BOMBAY CHAMBER

Bombay Chamber of Commerce & Industry

PRE-BUDGET MEMORANDUM 2018-19

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“A dream you dream alone is only a dream.
A dream you dream together is reality.”
— John Lennon

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Foreword

Much is being expected from the forthcoming Budget to be announced in the month of February, 2018 by the Hon'ble Finance Minister to kick-start the investment cycle so that the domestic economy transits into a higher growth orbit while remaining inclusive and sustainable. In fact, Union Budget is expected to be an agent of change in ushering India towards the laudable 2022 goals often enumerated by the government.

On 29 May,2017, 'The India Development Update' published by the World Bank claims that India is expected to remain the fastest growing economy in the world. The Report further argues that in India not only economic fundamentals are strong, but reform momentum continues. Also by bringing down 'transaction cost', GST is expected to raise more revenue in the long term. However, on the economic front, the sluggish growth of industry and fixed capital formation, remain areas which warrant priority in policy attention. Going forward, in the banking arena, the actions of the central government authorizing the Reserve Bank to direct banking companies to resolve specific stressed assets by initiating insolvency resolution process are expected to significantly improve the resolution of stressed assets, particularly in consortium or multiple banking arrangements. Finally, in the area of employment generation, spending on priority sectors (roads, railways, health and housing), MGNREGA (i.e., Mahatma Gandhi National Rural Employment Guarantee Act) and the Pradhan Mantri MUDRA Loan Scheme are going to be the most important factors. As labour regulations get further simplified, more jobs are expected to be included and created in the formal sector. On labour reforms, the codification of labour laws into four codes, viz., wages, industrial relations, social security and welfare, and safety and working conditions, will help avoid multiplicity of labour laws. At the same time, the job loss threat perceptions, particularly in Information Technology and Information Technology Enabled Services (IT and ITES) sector emanating from the emerging global protectionism cannot be overlooked.

In this backdrop Bombay Chamber of Commerce & Industry has prepared a Pre Budget Memorandum for FY 2018-19. Our recommendations are discussed in detail in the enclosed Memorandum, which we submit for your kind consideration. **The memorandum is divided in three parts**.

1. *The first part* deals with measures prescribed for economic policies which need to be revisited and revised in order to make them more effective. The Chamber would here stress upon four potential areas: **Inclusive Growth** which covers Education or human capital formation and skilling, Health and Low cost housing, **Infrastructure** with special emphasis on Power Industry and Road, **Urbanization** and **MSMEs and Manufacturing** sector. Some of the broad suggestions which Bombay Chamber would like to make for government's consideration are as follows –

Focus on Quality of Education & Skilling by ensuring periodic assessment (via NCERT for example) of learning, by increasing government spending from less than 4% to 5% of GDP for education and by increasing public spending for health by 1% of GDP in the next year and then to 3% for next few years, by providing remedial lessons to low ability or "falling behind" children at upper primary and secondary levels and by encouraging public private partnership in education and local health services. Chamber also recommends continuing Urban Land Ceiling Act and Tenancy Act to make the rental housing market more vibrant.

The present measure of outcomes in skill training is uni-dimensional. The chamber urges that outcome measures for skill training should also take into account quality parameters to make it multi-dimensional. A skilled labor force is essential to meet diversified demands of a growing economy, to tap the benefit of demographic dividend which is predicted to last only till 2040.

Emphasis of MSMEs & Manufacturing by increasing public and infrastructure investment to boost demand for capital and intermediate goods. The Chamber strongly recommends extension of the offset policy from defense sector to other sectors as well, especially for capital and intermediate goods.

Major thrust on Infrastructure by extending GST to Power Industry and allowing 100% deduction for expenditure to create "Greenbelt", reducing high logistics cost, revisiting highly skewed freight modal mix, enhancing warehousing facilities, reducing high waiting time for freight transportation and most importantly promoting full digitization clearance process. And finally,

Continue with the thrust on Urbanization by allowing ULB to be 'piggyback' onto income tax and ULB portion of State GST to be set at a minimum of 25%. Urbanization will pose considerable challenges over the coming decades. But these challenges can be – indeed, must be – overcome. While the urban land ceiling and tenancy Acts have been in sharp focus, the chamber would also argue for competition between states and cities and between cities. Cities that are entrusted with responsibilities, empowered with resources, and encumbered by accountability can become effective vehicles for competitive federalism and, indeed, competitive sub-federalism to be unleashed.

2. *The second part* of the memorandum deals with some of the areas which merit attention from a Direct tax standpoint especially in light of the objective of the current Government which is to simplify tax system, improve the business environment by encouraging a more customer centric approach to be adopted by the tax administration, encourage entrepreneurship, value creation and align some of the fiscal policies to global best practices. Although the recommendations have been captured in the later part of this memorandum, some of the key highlights are outlined herein below:

Reduced corporate tax rates to be align to claim of incentives by Companies rather than restricting them to the turnover criteria to enable Companies to have more certainty and also extending this benefit to the MSME sector;

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Introducing a completely new chapter to deal with cases in light of the Insolvency and Bankruptcy Code given that this is one major step in terms of helping corporates restructure their businesses with and get back on the growth path;

Relook at some of the provisions around MAT especially in light of introduction of IND AS and simplify the tax computations by doing away with ICDS;

Encourage deductions around Patents developed in India irrespective of jurisdiction where it is registered.

3. *the third part* of the memorandum deals with the ongoing concerns and needs in indirect taxation, which revolves mostly around the embryonic Goods and Services Tax (GST) law. The Chamber would like the Government to amend certain provisions in the law and at the same time bring clarity in law, both in substantive terms as well as in procedural aspects, so as to promote the ease of doing business and reduce the hardships to tax payers. The recommendations have been discussed at length below, with rationale for including the same in this memorandum.

We have covered below few of the key recommendations:

Ensuring a seamless credit mechanism for all goods and services which are used in the course of furtherance of business, such as allowing credit on pipelines laid outside the factory premises for transportation of such goods into or from the factory premises.

Removing unintended anomalies in law in order to bring in consistency with the erstwhile law **in relation to transfer of part of business as a slump sale** which inadvertently provides for relief only when the person does not cease to be a taxable person. Another instance in this regard could be **extending the benefit of lower tax rate to sub-contractors** wherever such lower tax rate is made applicable to contractors.

Issuing necessary clarifications and wherever necessary codify the same in law for bringing consistency in application of law by the authorities and tax payers alike, such as **categorization of High Sea Sales and disclosure of the same in tax returns.**

Harmonizing indirect tax levies amongst customs law and GST law such as **removal of Education Cess (EC) and Secondary and Higher Education Cess (SHEC)** under the customs law.

While presenting this Memorandum the Chamber would like to place on record its sincere appreciation of the contributions, time and efforts of the Esteemed Members of the Advisory Committee and also the support of the entire family of Bombay Chamber of Commerce & Industry in the completion of this task.

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Part I

PRE–BUDGET MEMORANDUM 2018-19: Economic Policies

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Part I

PRE–BUDGET MEMORANDUM 2018-19: Economic Policies

Sr. No.	Subject	Objective	Rationale	Recommendations
1	**Inclusive Growth** (Education, Health)	Improving Education- Shift the Focus on Quality	1. India needs to be at par with middle income East Asian countries and to the global average. 2. More importantly, India needs to speed up ground level work on ensuring good quality education to remove the deficit in learning that researchers have identified to be in the order of 2 years at the primary and secondary level. 3. More money is needed to expand vocation education at the upper secondary level (a slightly longer term issue). Co-existence of private and public schools is not enough.	• Raise the government spending on education from less than 4% to 5 % of GDP. • There should also be some monitoring of how the resources are spent, and review should be taken to ensure that spending has been well-targeted. • Periodic assessment of learning (via NCERT for example) should be maintained. • In order to promote early learning and cognitive development provide pre-school education. • Provide remedial lessons to low ability or 'falling behind' children at upper primary and secondary levels, so that they can complete secondary education and progress to the higher secondary level. This would be particularly helpful to low income families who cannot afford private tuition.

				• Remove state level disparities. • Public private partnership in education is essential. Sufficient 'interaction' between them will facilitate improvement or both.
			4. The private tuition market has transformed itself from a productive and supporting service sector to a public menace all over India. Many ill-informed parents think that is the only way to succeed in education. But in the absence of any quality assurance parents are spending extra-ordinary sums of money for poor services in return; it also creates a race, where low-income households lose out and eventually see little incentives to continue schooling.	• Consider promoting private tuition at school. This can be a fee-charging service.
			5. This will create more legitimate jobs (on a part time basis); existing teachers can also do additional work and get paid extra. But more importantly, this will have a better chance of assuring quality and greatly benefit children from lower income background.	• Government should allocate greater funds to make our schools like one shop facility, where students can spend extra two hours daily, receiving additional after-school tutoring in subjects they are weak or falling behind. • Private sector should engage into a contract with individual schools/ school board or local government in rolling out such after-school lessons.

		Coordination between health services and schools	6. Our (public) schools have awful sanitation status and poor access to toilet and drinking water facilities. 7. Schools should adhere to a minimum standard on access to toilet, sanitation and drinking water facilities. Ideally, this should be extended (in future) to having an appropriate dining facility where the mid-day meal will be served. 8. At present this is left to individual parents, who may not be informed enough; local health workers are also made responsible for contacting the households for child immunization (before the age of five). But after the age of five there is no system of monitoring child health. Therefore, links between school and local health services are important.	• Local health services can be linked to advise schools on immunization, sanitation, water purification, child health, girl child health issues, nutrition and general health check-up. Private sector players can provide services in this field.
		Improving health outcomes, especially for children	9. When it comes to health, India is doing badly not just in comparison to East Asia, but also some of our South Asian neighbours. In 2014 Sri Lanka spent 2% of its GDP on health, while India spent only 1.4%. In the same year, China spent 3.095% of its GDP, Malaysia 2.3% and Thailand 3.2%. The world average was 5.959%. As in education, the outcomes are not guaranteed by expenditure for health as well. In addition, there are complications due to public and private health issues.	• Increase the public spending on health by 1% of GDP in the next budget and then in the next few years to 3% of GDP.

			10. An RBI report (2016) shows that there is wide variation among states on social sector spending. In 2013-14 the average shares of the states' spending on education and health in their aggregate expenditure were 16.9% and 4% respectively. But there are three points to note: (i) There is considerable variation among the states. (ii) There is no clear correspondence between the spending on health and spending on education. (iii) The relative ranking of the states on either education or health does not match with their ranking in terms of GSDP.	• Reduce variability in spending among states and spending on education and health should be coordinated.
			11. There is also an important issue of addressing the question of access and exclusion of the SC, ST and minority groups. We also need to look at the district-wise data on schools and hospitals/health centres and see if the SC/ST/minority dominated districts are underserved or not. Expenditure should be increased to rectify this problem.	• Special attention to SC/ST/ minority and gender disparity is needed.
	Inclusive Growth (low Cost Housing)	As per the PMAY- G scheme, houses will be provided to all by the year 2022.In order to meet this goal, 10 million houses will need to be constructed by March, 2019. (NITI Ayog Action Plan). One third of the smart city budget was initially	12. These plans should include details of various types of low cost and disaster resilient Housing models which can be designed with materials that are available in various parts of the country. A scheme for the provision of interest subsidy to every rural household that is not covered under PMAY-G has recently been approved by the Union Cabinet. Steps should be taken to ensure convergence of this scheme with PMAY- G, including the provision of technical support to	• Speedier implementation so that the gap between the completed Houses and target is brought down. At present, the gap is too high. • Proportion of women as beneficiary must rise to 50%. • The share of minorities in the pool of beneficiaries must rise in line with the proportion of the minorities among the poor. • The overall share of the SC, ST and Minorities must rise to75%, which

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		for low cost housing projects, but isn't seeing things panning out yet.	beneficiaries by leveraging the existing structures.	was previously the norm before 2015. • Under the smart city program about 17,000 crore rupees have been invested in urban housing. A large part of it is also devoted to slum redevelopment program. In the longer term, attention should be given to reforming the urban land ceiling act and the tenancy act, so that the rental housing market becomes more vibrant. • That said, some protection for the low-income group is to be provided in the metro cities, either in the form of 'government housing' or 'shared ownership' or 'rent vouchers'. This is a long-term issue, but it is also long overdue.
2.	**MSME & Manufacturing**	Growth	1. Industrial output and investment have decelerated for quite some years now, though the exact magnitude of deceleration is debatable. In particular, capital goods sector has performed poorly. 2. Industrial growth has remained tepid since 2011-12. Official data show significant turnaround since 2013-14, but this view is not widely shared. The IIP numbers released recently show a better picture of the reality, but they as yet nowhere near what they were prior to2011-12. 3. The new IIP monthly data show a clear	• Budget should focus on stimulating industrial demand. • As consumer demand seems to be holding up better, the real constraint is one of demand for capital and intermediate goods. This will mainly come if public and infrastructure investment is stepped up. • We recommend extension of the offset policy to other sectors as well, especially for capital and intermediate goods industries. Imports of such goods and

			adverse impact of demonetization; same is true of quarterly employment numbers, which are for the organized manufacturing. 5. National Offset Policy is a measure where foreign supplier or foreign firm setting up facilities in India has to source a certain proportion of output from domestic sources. Many countries follow such practices as a measure to promote domestic investment and production, technology acquisition, promotion of indigenous capabilities, and employment generation. 6. The 2013 defence procurement policy (DPP) lays down the objectives of the offset policy: "The key objective of the Defence Offset Policy is to leverage capital acquisitions to develop Indian defence industry by (i) fostering development of internationally competitive enterprises, (ii) augmenting capacity for Research, Design and Development related to defence products and services and (iii) encouraging development of synergistic sectors like civil aerospace and internal security."	foreign players' access to domestic market need to be tied to technology transfer to domestic partners. Such a measure would reduce cost of infrastructure in the long run and help develop technologies suitable for local needs. Incentives given for the purpose can be WTO compatible.
		Off Set Policies (Defence Sector)		
	Promotion of Exports	Identifying key focus areas that will guarantee export volumes at least risk.	7. The Western countries in the European Union, USA and Canada etc constitute a very large market for technically advanced products. There are many companies in the MSME sector that are not doing well due to technology advancement, succession issues and a general reduction in turnovers due to	• Suggest that a small committee be set up to identify about ten such products and countries where there is a demand for them. We then identify goals and a game plan be made as to how to achieve them.

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			competition from China and other areas. Chinese companies are engaged in strategic purchase of these companies. Thereby they get an immediate market penetration. To their advantage the MSME sector is more accepting of change. The larger companies have adapted by improving the technology and also with high level of automation in their manufacturing plants. This is not what the MSE enterprises can easily do. It is difficult for an Indian company in the short term to canvass orders from the western market. Perhaps these markets can be won over by associating with association with MSME units in the West. Make them the shop front. IF we identify those areas which do not lend themselves to high levels of manufacturing automation and the requirement is of medium volume, (not to interest the large players and not requiring large sales networks). In such cases we can show substantial price advantages in manufacturing in India. For example: Special electrical 16magnetic and Power Electronic products, EV charging systems etc. Subsequently these efforts can be supported with design and development, first with the help of the MSME companies in the west and	

			subsequently substantially independently.	
3.	**Infrastructure (declining investment)**	Extending GST to Power Industry	1. In the current GST, power has been kept outside. This is against the very objective of GST as it will not only keep the tariff at a higher level but since power is backbone of all industries, this would have cascading effect on the economy. Inclusion of Power in GST will lower the cost manufacturing and make it competitive, particularly in sectors where the consumption of power is intensive.	• In the proposed GST, power shall also be covered, particularly when country wants universal electrification. The GST duty should be within 0%-5%.
		100% Deduction for Expenditure to Create "Greenbelt"	2. Pollution control equipment are eligible for 100% tax depreciation; however, expenditure on creating "Greenbelt" Becomes part of "Building (other than residential)" block & accordingly 10% depreciation can be claimed.	• Considering environmental concerns, a provision should be introduced to treat the expenditure on creating "Green Belt" as fully allowable revenue expenditure & thus treat the same on par with pollution control equipment. • Alternatively, a new block, viz. "Creation of Greenbelt", eligible for 100% depreciation can be introduced in the "Block of Assets'.

	Roads	**High Logistics Cost** Improved and efficient infrastructure is vital for India's economic growth and manufacturing competitiveness. As stated in a World Bank report, logistics costs for Indian manufacturing firms are comparatively higher than their global counterparts. Logistics costs incurred by Indian manufacturers range from over 10% of net sales for auto components to over 14% for electronics vis-à-vis the global benchmarks of around 3% of net sales for auto components and around 4% for consumer durables.	3. India's logistics cost at approximately 13% of GDP remains high compared to other developed Countries like USA (around 8%). This renders Indian firms uncompetitive thus putting them at a disadvantage to their competitors.	• To bring down the logistics cost that would form an integral part in the success of the "Make in India" initiative.
		Highly Skewed Freight Modal Mix India's freight movement is primarily through roadways accounting for 60% of total, as against railways that constitute close to 30% and waterways	4. Indian freight movement is highly skewed towards roadways. Freight movement by road is both expensive and polluting while other modes are 50%-60% cheaper and 50%-90% less polluting. Government is increasing its focus on railways and waterways.	• There is a need to have a diversified modal mix with shift towards cheaper and environment friendly modes of freight movement.

		merely 7%. This contrasts with other countries like China that has a favorable modal mix where both roads and waterways constitute 35%-40% of total freight movement.		
		Absence of Freight Aggregation and Disaggregation Centres Multimodal logistics park act as freight aggregation and distribution hubs enabling multimodal freight transport. Freight would aggregate at the Logistics hubs and freight movement between hubs could be shifted from road to other efficient modes like railways and waterways, thus enabling intermodal integration and seamless transfer of goods from one mode to another. This would cater to the distribution needs of the consumption centers through an efficient hub	5. Currently, freight movement happens on a point-to point basis due to absence of efficient freight aggregation and disaggregation centre's and multimodal transportation facilities.	• To shift from the point-to-point freight movement to a hub-and-spoke model of freight movement. This could be done through development of multimodal logistics parks (MMLPs) that would facilitate freight aggregation-disaggregation and multimodal freight movement.

		and spoke model of freight movement. Some other associated benefits of this mechanism include: reduction of transport costs by moving freight on larger sized trucks and rail that would in turn also help reduce pollution and congestion. Waiting time at the ports would also reduce with customs clearance at MMLPs.		
		Highly Fragmented Warehousing Market Warehousing facility is limited to storage of agricultural products and do not provide any world class warehousing services.	6. India's warehousing market is highly fragmented and lack world class warehousing facilities (mechanized storage and handling services). They also do not enable the required intermodal freight movement, all adding up to storage and handling losses.	• To form multimodal logistics parks that would help reduce warehousing costs. Logistics hubs would aggregate the smaller warehouses and provide for large modern and mechanized warehouse facilities, thus reducing storage and handling losses. It would also help reduce inventory holding costs.

		High Waiting Time for Freight Transportation Regulatory impediments create hurdles for freight movement. Customs inefficiencies and state border check-posts slow freight traffic and cause freight delays.	7. Implementation of GST would turn India into a consolidated market now.	• Formation of logistics hubs would provide for value added services such as customs clearance etc. Waiting time at the ports would also reduce with customs clearance at multimodal logistics park.
		Absence of Full Digitization Clearance Process As per global practices, it is seen that digitization and efficient technology play an important role in faster clearance of goods traded while maintaining the required level of security. India's sea port traffic accounts for 90% of the cargo traded, but large clearance times adversely impacts the logistics cost.	8. India's customs process is a mix of paper and electronic declaration and verification. India's share of green-channeled cargo of 50%-55% is low as compared to 86% of Australia. Also, the manual checks are not supported by efficient technologies thus resulting in increased clearance time. 9. The government has already initiated measures like complete process digitization, improved risk management and port-level tracking to facilitate efficient clearances.	• Complete digitization needs to take place. Advanced intelligence based risk management needs to be incorporated using big data, promote secure cargo tracking measures like RFID e-seals and improve scrutiny infrastructure through advanced technology.

			Further push to investment in Cold chain(with specific reference to Reefers) in the wake of huge proposed investment in Roadways and Inland waterways and the substantial reduction in transit time due to almost complete removal of check posts.	• In spite of increase in production in horticulture, diary and meat products only marginal reduction in post harvest losses and decrease in exports over the years. The crux is transportation in controlled temperature. Review of existing ministerial schemes to understand why approved projects are not taking off and help enhance the implementation through more tax benefits, easier/ cheaper credit , easier technology transfer to make projects viable.
		Integrated Ticketing and Freight Collection Safety and Security Incentives for Investments in Transportation	10. Metros are coming in many cities. Smaller cities are running mini seater buses as public transportation. Uber and Ola and radio taxis are changing the transportation patterns. There is need to relook at water transport for cities like Mumbai and coastal ones. Electrical and solar driven buses may be the future for shorter distances and smaller cities / towns. 11. Budget is not necessarily income and expenditure exercise; Budget needs to provide impetus for economic growth and ecological sustenance.	• All private and public transportation networks need to be integrated for ticketing, payment and freight collection • Technologies to be deployed for payment and seamless travel. • Safety and security needs to be looked at highest priority and these types of investments are to be made mandatory. • Incentives for private investments in transportation sector.
4	**Urbanization**	ULB portion of State GST to be set at a minimum of 25%.	1. Urban local bodies will have to deal with a huge fiscal gap once local body tax, Octroi and other entry taxes are scrapped.	• 25%-30% of GST must go to ULB from State's share.

		ULB must be allowed to "piggyback" onto income tax.	2. 14 out of 34 OECD countries have income tax as the local dominant tax. It is practiced in cities such as Milan, Moscow, Lagos, and Rome. In the United States too, 18 states allow municipalities to levy local income tax. New York City piggybacks onto state income tax accounting for 11% of city's total revenues. 3. Municipalities do not have access to a basket of "own taxes", commensurate with their responsibilities. With revenue assignment of taxes comes accountability, which is fundamental to creating a fiscal culture of expenditure efficiency. 4. Effective fiscal decentralization would lead to wealthiest ULBs – those with the largest tax bases- to finance their expenditures with their own revenues. This is currently being done in Maharashtra cities, due to Octroi. Relatively poorer ULBs can then receive central government transfers to equalize their ability to provide basic infrastructure services.	• ULBs must be allowed to "piggyback" onto income tax. This follows the "generalized benefit principle", where beneficiaries of city infrastructure & services pay for them. People see what their tax money is used for. • Also, taxes authorized to municipalities in the past under the GOI Act 1919 and those recommended by expert committees in 1950s which subscribe to generalized benefit principle must be restored or assigned back. The Government of India Act of 1919 had a provision to assign Bengal & Bombay 25% of the Income tax made. • Since piggyback is not possible within the present Constitution, municipalities should be enabled to have a formula-based share in income tax through some statutory mechanism.
5.	**Other Issues** **(Banking &Industry, Food Processing Industry, Hubs and Skills Training,etc)**	Banking & Industry Low Quality of Credit and no real time review of the end use of Credit	1. The existing Review of Bank Credit has not helped identify potential NPAs at the right time and prevent the continual write off of tax payer's money not to speak of the debilitating impact on the economy. e.g.: One of the major contributors to Bank NPAs of Rs.8 lakh crores is the capital intensive highly	• Borrowing Companies should furnish along with their certified /Audited Financial statements a report from their Statutory Auditors certifying the end use of the monies borrowed on a Quarterly / Half yearly basis during the entire tenure of the

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			leveraged debt financed steel industry. The resultant recapitalization of Banks should now be monitored periodically and the process governed by statute. 2. While RBI has reasonable Control over the Banks and monitors the status of the Banks it is almost a post mortem check on bad loans, followed by resolution plans by SICA and now IBC. 3. It would be ideal to have Finance Professionals report on a periodic (Half yearly/Quarterly) basis on the health of the Loans from the Borrowers side and report on progress of and certify the end use. 4. The Government has proposed massive recapitalization of banks amounting to Rs.2 lakh crores. This and the huge amount planned for investment in the infrastructure is bound to increase credit off take in the medium term.	Loan or till the completion of the Project. • Non Corporate borrowers may obtain the certificate from practicing Finance Professionals (CA s). • This will help monitor progress of Project, right use of funds and “red flag” any potential NPAs. The key indicators can be prescribed such as: • Interest coverage ratio (if existing company /entity) • Debt /Equity ratio • Interim Dividend payouts (existing Company) • Withdrawal of Capital (non Corporate entities) • Comparison of Capital /Revenue spends to the Lender approved Project estimates. • Review timelines of spend in comparison with Lender approved project timelines. • Cash generation /cash profit/cash flows. Let there be more focus on Liquidity along with Solvency.
			5. The Government has proposed massive recapitalization of banks amounting to more than Rs. 2 lakh crores. The credit off take is bound to increase with the massive infrastructure also planned.	• It is recommended that borrowing companies should obtain from their Statutory Auditors end use certificate on an half yearly basis. Non corporate borrowers could obtain the certificate from

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				practicing CAs. This will help monitor progress of project, right use of funds and red flag any potential NPAs.
6.		Food Processing Industry Low numbers of Reefers* and Mobile Cold Storage Processing as compared to requirement. *(Refrigerated shipping container for transporting perishables, having its own stand-alone -self-powered- cooling system.)	1. One of the main reasons for the high losses in the supply chain of perishables is the absence of adequate and efficient cold chain infrastructure right from the farm gate to the consumers. 2. A study done during 2012-14 on behalf of Ministry of Food Processing Industries on Assessment of Quantitative Harvest and Post Harvest Losses of Major Crops and Commodities in India, showed the average range of losses for food grains, oils seeds and fruits & vegetables to be between 4% to 16% resulting in an annual loss of Rs. 92,651 crore. 3. The losses in selected fruits and vegetables were found to be in the range of 5.8% - 18.0%. 4. A Committee of the erstwhile Planning Commission in 2012 had indicated cold storage requirement of 61 million tones, with the present capacity of cold storage estimated at around 32 million tones in the country. Thus the gap was around 29 million tones. 5. The existing capacity of Reefer Trucks is < 10,000 numbers while the approximate requirement was 62,000.	• Further push to investment in Cold Chain (with specific reference to Reefers) is needed in the wake of huge proposed investment in Roadways and Inland waterways and the substantial reduction in transit time due to almost complete removal of check posts . In spite of increase in production in horticulture, diary and meat products there has only been marginal reduction in post harvest losses and also decrease in exports over the years. • The crux is transportation in controlled temperature. Review of existing ministerial schemes to understand why approved projects are not taking off and help enhance the implementation through -more tax benefits, -easier/ cheaper credit , -easier technology transfer to Make, -projects viable.

			(in a country like France the number of Reefer trucks is 1,40,000). 6. The above said gap study has excluded milk, meat, marine and processed products (easily perishable) for working out the requirement of cold chain infrastructure. 7. The losses in inland and marine fisheries were found to be 6.9% and 2.9%, respectively. 8. The assessed loss in milk sector was 0.8%. 9. The losses in meat and poultry sectors were and 3. 2% and 3 7% respectively. 10. On the advice of CII to the Ministry of Agriculture the National Center for Cold Chain Development (NCCD) was set up in 2012 to meet these challenges. While there are many Cold Chain projects under National Mission on Food Processing (NMFP)and Mission for Integrated development of Horticulture(MIHD, very few have attained fruition and the private sector has not shown substantial interest in creation of the Cold Chain facilities. 11. Cold chain projects contribute positively to, employment creation and exports. It has high potential for growth. Today 85% of the cold storages are in the private sector and not a single complete cold chain solution provider is available	

			in the market. Absence of Reefer container linkages and high and increasing power costs are proving to be major impediments.	
		Housing Sector and Direct Taxes Tax on Notional Rent has a deleterious impact on the already beleaguered Housing sector with individuals hesitant to buy a second home and the stock piling with the Builders who also are subject to this tax under Section 23 (1) I.	**1.** New launches have dried up, home sales have slipped and piles of unsold stock are evident **2.** The market in H2 2016 pulling down residential sales and launches by 46% and 23% respectively, **3.** The developers baggage of unsold inventory, which until a year ago was mainly in the under construction category, have now 'ready for possession' apartments available across markets. With ready projects kept outside the ambit of RERA, developers have been focusing heavily on sales of their ready possession stock. **4.** With this backdrop, residential launches in the top eight cities of the country declined by 41% to 62,738 units in H1 2017 compared to 1,07,120 units in H1 2016. **5.** Unsold inventory levels at 5,96,044 units in H1 2017 are 10% lower than 6,60,239 units in H1 2016 and are consistently trending lower compared to its peak in H2 2014. With the baggage of unsold inventory and the state of the residential property market, weighted average property price has stagnated. Developers in most markets have been	• To boost the sagging Housing Industry, first time Buyers may be provided a higher tax break and second home buyers should not be subject to tax on Notional Rent. • This is subject to the condition that the person has not already owned a property, not more than 50%, via inheritance. If they do then their first bought property would get the tax benefit of the second home. This rule may be waived if the inherited property is in a rural area or in a non-metro city/town, and if it is in a non-metro area then its value should be below the average of the area as stipulated by the local land registrar's office. • Section 23(1) I of the Income tax Act is silent when a House property was never let and in those cases a deemed annual value was charged to tax. On some occasions ITAT has stated that if the property was not let out during the year and was vacant for the whole year the annual value would be as nil taking into account the intent to let but inability to find a tenant. • Recognizing this anomaly, the

			forthcoming in offering freebies and discount for sales. **6.** Also office space demand saw a 10% decline YoY in transaction levels during H1 2017 compared to a 13% growth in the previous reference period. The 10% decline in transaction levels translates to 18.1 mn sq ft of office space. (Extract from Knight Farnk's "INDIA REAL ESTATE RESIDENTIAL AND OFFICE – JANUARY – JUNE 2017")	Budget 2017 extended relief to Builders having vacant stock in trade for a limited vacancy period of one year. • The logic should extend to all tax payers and the fiction "Notional rent" or "deemed Annual Value" contained in the Section should be removed. • Added to this, a higher tax deduction on Interest and principal re-payments on Housing Loans will help the Housing sector to sell their stock pile and take up new projects having a multiplier effect on the Economy.
	Hubs and Skills Training	Ensuring appropriate skilling and training Methodology to evaluate skills and put in a methodology for continuous skill improvement	**1.** Skills imparted in our educational institutes are often insufficient or inappropriate and not in tune with the industry demand. **2.** Skills have to be continuously updated and certified due to changing technology and industry demand. [Set up a skill evaluation facility that can certify at different levels and can also make recommendations for further skilling. – Not sure about the exact wording; seems like a government run system] 3.Set up a skill evaluation facility that can certify at different levels and can also make recommendations for further skilling.	• Identify agencies that can do the skill evaluation and development. • Where appropriate, create external accreditation bodies for skill evaluation. • Based on these benchmarks the industry can choose the required talent. • Importantly make this a continuous process • Based on these benchmarks the industry can choose the required talent. • Importantly make this a continuous process.

BOMBAY CHAMBER

PRE–BUDGET MEMORANDUM 2018-19 : DIRECT TAXES

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	Subject	Comments / Recommendations
		Corporate Taxation
1.	Reduction in corporate tax rates to 25% for Micro, Small and Medium Enterprises (MSMEs)	**Rationale**: ➢ Part III of Schedule I of the Finance Act 2017 which provides for advance tax rates applicable for AY 2018-19 provides for concessional 25% rate of tax for companies with total turnover/ gross receipts during FY 2015-16 ≤ 50 crore for FY 2017-18 (AY 2018-19) regardless of quantum of its turnover in F.Y. 2017-18 (which may be more or less than Rs. 50 Cr). ➢ The above provision ties the eligibility condition for concessional rate of 25% to turnover/ gross receipts of FY 2015-16. Accordingly, – New companies which are set up on or after 1 April 2016 are unable to avail the benefit of concessional rate even if they qualify to be a MSME (turnover in FY 2016-17 & 2017-18 < 50 cr.) – Companies which were qualifying for 29% rate on the basis of their turnover in FY 2014-15 being less than Rs. 5 cr. as per Finance Act 2016 may not qualify for concessional rate 25% if their turnover of FY 2015-16 exceeds 50 crore. Such companies may fall in the general bracket of 30% tax rate for FY 2017-18. – Even a company which qualifies for 25% tax rate in F.Y. 2017-18 is not sure whether it will need to pay tax at 25% or lower or higher tax rate in F.Y. 2018-19 till the next Budget in February 2018. ➢ Thus, linking of concessional tax rate criteria to turnover/ gross receipts of one specific financial year may bring in uncertainty such that the tax rate for companies may keep fluctuating on a year-to-year basis depending on their turnover for specified financial years and the Finance Act provisions for each year. ➢ The uncertainty in tax rate impacts 'ease of doing business' while drawing up business plans for future or entering into long term contracts with customer or vendors. It also enhances risk factor for doing business in the form of company vis-à-vis other forms like LLP or partnership.

		Recommendation: ➢ With a view to remove tax uncertainty and improve 'ease of doing business', it is recommended that once a company qualifies for a concessional tax rate in a particular year, it may continue to enjoy that benefit for at least next 5 years. This would bring in permanency and certainty in tax rate at which a company would be subjected to in each financial year. ➢ Further the rate of 25% should be made applicable to all companies who are willing to sacrifice tax incentives as in case of newly set up domestic manufacturing companies u/s. 115BA. ➢ Further, the reduced tax rate of 25% should be made applicable also to firms and LLPs to put them at par with companies.
2.	Scrap super rich dividend tax (s.115BBDA)	**Rationale**: ➢ Super rich dividend tax levied u/s 115BBDA and as amended by FA 2017, although intended to bring in vertical equity, may be regarded as iniquitous for following reasons:- o It results in economic triple taxation viz. once as corporate tax on profits, secondly as DDT in hands of the company and thirdly as super rich tax on dividends. The economic tax ultimately borne by resident shareholders may be as high as 54%. o If the holding is organised through intermediate holding company which does not enjoy DDT roll-over benefit u/s. 115-O(1A), the economic tax rate may be as high as 63.5% for the resident shareholder. o It is levied in addition to increase in surcharge from 12% to 15%. The burden of additional tax on resident shareholders is effectively 11.85% inclusive of 15% surcharge and 3% education cess. o DDT rate has been gradually increased from 10% when it was first levied in June 1997 to current rate of 20.36% (by grossing up base rate of 15% and adding surcharge of 12% and education cess of 3%). **Recommendations**: ➢ It is recommended that super rich dividend levy amounting to third level taxation on profits should be scrapped since it amounts to excessive taxation on corporate profits and creates bias

		in favour of setting up non-corporate entities for doing business. There should be lower tax on corporate profits since they are highly regulated entities.
3.	MAT framework for Ind-AS companies (S.115JB)	Rationale: ➢ All taxpayers following mercantile method of accounting have to comply with revised ICDS notified on 29 September 2016 effective from F.Y. 2016-17 onwards in computation of income under the heads 'Profits and gains of business or profession' and 'Income from other sources': − The Income Tax Simplification Committee rightly recommended deferral of ICDS considering that taxpayers are already grappling with regulatory changes like Companies Act, Ind-AS and GST; there is scope for litigation on many aspects of ICDS; ICDS merely results in multiplicity of accounting methods, increased compliance burden of multiple records, etc. which outweigh the benefits to be gained by application of ICDS. − The Committee rightly recognized that ICDS at best brings timing difference between accounting and taxable income. − There is no international precedent on ICDS. In any case, it does not represent best international practice. − ICDS do not ensure parity with normal tax treatment under IGAAP. They have effect of accelerating revenue recognition or postponing expense/loss recognition. − The dual set of new standards for accounting under Ind-AS and tax computation under ICDS increases complexity, tax uncertainty and compliance burden for Ind-AS companies − In any case, they do not address all aspect of Ind-AS (eg. fair valuation of biological assets, ESOP cost amortisation, Service concession agreements (BOT projects), real estate development, etc) ➢ The Government is committed to reduction in corporate tax rates to 25%. But Finance Minister has clarified that it is not practical to remove or reduce MAT since the full benefit of revenue out of phase-out of tax incentives will accrue to Government only after 7 to 10 years when all those who are already availing exemption at present complete their period of availment. Hence, Government has not reduced MAT rate of 18.5% (plus applicable surcharge and cess).

		➢ MAT was originally introduced to make companies showing high profits to shareholders but paying low taxes by claiming various tax incentives to pay a minimum amount of tax. With phase out of substantial tax incentives, MAT has lost its rationale. It merely creates additional complexity in tax computation, additional compliance burden and has been persistent cause of litigation. ➢ The Finance Minister has acknowledged strong demand for abolition of MAT but has refrained from doing so on revenue considerations. Instead of abolishing or reducing MAT, Finance Act 2017 extended MAT credit from 10 years to 15 years. ➢ As clarified by CBDT vide FAQ 2 in Circular No. 24/2017 dated 25 July 2017, MAT pick up shall be from P&L which shall be subjected to existing MAT adjustments and thereafter adjusted for OCI items and First Time Adoption adjustments. ➢ Since MAT pick up shall be from P&L, fair valuation adjustments which enter P&L shall be subjected to MAT burdening Ind-AS companies with higher tax liability. For example, P&L under Ind-AS is likely to include notional/unrealised profits/losses in following illustrative circumstances:- − Fair valuation of financial instruments like shares or debentures held for trading purposes; − Discounting of interest free loan/advance/deposit received or given by the company (e.g. sales tax deferral loan from state government); − Discounting of trade receivables (like retention money) which are contractually receivable on deferred basis; − Recognition of notional construction profit on BOT projects executed by the company under Service Concession agreements with public authorities; − Fair valuation of biological assets, etc ➢ The MAT Ind-AS Committee in their first report had stated that if, in future, MCA clarifies that any notional/fair valuation adjustments recognised in P&L should be ignored for computing 'distributable profits' under Cos Act for the purposes of managerial remuneration or dividend

		distribution, the same may be considered for MAT purposes also. In this context, it is significant to note that s.123 of Companies Act 2013 is proposed to be amended vide Companies Act (Amendment) Bill 2017[1] in terms of which it shall be provided that in computing 'distributable profits' for payment of dividend to shareholders, any amount representing unrealized gains, notional gains or revaluation of assets and any changes in carrying amount of an asset or of a liability on measurement of the asset or liability at fair value shall be excluded. As a result of above referred amendment, all notional/fair valuation gains/losses recognized in P&L on account of Ind-AS shall be excluded for payment of dividend to shareholders. If MAT provisions are not correspondingly amended, it will result in great hardships for Ind-AS companies where they are required to pay MAT on notional gains recognized in P&L. ➢ The CBDT has clarified 14 issues on MAT framework for Ind-AS companies vide Circular No. 24/2017. It has also further recommended a retrospective amendment to s.115JB(2A) to adjust the book profit under Ind-AS by all amounts or aggregate of the amounts credited/debited during the previous year to any item of "Other Equity" (barring six specified items). The retroactive amendment is recommended to be effective from 1 April 2017 onwards (i.e. aligned with the effective date of Ind-AS MAT framework introduced by FA 2017). This is intended to capture those items adjusted to 'Other Equity' post the date of convergence which have impact on P&L i.e where there is initial credit/debit to 'Other Equity' in Balance Sheet which is unwound by contra debit/credit to P&L. The above approach may result in unintended consequences, apart from taxation of pure capital receipts –more particularly, where there is no such neutralising impact in P&L in subsequent years. This approach may also unfairly subject the company to heavy upfront MAT liability while reversing the effect thereof over a relatively long period. For example, company issuing foreign currency convertible bonds (FCCB) having 5 year tenure may suffer heavy MAT in year of issue where part of FCCB may be credited to 'Other Equity' in Balance Sheet while getting deduction due to unwinding thereof by debit to P&L over next 5 years. MAT paid in year of issue will become a cash trap if the company makes losses in subsequent years and is unable to absorb the same either in MAT computation or normal computation. This will dis-incentivise borrowing and virtually amounts to levy of MAT on capital receipts.

[1]Passed by Lok Sabha and presently pending in Rajya Sabha

		Hence, an ideal approach would be to ignore the amount credited to "Other Equity" as well as to disallow the notional interest cost debited to P&L in the respective years in MAT. This will maintain parity with IGAAP regime and smoothen the process of transition to Ind-AS. This will also be consistent with proposed amendment to Cos Act to exclude Ind-AS fair valuation adjustments while computing 'distributable profits' for payment of dividend. A literal interpretation of proposed amendment will make the Ind-AS company liable to upfront MAT on issue of instruments like 0% Compulsorily Convertible Preference Shares or Perpetual Debt instruments (with discretionary interest payment) of which 100% is credited to Other Equity and there is no reversal by debit to P&L. ➢ FAQ 9 of Circular No. 24/2017 states that equity component, if any, of financial instruments like NCDs and interest free loan shall be included in the "transition amount" and thus taxed in MAT over 5 years. This FAQ is consistent with the underlying intent of Committee that MAT taxation of FTA credit to "equity component" will be neutralized by MAT deduction of notional interest cost debited to P&L. However, as discussed above, there may be some financial instruments (such as 0% CCPS or 0% CCD or perpetual debt instruments with discretionary interest payment) which are entirely equity and no part thereof is classified as liability component in absence of contractual obligation to repay the lender. In case such financial instruments are issued before convergence to Ind-AS, on FTA, the company may retrospectively classify the issue amount as "equity component" (shown as part of "Other Equity) triggering MAT over five years due to inclusion in "transition amount" under s.115JB(2C). There is no reversal of such taxation in absence of debit to P&L at any time during the subsistence of the instrument. ➢ FAQ 6 of Circular No. 24/2017 states that adjustments relating to provision for diminution in value of any assets (other than fair value adjustments for FVTPL instruments) shall not be considered for the purpose of computation of the Transition Amount. Therefore, adjustments relating to provision for doubtful debts or provision towards impairment of any other asset shall not be considered for the purpose of computation of transition amount. This implies that a company cannot claim such provision as deferred MAT deduction over 5 years under s.115JB(2C). This will result in permanent disallowance of such amount since the current language of MAT provisions do not permit exclusion of such provision when reversed by credit to P&L.

		➢ Even otherwise, the add back towards provision for diminution in value of asset is inconsistent with object of MAT to levy tax on companies paying high dividends without paying taxes by showing higher book profit but lower taxable income. The provision for diminution in value of asset leads to lower book profit which curtails ability of company to pay dividends. ➢ The MAT adjustments provided in s.115JB(2A)(c)/(d) for demerged company and in s.115JB(2B) for resulting company in a demerger acknowledge that the book values of assets & liabilities may undergo change in books of both demerged company and resulting company under Ind-AS. ➢ Even if the transfer is at book value in the hands of demerged company, such book value may not necessarily represent original cost. This is because fair valuation is pervasive under Ind-AS. This is explained below. ➢ A company may choose revaluation model for PPE & Intangible Assets. Ind-AS mandates companies to fair value equity instruments (other than investment in subsidiary/associate/JV) either though P&L or through OCI. This makes it impossible for the companies to comply with condition (iii) prescribed in s.2(19AA) read with Explanation 3 viz, the property and liabilities of the demerged undertaking/s should be transferred at values appearing in books of account of demerged company immediately before the demerger and such book value should be after ignoring change in value consequent to any revaluation by the demerged company. Even if transfer is made at book value, the book value represents a revalued figure. ➢ Non-compliance of this condition makes the demerger non-tax neutral. In fact, use of the term 'demerger' in s.115JB (2A)/(2B) in a context which talks about revaluation is inconsistent with s.2(19AA) condition. **Recommendations**: ➢ ICDS should be scrapped at the earliest ➢ Consistent with the philosophy of reducing the rates of tax, there should also be a gradual reduction in the rates of MAT. The roadmap to reduction of MAT to 7.5% of book profit, over a period of 5 years, may be announced upfront. ➢ Instead of making MAT regime applicable to all the corporates, the applicability may be

		restricted only to those corporates who avail of any significant tax incentives which may be specified in the section. Reference may be made to s.115BA introduced vide Finance Act, 2016 which provides for 25% corporate tax rate to new domestic manufacturing companies who are willing to sacrifice specified tax incentives. Similarly, all those corporates who do not claim any tax incentive or who, under declaration, refrain from claiming incentive, may be kept out of MAT regime. In this behalf, availing depreciation or amortization can, in no case, be considered as a tax incentive. ➢ The implementation of MAT may be structured in the manner in which there is, currently, levy of Alternate Minimum Tax (AMT) from non-corporate taxpayers who are entitled to tax incentive. Under a much simpler computation, MAT may be computed by adding back to the total income, the incentives which go to reduce the taxable base. This will restrict the application of regime to those who actually claim incentives. It is also much simple computation compared to the computation based on several upward and downward adjustments which will only get further compounded by Ind-AS regime. ➢ In the alternative, corporates may be given an option of computing book profit and paying MAT based on IGAAP despite the fact that they may have adopted Ind-AS for statutory compliance purposes under Cos Act 2013. It will facilitate ease of compliance with MAT for corporates as also provide comfort to the Tax Authority on levy of MAT on realised profits. It will also avoid discrimination between IGAAP companies and Ind-AS companies in the matter of levy of MAT on notional/unrealised items. ➢ Consistent with proposed amendment in Companies Act to exclude Ind-AS notional adjustments from scope of 'distributable profits', MAT provisions should also be amended to exclude all notional / fair valuation adjustments under Ind-AS and levy MAT on realized gains only. ➢ The add back in existing MAT adjustments for provision for diminution in value of asset should be deleted for both IGAAP and Ind AS purposes. ➢ It is recommended that condition (iii) and Explanation 3 in definition of 'demerger' u/s. 2(19AA)

		requiring transfer at book value ignoring revaluation should be deleted from s.2(19AA). Otherwise accomplishing tax neutral demergers under Ind-AS will become virtually impossible.
4.	MAT on book profits (S.115JB) and DDT for SEZ units (S.115-O)	**Rationale**: ➢ Broadening of MAT provision by bringing SEZ units and developers under the ambit of MAT has significantly diluted benefits offered under the SEZ scheme. ➢ Likewise, bringing developers / units under the ambit of DDT has diluted the benefits. ➢ Manufacturing is one of the key areas of focus of the Government. As explained in the Memorandum to Finance Bill, 2015, the proposal in relation to taxes was introduced to provide measures to promote domestic manufacturing and improve investment climate. Therefore, in order to provide further impetus to manufacturing sector apart from other initiatives taken such as Make in India initiative, SEZ schemes should be given a boost. ➢ Press Release dated September 10, 2014 by Ministry of Commerce and Industry had given an indication that modification of MAT and DDT rules for SEZ units / developers are under active consideration. **Recommendation**: ➢ In the view of the above, it is recommended that MAT should be removed in case of SEZ units for the exemption period. Alternatively, MAT should be reduced in case of SEZ units to 8.5 percent. ➢ Further, DDT should not be applicable on dividends distributed by SEZ units for the exemption period.
5.	Phasing out of weighted deduction u/s 35(2AB)	**Rationale**: ➢ Presently weighted deduction of 200% is available under section 35(2AB) in respect of expenses incurred for in-house Research & Development. The Finance Act 2016 has reduced weighted deduction of R&D expenses under section 35(2AB) in respect of in-house R&D to 150% from April 2016 and 100% from April 2020.

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		➢ The phasing out of weighted deduction for R & D incentives will not only discourage the various initiatives like "Make in India", Digital India", "e Governance", "Clean Energy" etc. which are being aggressively pursued by the Government but also will dampen the spirit of innovation which is essential for the robust growth of the Indian industry. ➢ Incidentally, the current global trend is to encourage the R&D activities through provision of incentives e.g. such incentives are currently available in the USA, UK, Australia, France, Italy, China and Singapore to name a few. ➢ The UK Government continues to implement its R. & D. incentive regime despite drastic reduction in the headline tax rate of 26% in 2011 to 21% in 2015 and proposes to further reduce the rate to 18% by 2020. ➢ Several countries have low corporate tax rates along with R&D incentives, eg Singapore (Tax rate 17 percent; 100 to 150 percent of R&D expenditure), China (Tax rate 25 percent; 150 percent of R&D expenditure); UK (Tax Rate 20 percent – 30 percent; Patent box regime to encourage R&D) ➢ Also, present regime of inhouse R&D expenditure being regulated by DSIR which approves R&D expenditure as per its own subjective standards beyond statutory guidelines prescribed in Rule 6(7A), makes unilateral changes to its guidelines without any prior consultation with industry and applies the changes on retrospective basis to past years' claims is highly unsatisfactory and adversely impacts 'ease of doing business' for industry. For instance, DSIR recently revised its guidelines in 2017 which disqualifies expenditure reflected as 'Capital Work in progress'. There is no explanation for the basis of such disqualification. There is also no exception made for genuine R&D expenditure which may be reflected as CWIP (eg. machinery acquired in Year 1 which is installed in Year 2 and hence reflected as CWIP in Year 1 or developmental expenses capitalized in books as per requirements of AS-26) ➢ Inspite of several **Recommendations** made in this regard, the same has not been taken note of so far.

		Recommendation: ➢ In view of the above, it is once again strongly recommended to continue not only the current scheme of weighted deduction but also introduce new R. & D. incentive schemes which are administratively easy to implement. ➢ Scope of R&D deduction should be expanded to partially outsourced activities and commercial R&D companies ➢ The DSIR's role should be restricted to approval of R&D facility and expenditure claims should be verified by Assessing Officers as per statutory guidelines prescribed in Rule 6(7A)
6.	Deduction u/s 80JJAA	**Rationale**: ➢ As per the provisions of section 80JJAA, an additional deduction of 30% of the additional wages paid to new regular workmen employed by the company during the year is allowed for three consecutive years if certain conditions are fulfilled. One of the conditions is that the employee should be employed for 240 days and more during that previous year (relaxed to 150 days for manufacturing of apparels). ➢ The benefit is available only in respect of the employees employed till July of the financial year since employees employed from August onwards will not be able to complete 240 days in that financial year, and accordingly, will not be fulfilling the required condition. The intention for this additional benefit is to incentivize the companies to generate more employment. If the benefit is not available since the employee has not completed 240 days, the very purpose of incentivizing the companies is defeated. The company, especially IT company, recruits the employees throughout the year and hence calculating the number of days in the first year of employment will not cover the employees which are recruited in the later part of the year. ➢ It is also not clear whether s.80JJAA is a standard deduction for three years based on wages paid to qualifying new employees in Year 1 or is it a year-on-year deduction which can change with change in wages paid to qualifying new employees in subsequent years. In view of ambiguity, different taxpayers may adopt different positions.

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		➢ The language of s.80JJAA(3) is extremely ambiguous. There is no clarity whether taxpayers governed by old provision shall continue to be governed by old law and taxpayers qualifying for first time as per new law from A.Y. 2017-18 shall be governed by new law. The other view which is emerging is that the taxpayers who became eligible under the old law will continue to be covered under the old law for the residual period, whereas, the fresh claim will be tested under the new law. **Recommendation**: ➢ The condition of completion of 240 days by an employee should be required to be tested in two consecutive years instead of only the first year. If the employee fulfils the condition cumulatively considering the first two financial years of employment, the company should be allowed to claim the additional deduction from the year in which the number of days condition is fulfilled and subsequent 2 years. ➢ Clarity may be provided on whether s.80JJAA is a standard deduction or year-on-year deduction ➢ Clarity with respect to applicability of new S.80JJAA(3) may be provided with the help of illustrations.
7.	Payments to related parties covered u/s. 40A(2)(b)	**Rationale**: ➢ Finance Act 2017 omitted transactions involving payments to related parties u/s. 40A(2)(b) from the scope of 'specified domestic transaction' u/s. 92BA and thus relieved taxpayers from Domestic Transfer Pricing compliance on these transactions. ➢ This will reduce compliance burden & paperwork for the taxpayers. ➢ However, these transactions continue to remain within scope of s.40A(2) and hence will be tested for reasonableness and business necessity by the Assessing Officers under general provisions. ➢ The Supreme Court in the case of CIT v. Glaxo Smithkline Asia (P) Ltd in the case of domestic transactions held that the under-invoicing of sales and over-invoicing of expenses ordinarily will be revenue neutral in nature, except in two circumstances having tax arbitrage viz. (i) If one of

		the related companies is loss making and the other is profit making and profit is shifted to the loss making concern; and (ii) If there are different rates for two related units (on account of different status, area based incentives, nature of activity, etc.) and if profit is diverted towards the unit on the lower side of tax arbitrage. For example, sale of goods or services from non-SEZ area (taxable division) to SEZ unit (non-taxable unit) at a price below the market price so that taxable division will have less profit taxable and non-taxable division will have a higher profit exemption. ➢ Hence transactions between related parties none of whom are loss making or enjoying any tax incentive are ordinarily revenue neutral. These should not be covered within subjective tests of s.40A(2) to avoid unnecessary litigation. **Recommendation**: S.40A(2) should be amended to carve out exceptions for transactions between related parties where none of them are loss making or availing any tax incentive. This will improve 'ease of doing business' and remove uncertainty for taxpayers.
8.	Relaxation in Rule 6DD for payment of more than Rs. 10,000 in cash in foreign country (s. 40A(3))	**Rationale** ➢ Section 40A(3) of the ITA disallows cash payments made in excess of Rs. 10,000 subject to payments made in those cases and circumstances as mentioned in Rule 6DD. ➢ S. 40A(3) does not restrict itself to transactions in Indian rupee but also covers cash payment in foreign currency. ➢ With globalization, there is increase in foreign currency transactions. There are number of cases where companies send their employees on business trips or for short duration assignments outside India or for supervising overseas projects. ➢ In such scenario, companies may provide their employees with foreign currency travel card as also certain foreign currency to meet their daily expenses abroad. However, it has been observed that cash payments in foreign currency exceeding Rs. 10,000 is quite common feature in most of the cases because of various reasons such as:

		○ High cost of living in developed countries ○ Risk of online fraud in some countries in view of which employees are reluctant to carry travel card. ○ There may be reluctance on accepting card by the payee at many places ○ Insufficient balance in card ○ Technical issues in functioning of card ➢ While the intention is not to evade tax or make payments in cash only, due to unavoidable circumstances, expenses may be incurred in cash by the employees on behalf of the company and such amount could easily exceed Rs. 10,000 on account of stronger foreign currency. Triggering s. 40A(3) disallowance in the hands of company in such a case causes undue hardship resulting in multiple disallowances amounting to a huge figure. **Recommendations** ➢ Accordingly, it is recommended that suitable relaxation may be provided in Rule 6DD where cash exceeding Rs. 10,000 is used in foreign country by employees on behalf of the company having regard to various factors such as high cost of living, risk of online fraud etc. subject to condition that foreign currency carried in each foreign trip is within permitted limits as per FEMA.
9.	Extension of scope of section 43D to NBFCs	**Rationale**: ➢ The existing provisions of section 43D of the Act, inter-alia, provides that interest income in relation to certain categories of bad or doubtful debts received by scheduled banks, public financial institutions, State financial corporations, State industrial investment corporations and certain public companies like Housing Finance companies, shall be chargeable to tax in the previous year in which it is credited to its profit and loss account for that year or actually received, whichever is earlier. ➢ These provisions have been extended to co-operative banks other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. ➢ RBI Guidelines applicable to Non-Banking Financial Institutions (‘NBFC’) provide that interest on

		non-performing assets ('NPAs') shall be recognized only on cash basis. ➢ Similar to banks, NBFCs too are engaged in financial lending to different sectors of society. ➢ Also, Rules 6EA and 6EB which provide the categories of bad and doubtful debts have not been updated as per latest RBI Guidelines resulting in mismatch between accounts identified as NPAs in books as per RBI guidelines and accounts identified as NPAs for tax purposes. This has given rise to avoidable litigation where Tax Department seeks to tax notional interest income on NPAs not getting covered within Rule 6EA/B. It may be recollected that these rules were intended to be synchronized with RBI Guidelines. Unfortunately, they have not kept pace with amendments in RBI guidelines from time to time. **Recommendation**: ➢ Considering the apparent dichotomy between the RBI Guidelines and income-tax provisions, it is recommended that the provisions of section 43D should be extended to NBFCs also. ➢ Also Rules 6EA/B should be amended to align them with extant RBI guidelines by a generic reference to extant RBI guidelines. This will avoid the need to amend them from time to time with change in RBI guidelines.
10.	Dividend Distribution Tax (DDT) (S. 115-O)	**Rationale**: ➢ The condition of more than 50 percent holding in Section 115-O of the Act, with respect to the condition that the dividend should be received from a subsidiary, where such subsidiary is a foreign company, and the tax is payable by the Indian company under Section 115BBD[2] of the Act of the Act, needs to be realigned with the condition of 26 percent holding in case of Section 115BBD of the Act to enable less than 50 percent shareholding entities also to avoid the multiple taxation of dividends distributed. ➢ The condition that the dividend should be received from a subsidiary is in a sense restrictive in as much as a company is stipulated to be a subsidiary of another company, if such other company, holds more than half in nominal value of the equity share capital of the company. The said condition is unlikely to be fulfilled by majority of the promoter companies which hold

[2] *Section 115BBD – Where the total income includes income by way of dividend received from a specified foreign company, income tax on such dividends shall be payable @ 15 per cent.*

		investment in operating companies listed on stock exchanges. Even shareholders of joint venture companies are impacted by the above restrictions. In both the scenarios, since the operating / joint venture company ie the company declaring the dividend is not a subsidiary of any company, the first condition ie dividend should be received from a subsidiary company is never fulfilled and accordingly when the promoter company / shareholder of joint venture company declares dividend to their shareholders, it cannot deduct the dividend so received from the operating / joint venture company for the purpose of payment of DDT. ➢ The earlier DDT rate of 10 percent was comparatively in line with the rate of TDS on dividends in most Indian and international tax treaties. The increased basic DDT rate of 15 percent (effective rate of about 20 percent) reduces the dividend distribution ability of domestic companies and the uncertainty with respect to its credit in overseas jurisdictions impacts the non-resident shareholders adversely. ➢ Currently, DDT is also levied on undertakings engaged in infrastructure development which are eligible for tax benefit under Section 80-IA of the Act. This is detrimental to the growth of infrastructure facility in India. Further, the Finance Act, 2011 has also burdened the SEZ developers by including them in the scope of DDT. **Recommendations :** ➢ All dividends on which DDT has been paid, be allowed to be reduced from dividends irrespective of the percentage of equity holding keeping in mind that investment companies which do not necessarily own / have subsidiaries as they invest in various companies in the open market, be also made eligible for such benefit. ➢ Promoter holdings in operating companies are not necessarily in a single parent. Also, irrespective of whether there exists a parent-subsidiary relationship, tax on dividends which have already suffered levy of DDT amounts to multiple taxation which should be avoided. It is therefore suggested that dividends which have suffered DDT be treated as pass through and be not subjected to levy of DDT.

		➢ Further, even Section 115BBD of the Act prescribes for a lower threshold of 26 per cent holding in the foreign company and the dividends received from the foreign company are to be taxed at 15 percent. Thus, the said threshold should also be reduced in case of Section 115-O of the Act from 50 percent to a lower limit to enable avoidance of multiple taxation of the same dividends received by the holding companies. ➢ The tax rate of DDT is recommended to be reduced to 10 percent from the current effective rate of about 20 percent (after including grossing-up of the dividend). ➢ To incentivize the investment in infrastructure sector, it is recommended that DDT on industrial undertakings or enterprises engaged in infrastructure development, eligible for deduction under Section 80-IA of the Act, should be abolished. It is also recommended that further exemption from DDT be granted to the 'infrastructure capital company/fund' with the condition that it invests the dividend received from its subsidiary in the infrastructure projects. ➢ The Ministry of Commerce and Industry (Department of Commerce) has recommended the restoration of original exemption from MAT and DDT to SEZ developers and units. In line with these intentions of the Government and to attract more investment in the SEZs, DDT on SEZ developers and units should be abolished.
11.	Benefit restricted to 'true and first inventor of the invention': A non-starter under Patent Act which does not acknowledge company or firm as a 'true and first inventor'(S.115BBF)	**Rationale**: ➢ The benefit of s. 115BBF is restricted to 'true and first inventor of the invention'. Even a person who is jointly registered with 'true and first inventor' should be 'true and first inventor'. ➢ In view of following features under the Patent law, the benefit of the provision may be denied to firms/LLPs/companies who register the patents jointly with 'true and first inventor' who may be an employee even though they may have incurred significant expenditure for development of the patent and they are first economic owners of such patent. ➢ Under the Patents Act, following persons can apply for patent (a) a person claiming to be true and first inventor of the invention (b) an assignee of the true and first inventor in respect of right to make an application and (c) legal representative of a deceased person who immediately

		before his death was entitled to apply. ➢ It is also settled under the Patent Act that a company or firm cannot claim to be 'true and first inventor'. They can only apply as assignee of true and first inventor. ➢ Similarly, whether an invention made by employee should belong to employer depends upon contractual relations, express or implied. It is possible that, absent any contractual obligation, an employee may apply for an invention in his own name even though he developed the invention in the course of employment and by using employer's resources. **Recommendation**: ➢ It is, hence, recommended that the condition of joint patentee also being 'true and first inventor' be omitted. If the intent is allow benefit only to first person to register patent, the phrase 'being the true and first inventor of the invention' used in context of joint person may be substituted with the phrase 'being the assignee of the true and first inventor in respect of the right to make an application for a patent'.
12.	Patent registered in India as also in a foreign country (S.115BBF)	**Rationale**: ➢ The requirement of patent being registered in India under the Patents act raises an ambiguity whether royalty received from overseas in respect of patent which is registered both in India and outside India will be denied the benefit on the ground that the royalty is relatable to foreign patent and not Indian patent. ➢ It may be noted that Patent law is territorial in nature and monopoly cannot be exercised in any country unless the patent is registered in that country as per local patent law. ➢ The condition of patent being developed in India ensures that the benefit of PBR is restricted to inventions which are developed in India. Benefit should not be denied for royalty received from overseas countries for the same invention by registering it outside India. **Recommendation**: ➢ It should be clarified that royalty received from overseas for a patent which is registered in India as also in a foreign country also qualifies for concessional rate of tax. The benefit should not be denied on the ground that such royalty is attributable to foreign patent.

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		Capital Gains and other macro suggestions
13.	Indirect transfer – Capital gains on transfer of shares of foreign entity deriving substantial value from assets located in India (Provios to S.9(1)(i))	**Rationale**: ➢ Finance Act 2012 introduced indirect transfer provisions, w.r.e.f 1 April 1962, to tax income where a share or interest in an entity situated outside India derives substantial value, either directly or indirectly, in an Indian company. ➢ Circular 41 of 2016 issued pursuant to various queries raised by stakeholders seeking clarification on the scope of indirect transfer provision clarified that the provisions of IDT shall apply even to investors holding investment in India directly/ indirectly through FII/ FPI unless they are eligible for small shareholder exemption. This raised the risk of multiple taxation and Circular 41 was kept in abeyance pending decision in the matter. ➢ Addressing the above concerns, Finance Act 2017 inserted second proviso to Explanation 5 to s. 9(1)(i) wref 1 April 2015 stating Explanation 5 shall not apply to transfer of direct or indirect investment made by a non-resident in an FII registered as Category I or Category II FPI under the SEBI (FPI) Regulations, 2014 made under the SEBI Act, 1992. The exemption has also been extended to erstwhile FIIs notified for tax purposes prior to SEBI (FPI) Regulations, 2014 vide first proviso to Explanation 5 to s. 9(1)(i) applicable wref 1 April 2012. ➢ Certain categories of investors kept out of the purview: IDT provisions to apply in respect of such investors? - Category III FPIs have been excluded by the amendment. Category III FPIs are subject to, on their investments in India, the same conditions and restrictions that otherwise apply to Category I and II FPIs, if only, they are subject to a higher level of KYC by the SEBI/ domestic depository participants. - Further, the amendment has left out non-resident investors making investments, directly or indirectly, in Indian Alternative Investment Funds and Venture Capital Funds, Infrastructure Investment Trusts, Real Estate Investment Trusts and mutual funds investing in Indian

		securities. Many such non-resident investors may directly or indirectly have assets that derive value from assets located in India and consequently the redemption/transfer of investment in the fund by these non-resident investors outside India may lead to tax liability in India. ➢ Date of applicability: − First proviso introduced w.r.e.f. 1 April 2012, that is, the year in which Explanation 5 was introduced. However, Explanation 5 when introduced vide Finance Act 2012 was clarificatory in nature and was to be made effective retrospectively from 1 April 1962. − Hence, a doubt arises as to whether first proviso to Explanation 5 is also, being a proviso to Explanation 5, effective from 1 April 1962 or is effective only from 1 April 2012. ➢ In the Budget Speech, it was mentioned that it is proposed to issue a clarification that indirect transfer provision shall not apply in case of redemption of shares or interests outside India as a result of or arising out of redemption or sale of investment in India which is chargeable to tax in India. **Recommendations**: ➢ Modification in the definition of FII/ FPI to broaden their scope: It is recommended that the definition of FPIs is suitably modified to extend the benefit even for the following classes of FPIs: − FPIs classified under Category III of 2014 Regulations. − SEBI registered Alternative Investment Funds [under the SEBI (Alternative Investment Funds) Regulations, 2014], SEBI registered Venture Capital Funds [under the SEBI (Venture Capital Funds) Regulations, 1996], SEBI registered Infrastructure Investment Trusts [under the SEBI (Infrastructure Investment Trusts) Regulations, 2014], SEBI registered Real Estate Investment Trusts [under the SEBI (Real Estate Investment Trusts) Regulations, 2014], SEBI

		registered mutual funds [under the SEBI (Mutual Funds) Regulations, 1996. – We also expect that clarification exempting the applicability of the indirect transfer tax provisions to redemptions of shares or interests of any foreign entity having underlying Indian investments, as a result of or arising out of the redemption / sale of Indian securities which are chargeable to Indian tax, be issued. ➢ Retrospective applicability of first proviso to Explanation 5 in line with Explanation 5: – It is recommended that to grant certainty as to the applicability of first proviso, it be clarified that the first proviso is applicable retrospectively from 1995, that is, in line with the period from which the FII Regulations are in operation so as to ensure equal benefit to all FIIs registered under the erstwhile regulations as well as those registered under the 2014 Regulations. If not, this is likely to expose the investors to the risk of reopening of years prior to AY 2013-14. ➢ The clarification regarding overseas redemptions of share/interest pursuant to redemption or sale of investment in India not to trigger indirect transfer taxation should be introduced in the Act itself to avoid any uncertainty for overseas investors.
14.	Exemption for transfer of Rupee Denominated Bonds from one non-resident to another non-resident outside India (S.47(viiaa))	**Rationale**: ➢ Any transfer, made outside India, of a capital asset being rupee denominated bond of an Indian company issued outside India, by a non-resident to another non – resident. But no exemption is provided for buyback of RDBs by Indian issuing company from non-resident investors ➢ The terms of the issue of such bonds generally permit the Indian issuing company to buy them back, if so permitted by RBI. It may be recollected that RBI had permitted Indian companies in past to buy back FCCBs which were trading at discount in overseas stock exchange. The buyback at discount benefits the Indian economy by reducing the outflow of foreign exchange (For example, if bond with face value of $ 100 is bought back at $ 75, it results in foreign exchange savings of $ 25 for India). ➢ But the exemption is restricted to transfer from one NR to another NR. It does not cover

		➢ transfer by NR to Indian issuing company. Since the transaction takes in case of listed bonds through stock exchange mechanism, the seller NR will be unable to ascertain whether purchaser on the other side is NR or Indian issuing company. This creates ambiguity and practical challenge for NR sellers **Recommendation**: ➢ The capital gains exemption u/s. 47(viiaa) be expanded to cover transfer of bonds from NR to Indian issuing company as well as a part of buyback.
15.	Special provision for full value of consideration for transfer of shares other than quoted shares (s.50CA)	**Rationale**: ➢ Section 50CA provides for notional taxation in the hands of seller when the shares are sold at less than valuation mechanism prescribed. ➢ Literal reading of the section covers even shares of foreign companies (whether or not listed in foreign stock exchange) ➢ This may impact sale of foreign company shares held by Indian residents like sale of overseas subsidiary by Indian parent or sale of foreign listed shares acquired by Indian residents under Liberalized Remittance Scheme or acquired when the taxpayer was a non-resident. ➢ Benchmarking such transactions at normative rule like Rule 11UA which may get prescribed under the new section will create hardships for such taxpayers in the form of tax on notional gains. There will also be practical challenges in acquiring data from foreign companies for the purpose of computing Rule 11UA value. ➢ S.50CA being an anti-abuse provision for tackling tax abuse transactions in India should not be made applicable to shares of foreign companies since indirect transfer provisions and Transfer Pricing provisions adequately capture any potential tax abuse involved in transactions involving shares of foreign company

		Recommendation: ➢ S.50CA should be modified to apply only to transfer of shares of Indian company only. ➢ Without prejudice, just like Indian listed shares, foreign listed shares should also be exempted from the applicability of this provision
16.	Taxation of receipts of specified property without consideration or for inadequate consideration (S.56(2)(x))	**Rationale**: ➢ Scope of gift taxation was expanded by Finance Act 2017 by insertion of section 56(2)(x) in place of S 56(2)(vii)/(viia). It provides taxability for all taxpayers which are in receipt of sum of money or specified property without consideration or for an inadequate consideration. Further, various exceptions are provided on non-applicability of S 56(2)(x). However, there is a need to expand the scope of exceptions as provided in section 56(2)(x) failing which, it could lead to severe hardship for the taxpayers. ➢ As regards exemption to transfers exempted u/s. 47, s.56(2)(x) provides limited exemption to certain specified tax neutral transfers u/s. 47 like amalgamation, demerger, etc. It does not provide exemption from all transfers exempted u/s. 47. For example, transfer by holding company to Wholly owned subsidiary or vice versa (s.47(iv)/(v)), foreign amalgamation or demerger which involves transfer of shares of foreign company deriving substantial value from assets located in India u/s. 47(viab)/(vicc), conversion of bonds or debentures into shares u/s. 47(x), transfer of land of sick industrial company managed by workers' co-operative u/s. 47(xii), conversion of firm into company or company into LLP (s.47(xiii)/(xiiib)), etc. ➢ Clause (X) of proviso to section 56(2)(x) provides that any sum of money or property received from an individual (settlor) by a trust created or established solely for the benefit of the relative of individual will be excluded from the scope of section 56(2)(x). The technical reading of clause (X) suggests that, for claiming carve out under this clause, definition of relative is from donor's perspective and not from recipient's perspective as is the case for exclusion for individuals. Since the exemption is seen from the donor's perspective, the definition of relative has become

		narrower. **Recommendation**: ➢ Revival of Sick Companies are necessary and is in overall interest of the economy. Taxing the amount received by the sick companies may not be fair. Considering this, subvention granted by parent company to subsidiary company to recoup the financial losses or to improve the financial health of the company was considered as capital receipt. Suitable exception to carve out the case of subvention from the purview of section 56(2)(x) should be provided. ➢ Since the transferor in above referred cases of s. 47 is exempted from capital gains even if the transfer is for adequate consideration, there is no rationale for levying gift tax on transferee for receipt without consideration or for inadequate consideration. Hence, all exempt transfers specified u/s. 47 should be exempted from applicability of s.56(2)(x) in the hands of the recipient. ➢ Since provisions of section 56(2)(x) deal with the taxation in recipient's hand, while providing carve out, relative must be seen from the perspective of recipient and not donor. Accordingly, suitable amendment may be carried out in clause (X) of proviso to section 56(2)(x).
17.	Rule 11UA/ UAA prescribing methodology for determining FMV of unquoted shares for the purposes of s. 56(2)(x) and s. 50CA	**Rationale/ Recommendation**: ➢ As per the amendment in Finance Act 2017, transfer of shares at less than the FMV triggers taxation of shortfall in the hands of both the transferor u/s 50CA and the transferee u/s 56(2)(x), with effect from 1 April 2017 (as against the erstwhile provision which triggered taxation in the hands of only the transferee). In this regard, Rule 11UA/ UAA prescribe valuation rules for determining FMV of unquoted and preference shares. The Rules seek to determine the FMV of unquoted equity shares of the company by adopting the independent fair valuation of jewelry, artistic work, immovable property and shares and securities held by such company while all other assets and liabilities of such company would continue to be valued at book value as per existing rule.

		➢ When an asset is used in business, it becomes part of business. It contributes to business valuation. It cannot be isolated. Many a times it may be difficult to envisage FMV of an asset which is integral part of business. For example, a hotel building which is part of hotel chain management; a shop which is used by a trader; a factory building of a business conglomerate. It would be incorrect to isolate such properties. It may provide incorrect valuation of shares of a company. The suggestion may be to provide exclusion with regard to product assets which are forming part of business / profession. At best, they may say, they should form part of business / profession which is a going concern. ➢ Wherever value is dealt with by other statutory provisions, the respective value should be the correct benchmark. For example, transfer pricing Rules, indirect transfer rules, FEMA regulations, valuations approved by BIFR, etc., statutory restrictions, etc. should not be altered. Refer the carve outs which are given in case of transaction covered by s. 10(38). Similar carve outs should also apply, including in case of acquisition of shares from or by governed companies, the Government, under NCLT order, etc. ➢ A company listed on any recognised stock exchange outside India may be considered as a listed company. ➢ There ought to be de-minimis exemption of a variety of nature. For example, in the following cases. o Where the holding of shares is less than 15% of the shares – if at all, there may be a light covenant that the control does not exceed more than 15%, directly or indirectly. o Where the estimated fair value of shares is not likely to exceed Rs. 5 to 10 Cr. ➢ Many of the controversies and/or scope for injustice will lie down if, along the lines of s.56(2)(viib), there is an option provided to the taxpayer to go by the valuation either by a merchant banker and/or by chartered accountant of more than 10 year experience as per internationally recognised method. ➢ There ought to be discount of up to 25% in case of CHC, keeping in mind the non-transferability and the security being illiquid and/or minority holding, etc.

18.	General Anti Avoidance Rules (GAAR) – Chapter X-A	➢ The terms “substantial commercial purpose” and “significant effect” in the context of GAAR have not been defined in the Act. **Recommendation**: A clarification on what shall constitute as “substantial commercial purpose’ and “significant effect” for the purpose of s.97 of the Act is required. Substantial commercial purpose may be explained with reference to the terms used viz. location of an asset/transaction or place of residence of a party (for e.g. whether it would be specified value of assets located; value of a transaction as comparable to the total assets of the business or any other such related parameter). Similarly, what will constitute as “significant effect” vis-a-vis business risks / net cash flows needs to be clarified. ➢ Clause (e) and (f) in the definition of tax benefit refer to “reduction of total income” and “increase in loss” as a tax benefit giving rise to an ambiguity as to how tax benefit is conditioned at income / loss level. This may also defeat the objective of Rs. 3 Cr. Tax benefit threshold as provided in Rule 10U(1)(a) of the Rules. **Recommendation**: Clause (e) and (f) of the definition of “tax benefit” in s.102(10) of the Act should be appropriately worded to correspond with the “tax” amount, removing any reference to income / loss in the definition. ➢ Computation of tax benefit in case of tax deferral (which is merely a timing difference) needs to be clarified as the benefit obtained is effectively in terms of the present value of money. **Recommendation**: In line with the Shome Committee’s **Recommendations**, in case tax benefit is alleged to be obtained by way of tax deferral, the value of tax benefit should be computed on the basis of net present value of tax liability deferred to future years. Further, it may also be clarified that “tax benefit” for the purposes of s.102(10) of the Act excludes interest or penalty. ➢ Insertion of the notwithstanding provision contained in s.90(2A) of the Act which state that the provisions of GAAR would apply to a tax payer even if such provisions are not beneficial to the

		taxpayer would nullify the international principle on 'treaty overriding domestic tax laws'. **Recommendation**: Given the resultant implications of the provisions of Section 90(2A) on the non-resident taxpayers and the same being against the internationally accepted principles, the relevant sub-section should be withdrawn. ➢ The existing GAAR provisions are very subjective and prone to arbitrary application. To ensure that the provisions are not misused, the Shome Committee had recommended that the Government prescribe a negative list of circumstances where GAAR will not apply. **Recommendation**: Though the CBDT's Circular No. 7 of 2017 states that GAAR will not interplay with right of taxpayer to select or choose method of implementing a transaction, to reduce subjectivity, it may be better to provide a negative list of business choices where GAAR will not apply (for example, funding through equity or loan, release of surplus funds through dividend or buy-back or capital reduction, purchase of an asset v. lease of an asset). ➢ As per one acknowledged view point, it is required of an Assessing Officer to support initiation of GAAR by having to bring forth a comparable methodology (or, at least demonstrate an attempt at providing such comparable methodology) of accomplishing the transaction, [viz. the suggested alternative] which is perceived by the Assessing Officer to be a clean or non-tax abusive arrangement. The comparable drawn by the Assessing Officer should also be an alternative which has the same commercial and non-tax advantages and benefits which the taxpayer is otherwise able to obtain under the arrangement actually implemented. **Recommendation**: To invoke GAAR, the Tax Authority should be required to point out an alternative method of accomplishing the transaction, which is not tax abusive, and has the same commercial or non-tax advantages as the transaction actually implemented by the taxpayer should be provided for. ➢ In relation to GAAR, a distinction needs to be drawn between a tax deductor who can reasonably be considered to be a party to the avoidant arrangement, and a tax deductor who is an independent third party. In a case where the transaction is subject to tax, the tax deductor either has to make payment of TDS to the Government or make remittance of the amount to

		the recipient of income. Thus, the payer secures no tax benefit. **Recommendation**: Tax deductors and representative assessees should be kept immune from GAAR consequences unless there is an evidence of their positive involvement in being a party to an artificial scheme. ➢ Rule 10U(1)(d) provides that GAAR shall not apply to any income which accrues, arises or is received by any person from transfer of investment made before 31 March 2017. There is an apprehension that investments made before 31 March 2017 and received by way of gift or inheritance before or after 31 March 2017 may not be regarded as "investment made" by the taxpayer and may not get the benefit of grandfathering provision. Also, shares received upon tax neutral merger or demerger or reorganization in lieu of grandfathered investment does not enjoy grandfathering protection. **Recommendation**: Extend grandfathering to cases of investments received pre and post 31 March 2017, by way of gift, inheritance, succession, amalgamation, or demerger when the statute itself regards them to be substituted investment by providing for substitution of holding period as also cost. ➢ The clarification in the CBDT's Circular No. 7 of 2017 on GAAR v. SAAR is unclear, and is likely to create subjectivity and litigation. **Recommendation**:There is a need for re-consideration of the clarification. GAAR should be considered as a last resort. It should not be invoked in a case where there is compliance with SAAR and the subject matter is dealt with a SAAR. ➢ Greater clarity desired on application of the main purpose test and s.97(1)(c) to incorporation of an SPV set up by closely held investors (and selection of its jurisdiction). **Recommendation**: Formation of SPVs is known to the commercial world for a variety of reasons. The SC judgment in Vodafone case (2012)(341 ITR 1) has, at paras 43 to 45, detailed a number of commercial reasons which support the formation of a SPV. So long as the SPV itself has a valid commercial purpose, then the choice of location of the SPV should not be subject to GAAR merely because the location offers tax efficiency. Assuming that an SPV has a purpose to serve, the commercial purpose test should stand satisfied whether the SPV is in one jurisdiction

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		or in another. ➢ The reference to approving panel contemplated in sub-section (1) of s.144BA covers the element of declaration as impermissible avoidance arrangement (IAA), as also the tax consequences. The directions to be issued under sub-section (6) of s.144BA are “in respect of” the declaration. As one possible interpretation, the scope of approving panel is only restricted to “declaration” as IAA, but a meaningful part of the decision making as to determination of the consequences will be left to the Assessing Officer. **Recommendation**: In order to ensure that the consequences are fairly determined, clarify that Approving Panel will not only declare IAA but will also provide guidance on the consequences of declaring an arrangement as IAA.
19.	Relieve return filing obligation if royalty/ FTS/ capital gains has suffered TDS and also clarify that Section 206AA(7)(ii) read with Rule 37BC has retrospective effect	**Rationale** ➢ Pursuant to **Recommendations** in the first report of the Income Tax Simplification Committee, Finance Act 2016 liberalized the provisions of Section 206AA by inserting Section 206AA(7)(ii) which provides that Section 206AA shall not apply to payments to non-residents subject to conditions as may be prescribed. ➢ CBDT has notified Rule 37BC which provides that if the non-resident payee furnishes certain information and documents like TRC or Unique Identification number in his home country, Section 206AA shall not apply to specified payments viz interest, royalty, FTS and capital gains. ➢ This is a welcome relief to the taxpayers and considerably improves ease of doing business with non-residents by obviating the need to obtain PAN for non-residents. ➢ However, the requirement of filing returns by such non-residents still continues [except for interest payments covered by Section 115A(1)(a)] and without PAN, it is also not possible to file return. ➢ Thus the position which presently exists is that while PAN is not necessary at withholding stage,

		it is still necessary for filing return. Non-filing of return attracts penalty under Section 271F and s. 270A as also risk of prosecution under Section 276CC. ➢ The TDS rates applicable for non-residents is generally the final tax payable by such non-residents. The information of payments to non-residents gets transmitted to Tax Department on real time basis through compliance under Section 195(6) read with Rule 37BB (Form 15CA/ B) and quarterly withholding tax returns. Hence, requirement of filing return has no real benefit to the Tax Department. On the contrary, it increases compliance burden for the non-residents and makes them liable for penalty or prosecution. **Recommendation**: ➢ In line with exemption provided to non-residents from obtaining PAN for avoiding higher TDS under Section 206AA if they furnish TRC, they should also be relieved from return filing obligation where payer has already withheld taxes and reported in Form 15CA / CB.
20.	Prohibition on cash receipts exceeding Rs. 2 lakhs (S.269ST)	**Rationale**: ➢ S.269ST inserted by Finance Act 2017 prohibits any receipt otherwise than by way of account payee cheque/ draft or use of ECS through a bank account (specified modes) exceeding Rs. 2 lakhs − in aggregate from a person in a day − in respect of a single transaction or − in respect of transactions relating to one event or occasion from a person ➢ Government, any banking company, post office savings bank or co-operative bank are presently exempted from applicability of s.269ST. Central Government has power to notify such other persons or receipt which needs to be excluded from the scope of s.269ST. ➢ Contravention of the above provision is to attract penalty u/s 271DA equal to the amount of such receipt other than in specified modes.

		➢ Aforesaid provision may seemingly control circulation of cash in the economy. However, the genuine cases need to be protected. As per literal interpretation, payment of fund amongst relatives, say for household expenses or medical emergencies, is not exempted; money received may have been deposited into the bank the same day and yet it may be considered as a case of default, settlement of debt by book entry or conversion of loan into equity may also stand covered since it does not strictly fall within the specified modes mentioned above. ➢ Further, receipts exceeding Rs. 2 lakhs in respect of transactions relating to one "event or occasion" from a person is also prohibited. Say for example, if salary/ wages is paid in cash to laborer every month such that yearly aggregate exceeds threshold limit of Rs. 2L, Tax Authority may argue that such receipt is covered by s.269ST since payment of salary constitutes one event or occasion even though payments might have been disbursed monthly and raise a demand notice. Hence, it may be suggested that third limb of "event or occasion" should be explicitly kept out of the scope to avoid any litigation and protect honest taxpayers. Similar controversy may also arise in case of second limb which covers receipt in respect of a "single transaction". **Recommendation**: ➢ Thus, in order to protect the genuine cases, it is recommended that negative list u/s.269ST may be widened suitably considering the business exigencies and after carrying out detailed study on genuinely cash centric sectors. Accordingly, Central Government should suitably expand the list as and when need arises. ➢ Also, a case where recipient is able to prove that cash has been deposited in bank account, say within a week, and PAN of the payer is also available may be considered to be excluded from applicability of s.269ST subject to such conditions as may be imposed. ➢ There is no rationale for applying this provision where transaction is otherwise fully disclosed or offered to tax. If this provision triggers, it may lead to double whammy for taxpayers where on one hand they will offer tax and on other hand also trigger penalty u/s 271D. Hence, it is recommended that if taxpayer can prove that amount has been offered to tax, the same may

		be excluded from scope of s. 269ST. ➢ Further, as explained above, second and third limb dealing with receipt in respect of "single transaction" and "event or occasion" may be deleted to protect frivolous investigations being raised in case of honest taxpayers. ➢ Even though penalty u/s 271DA is to trigger only when person fails to explain good and sufficient reasons for the contravention, it may be better to explicitly exclude genuine cases from the applicability of s.269ST in order to avoid future litigation by giving discretionary powers to the Tax Authority. Honest taxpayers should be protected and should not be subjected to unjust hardship by making them liable to offer explanation. ➢ Without prejudice to the above, it is further recommended that limit of Rs. 2 lakhs may be enhanced to at least Rs. 10 lakhs to cover only high value transactions and exclude small taxpayers.

	Insolvency related issues The newly legislated insolvency and Bankruptcy code, 2016 has been a comprehensive and historic piece of legislation in India. In order to ensure effective implementation and smooth functioning of the new code, the tax laws should also be amended accordingly to have a separate chapter itself, in order to make the tax laws in sync with the new code. We have outlined below key important and critical changes that should be done in the tax laws, in lieu of the new insolvency and bankruptcy code.	
21.	Difficulty faced by taxpayers in respect of waiver of principal amount of loan and outstanding interest thereof	**Rationale**: ➢ Presently, there is increased focus on resolution of large NPAs faced by banking sector. The Government and RBI are vigorously pursuing several measures to reduce NPAs through different debt restructuring schemes, including insolvency proceedings against large borrowers under the newly enacted Insolvency and Bankruptcy Code 2016. The outcome is likely to result in substantial waiver of loan by the lenders and consequent write-back in their Profit and Loss statement. ➢ Under the normal provisions of the ITA, waiver of outstanding interest which is not allowed as deduction under s. 43B pursuant to non-payment is not taxable under s. 41 of the ITA. Further, as per preponderant judicial view, waiver of loan which has been used for capital purposes is not taxable as income under normal computation since it represents a capital receipt. However, on waiver of loan used for working capital purposes, taxpayers are facing difficulty in view of certain rulings which have held waiver to be taxable as business income. ➢ However, under MAT since waiver of loan and interest shall be credited to the profit and loss statement, taxpayers would need to consider the same while calculating book profits in absence of any exclusion provided for them. To the extent waiver of outstanding interest which was debited earlier to the profit and loss statement was allowed as deduction for MAT purposes, it would be fair to treat such amount as taxable when credited to profit and loss statement. However, taxation of principal amount of loan waiver and/ or interest capitalized to asset cost causes undue hardship on borrower companies for the following reason:

		○ There is mismatch on treatment of taxability of waiver in normal computation and MAT computation resulting in huge MAT liability at effective rate of 18.5% plus applicable surcharge and cess on such waiver amount ○ Company which is already under high debt and losses and is attempting to recover through debt restructuring scheme faces substantial cash flow burden due to MAT liability. Also, it may not be able to utilize the MAT credit ever if it gets liquidated pursuant to insolvency proceedings. ○ Bankers may also be reluctant to waive off their secured debt if they realise that substantial part of waived debt will get locked up in MAT payment. **Recommendation**: ➢ Considering the above and the fact that MAT was initially introduced with a different object i.e. to make companies which declared high profits and paid dividends to shareholders but paid very little or no taxes by availing different tax incentives, suitable amendment should be made in MAT provisions to attain the objective of revival of sick companies and restructuring their operations in the best possible manner. ➢ Accordingly, it is suggested that there should be specific exclusion for principal amount of loan waiver which is credited to profit and loss statement and interest waiver credited to the profit and loss statement to the extent it was not previously debited to the profit and loss statement. ➢ Also, a Circular may be issued to clarify that waiver of principal amount of loan used for capital purposes (like buying plant & machinery, setting up new unit, etc.) is not taxable under the normal computation.
22.	Entire unabsorbed losses (including unabsorbed depreciation) to be allowed as deduction for MAT purposes	**Rationale** ➢ As per the provisions of section 115JB of the Act, the amount of brought forward loss or unabsorbed depreciation whichever is less as per the books of accounts is allowed to be reduced from the net profit for working out Book profits. The amount of brought forward business loss before depreciation is to be compared with the amount of unabsorbed depreciation to determine the quantum of deduction under this clause.

		➢ The Act has however, not specified the method of computing the unabsorbed depreciation or business loss for set off against the book profits. Currently, two prevalent methods generally followed by taxpayers are consolidated approach and year-on-year approach. There exists high uncertainty of interpretation as to whether the amount of unabsorbed depreciation and business loss needs to be computed as per consolidated approach or year-on-year approach and consequential litigation thereof. ➢ There is conflict of judicial rulings on whether consolidated approach or year-on-year approach should be adopted. **Recommendation** ➢ It is submitted that the distinction made between the two is quite artificial and there is no rationale for permitting set off of only lower of the two. It may be noted that set off of both components is permitted in normal computation. Similarly, even for book-profit computation, set-off of both components should be permitted without any limitation. ➢ The methodology as currently prescribed in MAT computation is not comparable to Companies Act requirement for payment of dividend since unlike Companies Act, for MAT purposes, book loss does not include depreciation and no set off is permitted if one of the two items is NIL. Hence, it is suggested that full set off should be permitted for both items. ➢ Without prejudice, with a view to reducing litigation and going by the principle that a favourable interpretation may be preferred as a matter of judicial discipline, it is recommended that the consolidated working approach may be supported by a specific legislative amendment or through a CBDT Circular. Even assuming that there is a different thinking, the 'consolidated method' approach may still be preferred until the date there is a formal amendment to law.
23.	S. 79 restricting carry forward and set-off of losses in case of certain companies to apply only in case of abusive transactions	**Rationale** ➢ S.79 denies carry forward of loss for closely held companies where there is change in shareholding beyond 50% from shareholding which prevailed in the year of loss. This provision is intended as anti-abuse provision to prevent business reorganizations with sole motive of benefit of tax losses.

		➢ However, this provision acts as impediment in many bonafide circumstances like investment by PE investor in a start-up company or amalgamation or demerger of shareholder-company or intra-group reorganization. In insolvency proceedings, it is quite likely that a new management may take over the sick company in which case the losses incurred under the earlier management will lapse. This provides disincentive to takeover of sick units. **Recommendations** ➢ S.79 should be applied only in case of abusive transactions of change in shareholding. In order to achieve this objective, s. 79 may be modified by putting a condition akin to the one present in s. 72A(2) which provides that accumulated loss and unabsorbed depreciation shall not be allowed in the assessment of the amalgamated company unless the amalgamated company continues the business of the amalgamating company for a minimum period of 5 years and atleast 75% of the book value of fixed assets of the amalgamating company are continued to be held by the amalgamated company. ➢ Accordingly, restriction of s. 79 should not apply if business of the company is continued for at least 5 years after the date of change in shareholding and at least 75% of the book value of the fixed assets is retained for a period of 5 years.

<table>
<tr><th colspan="3">Measures to discourage cash transactions</th></tr>
<tr><td>24.</td><td>Levy of additional tax on cash holding & cash expenditure</td><td>Rationale/ Recommendations

➢ With a view to discourage cash holdings, additional tax (akin to wealth tax) may be levied on holding cash over specified threshold limit as on the last day (i.e. 31st March) of financial year:
o For taxpayers engaged in business or profession,
▪ who are liable to tax audit under the ITA - Rs. 10 lakhs;
▪ other taxpayers - Rs. 5 lakhs
o For individuals and HUFs not in business or profession - Rs. 5 lakhs

➢ With a view to discourage cash expenses, there should be levy of some tax on expenses in cash beyond the specified limit as under:
o For taxpayer engaged in business or profession:
▪ who are liable to tax audit under the ITA - if aggregate expenditure exceeds Rs. 25 lakhs
▪ other taxpayers – if aggregate expenditure exceeds Rs. 10 lakhs
o For individuals and HUFs, in relation to personal expenses, if aggregate expenditure exceeds Rs. 10 lakhs

➢ With a view to encourage banking / digital payments, certain incentives in the form of tax rebates may be provided to traders and / or the taxpayers using banking channel / digital payments

➢ Tax incentive may also be provided to e-commerce companies introducing various modes of digital payments such as digital wallets, mobile wallets, etc. particularly creation of instruments which are user friendly and capable of being operated without internet connectivity</td></tr>
<tr><td>25.</td><td>Enhancing reporting of cash transactions under Rule 114E</td><td>Rationale/ Recommendations
➢ Presently, banking institutions are obliged to report cash deposited beyond specified limit into savings account (Rs. 10 lakhs) and current account (Rs. 50 lakhs) in a given year.

➢ Similar reporting obligation may be cast on banks for providing details of withdrawal from saving /</td></tr>
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Jan Dhan bank account of taxpayer during the given year. This measure was also mentioned in the third report of TARC headed by Dr.Shome, as an option to withdrawal of Banking and Cash Transaction Tax (BCTT) though with different limits[3] for per day withdrawals. Presently, bank is to report cash withdrawal from current account if it exceeds Rs. 50 lakhs in a given year.

- Accordingly, reporting of specified transactions under Rule 114E may be introduced / expanded as follows:

Sr. No.	Existing provision	Recommendation
1	Reporting requirement on cash withdrawal or deposit exceeding Rs. 50 lakhs in FY from any current account	The limit for withdrawal may be reduced to Rs. 25 lakhs.
2	There is no reporting requirement on cash withdrawals from any account other than current account	Reporting should be mandated if cash withdrawals from saving or Jan Dhan account of any person exceeds certain limit say Rs. 5 or 10 lakhs in a particular year

- In addition thereto, following transactions may also be added within the scope of reporting under Rule 114E:

Sr. No.	Reporting entity	Transaction	Comments
1	Dealer / commission agents	Any cash payments to agriculturists[4] exceeding Rs. 5 / 10 lakhs in aggregate during the year who enjoy protection from section 40A(3) of ITA disallowance in terms of Rule 6DD for payer	• Separate reporting requirement may be cast on dealer or commission agent • Reporting may be made with reference to Aadhar of the agriculturist / payee

3 Cash withdrawals exceeding specified amounts (Rs.50,000 in the case of individuals and HUFs and Rs.1,00,000 in the case of other persons) made in a day from bank accounts, other than savings accounts.

4 Agriculturist means cultivator, grower, or producer of agriculture or forest product, animal husbandry or dairy or poultry farming, fish or fish products and products of horticulture or apiculture.

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<td>Various Government, semi Government, companies wholly owned by State or Central Government, local authorities etc. which are in-charge of collection of levies and taxes</td>
<td>Payment of any taxes in cash such as GST, electricity duty, property taxes etc. each exceeding Rs. 10,000 p.a.[5]</td>
<td>Reporting may be made with reference to PAN / Aadhar of payee</td>
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➢ Enhanced scope of Rule 114E would enable Government to capture relevant information about cash withdrawals by taxpayers and other cash transactions. However, it is imperative that Government uses such information in a judicious and intelligent manner so that genuine taxpayers who are in a position to explain the source are not harassed.
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<td>26.</td>
<td>Reporting of income and assets by rich agriculturists</td>
<td>Rationale/ Recommendations

➢ While suggestion to bring agricultural income within tax net may not be accepted by Government for political / legislative reason, agriculturists earning income - say, exceeding Rs. 10 lakhs per annum may be made compulsory to file nil ITR form or annual statement reporting following details:
o Details of agricultural earnings, rent earned from agricultural land ;
o Reporting of cash transaction as mentioned at para 5(c) above
o Details of other assets as per Schedule AL of ITR 1 to ITR 4 in case if agricultural income exceeds Rs. 50 lakhs per annum

➢ Above information will facilitate Government to link income with available resources and in case there is a mismatch, that person can be scrutinized.

➢ The purpose is not to levy tax on the agricultural income but is to collect information of cash dealings. Under the legal consultation, a separate legislation may be introduced to avoid any constitutional challenges.
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[5] This is an alternate to primary suggestion that Government department should stop accepting payment for taxes and other payments in cash - say, beyond Rs. 10,000

		➢ Law should also provide penal consequences for non-furnishing of tax return / statements and / or for inaccurate furnishing of reporting details.
27.	Cash payments by business segment availing presumptive taxation scheme	Rationale ➢ The existing presumptive taxation scheme covered under s. 44AD requires to pay tax at specified rate (8% of gross receipt / turnover upto Rs. 2 crores) without maintaining any books of accounts and other records. All the expenses and allowance are deemed to have been allowed in computing the presumptive income. One such deduction is in respect of cash expenses exceeding Rs. 10,000 as the operation of section 40A(3) of ITA is deemed to have been given effect to. ➢ The Government, with a view to encourage the traders to accept payments through bank or digital modes, provided incentives with reduced rate of presumptive income from 8% to 6% in relation to turnover / gross receipt from banking channel. **Recommendation** ➢ Since there is no specific disallowance being triggered in terms of section 40A(3) of ITA in case of presumptive tax provisions, it leads to scope for such taxpayer to indulge in cash payments without fear of disallowance. This may lead to leakage of cash payment of a sizable amount if considered at industry level. Since it may not be feasible to provide for specific disallowance under the presumptive taxation scheme, as an alternative, some incentive may be provided to taxpayers for encouraging them to use banking channel for making payment for business purchases as also other general expenses such as salary, wages, labour, rent, electricity etc. One such mode to incentives could be the reduced rate of presumptive taxation along the lines of proposal for acceptance of digital payments by the traders. The incentive of 2% reduction in presumptive income rate may be split in the form of 1% each for receipt and payment through banking / digital modes.

28.	Is there any need for reintroducing Banking Cash Transaction Tax (BCTT)?	Rationale/ **Recommendations** ➢ As detailed out in TARC report as also mentioned by Dr.Shome at public forum that BCTT is a useful source of information for tax administration to gather information about unaccounted money and address the issue of round tripping of funds; quantum of tax collected under BCTT is not relevant. ➢ As aforesaid if the BCTT is just to be considered as source of information and not the revenue collection measure, the same can be achieved by making banks reportable for the cash withdrawals by the account holder during the relevant year as stated above. Since BCTT is not a revenue collection measure, there is therefore no need to burden the taxpayer with additional tax. Also the present environment demands encouraging people for use of banking facility. A levy of BCTT may be perceived as anti-banking measure and may discourage people to opt for banking channel in the normal course of activities

International taxation		
29.	Place of Effective Management ('POEM') (S.6(3))	**Rationale/ Recommendation**: ➢ The CBDT had issued the final guiding principles for determination of POEM of a company on January 24, 2017. Further, the provisions of POEM are applicable to FY 2016-17. ➢ Considering that majority of the current financial year had already gone from the time the POEM legislation is in force and with final guiding principles coming into effect, there was lot of uncertainty and ambiguity around implementation in the business houses. ➢ Considering the above, it recommended that the provision of POEM should be deferred by one year in order to allow the taxpayers to implement the final guiding principles.
30.	Special transitional provision for POEM resident companies (S. 115JH)	**Rationale/ Recommendation**: ➢ FA 2016 introduced a new provision in the form of S. 115JH to grant power to the Government of India to notify certain exceptions and adaptations to the existing provisions of the Act in relation to company which is treated as POEM resident of India. A draft notification was issued on 15 June 2017 (Notification), to prescribe certain exceptions, modifications or adaptations, subject to which provisions of the Act will apply to a POEM resident foreign company which has raised certain concerns. ➢ **Due date of filing of return of income (ROI) in case of a foreign company which has hitherto not been assessed as a resident of India** ○ If the foreign company which has not been assessed as a resident in any earlier year is considered as POEM resident pursuant to a finding u/s. 6(3), followed by completion of assessment proceedings, any ROI, furnished by foreign company for any previous year which ended before the date of completion of proceedings may be considered to have been furnished within the due date applicable to the company u/s. 139(1) of the Act, if such returns are furnished within 180 days from the date on which notice for furnishing ROI is received by the company for that previous year.

		- The due date for s. 139(1) should be defined to mean the expiry of period of 180 days from the date on which notice for furnishing ROI is received for that year. - Once the ROI is regarded as filed within time frame of S.139(1) as extended, the foreign company will not suffer unintended consequence of delayed filing of return. - Interest u/s.234A will accordingly be reckoned from such due date as extended. ➢ **Advance tax obligation** - There may be no requirement of payment of advance tax for the period up to the end of previous year in which the assessment proceedings holding foreign company to be a resident for the first time are completed. The tax may be considered to have become due on the expiry of the period of 180 days which is available to the taxpayer for furnishing his ROI upon receipt of first order u/s. 6(3). - Period of default for interest levy u/s 234B should be reckoned from the extended time limit to be provided for furnishing ROI as discussed in para 2.01 above. - Interest u/s 234C should be waived off. ➢ **Compliance obligations: Tax audit report, transfer pricing report, etc.** - Consistent with the philosophy and spirit of s.115JH, the foreign company should be relieved of all procedural compliances/obligations such as obtaining of tax audit report u/s. 44AB or TP documentation and TP audit report compliance, etc. - If at all the obligation is imposed, the compliance obligation ought to take into account statutory obligations in the country of its incorporation about maintenance of books of account and supporting records. The company should not be expected to do those compliances which are not capable of being fulfilled having regard to norms of maintenance of books and records as per statutory requirements in the country of its incorporation. - Without prejudice to the above, following may be considered: **Transfer pricing compliances** - With wide reach of BEPS projects and inclusion of meaningful countries in

		BEPS agenda, the requirements may be relieved in case of a foreign company which has been subject to transfer pricing and documentation related compliances in its home country, for any past year upto the year of completion of assessment proceedings u/s.6(3) of ITA. • On an assumption that the foreign company is not eligible for dispensation as aforesaid, there should be *de minimis* threshold to exclude entities from purview of Chapter X for the previous years where the turnover of the company as per books of account in accordance with the accounting standards applicable in the country where it is assessed to tax is less than INR 250 Cr. • For companies not covered above, the time limit for compliance of obligation u/s. 92D in respect of maintenance of documentation and information and audit report u/s. 92E should be extended along the lines of time frame available for filing of ROI as stated above. ○ **Country by Country reporting (CbCR) compliance** ▪ The compliance done by MNE Group under CbCR may be accepted to be due compliance in terms of s. 286 of ITA. ▪ If the group is not covered by CbCR for any reason for any of the years, S. 286 should be made inapplicable for all the previous yearsupto the end of previous year in which the company is upheld to be POEM resident for the first time. ➢ **Income computation: other provisions** Consistent with philosophy of nationality non-discrimination provision in almost all comprehensive treaties which India has signed, the benefit of concession, exemption or relief which is available to an Indian company should, equally be extended to foreign company triggering POEM residency. Illustratively, this may include benefit of concessional rate of tax rate u/s. 115BBD in respect of dividend received from specified foreign company, capital gains exemption for transfer inter se between holding and subsidiary company covered by S.47(iv)/(v) etc.

		➢ **General point on draft notification:** For providing abundant clarity, each of the guidelines may be explained by means of an illustration. We believe that, but for illustration, Guidelines may be prone to varying interpretations and may become a source of litigation. (Eg. Para 3(iv), (v), (vi), (vii)) ➢ **WDV for tax purposes:** In case of a foreign company assessed to tax in the foreign jurisdiction, draft notification provides that WDV of the depreciable asset as per the tax record in the foreign country on the 1st day of the previous year shall be adopted as opening WDV of the relevant previous year. We have understood this to mean that WDV of assets which are depreciable will be adopted in the year of transition regardless of the taxable year in the overseas jurisdiction. For this purpose foreign jurisdiction may be considered as referring to the jurisdiction in which foreign company is taxed as a resident on comprehensive basis. This will avert any issues that may arise in case of companies which are assessed to tax in more than one jurisdiction. Our understanding is illustrated as under. • If the tax year of foreign company is calendar year, tax WDV as on 31 of December 2015 (i.e.1 January 2016) will be considered as actual (depreciable) cost of POEM resident company for A.Y. 2017-18 (previous year April 16 to March 17) for which company is considered POEM resident in India. • If the tax year of foreign company ended on 30 June 2015, the WDV as on 30 June 2015 (i.e. 1 July 2015) will be considered as actual (depreciable cost)for A.Y. 2017-18 (previous year April 2016 to March 2017) for which company is considered POEM resident in India. ➢ **Brought forward losses and unabsorbed depreciation** In case of a foreign company assessed to tax in the foreign jurisdiction, draft notification provides that brought forward loss **or** unabsorbed depreciation as per the tax record shall be determined year wise on the 1st day of the previous year and shall be deemed as losses or unabsorbed depreciation brought forward on the 1st day and shall be allowed to be set off and carried forward. Taxpayer should be allowed to carry forward loss as also depreciation. The word "or" should be substituted by word "and". Further, for this purpose foreign jurisdiction may be considered as referring to the jurisdiction in which foreign company is taxed as a resident on comprehensive basis. This will avert any

		issues that may arise in case of companies which are assessed to tax in more than one jurisdiction. We have understood this to mean that the losses which are appearing on the tax record will be presumed to be losses of the previous year for which assessment as a resident is made in India. It needs to be clarified specifically that the benefit of carry forward will be allowed notwithstanding that there may have been change in shareholding of any past year contrary to s. 79 and notwithstanding that ROI for year of residence may have been furnished beyond due date. Data as per assessment records of overseas jurisdiction will be accepted as valid and no independent evaluation will be done whether such ascertainment is in accordance with tax laws of overseas jurisdiction. Loss so quantified will be admissible irrespective of whether, as per Indian law, loss would have been admissible subject to certain conditions – say, for example, furnishing of return of income in time, change in shareholding, etc.
31.	Foreign Tax Credit on aggregate basis (Rule 128)	**Rationale**: ➢ An option is available to the assessee to apply either the provisions of domestic law or of the treaty law, whichever is more beneficial to him, in respect of countries with which India has concluded DTAA. The CBDT has notified FTC rules according to which the tax payer is required to compute the FTC. ➢ Indian MNCs have global operations with permanent establishments in many countries. The present method of computing FTC for each country by referring to the relevant treaty is onerous for both the assessees as well as the tax administration in view of the fact that each tax treaty is a code in itself and has to be contextually interpreted. **Recommendation:** ➢ The domestic law should provide for a simpler method of granting FTC by aggregating all foreign sourced incomes. The taxes paid in foreign country should be allowed as credit on aggregate basis against the India tax liability.

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32.	Carry-forward of excess Foreign Tax Credit (Rule 128)	**Rationale**: ➢ The FTC is restricted to the tax liability of the assessee in India. In the following situations, the assessee is not granted full credit for the foreign taxes paid: − The working formula prescribed in Section 91 or the relevant tax treaty is not yielding optimal results by way of granting FTC. − Where the assessee incurs a loss on its worldwide income for any assessment year, no FTC is granted. − Where the Indian tax payable on the worldwide income is lower than the foreign tax paid, FTC is partially available. − The method of computing the income in the foreign countries is different from the method of computing the income under the Income Tax Act. − The time period within which tax credit should be claimed and allowed is not defined. Owing to differences in laws and practices in tax administration in foreign jurisdictions, the tax liability for any financial year could get determined much after the conclusion of assessment for the same year in India. **Recommendation**: ➢ Assessees need to be allowed carry forward of the “unutilized” foreign tax credit for 5 years. It is recommended to suitably introduce the provisions to allow such relief which is due to the assessee. Accordingly, rule for FTC should provide for the carry forward of the FTC.
33.	Deduction for taxes paid on income to the provincial/local tax bodies like the State, Cities, Countries in overseas tax jurisdictions etc.	**Rationale**: ➢ In order to mitigate the rigours of double taxation in respect of cross border transactions, India has entered into Double Tax Avoidance Agreements (DTAAs) with many overseas tax jurisdictions. The provisions of the DTAAs prescribe tax relief to resident of a contracting country either by way of exemption method or tax credit method. Generally, the DTAAs entered into by India are with the central governments of overseas countries.

		➢ However, in case of countries like the USA, Canada, and Switzerland which have Federal structure of governance, the local governments at the provincial/state, cities, counties, which also levy taxes on income, are not party to the DTAA, and hence, taxes on income levied by such jurisdictions are not covered by the Scope of Taxes of such DTAAs. Such local taxes are merely not covered because the respective Federal Governments lack the necessary constitutional authority to contract on behalf of the local tax jurisdictions in view of the peculiar prevalent Federal structure of governance. ➢ Though the levy of such local taxes on income also amounts to double taxation of income, the relief is denied by the tax authorities in India on an erroneous ground that such local taxes are not covered by the applicable tax treaty. ➢ The anomaly becomes more apparent in cases where India has not signed a DTAA with any country. The provisions of section 91 which allows tax relief in such cases, do not distinguish between taxes on income levied by the Federal and/or provincial/local bodies and allows tax credit even for local taxes on income. **Recommendation**: ➢ The FTC should be allowed for taxes on income levied by overseas provincial/local tax jurisdictions or alternatively the taxes paid should be allowed as deduction from the total income of the assesse.
34.	Foreign Tax Credit by employer in respect of taxes paid in overseas countries. (S.192)	**Rationale**: ➢ In the current scenario of globalization, substantial cross border movement of Indian employees is happening which results in double taxation of salaries of such mobile employees. The salaries are taxed in the home (India) country and in the host (country of deputation) country. This becomes a serious cash flow issue for such doubly taxed employee's esp. since the employees can seek tax credit for the taxes paid in the overseas jurisdictions u/s 90/91 of the Act by filing tax returns in India. This leads to the avoidable administrative burden on the Department without any collection of additional revenue **Recommendation**: ➢ It needs to be clarified that the employer can allow credit at source in respect of foreign taxes paid by the employees overseas based on the foreign tax credit rules / clarifications.

35.	Foreign Tax Credit in case company is considered as Resident under POEM (Rule 128)	**Rationale and Recommendation**: ➢ Based on the application of POEM rules, if an overseas entity is considered to be a tax resident of India, it will lead to double taxation. ➢ The taxes paid by the deemed resident company in foreign country should be allowed to be set-off against the tax liability in India.
36.	Restriction on carry forward of MAT/AMT credit to the extent of excess FTC claimed (S.115JAA/115JD)	**Rationale**: ➢ Second proviso to S. 115JAA(2A) restricts quantum of MAT credit to be carried forward to subsequent years. The proviso provides that where the amount of FTC available against MAT/AMT is in excess of FTC available against normal tax, MAT/AMT credit would be reduced to the extent of such excess FTC. ➢ Similar restriction is inserted u/s. 115JD(2) on AMT credit. ➢ Both the provisions are effective from the 1 April, 2018 i.e. will apply in relation to A.Y. 2018-19 and onwards as specifically provided in Notes on Clause and Memorandum to the Finance Bill. ➢ The rationale of aforesaid restriction/ limitation is not clear. The restriction on quantum of MAT/AMT credit to be carried forward creates additional whammy of subjecting taxpayer to duplicated MAT liability while denying the rightful carryover of MAT/AMT credit. ➢ FTC credit is an alternative form of tax payment. For all purposes including for grant of refund or levy of interest, FTC is treated as advance tax paid to the extent the same is creditable against tax liability in India. Once MAT liability is admitted to be tax liability on income in India, there is no justifiable reason for treating FTC separately depending on whether FTC is creditable against normal tax liability or MAT liability. The amendment is inconsistent with the Government's assurance that MAT is to be effectively phased out and incidence of MAT is to be counter matched by grant of extended period of MAT credit **Recommendation**: ➢ The restriction on carry forward of MAT/ AMT credit may be removed.

37.	FTC for foreign disputed taxes to be allowed in year of payment pursuant to settlement of dispute (S.155)	BOMBAY CHAMBER: ➢ Tax Authority will rectify the assessment orders or an intimation order and allow credit of foreign taxes in the year in which the taxpayer furnishes the evidence of settlement of dispute and discharge of foreign tax liability ➢ Amendment by the Finance Act 2017 does not provide for time limit within which the AO has to rectify the assessment order. The amendment only gives a reference to S.154. S. 154 provides a limit of 4 years for reassessment, excluding anything specifically provided under S. 155. Issues may arise on what is the period of limitation which may apply for S. 155(14A) and how it should be applied. ➢ The amendment has provided that the AO shall amend the earlier order which denied FTC, if the taxpayer within six months from the end of the month in which the dispute is settled, furnishes to the AO evidence of settlement of dispute and evidence of payment of tax. Time threshold of six months from date of dispute settlement gives a very small window for taxpayers to claim the benefit for previous years, hence, giving a limited scope to the benefit. ➢ It is not clear as to what could constitute sufficient evidence on the part of taxpayers to claim the FTC benefit on dispute settlement. **Recommendation**: ➢ Since all the sub-sections in S.155, provide for the time limit to be applied and some of the sub-sections provide for a different time limit, hence it may be expressly clarified that what is the period of limitation which may apply to cases covered by S. 155(14A). ➢ It may also be clarified that the period of limitation (e.g. if it is 4 years), should be 4 years from the end of the year in which the amended order is passed and it should not be date of the original order. This is for the reason that if the dispute in the foreign country takes more than 4 years to get resolved and if the limitation period is considered to be 4 years from the date of the original order,

		the taxpayer may not get credit for taxes which he has actually paid. Such may not be the intent of the amendment. ➢ A similar provision is contained in S.155(16) which provides that where the compensation for compulsory acquisition is reduced by any Court or Tribunal, then the period of limitation shall be reckoned to be 4 years from the end of the year in which the order of the Court or Tribunal is passed. ➢ The time limit should be amended to provide for 6 months from date of settlement of dispute or date of effect of the amended order passed u/s. 155(14A), whichever is later ➢ Clarification should be provided on what is the documentation which shall constitute as sufficient evidence for justifying that the dispute has been settled. This may be done by specifying an illustrative set of documents, which shall constitute as evidence for settlement of dispute. Illustratively the following may be considered as evidence for settlement of dispute – Final assessment order/ final demand notice of the tax authority of the foreign country – Judgment of the Court of Law along with the final demand notice of the tax authority based on the judgement – Proof of payment of taxes – Self-declaration
38.	Tax Residency Certificate	Rationale: ➢ Many of the India based companies execute cross border purchase and/or sale transactions. In case of purchase transactions, for getting the benefit of lower/nil rate of withholding of tax under the provisions of applicable Double Tax Avoidance Agreement signed with the payee's country, the Indian companies are required to provide Tax Residency Certificate/s (TRC) issued by the Income Tax Department. ➢ Procuring TRC is a time consuming process which is an administrative burden both for the industry as well as for the Department.

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		Recommendation: ➢ The entire process of issuing the TRC needs to be digitized which will enable companies to download the digitally signed Tax Residency Certificate from Department's website which may be linked to the filing of the Tax Return by the companies.
39.	Tax Residency Certificates by Foreign Vendors	Rationale: ➢ A non-resident taxpayer, to whom a DTAA applies, is not entitled to claim any relief under such DTAA unless a certificate of his being a resident in any country outside India is obtained by him from the Government of that country. ➢ Many countries do not have a provision for issue of TRC until the end of the relevant financial year. In such cases, it is not possible for the taxpayer to obtain a TRC within the relevant financial year itself on real time basis, which actually creates practical difficulties for the Indian payer and foreign payees **Recommendation**: ➢ In such cases, TRC of previous year or tax return etc. along with a declaration that there is no change in circumstances resulting in change of residential status during the current financial year, should be allowed.

Transfer Pricing		
40.	Fast-track APAs	Rationale ➢ As per the recent press release by CBDT dated 4 September 2017, a total of 175 APAs have been signed out of more than 800 applications received in the last 5 years. ➢ Further, the Annual APA report by CBDT indicates that the unilateral APAs have taken an average of 29 months for conclusion, which is better than the time taken in other jurisdictions such as the US. Despite the growing number of APAs which are being concluded, potential investors into India seek clarity for their investment decisions given the current level of pendency of APA applications. **Recommendation**: ➢ For the new potential investors who intend to invest into the country and who need clarity on their transfer pricing (TP) model, the government could create a parallel process of obtaining a fast-track APA solution that would aid companies with respect to their investment decisions. A six-month time frame for APA for a prospective investor, would help in furthering the 'Make in India' agenda.
41.	Time Limit for Audit Proceedings	Rationale ➢ Currently, the time limitation for concluding assessments under section 153 of the ITA does not provide for keeping the TP assessment/audit under abeyance for the years covered under the APA (including roll back) until the conclusion of APA. This is resulting in administrative inconvenience for the taxpayers by simultaneously going through the rigorous audit proceedings in spite of opting for an APA regime **Recommendation**: ➢ Since APA is a mechanism to negotiate the arm's length pricing of inter-company transactions, the participation of both the parties in such discussion would essentially take time. ➢ Therefore, non-consideration of the time being spent on APA negotiations under the "exclusions" of s. 153 of the ITA would effectively require the taxpayers to go through normal audit proceedings for the years covered under the APA (including rollback years).

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		➢ In order to help the objective of APA, s. 153 of the ITA may suitably be amended so as to keep TP assessment/audit in abeyance until the signing of APA (including years for which rollback has been opted for).
42.	Bilateral APA (BAPA) in the absence of article 9(2) in the double taxation avoidance agreements (DTAA)	Rationale ➢ Currently, a BAPA can be entered only when Article 9(2) is present in the DTAA between the two countries. In the absence of Article 9(2) in the treaty with a country, Indian Income-tax regulations do not permit TP dispute resolution through Mutual Agreement Procedures (MAP) or BAPAs for companies having transactions with parties resident in these countries. **Recommendation**: ➢ Globally, countries permit MAP/BAPA where the treaty does not have Article 9(2). ➢ Further, Base Erosion Profit Shifting (BEPS) project report on Action Plan 14 i.e. “Making dispute resolution mechanisms more effective”, provides that the countries have agreed that they would remove barriers to access dispute resolution forums such as MAP and APA. ➢ Artificial barriers such as Article 9(2) requirement must be done away with, to make it easier for companies resident in countries (for which there does not exist Article 9(2) in the DTAA or are not signatories to MLI) to access the BAPA forum. ➢ A clarification on this issue would help to resolve issues for a large number of companies
43.	Rollbacks to be made applicable to all years and not just 4 year	Rationale ➢ As per the current India TP regulations, “roll backs” in the case of unilateral/ bilateral APAs can be entered only up to 4 preceding financial years. However, a practical difficulty arises in scenarios where the taxpayer has opted for BAPA with countries such as the US which permit “rollback” for all the open previous years. Therefore, such limitation in the existing Indian TP provisions would require the taxpayer to mandatorily go for MAPs for those years which fall outside “4 years” term even though the foreign jurisdiction allows for all the open years

		Recommendation: ➢ In order to make the dispute resolution mechanisms more effective, a suitable amendment may be issued to remove the restriction to access APA rollback with other countries for all the open years. ➢ This step would benefit large number of taxpayers who have been facing administrative inconvenience due to the requirement to file simultaneous application for MAP/ BAPAs for dispute resolution. ➢ This would also help taxpayers in resolving issues arising from mismatch (if any) in the financial years of the AE and the Indian taxpayer
44.	Consistency in applying the results of the BAPA with one country in a unilateral APA (UAPA) with another country if the functional and risk (FAR) profile of the transaction is the same	**Rationale** ➢ A question arises whether a taxpayer can apply for a UAPA in respect of certain international transactions and BAPA in respect of certain other transactions as part of the same APA application. The existing FAQs on APAs issued by CBDT (refer FAQ no 22) clarifies that it would be possible to do so and a single application could be filed with an appropriate type of APA request. ➢ A related issue which arises is whether the taxpayer can apply for an UAPA in respect of international transactions with certain AEs where a BAPA/ MAPA have been entered into in respect of similar transactions with certain other AEs. ➢ This question arises on account of reading of section 92CC(1) of the Act which is as follows: As per section 92CC(1) of the Act, *"The Board, with the approval of Central Government, may enter into an agreement with any person, **determining the arm's length price or specifying the manner in which an arm's length price is to be determined**, in relation to **an international transaction** to be entered into by that person"* **Recommendation**: ➢ As per Rule 10B(2), comparability of an international transaction with uncontrolled transactions shall be judged with respect to the following, namely: – Specific characteristics of property transferred or services provided;

		− Functions performed, taking into account assets employed or risks assumed by respective parties; − Contractual terms (whether or not such terms are formal or in writing) of the transactions which lay down explicitly or implicitly how the responsibilities, risks and benefits are to be divided between the respective parties to the transactions; and − Conditions prevailing in the markets in which the respective parties to the transactions operate, including the geographical location and size of the markets, the laws and Government orders in force, costs of labour and capital in the markets, overall economic development and level of competition and whether the markets are wholesale or retail ➢ Further, as per Rule 10A(d), "transaction includes a number of closely linked transactions". ➢ In light of the above provisions, if the comparability factors laid out under Rule 10B(2) are same/ similar for transactions covered under UAPA and BAPA, then the methodology and the pricing agreed for transaction with an AE under a BAPA could be extended and applied for the transaction with another AE as well, which may be part of a separate UAPA discussion. ➢ Reference could be drawn to OECD TP Guidelines, 2017 (Para 22 of Annexure II to Chapter IV – Page 478), which emphasizes the need for similarity in the facts and circumstances across jurisdictions for application of a single TP methodology in a multilateral APA discussion
45.	Rollback / APA provisions should apply in case of merger/demerger/conversion situations, where there is no change in FAR of the transactions	Issues when the applicant merges with other entities **Rationale** ➢ Subsequent to the introduction of the roll back provisions through Finance Act, 2014 and notified through Rules 10MA and 10RA of the Rules, CBDT issued clarification through Circular No 10/ 2015, in the form of FAQs. ➢ One of the FAQs issued by the CBDT is with regard to limiting the eligibility for rollback in case of reorganisation and reads as follows: *"In case of merger / de-merger of companies which company can claim the benefit of the APA?*

		The APA is between the CBDT and a person (company). The principle to be followed is that the company who makes the APA application would only be entitled to enter into an APA and claim the benefit of rollback in respect of the international transaction(s) undertaken by it in the rollback years. Other companies that have merged with the applicant company later or have demerged from the applicant company would not be eligible for the rollback provisions under the APA." ➢ The mere fact that the company merging has ceased to exist and thereby not entitled to a roll back would be unfair to the taxpayers since the past years continue to be audited. **Recommendation**: ➢ In case of an amalgamation (merger) / demerger, the transferor entity ceases to exist and all the assets and liabilities would vest with the transferee entity. Typically, the scheme of amalgamation / demerger explicitly provides for the same. Therefore, the transferee entity will stand liable for the pending assessments/ taxes etc. of the transferor entity on amalgamation / demerger. ➢ Further, given that amalgamation / demerger is a succession by the transferee entity as per Section 170 of the Act, the assessment shall be made on the successor in similar manner as it would have been made on the predecessor. Therefore, in case of an amalgamation, the successor would continue to be liable for pending assessments/ taxes etc. given that the predecessor ceases to exist. ➢ Extending the same analogy, the benefit of rollback should be made available to the successor provided the terms of the transaction and the functional analysis remains materially the same as of the transactions covered in the APA. Further, the provisions relating to APA in the Act do not prohibit the predecessor to continue with the APA roll back process and thus FAQ should not be limiting the scope of application of the provisions. ➢ Thus, it is suggested that there should be flexibility in the above fact pattern, such that merged entities are also entitled for rollback Conversion of a company into LLP **Rationale** ➢ The FAQs do not provide any guidance in case of conversion of a Company into LLP during the APA period.

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		Recommendation: ➢ Conversion of a Company into LLP is merely a change in the constitution and hence, the resulting LLP will continue to be liable for all the pending disputes/ assessments etc. which is similar to the case of a merger/ de-merger. ➢ Extending the same analogy, the benefit of APA should be made available to the new entity (LLP) provided that the terms of the transaction and the functional analysis remains materially the same as of the transactions covered in the APA. ➢ Therefore, in cases of conversions, the APA should not be automatically deemed void. The APA program should review the transaction/ functional analysis post conversion and provide for either continuation of the existing terms or revision of the terms of the APA.
46.	Impact on non-resident taxpayers by virtue of an APA agreed in the case of an Indian taxpayer	**Rationale** ➢ Any applicant who intends to enter into an APA shall make payment of the requisite fee as specified by the Rules. However, there may be cases where the same transaction could be regarded as an international transaction in the hands of both the transacting parties in India. ➢ For instance, an Indian entity makes payment of royalty to its overseas associated enterprise (AE) at 5 percent of the net sales generated by the entity. Payment/receipt of royalty will be an international transaction in the hands of both the transacting entities (i.e. Indian entity and overseas AE). Let us assume that the Indian entity decides to opt for an APA for such transaction. Under the APA, the ALP for such royalty payment is negotiated and determined at 3 percent of the net sales. In the meanwhile, the Indian entity while remitting royalty payment, deducts tax at source on a higher sum (royalty calculated at 5%) as against the arm's length sum (royalty calculated at 3%). In such a scenario, the Indian entity would give effect to the terms of the APA by offering the excess royalty to tax. However, there are no automatic provisions available to obtain refund of excess taxes withheld by the Indian entity from the AE. The only possible option could be for the AE to file a BAPA in India so that the ALP determined in the case of Indian entity, if applied, would result in refund of excess taxes withheld. ➢ **In the above fact pattern, an issue arises as to whether the initial APA statutory filing fee should be collected from the AE also in relation to the same transaction (Royalty income received by AE from the Indian entity)?**

		Recommendation: ➢ While a literal interpretation would suggest that separate filing fee needs to be paid by each of the APA applicant, in the overall interest of the taxpayers, it is suggested that only one filing fee is collected in such cases given that the incremental efforts involved in conclusion of the APA in the hands of the AE is likely to be minimal.
47.	Rollback of the transaction covered in the APA with different AE countries should be permitted	Rationale ➢ As per Rules 10MA(2)(i), rollback provisions apply to the "same" international transaction to which the APA applies. It has been clarified in the FAQs that "same" implies same nature of transaction, and undertaken with the same associated enterprise (AE). ➢ Another FAQ states as under: *"The term same international transaction implies that the transaction in the rollback year has to be of same nature and undertaken with the same associated enterprise(s), as proposed to be undertaken in the future years and in respect of which agreement has been reached. In the context of FAR analysis, the restriction would operate to ensure that rollback provisions would apply only if the FAR analysis of the rollback year does not differ materially from the FAR validated for the purpose of reaching an agreement in respect of international transactions to be undertaken in the future years for which the agreement applies."* ➢ It is possible that the same international transaction may, for a variety of reasons, be undertaken with a different AE in future years as compared to the period to which rollback applies. **Recommendation**: ➢ It should be noted that Rule 10MA only refers to the "same international transaction" and not to the "same AE". Accordingly, the applicability of rollback should not be prohibited to transactions undertaken with different AE in past years as long as the functional analysis of the transaction in the future period remains unchanged. In case of APAs for forward looking period, typically the APA agreed approach is followed as long as the functional analysis of the transaction continues to be the same even though the AE may have changed. ➢ In light of the above, it is suggested that the APA rollback be permitted in case of AEs different than the existing AEs if the functional analysis has remained consistent.

48.	Relaxation should be specifically provided to taxpayers from doing TP documentation / Form 3CEB where an APA is already concluded and the applicant is filing the Annual Compliance Report (ACR)	**Rationale** ➢ Rule 10T(1) of the Rules provides that "*Mere filing of an application for an agreement under these rules shall not prevent the operation of Chapter X of the Act for determination of arms' length price under that Chapter till the agreement is entered into*." ➢ From the abovementioned rule, it is clear that mere filing of an APA application does not absolve the taxpayer from the requirement of compliances prescribed under Chapter X of the Act till the APA agreement is entered into. However, it is uncertain as to whether the Chapter X compliances relating to maintenance of Rule 10D documentation and filing of accountant's report (i.e. Form 3CEB) continue to apply to the taxpayer even after the APA agreement is entered into **Recommendation**: ➢ Although there is no specific provision in the Act/ Rule providing an exemption to the taxpayer from maintaining documentation as per Rule 10D or filing Form 3CEB, the APA mechanism as a whole serves the purpose which was intended for such compliance requirement u/s 92D and 92E of the Act. Therefore, there is no need for the taxpayer to maintain documentation u/s 92D and file Form 3CEB u/s 92E in respect of the transactions covered under APA once the APA is signed due to the following reasons: − The ALP determined under APA overrides the determination of ALP u/s 92C and 92CA of the Act − APA process itself involves collection and analysis of detailed documents and information by the taxpayer to the tax authorities in respect of the covered transactions − APA is binding on the taxpayer as well as the tax authority and hence the need to maintain information and other documentation/filing requirements and regular audit of the same becomes redundant − The APA agreement, ACR and compliance audit, together addresses the requirements of maintaining TP documentation and filing Form 3CEB − Compliance with the TP documentation requirement and filing of Form 3CEB in addition to

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		filing ACR (as required by Rule 10-O) would lead to duplication of cost and compliance burden for the taxpayer – Absence of explicit provision in the APA rules, requiring maintenance of documentation and filing Form 3CEB once the APA is signed, like in the case of Safe Harbour Rules [Rule 10TC(5)] ➢ However, in a case where the taxpayer has entered into some other transactions during the year which are not covered under the APA, it would be necessary to maintain documentation in accordance with Rule 10D in relation to such transactions and file Form 3CEB.
49.	Specifically exempt APA applicants from filing ACR for rollback years	Rationale ➢ Rule 10-O requires the taxpayers to file ACR in Form 3CEF for each year covered in the APA agreement. The said rule was introduced before the introduction of the rollback provisions. No amendment was made to the rule after introduction of the rollback provisions. Further, Rule 10RA (introduced at the time of introduction of rollback provisions) which provides the procedure for giving effect to rollback provisions in an APA agreement does not require the taxpayer to file ACR for the rollback years. ➢ **Given the above, whether the requirement to file ACR in Form 3CEF applies even to the years covered under rollback provisions?** **Recommendation**: ➢ Unlike the prospective years covered under APA, the ALP for the covered transactions in respect of rollback years is generally agreed in an APA only after detailed analysis of the nature of transactions, functions performed and risks assumed by the parties involved in the transaction, price/ margin involved in the transaction and all other relevant factors. All the information/ documents required to be provided in the ACR would have already been provided to the APA authorities in respect of the rollback years. The ALP for rollback years is agreed by the APA authorities only after detailed analysis of all such information/ documents. Thus, requiring the taxpayer to file ACR in respect of rollback years will only lead to duplication of cost and increase the compliance burden for the taxpayer.

		➢ Further, Rule 10RA, which deals with the procedure for giving effect to rollback provisions, only requires the taxpayer to file modified return of income in accordance with Section 92CD of the Act. It does not specifically require the taxpayer to file ACR in Form 3CEF in order to be eligible for the rollback provisions. ➢ Thus, the requirement to file ACR in Form 3CEF should only apply to the prospective years covered under APA and shall not extend to the rollback years. This fact could also be clarified accordingly in the APA agreements
50.	Arm's length price as agreed by CBDT under APA must be respected by Central Board of Excise and Customs (CBEC) for customs valuation	**Rationale** ➢ Currently, there exist no guidance which clarifies that ALP as agreed under APA by CBDT would be factored by custom authorities under CBEC to determine the value of goods imported. Such an anomaly causes undue hardship to the taxpayer in terms of duplication of efforts and differential expectations of the authorities. **Recommendation**: ➢ It is suggested that the ALP determined/ manner of determining ALP as agreed with CBDT, is duly taken note of by the customs authorities as well to avoid the duplication in efforts to arrive at the arm's length price/ fair value. ➢ Similar position have been adopted by countries like Canada wherein APA agreed price is duly recognised by the respective custom authorities. Reference is drawn to Para 31 of the Memorandum D13-4-5 issued by the Canada Border Services Agency which states that: *"31. The CBSA will* ***accept a transfer price established through an APA as the price paid or payable of imported goods and the basis for their value for duty****, but may require that a correction to the value for duty be made if compensating adjustments are made to the transfer price."* ➢ The same could be considered by the Indian government to boost the confidence of MNE groups operating in in India

51.	Commencement of APA period	**Rationale** ➢ As per section 92CC(4) of the Act, *"The agreement referred to in sub-section (1) shall be valid for such period not exceeding five consecutive previous years as may be specified in the agreement."* ➢ For instance, a taxpayer (contract manufacturer) wishes to enter into an APA for the international transactions undertaken with its AEs and remunerated on cost plus mark-up basis effective from FY 2013-14 for 5 consecutive years and let us assume that the terms of the APA are finalised by FY 2014-15. Due to certain unforeseen circumstances, the taxpayer was unable to implement the contract manufacturing model from FY 2013-14 (start of the APA period) but was able to implement the model only in the following year (i.e.) FY 2014-15. In such a scenario, what would be the impact on the APA filed? **Recommendation**: ➢ It is suggested that the arm's length price determined/ manner of determining arm's length price as agreed with CBDT be applicable from the year in which the taxpayer is able to implement the agreed business/ billing model. The APA program should be flexible and allow deferment to the start of the APA period i.e., in the above case, the APA period should be allowed to commence from FY 2014-15 instead of FY 2013-14 for prospective 5 years
52.	Implementation of Country by Country report (CbCR) (S.271AA)	**Rationale** & **Recommendations**: India, as part of its commitment to implement the BEPS Action Plan 13, has implemented the three-tier framework (CbC Reporting, master File and Local File) effective from financial year 2016-17. CbC Report for a reporting year does not apply unless the consolidated revenues of the preceding year of the group, based on consolidated financial statement exceeds Euro 750 million (approx. INR 5,400 crores). Date of filing of CbCR: ➢ Globally, most tax jurisdictions allow 12 months from the date of the financial year end for filing a CbC, while in India MNCs would have only 8 months from the year end to file a CbC. Given that the rules have not yet been notified by the CBDT, MNCs should be allowed to file a CbC by 31 March 2018.

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		➢ Based on our review of the major economies, we see that there is not much correlation between CbC reporting date and Tax Return filing date. Most countries have delinked these and are following the OECD recommended 12 months from end of the fiscal year for CbC reporting. It was seen that in some countries such as Australia, China and Japan, the tax return date is much earlier than the Masterfile submission/ preparation date. ➢ This being the first year of CBCR and Masterfile, companies should be allowed the leeway of complying with the requirement and penal provisions should be dispensed with in case of non-compliance with the requirements in the first year. Alternatively, a provision may be introduced for cumulative compliance of two years in the second year in case any non-compliance happens in the first year and application of penal provisions should commence only from the second year. ➢ **Date of filing of Masterfile:** Given that the rules have not yet been notified by the CBDT, MNCs should be allowed to file a Masterfile by 31 March 2018. ➢ In case where the parent entity of the international group is not resident in India, the CbC report is to be prepared for the accounting period with respect to which the parent entity of the international group prepares its financial statements. Accordingly, where such parent entity follows January to December as the accounting period, the CbC report (including CbC data of Indian constituent entities) would be prepared for the period of January to December and filed on 31 December in the country of the parent entity. o What would be the obligation of the Constituent entity in India when it files it income tax returns on 30 November, in such cases? o In cases where there is no agreement for exchange of information between the UPE country and India, what would be the modality and timing for the constituent entity in India to provide the CbC to the India tax authorities ➢ As per the provisions of s. 286 of the ITA, the ultimate parent entity, preparing consolidated financial statement, is responsible to file CbC report within the due date specified under Section 139(1) of the Act. o In case the parent company, based in India, does not have any international transactions or SDTs, s. 92E is not applicable to it. Conversely, will it have to file CbC report by the due date of filing return which is in this case 30 September 2017?

		o In case the parent company, based in India, appoints an alternate reporting entity for filing CbC report in India, whether due date of filing CbC report will be 30 November 2017 since the alternate reporting entity has cross border transactions and hence, liable to file Form 3CEB? ➢ While the Industry is awaiting the notification of detailed rules on the master file and CbC reporting, it is advisable to keep the rules in line with the **Recommendations** in the BEPS Action Plan 13 so that fair degree of consistency is maintained with the global practices. There are certain areas in CbC reporting and Masterfile where further clarity would help the taxpayer to understand the provision in a better way thus publishing a CbC reporting and Masterfile FAQ may help to achieve the objective. ➢ Guidance could be issued on how to deal with permanent establishments for CbC reporting. o For the purposes of Table 1 of CbC reporting, the revenue, earnings before tax (EBT), tax figures and headcount of the permanent establishment should be included in the aggregated results of the jurisdiction in which it is situated. o The ease with which the results of PEs can be identified varies from group to group. Many taxpayers treat PEs as separate entities in their consolidating working papers/ERP systems and therefore their results would be easy to identify. The challenge here has been to ensure that representative offices are not treated as PEs. Other taxpayer’s ERP systems have not been set up to account for branches separately and there may be challenges for determining CbC Data for such cases. ➢ Dispensation from filing of the CbC by the ultimate holding company in India and instead CbC can be filed by each of the operating companies that consolidate other subsidiaries i.e. allowing an alternate reporting entity within India. o Many MNCs operate with multiple group companies operating in different businesses and industries. Ownership of these independently run businesses is through a holding company which is the ultimate parent entity. Some of the businesses may also be separately listed and may be preparing consolidated financial statements that includes its subsidiary companies. The ultimate parent entity may be consolidating all the different businesses and preparing its own consolidated financial statements for management information purposes and not for listing requirements.

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		○ As per a plain reading of the Income-tax Act, 1961, the CbC would have to be prepared by the ultimate parent entity. ○ The holding company, operating as an investor has limited visibility and control on the operations of the operating company and its subsidiaries that are managed independently. Therefore, the holding company is dependent on the operating company for both collation of data as well as understanding of businesses of various subsidiaries. ○ It may also be noted, that in case of risk based assessment and subsequent queries from tax authorities, the same would have to be addressed by the operating company, since the holding company as an investor, will not be in a position to respond on the operations of the operating company and its subsidiaries. ○ An option could be provided to the group, wherein if both the holding company i.e. Company A and the operating company i.e. Company B, cross the 750 Million Euro Threshold, then either Company A or Company B could file the CbC. This would not lead to non-compliance due to non-reporting on the part of the Group. However, it will significantly ease the administrative burden on the company.
53.	R&D - Liberalise Circular 6/ 2013 and promote setting up regional R&D centre in India	**Rationale** ➢ In recent times, India has been considered as a hub for carrying out R&D and other technical activities by the MNEs. India competes with several other countries Turkey, Thailand, Malaysia, China, Hungary, Poland, Indonesia, Brazil, Mexico, Russia, Vietnam, Singapore for investment in these areas. While these countries provide incentives to MNEs to set-up Global R&D hub in their countries, the position of the Indian administration is not very clear. ➢ CBDT had issued Circular 06/2013 which lists down the conditions for a R&D development center to qualify as a contract R&D center with insignificant risks. According to the circular, economically significant functions involved in research or product development cycle, have to be performed by the foreign AE through its own employees. The conditions in Circular 6 act as a barrier to these companies to scale up their Indian operations. **Recommendations** ➢ If critical decisions have to be based outside India for characterisation as a contract R&D unit, companies are inclined to locate their senior resources outside India. This prevents the Indian

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		company to go up the value chain and it remains a low-end service provider. ➢ If India needs to inculcate a culture of innovation and high end R&D, an ecosystem of research needs to be created. By dissuading companies from moving high value added work to India, the Circular 6 acts as a barrier to India developing as an innovation hub. The terms of Circular 6 therefore, need to be reworked to encourage multinationals to move their key decision making to India, to move the Indian R&D centres up the value chain.
54.	Intangibles: Marketing and Technology	**Rationale** ➢ Cross border flows of technology, monetary and human capital enables MNEs to organise the global development, enhancement, maintenance, protection, and exploitation (DEMPE) of intangibles activities in an efficient manner, driving innovation and growth. MNEs are keen to explore the developing / emerging markets such as India with a balance between core technology protection and local market based customisation. ➢ However, the treatment of intangibles, in terms of issues like DEMPE functions, legal ownership and economic value, has been a long standing area of dispute amongst Indian tax authorities and MNEs. ➢ This dispute has majorly centred around two broad categories of intangible: o <u>Marketing Intangible</u> - The focus by the Indian tax authorities on marketing intangibles has resulted in a de facto conclusion that any "excess" local brand building efforts (by way of Advertising, Marketing and Promotion (AMP) expenditure) by the Indian subsidiary of a foreign affiliate should be reimbursed with a mark-up by the foreign affiliate. o <u>Technology Intangible</u> - Similarly, royalties paid by the Indian subsidiary for brands or trademarks have also been questioned or disallowed under the premise that the local entity develops the brand in India and therefore does not enjoy the benefits from such "foreign owned and developed" brands in the Indian market. The key issue regarding technology intangibles has been the challenge to the royalty rate paid by the Indian entity. ➢ OECD BEPS Action Plan 8 was initiated to evaluate TP issues related to intangibles which may lead to base erosion and profit shifting. The OECD's perspective states that TP evaluation of intangibles start from the legal ownership and accounting aspects but expands to creation of economic value for the owner or user of the intangible. This focus on economic value creation has placed

		significance on FAR analysis related to DEMPE of intangibles due to which, on one hand, legally registered intangibles may not have economic significance from TP perspective, while on the other hand, unique or non-routine intangibles (business value drivers) may be created in course of business dealings which may not necessary gain legal protection under local IPR laws. **Recommendation**: ➢ Currently, Indian TP regulations provide little guidance on the methods to be used for valuing intangible property. This has resulted in ambiguity on the appropriate methodology for evaluating intangible pricing policies. As a result, the number of disputes has increased with significant adjustments made. ➢ Accordingly, in line with international practice and OECD principles, guidance should be issued to recognise certain methodologies/approaches for evaluating the arm's length character of transactions involving marketing and technology intangibles.
55.	Concept of base erosion by considering non-resident entity and resident entity together and not on a stand-alone basis	**Rationale** ➢ Currently law on TP in India is debatable on the concept of Base Erosion. Non- resident AE and the resident AE have historically been looked at a consolidated basis rather than stand-alone basis for the purpose of base erosion evaluation. However, in the case of Instrumentarium Corporation, the Special Bench has circumscribed the application of the theory qua taxpayer by looking at the impact for each tax year. The Special Bench noted that since the Indian TP law does not contain provisions enabling a correlative allocation in case of a primary TP adjustment, imputing arm’s length income in the hands of a potential income recipient does not automatically result in a corresponding expense deduction in the hands of the payer. Ignoring such principle and examination of both the entities individually poses the risk of double taxation. **Recommendation**: ➢ It is therefore, recommended that clarification in this regard be brought to uphold the principles of base erosion by considering non-resident entity and resident entity together and not on a stand-alone basis. ➢ Further to government initiatives to ease compliance burden of foreign Taxpayers, the CBDT could consider issuing a notification exempting foreign companies from undertaking transfer pricing

		compliances in India in cases where appropriate taxes have been withheld or paid in India on the transaction and the Indian entity complies with the TP regulations with respect to the said transaction. ➢ Such a step will help improve the ease of doing business in India and providing certainty to taxpayers.
56.	Secondary TP adjustment (s.92CE)	**Rationale** ➢ S. 92CE provides that in case where a primary adjustment is made in respect of an assessment year commencing on or after 1 April 2016, the excess money (difference between ALP determined by way of primary adjustment and actual transaction price) is not repatriated and lying outside India, will be treated as an advance in the hands of the assessee in whose hands the primary adjustment is made. ➢ As per the proviso to S. 92CE(1), the section is not applicable if (i) primary adjustment made is less than 1 crore and (ii) primary adjustments is made for A.Y 2016-17 (F.Y 2015-16) or before. ➢ However, there exists ambiguity in the application of secondary adjustment prospectively (i.e. with effect from 01 April 2018). This is in light of the fact that proviso to section 92CE comes out with a twin condition which seem to be "cumulative" viz. (i) primary adjustment is less than one crore **AND** (ii) primary adjustment is for assessment year 2016-17 and earlier years. Thus the literal interpretation of this proviso would have wider and unintended ramifications which include application of secondary adjustments for any previous years so long as the primary adjustment is in excess of one crore and further, for any amount of primary adjustment (less than a crore of value) in relation to assessment years 2017-18 onwards, would trigger secondary adjustment risk. ➢ S. 92CE(2) provides that, where as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed in such manner as may be prescribed.

		➢ It is ironical that while the provisions of S. 92CE are applicable for AY 2018-19 onwards, however, the same are applicable for primary adjustments pertaining to AY 17-18. This leads to retrospective application of S. 92CE. ➢ The provisions as presently worded may give rise to an interpretation that even where the primary adjustment is made in the hands of NR as a consequence as an anomalous interpretation it may be understood as allowing repatriation of funds outside India. This may not be permitted even in terms of FEMA/ RBI regulations. ➢ S. 92CE provides for secondary adjustment in case where excess money (difference between transaction price and arm's length price), which remains outside India, due to the primary adjustment under TP is not repatriated to India. Taxable funds may remain outside India only in case where a foreign party is involved. In other words there may be possible base erosion only in case where one of the parties to the transaction of a foreign AE. A transaction between two domestic entities, will not lead to profits allocable to India, remaining outside India. ➢ S. 92CE deems the difference between the transaction price and arm's length price as advance (which is to be recorded in the books) and provides for imputation of interest on such advances. However, there is no specific provision to reverse the advances appearing in the books even in case where the AE relationship ceases to exist or in case where the excess money is repatriated. ➢ S. 92CE provides that the excess money is to be recorded as advance in the books. In case where the primary adjustment is made in the hands of a subsidiary in respect of its transaction with its parent, and it leads to a secondary adjustment leading to recording of advances in the books of the subsidiary, there may be allegations that there has been grant of advance by a subsidiary to its parent and the same should be considered as deemed dividend u/s 2(22)(e). ➢ S. 92CE requires that the advances representing the excess money and interest imputed thereon be recorded in the books of the parties. Such recording of advance and its inclusion for MAT will lead to taxation of income which is already subjected to tax as normal income.

- The condition relating to primary adjustment that the adjustment made by AO has been accepted by the assessee is highly debatable. It is not clear whether condition will not apply if assessee has appealed against the addition before DRP or CIT(A). It is not clear whether the addition shall be treated as accepted by the assessee if he does not litigate till Supreme Court and does not file further appeal against adverse appellate order at intervening stage like CIT(A) or Tribunal with a view to avoid further litigation, though aggrieved by the addition. Hypothetically, if the matter is litigated till Supreme Court but is decided against the assessee, it cannot be said that the addition is accepted by the assessee. This is because even if assessee is aggrieved there is no further remedy available to the assessee. Any other view may result in retrospective secondary adjustments after litigation is settled at some stage.

- The model of ‘deemed advance’ and notional interest imputation results in notional taxation on perpetual basis if the funds are not possible to be repatriated to India. Most other jurisdictions like Canada, France and South Africa have adopted one time ‘constructive dividend’ model in which there is only one time tax.

Recommendation:

- Since there is huge litigation in India on primary adjustments itself, provision for ‘secondary adjustments’ should be deferred till litigation on primary adjustments is substantially reduced through alternative dispute forums like APA, DRP, etc. It will only result in perpetuating TP litigation. Further, repatriating the amount of secondary adjustments to India is likely to be practically difficult due to following illustrative reasons :-
  - The foreign jurisdiction’s regulatory authorities may not permit such payment
  - The foreign company will find it difficult to get tax deduction for such payments
  - Since India does not permit and/or grant deduction for such payments, there is absence of principle of reciprocity.
- The **Recommendations** made hereinafter are without prejudice to our primary **Recommendation** to defer this proposal. Further, since in cases of suomotu adjustment by assessee or where primary

		adjustment is made by AO and accepted by the assessee or as per safe harbor rules, it would be difficult to make secondary adjustment in the books of NR AE on account of unilateral action taken in India, the same should be deleted from the provision. ➢ It is recommended that the government reconsider the date of applicability of and to amend proviso to S. 92CE(1) to provide that the section will not apply in respect of primary adjustments pertaining to AY 2017-18 ➢ As the intent of the government appears (as supported in the notes on clauses and Explanatory memorandum to Notification No. 52/ 2017 dated 15 June 2017) to restrict the secondary adjustment only in respect of high value primary adjustment AND made in relation to assessment year 2017-18, legislative amendment should be made to introduce the use of conjunction 'or' in place of 'and' to avoid further litigation on this aspect. ➢ In order to remove this anomaly it may be recommended that S. 92CE(2) be amended to clarify that S. 92CE applies only in case where the primary adjustment is made in the hands of the Indian AE. ➢ As a matter of abundant caution and to avoid any unwarranted litigation, it may be clarified that S. 92CE applies only to international transaction and not domestic transactions as covered under S. 92BA. ➢ It may be specifically provided that the advances appearing in the books of the parties be reversed in following cases (1) AE relationship ceases to exist (2) Excess money is repatriated ➢ Once an amount is treated as a deemed advance and interest is imputed thereon under S. 92CE, then it should not again be subjected to tax by treating it as deemed dividend at the stage of advance. Further there is no grant of actual loan, but it is only by way of a deeming fiction that the excess money is treated as advance. Therefore, it may be clarified that once S. 92CE is applied and interest is imputed, S. 2(22)(e) will not apply. ➢ In order to remove double taxation under normal and MAT provisions, S. 115JB may be amended to provide that book entries pertaining to secondary adjustments are to be ignored in computing the

		taxable income. ➢ It should be clarified that if assessee disputes the primary adjustment made by Assessing Officer before higher appellate authority, it shall not be regarded as having been accepted by the assessee regardless of the outcome of the litigation. ➢ Further, issues could arise in case of primary adjustments made in the hands of foreign associated enterprises (AEs) with respect to royalty/ fee for technical services/ interest income if the transfer price is lower than the arm's length price or NIL transfer price. In such cases, an appropriate clarification may be issued on the applicability of secondary adjustment in the hands of non-resident AEs since such secondary adjustments would trigger payment of additional amount by Indian entity to its AEs to align with the ALP which would be contradictory to the provisions as contained under section 92(3) of the Act. ➢ Disallowance of a royalty/ service fee in hands of the Indian entity would require foreign AE to repatriate the cash back into India. However, in light of the second proviso to section 92C(4), foreign AE would continue to be taxed on the original royalty/ service fee even though it has remitted the income it received to the Indian entity. Given this, a clarification/ guidance should be issued in this regard so that tax treatment in the hands of foreign AE is done in a logical manner. ➢ Also, a suitable clarification may be appreciated on such application of section 92CE to grandfather the APAs which are already concluded including the rollbacks. ➢ As an alternative, the following may be considered wherever there exists impossibility in bringing the money for the past years. Such alternative would also help in mitigating the risk of availing a corresponding benefit (on account of secondary adjustment) elsewhere in tax jurisdiction where the overseas affiliate resides. o A rule based on constructive dividend – Under this, the "excess money" remaining outside India with the non-resident AE due to primary adjustment, would be treated as deemed dividend subject to tax in India. o The second option would be to permit secondary adjustment by way of interest imputation "out of the statutory books" (in other words, notional interest computation for tax

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		purposes) such that any adverse effect of repatriation requirement for interest component (by way of corresponding deduction benefit in the hands of foreign affiliate) is mitigated. ➢ Conclusion of unilateral APA, acceptance of assessment order or Tribunal decision, may trigger a situation with excess money lying in the hands of the AE. Under the secondary adjustment regulations, the excess money may be treated as an advance and Interest would be charged on such advance in perpetuity. Taxes on the interest on such advances, would also be imposed in perpetuity. Therefore, clarification may be issued as to whether the excess money can be re-construed as a deemed dividend, deemed capital contribution or deemed loan with a fixed tenor and rate of interest as the case may be, with applicable tax incidence. This will enable the Taxpayer to pay a one-time tax on the excess money without needing to repatriate cash.
57.	Interest deduction limitation rule (s.94B)	Rationale: ➢ To stimulate growth, Finance Act, 2017, has extended the benefit of concessional rate of TDS under s.194LC and s.194LD by another three years till 1 July 2020. The stated objective of such amendment as per the EM is to boost the economy by attracting foreign capital in India. Indian treaties also provide concessional rates of withholding for interest (around 10-15%). ➢ For many MNCs entering India, the preferred route is to use lending from overseas (or guarantee-based borrowing within India). In such an environment, the introduction of the thin capitalization rules are likely to adversely impact many subsidiaries of MNCs that operate in India and have huge capital requirement e.g. in the infrastructure and real estate sector. The amendment to limit interest deduction is likely to increase their tax outgo in the initial years; while there may not be ability to set off the interest disallowed in entirety where a high gestation period is involved. ➢ Limiting the interest deduction is likely to hamper their after-tax earnings and as a consequence the decision of the foreign investor to invest in India. ➢ Limiting interest deduction may work harshly on certain sectors such as real estate, power or infrastructure which do normally have funding from NR as also incur interest cost exceeding 30% of EBIDTA.

		➢ S.94B(1) covers interest and "similar consideration" paid to a non-resident (NR) being an associated enterprise (AE). However, the scope of "similar consideration" is not clear. ➢ Proviso to s.94B(1) states that if an explicit or implicit guarantee is provided by an AE to a lender, the debt issued by such lender will be deemed to be debt issued by the AE for the purposes of s.94B(1). ➢ S.94B(3) excludes taxpayer engaged in the business of banking and insurance. However, the exact scope of such exclusion is not clear ➢ S.94B(2) does not provide whether the disallowance will be of gross interest expenditure incurred in favor of NR AE or net interest expenditure (after considering interest income, if any) incurred in favor of NR AE. ➢ S.94B does not exclude debt issued by NR AE in a financial year prior to 1 April 2017 (A.Y. 2018-19); hence, interest expenditure in respect of such debt incurred post 1 April 2017 (A.Y. 2018-19) will also be covered by s.94B which tantamount to retroactive application of the provision. ➢ Where non-resident guarantees loan extended by resident bank, there is no base erosion involved and hence interest limitation rule should not apply. But the language of the provision does not make this position clear. **Recommendation**: ➢ In the spirit of promoting inflow of foreign capital and India's growth agenda, the introduction of s.94B should be altogether scrapped. Alternatively, its implementation may be deferred by another 5 years ➢ Alternatively, Thin Capitalisation rules with ideal debt-equity ratio for various industries should be considered as is presently applicable in countries like Australia, Canada, USA, Japan, etc ➢ Still alternatively, the introduction of a Group Ratio Rule in conjunction with Fixed Ratio Rule may be considered as recommended in BEPS Action Plan 4. This would allow due consideration for taxpayers that have high interest cost due to their highly leveraged nature of business. This would

		also avoid double taxation that results from restricting the interest expenditure to an artificial ceiling of 30% of EBIDTA. ➢ In the interests of boosting growth, taxpayers engaged in infrastructure sector should be altogether excluded from the applicability of s.94B. Alternatively, such sectors may be excluded from the applicability of s.94B for the first 5 years ➢ The term "interest" is well defined under s.2(28A) of the Act. Adding a new dimension in s.94B(1) by extending the scope to "similar consideration" creates ambiguity. We recommend that the scope of s.94B(1) should be modified to omit reference to "similar consideration". ➢ The reference to "implicit guarantee" should be omitted, since it not possible to prove or disprove implicit guarantee. ➢ The scope of exclusion applicable to business of banking and insurance may be clearly defined. The scope of exclusion should also be extended to non-banking financial company (NBFC) ➢ The disallowance according to s.94B(2) should be to the extent of net interest expenditure incurred in favor of NR AE, after reducing interest income received from NR AE, if any ➢ S.94B should be applied only to interest expenditure in respect of debt issued on or after 1 April 2017 to avoid retroactive application of the provision ➢ To avoid any dispute, it should be clarified that debt issued by resident bank based on guarantee provided by non-resident AE is not covered within the scope of s.94B and shall be fully allowed as deduction.
58.	Intra-group Services	Rationale ➢ In recent years, the appropriate treatment of the intragroup services has become a critical TP issue in India. These cross charge of management services to Indian subsidiary have been disallowed by the Indian Income-tax authorities when there is insufficient evidence that the services were rendered or whether they in fact resulted in a benefit to the local Indian entity. ➢ MNEs structure their global operations to generate internal efficiencies through the centralization of services. These efficiencies accrue to the global organization and can take the form of scale

		efficiencies (lower costs per unit of output) or improved competitive positioning (increased revenues and profits through the benefits of specialization). ➢ While there is a valid economic rationale for charging the costs of these services to the members of the MNE group, the recipient of these charges seek additional justification and documentation to corroborate the charges and allow them as valid deductions from a local country perspective. ➢ Using similar grounds, the Indian tax authorities have disallowed the deduction of expenses toward allocated management charges to the Indian subsidiary, resulting in significant TP adjustments ➢ These types of transactions have been increasingly made susceptible to audit by the Indian tax authorities. The nature and extent of enquiry has put an onerous burden on most taxpayers, as documentation of these categories of transactions often lags behind documentation for transactions involving tangible goods. Absence of specific TP rules in India in this regard and the controversial nature of the issue has resulted in complex and monetarily significant TP disputes and risks of double taxation. **Recommendation**: ➢ The OECD in its BEPS project report on Action Plan 10 provides for a 5 percent mark-up in case of low value intra-group / management services. It provides that service must provide a benefit; however, it provides for a simplified benefit test documentation i.e. tax administrations should consider benefits by categories of services and not on specific charge basis and there is a need to only demonstrate that assistance was provided and not to specify. ➢ Countries such as US, Germany, Singapore, etc. have issued specific legislations for IGS charges including principles (such as benefit test documentation, characterisation of routine services, cost allocation, etc.), which are broadly in line with OECD guidelines. ➢ Acknowledging the need and necessity for MNEs to have IGS arrangements, the CBDT had amended the safe harbour rules vide notification dated June 07, 2017 to incorporate low value adding IGS. The safe harbour rules provide for definition of low value adding IGS and an indicative permissible limit to the mark-up of 5 percent. However, there is no guidance on the documentation required to

		be maintained. ➢ While the India Chapter of the 2016 Draft of UN TP Manual states that India has rejected the simplified approach for such intra-group services charges, a domestic circular on the lines of Action Plan 10 with suitable India specific conditions can be brought to reduce litigation.
59.	Range to determine Arm's length price	**Rationale**: ➢ As per the existing provision of Income tax Rules, interquartile range can be used to determine arm's length price (ALP) only if there are six or more comparables. ➢ However, as per the international practice, interquartile range can be used to determine ALP if there are four or more comparable. ➢ Further, interquartile range as per Indian regulations (35th and 65th percentile) is narrower than the global practices which allow the range of 25th and 75th percentile. ➢ When number of comparables are less than six, in that case benefit of range is not available and mean of comparable is to be considered as ALP. **Recommendation**: ➢ India interquartile range rule should be aligned with the international practice and necessary amendment should be made in the law.
60.	Issue of economic adjustments	**Rationale** Adjustment for risk level differences ➢ Given the quality of information available in the databases, generally the comparables selected for analysis include companies, which may perform additional functions (while being engaged in undertaking comparable services/activity) and bear more risks akin to any third party vis-à-vis the taxpayer. In this regard, even though the comparable companies broadly perform functions that are similar to the taxpayer, the functional similarity does not adequately address the impact of risk differential on the expected return of the taxpayer under arm's length conditions. In the absence of specific guidance, Taxpayers usually do not resort to "risk adjustments" in their documentation.

		However, the approach adopted for performing the risk adjustment has been subjective and arbitrary. **Capacity utilization adjustment** ➢ In general, a company will have a higher profit margin (both gross and net), if it operates at the level of activity beyond its break-even point. Since the determination of capacity utilization is a critical determinant of its profit margins, adjustment for differences in this factor could be made to comparable data. **Depreciation adjustment** ➢ This adjustment esults from differences in the depreciation policy between the tested party and the comparable companies. In practice, certain companies follow the straight-line method of depreciating the assets whereas certain companies follow the written-down value method of depreciating assets. This adjustment ensures that the effect of different depreciation policies of the companies on the operating margin are normalised, by measuring them against gross fixed assets. **Recommendation**: Summarized below are the issues/ areas that could benefit from additional clarity: ➢ Some of the differences between the controlled taxpayers and the comparable companies (such as difference in level of risks, difference in capacity utilized etc) would have a significant impact on the transfer price as well as the comparability. ➢ It is therefore important that the Indian TP regulations give due recognition to the approaches which need to be considered by Taxpayers and tax authorities for making such economic adjustments. ➢ Some of the economic approaches for making these adjustments (e.g. risk adjustment based on Capital Asset Pricing Model etc.) could be suggested by the CBDT by way of a circular which would provide some guidance. Additional details on the economic approaches can be discussed in due course.

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Dispute Reduction Measures		
61.	Issuance of Guidance note/ Circular by the Tax Department on contentious issues	Rationale: ➢ A lot of time, money and energy of the taxpayers and Department gets wasted in litigating various issues which are generally common in nature or affecting industry as a whole. **Recommendation**: ➢ It is recommended that in case of any industry specific issue or any other common contentious issues, a Guidance note/ Circular should be provided forthwith by the Tax Department just like the Circular on FBT, the Handbook on negative service tax regime etc. which clarifies most of the doubts of the assessees. This will bring clarity and certainty in respect of various issues and reduce the litigation and saving the Department and the assessees of time. ➢ Alternatively, such common contentious issues affecting industry as a whole should be clubbed and disposed off together by the Tax Department, thus providing at least a partial relief to the taxpayers in case where other issues are also under litigation.
62.	Opportunity to taxpayers to settle contentious issues without levy of penalty	**Rationale** ➢ It is seen in practice that taxpayers keep the issue alive in litigation only on account of fear of levy of penalty. Many of the issues may be owned by the taxpayers by paying up tax and interest if there is no threat of penalty. ➢ S.270AA provides immunity from penalty and prosecution only if taxpayer owns up all the additions made by the Assessing Officer. There is no mechanism to settle small or repetitive issues while keeping larger issues pending. **Recommendation** : ➢ S.270AA should be amended to permit taxpayers to settle small issues (like additions not exceeding 20% of total income or losses and/or threshold quantum of addition of Rs. 1 Cr) by paying up requisite taxes and interest without levying any penalty or initiating prosecution while allowing taxpayer to litigate other larger issues. This will significantly reduce litigation to major issues involving large quantum of tax.

63.	DRP directions and departments Appeal thereon (S.253)	**Rationale:** ➢ Section 253 which deals with appeals to the Appellate Tribunal, has been amended with effect from 1-4-2016. The amendment has deleted sub-clauses (2A) and (3A) which permitted the Principal Commissioner or Commissioner to direct the Assessing Officer to file an appeal against the directions of the DRP. ➢ The Explanatory Memorandum to the Finance Bill 2016 clarifies that the amendment is pursuant to Government's decision to minimize the litigation. The same reads as under :- *"In line with the decision of the Government to minimise litigation, it is proposed to omit the said sub-sections (2A) and (3A) of section 253 to do away with the filing of appeal by the Assessing Officer against the order of the DRP. Consequent amendments are proposed to be made to sub-section (3A) and (4) of the said provision also."* ➢ The effect of the above amendments has been that the Hon. DRP has expressed its opinion, during the course of hearings, that though they may have decided the issue in favor of the assessee in earlier years, for the years post amendment, they will take a decision against the assessee, if the Assessing Officer has appealed against the direction in the earlier year. The rationale explained by the Members of the Panel is that the issue raised by the Department should be kept alive. ➢ Thus the litigation that the Department has perpetrated in the earlier year, will now need to be carried forward by the assessee with added burden of tax demand, thereby rendering legislative intent of DRP as an alternate dispute forum, futile and ineffective. ➢ The DRP panels have indicated that they are willing to accept an application filed u/s 158A(i.e. to avoid repetitive appeals) wherein if there is any favorable order of ITAT in earlier years (in favor of assessee) and Department is in appeal before HC and the question of law is being admitted, in such scenario, the assessee can file application u/s 158A before DRP and DRP will follow favorable order of ITAT with a condition that whenever HC order is available, the assessment order can be modified accordingly.

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		Recommendation: ➢ Subsections (2A) and (3A) may be reinstated as they stood prior to the amendment by Finance Act 2016 to grant power to Department to file appeals. ➢ Alternatively, the DRP be empowered with a specific provision to stay the demand raised in respect of such directions, which have been affirmed by the DRP only for the purpose of keeping the issue alive. ➢ Without prejudice, the scope of s.158A may be extended even to issues which are pending before Tribunal at the behest of the Department.
64.	Strengthening of Authority for Advance Rulings ('AAR')	**Issue**: ➢ The Union Cabinet, chaired by the Prime Minister, Shri Narendra Modi, gave approval to creation of additional benches in New Delhi and Mumbai. In-spite of formation of additional Benches in 2014, till this date, Vice Chairman for these Benches have not been appointed. The Member (Revenue) and Member (Law) were appointed for these additional Benches, however since benches were not functioning, they are not able to do any work or they have resigned and gone back. ➢ Since the AAR was not functioning, due to non-appointment of the chairman, a Writ Petition was filed in the Patna High Court by a Taxpayer. Pending the disposal of the Writ Petition, on this larger issue on constitution and functioning of AAR, the Patna high Court vide order dated 28th October 2016, directed that, as an interim measure, the Member (Law) would officiate as Chairman of AAR and the bench should start functioning. Finance Ministry did not challenge the order of the Patna High Court and accordingly, the main bench started functioning with Member (Legal) constituting the Bench. ➢ Despite CBDT issuing Circular (F.No. 225/261/2015 dated 28 October 2015) exerting Revenue officials not to adopt any delaying tactics and cooperate with the AAR, assistance from Revenue department has not been very positive, which has substantially hampered the functioning of AAR. Since revenue officials did not permit the Bench to function by not appearing before the Bench, all

		the matters were adjourned. After Bench started functioning in July 2017, effectively no matters were disposed off, as for one reason or other Revenue Officials continued to take adjournment. ➢ Looking to this situation it appears that resolution of matters pending at AAR of approximately 500+ is a distant dream. Advance ruling which used to be pronounced within 6 months for resolving disputes or reducing litigation does not seem to be possible even after waiting for 5 to 6 years. **Recommendations**: ➢ Considering the back log of cases pending in AAR, it is critical that the benches shall be made functional immediately so that the intent of creation of additional benches i.e., reduction of back log of the cases is achieved at the earliest. The six months' time-limit to clear the application (including the pending applications) be made mandatory to enable speedier disposal of applications and restore the confidence of taxpayers. ➢ The process of application may be streamlined. In order to expedite disposal, the admission process can be dispensed with and cases can be heard in one go – Only technical conditions can be verified by the Secretariat based on which application to be admitted or rejected. Other objections of Revenue can be heard at time of final hearing. ➢ Suitable directions may be re-issued to Principal Commissioners, Departmental Representatives, as to not seek frivolous adjournments before AAR so as to avoid in-ordinate delay in rendering certainty to the taxpayer on the pending issues before AAR; ➢ It may be mandated that, for purpose of seeking adjournment for hearing fixed before AAR or issuing report without providing at least 10 clear days before hearing, prior approval of CCIT's may be taken; ➢ Also, regular progress report may be given by Principal CCIT's/ CIT's on the regarding matters pending before AAR, to the designated CBDT Members

		➢ On a separate note, AAR scheme had also been introduced for residents in order to reduce litigations and uncertainties in tax assessments. However, the threshold limit for the eligibility has been kept at Rs. 100 crores. This has deprived many entities from seeking the benefit of the provisions. Therefore the threshold limit be brought down to Rs.10 crores.
65.	Creation of Specialised Cells for scrutiny of assessment orders	**Rationale:** ➢ Currently, the Revenue Officers are taking contradictory positions either at the assessment stage or at the various appellate forums with the sole motive of raising tax demands on the assessee to garner revenue. This defeats the cardinal constitutional principle of “no collection of tax without the authority of law” and leads both the Department and the industry to a time consuming, expensive litigation. **Recommendation**: ➢ The Hon. CBDT/CBEC should set up an apex specialized cell/s comprising technical/legal officers who shall examine each and every assessment order passed having monetary implications above a certain threshold. This apex cell shall oversee similar local/regional cells comprising technical/legal officers. ➢ On each and every issue affecting the industry, the Hon. CBDT/CBEC, based on the **Recommendations** of this apex cell, issue the official legal position of the Department. This not only will assist the revenue officers during assessment, appeal proceedings but also give certainty to the industry about the Departmental position in respect of tax issues.
66.	Creation of cells for specialised knowledge	**Rationale**: ➢ The assessing officers, are at times, not equipped to deal with specialized, technical issues (e.g. the transfer pricing issues etc.) which reflects badly on the quality of the assessment orders and many a times puts precious governmental revenues at jeopardy **Recommendation**: ➢ Specialized cells comprising specialist/technical officers (like the Transfer Pricing Officers) shall be set up, under appropriate legislative mandate, to whom the issues may be referred to by the assessing officers. ➢ These officers shall be intensively and continuously trained in newly identified complex, specialized areas.

67.	Statutory Time Limit for CIT (Appeals)	**Rationale**: ➢ Currently, there is no statutory time limit for passing the order by the Commissioner of Income Tax (Appeals). The time line of one year provided in s.250(6A) is recommendatory since no consequence is provided if the appeal is not disposed within such time limit ➢ Similarly, where ever the remand report is sought by the CIT (A) from the AO, the same also does not have statutory timeline. **Recommendation**: ➢ Just like assessment, a reasonable statutory time limit 3 years from the filing of appeal should be set for disposing of the appeal by CIT(A) as well as for disposal of the remand report by the AO. This will ensure the speedy disposal of appeal. ➢
68.	Appeal disposal on FIFO basis	Rationale: ➢ It has been the industry's perception that the "hearings" before the Commissioner of Income Tax (Appeals) are influenced by the Demand/Refund position of that case. Preference is normally given to the high demand appeals and the "refund" appeals are normally kept aside increasing the "pending" list of matters to be heard. **Recommendation**: ➢ It is recommended that the appeals should be disposed off on the basis of filing dates of appeals i.e. on F.I.F.O. basis and not by demand/refund position and in cases where issues are recurring year over and year and pending for hearing, block of years should be taken and heard.

<table>
<tr><th colspan="3">Procedural matters</th></tr>
<tr><td>69.</td><td>Exposure of penalty levy u/s 270A even when entire tax amount is deposited by way of advance payment of taxes (no credit for taxes withheld, advance taxes paid, self-assessment tax, etc.)</td><td>With an intent to bring in objectivity, certainty and clarity in penalty provisions, Finance Act 2016, w.e.f. AY 2017-18, introduced s. 270A to provide for levy of penalty in lieu of s. 271(1)(c) of the ITA. The scheme of new penalty provision seems to be comprehensive and provides for detailed mechanism for the manner of computation of under-reported income, exclusions therefrom, cases of misreporting of income, the rate of penalty levy, computation of tax payable for determining quantum of penalty, etc. It also provides window to the taxpayer for applying for immunity after fulfulling conditions specified in s. 270AA of the ITA

a) Rationale:

As per Explanation 3 of erstwhile penalty provisions under s. 271(1)(c), in case where return of income is not furnished, penalty will be calculated with reference to tax on income assessed reduced by credit of the taxes deducted or advance tax paid by taxpayer to arrive at the net figure of ‘amount of tax sought to be evaded’.

As against that, no similar provision exists under the penalty regime under s. 270A. This may create avoidable hardship in case of taxpayer who are not required to furnished return of income under s. 115A(5) of the ITA since their entire income earned and chargeable to tax in India has been subject to withholding, and in the course of assessment the income determined is the amount of income which has already suffered taxes by way of withholding in India. In such cases, the whole of the income, as assessed, may be considered as under-reported income.

Such would also be the case where there is no revenue loss as the whole of the tax was already paid up and yet, the return may not have been furnished.

b) Recommendation:

Hence it is recommended for insertion of separate provision similar to Explanation 3 to s. 271(1) to avoid genuine hardship to the taxpayer in cases where there is no loss to the revenue.</td></tr>
<tr><td>70.</td><td>Misreporting covered cases of deliberate misconduct: s. 270A(9)</td><td>a) Rationale:

Levy of penalty in respect of misreporting of income is 200% of tax payable as against penalty of 50% in case of under-reported income.

Cases of misreporting of income covers instances of ‘suppression’, ‘misrepresentation’, ‘false’ and ‘failure’. Terms ‘suppression’ and ‘false’ indicate a deliberate/ wilful act of misconduct. However, dictionary meanings of the term ‘misrepresentation’ and ‘failure’ suggest that it has both shades of meaning namely a deliberate mistake as well as an innocent mistake. If the comprehensive dictionary</td></tr>
</table>

		meanings of the term 'misrepresentation' and 'failure' are imported for the purpose of s. 270A(9), even mistakes which are not deliberate or are innocent and where there is a bonafide reason for such mistake would also be covered by the harsh consequences of 200% penalty levy under s. 270A(9) which may not be in sync with the legislative intent of providing a carve out for specific cases of penalty levy. **b) Recommendation:** In order to avoid above mentioned unintended consequences of covering even bonafide / innocent mistakes within the ambit of s. 270A(9), it is recommended that a suitable clarification by way of an Explanation or proviso be provided under s. 270A(9) suggesting that the cases intended to be covered by s. 270A(9) is of deliberate / wilful misconduct on the part of taxpayer.
71.	Denial of benefit of immunity even if one of the items of under-reported income is arising as a consequence of misreporting of income (s. 270AA)	**a) Rationale:** As per the provision of s. 270AA(1), the taxpayer will not be allowed to apply for immunity from penalty if penalty is initiated for the circumstances referred in s. 270A(9). In a case where there are 5 additions made by the Assessing Officer for which penalty is initiated, only 1 addition was classified as 'misreporting of income'. Thus taxpayer will be denied of the benefit of immunity in relation to other 4 additions even though conditions specified in s. 270AA of the ITA are complied with. **b) Recommendation:** Since the provisions for immunity are introduced to avoid litigation, it is advised to make immunity provision qua addition / disallowance and not qua assessment order. Hence the taxpayer should be allowed to apply for immunity for all such additions / disallowance for which initiation of penalty is not as 'misreporting of income'.
72.	Interest on income tax refund	**a) Rationale** Interest is paid on the refund due to the assessee @ 6% p.a. and the same is chargeable to tax. However, interest paid by the assessee under various sections is generally @ 12% and not allowed as a deduction while computing the total income. Accordingly, there is a difference in rate and the treatment when the interest is received by the assessee and paid by the assessee. The interest paid is for the use of money and is compensatory in nature. **b) Recommendations** Since the interest paid by the tax payers under various sections of the law is compensatory in nature, it should be allowed as deduction in computing total income. Alternatively, the interest received by the tax payer on refund should be exempted from tax.

73.	Issue of penalty notices mechanically	**Rationale**: ➢ There is an increasing tendency of initiating penalty proceedings mechanically under section 271(1)(c) of the Act in respect of **all** the additions made by assessing officer and many times despite orders of the higher judicial forums being favourable to the Assessees. **Recommendations** ➢ Clear cut guidelines should be issued advising field officers of the rare circumstances like deliberate suppression of facts having bearing on the assessment proceedings etc. under which such penalty proceedings shall be initiated. ➢ Interpretation issues or tax positions supported by the rulings of higher appellate forums should be outside the ambit of the penalty proceedings
74.	Specific provision of immunity for DRP based assessments (s. 270AA)	**a) Rationale:** The provision of s. 270AA envisages the immunity in case of assessment order which is appealable before CIT(A) under s. 246A and may not apply to order which is appealable directly to ITAT like DRP based assessment order. Such cases may not be eligible for the benefit of immunity under s. 270AA of the ITA **b) Recommendation:** There seems to be no specific reason for denying benefit for DRP based assessment. To avoid any ambiguity, specific amendment shall be made under s. 270AA for providing immunity benefit to such assessments also
75.	Non-disclosure of reason recorded for search/survey (S.132/132A)	**Rationale**: ➢ S. 132 and s. 132A as amended by the Finance Act 2017 provide for non-disclosure of 'reason to believe' or 'reason to suspect' for taking search or survey action, as the case may be, to any person or any authority or the Appellate Tribunal with retrospective effect from insertion of search and survey related provisions. ➢ Explanatory Memorandum justifies amendment on grounds that (a) confidentiality and sensitivity are key factors of proceedings u/s.132 and 132A and (b) certain judicial pronouncements have

		created ambiguity in respect of disclosure of 'reason to believe' or 'reason to suspect' recorded by the tax authority. ➢ Hon'ble FM in his budget speech stated the object of amendment is to maintain the confidentiality of the source of the information and the identity of the informer. ➢ SC in the case of DGIT (Inv.) vs. Spacewood Furnishing (P) Ltd. [2015] 374 ITR 595 (SC)] in the context of section 132, after referring to number of other SC rulings has re-iterated various principles governing search cases. SC held that recording of reasons by authority is a jurisdictional condition and recording is must before issuing of authorization under section 132. SC further held that reasons recorded need not be communicated to person against whom warrant is issued at that stage; but, may be made available on demand at the stage of commencement of assessment. ➢ SC ruling clearly bring out the matter of disclosure of reasons and the stage at which reasons may be disclosed to taxpayer and the court. In terms of clear mandate of SC ruling, no ambiguity survives therewith. The reference in Explanatory Memorandum to ambiguity arising out of judicial pronouncement in the matter of disclosure of reasons is not clear. ➢ The reasoning of confidentiality of informer has no bearing on the evaluation whether the reason to believe has been acquired on the basis of nexus with information. ➢ Taking away right of the taxpayer to reasons may result in lack of transparency and is prone to misuse by tax authority. ➢ Even if search is held to be invalid, tax authority is entitled to use material gathered in search against the taxpayer and can re-open the assessment/s. No prejudice is thus caused to tax authority if validity of search/assessment is examined at the initial stage. ➢ In terms of SC ruling, authority is bound to disclose reasons before the court in the event of challenge to formation of belief by the authority. Taxpayers who could have closed the issue of validity of search in regular appellate forum may now approach High court in writ and thereby burden the High Courts which are already over flooded with matters.

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		➢ The amendment conflicts with Government moto to provide predictable tax regime. ➢ Also, amendment with retrospective effect from inception of section is against the philosophy of the present Government. **Recommendation**: ➢ Status quo of tax position be retained under section 132/132 (1A) by omitting the above amendment.
76.	Suggestion for cross-referencing Finance Bill clauses with Explanatory Memorandum	**Recommendation**: ➢ Over years, it is customary that Explanatory Memorandum to the Finance Bill which provides the object and rationale of amendments proposed by various clauses of the Finance Bill gives cross reference of respective clause numbers of the Finance Bill ➢ But there is no document which provides cross reference of clauses in the Finance Bill with relevant paragraphs/page numbers of Explanatory Memorandum. This makes reading of Finance Bill cumbersome since the reader has to search for the relevant paragraph in Explanatory Memorandum to understand the object of the relevant clause ➢ As a measure to improve reader friendliness of the Finance Bill and Explanatory Memorandum, it is suggested to provide a clause wise index of the Finance Bill with cross reference of relevant para/page number of Explanatory Memorandum.
77.	Transactions in foreign currency: Uniformity in use of exchange rates	**Rationale**: ➢ **Service tax: As per the provisions of section 67A of the Finance Act, for determining the service tax liability in respect of** transactions in foreign currency, the applicable rate of exchange as per generally accepted accounting principles (GAAP) on the date on which point of taxation arises is prescribed. . ➢ **Income tax:** The Income Tax Rule 115 of the Income Tax Rules, 1962 prescribes use of prevalent telegraphic transfer buying rate of the State Bank of India for conversion of foreign currency transaction into rupees. ➢ **Customs duty:** For the purpose of valuation of foreign currency transactions, the Customs Act requires exchange rates declared under the provisions of section 12 of the Customs Act to be used for payment of customs duty.

		➢ **Statutory Accounts:** For the purpose of financial disclosures, Ind-AS 21 of the Institute of Chartered Accounts of India prescribes the exchange rates to be used. ➢ In order to reduce the issue of computing amounts under various exchange rates, the Central Government has accepted the **Recommendation** of the industry to allow use of exchange rate accepted under the Indian AS for **determining service tax liability** in respect of foreign currency transactions. ➢ Different statutes require taxpayers to use different rates for converting foreign currency denominated transactions. Use of different exchange rates is nightmarish even to companies using latest ERPs **Recommendation**: ➢ It is recommended that, to bring uniformity and consistency, statutory provisions under different statutes should provide to use the exchange rate prescribed under the Indian AS.
78.	Delink Assessment and Collection of Tax functions	**Rationale**: ➢ Because of the revenue pressures, the Revenue Officers tend to pass Orders with unrealistic tax demands which generally fail to get sustained at the higher appellate forums thus giving false sense of inflated revenue to the Department. The so-called short term gains (demands) are nullified in the longer term with the additional interest liability. ➢ The root cause of this malaise seems to be the conflict of interest since the assessing officer acts as an assessor of tax, raises the tax demand and also collector of tax. **Recommendation**: ➢ It is recommended that the three distinct functions of assessment, raising of tax demand and collection of tax shall be handled by three different officer-functionaries to avoid the conflict of interest. ➢ Alternatively, it is recommended to delink raising of tax demand at the assessment level as one of the key performance indicators. Instead, the quality of the assessment shall be made the key performance indicator.
79.	Disclosure in New Income Tax Return Forms	**Rationale**: ➢ The CBDT vide notification No. 14/2012, Dated: March 28, 2012 has prescribed the Income Tax Return forms -wherein a resident individual has to make additional disclosures if he holds any assets located outside India or has a signing authority in a bank account located outside India. ➢ Normally a company operates its bank account through their employees who are given the signing

		authority. The effect of the above notification is that even if an individual has a signing authority to operate company's bank account located outside India, he is required to disclose these bank accounts in his individual Income Tax Return. This creates hardship for those individuals who merely operate bank accounts on behalf of the company. In the current scenario of globalisation it is very likely that the employees would be authorized to sign the bank accounts opened in the overseas countries. **Recommendation**: ➢ In view of the above, it is recommended that exclusion should be carved out for disclosing the details of the overseas bank accounts of a listed company in the income Tax Returns of their employees.

Withholding Taxes		
80.	Relief from compliance burden and onerous consequences of TDS default for payers / payees	**Rationale**: ➢ TDS is an onerous responsibility for payers and payees alike. ➢ The payer is required to evaluate applicability of correct TDS rate, obtain PAN of payee, deduct tax, pay to Government, file quarterly TDS returns and issue TDS certificate to payee. For payments to non-residents, there is additional obligation to comply with reporting under s.195(6) even if there is no TDS involved. ➢ Any default or delay in the process has onerous consequences for the payer. He may face any or all the following consequences :- ○ Recovery of shortfall of TDS ○ Interest for delayed payment ○ Penalty for failure to deduct and/or default in procedural compliance like issue of TDS certificates ○ Fees/penalty for delayed filing of quarterly TDS certificate ○ Prosecution for delay in deposit of TDS after deduction ○ Disallowance of expense ➢ Some of the above defaults may be, in view of bonafide reasons ➢ Further, payers also face practical difficulties when there are varying TDS rates for different types of payments. It creates potential for litigation on characterisation of payment for TDS purpose. (eg. Contract vs. Commission, Contract vs. Technical/Professional services, Salary vs. Professional fees, etc) ➢ Similarly, there are administrative compliances on the part of payees as well such as: ○ Obtaining and compiling TDS certificates ○ Keeping a track on TDS reflected in 26-AS ○ Reconciling voluminous data ○ In case of any mismatch or discrepancy, follow up with the payers for correction of TDS return. In some cases, payers may not respond back at all ○ Any discrepancy or manual error leads to rejection of TDS credit. (For example, error while filling TAN of deductor).

		Recommendation: ➢ Considering the above severe consequences and the fact that objective of TDS is not revenue collection but to collect information about transactions taking place, TDS provisions need to be rationalized and there should be a common minimal rate of 1% or 2% across all the payments to avoid disputes on characterization of payment for TDS purposes. There should be explicit provision in the ITA which clarifies that if income is exempt in the hands of the payee, then there is no TDS requirement which is merely an empty formality in such cases where payees have to ultimately claim refund. ➢ Also, with increasing use of technology, Government has various sources of information collection such as PAN linkage for most of the transactions, increasing importance of Aadhaar linking, GST database which is linked to PAN and thus it is high time that TDS should be made less tedious for the taxpayers to enable ease of doing business in India. ➢ Without prejudice to the above, the following measures may be considered for relieving some burden for the payers as also to reduce litigation on TDS disputes: o Revisit old CBDT Circular No. 715/1995 and such other similar circulars and issue updated FAQs considering current scope of TDS provisions and commercial developments o Introduce facility for advance deposit of TDS without specifying section no. and AY which payer may then appropriate towards deductions made under various sections on monthly basis (akin to Personal Ledger Account for Excise duty/Service Tax) o Where there is merely characterisation dispute on TDS rate, there should be no levy of penalty neither disallowance of the entire expense
81.	Requirement to issue TDS Certificates be abolished	**Rationale:** ➢ As per the Income Tax (6th Amendment) Rules, 2010 (Notification No. 41 dated 31-May-2010), Form No. 16A is required to be issued on a quarterly basis. ➢ The requirement of issuing TDS certificates has become obsolete and if continued, leads to substantial administrative inconvenience without adding any corresponding value to the compliance requirement of service vendors or service providers. ➢ Currently, TDS certificates to be issued are to be downloaded from Income Tax website. The same is on

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		the basis of the TDS return filed by the deductor which gets reflected in the form 26AS of the payee. Hence, the requirement of issuing of TDS certificate has lost its relevance. **Recommendation**: ➢ The requirement of issuance of TDS certificates should be abolished with immediate effect.
82.	Issuance of Master Circular clarifying TDS provisions applicable for the year	Rationale: ➢ Circulars issued by the Hon. CBDT are used by the industry and the tax practitioners to interpret the T.D.S. provisions including the compliance aspect thereof. Over a period of time, there have been a plethora of Circulars/Clarifications/Instructions, reflecting Department's interpretation of the various T.D.S. provisions which the industry is required to navigate for compliance. **Recommendation**: ➢ After the enactment of the Finance Bill every year, the Hon. CBDT should as a policy, issue one comprehensive Master Circular clarifying compliance aspects, procedures, relaxations, interpretations etc. covering all the provisions of T.D.S. under the Act.
83.	Form 26AS to include PAN of deductor and the Unique TDS Certificate Number	Rationale: ➢ Currently, Form 26AS contains the details of Name and TAN of the deductor. However, PAN of the deductor does not appear in the statement. In absence of PAN, it is difficult to match the TDS as per 26AS with the books of the accounts of the deductee-companies since the customer details are generally PAN based. ➢ Similarly in case of large companies, matching of TDS as per 26AS with TDS as per books becomes very difficult. **Recommendation**: ➢ Form 26AS should also incorporate the PAN of the deductor and the unique certificate number so that the same can be reviewed and matched with the books of accounts of the company.

84.	Reporting of all cross border payment (Form 15CA/15CB)	**Rationale**: ➢ The Finance Act 2015 has mandated the payer to report specific information of all cross border payments in the prescribed form 15CA after obtaining certificate from a Chartered Accountant in Form 15CB whether such payment is chargeable to tax or not. The requirement of CA certification is cumbersome, an administrative and a financial burden since: o the payer anyway is required to report the transaction/s with prescribed information on a quarterly basis, o the Chartered Accountant's certification is not binding on the Department. **Recommendation**: ➢ The requirement of CA certification and reporting of transaction in Form 15CA at the time of making cross border payment needs to be discontinued.

Personal Taxation		
85.	Cap on intra-head set off of House Property loss up to Rs. 2 lakhs (S.71(3A))	**Rationale**: ➢ Sub-section (3A) inserted by the Finance Act 2017 restricts set off of loss under House Property chapter against income under other heads to an amount of Rs. 2 lakhs only, with balance loss to be carried forward for maximum 7 years and set off against future income under House Property head. ➢ The amendment is supposedly to plug anomaly between self-occupied property (where interest deduction is restricted to Rs. 2 lakhs) and let out property for individuals. However, the restriction applies across the board for all types of taxpayers and all types of house property. ➢ The amendment has far reaching impact not only for individuals but all the taxpayers. It also impacts properties currently held by taxpayers and, therefore, has retroactive impact. ➢ On one hand the Government is keen to provide incentives to real estate sector by granting ‘infrastructure sector’ status which enables them to obtain credit at lower rates, liberalising conditions of s.80IBA which provides profit linked tax holiday to real estate developers, clarifying capital gains treatment for joint development agreements and so on. The amendment is directly in conflict with this object and provides disincentive to taxpayers to acquire new house. ➢ Recently inserted sub-section (5) of s. 23 provides that for real estate developers, annual value of property held as stock in trade shall be NIL for first 2 years (and by implication, full annual value thereafter). The restriction on set off of house property loss to Rs. 2 lakhs in such cases will result in great hardship. For instance, if a builder completes housing project having 100 flats in Year 1 and sells 40 flats in that year, he will be unable to set off interest cost (including pre-construction period interest cost) pertaining to unsold 60 flats in excess of Rs. 2 lakhs against profit of 40 flats. This is because, as per Tax Authority, interest pertaining to unsold 60 flats will be processed under House Property chapter. Further, the interest cost pertaining to 60 flats of Year 1 cannot be set off against profit on sale of such 60 flats itself in future year because such profits shall be assessable as Business income whereas House Property loss can be set off only against House Property income. This would be quite unfair for the builder since interest represents a commercial cost incurred to earn profit from sale of flats. Artificial denial of interest deduction will result in taxation of unrealistic and hypothetical income.

		➢ Even in case of individuals owning a second home which is actually let out, it is well known fact that interest cost generally does not cover full rental income since market rates of rent are not commensurate with capital cost. The loss set off limitation will virtually result in interest expenditure going down as sunk cost in view of inability to absorb it against rental income of next 7 years. **Recommendation**: ➢ Having regard to significant hardships which all taxpayers may face due to house property loss set off restriction, it is recommended that the amendment should be reversed and status quo be maintained. This will be in line with other incentives provided in Budget 2017 to real estate sector. ➢ At the highest, if the intention is to put second home owners at par with single home owners, the loss set off restriction of Rs. 2 lakhs for individuals should be made qua each house property and not qua taxpayer such that taxpayer is able to deduct loss of Rs. 2 lakhs each for each property whether self-occupied or let out. ➢ In any case, to avoid any retroactive impact, it may be clarified that the limitation is applicable only to new house properties acquired on or after 1 April 2017. ➢ Without prejudice, where house property is held as stock-in-trade, it should be clarified that interest expenditure is deductible u/s. 36(1)(iii) and not u/s. 24(b). ➢ Further, the amendment would have a negative impact on the real estate business as the investors will be discouraged to invest in an additional house, or wait till the present loan is completed to get a new loan and acquire the next house.
86.	NIL value for house property held as stock in trade for first two years (S.23)	**Rationale**: ➢ S. 23(5) provides that for real estate developers, annual value of property held as stock in trade shall be NIL for first 2 years (and by implication, full annual value thereafter) ➢ The difficulty faced by real estate developers are also faced by property buyers. When a buyer in a under construction property receives possession of the property after receipt of CC, it is very difficult for him to straightaway occupy the same or let it out. Just like builders face difficulty of

		finding buyers for ready flats, property buyers also face similar challenge in locating tenants to let out the same. **Recommendation**: ➢ The benefit of NIL concessional value for two years starting from year of obtaining CC should be extended to all assesses and not merely those who hold the same as stock in trade
87.	Tax on notional income (S. 22)	Rationale: ➢ Under the existing provision, tax is payable on notional basis in respect of house property which remained vacant throughout the year. ➢ Further, determination of annual value based on sum at which property might reasonably be expected to let in such case is also a litigation prone issue. **Recommendation**: Restrict taxation of house property income to rent income actually received / receivable and remove taxation of notional income based on annual letting value.

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		New and simple income tax law
88.	Revamping of the income tax law	**Rationale**: ➢ Recent news report suggest that the Government is considering to overhaul the existing 56 year old ITA to tailor it to the current requirements of the Indian regime. ➢ Earlier, an attempt was made in 2009 when a draft Direct Taxes Code (DTC) was published for public comments by the erstwhile Government. It was even introduced in the Lok Sabha and referred to the Standing Committee on Finance. However, in Budget Speech 2015, Hon'ble Finance Minister ArunJaitley pointed out that there is no great merit in proceeding with the DTC as it existed then since most of the provisions were already included in the ITA and also jurisprudence under the ITA was well-evolved. ➢ Now if the Government is again considering to revamp the entire income tax law, it is imperative to consider the fact that the Indian taxpayers are already grappling with transformational changes in the taxation regime due to introduction of Goods and Service Tax, notification of ICDS, adoption of Ind-AS etc. ➢ The Government is also constantly amending the ITA on the basis of international practices such as introduction of POEM residency rule, GAAR, thin capitalization, secondary adjustment, etc. **Recommendation**: ➢ In light of the above, it is recommended that Government reconsiders the decision of revamping the income tax law after giving it a due and careful thought and rather should not introduce in the current business environment in India. This will help to regain and retain the trust among foreign investors and businessmen in India regarding the government taxation policies. ➢ Without prejudice to the above, if the Government is keen on introducing a new direct tax law, following guiding principles may be noted: o The draft of new law should be laid down for consultation of the public and industry and there should be sufficient time frame for healthy discussion and **Recommendations**. There should be minimum time gap of 2-3 years between the release date of first draft and actual implementation thereof by the taxpayers to provide taxpayers sufficient time to adapt to the changes.

		- The new law should be simple in language to understand and implement for the taxpayers. The use of multiple provisos and Explanations should be avoided. Wherever possible, illustrations should be provided in the law itself to avoid any interpretational issues. - There is no need for multiple heads of income which make the process of tax computation cumbersome. In particular, the distinction between House Property, Business income and Other Sources should be removed. - Also, some of the contentious provisions of the existing Act should be scrapped while introducing the new law such as notional taxation in case of vacant house property, taxation of salary on earlier of due or receipt, s. 14A, artificial distinction between speculative and non-speculative losses, etc.

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PART II-B
PRE–BUDGET MEMORANDUM 2018-19 : INDIRECT TAXES

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GST related issues: Issues requiring amendment to GST Act			
1.	**<u>GST implication on transfer of a part of business on slump sale basis (i.e. going concern basis)</u>** As per Entry No. 4(c) of Schedule II of the CGST Act, 2017, when a business is transferred as a going concern to another person (which would include a slump sale) then such transfer of business will not be regarded as a supply for the purposes of GST. The relevant extract of Entry No. 4 (c) is reproduced below: "4. Transfer of business assets (a)…… (b)…… (c) ***<u>where any person ceases to be a taxable person</u>***, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless— (i) the business is transferred as a going concern to another person; or (ii) …… Further, as per Notification No. 9/2017-Integrated Tax (Rate) dated	Doubt arises from the language adopted in the said entry which opens with the words "where any person ceases to be a taxable person….", giving the impression that it will apply only when the whole business of a person is transferred and the assessee is no longer a taxable person. However, such an interpretation could lead to divergent views in terms of settled position laid down under the erstwhile sales tax/ VAT law as per the various judicial pronouncements. In Deputy Commissioner vs. K. Behnan Thomas [1977-39-STC-324-Mad], it was observed that the sale of a branch of a business constituted a transfer of independent business. This was cited with approval and followed in Monsanto Chemicals of India(P.) Ltd. v. The State of Tamil Nadu [1982-51-STC-278-Mad], in which the issue related to the sale of a division of an enterprise. Thus, in the context of sales tax/VAT, the judicial view has been that it is not necessary that the entire business must be sold for a transaction to be regarded as "transfer of business as a going concern". Even a sale of a division or business vertical which constituted an independent business was regarded as transfer of business on a going concern basis and no indirect taxes were applicable. Further, if one were to look for an indication of the Government's view, it seems to be	The Chamber recommends that suitable amendments should be made in the Schedule entry no 4 (c) of Schedule II in order to provide that transfer of any goods forming part of assets of any business of a going concern should not be leviable to GST even in cases where the person does not cease to be a taxable person. This should align the exemption notification with Entry No. 4(c) in Schedule II of the CGST Act, 2017.

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GST related issues: Issues requiring amendment to GST Act			
	June 28, 2017 which, among other things, exempts the services by way of transfer of business. The Entry No. 2 of the notification reads:"*services by way of transfer of a going concern, as a whole* *<u>or an independent part thereof</u>*, falling under chapter 99", would be exempted from GST. However, the ambiguity which arises on conjoined reading of the Schedule entry and the exemption notification is whether GST would be applicable when only a part or a division of business entity is transferred on a going concern business?	available in Notification No. 9/2017-Integrated Tax (Rate) dated June 28, 2017 which, among other things, exempts the services by way of transfer of business. Under this notification, *services by way of transfer of a going concern, as a whole* *<u>or an independent part thereof</u>*, falling under chapter 99, would be exempted. However, same intent is not clearly coming out from the Entry No. 4(c) of Schedule II of the CGST Act, 2017. It may be pertinent to note that exclusion from the definition of supply of transfer of an independent part of the business is globally accepted principle. For example, in UAE VAT, Article (7) of Federal Decree law No. 8 of 2017 excludes from scope of supply the transfer of whole or an *<u>independent</u>* part of a business for the purpose of continuing a business that was transferred.	
2.	**Levy of GST on services rendered in the course of export to foreign parties for use outside India and consideration for which is received in convertible foreign exchange** As per section 13 (3) (a) of IGST Act, 2017, R&D, technical testing and analysis, services relating to re-engineering which require the temporary import of equipment, other than for repairs, for carrying out	Exports of services relating to R&D, Technical Testing and Analysis, Clinical trials, Re-engineering is emerging as a new big opportunity for technologists and scientists in India similar to what we witnessed in the IT sector. The levy of tax on export of such services even after	The Chamber recommends that R&D, technical testing and analysis services should be carved out from the performance based provision for place of supply in the same manner as applied to export of goods after repairs. The place of

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	clinical trials, technical testing or re-engineering processes have been subjected to levy of GST for the reason that the goods were worked upon in India even where such agency has exported the services for use outside India and consideration is received in convertible foreign exchange.	re-exports of the article, vehicle or equipment after completion of the study is not accepted as a sufficient reason to establish export of service and as a result hampers the growth of such export industry in India.	supply for such services should be determined as per the residual provisions based on the location of the recipient of services. Hence, export of such services should be considered as zero rated services.
3.	**Whether there should be levy of GST on recovery of insurance premium or canteen expenses by the employer from the salary of employees** Company enters in to an agreement with the Insurance Company to cover the life and health of its employees including their family. The insurance policy is in the name of the Company with the list of beneficiaries (i.e. employees). As per terms of the employment contract, a part of insurance premium is borne by employer and the rest is borne by the employee which is recovered from his salary. The Company discharges full GST on the insurance premium paid to the insurance company. The question now arises is whether part of the recovery	The Company (employer) is discharging full GST on the insurance premium for all its employees. As a result, the entire transaction has suffered full GST. The recovery of part of the premium (to be borne by the employees) is strictly not an income against any supply since the Company is not engaged in the business of providing insurance service. Therefore, there is no justification that such part recovery of premium be treated as taxable event.	The Chamber recommends that appropriate provisions should be made in the GST Act to exclude recoveries towards insurance premium or canteen expenses recovered from employees when the entire insurance premium or catering services has suffered GST on the full value of service and credit of which is not taken by the employer.

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GST related issues: Issues requiring amendment to GST Act			
	of premium made from the employee is once again liable to tax at the hands of the Company?		
4.	**GST on commission received from Overseas Principals in convertible foreign exchange by intermediaries in India** Indian Companies represent foreign companies in India for marketing their capital goods (machine tools, textile machinery, etc.) to Indian customers and to provide these customers with after-sales services. For providing these services, the Indian companies charge commission to overseas principal which is earned in foreign exchange. This commission will now be subjected to GST @ 18%.	The commission value payable by a foreign Principal is included in the sale price of the machinery to the Indian customer. The Indian importer/customer is required to pay Customs Duty and GST; this means Government collects GST on the commission value also. Charging GST on commission when billed to overseas principal amounts to double taxation. There is a distinction between intermediaries of goods and intermediaries of services, Government collects GST from the intermediaries of services only once per transaction whereas for goods imported in India, the tax is collected twice; one at the time of goods import and second at the time of charge of commission for rendering services.	The Chamber recommends that intermediaries who facilitate import of goods into India and who receive their commission from service recipients located outside India, should be excluded from the deeming fiction of Section 13(8).
5.	**Time for issuance of Show Cause Notice under GST** Sec 73(2) of the CGST Act, 2017 states that SCN has to be issued at least three	It is well known that in many SCNs, it involves matters which take a longer period of time to	The Chamber recommends that the time limit for issuing the SCN be

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Sr. No	Issue	Justification	Recommendations / Suggestions
	GST related issues: Issues requiring amendment to GST Act		
	months prior to last date specified for passing the Order against the SCN. Further Sec 73(10) states that Order against the SCN can be issued only within three years from the due date of furnishing of Annual Return for the said financial year. This may effectively mean in many cases that the assessee and the said officer would get only three months to provide reply, conduct hearing and pass Orders.	collect details and documents from various sources and may also require discussions and research with appropriate experts. Going by the principles of natural justice, the assessee should be given a fair opportunity of responding and representing his matter.	reduced to two years from the due date of furnishing of Annual Return for the said financial year as against the present time limit. This will give notice sufficient to address the allegation contained in the notice for which an order needs to be passed within three years from date of furnishing of annual return.
6.	**ITC on pipelines laid down from outside the factory premises to inside the factory premise used for business purpose should allowed.** As per Section 17 (5) , input tax credit is allowed on all goods and services which are used in course of furtherance of business. Hence, pipelines used for bringing material or for sending material from place of production or supply should also be eligible for input tax credit.	As per Section 17 (5), pipelines located outside the factory has been put under the negative list, thus ITC is not admissible on the same even when they are used for business purpose.	The Chamber recommends that restriction on input tax credit for pipelines outside the factory premises should be removed.
7.	**ITC on Rent-A-Cab Services, Catering Services**		

Sr. No	Issue	Justification	Recommendations / Suggestions
GST related issues: Issues requiring amendment to GST Act			
	Under the GST, input tax credit on 'rent-a-cab' services and catering services has been restricted.	As per Factory Act, 1948, it is mandatory for employer to provide canteen services to staff. Hence it is an activity which is integrally connected with the running of factory and manufacturing of goods. Many a time these issues are mandatory for a business - either due to law or customary practice of industries. Rent-a-cab services are utilized for availing the service of bus providers for transportation of employees from their residence to factory and vice-versa. It is needless to say that such services are necessarily required to run a factory of large scale and are used in relation to business.	The Chamber recommends that input tax credit of services such as rent-a-cab, outdoor catering services, employees' insurance which are mandatory and absolutely essential in efficient running of business, should be allowed.
8.	**Classification of licensing of software** CBEC vide FAQ released for IT/ITES sector provided its view that pre-developed or pre-designed software put on media to be treated as good and classifiable under the HSN 8523. Further, it also clarified that development, design, programming, customization, adaptation, upgradation, enhancement, implementation of IT software and temporary transfer or permitting the	Last two decades the IT industry facing classification issue on the point whether the software to be treated as 'good' or 'service'.	As per Schedule II of the GST Act, certain type of supplies are deemed to be 'services'. The Chamber recommends that irrespective of mode or medium of delivery, licensing of pre-developed/pre-designed software should be classified as 'deemed service'.

Sr. No	Issue	Justification	Recommendations / Suggestions
GST related issues: Issues requiring amendment to GST Act			
	use or enjoyment of any intellectual property right are treated as "services" in terms of Schedule II of the CGST Act 2017. With respect to software licensing, it is clarified that the contract of supply and terms and conditions of End User License Agreement (EULA) are important to determine whether or not there has been 'temporary transfer or permitting the use or enjoyment of any intellectual property right'.		
9.	**Place of supply of service provided by tourism accommodation services such as for hotels, cruises, campsites:** As per Section 12 (3)(b) of The Integrated Goods and Services Tax Act, 2017 (IGST Act), place of supply for services by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel or services by way of accommodation in any immovable property for organizing any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property shall be the	As per provisions of section 12 (3)(b) of IGST Act, place of supply of accommodation services is the location of the immovable property and accordingly the supply is classified as “intra-state” supply and Central tax plus state tax is levied. Barring some companies in the business of FMCG or services, most corporates are not likely to be registered across all states in India. Further as per input tax credit utilization rules, the input tax credit of center and state tax cannot be cross utilized thus this is increasing the burden of tax ranging between 18 to 28% as compared to 6% rate of tax in south and east Asia.	The Chamber recommends that suitable amendment in the place of supply provisions should be made to achieve seamless flow of credit and avoid any harm to the tourism industry: • Place of supply of accommodation services provided to registered person shall be the “location of recipient” instead of location of immovable property. • Place of supply of accommodation services provided to unregistered person shall be the “location of

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Sr. No	Issue	Justification	Recommendations / Suggestions
	GST related issues: Issues requiring amendment to GST Act		
	location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located.		immovable property" as per erstwhile provisions under service tax law.
10.	**Credit pertaining to motor vehicles should be restricted only to motor vehicles covered vide 8708**	As per Section 2 (76) of the CGST Act, the term 'motor vehicle' would mean the same as given vide the Motor Vehicles Act, 1988. The meaning of motor vehicle under the Motor Vehicles Act is vast enough to cover all kinds of mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimeters. Given above, machines such as cranes with wheels (which can move on road) or excavators and other such equipment would get included under the ambit of the term 'motor vehicles'. As per Section 17(5)(a) of the CGST Act, input tax credit shall not be available in case of motor vehicles other than used for further supplies of such vehicles or used in transportation of goods.	It is requested that similar to CENVAT Credit Rules 2004, the motor vehicles covered vide tariff heading 8702, 8703, 8704, 8711 and their chasis should be kept out of the ineligible credit list, by exempting the same from Section 17(5)(a) of CGST Act. Suitable notification giving effect to the same be issued.

Sr. No	Issue	Justification	Recommendations / Suggestions
GST related issues: Issues requiring amendment to GST Act			
		In view of the above, the tax paid on procurement of machines such as cranes and excavators if covered vide the meaning of the term 'motor vehicle', would not be available as credit under GST. It may be noted that even under the erstwhile CENVAT Credit Rules 2004, the credit on motor vehicles was restricted, however exception was made to such motor vehicles covered vide tariff headings 8702, 8703, 8704 and 8711 (alongwith their chasis). However, not providing such exception under GST has widened the scope of ineligible input tax credit, and has caused undue hardships to the taxable persons.	
GST related issues: Issues requiring amendment to GST Rules			
11.	**Condition of 180 days for making payment of value of goods/service and tax for availing input tax credit.** Rule 37 of CGST Rules stipulates reversal of input credit availed if the payment of value of goods/service and tax is not done to the supplier within 180 days of date of issue of invoice.	The condition poses significant challenges for claiming input tax credit as payment to supplier may not be made within 180 days of the date of invoice due to various business reasons such as agreed terms, company policy, retention amount, payment to be made only on completion of work etc. When the Government has received the payment of tax from Supplier, there is no need to	In line with the principle of ease of doing business and simplicity, the Chamber recommends the condition of making payment within 180 days of invoice may kindly be done away with.

Sr. No	Issue	Justification	Recommendations / Suggestions
		GST related issues: Issues requiring amendment to GST Act	
		step into the business to see when the payment is settled between the Supplier and the Recipient for the purpose of tax credits.	
12.	**ITC of GST paid on Railway Freight** As per Circular No.19 of 2017 dated 30.6.2017 has clarified that the Railway Receipt (RR) is to be treated as Tax Invoice for the purpose of input credit under GST.	Rule 36 of the CGST Rules, 2017 do not prescribe 'RR' as a document for the purpose of availing input credit. This has exposed the industry to the risk of credit being disallowed by GST authorities.	The Chamber recommends to amend the rules and specify RR as eligible document for taking input tax credit in case of transportation of goods by rail.
13.	**Specify format for intimation of goods sent for job work**	As per Section 143 of the CGST Act, the principal who intends to supply his goods for the purpose of job working has to file an intimation with the jurisdictional authorities. It may be noted that the authorities have not provided for any specific format of intimation in respect of goods sent for job working. Hence, each principal would provide intimation in his desired format, which could further lead to raising of concerns by the authorities in respect of details submitted.	It is suggested to amend the CGST Rules in order to provide a draft format for intimation to be provided by the principal while removal of goods for job work under Section 143.
		GST related issues: Issues for clarification	
14.	**Categorization of High Sea Sales, admissibility of input tax credit and disclosure in GSTR-1 of the high sea seller**	The Circular has addressed the long standing concern of industry and trade with respect to	The Chamber recommends that a suitable clarification should be

Sr. No	Issue	Justification	Recommendations / Suggestions
GST related issues: Issues requiring amendment to GST Act			
	As per Circular No.450/131/2017-Cus IV issued by CBEC with respect to leviability of IGST on High Sea Sales, it has been clarified that IGST shall be levied and collected only once at the time of importation i.e. when the import documentation are filed before the customs authorities for the custom clearance purpose for the first time by the person who buys the goods from the original importer. Therefore, the supplier making the High Sea Sales is not required to pay IGST on such supplies. However, the following aspects have not been addressed in the said circular (supra): • Whether the supplies made on high sea sales on which IGST is not leviable would be regarded as an 'exempted supplies'? If yes, whether the supplier making such sales would be required to reverse proportionate input tax credit on common input services as per Rule 42 of the CGST Rules 2017 read with section 17(2) of the CGST Act, 2017.	leviability of IGST on high sea sales. However, there are certain aspects particularly with respect to reversal of input tax credit on common input services and reporting and disclosure of high sea sales turnover in the GSTR-1 by high sea sales supplier which are not addressed. Such issues could lead to differences in interpretation and implementation of the Circular by the field formations. Categorization of high sea sales turnover: With respect to categorization of turnover as taxable or exempted or otherwise, the Circular has clarified that the value addition accruing in each such high sea sales shall form part of the value on which IGST is collected at the time of clearance by the final importer. Therefore, the final sales price between the high sea supplier and the buyer (importer) is to be declared as consideration (value) for payment of IGST by the buyer (importer) at the time of import of such goods sold by the supplier on high seas. As a result, IGST is payable by the importer on the value addition made by each high sea supplier. In view of this, from the standpoint of high seas supplier, such supplies should not be regarded as "an exempted supplies" as IGST is in a way paid on the final value by the importer i.e. by including value addition of each such high sea supplier.	issued that the high seas supplies shall not be treated as 'exempted supplies' in the hands of high sea supplier. It is also recommended that suitable amendments should be made in GSTR-1 to separately disclose and report turnover of high sea sales.

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Sr. No	Issue	Justification	Recommendations / Suggestions
GST related issues: Issues requiring amendment to GST Act			
	• Whether the turnover of high sea sales is required to be disclosed and reported in GSTR-1 of the supplier making such sales? If yes, under which table / section of GSTR-1, such turnover of high sea sales, is to be reported- taxable or exempted?	Disclosure and reporting of high sea sales in GSTR-1 (outward supply statement): For the purpose of reporting high sea sales, in GSTR- 1 i.e. outward supply statement, these supplies should not be considered as an exempted supplies and in absence of any specific table / schedule for disclosing such supplies, there are concerns as to how and where these supplies should be reported. It is apprehended that either non-disclosure or inappropriate disclosure of the high seas sale turnover in GSTR-1 could lead to potential challenges of such claim and unwarranted disputes by the tax authorities.	
15.	**Extending of GST exemption for works contract services to sub-contractors** Notification No. 20/2017 – Integrated tax (Rate) dated 22 August 2017 has amended item no. (iii) of S. No. 3. By virtue of this amendment, composite services by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration mentioned in item no. (iii) of S. No. 3 of Notification No. 20/2017 (hereinafter referred to as 'amended item no. (iii)')	 As per the amendment, it appears that benefit of lower rate of GST at 12% would be available only on direct supply of composite services that is for main contractor provided to governmental recipients. However, in case where contract is received from a governmental authority which is further sub-contracted, the sub-contractor would be liable to pay GST @ 18%, since the construction service provided by the sub-contractor would get covered vide item no. (vi) of S. No. 3 of the Notification No. 8/2017-Integrated Tax (rate) as	 The Chamber recommends that suitable amendments should be made in order to allow the lower rate of GST of 12% for specified works contracts undertaken by sub-contractor.

Sr. No	Issue	Justification	Recommendations / Suggestions
GST related issues: Issues requiring amendment to GST Act			
	would attract 12% GST ***provided the given services are supplied to*** the Government, a local authority or a Governmental authority, which is in relation to contract awarded by Government, local authority or a governmental authority (hereinafter referred to as 'governmental recipients') However, clarity is required whether the benefit of 12% GST rate is also extended to sub-contractors, for composite services prescribed vide Item No. (iii) of S. No. 3 of Notification 8/2017- Integrated Tax (Rate), as amended by Notification No. 20/2017-Integrated Tax (Rate).	the sub-contractor would be rendering services to the main contractor and not to Government, a local authority or a Governmental authority. In this regard, we would like to draw reference to a similar exemption in service tax vide Notification No. 25/2012-ST dated 20 June 2012, which provided exemption for various services. As per the notification, an exemption entry similar to the above mentioned in amended item No. (iii) had been provided vide Entry No. 12A. However, to further extend the benefit of the given entry to sub-contractors, Entry No. 29. (h) had been provided in the notification, which specifies that the sub-contractor is exempted from payment of service tax in case where the main contractor is exempted from levy of service tax. However, under GST, there is no similar provision / notification which would allow the sub-contractor to avail the benefit of lower GST as enjoyed by the main contractor. Hence, the industry is unsure of extending the amended item no. (iii) to subcontractors. The main contractor would be required to pay 18% on input services received from sub-contractors, while his liability on output service (provided to governmental authorities) would be @ 12%. Hence, the same would result into a situation of inverted tax structure for such contractors who outsource the entire construction contract to a sub-	

Sr. No	Issue	Justification	Recommendations / Suggestions
GST related issues: Issues requiring amendment to GST Act			
		contractor. Also, the benefit of refund is not available to service provider for such inverted tax.	
16.	**Speedy disposal of refunds filed by SEZ units/Exporters under old law having centralized registration** Under service tax law, taxpayers having centralized registration or those who are covered under LTU allowed to file refund application with single jurisdictional officer for tax paid on services availed by SEZ units and exports made from any part of India. Under GST, the jurisdictional GST officers are not processing the refund application filed under old law and also transferring the files from one office to another under the pretext that the tax payer has obtained multiple GST registrations.	Non-processing and transferring refund files from one location to another leading to inordinate delay in grant of refund leading to blockage of working capital which is increasing cost of services exported.	The Chamber recommends that refund application pending under old law to be processed by single officer having current jurisdiction of assessee's principle place of business. It is also recommended that the Board to issue clear instructions to field formations for speedy processing of pending refunds, setup monitoring mechanism and review of pending claims at Board level.
17.	**Clarification on non-applicability of service tax and GST on cash calls** A Circular No. 179/5/2014-ST dated 24 September 2014 was issued regarding applicability of service tax on	Oil and gas companies are burdened with demand of service tax on cash calls.	The Chamber recommends that clarification should be issued under service tax as well as GST regime that consortium and

Sr. No	Issue	Justification	Recommendations / Suggestions
GST related issues: Issues requiring amendment to GST Act			
	cash calls. However, the said circular has kept the issue open for interpretation of service tax authorities.		parties to consortium (which has executed a sharing agreement with Government of India) are not distinct entities and the cash calls are not consideration for services but only a contribution made by contractors.
18.	**Clarification on non-applicability of service tax and GST on cost petroleum** Companies have received correspondence from departmental authorities with regard to service tax demand on cost petroleum treating the cost petroleum as consideration paid by government to exploration companies for mining services undertaken by them. The arrangement of Production Sharing Contract (PSC) is such that it invites exploration companies to undertake exploration for itself in conjunction with Government of India. The authorities are demanding service tax on the activity of exploration without appreciating the rationale of PSC.	There is no activity carried out by the Government/ Contractors and these are not consideration for a service but simply a share of the government in the production. Internationally, Profit Petroleum/ Cost Petroleum are not considered as 'service' by the Governments to O&G companies or vice versa and nowhere in the world are indirect taxes applied on such transactions.	The Chamber recommends that clarification should be issued under service tax as well as under GST regime that Profit Petroleum/ Cost Petroleum is not consideration for service; these are formulas to determine the Government's share in the production (tax paid sales revenue).
19.	**Purchase of petroleum products against Form "C".**		

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Sr. No	Issue	Justification	Recommendations / Suggestions
GST related issues: Issues requiring amendment to GST Act			
	After implementation of GST, the definition of goods under CST Act has been amended to mean the specified petroleum products only. However, Sec 8(3) of the Central Sales Tax Act has not been amended.	In view of the same, there is no clarity whether petroleum products such as petrol, diesel and natural gas can be purchased at a concessional rate of tax @ 2% against C Form, especially if they are used for purposes of manufacturing of GST goods or mining.	The Chamber recommends to issue suitable clarification that petrol, diesel and natural gas can be procured against Form C when the same is used for purposes of manufacturing of GST goods or mining.
20.	**Valuation of capital goods purchased in pre-GST regime when supplied under GST**	Section 18 (6) of the CGST Act specifies that any capital goods supplied, on which input tax credit has been claimed has to be valued on the higher of the following: a. Transaction value b. Value of such asset reduced by prescribed depreciation (5% per quarter) On strict reading of the provision, the term 'input tax credit' would mean credit under GST regime. In case of supply of such capital goods on which credit has been availed under the previous tax regime, there is no clarity as to whether the same should be valued basis the provisions of Section 18 (6).	It is requested that a clarification should be issued in order to specify that provisions of Section 18 (6) of CGST Act would be applicable only in case where the capital goods have been purchased in the GST regime. For the capital goods purchased prior to GST regime (and on which credit has been availed) and supplied under GST, tax would be applicable on the transaction value.
21.	**Clarity that supply of goods from a country other than India to another country would not attract GST (Third country sales)**	Section 7(5)(a) of the IGST Act states that in case where the supplier is in India and the place of supply is outside India, the transaction would be treated as interstate supply. As per Section 5 of the IGST Act, interstate supplies would attract IGST, unless specifically exempted or NIL rated.	The Chamber recommends that suitable amendment may be introduced in the law in order to treat the transaction out of the ambit of the term 'supply' under GST.

Sr. No	Issue	Justification	Recommendations / Suggestions
GST related issues: Issues requiring amendment to GST Act			
		In a typical transaction, where a person in India arranges for procurement of goods from outside India and supplies the same to another country without bringing the goods in India, GST would be applicable as per Section 7(5)(a) read with Section 5 of the IGST Act. However, merely because the goods did not enter India, the intention of the supplier to 'export' such goods would not change, even if the transaction does not meet the criteria of exports (i.e. taking goods outside India from India). Further, as per the policies of the World Trade Organization, supply of goods from one member country to another should not include tax element, other than restricted goods. It may further be noted that giving such supplies a treatment equal to exempted supplies would not serve the necessary purpose, since exemption to such goods would warrant reversal of input tax credit as per the Section 17 (2) of CGST Act. From an international practice standpoint, many countries such as Singapore consider third country sales as "out of scope supplies" and do not apply GST either on first or second legs of transaction. Such transactions are also not required to be reported in the GST returns.	
22.	**Mechanism for payment of GST on the supply of goods as well as**	Under GST regime, works contract have been classified as "services". In case of any EPC contract	The Chamber recommends that specific amendment / clarification

Sr. No	Issue	Justification	Recommendations / Suggestions
GST related issues: Issues requiring amendment to GST Act			
	services, alongwith the HSN code to be used in case of EPC contract undertaken by Indian contractor in another country and vice versa.	in another country undertaken by a contractor in India, the tax payer in India would be required to supply goods as well as services to the country where project is being executed. In the given case, there is a lack of clarity with respect to the mechanism for payment of GST on the supply of goods as well as services, alongwith the HSN code to be used, since under GST, the supply of goods under works contract would be considered as a part of supply of service. However, under customs, the same would be treated as supply of goods. On similar lines, concerns would arise in case of project being executed in India by EPC contractors based outside India (i.e. with respect to GST on import of goods / services).	be issued adopting a proper mechanism to supply goods as well as services in respect of works contract undertaken in case of another country. Further, clarification should also be issued under the customs legislation in order to provide clarity for raising of invoice, filing of bill of entry and payment of necessary duties in case of such works contract where the outside India contractor is undertaking project in India.
23.	**GST on reimbursements in relation to expenses incurred by liaison offices in India, operated by parent entities located outside India**	The liaison offices in India operated by their parent entities located in various countries are forbidden to carry any 'business' in India, on account of various governing laws in this regard. However in order to undertake the operations in India, the expenses incurred by the liaison office are reimbursed by the parent entity. In case where such reimbursements are subjected to GST, there would be an additional hardships on such foreign entities looking to operate for	Such entities not being a project office or a representational office, we seek some clarification on taxability of such reimbursements. We further request to provide a clarity in case of GST applicability on reimbursements made by Indian entities holding liason offices in countries other than India

Sr. No	Issue	Justification	Recommendations / Suggestions
GST related issues: Issues requiring amendment to GST Act			
		marketing purposes through liaison offices in India	
GST related issues: Exemption or Rate related issues			
24.	**Registered person engaged in selling used car should be treated on par with registered dealer engaged in dealing with second hand cars for GST exemption.** As per Rule 32(5) of GST Rules, 2017 those dealers dealing in second hand cars are exempted from levy of GST on supply of second hand cars. This exemption is based on the fact that cars have already suffered full rate of tax and cess while no input tax credit was available on such cars except in certain specified cases. On similar lines, the industry uses motors cars for business purposes on which they are not entitled to claim input tax credit. At the GST council meeting held on 6th October, 2017 it has been recommended that the motor vehicles sold / supplied by registered person	Business entity is not allowed to avail input tax credit of GST paid on purchase of new motor vehicle (i.e. conveyance). Similar to exemption to a registered dealer of second hand cars, the business entity who is not entitled to input tax credit on the motor cars used for the purpose of business should not be required to pay IGST again when the motor vehicle is disposed off by way of resale to avoid double taxation.	The Chamber recommends that the benefits of GST exemption as available to registered dealer engaged in dealing second hand car should be extended to registered person selling the car which was purchased for business purposes and no input tax credit was available on the same.

Sr. No	Issue	Justification	Recommendations / Suggestions
GST related issues: Issues requiring amendment to GST Act			
	who have procured the said vehicles prior to 01 July, 2017 shall be taxed at 65% of applicable GST + cess. No benefit has been given on sale of motor vehicles by registered persons who have procured such vehicles for business purposes.		
25.	**Supply and installation of solar roof top under EPC contract to be considered as supply of power generating system @ 5%** Supply and installation of solar roof top, supply of solar power project and installation of the same is considered as works contract service (in relation to immovable property) attracting 18% GST as per Notification No. 11/2017- Central Tax (Rate) GST shall be levied @ 5% as per Entry No. 234 of Schedule -I for goods classifiable under HSN 84 or 85 as renewable energy devices & parts for their manufacture of Solar power based devices and Solar power generating system. Further, as per Notification 11/2017-	In pre GST regime, excise duty was exempted under: a) Entry no. 237 of Notification No. 06/2002-Central Excise- Non-conventional energy devices/ systems specified in List 9 b) Entry No. 332/332A of Notification 12/2012-Non-conventional energy devices/ systems specified in List 8. The supply and installation shall attract 18% GST which would lead to additional burden of tax.	The Chamber recommends that supply and installation of Solar roof-top under works contract shall be construed as supply of Solar power generating system and should be taxed @ 5% under Entry no.234 of the said notification renewable energy devices & parts.

Sr. No	Issue	Justification	Recommendations / Suggestions
GST related issues: Issues requiring amendment to GST Act			
	Central Tax (Rate) GST shall be levied at 18% as per Entry no. 3 for goods classifiable under HSN 9954 as composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.		
26.	**Categorization of hotels based on transaction value and not on declared tariff** As per section 15 of CGST Act, value of taxable supply is the transaction value i.e. price actually paid or payable for the said service. However, in case of services by way of accommodation in hotels or otherwise, the rate of tax is decided based on the declared tariff. As per notification no. 11/2017-Central tax (Rate), rate of tax at 12% or 18% or 28% is decided based on the declared tariff without excluding any discount offered on the published charges.	Under Service Tax regime, service tax was being levied at an effective rate of 9% (after abatement) on the value charged for services. This increase in tax cost may result into unnecessary litigations due to arbitrary interpretations by the enforcement.	The Chamber recommends that suitable amendments be made in determining the rate of supply based on the actual charges and not the declared tariff for accommodation in hotels, inn, guest house, home stay, club or campsite, by whatever name called including a house boat.
27.	**Package rate for hotels** As per notification no. 11/2017-Central tax (Rate), declared tariff includes charges for all amenities	This pushes the tariff for package above Rs. 7500/- and therefore higher rate of GST at 28% is levied. Such inclusion of all other amenities shall evolve	The Chamber recommends that a clarification should be issued that such additional facilities should not

Sr. No	Issue	Justification	Recommendations / Suggestions
GST related issues: Issues requiring amendment to GST Act			
	provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges. It shall also include breakfast and meals if the tariff value is inclusive of such other facilities.	unbundling of services.	be included in the tariff value for the purpose of determination of rate.
28.	**Exemption from IGST for import of goods required for oil & gas exploration (under Essentiality Certificate 'EC')** Basic Custom Duty and Customs cess continues to be exempted on import of goods required for oil & gas exploration subject to availability of 'Essentiality Certificate' in accordance with Notification No. 50 / 2017 – Customs Such import of goods required for oil & gas exploration would attract IGST @ 5% - Notification no. 3/IGST (rate) on the assessable value of goods subject to Essentiality Certificate is made available to Jurisdictional officer of the Supplier unless import is covered vide Notification No.	In terms of Notification No. 12 / 2012 – customs, import of goods required for oil & gas exploration was exempted from payment of customs duty subject to Essentiality Certificate ('EC') issued by Director General of Hydrocarbons ('DGH'), which was addressed to Custom authorities. IGST @ 5% of the assessable value of goods, increases the tax cost and puts an additional burden on Oil & gas industry.	The Chamber recommends that the Government should make a suitable amendment in the notification no. 3/2017 – IGST (Rate) and provide for the complete waiver of IGST in line with the circumstances that existed in the pre- GST regime and not burden Oil & Gas sector with additional tax.

Sr. No	Issue	Justification	Recommendations / Suggestions
GST related issues: Issues requiring amendment to GST Act			
	72/2017 - Customs.		

29.	**Exemption from GST for domestic procurement of goods required for oil & gas exploration** Domestic procurement of goods required for oil & gas exploration would attract GST @ 5% on the value of goods in terms of Notification No. 3 / 2017 – IGST(Rate) / Notification no. 3/2017 – CGST (Rate) subject to the condition that EC should be produced before GST officer having jurisdiction over supplier at the time of making outward supply.	In terms of Entry no. 336 of Notification No. 12 / 2012 – Central Excise, there was exemption from payment of excise duty provided they were supplied under the contract awarded on international competitive bidding basis. GST @ 5% of the assessable value of goods, increases the tax cost and puts an additional burden on Oil & gas industry	The Chamber recommends that government should provide an amendment in notification- 3/2017 – IGST (Rate) / Notification no. 3/2017 CGST (Rate) and provide complete waiver of IGST similar to Pre GST regime and not burden Oil & Gas sector with additional tax.
30.	**GST implications on import of vessel** While basic Customs Duty and Customs Cess continues to be exempted, IGST of 5% is made applicable in terms of Entry no. 404 of Notification No. 50 / 2017 – Customs. In view of this Notification, IGST of 5% stands applicable on the assessable value of vessel, barge or	Import of vessel was exempted from payment of whole customs duty subject to EC issued by DGH in the Pre GST regime by notification no.12/2012-Customs. The same are imported by upstream companies, the amount of IGST paid less Drawback shall be a cost, leading to increased tax cost for oil & gas upstream sector. In case where vessel is imported for lease period of more than 18 months, drawback is also not admissible.	The Chamber recommends that Notification No. 50 / 2017 – Customs should be amended to provide for complete waiver of IGST on import of all goods required for petroleum operations including tug, vessel and boats. Alternatively, the benefit of

	tug at the time of its importation.		exemption from IGST in terms of Notification No. 72 / 2017 – Customs should be extended to import of vessel, tugs or boats as well.

Custom related issues			
31.	**Advance Ruling – Widen the scope of Advance ruling – under Customs** The facility of obtaining advance ruling under the customs law is available only with respect to a 'proposed' business activity.	There are lot of disputes in admission of matters by Advance Ruling Authority due to this aspect.	The Chamber recommends to widen the scope of advance ruling and allow the applicants to file an advance ruling for the existing business activity also. This will help in better compliance of the existing laws and reduce the ongoing litigations.
32.	**Strict timelines to be adhered under Customs for appeal or review** The customs laws provide for the specified period within which an appellate authority shall endeavour to pass an order/provide its decision.	However, the said timeliness are not adhered by the tax authorities practically. Reliance is also placed upon Circular No. 22/2015-Customs dated 3 September 2015, wherein the department had instructed the assessing officers that the queries seeking clarification from importer should not be raised in a piece meal manner. Further, the authorities had also instructed that genuine clarification sought by officers from importers/exporters should be	The Chamber recommends suitable amendment to be made to provide the following: ✓ Stringent/Mandatory timelines within which the appellate authority shall pass an order; ✓ Any alternate remedy such as the appellant is allowed to file an application before higher forums, in case the appellate authority has not passed the

		raised in one go and not in a piece meal manner. The circular also captured the instruction that field formation could consider listing of the queries frequently raised in course of assessment and disseminate them through Public Notice or sensitize trade about the same so that importers could take preventive action to avoid such queries or be better prepared to reply to such queries. However, such methodology is not observed to be adopted by most jurisdictions.	order within the set timelines. ✓ A proper notification laying down the methodologies for analysing the submissions and raising of additional requirements should be issued This will enable assesses to determine their liabilities in an identified period.
33.	**Extending the benefit of 'Clear first-Pay later' to importers holding AEO (Tier-One) under Customs** The Government of India has notified the Deferred Payment of Import Duty Rules, 2016 which provides a mechanism for delinking duty payment and Customs clearance. It is based on the principle 'Clear first-Pay later'.	The benefit of the same is currently being extended to importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and (Tier-Three).	The Chamber recommends to widen the scope and extend the benefit of the same to importers holding AEO (Tier-One) as well.
34.	**Provisional release of seized goods under Customs** The customs law provides that any goods, documents or things seized pending the order of the adjudicating officer may be released to the owner on taking a bond from him as the Commissioner of Customs may require.	Presently, customs law provides for provisional release of goods only when the order is pending before adjudicating authority but doesn't cover provisional release of goods when order is pending with appellate authority.	The Chamber recommends that suitable clarification on actual user condition under the Customs Act should be issued.
35.	**Clarification on applicability of other allied laws**		The Chamber recommends to give specific exemption from the

	With respect to temporary admission of goods for inward processing which are meant for some repair/processing and will thereafter be exported out of India, clear guidelines should be prescribed with respect to the applicability of other allied Laws: For e.g.: In case any person is importing a second hand IT equipment for the purpose of repair in India, then whether they are supposed to obtain license under the following Laws: ✓ Foreign Trade Policy 2015-20 (DGFT) ✓ Hazardous and Other Wastes (Management and Transboundry Movement) Rules, 2016 ✓ Any other applicable laws		applicability of such Laws to provide trade facilitation to such industry players.
36.	**Strict timelines for grant of refund under Customs** It has been observed that specified time limit is not followed by the officers in granting the refund even after submission of all relevant documents.	The prolonged delay in refunds is causing undue financial hardship.	The Chamber recommends suitable amendment in the Laws can be made to provide the stringent / mandatory timelines for granting of refund which should be obligatory in nature and mandatory interest on delayed refunds.
37.	**Abolish Education Cess and Secondary & Higher Education Cess**		

	Currently cess is levied on Basic Custom Duty.	Education Cess and Secondary & Higher Education is already subsumed in Excise duty and Service Tax. Also, in case of Service Tax, SBC and KKC is subsumed as a part of movement towards GST.	The Chamber recommends that Education Cess and Secondary and Higher Education Cess to be abolished on Basic Customs Duty as well.
38.	**Royalty as part of Drawback** Royalty is one of the levies which is out of preview of GST.	This results in cascading effect as various taxes get levied on this element also at every stage and as a result, the ultimate burden of taxes is increased. The Government has already acknowledged that levies and duties should not be exported.	The Chamber request that the element of Royalty be included in the calculation of drawbacks rate. This would go a long way in encouraging international competitiveness for the country's cement industry.
39.	**To allow imports of PE Resins at a concessional rate of duty [Mega Notification No. 12/2014]**	• Manufacturing industries in India are importing new PE Resin Technologies into India. The import of new resin is primarily being planned to reduce the plastic packaging thereby reducing the plastic waste and promoting environmental safety. These flexible packaging laminates are used in various manufacturing industries including FMCG for use in packing of finished products. • Borouge bimodal technology is unique in respect that it gives toughness to the packaging even after pack is down gauged. It reduces consumer and customer quality issues (for us it has reduced to an extent of 16%). The following three grades of resins are imported from Borouge UAE with HS Code 3901.90.90: a. FB 2230 (Borstar technology bimodal	The Chamber feels that the case has merits and deserve your kind consideration. Most importantly, such a step would result into lesser plastic waste and environment friendly. Granting of this concession would also go a long way in promoting environmental safety thereby reducing packaging footprint and would benefit the industry and the consumers.

		LLDPE resin) b. FB 1350(Borstar technology bimodal LLDPE resin) c. FK 1820(Borstar technology bimodal Metallocene LLDPE resin) Benefits • It is submitted that appreciating the need for reducing the packaging footprint in the environment, efforts were taken to explore different technologies that can help industries to reduce the footprint. This further helps on protection of degrading natural resources and it is appropriate to country's context as it is environmentally effective, cost efficient, taking an integrated structured approach and avoiding barriers to trade. Overall, this would strive to reduce waste from manufacturing operations. • With the use of Borouge Bimodal technology industries can harmonize their flexible packaging laminate and also down gauge the material thickness. Reducing the material thickness has no negative impact on performance of the packaging if we use Borouge bimodal technology. In the second stage, efforts are on exploring the next level of resin change namely Metallocene grade, again using Borouge Bimodal technology. This technology and products mentioned above would be used for manufacturing flexible packaging laminates, which are generally used for medium and low-income	

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		groups. Both these steps will help us reduce the amount of packaging by weight and will also result into lesser wastages, which would ultimately be a step towards environmental friendliness. • It does not result into any kind of damage to the quality of product for which such packaging material would be used. Sourcing • Middle East traditionally has lowest cost of Polyethylene resin and Asian countries like India has the best cost of converting the resin into film. It is a perfect match and surely suits the current theme of "Make in India" as the country can then use them domestically and / or export the finished polyethylene film to any part of the world at a very competitive price. • Currently the above-mentioned grades attract 7.5% Basic Custom Duty. None of the Indian manufacturers have this "Borouge Bimodal technology" and therefore, if the duty is reduced or exempted on these resins, it would not have any adverse impact on the domestic manufacturing sector. • It is further stated that that these types of resins are also manufactured in Singapore where Indian Government has given the	

		preferential duty treatment under India-Singapore FTA. Our specific request therefore is to include these resins in jumbo Notification No.12/ 2012, subject to actual user condition. We earnestly request, “Zero Basic Custom Duty” for import of these resins, subject to condition that these resins would be utilized for manufacturing, of flexible packaging laminates required for manufacture of products listed in the IEM of the respective manufacturing industries. No adverse impact on domestic packaging industry. As already explained, since there are no local manufacturers, reduction of custom duty will not affect the domestic manufacturer. Secondly, the concession being asked is limited to specific end use and therefore will not result in revenue loss in general. Actual user condition The actual user condition can be monitored by Central Excise Department as to the actual use of these resins into specified packing materials. The manufacturing of end products can be checked by monitoring the IEM’s and therefore, the necessary system to check the use of resins for manufacturing of packing material for specified end products is already in place.	

		Since, concessional duty of less than 1% is already offered to Singapore under FTA government has in principal agreed for reduction in duty.	
40.	**Allow duty free import of oils for manufacture of soaps/oleo-chemicals under conversion arrangement as well.** Notification No. 12 / 2014-Customs dated 11.7.2014 as amended r/w Customs Import of Goods at Concessional Rate of Duty, Rules, 2016 [Notification No. 68/2017 (NT) dated 30.6.2017]	Oils such as Palm Fatty Acid Distillate [PFAD], Stearine, Stearic Acid, etc. are converted into Distilled Fatty Acid [DFA] and DFA is subsequently used for the manufacture of soaps. Such oils are allowed at `nil' rate of duty as per Sr. No. 230A of the Notification No.12/2014-Cus dated 11.7.2014 read with Customs [Import of Goods at Concessional Rate of Duty Rules, 2017 when imported into India for manufacture of soaps and oleo-chemicals. • While there has been no issue in case of manufacturing activities undertaken at the own unit the problem arises when such manufacturing activities are contracted to a third party who undertakes the manufacturing activity for and on behalf of the brand owner/ principle manufacturer who supply the material. Although two legal entities are involved in the process of importing and conversion of oils into DFA for manufacture of soaps the ownership in the goods shall always remain with principal manufacturer [importer]. • The Customs Act and/or Central GST Act, 2017 do not define the term "Actual User". The Foreign Trade Policy (FTP), which regulates imports and exports, defines "Actual User	The Chamber recommends that suitable clarification on actual user condition under the Customs Act should be issued.

		(Industrial)" in Para 9.5 of Chapter 9, as under: "Actual User (Industrial)" means a person who utilizes the imported goods for manufacturing in his own industrial unit or manufacturing for his own use in another unit including a jobbing unit." • From the above, it is clear that if the imported goods are utilized for manufacture of the final products in his own unit and/or in a jobbing (job-worker's) unit, it would be treated as fulfillment of "end use". The benefit given under the aforesaid notification cannot be taken away mere because of involvement of two entities and on account of certain procedural difficulties. The solution lies in taking an undertaking from the original importer in order to safeguard the interest of the revenue and also ensure that the oils so imported are used only for manufacture of soaps / oleo-chemicals. The notification does not impose any restriction for the conversion arrangement and it only stipulates the condition of end use, which stands fulfilled by virtue of the arrangement as elaborated above.	

Advisory Committee Members

A. Policy Research & Development (PR&D) Committee	
Dr. Sidhartha Roy (Chair)	Economic Advisor, Tata Group (022) 6665 7691, Email: sroy@tata.com
Professor Bibhas Saha	Durham Business School, UK Phone : +44 1913345433(O) Bibhas_Saha(Skype id), Email : b.c.saha@durham.ac.uk
Professor R. Nagaraj	Indira Gandhi Institute of Development Research (022) 022-2841-6518, Email : nag@igidr.ac.in
Mr. Deepak Goray	Head, City Account Management Siemens Ltd. (022) 022-2841-6518, Email : deepak.goray@siemens.com
Ms Shivani Handa	Senior Manager, City Account Management Siemens Ltd. Tel : 91 080 33422018, Email : shivani.handa@siemens.com

B. Taxation &Accountancy Committee	
Mr. F.N. Subedar (Chair)	**Chairman,** Tata Services Ltd. D: (022) 66657127 (B) 66658282 I 23647885 Email : fnsubedar@tata.com

Direct Tax Group	
Mr. Sudhir Kapadia (Chair)	Partner & National Tax Leader Ernst & Young LLP 6192 0900 / 6192 0000 / 6192 1000 sudhir.kapadia@in.ey.com

Ms. Rajeshree Sabnavis (Co-Chair)	Rajeshree Sabnavis & Associates (022) 4672 2207 B (22) 4672 2222 M: 98201 52275 rajeshree.sabnavis@gmail.com

Indirect Tax Group	
Ms. Pinky Mehta (Chair)	
Prashant Deshpande (Co-Chair)	Partner, Deloitte Haskins & Sells LLP (22) 6185 4220 / M: 98670 33840 / pradeshpande@deloitte.com

Secretariat	
Mr. Vijay Srirangan	Director General Bombay Chamber of Commerce & Industry (D) 61200205 (B) 61200200 / dg@bombaychamber.com

ABOUT BOMBAY CHAMBER

The Bombay Chamber of Commerce & Industry is India's premier Chamber of Commerce & Industry situated in Mumbai, the industrial, financial and commercial capital of India. Established in 1836, it is one of the oldest Chambers in the country and has a long and illustrious history of continuous service to Trade and Industry.

The Chamber can boast not only of its longevity but also of its impeccable lineage. With more than 3500 prime companies as its members, the Chamber represents the cream of Indian Industry, Commerce and Services. While the name `Bombay Chamber' conjures images of an organization representing exclusively a city-based membership, in reality it represents a wide spectrum of highly reputed and professionally run companies which are based in the city of Mumbai, but whose manufacturing facilities and commercial influence spread not only all over India but also internationally.

It comes as no surprise that the Bombay Chamber's membership represents as much as a third of the country's GDP in the manufacturing and services sectors. The Chamber uniquely represents large and medium sized corporations, banking and financial institutions, professional consulting companies and a large number of multinationals.

Bombay Chamber of Commerce and Industry
The Ruby, NW, 4th Floor, 29, Senapati Bapat Marg, (Tulsi Pipe Road)
Dadar (West), Mumbai 400028
e-mail: dg@bombaychamber.com
website : www.bombaychamber.com