time and effort. When all such transactions are already part of the audited accounts and considered for the purpose of filing the return additional compliance on this aspect is not required.	It is recommended that such compliance should be enforced only for selected assessees on appropriate risk based criteria. For assessees who are regularly filing their return, being selected for scrutiny every year and there have been no issues on these aspects should not be burdened with additional compliance. It is against the government's professed policy of ease of doing business.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
25	Faceless Assessment Scheme	The government has introduced faceless assessment scheme to ensure transparency in dealings between the tax body and taxpayers and to eliminate undesirable practices on account of individual discretion and subjective judgement. This initiative intends to bring uniformity in approach and make the assessment process more standardized and efficient for the taxpayer.	The conventional system of assessment and appellate proceedings provides an opportunity to the taxpayer to explain facts and represent its case personally or through an Authorized Representative before the AO. The faceless scheme envisages that personal hearings will be granted only in exceptional circumstances to be notified by CBDT. In case of complex issues which are prone to litigation, tax payers should have an adequate chance to put across their points to the officials of the tax department. The new faceless assessment system may lead to reduction in corruption but increase in litigation since the revenue authorities will be inclined to make adjustments in absence of complete understanding of the facts and the nature of business of the assessee. A rise in litigation will defeat the government's purpose. Further, currently, limited data can be uploaded on the portal, leading to administrative inefficiencies for the taxpayer. This is a practical issue particularly in case of large companies having voluminous data.	It is recommended that adequate opportunity must be provided to the assessees to interact with the tax officials and explain the issues/submissions. This may be done over video conferencing or other digital means. This will ensure that the issues are properly understood by the income tax department and this will help in avoiding adhoc adjustments. Further, the computer systems infrastructure should be adequately updated to handle voluminous data. Assessees may be given the option of submitting voluminous data by post.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
26	Rectification Of Mistakes Apparent From Record- Section 154	Section 154(8) stipulates that where application for amendment is made by assessee for rectifying any mistake apparent from record, the income-tax authority shall pass an order, **within a period of *six months from the end of the month* in which such an application is received**, by either making amendment or refusing to allow the claim. In fact, the Central Board of Direct Taxes (CBDT) tried to address the issue of delays in disposal of rectification application/petition vide instruction No. 01 of 2016 dated 15.02.2016 directing that the time-limit of six months mentioned in section 154(8) is to be strictly followed by the assessing officer while disposing off the rectification application filed by the assessee.	However, it may be noted that time limit of six months is not being observed in deciding the applications. In many cases, the assessee has to file repeated application because an application on which order has not been passed within six months is considered by authorities as lapsed or no longer valid.	It is therefore suggested that- i. provisions should be introduced such that if the application for rectification is not rejected within the prescribed time, it would be deemed that the application has been allowed and the AO should be bound to rectify the mistake; and ii. there should be accountability for the Assessing Officer for non-compliance with the provisions of section 154.

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Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
27	Order Giving Effect to the Order Appellate Authorities	Section 153(5) stipulates that AO is required to pass the order giving effect to the order of appellate authorities ***<u>within 3 months from the end of the month in which the order is received</u>***. Further, section 244A(1A) provides that if the AO does not pass the order giving effect within the time limit of 3 months, the assessee shall be eligible for an additional interest on the refund amount @3% per annum from the period after the expiry of 3 months to the date of refund. In fact, CBDT had issued a direction to its subordinate authorities vide Instruction No. 8 of 2011 which directs the AO to give effect to the order of the CIT(A) in a timely manner.	The letters filed with the Assessing Officer for passing order giving effect to the order of appellate authorities are not discharged by the assessing officer within the time frame and there are delays while passing order giving effects. In many cases, the Assessee has to file repeated reminder letters and constantly follow up with the AO to pass the order giving effect to the order of CIT(A).	It is therefore suggested that- i. the rate of additional interest be increased from 3% to 6% per annum for the time period from the expiry of 3 months till the date of refund; and ii. there should also be stricter consequences or repercussion, which the assessing officer would have to face for not passing the order giving effect within the time specified u/s. 153.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
28	Tax on income of new manufacturing domestic companies u/s 115BAB	For claiming the benefit of a lower tax rate of 15% u/s 115BAB, the company should not be engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or **distribution** of, such article or thing manufactured or produced by it.	The condition is very ambiguous in the sense that the activity of distribution can be narrowly interpreted by the revenue authorities so as to exclude from its ambit the activities of advertising, sales promotion, marketing etc. All these activities are an integral part of the business of the assessee without which it would not be able to sell its products.	It is recommended that the activities of sales promotion, marketing, advertisement etc. must be clearly included in the section to avoid any ambiguities.
29	TDS under section 194J	Prior to Finance Act 2020, TDS @ 10% was applicable on Fees for professional or technical services. To reduce litigation between the applicability of 194C and 194J, Finance Act 2020 reduced the rate for TDS in section 194J in case of fees for technical services (other than professional services) to two per cent from existing ten per cent. The TDS rate for professional services remains @ 10%.	TDS on technical services is 2%, whereas TDS on professional services remains 10%. However, the list of professions notified also includes the profession of technical consultancy. Therefore, in case the assessee deducts 2% TDS on technical services, the same can be disputed by the income tax department as a professional service of technical consultancy and therefore liable for TDS @ 10%. In absence of clear guidelines, there can be a lot of litigations on this issue.	It is recommended that appropriate amendment be made in the Act to remove the ambiguity in classification of professional service and technical service.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
30	Issue of Certificate under section 281 in respect of transfer of any asset.	As per the provisions of section 281, an assessee can approach the Income Tax Department for issue of a certificate under section 281 in relation to any pending tax proceedings in case of transfer of any asset by way of sale, mortgage, gift etc. to any other person. This certificate/clearance helps in making the said transfer free from any risk of attachment etc. in the hands of the transferee.	The provisions of section 281, clearly state that the Income Tax Department's Clearance is only in respect of any pending tax proceedings that exist at the point of transfer / sale etc. However, it has been observed that presently the Income Tax Authorities are issuing the said section 281 certificate with specific conditions relating to future tax demands that may arise for the said assessee, as well as stipulations relating to advance tax payments for the income /gains in relation to the said transfer. The above is not in accordance with the provisions of the said section and acts as a hindrance to the Government's professed policy of ease of doing business.	The CBDT should give clear instructions to the various income tax offices to refrain from imposing unnecessary conditions relating to future tax dues / advance tax in the certificate under section 281 for any asset transfer since it is not in line with the provisions of the said section and results in unnecessary harassment and disputes.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
31	Equalization levy- Clarity required	Effective 1 April 2020, Finance Act 2020 expanded the scope of equalisation levy to non-resident e-commerce operators by introducing a new levy of 2% ('EL 2.0'). Currently, the way EL 2.0 provisions are worded, there is ambiguity as regards its scope and there are numerous interpretational issues, such as: • What is implied by the term **'online sale of goods'** or **'providing online services'** i.e. How to deal with situations where only one leg of the transaction is online and the other happens in a physical form. • Interpretation of the term **'digital or electronic platform'**. Applicability on sales of goods or services carried out through telephonic medium or through e-mail.	It is recommended that detailed FAQs be issued clarifying the concerns of the stakeholders.	This will ensure timely compliance and avoid litigation on interpretational issues.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Equalization levy-Clarity required…***contd. From previous page***	• How to deal with situations involving sales returns? If any adjustment is possible? • In case of e-commerce operators, who do not sell their own goods or services but merely act as facilitators, would EL 2.0 be levied on their commission income or on the total consideration involved in sale of goods or services. • Applicability in case of software licensing arrangements and outright sale of software • Applicability in case of cost re-charges from group companies • There is carve out provided for ecommerce operators who have a Permanent Establishment (PE) in India, but clarity is required on the type of PE, i.e. fixed place PE, service PE or agency PE. Whether Authority for Advance Rulings (AAR) route is available for seeking clarity on issues relating to EL 2.0?		

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
32	Section 10(50) of the Income-tax Act, 1961 (the Act) vs. Equalization Levy	As per section 10(50) of the Act, a transaction covered by EL 2.0 provision is exempt from tax under the Act. However, this exemption is available from 1 April 2021, whereas EL 2.0 provisions are effective from 1 April 2020. Consequently, in the first year of operation of EL 2.0, one transaction could be subjected to both EL 2.0 and withholding tax under the Act. This should be addressed on an urgent basis.	Exemption provided under section 10(50) should be made applicable from 1 April 2020.	This would remove hardship to the taxpayers on account of possible double taxation.
33	Equalization levy- Due date for payment for the last quarter	Due date for payment for EL 2.0 for the last quarter is 31stMarch itself. Due to year end closure exercise and the fact that true up for EL 2.0 transactions done during the financial year, may be required by 31st March, compliance within the stipulated time would become very cumbersome. This would result in interest liability for the taxpayers.	The time limit of payment of EL 2.0 for last quarter should be extended to 30th June.	This would ensure timely compliance with EL 2.0 provisions.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
34	Section 80M – Clarity on the quantum of eligible deduction for inter-corporate dividends	Section 80M of the Act allows deduction for inter-corporate dividends received by a domestic company in case the said company further declares the dividend to its shareholders. However, clarity is required as regards: • amount of deduction eligible i.e. whether it is the gross dividend received or the net dividend after considering permissible deductions • whether a company paying tax at concessional rate under section 115BBD of the Act for dividend received from a foreign company will be allowed to take deduction under section 80M, considering difference in the corporate tax rate and rate provided in section 115BBD whether any distribution made in any earlier year can be claimed as deduction in any subsequent year, if no deduction for such distribution has been claimed earlier under this section (for any reason).	It is suggested that suitable clarity be provided on these issues.	This will reduce litigation on interpretational issues.

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Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
35	Rationalizing section 56(2)(x) of the Act to exclude transfers covered under section 47	Section 56(2)(x) provides for taxation in the hands of recipient of money/ specified property received for inadequate consideration. The section excludes certain specified transactions covered under section 47 (e.g. amalgamation, business reorganization, demerger, etc.) from the rigors of this provision.	All types of business reorganisations, as enumerated in section 47, should be kept outside the purview of section 56(2)(x).	This would help rationalize the existing provisions.
36	Section 194J - Professional services vs. Technical services	Finance Act 2000 has reduced the TDS rate for Fees for Technical Services (FTS) to 2%, however, for Fee for Professional Services (FPS), the TDS rate continues to be 10%. The definition of FTS under the Act is wide enough to cover FPS also. Similarly, the definition of FPS in section 194J contains certain items which could be classified as FTS, such as technical consultancy, services provided by an engineer etc.	The government should issue appropriate clarification in this regard. Further, it may also be clarified if professional services can be carried out by a company, as there are conflicting judicial views on this issue.	Though this change was done to reduce interpretational issues as regards applicability of section 194C and 194J, it has created challenges around classification between FTS and FPS. Clarity on this issue will mitigate litigation on interpretational issues.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
37	Section 194-O - Clarity required on TDS provisions on e-commerce transactions	• The definition of E- commerce operator (ECO) covers both domestic as well as foreign ECOs. Thus, in order to enable deducting TDS under section 194-O, a non-resident ECO is required to obtain Tax Deduction Account Number (TAN). Under the guidelines for obtaining TAN, such ECO is required to mention one Indian address in the application. This requirement would cause hardship for ECOs that do not have a place of business in India. • Under the current provisions, payment made directly by customer to an E-Commerce Participant (ECP) will be deemed to be credited or paid by ECO to ECP. In such case, manner and mechanism of deducting TDS is unclear.		A clarification from the CBDT to extend the benefit to goods is required, to avoid interpretational issues and consequential litigation. Relief from obtaining TAN and prescribing mechanism for TDS collection in case of direct payments would help ease out compliance related issues.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
38	Taxability of capital gains of a Discretionary Family Trust	The capital gain tax rate under section 112, 112A and 111A, as the case may be, ranges from 10%-20%. However, as per Section 164 of the Act, income of a discretionary Trust is taxable at Maximum Marginal Rate ('MMR'). Therefore, there is lack of clarity as regards the tax rate applicable to a Discretionary Family Trust in case its income comprises of capital gains as specified under Section 112, 112A or 111A.	Clarity with respect to rate of tax applicable on capital gains for discretionary Trusts, should be provided in Section 164.	This will reduce litigation on interpretational issues.
39	Beneficiaries of a Family Trust comprising of Sub-Trusts	As per Clause X of the proviso to Section 56(2)(x), the said section is not applicable on receipt of property from an individual by a trust created or established solely for the benefit of relatives of the individual. Further, the term 'relative' has been defined in Explanation (e) to Section 56(2)(vii) to include only individuals.	Clarity should be provided in Clause X of the proviso to Section 56(2)(x), that if a sub-trust is a beneficiary of the Master-Trust and the beneficiaries of the sub-trust are individuals who are relatives of the donor of the Master-Trust, then the exemption from 56(2)(x) should be available, because the ultimate beneficiaries of the Master-Trust are individual relatives of the donor.	Various promoter groups create a dual Trust structure (consisting of Master-Trust and sub-trust), to ensure effective succession planning for multiple generations. Clarity with respect to sub-trusts for the purpose of Section 56(2)(x) would help in removing uncertainties in taxation while carrying out succession planning.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
40	Availability of deductions under Section 54F and Chapter VIA to Family Trusts	Deduction under Section 54F is available to individuals and HUFs. Similarly, various deductions prescribed under Chapter VIA are available only to individuals and Hindu Undivided Family (HUFs) e.g. Section 80C, 80CCA, etc.	It is recommended that the benefits of Section 54F and various sections of chapter VIA of the Act should be made available to Family Trusts as well.	As per several judicial precedents, a Family Trust is taxed in the same manner as an individual. Therefore, it is desirable that benefits / deductions available to individuals under the Act should be made available to Family Trusts as well.
41	Section 90(2) - Introduction of threshold for the requirement to obtain Tax Residency Certificate (TRC**)**	Section 90(2) provides that in respect of a taxpayer to whom a Tax Treaty applies, the provisions of the Act shall apply to the extent they are more beneficial. However, for this purpose, TRC is required to be furnished by the taxpayer. This provision applies to all non-residents irrespective of the level of income and the nature thereof.	It is suggested that a threshold of INR one crore per payer per annum or any other appropriate threshold be specified for applicability of this provision relating to obtaining a TRC.	Since obtaining TRC involves time and cost, this provision creates unintended hardship to both non-resident recipients and the resident payer even where amounts involved are not very large.

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Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
42	Issus relating to Start Ups	Requirement of valuing shares under DCF method by merchant banker.	As startups are required to raise small quantum of equity funds from time to time, engaging merchant banker each time is costly and cumbersome	To allow valuation by the auditor for proposed capital infusion upto Rs. 1 cr.
		Benefits under section 54 GB of Income tax Act restricted to only 80IAC registered startups	There are very few startups registered under section 80IAC.993 out of 1000 are registered with DPIIT but not under 80IAC.	It should be made available to all Startups registered with DPIIT.
		Presently benefit of deferment of tax on ESOP is restricted to only 80IAC registered startups	As startups frequently have to issue ESOP to retain employees, it is facing huge tax burden. Hence tax benefit should be made available to all DPIIT registered startups	It should be made available to all Startups registered with DPIIT.
		Relaxation of adjustment of brought forward losses only available to 80IAC registered startups	Most of the startups incur losses in initial years. They also need to raise funds by taking new investors. Losses incurred in previous years should be allowed to be set off for all DPIIT registered startups	It should be made available to all Startups registered with DPIIT

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
43	Section 10AA of the Income Tax Act	Section 10AA of Income tax act provides tax holidays for the industries established in specified area for upliftment of these areas/ industries. The benefit is available as 100 % tax holidays for First 5 years, 50%, for next 5 years & 50% for the next 5 years subject to specified investment criteria after 10 years. Budgetforfinancialyear2016-17introducedasunsetclausefor benefits available to units operating in Special Economic Zones under Section 10 AA of Income Tax Act. These benefits will be available to the unit which start production on or before 31st March, 2021	In the context of the current economic situation because of the pandemic and lock down, there is an urgent need to provide additional tax incentives.	We recommend that the benefit should be extended to 100% for the 10 years period. We would recommend that this implementation of this sunset clause be extended till 31st March, 2025.
44	Meaning of the term 'manufacture' under section 115BAB	Section 115BAB, provides for a reduced corporate tax rate of 15% for new manufacturing companies. The term 'manufacture' has been defined under section 2(29BA) of the Act in a very wide manner. Further, there has been a lot of litigation in the past, as to what constitutes 'manufacture'. Also, there is lack of clarity, as to whether	It is recommended that the government issues detailed guidance on what constitutes 'manufacture' for availing benefit of the reduced rate of tax. Further, the government should also clarify if reduced tax rate would be available in cases where goods are manufactured on job-work basis or under contract manufacturing; covering situations where manufacturing activity is undertaken on a principal to agent basis or principal to principal basis.	This would help reduce litigation on this issue in future.

		when a company gets goods manufactured from a job-worker or a contract manufacturer, whether it would be eligible to avail the reduced rate of 15%.		

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
45	Consequences of breach of conditions of Section 115BAB of the Act – whether taxpayer can fall back on Section 115BAA of the Act? Also, to get clarification that consequences restricted only to the year of breach of conditions	While section 115BAB of the Act stipulates conditions to be satisfied by a company exercising the option to avail lower tax rate of 15%, there is no clarity on the consequences that may follow in the event of breach of any of the conditions which result in the company falling outside the scope of s. 115BAB (Illustratively, where a company post exercise of the option u/s 115BABcarriesonsomenon-qualifying operations).	Doubts have risen whether such a company will be taxed at normal rate of 30% (plus applicable surcharge and cess or whether it can avail the benefit of s.115BAA which provides for lower effective tax rate of 25.17%? This question is also pertinent if dispute arises in the assessment where the Tax Authority denies the benefit of s.115BAB by alleging breach of some condition.	It is recommended that, to provide clarity and certainty, a company which loses shelter of section 115BAB of the Act may, at its option, be allowed to be governed by section 115BAA of the Act.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Consequences of breach of conditions of Section 115BAB of the Act – whether taxpayer can fall back on Section 115BAA of the Act? Also, clarify that consequences restricted only to the year of breach of conditions........ ***contd. from previous page.***	For availing the benefit of section 115BAA of the Act, the company needs to exercise the option in the return of income. A company availing section 115BAB of the Act benefit would have exercised option in favour of section 115BAB of the Act in its first return. There is no statutory mechanism provided for the company availing section 115BAB of the Act benefit to fall back on section 115BAA of the Act benefit in case of any breach of section 115BAB of the Act condition or in the event of dispute arising in its assessment.	It may be noted that a company fulfilling section 115BAB of the Act conditions would also be compliant with section 115BAA of the Act condition of computing total income without availing any tax incentives. Even if there is breach of formative condition or there is use of second-handplant&machinerybeyond20%threshold,thecompany's computation would be in line with section 115BAA of the Act and hence, it should not be deprived of section 115BAA of the Act benefit, if for any reason, it is denied benefit of section 115BAB of the Act.	Alternatively, a company exercising its option under section 115BAB of the Act may also be concurrently permitted to exercise its option under section 115BAA of the Act to enable claim of benefit of either provision so long as conditions stipulated therein are fulfilled.

_Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Consequences of breach of conditions of Section 115BAB of the Act – whether taxpayer can fall back on Section 115BAA of the Act? Also, clarify that consequences restricted only to the year of breach of conditions........***contd. from previous page***	Also, it is not clear as to what will be the impact of venial breach of condition by the taxpayer. Say, for instance, in a particular year, the use of second hand plant and machinery marginally (say, 22%) exceeds the permissible limit of 20% of the total value of the plant and machinery used by the taxpayers. The company was otherwise eligible to claim the benefit of section 115BAB of the Act in all the past and subsequent years.	It needs to be suitably clarified that the company shall not be eligible to claim the benefit of confessional tax regime only in the year of breach of condition and it's claim to avail benefit of concessional tax regime in future or past years shall not be impacted.	Furthermore, it may be clarified that in case of breach of conditions in a particular year, the claim of the taxpayer to avail concessional tax regime in future or past years shall not be affected if it otherwise fulfils all other conditions in those years.
46	Applicable tax rate on excess income arising on account of TP adjustment –Section 115BAB(4) of the Act	Concessional tax rate of 15% introduced under section 115BAB of the Act is applicable on total income of the taxpayer which will also include all adjustments made pursuant to application of transfer pricing provisions.		It may be clarified whether the excess income arising on account of TP adjustment under section 115BAB(4) of the Act shall be chargeableat25concessional tax rate under section 115BAB or normal tax rate, as the case maybe.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Applicable tax rate on excess income arising on account of TP adjustment –Section 115BAB(4) of the Act…..***contd. from previous page***	Further, section 115BAB(4) of the Act provides for adjustment wherein the tax authority is of the view that owing to close connections between the domestic company and the transacting parties, the domestic company has reported income which is in excess of the regular income. Accordingly, the excess profits shall not be considered for the purposes of computing "profits and gains of such company" for the purposes of section 115BAB of the Act. Thus the issue that arises is how to calculate the tax payable on income which is hit by the provisions of section 115BAB(4) of the Act i.e. whether it shall be eligible to claim concessional tax rate of 15% or would normal tax apply to it.		Further, assuming that company is not eligible to 15% tax under section 115BAB of the Act on such income on fair consideration of provisions a company which has fulfilled all other conditions should be allowed to fall back to section 115BAA of the Act such that it can avail tax rate of 22%

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
47	Benefit of addition of losses on account of unabsorbed depreciation to be extended in AY 2021-22 and subsequent years also	In terms of the provisions of Sec. 115BAA(3), no loss or unabsorbed depreciation attributable to the prescribed deductions claimed by the company in earlier years, shall be allowed to be carried forward and set off once the company has transition into the new regime. However, some relaxation was provided in cases where there is a loss on account of depreciation allowance in respect of a block of asset which has not been given full effect to prior to the assessment year beginning on the 1st day of April, 2020. In such cases, corresponding adjustment can be made to the written down value of such block of assets as on the 1st day of April, 2019 in the prescribed manner, if the option under sub-section (5) is exercised for a previous year relevant to the assessment year beginning on the 1st day of April, 2020.		The reading of the aforesaid section suggests that the benefit of adjustment of unabsorbed depreciation to the block off assets is available only for such companies which will transition to the new regime in AY 2020-21 only. Since, many companies owing to their existing business losses may transition to the new regime in subsequent years, it is suggested that the benefit of addition of unabsorbed depreciation (arising on account of claim of additional depreciation in earlier years) should be available in AY 2021-22 and subsequent years also. As losses on account of additional depreciation

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Benefit of addition of losses on account of unabsorbed depreciation to be extended in AY 2021-22 and subsequent years also…***contd. From the previous page***			arise due to accelerated depreciation claimed by the company in earlier years and denial of the said losses to be added back to the WDV will result in permanent loss to the company.
48	Provisions of ICDS to be modified	Currently for the purpose of computing profit under the head profit and gains of business or profession or income from other sources, an assessee is required to follow the provisions of Income Computation and Disclosure Standards (ICDS). Various amendments were also brought in the Act to give effect to such provisions. ICDS was introduced taking into consideration the traditional accounting standards. However, most of the companies today have transitioned to Ind-AS method of accounting.		It is suggested that the provisions of ICDS be revisited and modified to streamline it with Ind-AS method of accounting as the current ICDS provisions is resulting in major differences between the books and income tax due to different accounting methods. Such differences result in only timing difference but create lot of administrative hassles as the assesse has to draw up its accounts again for income tax purposes.

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Transfer Pricing

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
49	Rationalization of Transfer Pricing (TP) compliance thresholds: TP documentation under section 92D of the Act read with Rule 10D of the Rules and Accountant's Report in Form 3CEB under section 92E of the Act	Existing threshold of INR 1 crore for maintenance of mandatory TP documentation is a very low and hence increases compliance burden on small taxpayers. Post introduction of TP Regulations in 2001, there has been no change in this threshold whereas there have been several changes both at macro and micro level in the economy and this limit is very low in the current business context.	Align TP documentation threshold with Tax audit threshold which is currently, INR 5 crores.	This will reduce compliance burden on small taxpayers Compliance thresholds in several other cases have been significantly increased in the recent past: - The minimum threshold for Tax audit has been increased from INR 1 crore to INR 5 crores w.e.f. AY 2020-21 - Thresholds under several other provisions/statutes have been eased with the intention of providing benefits and reducing

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Rationalization of Transfer Pricing (TP) compliance thresholds: TP documentation under section 92D of the Act read with Rule 10D of the Rules and Accountant's Report in Form 3CEB under section 92E of the Act…***contd. from previous page***			- compliance and regulatory burden on wider base of taxpayers, for example: increase in investment and turnover criteria for determining Micro, Small and Medium Enterprises (MSMEs) - The limit for specified domestic transactions increased from INR 5 crores (at the time of introduction in Finance Act, 2012) to INR 20 crores (by Finance Act, 2015)
50	Integrate filing of Form 3CEB under section 92E with preparation of TP documentation under section 92D read with Rule 10D	Currently Form 3CEB and TP documentation are separate documents. Since, TP documentation prepared under section 92D read with Rule 10D forms the basis for determination of Arm's Length Price (ALP) and certification of Form 3CEB,	While filing of Form 3CEB, wherever the aggregate value of international transactions exceeds the threshold for maintenance of documentation (recommended threshold of INR 5 crores), option to electronically file TP documentation along with Form 3CEB should be enabled.	This would make the whole TP compliance process efficient for taxpayer and save time.

	into a single electronic filing	both the documents should be integrated and single electronic filing of TP documentation and Form 3CEB should be enabled.		

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
51	Advance Pricing Agreement (APA) regime	No guidance on timeframe to conclude APAs**:** As per Central Board of Direct Taxes (CBDTs) Annual Report for the APA programme in India, it took an average of 45.22 months in FY 2018-19 to conclude 41 unilateral APAs. Thus, the time taken to conclude APAs has significantly increased from past years. Current APA regime has roll back option only for 4 previous years. The taxpayer may have cases pending before the Income-tax Appellate Tribunal (ITAT) for a period more than 4 previous years as there is no time limit for disposal of cases before the ITAT. The roll back period in other major economies is higher. In USA, there is no restriction on number of years to be rolled back, China has a 10-year roll back period, Japan has a 6-year roll back period.	CBDT can prescribe a 24 months' time-limit as a guidance, to conclude unilateral APAs. There should be no limitation of years on the roll back option	Till the APA is concluded, the element of uncertainty on pricing and position with respect to covered years continues. This can be mitigated by allowing a time bound movement of unilateral APA proceedings. Roll back provisions allow taxpayers to resolve pending TP disputes for past years and get certainty thereto. Under bilateral APAs, roll back option can be opted for if both the concerned countries have such roll back option covering the years for which taxpayers wants to apply to get covered under the APA. Hence, it is essential that the limit of 4 roll back previous years be removed or at least increased.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
52	Secondary adjustment under section 92CE of the Act read with Rule 10CB of the Income-tax Rules, 1962 (the Rules)	**Computation of interest:** As per Rule 10CB of the Rules, interest on the excess money or part thereof lying with the Associated Entity (AE) as a result of primary adjustment, not repatriated into India within the prescribed time shall be computed from the date of order of Assessing Officer (AO) or the ITAT as the case may be (where such order is accepted by the tax payer). In most cases, there is some delay or time gap between the date of the order and the date when order is received by the taxpayer. Moreover, in case of order of ITAT, the computation of adjustment amount and tax thereon is made in the order giving effect to the ITAT order and not in the ITAT order itself. Hence, keeping the trigger date for computation of interest as date of AO and ITAT order will result in undue hardship to the taxpayer and pose practical difficulties in repatriating the specified adjustment within statutory time limit.	Time period for computation of interest should start from the end of the month in which Assessment order (where order is passed by the AO and accepted by the taxpayer) or from the end of the month in which order giving effect to ITAT order is received by the taxpayer (in case of order passed by ITAT is accepted by the taxpayer).	Mitigate undue hardship to the taxpayer and practical difficulties in repatriating the specified adjustment within statutory time limit.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Secondary adjustment under section 92CE of the Act read with Rule 10CB of the Income-tax Rules, 1962 (the Rules)….***contd. from previous page***	Time period for repatriation: Rule 10CB allows a time of 90 days to repatriate the excess money into India without interest.90 days' time period to repatriate secondary adjustment related amount is too low considering it involves corresponding adjustments and cash flow related decisions at the AE level, especially when the amount related to past years. Both the parties have to take into account laws of both the countries regarding repatriation, accounting standards, cash flow issues etc. In April 2020, Reserve Bank of India has increased the time limit for repatriation of export proceeds into India from 9 months to 15 months from the date of corresponding exports. This has been done keeping in view the difficulties faced by businesses due to the COVID-19 pandemic.	Increase the time period of repatriating the excess money arising on account of primary adjustment from 90 days to 15 months in line with RBI provisions keeping in view the current COVID-19 pandemic.	The current period of 90 days for repatriating excess money into India is on the lower side keeping in view practical aspects of secondary adjustments. The same needs to be aligned with time period under RBI regulations in order to avoid hardship to the taxpayers especially amidst current global economic scenario.

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Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Secondary adjustment under section 92CE of the Act read with Rule 10CB of the Income-tax Rules, 1962 (the Rules)….***contd. from previous page***	Secondary adjustments on Royalty, FTS, Interest etc.; Where primary adjustment relates to international transactions involving Royalty, FTS, Interest and similar payments by the taxpayer to the AE, the AE has already paid tax on higher income in India. Currently, there is no clarification on availability of tax refund to the AE on account of reduction the amount of such payments as a result of primary adjustments and consequent secondary adjustments. Separately, it is not clear if Article 9 of Double Tax Treaties covers cases of Secondary adjustments as well, in order to provide relief from double taxation.	Clarification should be provided in order to explain how double taxation arising from secondary adjustment provisions would be tackled.	Provide clarity and reduce litigation on interpretational issues

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
53	Limitation of interest deduction under section 94B of the Act	Section 92B restricts interest deduction to 30% of earnings before interest, depreciation, and taxes (EBIDTA) and balance is allowed to be carried forward for deduction for subsequent eight AYs. In current global economic scenario marred by COVID-19 pandemic, where majority of the businesses have been heavily impacted with increased reliance on borrowings, reduced demand and disrupted supplies, a 30% EBIDTA limit might result in unnecessary hardship for several companies whose EBIDTA itself has fallen due as a result of the pandemic.	Suspend the operation of section 94B for a temporary period till the businesses recover from the distress caused due to COVID-19 pandemic.	The objective of introduction of limitation of interest provision under section 94B was to implement Base Erosion and Profit Shifting (BEPS) Action Plan 4 and address the tax issues arising out of thinly capitalised companies. In current economic scenario, where businesses have been severely impacted due to COVID-19 pandemic, application of a fixed interest limitation rule as a percentage of EBIDTA would result in hardship to the taxpayers.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
54	Range concept under Rule 10CA of the Rules	Rule 10CA provides that where there are 6 or more comparables, 35th to 65th percentile would constitute inter-percentile range. This is not in line with the international practice which allows use of interquartile range of 25th to 75th quartile and does not require the existence of minimum 6 comparables for computing the range. Current Rules 10CA also does not allow use of range in case of method applied under Rule 10AB of the Rules (Other method)	In order to rationalise Indian TP Regulations in line with Global best practices, range should be adopted as inter-quartile range (25th to 75th percentile).	Adoption of 25th to 75th percentiles (first to third quartile) is a global practice in computation of arm's length. It avoids unnecessary restriction of range to a smaller set of datapoints where comparables are selected by applying arm's length principles.
55	Economic adjustments	Rule 10B of the Rules, provides for making adjustments to the prices/profits of/in comparable uncontrolled transactions arising from differences in functions performed, assets employed, and risks assumed (FAR) under different TP methods. However, the only adjustments that the transfer pricing officers (TPOs) have allowed is the adjustment for working capital differences.	Guidance be provided on application and use of economic adjustments with illustrations on adjustments for working capital differences, idle capacities, accounting differences, risk related adjustments etc.	Guidance on application of economic adjustments will remove uncertainties both at the end of tax authorities and taxpayers and improve the comparability. It is very common, especially in current economic

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Economic adjustments…***contd. from previous age***	Differences on account of FAR of international transactions can be demonstrated in terms of idle capacities, accounting differences, risks borne etc. These factors are important to consider while determining arm's length price of international transactions.		circumstances that differences in FAR and economic circumstances have a wider impact on businesses in terms of capacity utilizations, forex fluctuations, fall out of market risk etc. A guidance in this context on economic adjustments would help reduce litigation.

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Personal Tax

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
56	Taxation for Individuals	(a)Budget 2020 has ushered in an important change in terms of income tax regimes. There is a new tax regime that will coexist with the old one.	With two tax regimes in place, income tax for individuals have become very complicated. Further, there are different rates of taxes depending upon the source of income. In addition to this, different rates of surcharge are applicable depending upon the total income and capital gains element in the total income both under the old and new tax regime. Under the new tax regime u/s 115BAC, wherein lower slab rates have been prescribed, the benefit of standard deduction has been taken away. The objective of providing standard deduction is that it allows salaried individuals to claim a flat deduction from income towards expenses that would be incurred with relation to his or her employment. Therefore, there is no rationale for not providing this deduction to the assessees opting for the tax rates prescribed u/s 115BAC.	It is suggested that the tax structure for individuals be simplified. This will also help in improving the compliance. Further, the standard deduction should be restored for employees opting the tax rates prescribed u/s 115BAC.
		(b)Tax rates :Consequent to the reduction of corporate tax rates, the differential between personal and corporate tax rates has widened. The highest marginal rate for individuals has now gone upto 43% against the normal Corporate Tax Rate of 25%.	The huge gap in the tax rates as mentioned in the earlier column has resulted in all structuring decisions in favour of corporates. Also, the high personal tax rate for individuals stands out as an exceptionally high rate as compared to other countries.	It has become an urgent necessity to reduce the personal tax rates for individuals so that there is a degree of equity and fairness in relation to structuring decisions as well as being competitive with other countries.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
57	Taxing of ESOPs in the hands of the employees	The current Income Tax Law, provides for the inclusion of ESOPs under section 17(2) to be taxed as a "*perquisite*", consequent to the abolition of FBT. The section states that ESOPs issued free of cost or at concessional rates will be taxed on the date of exercise on the difference between the "*fair market value*" and the amount actually paid by the employee. The "*fair market value*" is to be determined based on stipulated methods which have been separately prescribed by the CBDT.	This suffers from the following drawbacks : (a)It seeks to tax a notional benefit at a time when the actual gain is not realized by the employee. In fact, it is possible that the actual sale of shares could result in a loss for the employee. Since the perquisite tax paid earlier cannot be set off against the capital loss, the employee suffers a double loss, namely tax outgo and loss on sale of shares. (b)The question whether the ESOPs are granted at a concessional rate is being determined with reference to the "*fair market value*" on the date of exercise of the options. Technically, this is an incorrect approach. If the ESOPs are issued at the prevailing market price on the date of grant, the issue should be treated as "*non concessional*". This would be in line with the guidelines issued by SEBI. Any subsequent gain accruing to the employee due to favourable market movements by the date of vesting or exercise of option cannot be treated as a "*perquisite*" granted by the employer. (c)Further, if such subsequent gains are a perquisite in the hands of employers, it would stand to reason that the value equivalent of such a perquisite should have been a deductible expenditure in the hands of the company issuing the ESOP. Since the tax law does not contemplate such a deduction, the taxation of the perquisite would result in double taxation.	It is suggested that the taxation of ESOPs as perquisite at the time of allotment / exercise should be avoided for the reasons explained above. If at all it is taxed, it should be based on the fair market value i.e. the market price prevailing on the date of grant. Any subsequent appreciation should only be taxed at the time of realization / sale as capital gains.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Taxing of ESOPs in the hands of the employees***….contd. from previous page***		Also, from the strictly legal angle, there are a number of differences between ordinary shares and ESOP shares. Therefore, they are not comparable. The taxation principles currently existing, result in discrimination. The market value is also strictly not applicable since there are lock-in periods applicable. A detailed note on these aspects is enclosed (**Annexure 4).** Since the actual sale of shares will attract capital gains tax, if applicable, it is unnecessary to subject the employee to perquisite tax. In fact, before FBT was imposed on ESOPs, specific provisions existed in the Income Tax Act for exempting the same from perquisites and subjecting it only to capital gains tax. It may be noted that ESOPs have emerged over the years as a critical, motivational and retention tool for companies in a highly competitive market for talent. It is a very effective instrument for encouraging employees to perform and excel and is a win-win proposition for the employers / shareholders on one hand and the employees on the other.	

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
58	Taxing of Employer's Contribution to Recognized Provident Fund and Superannuation Fund beyond Rs.7.5 lakhs	The Finance Act, 2020 had imposed tax on employees in respect of the Employer's Contribution to Recognized Provident Fund and Superannuation Fund in excess of Rs.7.5 lacs along with the accretion by way of interest, dividend etc. pertaining to the said excess.	It may be noted that there are various types of Superannuation Funds. In case of the new pension scheme and similar superannuation funds, the contributions made by the employer vests with the employee and he can transfer it from one employer to another. However, in other cases, contributions made by the employer to a Superannuation Fund do not accrue to the benefit of the employee till such time he retires upon superannuation, when the Fund is used to purchase annuities and/or to pay the commuted pension to the retired employee. Such contributions may or may not result in superannuation benefits to the employees since there are various conditions to be fulfilled by the employees like serving a stipulated number of years, reaching a certain age etc. Therefore, this should not be taxed as perquisite as per the ratio of decision laid down by the Hon'ble Supreme Court in **CIT vs. L W Russel [2002-TIOL-686-SC-IT]**. Further, the pension payments are subjected to tax at the time of actual receipt by the employee.	As such, it is suggested that the said contribution in excess of Rs.7.5 lacs as per section 17(2)(vii) should not be taxed as perquisite.
59	Deduction for Personal Tax Computation	The Finance (No.2) Act, 2014 had increased the overall limit to Rs.1.5 lac in respect of deduction under section 80C		In the context of the current inflationary situation, it is suggested that this limit be increased to at least Rs.2.5 lac. This would act as a fillip to investments and also generate greater savings for the tax payer.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
60	Medical Reimbursements for Retired Employees (for hospitalization)	Under section 17 of the Income Tax Act, medical reimbursements received by employees from employers are not taxable in respect of expenditure incurred in approved hospitals and for prescribed diseases. Further, specific tax relief is also provided to employees in respect of medical treatment outside India for self and family. However, such tax benefits are not available to retired employees.		It is suggested that the provisions of section 17 be amended to include retired employees for the tax benefit on medical reimbursements/hospitalization expenditure, both for domestic and foreign medical treatment.
61	Leave Travel Concession/Assistance– tax relief every year and replacement of calendar year by financial year	As per the current provisions, Leave Travel Concession/Assistance is eligible for tax relief for 2 calendar years in a block of 4 calendar years.		It is suggested that the concept of calendar year should be replaced with financial year (April – March) in line with the other provisions of the Income Tax Law. Moreover, the concerned tax relief should be granted annually and be extended to both domestic and foreign travel, to give a fillip to the Travel and Tourism Industry.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
62	Exemption for payment of Leave Encashment to be raised to Rs.10 lakhs	The exemption limit for payment of leave encashment is notified by the CBDT in accordance with the powers given under section 10(10AA). The current limit of Rs. 3 lakhs is very old (since 1998) and needs to be raised substantially with immediate effect.		It is suggested that the limit should be raised to Rs.10 lakhs.
63	Senior Citizens	The population in the current senior citizens' category did not have a robust social security / pension fund investment facility during their working life. As a result, they are hugely dependent on interest income from fixed deposits etc. The rate of interest has come down drastically in the past one year leaving the senior citizens in financial difficulty. Further, actual inflation is much higher than headline inflation numbers. This has added to their misery.		It is recommended that beneficial tax measures should be introduced for senior citizens in the upcoming budget. -Minimum tax exemption limit for senior citizens (60 years age to 80 years age) should be increased to Rs. 7.5 lakh from the current threshold of Rs. 3 lakh. -Very Senior Citizens who are aged above 80 years should not pay tax if their income is upto Rs. 12.5 lakh.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Senior Citizens..***contd. from previous page***	Additionally, medical expenses shoot up heavily in the old age. Persons covered by medi claim insurance policies have to cough up very high insurance premia after one or two claims. Hence it is recommended that beneficial tax measures should be introduced for senior citizens in the upcoming budget. <u>Easing of threshold Exemption Limit and TDS</u> -Budget 2019 should increase minimum tax exemption limit for senior citizens (60 years age to 80 years age) to Rs. 7.5 lakh from the current threshold of Rs. 3 lakh. -Very Senior Citizens who are aged above 80 years should not pay tax if their income is uptoRs. 12.5 lakh.		-There should not be any TDS from payment of interest to Senior and Very Senior Citizens. - Ceiling for Health Insurance premium along with deduction for medical expenses for senior citizens as per the provisions of section 80D should be increased to Rs. 1 lac.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Senior Citizens..***contd. from previous page***	-There should not be any TDS from payment of interest to Senior and Very Senior Citizens. Better Tax Benefits For Health Insurance -Currently, the health insurance premium for a senior citizen is eligible for deduction to the extent of Rs 50,000. This ceiling should be removed altogether allowing full deduction of medical insurance premium.		
64	Contribution to National Pension Scheme (NPS)	At present the voluntary contribution of Rs 50,000 is allowed as a deduction u/s 80CCD(1B).		The amount should be increased to Rs 150,000/-. In case of employees of private companies who are subscribed to NPS, 15% of the salary should be allowed as deduction u/s 80CCD(1) and 80CCD(2), instead of 10%.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
65	Valuation of Company Owned Accommodation provided to employees under section 17(2).	As per the current Income Tax Law, company owned accommodation provided to employees is taxable @ 15% of salary in cities having population exceeding 25 lakhs. In other cases, it is taxable @ 10% of salary in cities having population between 10 lakhs and 25 lakhs and 7.5% of salary in other places. In case of leased / rented accommodation, value of the accommodation is taken at the stipulated percentages or lease rent, whichever is lower.	The above method of determination of the perquisite suffers from various inequities. For example, for the same employee staying in the same company owned accommodation, the perquisite will increase with any salary increase. Again, for the same company owned accommodation, different employees with different salaries will have different perquisite value. Also, irrespective of the size/quality of company owned accommodation, the perquisite for a particular employee will be determined as a percentage of salary.	It is suggested that in case of company owned accommodation the concept of fair value should be introduced to ensure that the right amount of perquisite is determined for income tax purposes. Fair Value should be defined as the comparable rent in the concerned location.
66	Standard deduction for salaried taxpayers [section 16(i)]	Finance Act 2019 enhanced the limit of standard deduction to INR 50,000 (from INR. 40,000) for salaried taxpayers. However, this was in replacement of the exemption available on transport allowance (INR. 19,200 per annum) and medical expenses (upto INR. 15,000 per annum). The net effect in terms of reduction of taxable income was only INR. 15,800 per taxpayer. This is a very meagre relief for salaried taxpayers.	The exemptions for reimbursement of medical expenses and transport allowance may be reinstated along with the standard deduction of INR 50,000. Alternatively, the amount of standard deduction may be increased to give relief to salaried taxpayers	The standard deduction seeks to create parity amongst individual taxpayers receiving income from salary vis-à-vis income from business/ profession. Individuals earning income from business or profession are eligible to claim deduction for various expenses incurred for earning such income. However, there is no such deduction for expenses available to salaried taxpayers. Hence, it is desirable that the amount of standard deduction be enhanced.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
67	Non-life insurance: Deduction in respect of Insurance Premium	Currently, deduction under section 80C of the Act is available for life insurance premium and a deduction under section 80D of the Act is available for health insurance premiums. No such deduction for premium is available in case of travel insurance, home insurance or personal accident insurance policy.	A separate deduction should be available for payments relating to travel insurance, home insurance or personal accident insurance policy.	Deduction for insurance premium will encourage people to secure their assets like car, home, etc. and avail personal accident cover. This will aid in financial protection and secure the policyholder from any financial losses that may arise due to unforeseen events.
68	Section 115BAC - Measures to promote savings and make the scheme more attractive	Section 115BAC in the Act introduced an optional tax regime for individuals and HUFs with six slabs of tax rates. Under the scheme, a taxpayer is eligible for reduced rates of tax if he foregoes certain tax exemption/deductions. Since the scheme does not permit deduction under section 80C, it has unintended consequences of disincentivizing investments/savings.	Deduction under section 80C should be available to individuals/HUFs opting the Scheme.	This will make the optional Scheme more attractive while promoting promote savings.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
69	Section 192 (IC) - Deferring TDS or tax payment in respect of income pertaining to Employee Stock Option Plan (ESOP) of start-ups	As per section 192(IC), TDS on ESOPs offered by Start-ups to its employees is deferred. The rationale for this deferral was to address cash flow problems of the employees of start-ups. However, this provision does not adequately address the cash-flow problem of the employees. It merely defers the TDS liability by at most 4 assessment years (AY), rather than eliminating the cash flow problem altogether. This is because, the employee would still be faced with the cash flow problem after 4 years, should he/she remain associated with the start-up. Further, an 'eligible start-up' has been defined to mean a start-up referred to in section 80-IAC of the Act. Under the said provision, 'eligible start-up' means a company or a limited liability partnership engaged in eligible business which holds a certificate of eligible business from the Inter-Ministerial Board (IMB) of Certification. Additionally, an 'eligible start-up' should be incorporated by 31 March 2021.	In order to completely address the cash-flow problem faced by the employees, it is recommended that tax should be deducted only when the shares are sold by the employees and not on expiry of 48 months. Further, the definition of a 'eligible start-up' should be aligned with the definition contained Notification G.S.R. 127(E) dated 19 February 2019 issued by the Department for Promotion of Industry and Internal Trade (DPIIT). Additionally, the benefits should also be extended to ESOPs offered other companies as well.	This will comprehensively address the cash-flow problem faced by employees of start-ups. Further, it will also streamline ESOP taxation in the hands of employees of both start-ups and a non-startups.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Section 192 (IC) - Deferring TDS or tax payment in respect of income pertaining to Employee Stock Option Plan (ESOP) of start-ups…***contd. from previous page***	This requirement poses following challenges: (i) Start-up incorporated after 31 March 2021 would not qualify as an 'eligible start-up' under the provisions of section 80-IAC. (ii) Links the benefit to a start-up which hold a certificate from IMB Further, this provision only covers employees of a 'start-ups' and does not cover employees of other companies i.e. other than start-ups, who also face similar cash flow issues during taxation of ESOPs.		
70	Salary as per Rule 6 of the Fourth Schedule of the Act v. Salary as per Employee Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act)	As per Rule 6 of the Fourth Schedule of Act, employer contribution upto 12% of salary does not form part of taxable income of an employee. Any contribution exceeding 12% is taxable in hands of the employee.	Exemption for employer's contribution under the Act should be linked with computation taking into account the definition of salary under the EPF Act.	This will reduce hardship of the taxpayers and mitigate any litigation due to interpretational aspects.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Salary as per Rule 6 of the Fourth Schedule of the Act v. Salary as per Employee Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act)…***contd. from previous page***	Definition of Salary as per Rule 2 of the Fourth Schedule of Act is as follows: *"salary" includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.* After the Supreme Court decision in the case of Regional Provident Fund v. Vivekananda Vidyamandir, in January 2019, employers and employees have to contribute EPF on the basic wages as per the EPF Act, as interpreted by the Apex Court i.e. after including all the fixed allowances payable to employees. This creates disparity between definition of salary as per EPF Act and as per fourth schedule to the Act and accordingly impacts the amount taxable under the Act.		

Annexure 1

REPRESENTATION IN RESPECTOF PLACE OF EFFECTIVE MANAGEMENT (POEM)

1. **URGENT NEED FOR DEFERMENT** :

The Finance Act, 2016 introduced the concept of POEM applicable with effect from 1st April, 2016. However, the exhaustive circular of CBDT was issued on 24th January, 2017. Finally, the draft notification on the subject has finally been issued by the CBDT on 15th June, 2017 for necessary comments and feedback. Infact, the detailed notification prescribing exceptions, modifications and adaptations to various provisions of the Act for taxing foreign companies treated as resident in India on account of their place of effective management (POEM) was finally issued on 22nd June 2018.

As obvious from the above, the concerned circulars and notifications have been badly delayed.

Moreover, there is always a time lag in the determination of the said residency status which will get determined only during the assessment proceedings. If a foreign company is deemed to be a tax resident for any Indian tax year under the POEM regulations for the first time by reason of the Indian tax authority holding so then the main section provides that the same rules will apply for all the succeeding Indian Tax years as well.

As such, if the concerned foreign company is held to be resident company for the first time for financial year 2016-17 and this is determined during the assessment proceedings in financial year 2020-21, (by virtue of the Time Limit Regulations under section 153), then it will be presumed that it will also be a tax resident in financial years 2017-18 and 2018-19. Also, most part of financial year 2019-20 would have been completed by then. Accordingly, the foreign company would be required to comply with the Indian Tax Rules without any advance notice of the Indian tax authority's intention. In other words, although POEM is to be separately determined for each tax year, it is most likely than not that the said position will be continued for the succeeding three years as well by the Income Tax Authority.

Therefore, it is imperative that applicability of POEM should be deferred by at least 3/4 years i.e. financial year 2021-22, specially in the context of the economic fall outs of the economic pandemic.

2. **HIGH TAX RATEAND COMPLICATED TAX STRUCTURE** :

In the notification, it has been mentioned that the foreign company shall be continued to be treated as a foreign company for all other Indian tax purposes, even if it is deemed to be resident in India and it will be subject to the tax rate of 40% applicable to a foreign company.
The above appears to be a case of the Government wanting best of both worlds. In a unipolar world, where all tax rates are falling and countries are competing for moving businesses to their shores, the approach of our Government appears to be in conflict. In fact, it appears to be virtually penal in nature and **may not pass the test of discrimination**.

Moreover, quick and radical changes are being brought about in the Tax Rules in a wide variety of areas like BEPS initiatives, General Anti Avoidance Rules, Information Sharing (MLI), Thin Capitalization etc. It appears that too many things are happening too soon and at the same time. It is important that sufficient preparation time and notice is given to the impacted parties to comply with the fast changing regulations. Otherwise, this could severely impact the Government's 'Make In India' strategy and pull back progress and growth. Further, this will also militate against the professed policy of simplification of Tax Laws, by the introduction of the abovementioned complex and bureaucratic tax structure.

3. **OTHER ISSUES NOT ADDRESSED IN THE DRAFT NOTIFICATION** :

- **Book Keeping and Audit** : It is not expressly clarified whether the foreign company is required to maintain books of account in India and also get it audited as per the Indian Income Tax Law.
- **Transfer Pricing Compliances** : Transactions between the concerned enterprise deemed to have POEM in India and its group companies outside India should not be subject to Transfer Pricing compliances specially where it has been considered as resident for the first time, since this determination will happen fairly late, say after 2 to 3 years.
- **Operating companies** : The said provisions should only be made applicable to shell companies and this should be expressly notified in the regulations. Operating companies having primary assets/employees outside India should be definitely excluded from the ambit of POEM.
- **Board Meetings** : Excessive importance has been given to the place of holding of Board Meetings in the earlier notifications. In case of outbound investment from an Indian company where the Board is merely supervising the performance, deeming he POEM in India would lead to unnecessary harassment and complications. This aspect needs to be further addressed and clarified.
- **Exceptional Application** : The POEM provisions should be resorted to only in exceptional circumstances. Although, it has been specified earlier that the approval of a collegium of 3 members of Principal Commissioner's/Commissioners is required, it is suggested that owing to the onerous compliance, reporting and penal consequences, a mechanism of ruling from a Panel, Tribunal or Court is put in place, when the POEM determination is done for the first time.
- **Dual Residency under DTAA** : Each country has its own Tax Residency Rules and therefore, there will be a multiplicity of disputes in respect of dual residency. As such, the tie-breaker rule in the DTAA may have to be invoked. The models existing under Mutual Agreement Procedure (MAP) under the DTAA should be made applicable, wherever possible.

Annexure 2

TAXABILITY OF GRATUITY , LEAVE ENCASHMENT AND OTHER TERMINATION BENEFITS TO THE LEGAL HEIR(S) OF A DECEASED EMPLOYEE:

(a) **Regarding Leave encashment** –

There are CBDT circulars stating that leave salary paid to the legal heirs of the deceased employee in respect of privilege leave standing to the credit of such employee at the time of his/her death is not taxable as salary / not taxable. The gists of the 2 circulars are given below :

- Circular No. 35/1/65-IT(B), dated 5-11-1965 states if the legal representative of the deceased is to be taken to be the assessee, then the amount/proposed to be paid is certainly not due to him. It is an ex gratia payment on compassionate grounds in the nature of gift. Thus, the payment is not in the nature of salary.

- Circular No. 309 [F. No. 200/125/79-IT(A-I)], dated 3-7-1981 states this receipt in the hands of the family is not in the nature of one from an employer to an employee. The deceased had no right or interest in this receipt. This payment is only by way of financial benefit to the family of the deceased Government servant, which would not have been due or paid had the Government servant been alive. In view thereof the amount will not be liable to income-tax.

  Based on the above 2 circulars it would seem that CBDT intends to exempt in the hands of the legal heir the leave encashment salary received by the legal heir of a deceased employee.

(b) **Regarding Gratuity** –

- There is a CBDT circular No. 573 dated 21.08.90 which states that a lump-sum payment made gratuitously or by way of compensation or otherwise to the widow or other legal heirs of an employee, who dies while still in active service, is not taxable as income under the Income-tax Act, 1961**. In fact this circular will cover all other lumpsum termination benefits being paid to the legal heir of a deceased employee, who dies while still in active service.**

- Further, there are 2 case laws **Smt. L.K. Thangammal Vs. Third Income Tax Officer (1 ITD 762 – ITAT Madras**) and **First Income Tax Officer Vs. Smt. A.A.Talati (31-TTJ-245- ITAT Mumbai)**which clearly established the law [before introduction of Section 56(1)(v)] that **gratuity received by the legal heir of a deceased employee is not taxable , even after taking into account the provisions of section 10(10)(iii) of the Act.**

(c) However, Section 56(1) and section 2(24) has been amended w.e.f AY 2005-06 to include gratuitous payments received by an Individual / HUF (any sum of money received not exceeding the prescribed amount without any consideration) with a view to widen the scope of Income. There are certain specific exclusion to such gratuitous receipts but such exclusions do not cover the leave encashment, gratuity or other termination benefits received by the legal heir of any deceased employee in connection with the services rendered by him.

Hence, due to the introduction of Section 56(1)(v)/(vi)/(vii) the leave encashment, gratuity and other termination benefits received by the legal heir is now getting taxable though there were CBDT circular issued [before the introduction of Section 56(1)(v)/(vi)/(vii) of the Act] which had exempted such payments. As the earlier CBDT circulars have not been withdrawn there is a confusion as to whether these payments to legal heir are taxable income in their hands or not.

Since death of an employee creates a lot of financial hardship to the legal heirs and it will be difficult for the legal heirs to calculate and pay taxes on the termination benefits received, hence it is suggested that CBDT should come out with a clear instruction that leave encashment , gratuity or other termination benefits received by the legal heir of a deceased employee is not taxable , even after the introduction of Section 56(1)(v)/(vi)/(vii) of the Act.

Annexure 3

IMPLICATIONS OF THE EXPLANATIONS INSERTED IN THE DEFINITION OF ROYALTY BY THE FINANCE ACT 2012

- As per explanation 2 to Section 9(1)(vi) of the Act, Royalty *inter alia* included within its ambit any lump sum consideration for

  (a) the use of any patent , invention, model, design, secret formula or process or trademark or similar property.........

- **Explanation 6 to Section 9(1)(iv) has been introduced by Finance Act , 2012 which clarifies that the expression "process" includes and shall be deemed to have always included transmission by satellite (including up-linking , amplification, conversion for down-linking of any signal), cable, optic fibre or by any similar technology, whether or not such process is secret.**

- Based on the above clarificatory explanation introduced by the Finance Act 2012, various transactions **(as listed below)which are actually not in the nature of royalty payments and were earlier not within the ambit of TDS may now come under the purview of Section 194J, based on the wordings of Explanation 6** :

  (a) Payment of Telephone (including mobile) bills

  (b) Payment of Internet charges

  (c) Payment to cable operators, service providers like tata sky, distributors of tata sky, dish TV etc. for viewing the television channels

(d) Payment of Broadband charges

(h) Wheeling/ transmission charges paid to the state-electricity grid or private electricity transmission and distribution companies for transmission of electricity of the electricity generated by the windmills installed by private assessees to their factory/units for captive consumption

(i) Electricity charges

- However, **there should not be any levy of TDS on the above transactions** viz., telephone / mobile charges, internet charges , payment for viewing television channels, electricity charges based on the amendment of Finance Act 2012, since

i. **The subscribers/ customers are not getting any right/claim any property in the transmission lines by paying these amounts. The contract between the subscriber and the other party in none of these cases is for using any transmission lines** (say for telephone charges, electricity charges, but it is a contract where the service provider (telecom co., electricity Co., etc.) are suppose to provide for a service by using their own infrastructure of cables, satellites, optic fibre line etc. Since no right is being given in respect of the transmission lines to the subscribers/clients , hence the payment made all the above transaction should not be treated as Royalty and no TDS should be deducted .

ii. The telecom co., electricity co., internet service providers are raising huge resistance against the deduction of Tax at source. BSNL, which is a PSU Company, has clearly circulated a letter wherein they have said that no TDS is applicable on telephone charges and in case tax is deducted by the subscribers/clients then telephone services will be discontinued. Copy of their letter is attached. Further, there is also a letter from CBDT to BSNL, letter no. 275/72/2002 – IT(B) dated 16-2-2004, wherein the CBDT has stated that TDS under section 194J would not be applicable on payment made by subscribers to telecom companies.

iii. There are caselaws delivered prior to the Finance Act 2012 [Skycell Communications Ltd. (251 ITR 53) – Madras High Court] wherein it has been clearly held that services in the nature of a standard facility , provided with the use of highly sophisticated equipment cannot be considered to be a technical service and hence does not attract TDS. Hence, no TDS u/s 194J is applicable on payment for telephone services, internet services etc. Thus, till date the Income Tax Dept had contested that these are payment for technical services and courts have clearly held that such payments are not technical services. Thus, now the department cannot do a volte face and assert that the above listed transactions are royalty payments (since these cannot be technical services in the light of the HC decision) on which TDS u/s 194J will be attracted.

iv. Regarding, wheeling/ transmission charges paid to the state-electricity grid or private electricity transmission and distribution companies for transmission of electricity of the electricity generated by the windmills installed by private assessees to their factory/units for captive consumption , there are specific caselaws by various Tribunals that no TDS u/s 194C or 194J on wheeling and transmission charges paid to State Electricity Transmission Co; Charges not for 'carrying out work' or FTS; Such payment is made pursuant to order of State Authorities constituted under Electricity Act and represents mere reimbursement of cost[TS-511-ITAT-2012(Mum)]

- Since the amendment to explanation 6 has created a lot of confusion as to the application of TDS u/s 194J on payments which are not in the nature of royalty itself**, it is suggested that CBDT comes out with a circular explaining the applicability of this new explanation 6 and specifically exclude payments for telephone (including mobile) bills, payment of Internet charges, Payment to cable operators, service providers for viewing the television channels, Payment of Broadband charges, Electricity charges, Wheeling/ transmission charges paid to the state-electricity grid or private electricity transmission and distribution companies for transmission of electricity of the electricity generated by the windmills installed by private assessees to their factory/units for captive consumption**

Annexure 4

ESOP shares vis-à-vis Market Shares

They are not comparable

1. ESOP shares are "issued" by the employer and "subscribed" to by the employee, whereas the shares acquired in the market ("market shares") are "transferred" from one shareholder to another. Consequently, while the market shares are goods, the ESOP shares do not become goods until they are allotted in favour of the subscribing employee.

2. It follows that the ESOP shares are not comparable with the shares that are already being traded. Therefore, it is incorrect to quantify any benefit to the employee with reference to the already trading shares or their so-called market value.

3. Even after allotment of the ESOP shares, the employee is prevented by law or the terms of the grant, from selling the shares during a lock-in period, whereas the shares bought in the market can be sold immediately without any restraint. The legal ability of disposition being one of the essential attributes of "property", the ESOP shares, unlike the market shares, are not property in the hands of the employee even after allotment.

4. When on the date of exercise the shares are subject to a lock-in condition, they cannot be considered to be a benefit; and if it is a not a benefit, it ought not to be fictionally treated as benefit and brought under "perquisites". In ***CIT v. Infosys Technologies Ltd.,(2008) 2 SCC 272*, at page 277**, the Supreme Court held as follows:

   "During the said period, the said shares had no realisable value, hence, there was no cash inflow to the employees on account of mere exercise of options. On the date when the options were exercised, it was not possible for the employees to foresee the future market value of the shares. Therefore, in our view, the benefit, if any, which arose on the date when the option stood exercised was only a notional benefit whose value was unascertainable. Therefore, in our view, the Department had erred in treating Rs.165 crores as perquisite value being the difference in the market value of shares on the date of exercise of option and the total amount paid by the employees consequent upon exercise of the said options."

   The Court further, at page 279, held:

> "It is important to bear in mind that if the shares allotted to the employee had no realisable sale value on the day when he exercised his option then there was no cash inflow to the employee. It was not possible for the employee to know the future value of the shares allotted to him on the day he exercises his option."

It may be borne in mind that in the Infosys case, the Supreme Court dismissed the Government's appeal not only because the ESOP shares were not enumerated under "perquisites" in S. 17 (2), but also because it does not amount to a benefit.

5. For this reason also the ESOP shares and the market shares are not comparable, and the latter cannot afford any basis for determining any benefit that may have accrued to the employee on account of the ESOP shares.

Discrimination

6. When a listed company issues IPO or rights shares at a price less than the market value (or bonus shares), the difference between the issue price and the market price is not taxed. If in such a case the difference does not take the character of income, it cannot be income in the case of ESOP shares too.

7. And, if such difference (in the case of IPO/rights/bonus) does take the character of income, then taxing ESOP share alone lacks any intelligible differentia that can validly explain this classification.

8. If a distinction is suggested on the ground that in the case of ESOP shares the benefit takes the character of income from salaries (which is apparent from treating it as "perquisite") which is not so in the case of market shares, it would be incorrect because such income, especially in the nature of salaries, would flow to the employee only when he realizes a gain upon the sale of the shares and not by mere allotment. Therefore, this is not a meaningful distinction.

Valuation

9. The "market value" is taken as on the date of exercise. But the ESOP shares are allotted after a lapse of time, when the market value may not be the same.

10. Even the market value on the date of allotment would not be relevant because the employee would not be able to realize that "value", being prevented from selling the ESOP shares during the lock-in period.

11. Further, the issue of ESOP shares results in expanding the capital base, and a consequent reduction in the intrinsic value of the existing shares. For this reason also, the alleged benefit flowing from ESOP shares cannot be reckoned with reference to the current value of the already existing market shares.

Annexure 5 – Ambiguities in the provisions of TCS provisions

a. Practical difficulties

There may be various practical difficulties in the implementation of these provisions:

(i) Refund of advance if contract cancelled or if credit notes are given

Since the TCS provisions are applicable on consideration received on sale of goods, practical difficulties may arise where advance is collected for sale of goods and TCS is remitted and subsequently the contract is cancelled and the amount is refundable. Credit notes may be issued by the seller which may again raise issues since TCS would already have been collected on such amount.

(ii) What if the Sale consideration is adjusted against the amounts payable for purchases from the said party, whether provisions of TCS would be applicable?

In case of adjustment of amount receivable with the amounts payable, the applicability of TCS has not been clarified. In this case, the consideration has not been received but has been adjusted by way of book entries.

(iii) No mention on invoice

Since the TCS is on consideration exceeding Rs. 50 lakhs, the applicability may not be known at the time of raising the invoice. In absence of the mention of the same on the invoice and collection of TCS at a subsequent stage will lead to various reconciliation issues between the parties.

(iv) Mismatch between books and 26AS

Due to the requirement of TCS arising on collection basis, there will timing differences between the year of purchase made by the buyer and the TCS credit amount appearing in Form 26AS. This will lead to reconciliation differences between the books of the buyer and Form 26AS in such a manner that the purchases as in Form 26AS will never match with the purchases in the books of the buyer. This also may lead to selecting the cases for scrutiny on the basis of mismatches.

Recommendation

Appropriation clarification must be provided to resolve these practical issues. It may be provided that instead of receipt of consideration, TCS may be made applicable based on amount invoiced.

b. Applicability of TCS on sellers in the year of incorporation - how to check threshold limit

A “seller” means a person whose total sales, gross receipts or turnover from the business carried on by him exceeds ten crore rupees during the financial year immediately preceding the financial year in which the sale of goods is carried out.

On bare reading of the provision, it seems, in the year of incorporation the provisions of ould not apply.

Recommendation

A specific clarification to this effect must be provided to avoid ambiguities.

c. Applicability of TCS on composite sales

In certain sectors, like hotels the nature of sales is composite i.e. involving sale of services as well as sale of Goods (Food and Beverages etc.). Whether TCS will be applicable on Hotel Revenue – be it Room Revenue, Food & Beverages, Other Revenue etc., has not been clarified in the provisions.

Recommendation

Supply of food/beverages is essentially a part of the service transaction and should not be considered as sale of goods. This view is fortified by the consistent treatment followed under the GST law wherein such sales are classified as services. A specific clarification must be given excluding Hotel sales from the provisions of TCS.