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Bombay Chamber of Commerce & Industry

PRE-BUDGET MEMORANDUM 2020-21

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Part I

PRE–BUDGET MEMORANDUM 2020-21: 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). This has received new attention in Draft New Education Policy 2019. There is promise to impart 'digital literacy'; but it does not go into the issues of pathways to future apprenticeship and industrial training. Some rethinking is needed. 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. The Draft New Education Policy 2019 document has strongly supported the idea of Early Childhood Care and Education (ECCE) and promised universal free access to care and education of all 3-6 years old by 2025. This is a very welcome move. The proposal of using the Anganwadi system, where suitable, is a good one. This

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				calls for improving and strengthening the Anganwadis. Whether pre-schools should be stand-alone or integrated with local primary schools is a matter of decentralized decision. It should depend on local conditions. • 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. • The Draft New Policy Education 2019 document does talk about learning deficiency. However, its idea of National Tutors Programme (NTP), which involves using best students in the school helping younger weaker students, need to be thought through. It is not clear how it would work and whether

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				it is the best option. Similarly, the proposed idea of Remedial Instructional Aides Programme (RIAP) relying on local resources, such as by hiring local women, as offering remedial teaching, is also neither ambitious, nor necessarily efficient. What to do when local expertise is absent, which may be likely in subjects like English, Mathematics and Science? Much more clear thinking is needed.
			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	• Government should allocate greater funds to make our schools like one shop facility, where students can spend extra two hours daily, receiving

			chance of assuring quality and greatly benefit children from lower income background.	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.

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		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 was5.959%. 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 centers 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 would need to be constructed by March, 2019. (NITI Ayog Action Plan). One third of the smart city budget was initially for low cost housing projects, but isn't seeing things panning out yet.	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 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 beneficiaries by leveraging the existing structures.	• 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 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

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				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 to 2011-12. 3. The new IIP monthly data show a clear adverse impact of demonetization; same is true of quarterly employment numbers, which are for the organized manufacturing.	• 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 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

		Off Set Policies (Defence Sector)	4. 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. 5. 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."	run and help develop technologies suitable for local needs. Incentives given for the purpose can be WTO compatible.
	Promotion of Exports	Identifying key focus areas that will guarantee export volumes at least risk.	6. 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	• 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.

			due to technology advancement, succession issues and a general. Reduction in turnovers due to 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 independent.	
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 of electricity and make it competitive, particularly for industries.	• 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' (people plant trees but do not follow up to grow…. Could be dropped as small part)
	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. Possibly, freight corridors shall help in faster delivery • and a little less cost.
		Highly Skewed Freight	4. Indian freight movement is highly	• There is a need to have a

		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 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.	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.	diversified modal mix with shift towards cheaper and environment friendly modes of freight movement. Water ways for freight movement needs to be developed.
		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	5. Currently, freight movement happens on a point-to point basis due to absence of efficient freight aggregation and disaggregation centres 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.

		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 centres Through an efficient hub 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	8. India's customs process is a mix of paper and electronic declaration and verification. India's share of green-channelled 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.	• 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.

		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.	9. The government has already initiated measures like complete process digitization, improved risk management and port-level tracking to facilitate efficient clearances. Further push to investment in cold chain (with specific references 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%. ULB must be allowed to "piggyback" onto income tax.	1. Urban local bodies will have to deal with a huge fiscal gap once local body tax, Octroi and other entry taxes are scrapped. 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.	• 25%-30% of GST must go to ULB from State's share. • 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	**Consumption Demand**	a. Tax Structures	Indian growth has been consumption oriented rather than export or tourism oriented. Exception has been export of IT services which as service industry has contributed to growth. Hence, while in the long run we should try to improve export contribution, short run we could only fuel internal consumption for growth. Continue to give stimulus may not be the right solution as deficit has to be also controlled. Hence there are issues which need attention in the forthcoming budget: we have to go back to basics of economy by John Maynard Keynes: 1. If prices are going up, people will reduce their consumption, so although same money or little more money is being spent but production units start coming down. 2. If tax structure makes things costly, we will get same results. So increase in duties beyond certain level could encourage prices to go up and consumption to come down. Although it could help in Make in India, but consumption could be down but whatever is sold will be made in India. India loses on exports basically because of quality and high cost. How do we find the right balance?	• Possibly we need to structure our tax holidays based on efficiency and investments. • Either direct or indirect taxes could be reduced for addressing affordability to fuel consumption. Both moving up may not help. Corporate tax reduction may not result into consumption as the excess cash generated may only go into non productive savings. • Customer duties increase could also encounter price points to be raised unless duty structure is vastly different on ready goods or components. Lower duties on components could encourage assembly hub in a big way while increasing affordability.

		b. Tax Structure/ Incentives	Consumption demand has fallen by 3.1% in Q1FY20. A number of indicators of domestic consumption demand such as two-wheeler sales, four-wheeler sales, and non-oil-non-gold imports have seen a deceleration in the past few quarters. Since demand is weak, capacity utilization is unlikely to see an improvement and this will delay the investment cycle. During Q4FY19 and Q1FY20, investment demand has fallen by 3.6% and 4% respectively.	• Reduction in Personal income tax will result in higher consumption. The reduction if accompanied with removal of exemptions will nullify the arbitrage between renting and buying a house as HRA deduction available to salaried customers. • In case the government does not want to reduce personal income tax, GST on a number of items can be reduced so as to reduce the cost of goods and services. • This is part of countercyclical fiscal policy in a slowing economy.
		c. Labour jobs / reforms	Constraints on hiring – little flexibility	Fixed term Employment must be legislated, this can provide some succour and flexibility to the industry for hiring and can help allay some of the concerns over incremental employment creation.
		d. Rural Development	One of the major problems faced by the Indian economy is lack of demand in the rural sector, mirroring rural distress. Several reasons can be attributed to such a state of affairs.	• Increasing the rural wage rate by increasing the mandatory wage rate that should be paid under Central Government Scheme such as MGNREGA. As

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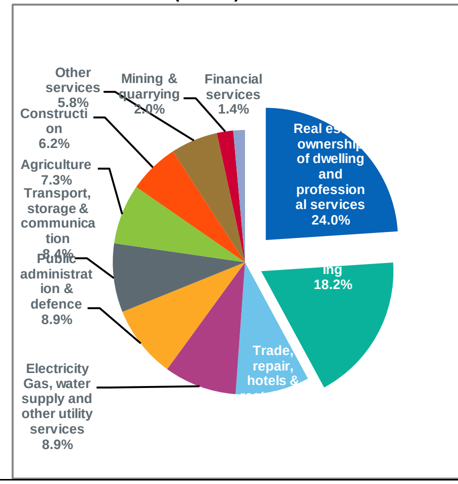
			The depressed state in the price of agricultural products is not only rendering the farming activities unviable but also contributing to rural distress. This requires deliberate action to ensure some degree of inflation. Government interventions should be centred on the idea of reflection, thus, the forthcoming budget should be inflationary by design.	there is a direct relationship between wage rate under MGNREGA and wage rates of several rural agricultural and non-agricultural occupations, a moderate increase in daily wage rate in MGNREGA scheme will help to accelerate rural wage rates. • Solar Panel installation in Agri land should be encouraged. This is considered third crop. This requires initial investment, which may be provided by banking system (so that the demand for bank credit increases) with some subsidies by state and central governments (resulting in an increase in the transfer by governments). Moreover, evacuating excess power from farm would require investment in transmission lines. This in turn would encourage public investment. Regular maintenance of the panels will create new employment opportunities.

6	**Realty Sector**	a. Housing Infrastructure to Fuel Job Creation	Apart from service industry, housing industry is critical to job creation. It leads to creation of many MSMEs also. Today generation prefers to rent a house rather than purchase leading to decrease in demand as return on investment lies between 1-2 % unless property is bought for sale	Some advantages could be considered for the buyers • The limit of GST on society charges need to be linked to green building, energy consumption, water usage. Solar energy usage, etc this could change a mindset. • Two properties depending on income could be treated as self occupied.
		b. Propelling GFCF and Role Played by the Real Estate Sector	GFCF (Gross Fixed Capital Formation) cannot improve in a meaningful way without contribution from Real Estate and Manufacturing sector. Real Estate accounts for 42.2% of Investment and that has been besieged by numerous problems. Moreover, that same sector has largely been contributor to unskilled and semi-skilled worker to unorganised segment. The sector is unique and one of the most critical for households. Though this segment has been facing acute problem from demand side owing affordability or lack of visibility over incremental income. On the other hand, it is also not prudent for policy maker to go for heavy lifting, which may lead to morale hazards and if not risk of asset price bubble in the future. Therefore any policy initiative to rejuvenate Real	Increase Tax incentive for First time home buyers, with ceiling one the ticket size (possible size: Mumbai – INR20 million, other top seven cities- INR15 million, and balance cities - INR10 million). This will stoke genuine buyer's interest without fuelling investors' interest (first time). Will also help to generate demand for Real Estate and would give some tax incentive to Household.

			Estate sector should be well crafted. Investment (GCF) FY12-FY18  	
7	**Personal Income / Consumption**	a. Reduction on Individual Tax Rate	Corporate tax reduction has already taken place. However, the benefits of tax reduction have not been passed on to the unincorporated sector. Technically unincorporated sector, i.e., household industries, micro and small scale entrepreneurs come under individual tax-payer category. Given this scenario there is an immediate need to reduce individual tax rate.	The maximum tax rate should not be more than 25% at the same time the exemption limit for tax payment should be increased. Currently up to Rs. 5 Lacs there is no income tax liability. However, ITR needs to be filed. This limit can be raised to Rs. 7.5 Lacs without significant revenue loss.
		b. Senior Citizen	Senior citizens have to live on their hard earned money of their lives. With life span reaching 70 years on an average they need special consideration for ease to live. Non affordability impacts their quality of life appreciably. They also have health	• Either tax free bonds could issued for Sr Citizens • Income tax limits could be increased further for Sr. citizens.

			issues and additional spending requirement on health.	• Interest rates on Deposits could be hiked to 100 basis points higher than normal deposit rates
		c. Domestic Savings	1. Physical savings of households has been dropping in the last few years and has fallen by 10.3% from a high of 15.5%. 2. Financial savings of households has remained at approximately 7% of GDP over the last few years.	• In order to increase physical savings/ real estate demand, consumers can be given higher tax exemption for purchase of a house. Additionally, if the government continues the practice of HRA exemption for salaried customers, the exemption for buying a house should be increased particularly in bigger cities such as Mumbai, Delhi etc • The limit for financial savings is also fixed at Rs 150,000 and has not been revised for a long time. An increase in exemption limit will increase financial savings of households.
8	**Agriculture**	a. Irrigation	Lack of holding power with farmers and lack of supply chain resulting in wastages.	Government must raise Investments in Irrigation (including micro irrigation) across the country. It must strengthen the agriculture supply chain to reduce wastage and enable better prices for farmers. Large Farm gate and near-

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				farm gate storage (of more than 1000 MT) should be incentivised including private participation under a new scheme or under RashtriyaKrishiVikasYojana (RKVY) and Rural Development Schemes to enable farmers to hold produce.
		b. Sugar Manufacturing-Sustainable Growth	Indian Sugar sector has remained under pressure since 2007-08. Official data show signs of turnaround during 2013-14, but this was short-lived. The prime reason was ever increasing sugarcane (raw material) cost owing to minimum support price payable by sugar mills inform of Fair and Remunerative Price (FRP) at National level or State Advised Price (SAP) for select states (usually higher than FRP) with corresponding low sugar (finished goods) prices. It is only since last one year the sector is again showing signs of turnaround primarily due to improvement in sugar realisations.	• Union budget should focus on stimulating ethanol demand. As ethanol demand will be dependent on increased availability of ethanol that can be produced from sugarcane juice and B-heavy molasses. This will mainly come if public investment through oil marketing companies is stepped up for setting up ethanol production capacities directly using sugarcane juice. This is something we have been expecting for the last 10 years. • Also the rationalisation of fixing sugarcane prices by linking the sugarcane price to sugar realisation in accordance with the recommendations by The Economic Advisory Council to the Prime Minister (Chairperson: C. Rangarajan).

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				(Which submitted a "Report on the Regulation of Sugar Sector in India: The Way Forward" way back on October 5, 2012, some of which have been adopted. But the suggestions of committee for determining cane prices according to scientifically sound and economically fair principles by way of sharing of the revenues/value created in the sugarcane production chain in a ratio of 70:30 between farmers and millers, is yet to be adopted.)
9	**Encourage Export /Innovation**	a. Efficiency/ Quality	Efficiency, quality and productivity in manufacturing make all the difference in export readiness. Safeguard duties could be short term solution but it may encourage inefficient production, costly production, thus not helping the economy in the long run. We need to make our manufacturing competitive and quality conscious to increase exports and materialise trade treaties. Our ICT sector is an example where have made it.	• Safe guard duties or increase in duties could be time bound giving time for industry to improve their processes. • Technology up-gradation required to augment productivity and efficiency could be incentivized or given tax holiday. This could be done even for climate change based technology up-gradation. • Banking interest rates could be also based on technology being used to make it competitive. *(For an example filing in new companies could be made yearly as they may not be making profit*

				initially. It could be optional to file monthly to take credits. Penalties could be lower. Big companies have departments to deal with these issues; entrepreneur is all alone struggling to set up business and has no appetite and resources to engage people only for these purposes.)
		b. Dispute Resolution	The stiff fines and penalties always lead to increasing the hurdle rate to start business leading to lower risk appetite to start a new business. These risks come over and above the risks of investment being put in. The start ups and formative companies in initial couple of years need this consideration.	The rules and regulations should not be same for Apple and Orange as company status. These need to be substantially different.
		c. Regional Trade Treaties and Inverted Duty Structure	It is important to recognise that some of the bilateral and regional trade treaties lead to inverted duty structure; as the final good has no duty under the treaty terms whereas inputs/ intermediate goods, etc are taxable.	These anomalies need to be removed. Also, some of these trade treaties need reworking/ redesigning. Otherwise, inverted duty structure can work against employment generation in the country.

Part II
PRE–BUDGET MEMORANDUM 2018-19: Direct Taxation

	Subject	Comments / Recommendations
		Corporate Taxation
1.	Reduction in corporate tax rates to 25% for Micro, Small and Medium Enterprises (MSMEs)	**Rationale**: ➢ The successive Finance Acts starting from 2016 to 2019 provide for lower corporate tax rate of 25% for small companies. The small companies are identified with reference to turnover less than specified limits (Rs. 5 Cr / Rs. 50 Cr / Rs. 250 Cr/ Rs. 400 Cr) in base year. The base year is two years prior to the relevant tax year. For example, for tax rate of 25% in F.Y. 2019-20, the turnover in F.Y. 2017-18 should be less than Rs. 400 Cr. ➢ The above mechanism gives rise to following difficulties :- − New companies which are set up after base year are unable to avail the benefit of concessional rate even if their turnover is less than specified limit. − Companies which qualify for 25% rate in one year on the basis of their turnover in relevant base year being less than specified limit may not qualify for concessional rate of 25% for next year if their turnover in year following base year exceeds specified limit. For example, a company having turnover < Rs. 400 Cr in F.Y. 2017-18 will qualify for 25% in F.Y. 2019-20 but will not qualify for 25% in F.Y. 2020-21 if turnover exceeds Rs. 400 Cr in F.Y. 2018-19. − Even a company which qualifies for 25% tax rate in F.Y. 2019-20 is not sure whether it will need to pay tax at 25% or lower or higher tax rate in F.Y. 2020-21 till the next Budget in February 2020. ➢ Thus, linking of concessional tax rate criteria to turnover/ gross receipts of one specific financial year brings 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. ➢ Further, despite normal corporate tax rate being reduced to 25% (plus applicable surcharge and cess), MAT rate is still retained at 15% (plus applicable surcharge and cess) on 'book profit' u/s. 115JB of the Act **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 reduced tax rate of 25% should be made applicable also to firms and LLPs to put them at par with companies. ➢ Also, the MAT rate should be reduced to 10% (inclusive of surcharge and cess) in line with reduction in normal corporate tax rate. ➢ In order to extend the benefit across small companies ie those having a turnover of less than Rs 400 crores, the proposal should be amended to say that for the purpose of determining the tax rates for companies incorporated after April 1, 2018, the total turnover or gross receipts of the year in which a domestic company is incorporated should be considered.

2.	Tax on income of certain domestic companies (S. 115BAA) and related MAT issue	**Rationale:** ➢ A new section, ie S.115BAA was introduced vide The Taxation Laws (Amendment) Ordinance, 2019 ('the Ordinance') wherein the total income of certain domestic companies for previous year relevant to assessment year beginning on or after April 1, 2020 would at the option of the company be taxed at the rate of 22% (plus surcharge and cess). ➢ The option to avail the reduced rate of tax is subject to fulfilment of certain conditions prescribed therein. Further, once the option is exercised for any previous year, the same shall not be withdrawn. ➢ As per the clarifications issued by CBDT on October 2, 2019 vide Circular No. 29/ 2019, a company opting for a concessional tax rate would not be able to carry forward for set-off, the loss or depreciation as stated above and will not be allowed to avail MAT credit as well. ➢ The rationale behind MAT levy is that a taxpayer who avails incentives and deductions should pay some amount by way of minimum tax even though no tax is actually payable. It is the discretion of the Government to specify the amount of tax which it expects to receive under MAT. S. 115JB is a provision by which the Government enforces its expectations of fixing minimum tax liability. Non-applicability of s. 115JB is leading to an erroneous conclusion that MAT credit is not available for set-off under the 115BAA tax regime. Instead of denying the tax payer the benefit of set off of MAT credit on the premise that for that relevant year MAT is not applicable, the MAT liability should be considered as Nil in which case the tax liability as computed u/s 115BAA should be reduced by the MAT credit available for set-off (subject to brought forward MAT credit availability). ➢ MAT credit has always been treated akin to advance tax. Thus, similar to set off available for entire advance tax against tax payable, MAT credit should also be eligible for set off in entirety against normal tax payable. The taxpayers opting for concessional tax rate u/s.115BAA are required to sacrifice benefits of tax deductions and incentives. Such taxpayers should not be further penalized by taking away the benefit of MAT credit entitlement. The suggestion made in CBDT Circular for the industry to wait till entire MAT credit is utilized before opting for s.115BAA rate will defeat the very object of encouraging the industry to opt for lower tax rate without availing any tax incentives.

		➢ Alternatively, MAT credit should be granted for difference between s.115BAA rate of 22% and current MAT rate of 15% which will address Government's revenue concern if entire difference of 22% is allowed as MAT credit. ➢ The CBDT vide Circular No. 29/ 2019 dt 2 Oct 2019 also clarified that domestic company opting for 22% rate shall not be allowed to claim set-off of any brought forward loss on account of additional depreciation in the year in which option is exercised or any subsequent AY. The Circular further suggested that since there is no time limit within which company can opt for 22% rate, domestic company having brought forward losses on account of additional depreciation may, if it desires, exercise the option after set-off of losses so accumulated ➢ It is submitted that CBDT's suggestion leads to double jeopardy for the companies. While availing the set off-of carried forward additional depreciation, the company becomes liable to MAT. Thereafter, the company will also need to wait till MAT credit is fully utilized. Further, with expansions and replacements happening on regular basis and additional depreciation being a mandatory allowance, it will be difficult for company to switchover to s.115BAA in distant future if it waits for complete utilisation of unabsorbed additional depreciation loss and resulting MAT credit. This will defeat the very object of introducing s.115BAA to have a lower corporate tax rate without tax incentives to spur economic activity and reduce tax litigation ➢ To the extent there is unabsorbed additional depreciation loss or unabsorbed loss on account of section 35AD deduction for capital assets, the taxpayer cannot be regarded to have availed any tax incentive since the cost of the assets to that extent are not set off against profits of the business. Reference, in this regard, may be made to provisions of s.35AD(7B) which provides for 'claw-back' of deduction allowed u/s. 35AD if the asset is diverted from the specified business but even while clawing back the deduction allowed in past, the provision permits deduction for normal depreciation and WDV of the asset is also stepped up to that extent (refer, proviso to Explanation 13 to s.43(1)). This supports that the taxpayer should not be deprived of normal depreciation if conditions of s.35AD are not fulfilled

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		Recommendation: ➢ It is recommended that S.115JAA be amended to provide that accumulated MAT credit as on 01 April 2019 be allowed to be carried forward and set off against the tax liability even under the new regime where companies would opt for reduced rate of tax. Suitable computation mechanism for set off be provided under S. 115JAA of the Act. ➢ Section 35AD was introduced to reinvest the profits in the hospitality sector and in turn channelise the huge investment in tourism sector. Overall intention of introduction of lower tax provisions is to boost the economy in an immediate period of time. Denial of the set off brought forward losses for the past 35AD claims will delay the favourable impact of lower corporate tax rate as companies may not opt for lower tax rates immediately. It is therefore recommended that the CBDT may reconsider its view on allowability of set-off of brought forward loss attributable to additional depreciation and s.35AD deduction (@ 100% of cost of assets). Companies may be permitted to recoup the unabsorbed loss representing cost of the asset while paying lower tax @ 22%. This will provide more meaningful benefit to the industry and provide incentive to move over to lower tax rate (without availing incentives) at the earliest. ➢ Alternatively, it may be clarified that once domestic company opts for 22% rate and is denied the benefit of set off of unabsorbed loss represented by additional depreciation or s.35AD deduction, correspondingly, the WDV of the asset will be reinstated on which the company can claim normal depreciation. ➢ 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. 115BAA.
3.	Tax on income of newly established domestic manufacturing companies (S. 115BAB)	**Rationale/ Recommendations:** ➢ Similar to S. 115BAA as discussed above, S. 115BAB was introduced vide the Ordinance to tax newly established manufacturing companies ie companies set-up and registered on or after October 1, 2019 and has commenced manufacturing before March 31, 2023 at the rate of 15% subject to the following conditions: o It is not formed by splitting up or reconstruction of a business already in existence; o Does not use any plant or machinery previously used for any purpose; o Does not use any building previously used as a hotel or a convention centre, as the case maybe;

  - The company is not engaged in any business other than the business of manufacturing of any article or thing and research in relation to, or distribution of such article or thing manufactured or produced by it;
  - The total income has been computed without claiming any deduction u/s 32, 32AD, 33AB, 35AD or under Chapter VIA etc, set-off of loss relating to the said provisions, depreciation under section 32(1)(iia)

Eligibility

- The said section applies to any company engaged in the business of 'manufacture or production' of any article or thing. However, it is unclear whether generation of power or electricity and food production industry viz for hotel, air catering are also covered within the scope of s. 115BAB.

- In addition to the above, clause (a) of s.115BAB(2) extends the benefit of the lower 15% rate to only those companies who commence "manufacturing" by 31 March 2023 as against Clause (b) which covers both companies engaged in manufacturing as also production.

- One of the conditions imposed by s. 115BAB is that the company should not use any second-hand plant and machinery. Restriction on "use" instead of "transfer" (which term is generally used in other profit linked incentives such as u/s 10A, 10AA, 35AD, 80IA, 80IB, 80IC) of any plant or machinery previously used for any purpose in S. 115BAB could have unintended consequences and the same needs to be corrected. Also, the restriction should apply to the undertaking and that too only at the formation stage and not to the entity as a whole over its entire lifespan, as is the case with other profit linked incentives.

- **It is recommended that:**

  - Basis various judicial precedents which holds power generation as "generation of article or thing", s.115BAB should be amended to provide that companies engaged in the business of generation of power/ electricity / food production shall also be entitled to the benefits provided under the said section.
  - To avoid unnecessary conflict and align with the intention of the provision, it is

		recommended to amend Clause (a) above to also include a reference to "production". o Further, a logical reason should be provided of why any building previously used as a hotel or a convention centre should not be used in order to claim benefit u/s.115BAB. o Restrictive conditions under the erstwhile profit linked incentive provisions have been tested over time and introducing the new ambiguous language shall result in new interpretational issues and unintended consequences. Accordingly, the restrictions on use of second-hand machinery should be worded appropriately. The purpose will be adequately served if the language which has been hitherto consistently used for incentive deductions is adopted as part of this section as well. The restriction should be applied to use of plant and machinery previously in use which is transferred to the company. **Transactions with closely connected persons / Consequences of breach of conditions/ failure to qualify for the 115BAB regime** ➢ S.115BAB(4) provides for adjustment wherein the tax authority is of the view that owing to close connections between the domestic company and the transacting parties, the domestic company has reported income which is in excess of the regular income. Accordingly, as per s. 115BAB(4), the excess profits shall not be considered for the purpose of computing "profits and gains of such company" for the purposes of s. 115BAB. ➢ However, there is lack of clarity on the mechanism to calculate the tax payable on income which is hit by the provisions of S. 115BAB(4) i.e. whether it shall be eligible to claim concessional tax rate of 15% or would normal tax rates apply to it. ➢ Further, while s.115BAB stipulates conditions to be satisfied by a company exercising the option to avail lower tax rate of 15%, there is no clarity on the consequences that may follow in the event of breach of any of the conditions which result in the company falling outside the scope of s. 115BAB. There is no clarity as to whether regular tax rate ie 30% or the beneficial tax regime u/s 115BAA would be applicable to such taxpayer. ➢ **It is recommended that:** o It may be clarified whether the excess income arising on account of TP adjustment u/s 115BAB(4) shall be chargeable at concessional tax rate u/s 115BAB or normal tax rate, as the

		case may be. o Clarification be provided thatin case such profits / the company is not eligible to 15% tax rate u/s 115BAB(4), the said company if it has fulfilled all other conditions should be allowed to fall back to s.115BAA such that it can avail tax rate of 22% even though it has not exercised the said option in its Return of Income. o Alternatively, the said option should be provided to the taxpayer (either at the return filing / assessment stage) to avail the tax regime under S. 115BAA where for any reason it is considered that there is a breach of conditions prescribed in S. 115BAB. o Further, if there is a breach of condition by the company in a particular year, it should be clarified that the company shall not be eligible for the concessional tax regime only in the year of breach and that the breach of conditions will not impact the claim of the company in any of the past or future years where the conditions were otherwise fulfilled by the taxpayer.
4.	Clarify applicable rate of surcharge in case of special incomes u/s 111A, 112 etc. for companies exercising option u/s 115BAA/ BAB	**Rationale:** ➢ Special incomes such as STCG, LTCG taxable u/s 111A, 112, 112A etc. are outside the scope of concessional tax regime u/s 115BAA/ BAB and hence, they continue to be taxed at special rate of tax as per the provisions of Chapter XII of the ITA. ➢ As per the provisions of s. 115BAA/ BAB r.w. Finance (No. 2) Act 2019, income chargeable to tax u/s 115BAA/ BAB shall be levied surcharge at flat rate of 10% whereas special incomes such as STCG u/s 111A, LTCG u/s 112, 112A etc. shall continue to attract graded surcharge @ Nil/ 7%/ 12% depending on the relevant threshold of total income. For instance, for total income upto Rs. 1 Cr, no surcharge applies. For total income between Rs. 1 Cr and 10 Cr, surcharge @ 7% applies and for total income exceeding Rs. 10 Crs, the surcharge @ 12% applies. **Recommendation:** ➢ It is recommended that flat surcharge of 10% should apply to total income chargeable to tax u/s 115BAA/ BAB whereas surcharge @ Nil/ 7%/ 12% should apply if the special incomes such as STCG u/s 111A, LTCG u/s 112, 112A etc. (i.e excluding the income chargeable u/s 115BAA/ 115BAB) exceed the relevant threshold as prescribed for total income. ➢ Alternatively, a flat surcharge @ 10% may apply to all incomes earned by company exercising option u/s 115BAA/ 115BAB, including income taxable at special rate of tax.

5.	Clarity required in terms of surcharge rates on income earned u/s 115AD by FPI/ FIIs structured as trusts but classified as 'individuals' under the Act	**Rationale:** ➢ Finance (No.2) Act 2019 increased surcharge rate for individuals, HUFs, AOP/ BOIs, which had unintended impact on FIIs structured as trusts considering that the CBDT Press Release dated 31 July 2012 issued in the context of return filing by private discretionary trusts clarified that judicially, discretionary trust has been considered as an "individual". ➢ To correct the anomaly, the Ordinance withdrew the higher surcharge for non-corporates on certain capital market transactions for both domestic and foreign investors in terms of announcement vide Press Release dated 24 August 2019. However, the third proviso to s. 2(9) of the Finance (No.2) Act 2019 only referred to 'association of persons and body of individuals'. ➢ Where FPIs/ FIIs structured as trusts are classified as "individual" under the Act, ambiguity arises on the applicable rate of surcharge for capital gains income earned by them taxable u/s 115AD(1)(b). It is not very clear whether the withdrawal of surcharge is effective for FPIs/ FIIs in view of non-applicability of the third proviso which does not explicitly refer to individuals. Accordingly, issue arises with respect to determination of the correct rate of surcharge applicable to such FPIs/ FIIs. **Recommendation:** ➢ To achieve the purpose intended by the Government and to reduce the unintended hardship caused to the FIIs/ FPIs, it is recommended that clause (aa) of third proviso to s. 2(9) of the Finance Act, 2019 withdrawing the enhanced surcharge rates for FPIs may be amended to include reference to individuals and Artificial Juridical Person (AJP) also.
6.	Scrap super rich dividend tax (s.115BBDA)	**Rationale**: ➢ Super rich dividend tax levied u/s 115BBDA 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 46.77%. 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 55.86% for the resident shareholder. o DDT rate has been gradually increased from 10% when it was first levied in June 1997 to current rate of 20.56% (by grossing up base rate of 15% and adding surcharge of 12% and education cess of 4%). **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.
7.	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, even after the recent Ordinance, Government has not eliminated MAT but reduced MAT rate to 15% (plus applicable surcharge and cess) for companies which continue to avail tax incentives and/or wish to fully utilise the carry forward of losses on account of incentives like additional depreciation or fully utilise existing MAT credit.

➢ 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 are 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 has been amended vide Companies Act (Amendment) Act 2017 in terms of which it is 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.

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		➢ 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 amendment to s.123 of 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 second provisos to s.115JB(2A) and s.115JB(2C) provide that where fair valuation change recognised in OCI or recognised as transitional adjustment in first Ind-AS year in respect of an asset or investment is not included in ‘book profit’ in the year of recognition in OCI or in year of transition, as the case may be, it shall be included in ‘book profit’ in the year in which such asset or investment is retired, disposed, realised or otherwise transferred. The rationale of this provision is that fair value change is not captured for MAT in year of recognition in books as per Ind-AS mandate but deferred till the year of actual realisation of such change. This is a fair proposition. However, it creates difficulty where the asset or investment is transferred in a tax neutral transaction like amalgamation or demerger. ➢ To illustrate, A Ltd holds shares of B Ltd which is fair valued under Ind-AS in books of A Ltd from cost of Rs. 200 to fair value of Rs. 1000. The fair value change of Rs. 800 is not included in ‘book profit’. B Ltd merges with C Ltd and A Ltd receives shares of C Ltd in lieu of shares of B Ltd. Assume that fair value of C Ltd’s shares is same as fair value of shares of B Ltd (Rs. 1000). The transaction of amalgamation may be interpreted to be ‘disposed, realised or otherwise transferred’ triggering inclusion of Rs. 800 in the ‘book profit’ of A Ltd in the year of amalgamation. Such interpretation will defeat the intent of s.115JB(2A) and s.115JB(2C) to defer MAT till the year of actual realisation of fair value gains. Hence, an exclusion ought to be provided in these provisions for transfer by way of tax neutral transactions.

		➢ Further, the MAT provisions provide manner to compute book profits in the first year of transition to Ind-AS ie for First Time Adoption of IND-AS. However, in a scenario where newly notified Ind-AS is adopted pursuant to requirement by MCA (for example Ind-AS 115 – Revenue from Contract with customer or Ind-AS 116 Lease) by a company which has already transitioned to Ind-AS framework in earlier year(s), there is no express provision under MAT which provides for the treatment of adjustments arising in the books of account on account of adoption of such new Ind-AS. **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. MAT rate should be reduced to 7.5% of book profit, instead of 15% as amended by recent Ordinance. ➢ 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. 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.

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		➢ 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 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. ➢ The second provisos to s.115JB(2A) and s.115JB(2C) should be amended to exclude retirement, disposal, realisation or transfer of fair valued asset or investment under a tax neutral transaction like amalgamation or demerger. The fair valuation gain may be taxed when the new asset or investment received on tax neutral transfer is sold. ➢ An express provision should be included for treatment of adjustments arising in the books of accounts on account of adoption of new IND-AS pursuant to transition to IND-AS framework in earlier years.
8.	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. 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. **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.
9.	Phasing out of weighted deduction u/s 35(2AB)	**Rationale**: ➢ The Finance Act 2016 has reduced weighted deduction of R&D expenses under section 35(2AB) in respect of DSIR approved in-house R&D facility to 150% from April 2016 and 100% from April 2020. ➢ 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). ➢ Hong Kong has also recently amended its R&D tax benefit regime. Under the new Hong Kong law, effective for expenditures incurred on or after 1 April 2018, qualifying R&D expenditures on a qualifying R&D activity (wholly undertaken and carried on within Hong Kong) will be eligible for a 300% deduction for the first HK$2 million (USD250k), and the remainder, a 200% deduction without limitation. Nonqualifying R&D expenditures will continue to be eligible for the normal 100% deduction. ➢ 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 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.

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		➢ 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)
10.	Investment allowance (S.32AC)	**Rationale** ➢ Section 32AC granted weighted deduction @ 15% on investment in plant and machinery. However the section was operative only upto 31.03.2017. ➢ The pace of private investment in the economy has considerably slowed down post efforts by the banking industry to resolve NPA cases. ➢ There is a need to boost the investment in plant and machinery as a part of make in India initiative. It will have positive externalities in the form of increase in employment, expansion of MSME sector, ancillary industries, etc. ➢ Globally, countries like US are providing tax benefit of immediate expensing for encouraging more investment with a view to create more jobs. **Recommendation** ➢ Hence it is suggested that the benefit under section 32AC be re-introduced.
11.	Deduction of capital expenditure in respect of greenfield projects	**Rationale:** ➢ The deduction under s. 35AD is available to a company building and operating, anywhere in India, a hotel of 2 star or above category as classified by the Central Government in respect of the whole of any expenditure of capital nature incurred by him. ➢ The section nowhere mentions that the star category certificate is to be issued by the Central Government before claiming the deduction. The process to obtain star category certificate post opening of the hotel is time consuming. As there is contradictory view taken by the department, a clarification should be issued or the section should be amended in this regard.

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12.	Recommendations for encouraging the Electric Vehicles Industry (S. 35AD)	**Rationale:** ➢ Finance Minister in her budget speech of 2019-20 had announced investment linked income tax exemptions under section 35AD for set up of mega-manufacturing plants in sunrise and advanced technology areas such as Semi-conductor Fabrication (FAB), Solar Photo Voltaic cells, Lithium storage batteries, Solar electric charging infrastructure, Computer Servers, Laptops, etc. However, no corresponding benefit was inserted in section 35AD ➢ It may be noted that section 35AD presently contains an enabling provision for the CBDT to notify specified business in the nature of setting up and operating a semi-conductor wafer fabrication manufacturing unit as per guidelines laid down in Rule 11-OB of the Income-tax Rules. For this purpose, “semiconductor wafer fabrications” may not cover most of the items referred in the Budget Speech of 2019-20 like *Solar Photo Voltaic cells, Lithium storage batteries, Solar electric charging infrastructure, Computer Servers, Laptops, etc* **Recommendation:** ➢ It is recommended to insert the aforesaid businesses referred in the previous Budget Speech be included in other specified business listed in section 35AD. ➢ R&D in sunrise industry may be incentivized by extension of weighted deduction benefit u/s 35(2AB). ➢ End users may be given higher depreciation benefit on purchase of electric vehicles. ➢ Setting up of battery/charging stations may be incentivized by giving higher depreciation on the equipment/charging system. ➢ In respect of deduction available to individual taxpayers for interest on loan taken for purchase of electric vehicles u/s 80EEB, the Explanatory Memorandum to Finance (No.2) Bill 2019 states that the deduction is available only in respect of first electric vehicle purchase, while the Act does not specify any such stipulations. Proper clarity should be provided for certainty and to avoid any possible litigation.

13.	Tax Treatment of Corporate Social Responsibility Expenditure (‘CSR’) (S. 37)	**Rationale:** ➢ As per the Companies Act, every company meeting the specified threshold shall mandatorily spend 2% of their average net profits on CSR ➢ As per the Act, the expenses on CSR incurred by the company shall not be allowed as a deduction ➢ The companies are incurring such expenses to assist the Government in social projects for the country. Accordingly, denying a deduction of the said expenses is unfair. **Recommendation:** ➢ It is requested that an express provision be made in the Act to the effect that expenditure incurred on CSR is allowed as deduction while computing tax liability ie it is recommended to allow deduction of expenses incurred for CSR activities under S. 37 and to delete Explanation 2 to S.37.
14.	Tax Treatment of Employee Stock Ownership Plan (‘ESOP’) Expenditure	**Rationale:** ➢ Presently there is no express provision in the Act about allowability of ESOP expenditure while computing taxable income. There are various judicial precedents from different Courts / Tribunals giving favourable views with regard to allowability of ESOP expenditure **Recommendation:** ➢ Since ESOP expenditure is in the nature employee compensation, the same should be allowed as revenue expenditure based on method of accounting regularly adopted by the taxpayer (either Ind-AS or IGAAP, as applicable).
15.	Aligning the applicability of the S. 56(2)(viib) in case where conditions of DIPT notification are not fulfilled with the principal	**Rationale:** ➢ Section 56(2)(viib) provides for taxation of excess of issue price of shares over its fair market value, in case of private companies, where the shares are issued at premium to a resident. Certain eligible start-ups who fulfil specified conditions are exempt from applicability of aforesaid section. Finance Bill, 2019 made the provision of Section 56(2)(viib) applicable in case of aforesaid start-ups if they fail to comply with the conditions.

	provision and applicability of S. 79 benefit	➢ Further, Section 79 was amended to allow the eligible entity to carry-forward losses also in case where minimum 51% shares are held by same persons. However, the amendment has been made effective from April 1, 2020. ➢ DPIIT Notification No. GSR 127(E) dated 19 February 2019 has relaxed the eligibility norms for 'start-up' as compared to earlier notifications. The turnover threshold for startup entity has been enhanced from Rs. 25 Cr to Rs. 100 Cr. Further, the qualifying period has been increased from 7 years from date of incorporation to 10 years. However, the income tax benefits in S.79 and S.80IAC is still retained at Rs. 25 cr and 7 years. It is only fair that the norms for income tax benefits should be aligned and move in tandem with DPIIT norms **Recommendation:** ➢ As regards Section 79, the same may be considered to be made effective from April 1, 2018 (when the section was amended to specifically introduce provisions for Start-ups), so that the companies whose shareholding changed in the interim period are also covered within the ambit. ➢ The provisions of S.79 and S.80IAC should be amended to align with current DPIIT eligibility norms for startup by increasing the turnover cap to s. 100 Cr and eligible period to 10 years.
16.	Relaxation u/s.68 to Cat I and Cat II AIF	**Rationale / Recommendation:** ➢ S.68 was amended by Finance Act 2012 to require unlisted companies to explain 'source of source' in respect of share application / capital / premium, etc and also introduced s.56(2)(viib) to tax excessive premium received by unlisted companies from residents. But in both provisions, exception was carved out for share capital raised from Venture Capital Fund / Venture Capital Company. ➢ Finance (No.2) Act 2019 has amended s.56(2)(viib) to extend the carve out to all the Category I and Category II SEBI registered AIFs. However, similar consequential amendment is not made in s.68. Since Category I and II AIFs are regulated entities like VCC/VCF, they should be exempted from s.68 as well.

17.	Profit linked deduction for affordable housing projects – Section 80-IBA	**Rationale:** ➢ S.80-IBA grants profit linked tax holiday to developers in respect of profits and gains from development of affordable housing projects approved on or before 31 March 2020 ➢ With a view to align with GST Act definition of 'affordable housing project', the conditions of s.80IBA were modified by Finance (No.2) Act 2019. ➢ The size restriction on residential unit was liberalised to 60 sq. mtrs if the project is located in metropolitan cities of NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Mumbai (whole of Mumbai Metropolitan region), Chennai, Kolkatta, Bengaluru and Hyderabad and 90 sq. mtrs where the project is located in any other place. ➢ But a new condition was inserted to provide that the stamp duty value of the residential unit shall not exceed Rs. 45 lakhs. ➢ The stamp duty value restriction of Rs. 45 lakhs will be difficult to comply till the last residential unit in the project is sold. It may be noted that due to subdued market conditions, the sale of residential units may spread over 4 to 5 years in a project. In the meantime, the stamp duty ready reckoner rates may undergo revision and the taxpayer-developer will be deprived of the benefit for the unsold inventory. ➢ The value restriction of Rs. 45 lakhs is not in sync with increase in permitted size of affordable residential unit from 30 sqmtrs to 60 sqmtrs (645 sq. ft) for metropolitan areas. The land prices in metropolitan cities like Mumbai is very high as compared to other locations. It is not possible to sell residential flat of 645 sq. ft at low value of Rs. 45 lakhs. This condition will be difficult to comply for approvals which are already taken or on the verge of receipt on or before 1 September 2019. ➢ The changes in the conditions are substantial. For a new project for which approvals are yet to be obtained, the developers will need to rework the project parameters to fit within the new criteria which will take substantial period of time. Processing of approvals by local authorities is a time-consuming process over which the developer has no control. The existing time limit of 31 March 2020 for obtaining approvals will be very short

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		Recommendation: ➢ The stamp duty value restriction of Rs. 45 lakhs may be put as on the date of approval to avoid a situation of taxpayer being deprived of the benefit if the rates rise in subsequent years. ➢ The value limit of Rs. 45 lakhs must be suitably enhanced to Rs. 65 lakhs for metropolitan areas in recognition of economic realities and to give meaningful benefit to real estate industry and homebuyers. The limit of Rs. 45 lakhs can continue to be applied to non-metropolitan areas. ➢ The sunset date of 31 March 2020 should be extended to at least 31 March 2022 to allow sufficient time to developers to rework the project parameters as per new conditions and take approval from local authorities.
18.	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. ➢ S.115BAB was introduced vide the Ordinance to provide an impetus to the domestic manufacturing companies by allowing a reduced rate of tax. However, as witnessed, the beneficial reduced tax rate is only provided for companies engaged in the production or manufacture of any article or thing. Similarly, s.80JJAA provides benefit in the form of deduction of 30% of additional employee cost. ➢ Additional employee cost is defined to mean the total emoluments paid / payable to 'additional' employees employed during a particular year and whose emolument is not more than Rs 25,000 per month. The threshold of Rs 25,000 is too low given the current scenario in India as well as globally. In order to make India known as a country providing value added services having a talent pool, the said threshold of Rs 25,000 for allowing deduction to the companies engaged in service sector is very low. ➢ Further, it is 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.

		➢ The section is clear that it allows deduction for 3 years. Hence, 30% of salary cost of qualifying employee recruited in Year 1 is available in Years 1, 2 & 3. However, Form 10DA in which audit report has to be obtained merely refers to additional employees of current year and 30% of salary paid to new qualifying employees of current year. It does not refer to deduction available in respect of qualifying employees recruited in past 2 years. This creates practical difficulties in furnishing of audit report and ITR. It is also apprehended that the AO may erroneously interpret the law based on faulty format of audit report leading to litigation. ➢ S.80JJAA(2)(b) provides that the deduction shall not be available if the business is acquired by the assessee by way of transfer from any other person or as a result of any business reorganisation. This is intended to deny deduction in respect of employees who newly join the taxpayer-entity by virtue of such transfer/business reorganisation. However, a literal reading of this provision can lead to erroneous interpretation that the taxpayer will become permanently disqualified to claim s.80JJAA deduction even in respect of employee who newly join post the transfer/business reorganisation. This can lead to litigation. It is submitted that the object of the deduction being to encourage new employment, the employees who join post the transfer/business reorganisation should not be disqualified. **Recommendation**: ➢ Entities whose additional per employee emolument is more than Rs 25,000 should also be allowed the standard deduction. It is recommended to increase the threshold to atleast Rs 100,000. ➢ Clarity may be provided on whether s.80JJAA is a standard deduction or year-on-year deduction. Further, Explanatory Circular may be issued on computing quantum of s.80JJAA deduction in different practical scenarios like newly formed business, amalgamation, demerger, slump sale, etc. ➢ Form 10DA may be amended in line with correct position of deduction u/s.80JJAA being available for current year's new employees as also new employees of past two years.

		➢ S.80JJAA(2)(b) may be amended to provide that nothing contained in that clause will apply to additional employee who is not employed by virtue of such transfer or business reorganisation.
19.	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.
20.	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: o High cost of living in developed countries o Risk of online fraud in some countries in view of which employees are reluctant to carry travel card. o There may be reluctance on accepting card by the payee at many places o Insufficient balance in card o 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.
21.	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. ➢ The extension of coverage to deposit taking NBFCs and systematically important non-deposit taking NBFCs within scope of s.43D by Finance (No.2) Act 2019 to permit them to recognize interest on prescribed categories of bad and doubtful debts on actual receipt or credit to P&L, whichever is earlier is a welcome amendment and will address the challenges arising to such taxpayer due to ICDS IV which requires recognition of interest income on time basis regardless of absence of reasonable certainty of ultimate collection.

		➢ However, presently there is controversy on Rule 6EA which prescribes the categories of bad and doubtful debts covered by s.43D. This rule was notified in 1992 based on RBI guidelines then prevailing and has not kept pace with evolving guidelines. It is not in sync with extant RBI guidelines. For instance, extant RBI guidelines treat debt overdue for 90 days as NPA whereas Rule 6EA prescribes 180 days. This gives rise to controversy on taxation of notional interest income on overdue debts between 90 to 180 days despite non-recognition in books of account **Recommendation**: ➢ 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.
22.	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[1] 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 investment in operating companies listed on stock exchanges. Even shareholders of

[1] *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.*

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.

- Further, while computing DDT on dividend declared/payable in the financial year by the company, the provisions of section 115-O allows set off of the dividend received from its subsidiary co. during the **financial year** where the subsidiary co. has paid DDT on dividend paid to the holding company. The term “**during the financial year**” appearing in this section has created confusion as to whether holding company can take set off of the dividend received from its subsidiary during the earlier financial year (Say FY 2015-16) against the dividend declared in current financial year i.e. FY 2016-17

- 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. ➢ A clarificatory amendment is required allowing set off/credit of one time dividend received from subsidiary irrespective of the year in which the dividend has beenpaid by the subsidiary. ➢ 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.

23.	Disallowance u/s. 14A	**Rationale** ➢ Section 14A has witnessed maximum litigation right since it was first introduced in 2001. The Government has time and again made efforts to reduce litigation, but taxpayers continue to face difficulties on year-on-year basis. ➢ The provision is intended to avoid 'double benefit' to taxpayers by way of exempt incomes and deduction of corresponding expenses against taxable incomes. However, if the income has suffered tax in alternative manner, there is no justification for disallowance of expenses. It is submitted that while dividend which has suffered DDT is legally a tax-exempt income, in reality, there is economic double taxation thereof since company pays DDT and the shareholder also has to pay tax by being unable to deduct the related expenses against other taxable incomes. Similar principle applies to other forms of exempt income like share of profit from firm, LLP, etc. ➢ With a view to reduce litigation on this issue, Justice Easwar Committee had recommended that incomes which have suffered tax by way of DDT or entity level taxation should not be treated as exempt income. However, the Government has not yet implemented this recommendation. ➢ Incidentally Rule 8D was amended in 2016 based on Justice Easwar Committee's recommendation to remove the limb of disallowance of pro-rata indirect interest expenditure but the disallowance under third limb was increased from 0.5% of annual average value of investments to 1% of monthly average value of investments. This has resulted in increase in disallowance of notional expenses. ➢ An additional difficulty arising due to normative computation of disallowance at 1% of average value of investments is the accounting mandate under Ind-AS to fair value investments in books (other than investment in subsidiaries, JVs or associates). This leads to highly artificial disallowance based on fair value of investment rather than cost actually incurred by the taxpayer. The erstwhile Rule 8D(3) provided that the value of investments

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		should be computed by ignoring revaluation. However, this provision was omitted in 2016 leading to higher artificial disallowance. The disallowance should fairly be based on actual expenditure incurred which is with reference to the cost of the investment and not its fair value. ➢ Another aspect of controversy is whether Rule 8D can be applied while computing 'book profit' u/s. 115JB of the Act. The Special Bench of Delhi Tribunal in the case of ACIT vs. Vireet Investment Pvt. Ltd ([2017] 165 ITD 27 (Delhi - Trib.) (SB) held that the normal computation and book profit computation being distinct, the normative disallowance as per Rule 8D cannot be applied to 'book profit' computation which has to be based on expenses debited to P&L A/c. ➢ Further, there is ongoing controversy over applicability of disallowance u/s. 14A in absence of exempt income arising from any particular tax-free investment arising during a year. While High Courts have consistently ruled in favour of taxpayers on non-applicability of s.14A where no exempt income is earned, Department's position as clarified in Circular No. 5/2014 dated 11.2.2014 is that the disallowance can apply even if there is no exempt income. It is necessary to put an end to such ongoing litigation. The Department should accept the position reiterated by multiple High Court rulings. **Recommendations** ➢ The recommendation made by Justice Easwar Committee to put a clarificatory provision in s14A that dividend received after suffering DDT and share income from firm/LLP suffering tax in the firm's/LLP's hands will not be treated as exempt income be accepted by the Government and immediately implemented. ➢ It may also be clarified in s.14A that it will not apply if there is no exempt income earned from tax free investment during the relevant financial year ➢ Rule 8D may be amended to scale down the artificial disallowance under second limb from 1% of average value of investments to 0.5% of average value of investments. It may be clarified that the average value needs to be computed by ignoring revaluation as was the

		position prior to amendment of Rule 8D in 2016 ➢ It may also be clarified preferably through a Circular that computation as per Rule 8D cannot be applied to 'book profit' computation u/s. 115JB which has to be based on actual expenses debited to P&L A/c. ➢ CBDT Circular No. 5/2014 dated 11.2.2014 stating that the disallowance can apply even if there is no exempt income may be withdrawn on retrospective basis and the ratio of multiple High Court rulings in favour of taxpayer may be accepted by the Tax Department.
24.	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'.
25.	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.

26.	Dividend distribution tax @ 30% (plus surcharge and cess) on deemed dividend by way of loan or advance given by closely held company to shareholder/ concern in which such shareholder is interested (S.115-O)	**Rationale**: ➢ S.2(22)(e) was amended by Finance Act 2018 to provide that in the event of grant of loans and advances by closely held company either to the shareholders having 10% equity or to a concern in which such 10% equity holder has 20% beneficial ownership, the company itself will be liable to pay dividend distribution tax u/s.115-O at the applicable rate to the extent of accumulated profits, which the company possesses. Such tax is payable regardless of the fact that the loan may have been given against proper interest and may have been repaid on due date. The DDT has to be paid within 14 days of payment of loan or advance and any default in such compliance attracts interest and prosecution consequences. ➢ It may be noted that the Companies Act 2013 places many restrictions on loans and advances to shareholders or group concerns and any violation attracts fine and punishment under the Companies Act. Hence, there is no need of artificial provision like s.2(22)(e) in the Act. ➢ It may not be possible for a company giving loan to ascertain the beneficial holding of its shareholders in another concern. The company will be dependent wholly on the certification of the shareholder. Further, if the company proceeds on the basis of the certification provided by shareholder and the same turns out to be incorrect at subsequent stage, there might be adverse consequences considering the company and its principal officer will be regarded as assessee in default and all consequences of interest, prosecution, etc. will consequently follow ➢ It appears that the amendment was intended to resolve the controversy over in whose hands the loan or advance should be taxed if given to a concern in which shareholder has interest (i.e whether it should be taxed in hands of shareholder or the concern receiving the loan). The SC in the case of Madhur Housing and Development Company (TS-462-SC-2017) had held that the amount should be taxed in hands of shareholder but subsequent Constitution Bench of SC in the case of National Travel Services (TS-29-SC-2018) has dissented from this view and has referred the matter to a larger bench. The controversy could have been easily resolved by amending s.2(22)(e) to identify the person in whose hands the amount will be taxed instead of resorting to more cumbersome and harsh provision of DDT in hands of the company. ➢ In practice, unlike other forms of dividend like interim or final dividend or deemed dividends covered under other clauses of s.2(22), controversy of loan or advance given by closely held

		company to substantial shareholder or concern in which such shareholder holds substantial interest generally arises in assessment much after the date of payment of loan or advance. The company may not be aware that bonafide loans given will be treated as deemed dividend. ➢ Prior to amendment, if the discovery of deemed dividend was made at a subsequent stage, the concerned shareholder could still make compliance by paying up taxes and offering the same while filing return of income. Under the new DDT regime, the company will get exposed to interest u/s. 115P and prosecution u/s. 276B if it fails to pay DDT within 14 days of payment of loan or advance. Since the deemed dividend by way of loan and advance stands on different footing than other forms of dividend, it is recommended that interest and prosecution should not be triggered for the company if the DDT is paid within 30 days of the end of the relevant financial year. This will protect interests of both taxpayers and Revenue. It may be noted that under TDS provisions, time of 30 days is permitted for paying up TDS for tax deducted on last day of financial year without inviting any adverse consequences. ➢ The CBDT had earlier clarified through Circular No. 19/2017 dated 12 June 2017 that s.2(22)(e) is not triggered in case of trade advance given in ordinary course of business. The ought to be reiterated in context of DDT. **Recommendation**: ➢ Instead of levying DDT on deemed dividend, s.2(22)(e) should specify the person in whose hands such dividend shall be taxed if loan/ advance given to a concern in which shareholder has interest (i.e whether it will be taxed in hands of shareholder or the concern receiving the loan). ➢ Without prejudice, it should be clarified that trade advances as clarified in Circular No. 19/2017 dated 12 June 2017 are not impacted by the amendment. ➢ Since deemed dividend u/s. 2(22)(e) stands on different footing than other forms of dividend, it is also recommended that longer time for payment of DDT on deemed dividend u/s. 2(22)(e) should be provided i.e within 30 days from end of the relevant financial year to avoid adverse consequences of interest and prosecution.

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27.	Amendments to align the ITA with ICDS notified u/s. 145(2) (w.e.f A.Y. 2017-18)	**Rationale**: ➢ A set of provisions were inserted by Finance Act 2018 with retrospective effect in order to align ITA with ICDS in light of Delhi HC ruling in the case of Chamber of Tax Consultants vs. UOI (2018) (252 Taxman 77), which struck down several provisions of ICDS by holding that ICDS cannot override the law settled by judicial precedents on interpretation of ITA. ➢ FA 2018 carried out retrospective amendments which were intended to regularise ICDS compliance by large number of taxpayers and prevent any further inconvenience to them as also to provide certainty in wake of recent judicial precedents on the issue of applicability of the ICDS. ➢ Even before ICDS was introduced, it was represented by us that ICDS merely seeks to create timing differences by preponing taxation of incomes and postponing deduction of expenses/losses. It creates uncertainty for taxpayers, adds onerous compliance burden and opens new vistas for litigation without having meaningful impact on revenue. Hence, our principal recommendation was to scrap ICDS. ➢ As per Justice Easwar Committee's first report released in January 2016, ICDS, at best, brings only timing difference on recognition of revenue/expenditure, but, in the process, creates more litigation and more confusion outweighing the gains. ➢ The aforesaid Delhi HC ruling and proposed retrospective amendments bear testimony to potential litigation under these provisions ➢ Formulation of ICDS does not presently represent a known international practice – much less, the best international practice. ➢ ICDS are inconsistent with Government's avowed object of stability of tax policy, ease of doing business and reducing litigation. Hence, as a policy, ICDS should merely restrict itself to elimination of accounting alternatives available, if any, in ICAI Accounting Standards and not seek to disturb existing tax practice. ➢ While the object is to align ITA with ICDS, certain of the provisions are in conflict with ICDS which may add to the existing complexity. Some illustrations are as follows :-

		▪ Presently, ICDS clarify that they are not applicable to individuals or HUF not liable for tax audit u/s.44AB of the ITA as well as taxpayers following cash system of accounting but there is no such clarification in the retrospectively inserted provisions. There is no carve out for taxpayers following cash method of accounting to whom ICDS do not apply. ▪ While MTM losses are to be disallowed, there is no clarity whether MTM gains are also to be ignored. FAQ No. 8 in Circular No. 10/2017 dated 23 March 2017 had clarified that even MTM gain will not be taxed and such gain will taxed only upon actual realization but no such provision is proposed in ITA. ➢ Since ICDS clarifies that statutory provisions of the Act shall prevail over ICDS in case of conflict, the above illustrations raise doubts whether they shall override more favourable treatment provided in ICDS. The above are merely illustrations to highlight the potential for high litigation of the retrospective amendments. ➢ As per accounting standards, income and expenses get accounted net of excise duty, VAT etc. where credit of such taxes could be availed in future. Section 145A(ii) and ICDS II mandatorily requires restatement of sales, purchases and inventory inclusive of such taxes. This requires restatement of revenues & expenses. It has already been held by Supreme Court in the case of CIT v. Indo Nippon Chemicals Co. Ltd (261 ITR 275) that either of the method (inclusive or exclusive of taxes) when correctly followed results in same income and is a revenue neutral exercise. However presence of such provisions give rise to unnecessary litigation. **Recommendation**: ➢ We reiterate our principal representation that ICDS should be withdrawn. ➢ The inconsistences between the statutory provisions and ICDS should be removed to remove any uncertainty on interpretation. To illustrate :- o Clarify that MTM gain shall not be taxed in line with treatment for MTM loss u/s 36(1)(xviii) and s. 40A(13). o Clarify that for banks and other authorised dealers offering forward exchange contracts to their constituents, MTM loss on forwards shall be allowed as per RBI Guidelines.

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<table>
<tr><td>28.</td><td>Carry back of losses.</td><td>Rationale
➢ Provision relating to carry back of losses are prevalent in many developed countries. This blends with the commercial reality that subsequent year's losses reduce the accumulated profits and returns to the shareholders.
Recommendation
➢ Such provisions should be introduced in the Income-tax Act and carry back of losses upto 3 to 5 years be allowed.</td></tr>
</table>

		○ Clarify that s.43AA dealing with taxation of forex fluctuation does not apply to individuals/HUFs not having business income and/or not liable to tax audit. ○ Clarify that opening balance of FCTR as on 1 April 2016 shall not taxed on upfront basis in F.Y. 2016-17 (A.Y. 2017-18). ○ Clarify that 'grandfathered' construction/service contracts which are incomplete as on 1 April 2016 will not be required to be mandatorily recognised on POCM basis. ○ Clarify that taxation of government grants shall be in accordance with ICDS. ○ Section 145A(ii) requiring restatement of purchases, sales and inventory (on inclusive basis) be withdrawn
28.	Carry back of losses.	**Rationale** ➢ Provision relating to carry back of losses are prevalent in many developed countries. This blends with the commercial reality that subsequent year's losses reduce the accumulated profits and returns to the shareholders. **Recommendation** ➢ Such provisions should be introduced in the Income-tax Act and carry back of losses upto 3 to 5 years be allowed.
29.	Amendments made for removal of difficulties faced by taxpayers	**Rationale:** ➢ Finance (No.2) Bill 2019 introduced following amendments which are listed under the caption of "Removing difficulties faced by taxpayers" in the Explanatory Memorandum. But the effective date is different for different provisions as follows:-

Sr	Provision	Effective date
1	Facilitating demerger of Ind-AS companies by relaxing the condition of transfer at book value by ignoring revaluation	1 April 2020 (A.Y. 2020-21)
2	Relaxing the provisions of s.201 and 40(a)(i) in case of TDS default on payments to non-residents	1 September 2019 for s.201 1 April 2020 (A.Y. 2020-21) for s.40(a)(i)
3	Clarification with regard to Assessing Officer's power in respect of modified return of income filed in pursuance to signing of APA	1 September 2019

4	Clarification with regard to provisions of secondary adjustment and giving an option to assessee to make one-time payment	1 April 2018 for clarificatory amendments and 1 September 2018 for one-time option
5	Concessional rate of STCG to certain equity-oriented fund of funds	1 April 2020 (A.Y. 2020-21)
6	Pass through of losses in case of Category I and Category II Alternative Investment Fund (AIF)	1 April 2020 (A.Y. 2020-21)
7	Provision of credit of relief provided under section 89	1 April 2007
8	TDS on non-exempt portion of life insurance pay-out u/s. 194DA	1 September 2019
9	Clarification regarding definition of "accounting year" in s.286	1 April 2017

- As can be seen from above table, although all provisions are meant to remove difficulties and/or clarify the law, some amendments are being made on retrospective basis while others are made on prospective basis. It is understandable that amendments for TDS u/s. 194DA or procedural provisions like s.201 may be made on prospective basis, but the substantive provisions impacting computation of income ought to made on retrospective basis.

Recommendation:

- Ind-AS became applicable from F.Y. 2016-17 (A.Y. 2017-18) in phased manner to Indian companies. The MAT framework for Ind-AS companies was introduced by Finance Act 2017 with effect from A.Y. 2017-18. Hence, s.2(19AA) amendment for demerger by Ind-AS compliant companies should also be made from A.Y. 2017-18 to avoid any unwarranted litigation on tax-neutrality of Ind-AS demergers which have happened till 31 March 2019.

- Similarly, the anomaly regarding expense disallowance for TDS default between non-residents and residents sought to be addressed by proposed amendment to s. 40(a)(i) crept in 1 April 2013 when Finance Act 2012 amended s.201 and s.40(a)(ia) in respect of payments to residents. Hence, amendment to s. 40(a)(i) should be ideally be made effective from 1 April 2013. Nevertheless, since amendment to s.201 being procedural in nature is being made from 1 September 2019, the amendment to s.40(a)(i) should be made from 1 April 2019.
- Concessional rate of STCG to certain equity-oriented fund of funds under s.111A should be made from 1 April 2019 aligned with insertion of s.112A which introduced 10% tax on LTCG on such units.

		Mergers & Acquisitions and Business reorganisation related suggestions
30.	Sec 72A (Satisfaction of conditions by amalgamating and amalgamated Companies)	**Rationale:** ➢ As per the section on carry forward and set off of accumulated loss and unabsorbed depreciation in amalgamation and demerger, amalgamated company will be allowed carry forward and set-off of losses consequent to amalgamation only if additional conditions are satisfied by the amalgamating company i.e. :- • it has been engaged in the business for at least three years during which the accumulated business loss was incurred or the unabsorbed depreciation was accumulated; and • As on the date of amalgamation, it has continuously held at least three-fourths of the book value of fixed assets, which are held by it two years prior to the date of amalgamation. ➢ Amalgamated company to satisfy following conditions: – • three-fourths of the book value of fixed assets of the amalgamating Co. be held for at least five years • Continues same business as that of amalgamating Co. for at least five years ➢ Achieving installed capacity may not be possible for the hotel sector companies, which are given the benefit under this section, hence these criteria should not be made applicable to hotel and other service sector companies. It will enable recycling of assets and procuring of assets of the latest technology and make the amalgamation viable. **Recommendation:** ➢ The additional conditions as stated above, should be deleted. Alternatively, continuity to hold assets of the amalgamating Co. should be confined to 50% of the book value. Also, continuance of business of amalgamating companies for 5 years should be reduced to two years

31.	Indirect transfer – Capital gains on transfer of shares of foreign entity deriving substantial value from assets located in India (Proviso 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? − 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:

  - 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.

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32.	Issues arising due to re-categorization of foreign portfolio investments (FPI) under the SEBI (FPI) Regulations, 2019	**<u>Rationale</u>** The erstwhile SEBI (FPI) Regulations, 2014 categorised Foreign Portfolio Investors (FPIs) in three categories viz. Category I, Category II and Category III. For tax purposes all three categories are treated at par except for the purposes of (a) exemption from indirect transfer (Explanation 5 to s.9(1)(i)) to avoid multiple levels of taxation at fund and investor levels and (b) concessions in offshore fund manager regime (s.9A) through CBDT Notification No. SO 2455(E) dated 3 August 2017 from certain onerous conditions. In respect of assessment of its own income, vide CBDT Notification No. 9/2014 dated 22 January 2014 every FPI registered with SEBI under SEBI (FPI) Regulations, 2014 is treated as Foreign Institutional Investor (FII) for the purposes of s.115AD of the Income tax Act and thus every FPI (regardless of its category) becomes eligible for the special tax regime applicable to FIIs u/s. 115AD. However, for the purposes of exemption from indirect transfer and concessions in offshore fund manager regime, only Category I and II FPIs under SEBI (FPI) Regulations, 2014 are included for tax benefits since they are considered to be regulated and broad-based. Category III FPIs are not granted similar benefits. SEBI (FPI) Regulations, 2014 (2014 Regulations) have recently been repealed and replaced by SEBI (FPI) Regulations, 2019 (2019 Regulations) on 23 September 2019 pursuant to recommendations of H. R. Khan Committee and public consultation thereon. Under the new 2019 Regulations, there are only two categories of FPIs viz. Category I and Category II. One of the changes, amongst others, is that funds registered with countries which are not part of Financial Action Task Force (FATF) like Mauritius and Cayman Islands will be registered as Category II FPIs – such funds may have been registered as erstwhile Category II funds on the basis of being regulated and broad-based. SEBI has also notified Operational Guidelines for recategorization of FPIs. Under these guidelines, there is automatic recharacterization of erstwhile Category I FPIs to Category I FPIs in the new regime. Similarly, there is automatic recharacterization of erstwhile Category III FPIs to Category II FPIs in the new regime. But the recharacterization of erstwhile Category II to Category I in new regime is not fully automatic and would depend on whether eligibility criteria is met.

		Usually, whenever provisions of one statute are borrowed in another statute and the provisions of the earlier statute undergo amendment or repeal, it has consequential impact on the subsequent statute. For example, the Income tax Act refers to many provisions of erstwhile Companies Act 1956 which has since been repealed and replaced by Companies Act 2013. Nevertheless, the income tax provisions are read in the light of corresponding provisions of new Companies Act 2013. Such is also the general rule laid down in section 8 of General Clauses Act, 1897. This rule is, however, subject to a caveat that it will not apply if a different intention appears. Commentaries on General Clauses Act clarify that this exception is applied in very few and exceptional situations. Considering the general rule of interpretation as per section 8 of General Clauses Act, the references in the IT Act/Rules/Notification to either 2014 Regulations or to Category I and II FPIs under 2014 Regulations need to be construed as 2019 Regulations or corresponding Categories under 2019 Regulations. But this poses tricky issues of interpretation and can give rise to ambiguity and scope for litigation for foreign investors. For instance, issues can arise (a) whether every new FPI henceforth registered under 2019 Regulations will be automatically regarded as FII for the purposes of s.115AD of the IT Act; or (b) whether erstwhile Category II funds under 2014 Regulations re-categorised as Category II funds under 2019 Regulations will continue to be exempt from indirect transfer provisions. Any controversy or litigation on this issue can have significant adverse impact on foreign investment and capital markets. **Recommendation:** • To avoid unnecessary confusion and ambiguity on tax consequences of substitution of 2014 Regulations by 2019 Regulations, it is recommended that corresponding consequential amendments may be made in the IT Act/Rules/Notification which refer to 2014 Regulations. More particularly, the following references may be modified/amended :- ▪ CBDT Notification No. 9/2014 dated 22 January 2014 in terms of which every FPI registered with SEBI under 2014 Regulations is treated as FII for the purposes of s.115AD of the IT Act ▪ Second proviso to Explanation 5 to s.9(1)(i) pertaining to indirect transfer rules which grant exemption to Category I and II FPIs from indirect transfer rules

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		▪ CBDT Notification No. SO 2455(E) dated 3 August 2017 which grants certain concessions to Category I and II FPIs under offshore fund manager regime. • Considering the changes in SEBI's FPI regulations in the matter of KYC norms and compliance requirements, the differential tax treatment to Categories I and II FPIs under 2014 Regulations in the matter of indirect transfer and offshore fund manager regime may be eliminated and all FPIs may be granted uniform tax treatment. • Alternatively, the preferential tax treatment to Categories I and II FPIs under 2014 Regulations may be continued for Category I FPIs under 2019 Regulations. But while doing so, it is necessary to 'grandfather' erstwhile Category II FPIs under 2014 Regulations registered prior to 23 September 2019 for ensuring continuity of tax treatment which prevailed prior to 23 September 2019 for such funds and avoid disruption in the capital markets due to recategorization of such funds. This would be consistent with 'savings and repeals' provisions of 2019 Regulations which protect the vested rights of existing funds.
33.	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 is exempt u/s. 47(viiaa). 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

<table>
<tr><td></td><td></td><td>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.</td></tr>
<tr><td>34.</td><td>Notify cases to which s.56(2)(x) and s.50CA will not apply</td><td>Rationale/ Recommendation:
➢ Pursuant to industry representations, the Finance (No.2) Act 2019 amended s.50CA and s.56(2)(x) to give power to CBDT to notify cases to which these provisions will not apply.
➢ Obviously, such is the correct approach since it would be very difficult to provide for all bonafide situations to which notional capital gains in hands of seller and gift taxation in hands of buyer in the Act itself.
➢ However, the CBDT is yet to come out with Notification u/s. 50CA and s.56(2)(x). Hence, the challenges indicated in following illustrative cases in our last year’s Pre-budget representations continue to be faced by the industry :-
o Sale of foreign company’s shares where it is difficult to apply Rule 11UA valuation
o Exempt transactions like 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
o Fresh issue of shares in scenarios like Initial Public Offer (IPO), private placement, rights, bonus, etc
o Investment made by holding company into its wholly owned subsidiary (domestic as well as foreign company)
o Time lag involved between fixing up share price by the parties under an agreement and actual allotment / transfer of shares due to time taken in making regulatory compliances and / or seeking shareholder or regulatory approvals</td></tr>
</table>

		○ Options or share warrants which are issued at a particular date giving option to the holder to subscribe for shares at a future date at the prefixed value which is generally at FMV on the date of issue of options/warrants ○ Transfer or issue of shares or securities in case of corporate insolvency resolution process under IBC. ➢ Hence, it is recommended that CBDT should expedite the issue of Notification u/s. 50CA and s.56(2)(x). Further, prior to the issue of Final Notification, it is recommended that a draft Notification should be published for stakeholders' comments to ensure that all possible bonafide cases faced by industry get adequately represented in the Final Notification.
35.	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 jewellery, 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 and FMV may be reckoned with reference to ruling price on the relevant foreign stock exchange. ➢ 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. ➢ The valuation Rules being Rule 11UA requires determination of value based on the formula prescribed therein. Such formula includes determination of immovable property value based on the valuation made by prescribed authority. Such values would not be available for foreign companies. Also for Indian companies it is cumbersome to calculate value on the acquisition date. ➢ Therefore the valuation Rule should not only include net asset based value as per Rule 11UA but also should have DCF value by any approved / recognized valuer (similar to the permissible valuation for section 56(2)(viib). Many of the controversies and/or scope for injustice will die 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 closely held companies, keeping in mind the non-transferability and the security being illiquid and/or minority holding, etc.

36.	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.

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		➢ 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 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.
37.	Carry forward of MAT credit in hands of amalgamated/resulting company (section 115JAA)	**Rationale**: ➢ According to the existing provisions of MAT credit – the said MAT credit can be carried forward for a period of 15 succeeding assessment years. There is no provision in the section to carry forward this MAT credit to amalgamated company or resulting company in the case of amalgamation or demerger. The provisions of amalgamation and demerger are intended to be revenue neutral and therefore, if the amalgamation or demerger gets effected in compliance with the provisions of Income-tax, then the companies under consideration should not be adversely impacted. Considering this principle, MAT credit be allowed to be carried forward to amalgamated or resulting company.

		Recommendation: ➢ Consistent with the principle of tax-neutrality of amalgamation and demerger, MAT credit allowable under section 115JAA to the amalgamating company or demerged company, be made available to the amalgamated or resulting company.
38.	New Long Term Capital Gains (LTCG) regime @10% with 'grandfathering' of value appreciation till 31 January 2018 for equity shares, equity oriented MF units and units of business trust (w.e.f A.Y. 2019-20)	**Rationale**: ➢ In principal, the Chamber welcomes the amendment to levy 10% LTCG tax and believes that financial markets stakeholders should contribute their fair share to the economy. ➢ **Abolish STT on proposal to tax LTCG** o It may be recollected that exemption from LTCG u/s. 10(38) was hitherto provided on the basis that surrogate tax is collected in the form of Securities Transaction Tax (STT). While LTCG has been introduced, there is no proposal to withdraw STT since short-term capital gains tax is still liable to concessional tax rate of 15% (instead of normal rate of 30%/40%). o As a result, both LTCG and STCG transactions suffer duplicated tax of STT and income-tax which will have adverse impact on stock markets. This will reduce the return on equity for foreign investors and discourage them from investing in India. It may also proliferate off-market deals and overseas derivative trading. Removal of STT will considerably reduce compliance burden for all stakeholders and improve 'ease of doing business'. If required, STCG rate can be recalibrated to compensate for the loss of STT revenue. ➢ **Clarify 'grandfathering' for listed shares held on 31 January 2018 in lieu of which shareholder may get shares of amalgamated or resulting company subsequently** o An issue arises whether section 55(2)(ac) of the Act which provides for 'grandfathering benefit' for shares held on 31 January 2018 seeks to cover only listed shares that have been acquired before 1 February 2018 or whether it also cover the listed shares of the amalgamated company, received in lieu of the shares of the listed amalgamating company (which are acquired before 1 February 2018), by the shareholders of the listed amalgamating company pursuant to the Scheme.

		○ The legal fiction of the Act in relation to amalgamation is to treat the event of amalgamation as a tax neutral event in the hands of the amalgamating company, amalgamated company and the shareholders of the amalgamating company. However, on a plain reading of the section, the Assessing Officer may suggest that section 55(2)(ac) will not apply in case where the shares of listed amalgamated company which are acquired post 1 February 2018 in lieu of the shares of the listed amalgamating company which were acquired by the shareholders prior to 1 February 2018.. This may lead to an unjust and unintended consequence in as much as the grandfathering of the gains up to 31 January 2018 would be denied resulting in the entire gain being held taxable. While it could be argued that such an interpretation of section 55(2)(ac) is unjustified and that the Act has to be read as a whole and section 55(2)(ac) ought to be read along with section 2(42A)- This could lead to unnecessary and avoidable litigation and uncertainty ○ Ironically, the definition of 'fair market value' contemplates a situation where the listed shares are acquired by way of transaction not regarded as transfer u/s. 47 in lieu of shares which are unlisted on 31 January 2018 (Refer Explanation (a)(iii)(B) to s.55(2)(ac)) but not shares which are listed on 31 January 2018. ➢ **Other tax neutral transactions where cost and holding period of previous owner is substituted in hands of successor which will face similar issue** ○ Similar issue arises in following illustrative cases where provisions of s.2(42A), s.47 and s. 49 provide for tax neutrality with cost and holding period substitution • Shares of listed company held on 31 January 2018 which is demerged post 31 January 2018 and shareholders receive shares of resulting listed company. • Shares held by previous owner on 31 January 2018 which is received post 31 January 2018 under exempt transfer like gift, inheritance, settlement into trust, intra-group transfer between a Holding Company and its wholly owned subsidiary exempt u/s. 47(iv)/(v), corporatisation of firm, conversion of company into LLP, etc ➢ **Threshold of Rs. 1 lakh for trigger of LTCG tax is very low for individual investors**

		○ According to Budget Speech, exempted capital gains from listed shares and units is around Rs. 3,67,000 Cr as per returns filed for A.Y. 2017-18 of which major part has accrued to corporates and LLPs. It is necessary to retain incentive for individuals and HUFs for investing in stocks and mutual funds to have larger participation in financial markets. The threshold exemption of Rs. 1 lakh is too low as an incentive to invest in financial markets. It may be noted that threshold for imposition of super rich tax of 10% u/s. 115BBDA on exempt dividend income is Rs. 10 lakhs. The threshold for LTCG taxation should also be enhanced to Rs. 10 lakhs for individuals and HUFs. This will not adversely impact revenues for the Government since, as per Budget Speech, they are not major beneficiaries of exempt capital gains. **Recommendation:** ➢ Remove STT (if required, by recalibrating STCG rate) to avoid duplicated taxation and to ease compliance burden for all stakeholders. ➢ A specific clarification be issued that for the purpose of applicability of section 55(2)(ac) of the Act, the shares of the listed company received by the shareholders shall be deemed to be acquired from the date of acquisition of the previous owner, and/or as the case may be, assets in lieu of which shares listed on date of transfer were acquired, under transfer exempt u/s. 47. ➢ Further, it may also be clarified that, in a case where shares acquired are in lieu of shares listed as on 31 January 2018 under transfer exempt u/s. 47, the 'fair market value of such asset', for the purpose of section 55(2)(ac) of the Act, should be the fair market value of shares of the listed company held on 31 January 2018, which is the highest price of the equity shares of the listed company quoted on such exchange on 31 January 2018. ➢ In case of shares of demerged company held on 31 January 2018, the FMV of the shares of demerged company as determined in terms of Explanation (a) to s.55(2)(ac) may be pro-rated between shares of demerged company and resulting company as per the provisions of s.49(2C)/(2D) ➢ Amend s.112A(2)(ii) to clarify that LTCG uptoRs. 1 lakh shall not form part of 'total income' and hence, will not suffer any tax. The threshold limit may be enhanced to Rs. 10 lakhs for individuals and HUFs to retain incentive for such taxpayers to invest in financial markets.

39.	Safe harbour (5% tolerance limit) for applicability of s.43CA, 50C and 56(2)(x) for shortfall in consideration as compared to stamp duty value of immovable property	**Rationale**: ➢ By virtue of amendment by FA 2018, in cases where the stamp duty value of immovable property does not exceed 105% of consideration received/receivable on transfer of capital asset/stock in trade being land or building or both, consideration received/receivable shall be considered as full value of consideration. (s. 43CA and 50C). Similarly where the stamp duty value does not exceed 105% of consideration paid to acquire immovable property, there will be no trigger of taxation u/s 56(2)(x) of ITA ➢ In the context of section 50C, Tribunals have adopted a view that where the difference between consideration and stamp duty value does not exceed 10%, provisions of section 50C are not applicable. Refer, • Smt. Sita Bai Khetan vs. ITO (ITA No. 823/JP/2013) (delta of 10%) • John Fowler (India) Private Ltd v DCIT (ITA No. 7545/Mum/2014) (delta 10%) • Krishna Enterprises v ACIT [ITA No. 5402/Mum/2014) (delta 10%) ➢ The erstwhile provisions dealing with transfer of immovable property for lower consideration had delta of 15% and 25% respectively in s.52(2) (omitted in 1988) and s.269C(2)(a) (made inapplicable from 1986) of the Act. Erstwhile s.52 operated on similar lines as current s.50C whereby the shortfall in consideration as compared to stamp duty value was deemed to be income of the taxpayer. S.269C(2)(a) formed part of Chapter XX-A which gave power to Central Government to acquire immovable properties proposed to be transferred if the Central Government was of the opinion that the consideration was grossly understated by more than 25%. ➢ Having regard to past statutorily recognized safe harbours, the present delta of 5% is accordingly far too inadequate and should be increased to at least 15% **Recommendation**: ➢ The delta of 5% is too small and should be increased to 15% - 25% in line with erstwhile provisions of s.52(2) and s.269C(2)(a) or at least to 10% as per Tribunal rulings on current provisions of s.50C

40.	Cost step up for distribution of assets taxed as 'dividend' u/s. 2(22)	**Rationale** ➢ S.2(22) covers distribution of different types of assets by a company to its shareholders as 'dividend' which is presently liable to Dividend Distribution Tax (DDT) u/s. 115-O in the hands of the company. For instance, s.2(22)(a) covers distribution of assets by a company to its shareholders, s.2(22)(b) covers distribution of bonus debentures to preference shareholders, s.2(22)(c) covers distribution of assets on liquidation, s.2(22)(d) covers distribution of assets on capital reduction. ➢ The company becomes liable to pay DDT on any such distribution. While it is not clearly specified in s.115-O, it is well understood that DDT is payable on the fair value of such assets as on the date of such distribution. ➢ Once the company has paid DDT on such assets, on general principles, the cost of acquisition in the hands of the shareholder should be reckoned as the FMV of the asset on which company has paid DDT. This principle is recognised in the Income Tax Act with reference to assets like ESOP shares which have suffered perquisite taxation in the hands of the employees, assets received by way of gift or for inadequate consideration u/s. 56(2)(x) on which recipient has suffered gift tax u/s. 56(2)(x), etc (Refer, s.49(2AA), 49(4), etc) ➢ However, in case of assets received on liquidation, it is provided that cost in the hands of the shareholder shall the cost to the company (Refer, s.49(1)(iii)(c)) and the holding period shall include holding period of the company (Refer, Explanation (1)(b) to s.2(42A)). Further, s.46 provides that he company shall not be liable to capital gains on assets distributed on liquidation but the shareholder shall be liable to capital gains w.r.t market value of the assets received as reduced by amount taxed as dividend u/s. 2(22)(c). This implies that even after tax is paid by way of DDT by the company or as capital gains by the shareholder on the FMV of such assets at the time of receipt of liquidation, the cost of acquisition is still borrowed from cost to the company and is not stepped up to FMV as on the date of distribution. ➢ There are no specific cost step up provisions for other forms of distribution referred in s.2(22). Cumulative impact of above referred provisions results in double taxation of the same value at the time of receipt as also at the time of subsequent transfer of the asset.

		Recommendation ➢ To avoid litigation and double taxation, s.49 may be amended to provide for cost step up for assets received by shareholder which has suffered tax (either as DDT in the hands of the company or as capital gains in the hands of the shareholder) at the time of distribution. Further any such provision may be inserted with retrospective effect to clarify that such was always the position under the Act.
41.	Tax on buy back of shares of companies (S.115QA)	**Rationale** ➢ According to section 115QA a company (not being company whose shares are listed on stock exchange) buying back its own shares is required to pay tax @ 20% on the income distributed on such buy back. ➢ The distributed income is defined to mean the consideration paid by the company on buy back as reduced by the amount which was received by the company for issue of such shares. For example – if the company has received Rs. 10 on allotment of shares and the amount being paid on buy back is Rs. 100 then the difference of Rs. 90 is considered as distributed income. ➢ However, in cases where the shares are transferred between investors before such buy back, and capital gains tax has been paid, it would be incorrect to consider the price that was received by the company on original allotment of shares for the purpose of computing distributed income. Such a proposition results into double taxation of income. For example – based on the above case – if the shareholder (A) who got shares allotted at Rs 10 and has sold them to another shareholder (B) at Rs 50 and thereby paid capital gains tax, even in such case the distributed income on buy back as per section 115QA would be computed at Rs 90 disregarding the price paid by the shareholder who finally surrenders shares on buy-back ➢ The scope of applicability of the BBT provisions has been expanded to listed companies by Finance (No.2) Act 2019 w.e.f 5th July 2019. However, the recent Ordinance introduced 'grandfathering' for buybacks in respect of which public announcement was made before 5th July 2019. It is submitted that the scope of BBT should be narrowed down to exclude certain

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		kinds of listed entities which fulfil stipulated objective criteria/ parameters indicative of the genuine cases where the buy-back may not be considered to have been undertaken as a tax avoidant exercise, such as companies having a steady dividend pay-out record, achievement of certain performance parameters such as EPS, Return on Equity, Return on Capital, Debt-Equity Ratio, etc., companies which are in immediate need of funds, etc ➢ Grandfathering provisions to be introduced under Section 115QA or Rule 40BB akin to section 55(2)(ac) from company's perspective such that the "amount received" for the purpose of determining "distributed income" under Section 115QA may be deemed to be the market price of shares prevailing on stock exchange as on 4 July 2019 **Recommendation** ➢ Section 115QA be amended to define distributed income as the difference between amount payable on buy back and the amount paid by the shareholder on allotment of share or purchase of share whichever is higher. Computing "amount received" in respect of listed shares poses challenges and hence 'grandfathering' may be introduced for FMV as on 5^{th} July 2019 akin to s.55(2)(ac) ➢ Exceptions may be introduced for exempting genuine buyback transactions not driven with primary motive to save DDT
42.	Tax Treatment of Business Acquisition Expenditure	**Rationale:** ➢ In order to expand business, corporates acquire different entities. In the course of acquisition, expenses get incurred for feasibility study, due diligence, foreign travel expenses etc. ➢ Presently there is no specific provision to allow such expenditure while computing taxable income. Most of such expenses turn out to be infructuous and do not result in any investment or capital asset but they are nevertheless legitimate business expenditure. Hence, such expenses should, on principles, be allowed as revenue expenditure. **Recommendation:** ➢ Considering the competitive business requirement, such expenditure should be allowed as revenue deduction.

43.	Group Taxation.	**Rationale** ➢ In order to meet the dynamic market challenges many business houses are setting up new businesses / acquiring companies in order to attain business synergies. At times, even though, subsidiary companies get formed / acquired in order to meet business / commercial needs, essentially these are in the nature of various projects carried out by parent company in different set-ups. Presently we have entity-wise taxation which leads to charge of tax on profit making companies whereas losses incurred by some other projects in different companies of the same group remain unabsorbed and at times are permanently lost. **Recommendation** ➢ It is suggested that taxation should be done at a consolidated level / group level whereby intra group transactions would be eliminated and tax would be charged on 'real' income of the parent company.

	Insolvency resolution 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.	
44.	Amendments by Finance Act 2018 for facilitating corporate insolvency resolution - MAT set off for aggregate of brought forward loss and unabsorbed depreciation (clause (iih) to Explanation 1 to s.115JB(2)) (w.e.f A.Y. 2018-19)	**Rationale**: ➢ We welcome the amendment by Finance Act 2018 to grant relief from MAT for companies undergoing insolvency resolution under Insolvency and Bankruptcy Code 2016 (IBC). ➢ Pursuant to the amendment, while computing book profits u/s 115JB of the ITA, a deduction will be allowed for aggregate of book profits and unabsorbed depreciation in case of companies in respect of which an application for initiating resolution process has been accepted by the adjudicating authority. ➢ The language used in s. 115JB creates a confusion as to whether aggregate of losses and depreciation ***as per booksof account*** is to be considered for deduction or whether aggregate of losses and depreciation ***as computed for tax purposes*** is to be considered for downward adjustment from book profits. ➢ Logically, the deduction should be for loss/depreciation as per books and not as computed for normal tax computation purposes. The said new clause is by way of carve out from existing clause (iii) which grants set off for lower of loss or depreciation as per books of account. Also, the overall context of MAT is based on revenues, incomes, expenses and losses and other adjustments as per books of account. Nevertheless, in absence of reference to 'books of account' as used in clause (iii), there is potential for confusion and litigation. ➢ Press Release dated 6 January 2018 announced a partial relief under MAT provisions by permitting full set off of past book losses instead of lower of loss (excluding depreciation) and

		unabsorbed depreciation. The Press Release specifically acknowledges that companies undergoing resolution are facing genuine hardships. However, while proposed MAT relief by way of full set off of past book losses is a welcome measure, it does not fully meet the industry expectations and does not address actual MAT difficulty faced by corporate debtors. ➢ The major MAT hurdle faced by corporate debtors is the waiver ('haircut') which they would get from the creditors which are very substantial in nature. ➢ To illustrate, if a company owes debts of Rs. 10,000 Cr to creditors and obtains waiver of 75% under a resolution plan, it is required to credit Rs. 7,500 Cr to P&L which will trigger MAT liability of approx. Rs. 1600 Cr (@ 21.36%). Since the very reason for company being referred to National Company Law Tribunal (NCLT) under IBC is its inability to pay debt, it is highly unlikely that the company will be able to generate sufficient liquidity to pay such huge amount of MAT – that too, in preference to other creditors (including secured creditors, employees, etc.) ➢ As per MAT relief announced by the Government, it will be possible for the company to set off full amount of loss brought forward from earlier years. But this may not provide full relief. This is because in majority of the cases, it is likely that the company may not have any brought forward book losses or may have nominal amount of book losses. ➢ Under Sick Industrial Companies Act (SICA), company was referred to the Board for Industrial and Financial Reconstruction (BIFR) when it became 'sick' (i.e net worth turned negative) or potentially sick (net worth eroding to 50%) which was at much advanced stage of delinquency. Such companies were more likely to have brought forward book losses. ➢ But under IBC, the criteria for referring the company to a resolution process is at a much earlier stage i.e when the company defaults in repaying debt in excess of Rs. 1 lakh. There is no need for company's net worth to turn negative or incur substantial losses. ➢ The company would get meaningful MAT relief only if it is permitted to exclude the credit representing waiver by creditors from its 'book profit'.

		➢ It may be noted that during SICA regime, sick companies were protected from MAT on entirety of their profits for the period beginning from the year in which they turned sick (i.enetworth becoming negative) till the year in which they ceased to be sick by virtue of networth becoming positive. It is necessary to grant similar protection for companies undergoing corporate insolvency resolution under IBC since IBC has replaced SICA and intends to achieve a faster time bound resolution with creditor in command process as against time consuming debtor in command process under SICA. ➢ A company which is already reeling under high debt, cash flows constraint and is attempting to recover through debt restructuring scheme will face substantial burden due to MAT liability ➢ Bidder is under no compulsion to buy. Even the prospect of MAT may result in low bid and injurious to the interests of Government, economy and community. It would be unfair if Government which does not sacrifice MAT willingly agrees to suffer debt in value of banks owned by it or by creating economic chaos. ➢ Non-provision of such protection may frustrate the very object of IBC to achieve a time bound resolution which is in the interest of all stakeholders like creditors, employees, vendors, etcas also the Government. ➢ It may be noted that failure to achieve time bound resolution results in liquidation of the company. This will have an adverse impact on the economy with closure of factories and loss of jobs ➢ Removal of tax hurdles which paves way for successful resolution will avoid liquidation of the company, protect job losses and enable the company to continue as a going concern contributing to the economy ➢ Many resolutions also happen outside the framework of IBC under RBI Guidelines. Such resolutions under RBI Guidelines also require similar MAT protection as in case of companies admitted under IBC. **Recommendation**: ➢ Suitable clarification should be inserted in S. 115JB to clarify that the brought forward losses and unabsorbed depreciation for this purpose should be considered as per books of account. It may be provided that the aggregate of the brought forward losses and unabsorbed

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		depreciation as at the end of the year preceding the year in which application is admitted may be allowed to be reduced from book profits. ➢ The company would get meaningful MAT relief only if it is permitted to exclude the credit representing waiver by creditors from its 'book profit' and hence it is submitted that specific exclusion for waiver from creditors pursuant to resolution plan approved by NCLT should be provided in computation of 'book profit' under MAT provisions. Such protection should also be extended to companies undergoing resolution under any RBI Guidelines and not merely through IBC.

Measures to discourage cash transactions		
45.	Levy of additional tax on cash holding & cash expenditure	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

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<td>➢ 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>
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<td>46.</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. Finance (No.2) Act 2019 introduced a new TDS provision on cash withdrawals from banks in excess of Rs. 1 Cr in a financial year.

➢ The following transactions may also be added within the scope of reporting under Rule 114E:
<table>
<tr><th>Sr. No.</th><th>Reporting entity</th><th>Transaction</th><th>Comments</th></tr>
<tr><td>1</td><td>Dealer / commission agents</td><td>Any cash payments to agriculturists[2] 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</td><td>• Separate reporting requirement may be cast on dealer or commission agent
• Reporting may be made with reference to Aadhar of the agriculturist / payee</td></tr>
<tr><td>2</td><td>Various Government, semi Government,</td><td>Payment of any taxes in cash such as GST, electricity duty, property taxes etc.</td><td>Reporting may be made with reference to PAN / Aadhar of payee</td></tr>
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[2] 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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<tr><td></td><td>companies wholly owned by State or Central Government, local authorities etc. which are in-charge of collection of levies and taxes</td><td>each exceeding Rs. 10,000 p.a.[3]</td><td></td></tr>
</table>

Enhanced scope of Rule 114E would enable Government to capture relevant information about 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>47.</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:

Details of agricultural earnings, rent earned from agricultural land ;
Reporting of cash transaction as mentioned at para above
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

</td>
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</table>

[3]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

		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. ➢ Law should also provide penal consequences for non-furnishing of tax return / statements and / or for inaccurate furnishing of reporting details.
48.	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.
49.	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 labourer 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 is 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. For instance, the said section should provide exception for cash received from foreign tourist holding foreign passport. Sometimes there is practical difficulty with foreign tourist as they only have foreign currency and are unable to make payment through any other mode and hotels are forced to accept the foreign currency. 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.

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International taxation		
50.	Place of effective management (POEM) (S.6(3)	**Ratonale** ➢ Finance Act 2015 had introduced the concept of Place of Effective Management (POEM) in the Income tax Act 1961. Later the Finance Act 2016 deferred the concept to financial year 2016-17 and onwards. ➢ The objective behind introduction of POEM is to identify the right place of generation of profits and enable the respective country to levy tax thereon. It may be noted that the concept of POEM has been introduced with the intention to stop the tax evaders who by forming shell companies in tax haven countries and thereby misusing the Double Tax agreement benefits. ➢ The CBDT has issued guidelines for determination of POEM which lay down several criteria. Further it has also been mentioned in the guidelines that inspite of meeting some or all of the conditions still substance would prevail over form. This has created a lot of uncertainty in the mind of Indian Multinational companies who are doing operative business outside India through its subsidiaries and that too in non-tax haven countries. ➢ When the subsidiaries of Multinational companies already are liable to pay tax in the respective countries then only question remains is about determination of correct share of profit for each country. This aspect gets take care of by transfer pricing provisions that exist in almost all countries including India. ➢ Further it may be noted that the Finance Act 2016 has also introduced reporting of transfer pricing on a global basis by way of introduction of section 286 relating to furnishing of report in respect of international group. Thus there are adequate measures available to identify country-wise profitability. Even otherwise the transfer pricing regulations have ability to identify jurisdictional profits and levy tax thereon. ➢ In light of the above, the requirement of POEM compliance will be cumbersome and will affect the ease of doing business of Indian multinational groups.

		Recommendation ➢ It is recommended that the concept of POEM be done away with and position prior to Finance Act 2015 be restored while determining the residential status of entities. ➢ Alternatively the companies which have active business and are operating in non-tax haven countries such as US, Australia, South Africa, China etc. be made exempt from the compliance of the POEM provisions. ➢ Without prejudice to above Penalty and prosecution provisions should be waived for at least initial 5 assessment years till the time law is settled.
51.	Special transitional provision for POEM resident companies (S. 115JH)	**Rationale/ Recommendation**: ➢ **Requirement for increase in threshold of turnover for POEM evaluation:** o The CBDT issued a Circular No. 8/2017 dated 23 February 2017, prescribing a threshold of INR 50 Cr of turnover or gross receipts in a particular financial year for application of the POEM guidelines to a foreign company. However, this threshold is too low for a foreign company. o It is recommended that the thresholds are increased so that small and medium sized foreign companies or the ones which have marginal business from India should not fall within the garb of POEM to avoid undue burden of compliance. ➢ 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 Final Notification No.29/2018 dated 22 June 2018 was issued, 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. ○ Further, a POEM resident foreign company was unable to file ROI for tax year 2016-17 and 2017-18 as the Notification under S.115JH was issued on 22 June 2018, which is after the due date for furnishing ROI for the concerned tax years. Thus, the CBDT should introduce a one-time scheme for all first time POEM resident companies for filing ROI voluntarily for FY 2016-17 to FY 2018-19. The CBDT should prescribe a prospective and liberal due date u/s.139(1) to encourage voluntary compliance of POEM provision. ○ The CBDT should specifically provide that ROI filed as per the extended due date is in compliance with s.139(1) of ITA and unintended consequences of interest (Section 234A, 234B, 234C, etc.), late fee, penalty shall not apply. ➢ **Compliance obligations: Tax audit report, transfer pricing report, ICDS 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

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			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. o 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. o **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 years upto the end of previous year in which the company is upheld to be POEM resident for the first time. o **Non-applicability of ICDS provisions to first time POEM resident foreign companies:** POEM companies should be relieved from applicability of ICDS for computation of income in order to reduce compliance burden. o 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. o Alternatively, the CBDT may consider adopting an approach whereby foreign companies would be taxed in India at a prescribed percentage of their book profits determined as per laws of foreign jurisdiction. Such approach shall relieve the first time POEM resident foreign company from tedious compliances under ITA. ➢ **General point on notification:** ▪ For providing abundant clarity, each of the guidelines may be explained by means of a suitable illustration. We believe that, but for illustration,

Guidelines may be prone to varying interpretations and may become a source of litigation.

- **Brought forward losses and unabsorbed depreciation**
  - In case of a foreign company assessed to tax in the foreign jurisdiction, Notification provides that brought forward loss and unabsorbed depreciation as per the tax record shall be determined year wise on the 1^{st} day of the previous year and shall be deemed as losses or unabsorbed depreciation brought forward on the 1^{st} day and shall be allowed to be set off and carried forward as per provisions of ITA.
  - 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 instead of considering jurisdiction of incorporation of the company. 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 or as per books of accounts 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.

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		▪ It may be noted that the scheme of determination and characterization of losses as per tax/books of accounts of Foreign company can be different under ITA and under foreign law. For instance, short term capital loss and long term capital loss has different tax treatment under ITA based on holding period whereas foreign jurisdiction may not have any such distinction or, may have different holding period of asset. Further, it is unclear on how the balance of loss appearing in books of accounts may be attributed to different types of loss incurred under each head of income and to unabsorbed depreciation. Thus, it is recommended that an appropriate mechanism (with suitable illustrations) for determining the nature of losses incurred in foreign jurisdiction may be notified by the CBDT to enable transition of such losses and unabsorbed depreciation. For instance, clarity may be provided with respect to bifurcation of losses into short term and long term capital loss. ▪ It may be clarified that 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. ➢ **Non-applicability of MAT provisions to first time POEM resident foreign companies:** o Presently, provisions of MAT are not applicable to a foreign company if the company is a resident of other country with which India has DTAA and the company does not have PE in India as per the applicable DTAA provisions. In case where there is no DTAA, the foreign company is a resident of other country and the company is not required to seek any registration under laws relating to company.

		o Generally, foreign company is not required to maintain books of accounts in India and prepare financial statements under provisions of the Companies Act, 2013. Thus, a foreign company may not have financial statements which are prepared under the Companies Act, 2013 basis which MAT provisions are applicable. o There is no clarity whether foreign company whose residence is determined in India will get benefit of the said exclusion from MAT provisions. Thus, POEM resident foreign company should be kept outside the purview of MAT provisions. ➢ **Compliance with withholding tax provisions by first time POEM resident foreign company:** o Para A(ix) of the Notification No. 29/2018 prescribes that compliance by foreign company with provisions of TDS prior to it becoming resident is considered as sufficient compliance. o A literal reading of Para A(xi) appears to provide exemption/protection only up to a period when F Co was a non-resident. o Reference to "prior to its becoming Indian resident" may not strictly protect transitional years in which POEM residency is determined. o Reference may be drawn to the intent of the Legislature expressed in Explanatory Memorandum to FB 2016 and as also reiterated in Explanatory Circular to FA 2016. The Legislature has admitted that there is difficulty faced by first time POEM resident company in complying with provisions of TDS and its related procedure. Further, the legislature has also noted that there shall be difficulty in compliance as POEM may be determined in assessment proceedings after closure of the relevant tax year.

		o While the legislative intent is to apply the clause to first year of POEM residency, the plain language of the clause applies to period 'prior to company becoming Indian resident and is not aligned with the object. o In order to avoid unintended litigation or ambiguity, CBDT should simplify that the language of Para A(xi) to state that the compliance of TDS provisions by foreign company in capacity of foreign entity shall be considered as sufficient compliance for the transitional year/s. It should also be expressly clarified that provisions of S.40(a)(i)/(ia) or 40(a)(iii) will have no applicability during such transitional period and the consequences of levy of interest and penalty would also not apply during transitional year/s. ➢ **Clarity on Para D of the Notification dated 22 June 2018** o Para D of the Notification prescribes that any 'transaction' of F Co with any other person or entity shall remain unaltered even if there is change in residential status of F Co. The exact issue addressed by the said clause is unclear. It is also not clear the context in which Para D will operate and parties to which it wants to protect. o The CBDT should amend the language of Para D in order to clarify the exact intent of introduction of Para D and appropriate illustrations can be provided for understanding the scope of the provisions. ➢ **Applicable exchange rate for conversion of balance sheet of foreign company** o Rule 115 provides exchange rate for conversion of income arising in foreign currency for the purposes of computation of income under ITA. Notification No.29/2018 also prescribes for conversion of value expressed in foreign currency into INR in accordance with provisions of Rule 115. It may be noted that Rule 115 primarily applies to 'income' computed as per provisions of ITA which accrues or arises in foreign currency.

		○ While F Co may prepare P&L and balance sheet as per foreign accounting standards, the F Co may be required to convert such P&L and balance sheet into INR for reporting purposes in India. ○ As Rule 115 is not applicable to items of balance sheet, it is suggested that CBDT should provide for a conversion mechanism for converting transactions recorded in foreign company balance sheet into INR. ➢ **Determining computation of income for intervening year of POEM residency** ○ The language of S.115JH(1) provides that exception, modifications and adaptations (EMAs) notified under Notification No.29/2018 are applicable only for the previous year in which the F Co becomes POEM resident for the first time in India. ○ Consider a situation where POEM is determined in India for a foreign company in Year 1 and 2. In Year 3, such foreign company is thereafter regarded a Non-Resident whose POEM is outside India. However, in Year 4, POEM of such POEM is once again determined to be in India. ○ The present language of S.115JH(1) does not cover strictly Year 4 in the illustration. There could therefore be challenge in computation of income of Year 4 in the hands of POEM resident F Co. Also, the Notification does not address such type of scenario. The CBDT should provide clarity on manner of computation of income in such scenario.
52.	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.

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		➢ 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.
53.	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.
54.	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.
55.	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.
56.	Relaxation in conditions of special taxation regime for offshore funds – S.9A (A.Y. 2019-20)	**Rationale**: ➢ The proposal to relax time period for raising minimum corpus of Rs. 100 Cr and modification of de minimis remuneration from ALP remuneration to minimum remuneration as may be prescribed by CBDT are welcome amendments which will remove some bottlenecks for Offshore funds to shift their management to India.

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		➢ However, there are still some concerns of offshore funds which have not been addressed. ➢ One of the conditions of s.9A is that that aggregate participation or investment in the fund, directly or indirectly, by persons resident in India does not exceed five per cent of the corpus of the fund. It is practically impossible to verify participation by Indian residents on an ongoing basis in case where the eligible investment fund is an open-ended fund or listed on overseas stock exchanges. Separately, participation or investment by Indian residents in an FPI is adequately regulated and monitored by SEBI. SEBI, from time-to-time, issues guidelines on restrictions of investment by Indian residents in an FPI (recent guidelines to this effect was provided on 21 September 2018 vide Circular CIR/ IMD/ FPIC/ CIR/ P/ 2018/ 132). Given that SEBI already prescribes Guidelines in this regard, which are well understood and followed by market participants, there should not be any additional requirement u/s 9A of the Act with respect to the participation of Indian residents. ➢ Further, one of the conditions for the Fund Manager is that he should not be an employee of the eligible investment fund or connected person of the eligible investment fund. In case where an Indian fund manager intends to set-up an offshore fund, the fund manager or its affiliates are required to make sponsor contributions in the Fund to demonstrate their 'skin in the game' and establish the Fund's track record. This condition prohibits Indian fund manager from setting up an offshore fund to attract global money as well as develop its brand in the global markets. Further, in a typical fund structure, the Indian fund manager holds nominal management shares/ management or voting rights in relation to the management of the Fund. Such management shares merely confer control/ management rights in a Fund, while the economic rights continue to be held by investors in the Fund.

This condition therefore poses a significant concern for most typical fund structures.

In addition to the above, the definition of connected persons in S. 102 has been introduced in the context of GAAR provisions and when applied in the context of S. 9A of the Act, it appears out of sync with the commercial realities of common fund structures.

- Also, "associate" is defined to mean an entity in which a director or a trustee or a partner **or a member** or a fund manager of the investment fund or a director or a trustee or a partner or **a member** of the fund manager of such fund, holds, either individually or collectively, share or interest, being more than fifteen per cent of its share capital or interest, as the case may be. It is practically impossible for the eligible investment fund to seek details from their investors (which qualify as members under the current definition) on an ongoing basis with respect to their investment in Indian companies in order to enable the Fund to track, monitor and ensure compliance with this condition. Further, the aforesaid situation is more aggravated where the eligible investment fund is listed/ open-ended, or the fund manager is listed on stock exchanges (given that the investors in the eligible investment fund/ fund manager will change on a daily basis).

Recommendation:

- The reference to ‘indirect’ in Section 9A(3)(c) may be omitted to relieve the fund from tracking indirect participation by residents in the fund.
- Section 9A(4)(a) may be amended to omit the condition that the person is not an employee of the eligible investment fund or a connected person of the eligible investment fund.

The reference to ‘member’ in definition of ‘associate’ in s.9A(9) may be omitted to relieve the fund from tracking other investments of their investors.

57.	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.
58.	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.

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		Recommendation: ➢ The restriction on carry forward of MAT/ AMT credit may be removed.
59.	FTC for foreign disputed taxes to be allowed in year of payment pursuant to settlement of dispute (S.155)	**Rationale** : ➢ 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

60.	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. **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.
61.	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.

62.	Foreign companies having incomes liable to presumptive scheme of taxation u/s. 44B/BB/BBA/BBB excluded from MAT (w.e.f A.Y. 2001-02)	**Rationale**: ➢ The retrospective amendment to S. 115JB by FA 2018 to clarify that MAT provisions do not apply to a foreign company, where its total income comprises of profits and gains from business referred to in S.44B/BB/BBA/BBB and such income has been offered to tax at the rates specified in those sections, is a welcome amendment which provides relief to foreign companies engaged in shipping, aircraft, oil & gas exploration and turnkey power project execution. ➢ But relief from MAT is limited to cases where such foreign company derives income which is 'solely" from the specified business in S.44B/BB/BBA/BBB. This is likely to be interpreted to mean that if such foreign company has any other income (– say, from sale of capital asset used for specified business or interest on income-tax refund or interest on temporary deposits with banks, etc), the proposed exclusion will not apply and the foreign company will be fully exposed to MAT even on income from specified business. This will render the MAT protection academic since most foreign companies engaged in specified businesses are likely to have one or other incidental incomes like interest. The object of the provision will be defeated by such onerous & impractical condition. **Recommendation**: ➢ It may be provided that, income covered by presumptive provisions will be excluded from MAT by inserting a specific clause on the lines of exclusions provided in clause (f) and (fb) for capital gains or interest/royalty/FTS income earned by foreign companies. ➢ As next best alternative, it may be provided that earning of income which is ancillary/ incidental to the specified business of foreign company will not disqualify the Taxpayer from relief under MAT.
63.	Expansion of scope of 'business connection' under dependent agent PE rule	**Rationale**: ➢ In line with Multilateral Instrument (MLI) signed by India and pursuant to BEPS Action 7 provision on dependent agent permanent establishment(DAPE), the amendment by FA 2018 significantly enlarges the scope of 'business connection' by providing that a person who plays a principal role which leads to conclusion of

		contracts by a NR will also be now considered as dependent agent. The contracts may be– • in the name of the NR; or • for the transfer of the ownership of, or for the granting of the right to use, property owned by that NR or that NR has the right to use; or • for the provision of services by the NR ➢ The provision appears to be at variance to the text of comparable MLI provisions. As per MLI, DAPE is constituted if a person habitually concludes contracts on behalf of a NR, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the NR. The phrase “that are routinely concluded without material modification” as used in MLI is missing from the text of proposed amendment under ITA. ➢ This may lead to doubts whether the proposed provision is wider than scope of DAPE as agreed in MLI. For example, whether DAPE may trigger even in a case of non-routine or one off conclusion of contracts by NR based on activities of agent. Similar doubts may arise where contractual terms negotiated by agent are substantially modified by NR ➢ Comparable MLI provision creates a carve-out from DAPE definition if the agency function is performed in respect of “preparatory and auxiliary” activities. However, such exclusion is not provided in the proposed amendment. Furthermore, as compared to the existing provisions of the ITA, there is no specific carve out provided in respect of the activities of dependent agent which are confined to ‘purchase of goods or merchandise for NR’. This carve out is significant to Government’s initiative of “Make in India” and its objective of export promotion. ➢ The proposed amendment will become effective immediately with regard to enterprises from non-treaty jurisdictions and will thereby impact trade with non-treaty countries when even at global level there are concerns on interpretation of the language of MLI’s DAPE provision considering usage of certain subjective terms such as “habitually”, “principal role”, routinely”, “material” etc.

		➢ While income attributable to such activities may not be significant, the payer may prefer to act conservatively in case of presence of agent to avoid other onerous consequences like withholding, representative assessee, etc. ➢ The proposed amendment has been introduced with the prefix "for the removal of doubts". The proposed clause (a) sits within the preamble of Explanation 2 which was initially inserted in the year 2003 effective from A.Y. 2004-05 with the prefix 'for the removal of doubts'. Given the above, there may be temptation on the part of tax officers to stretch this provision to the earlier years, while this would be a clearly unintended posture, apart from being wrong. **Recommendation**: ➢ In line with the legislative intent, provisions should be aligned to the DAPE provisions under the MLI/ BEPS Action 7: • The phrase "without material modification on routine basis" as present in MLI provision on DAPE, should be inserted ➢ Similarly, preparatory/ auxiliary activities may be excluded from ITA provision, in line with MLI/treaty provisions. ➢ Also, carve out for purchase contracts on lines of current definition of 'business connection' may be provided. ➢ The phrase 'for the removal of doubts' may be deleted to make it clear that the proposed amendment applies prospectively from A.Y. 2019-20 onwards. At least, a clarification may be issued by CBDT that the amended provision will not be used for past assessment years.
64.	Expansion of scope of 'business connection' to 'significant economic presence'	**Rationale**: ➢ In light of the emerging business models in the Digital Economy (DE), where physical presence is not a pre-requisite to earn profits, scope of 'business connection' has been expanded by FA 2018 to tax business models that operate remotely through digital means. To achieve this objective, Explanation 2A to S.

		9(1)(i) is proposed to be inserted in terms of which 'Significant Economic Presence' (SEP) would also constitute business connection for a NR. ➢ SEP is defined to mean: • Any transaction in respect of any goods, services or property carried out by a NR in India including provision of download of data or software in India if the aggregate of payments arising from such transaction or transactions during the previous year exceeds the amount as may be prescribed; or • Systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means. ➢ SEP in India shall be constituted irrespective of whether NR has a residence or place of business in India or renders services in India. Income attributable to transactions or activities covered in SEP definition is is deemed to accrue or arise in India ➢ The first limb of the definition does not carve out distinction between physical trade in goods and services and trading through digital means. Thus it is capable of being applied even to physical transactions of goods, services or property carried out by non-resident in India. This is in contrast with second limb of the definition which requires that the business activities should be carried out through digital means. The expansive scope of first limb may raise PE concerns for non-residents doing business with India from non-treaty countries. ➢ The Explanatory Memorandum refers to BEPS Action 1 on Digital Economy. Consistent therewith, SEP should not be extended to physical trades unless the contracts are made digitally. ➢ There is an ambiguity on the scope of the phrase "carried out by a non-resident in India". ➢ The use of phrase 'for the removal of doubts' also raises concern, whether the amendment may be indiscriminately applied to earlier years. ➢ There is no guidance on attribution of profits to transactions or activities which trigger SEP.

		Recommendation: ➢ It should be clarified that the provisions will come into effect prospectively and only once the thresholds and guidance on profit attribution is prescribed. ➢ The thresholds should be prescribed by adopting a consultative process. For a constructive consultation process, the Government should release various data points gathered by it about coverage of SEP, the businesses sought to be covered and the impact that it may have on businesses, as also the likely tax burden which may fall on the businesses. The thresholds should be determined only thereafter. ➢ In order to avoid unintended coverage of physical transactions in the first limb, a threshold should be prescribed only for the transaction in goods, services or property is carried out “through digital means” (eg. online market place, hotel or accommodation booking, cab booking, etc) or transactions involving download of data or software in India. ➢ Meaning of the phrase “carried out by a non-resident in India”, “soliciting of business activities”, “engaging in interaction” should be clarified through illustrations to bring out the legal intent and avoid ambiguity. ➢ Clarify that the payments which are received by a NR as a collection agent of the other person, such as credit card companies or payment gateways or intermediaries, are not covered in SEP. ➢ It should be clarified that any revenue which is otherwise chargeable under any other specific provision of ITA will remain outside the realm of SEP provisions. Further, to avoid duplicated count, revenue attributable to transactions in the first limb should not again be considered for second limb and vice-a-versa. ➢ To avoid any unintended damage on the Indian Economy, it should also be clarified that SEP provisions are not intended to cover outsourcing arrangements with entities in India. ➢ Corporate website or websites with standard terms, Q&As or information should

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		be excluded to reflect the intent for covering active interaction by the NR, via a website or app. ➢ Guidance on user threshold should be provided to tackle the issues of multiple users using single log in, single user using multiple devices, free users, determining location of the user, etc. ➢ ***Guidance on attribution of profits to SEP -*** - SEP provisions should be implemented only once the appropriate principles of profit attribution are formulated by undertaking further research work. This is also advised in the report of Committee on Taxation of E-Commerce on Equalisation Levy (February 2016). - The proposed rules for allocating profits to an SEP should be built on the current TP framework based on the ALP, by treating the SEP as a separate and independent enterprise, taking into account assets used, functions performed and risks assumed, and adapted suitably to include attributes of digital business. - For this purpose, it should be borne in mind that the raw customer data itself has no value, unless it is processed and analysed. Thus, in a scenario where customer data gets processed and analysed outside Indian territory, the extent of profit attribution to Indian SEP should be restricted to minimal. - The guidance on attribution also needs to consider the peculiarities of loss-making enterprises, as also the peculiarities of enterprises which have a thrust on “value creation”. It may be noted that while data and users may be relevant, these inputs do not contribute to income or profits until they are monetized. - Further, the profits should be attributed only to the activities undertaken by the NR in India; activities performed by the customer/ consumer should not be considered.

		➢ In case of B2C transactions or activities, it is recommended that the primary, as also the secondary tax liability, of collection should be squarely on the recipient of the income and the payer should be relieved completely of its obligation as a withholding agent or representative assessee, irrespective of whether the payee is from a treaty or a non-treaty jurisdiction. ➢ Also, for ease of business of small businesses, annual threshold of RS.10 million per payer may be prescribed such that, in B2B cases, the payer may be required to withhold taxes only when the estimated aggregate payments made by a payer during the year exceeds RS.10 million.

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Transfer Pricing		
65.	Fast-track APAs	**Rationale** ➢ As per the press release by CBDT dated 1 October 2019, a total of 300 APAs have been signed out of more almost 1000applications received in the last 5 years. ➢ Further, the Annual APA report by CBDT indicates that the unilateral APAs have taken an average of ~32 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.
66.	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

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		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). ➢ 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).
67.	Rollbacks to be made applicable to all years and not just 4 years	**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.
68.	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
69.	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. **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.

70.	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.
71.	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.

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		➢ 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.
72.	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 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.
73.	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.
74.	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
75.	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.
76.	Implementation of Country by Country report (CbCR) (S.271AA)	**Rationale** & **Recommendations**: ➢ 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 12 months from end of reporting accounting year. 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? o 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. o As per a plain reading of the Income-tax Act, 1961, the CbC would have to be prepared by the ultimate parent entity. o 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. o 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. o 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.
77.	Issues in Country-by-Country Report (Cbcr) filing	**Rationale** **Cbcr compliance for Investment holding entity** ➢ As per plain reading of the Income-tax Act, 1961, the CbC report would have to be prepared by the ultimate parent entity i.e. the holding company for the group as a whole. Therefore, currently the governing principle to determine an MNE Group is based on the ownership or controlling interest. ➢ However, challenges could arise if an investment holding entity files a consolidated CbC report after incorporating results of all its flagship diversified operating subsidiaries. Given the overall objective of the OECD and tax regulators to use the CbC report as a source of relevant and reliable information for high-level transfer pricing risk assessment purposes, obtaining a report filed by the investment holding company may not serve the stated objective fully. **Recommendations:** ➢ It is suggested that an option may be given for such investment holding entities in India to file a separate CbC report for each of the independent business entity / business division wherein the investment is held by holding company. Thus, it will likely provide tax authorities with better details and more relevant information for the purpose **of conducting the initial risk** assessment. This will also ease the administrative burden on the holding company in terms of collating and providing

		the required information in the CbC. Therefore, each of the independent business shall be allowed to file its own CbC separately.
78.	Issues in Master File (MF) filing	**Designation for Master File filing possible only if there are "more than one" "resident" CEs** **Rationale** ➢ Rule 10DA(4) states as follows: *"Where there are more than one constituent entities resident in India of an international group, then the report referred to in sub-rule (2) or information referred to in clause (i) of sub-rule (3),as the case may be, may be furnished by that constituent entity which has been designated by the international group to furnish the said report or information, as the case may be, and the same has been intimated by the designated constituent entity to the Director General of Income tax (Risk Assessment) in Form 3CEAB"* ➢ Reading of above rule suggest**s** that if there is only one Constituent Entity ("CE") of an international group resident in India, along with non-resident foreign entities as others CEs in India, it appears that group cannot designate Indian CE to furnish Master File on behalf of all the CE. Further, it appears that a non-resident CE cannot be chosen as designated entity to file Master File on behalf of all CEs (resident or non-resident in India)? **Recommendations:** ➢ Designation should be allowed if there are more than one CEs in India. Hence, the condition that designated CE should be "resident" in India, is recommended to be removed in order to reduce the duplicate burden e.g. in situation where there is only one resident CE and foreign CE in India. **Whether non-taxable transactions should be considered for evaluating MF thresholds or reporting in MF**

		Rationale ➢ The newly inserted Section 92D(1), which is applicable from AY 2020-21 and onwards, reads as under: **(1)** ***Every person:*** ***(i) who has entered into an international transaction or specified domestic transaction shall keep and maintain such information and document in respect thereof, as may be prescribed;*** ***(ii) being a constituent entity of an international group, shall keep and maintain such information and document in respect of an international group as may be prescribed.*** ➢ Person is defined under section 2(31) of the Act to include company which also includes corporates incorporated outside India i.e. foreign company. Constituent entity is also defined under section 286(9)(d) to include any separate entity of an international group that is included in the consolidated financial statement of the said group for financial reporting purposes. ➢ Section 92D(4) applicable upto 1 April 2020 made a reference to Rule 10DA of the Rules for the information / documents required to be reported by the constituent entity. However, it is pertinent to note that the substituted section does not make an explicit reference to Rule 10DA. ➢ Rule 10DA also states as follows: ***"10DA. (1) Every person, being a constituent entity of an international group shall,-*** ***(i) if the consolidated group revenue of the international group, of which such person is a constituent entity, as reflected in the consolidated financial statement of the international group for the accounting year, exceeds five hundred crore rupees; and*** ***(ii) the aggregate value of international transactions,-*** ***(A) during the accounting year, as per the books of accounts, exceeds fifty crore rupees, or***

		(B) in respect of purchase, sale, transfer, lease or use of intangible property during the accounting year, as per the books of accounts, exceeds ten crore rupees" ➢ Hence, on reading of above, it can be concluded that every person including foreign company which is constituent entity of the group, is required to comply with Indian Master File provisions, if it meets the threshold for Part B. Part A applies irrespective of any thresholds. **Recommendations:** ➢ Rule 10DA is prescribed under the proviso to Section 92D(1). Therefore, proviso and the rule made thereunder would need to be construed harmoniously with s. 92D(1) and it cannot be dissected from the provisions of s. 92D(1) in its interpretation. ➢ The circumstances prescribed for maintaining additional information/ documentation are based on the value of international transactions of that person. Hence, the international transaction referred to in Rule 10DA(1)(ii) would be the international transactions for which person prepares/ maintains documentation under s. 92D(1). ➢ To the extent a person considers the transactions as international transaction for which documentation under s. 92D(1) is required to prepared and maintained, the same needs to be considered for the purpose of Rule 10DA(1)(ii) and value as per books of accounts would need to be used for measuring the value. ➢ Further, since international transactions referred to in s. 92D(1) needs to be reported/disclosed in Form 3CEB and Form 3CEB requires disclosure of value of the international transactions as per books, practically, all international transactions reported in Form 3CEB along with value as per books reported in form would be the basis for determining whether the person is covered by Rule 10DA(1)(ii) or not.

		➢ However, an alternative view to above is that although MF is prescribed as proviso to Section 92D, it has a different purpose and is not concerned with computation of income of the taxpayer under Section 92(1). Such a view may lead to coverage of "ALL" transactions under Section 92B, irrespective of same being taxable in India. This may lead to unintended outcome especially in case of foreign companies who have only purchase/sale transaction with Indian AEs or invests more than INR 50 crores, which are not taxable in India. In such case, foreign entity may not be under obligation to file tax return/maintain TP documentation under Section 92D/file Form 3CEB under Section 92E. We recommend that only international transactions which have bearing on taxability should be considered and suitable clarifications must be brought in this regard to clarify the law. This is required to be clarified by the CBDT by way of the circular or by amending the relevant Rule 10DA.
79.	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.

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		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 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.
80.	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.

		○ Technology Intangible - 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.

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81.	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.

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82.	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. ➢ 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. ➢ 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.

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		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. ➢ 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 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 (3) additional tax as mentioned in 92CE(2A) is paid by the assessee. ➢ 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.

83.	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.
84.	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.

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		➢ 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.

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		➢ 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.
85.	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.

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86.	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 results 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		
87.	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.
88.	Procedure for reopening assessment under S. 147/148	**Rationale/ Recommendation:** ➢ Though the provisions require recording of reasons to be done by the assessing officer, prior to the issue of notice u/s 148, it required the Supreme Court decision to lay down the procedure to be followed in the case of re-opening of assessments – GKN Driveshafts 259 ITR 19. ➢ The said procedure should be prescribed by the Act to streamline the process and ensure strict adherence and thereby reduce litigation.
89.	Making alternate claim, fresh claim during assessment. (Section 143(3) / 148)	**Rationale** ➢ Many times out of abundant caution and also to avoid certain penalty provisions, assessee restrains from taking certain aggressive position in its Return of Income irrespective of the fact that there are many supporting/favourable judgements available to him at that point of time.

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		➢ Further, the time limit for filing revised return has also been reduced from one year from end of assessment year to end of assessment year. Hence, there are greater chances of assessees missing out on putting forth additional claims in the return of income. ➢ In these cases, the assessee prefers to make such claims before the assessing officer during the course of assessment proceedings. In most cases, AOs disallow such claim by stating that those were not made in the return of income (relying upon the SC decision in the case of Goetze). This jeopardies assessee's position. **Recommendation** ➢ It is recommended that necessary amendments be made to the existing provisions to enable a taxpayer to make fresh claims at the assessment stage also.
90.	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. ➢ Currently there is no facility for the Assessee to disclose his stand on any tax issue through return of income by way of notes, working or even supporting. Those are called only if the case is selected for scrutiny. Therefore, in most such cases assessee give their notes, working and stands on tax issues during the course of assessment. However, the AOs normally initiate penalty proceedings for each ground ignoring asseessee's suo moto submissions **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. ➢ It is recommended that no penalty provisions should be invoked in cases where Assessee has made full disclosure of facts by way of notes, working, supporting about his stand on tax issues at the time of filing return of income.
91.	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. **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.
92.	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.
93.	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.
94.	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) may 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.
95.	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.
96.	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.
97.	Appeal Effect	**Rationale / Recommendation:** The assessing officer should be bound to pass an order giving effect to the appeal order within three months of receipt of the order, failing which written explanation is to be submitted to the Commissioner of Income Tax and provision should be made for penal consequences to be recovered from the salary of the erring officer.

Procedural matters		
98.	Withdrawal of registration u/s. 12AA	**Rationale**: ➢ S. 12AA is amended by Finance (No.2) Act 2019 to provide that registration of charitable trust can be cancelled in case of non-compliance of '*material*' conditions of other applicable laws. ➢ There are adequate provisions under the Act to cancel registration of non-genuine charitable trusts or where activities are not in line with the objects of the trust. Where the Trust is not complying with other laws as may apply to it, the latter regulations have appropriate procedures to address the same and the same need not be addressed through the Act. ➢ Accordingly, the above amendment should be deleted since determination of '*material*' non-compliance is subjective and increases scope of litigation.
99.	Relaxation of regulations applicable to Representative Assessees u/s.163	**Rationale / Recommendation:** ➢ The existing provisions of s.161 do not provide relief to the representative assessee with respect to existing or future tax demands raised on non-resident's income even where the non-resident himself pays taxes in India. ➢ In line with the amendment in s.201 and s.40(a)(i) where the payer is not treated as assessee-in-default once payer's TDS default is made good by the non-resident payee, a relief may be introduced to relieve the payer from being assessed as 'representative assessee' of the non-resident payee where the latter has filed return in India and paid taxes payable, if any, as per returned income.
100.	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.)	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 fulfilling conditions specified in s. 270AA of the ITA.

		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. ➢ Further, the language of the provisions of s .270A was amended by Finance Bill 2019 to equate the case of filing of tax return for the first time in response to notice issued under s. 148 with a case of non-filing of tax return. Consequently, computation of under-reported income and tax payable thereon would be determined on the similar as is applicable to case of non-filing of tax return. ➢ Under the erstwhile provisions of s. 271(1)(c), in terms of Explanation 3 r.w. clause (c) of Explanation 4, amount of tax sought to be evaded was calculated after taking into consideration credit for pre-paid taxes already paid by the taxpayer ➢ In absence of provision for grant of credit for pre-paid taxes in s. 270A(10) it may result in genuine hardship to the taxpayer in cases where whole of the tax has been deposited either by way of TDS or by way of payment of advance tax. Despite the fact that there is no revenue loss to the Government, the taxpayer will expose itself to penal consequences of s. 270A.

		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. ➢ S. 270A(10) be suitably amended to provide for credit for pre-paid taxes (TDS, advance tax and self-assessment tax) along the lines of erstwhile Explanation 3 to s. 271(1)(c), in computing amount of tax payable on under-reported income
101.	Misreporting covered cases of deliberate misconduct: s. 270A(9)	**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 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.

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102.	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'.
103.	Manual Refund to be granted in timely manner	**Rationale/ Recommendation** ➢ The issue of manual refund requires approvals from various higher authorities, which is a time consuming process and delays the refund to the assessee as compared to e-refunds. It is recommended that a simple time bound process should be set up to ensure timey refunds to the assessee wherever there is no mechanism to issue e-refunds.
104.	Interest on income tax refund u/s. 244A	**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.

		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. **Rationale:** ➢ It is noted that the Revenue raises unreasonable demands on the taxpayer for collection of taxes and meeting the revenue targets. The taxpayers are unduly burdened with high tax demand. Even though the taxpayer files an appeal before the higher appellate authorities, it is usually required to deposit a certain percent of the total demand with the government treasury pursuant to the final assessment order. **Recommendations:** ➢ In the event the demand is reversed by higher appellate authority, the interest on refund to the tune of 1% for every month or part of the month should be provided from the date of the assessment order till the date of credit of refund to the account of the tax payer. **Rationale:** ➢ As per the existing provision of the Act, in case of belated return, interest on income tax refund is granted after excluding period of delay from the first day of the assessment year till the date of refund. ➢ The amendment in Finance Act 2016 provides that in case of belated return, the interest shall be paid to the assessee from the date of filing of the return to the date of refund. Here, it is not out of place to mention that a penalizing provision already

		exist for filing belated return of income. Introduction of this provision will lead to double penalty on the assessee. **Recommendation:** ➢ In the fair interest of the assessee, if the excess taxes are paid on or before 31 March of a particular assessment year, the interest should be granted from the 1st day of the assessment year and not from date of filing of return of income.
105.	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
106.	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

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		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
107.	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.

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		➢ 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. ➢ 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.

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108.	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.
109.	Transactions in foreign currency: Uniformity in use of exchange rates	**Rationale**: ➢ **GST:** According to Rule 34 of Central Goods and Services Tax Act, 2017, the exchange rate for determination of value of taxable goods shall be the exchange rate notified by the CBEC u/s 14 of Customs Act for the date of supply of such goods in terms of s. 12 of CGST Act and for value of taxable services, exchange rate shall be determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of s. 13 of CGST Act. ➢ **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.

		➢ 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.
110.	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.
111.	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. ➢ Further, Schedule SH-1 of ITR 6 requires the historical details of shareholding of unlisted company such as issue price, amount received, date of allotment, etc. In case, where the company was acquired from third party and historical records relating to shareholders are not available or in case where the company was incorporated many years ago, all the historical documents relating to issues, transfer, transmission of shares, etc. may not be available with the company to fill in the details. **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. ➢ Also, it is recommended that the return should not be treated as invalid or all the fields should not be kept mandatory in schedule SH-1.
112.	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. Risk of prosecution has become more imminent due to removal of threshold of tax liability of Rs. 3500 for prosecution against companies resulting in a situation that a company can be prosecuted even if it has no incremental tax liability.
- 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. This can be done either by issuing a Circular

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		which removes the difficulties faced by non-residents and/or at least by modifying return forms/filing process for non-residents such that they are not required to obtain and furnish PAN.
113.	Prosecution for failure to file return of income for companies (S.276CC)	**Rationale**: ➢ The amendment by FA 2018 withdraws relaxation in case of 'company' assessees from prosecution where tax liability (net of advance tax and TDS) does not exceed Rs. 3,000 and hence, the risk of prosecution can arise under s.276CC even if the tax liability is Nil and is fully met by TDS ➢ Intent of the amendment as clarified in Explanatory Memorandum (EM) is to plug the loophole in case of shell companies or companies holding Benami properties. The proposed amendment if enacted in the present language would go beyond the stated object and may also cover foreign companies whose income is largely covered by TDS. ➢ It may be noted that foreign companies earning incomes in the nature of interest u/s. 115A which is fully covered by TDS are exempted from filing returns. Similar exemption may be extended to foreign companies earning royalty and fees for technical services which is fully covered by TDS. It may be noted that information pertaining to payments to such companies is getting transmitted to the Tax Department in a dual mode viz. once through s.195(6) compliance made by payers in Form 15CA/B and also through quarterly TDS returns filed by the payers. Further, the payers of royalty/FTS can be proceeded against as 'representative assessee' of the foreign companies u/s. 163 if the Tax Department wishes to investigate whether activities of such companies trigger PE in India. Further, if the royalties/FTS are from related entities in India, the Indian payers would be making TP compliance by maintaining TP documentation and filing TP audit report. Thus, filing of filing ROI for such companies becomes an academic formality. It may be noted that s.206AA exempts such foreign companies from obtaining PAN to avoid higher TDS if they are

		able furnish TRC and other information to the payer. Thus, there is a strong case to exempt foreign companies having only royalty/FTS income fully covered by TDS from filing returns in India which will enhance 'ease of doing business' in India and will also protect them from expanded scope of prosecution u/s. 276CC. **Recommendation:** ➢ Having regard to intent express in EM and having regard to Government's thrust on 'ease of doing business', exemptions/relaxation should be provided to foreign companies as also genuine bonafide companies from prosecution u/s. 276CC.
114.	Extended scope of persons mandated to obtain PAN (s.139A)	**Rationale**: ➢ FA 2018 has introduced additional clause (v) and clause (vi) to s. 139A(1) extending the scope of the persons who are mandated to obtain PAN. The amendment seeks to cover the following persons: • Clause (v): Non-individual entities which enter into financial transaction of an amount aggregating to INR 2.5 lakhs or more in a financial year. • Clause (vi): Natural persons being managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer, office bearer of the person referred to in clause (v) or any person competent to act on behalf of the person referred to in clause (v) ➢ The term 'financial transaction' is not defined specifically under ITA for the purpose of s. 139A(1). Ambiguity may arise on common parlance of the term 'financial transaction' which would be a very wide connotation since common parlance meaning may include any transaction which involves 'monetary consideration'. It may cover every sale, purchase, exchange, barter, etc. thereby making the scope of the proposed cl. (v) to s. 139A(1) unclear. ➢ It is clarified that clause (v) applies to residents but clause (vi) does not contain this condition. This may be invoked against foreign directors of Indian companies to obtain PAN.

		➢ Also, the scope of the term 'principal officer' used in clause (vi) is ambiguous. A variety of persons can be considered as principal officer of the enterprise and each of them will be under a clinical obligation to obtain PAN. ➢ Vide FA 2019, an additional clause ie clause (vii) was introduced to expand the instances where a person is required to obtain PAN. Per the amended section, if a person "***intends***" to enter into such transactions as may be prescribed by Board in the interest of revenue, it will need to apply for PAN. There is ambiguity in language of the provision. Literal reading would mean that provision requires a person to obtain PAN merely on the basis of 'intention' to undertake prescribed transaction, irrespective whether or not the transaction is actually undertaken/consummated **Recommendation:** ➢ Definition of "financial transaction" may be provided in ITA in the context of s. 139A. Alternatively, CBDT may be delegated with an authority to prescribe a specific list of 'financial transactions' (provided, not covered by (i) to (iv)) for the purpose of s. 139A(1)(v) ➢ If the scope of 'financial transactions' needs to be borrowed from Rule 114E/ Rule 114B, the same may be incorporated with such modifications so as to ensure that only those NRs who have nexus with India may be sought to be covered. ➢ Scope of clause (vi) be accurately delineated and it may be held to be a sufficient compliance of s. 139A(1) if any one of the person (being resident in India or operating in India) acting on behalf of the enterprise covered by clause (v) obtains PAN. ➢ In case of clause (vii), suitable amendment be made to clarify that a person will be liable to obtain PAN before entering into or execution of prescribed transactions.
115.	E-assessment scheme (S.143(3A) w.e.f 1 April 2018)	**Rationale** ➢ FA 2018 provided statutory framework for e-assessment by inserting s.143(3A) in the Act w.e.f 1 April 2018 in terms of which the Central Government can notify a scheme for e-assessment and also give directions for modification of the application of the provisions of the Act as relevant to assessment proceedings.

		➢ In keeping with the new provisions of e-assessment u/s 143, amendments are suggested in the reopening provisions also to improve transparency and codify the procedure laid down by Supreme Court in the case of GKN Drive shafts (259 ITR 19). ➢ The e-assessment scheme notified by Central Government vide two Notifications notified on 12 Sep 2019 does not envisage DRP mechanism. There is no process prescribed for issue of draft assessment order, opportunity to file objections before DRP, giving effect to DRP directions, etc. There is also no clarity on process to be followed for reference to TPO and extended time limit for completing TP assessments. ➢ Taxpayer can request for video conferencing facility in a case where a modification is proposed in the draft assessment order and an opportunity is granted by NeAC to object such modification but not in any other case. Provision of video conferring facility at all stages of the proceedings helps the taxpayer to explain and present his case orally before any adverse inferences are drawn against him based on existing material. **Recommendations** ➢ The Notice u/s 148 should be accompanied by: (a) the reasons recorded in writing by the AO and (b) The approval u/s 151 if obtained, and if not the reasons for the same. The litigation on the validity of the proceedings and technicalities regarding the recording of the reasons and the necessary approvals will be put to an end. The transparency and minimal interaction between the officer and assessees will be minimised and the goal of simplicity will be achieved. ➢ Further it may be provided that the assessee has the right to object to the reasons recorded and if so done, the same are to be disposed off by the AO by an order in writing, before completion of the assessment. The principles and procedure laid down by the Supreme Court, in GKN Driveshafts 259 ITR 19 will become part of the statute in the interest of the revenue and the assessees at large, ensuring compliance, timely disposal and rationality. ➢ It is recommended that cases which are covered within the purview of s. 144C of the ITA be continued to be covered by existing scheme of DRP. Further, the existing process of TP assessment and extended time limit may be appropriately incorporated in e-assessment scheme.

		➢ Taxpayer should be allowed to present its case through video conferencing at all levels during the course of assessment under the E-assessment Scheme **Rationale:** ➢ Notification No. 62 / 2019 [S.O. 3265(E)] dated 12 September 2019] (Second Notification) unintendedly overrides General Anti Avoidance Rule (GAAR) assessment procedure prescribed under s. 144BA of the ITA ➢ S. 144BA of the ITA provides for special assessment procedure for assessments which involves invocation of GAAR in relation to determination of transaction or arrangement which is impermissible avoidance arrangement. To recollect, GAAR procedure involves determination of impermissible avoidance agreement by higher authorities like CIT and being evaluated by Approving Panel of 3 members comprises of Judge of High Court, an academic and scholar and Principal CIT or CIT. To recollect, intent of setting up special GAAR procedure with high rank authorities and independent panel was to ensure that GAAR is not being invoked indiscriminately by Tax Authority to harass the taxpayers ➢ Second Notification in the process of providing exceptions, modifications and adaptations for the purposes of carrying on assessment under E-assessment Scheme for set of certain ITA provisions, has modified s. 144BA of the ITA. E-assessment scheme does not adapt the procedure prescribed under s. 144BA of the ITA for all those assessments which involve invocation of GAAR. In absence of procedure of s. 144BA being incorporated in the E-assessment Scheme, AU may not be able to refer GAAR assessment to CIT and Approving Panel referred to in s. 144BA of the ITA. Considering serious nature of GAAR implications, it is wholly unintended that assessment involving GAAR could be handled by Tax Authorities of AU. This would frustrate intent of GAAR scheme. **Recommendations:** ➢ It is recommended to exclude referencing of s. 144BA of the ITA from the Second Notification. It may also be clarified that the assessments involving GAAR procedure are outside the E-assessment regime. **Rationale:** ➢ S. 92CA of the ITA provides that where taxpayer has entered into an international transaction or specified domestic transaction and where he considers necessary or

		expedient to do so, Tax Authority may refer the computation of arms length price (ALP) in relation to these transaction to TPO. Read with CBDT Instruction No. 3 / 2016 dated 10 March 2016, Tax Authority is mandatorily to refer all cases of determination of ALP in relation to international transaction to TPO. Further, TPO to pass a separate order for determination of ALP and ALP so determined by TPO is binding on the Tax Authority. ➢ Further, time limitation under s. 153 of the ITA for passing the final assessment order by Assessing Officer involving reference under s. 92C(1) of the ITA is also extended by one year. ➢ Second Notification has modified s. 92CA of the ITA. The prescribed E-assessment Scheme does not adapt procedure provided in s. 92CA of the ITA. While it is true that AU can seek assistance of TU (where TPO is one of the specialised Tax Authority) for TP matters / issues, scheme does not mandate on AUs to compulsorily refer the matter to TU on the issue of determination of ALP in relation to international transactions / specified domestic transactions. Further, assuming AU seeks assistance of TU for TP matters / issues, such assistance is not sought by way of 'reference' as provided in s. 92CA(1) of the ITA - but, merely with a view to seek assistance of TU in general. Further, unlike s. 92CA(3) of the ITA, Scheme does not mandate TU to determine ALP of the transaction by passing an order in writing and send copy of such order to Tax Authority and taxpayer. Also, unlike s. 92CA(4) of the ITA, the E-assessment Scheme does not mandate AU to pass final order in conformity with order of TU on TP issues. Lastly, all cases of TP assessments will have to be completed within normal limitation period prescribed under s. 153 of the ITA without availing facility of extended period of twelve months for assessments which involve reference to TPO under s. 92CA(1) of the ITA. **Recommendations:** ➢ It is recommended to restore cases of TP assessments within E-assessment Scheme in traditional manner by suitably incorporating appropriate back provisions in Second Notification along the lines of provisions of s. 92CA of the ITA.

Withholding Taxes		
116.	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 :- o Recovery of shortfall of TDS o Interest for delayed payment o Penalty for failure to deduct and/or default in procedural compliance like issue of TDS certificates o Fees/penalty for delayed filing of quarterly TDS certificate o Prosecution for delay in deposit of TDS after deduction o 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: o Obtaining and compiling TDS certificates o Keeping a track on TDS reflected in 26-AS o Reconciling voluminous data o 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 o Any discrepancy or manual error leads to rejection of TDS credit. (For example, error while filling TAN of deductor).

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		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. ➢ Further, where the assessee fails to deposit tax with the government and if he suo-moto realises his mistake and makes a delayed payment, with interest, he should not

		be subjected to prosecution by the department. The honesty of the deductor of correcting an error along-with compensatory interest, should be rewarded rather than be punished with prosecution. In this regard, amendment should be made to S.276B to the effect that failure/ delay in making the payment of tax deducted, if pointed out by the department would face prosecution, and no action shall be taken if the assessee has of its own volition corrected the position and the interest of the revenue has thus been catered to.
117.	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 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.
118.	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.
119.	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.
120.	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.
121.	Disallowance of cash expenses and expenses with withholding tax default for charities (S.10(23C) and s.11)	**Rationale**: ➢ FA 2018 has made an amendment in s. 11 and s. 10(23C) of the ITA to incorporate s. 40(a)(ia), 40A(3) and 40A(3A) of the ITA (hereinafter referred as specified provisions), mutatis mutandis for taxation of charitable trust under s. 11 and other institutions specified in clause (iv) / (v) / (vi) / (via) of s. 10(23C) of the ITA (hereinafter referred as charitable entities). These provisions relate to disallowance of cash expenses and expenses on which there has been withholding tax default. ➢ The proposed amendment of introducing withholding tax default provision into trust taxation is harsh and may adversely impact genuine charitable entities. We have listed below few hardships / ambiguity in relation to the proposed amendment on implementation to charitable entities ➢ Ensuring 100% compliance with specified provisions is difficult to comply for small charities who cannot afford expert professional assistance. Tax withholding and other provisions of ITA are complex and will require technical knowledge of the provisions of the ITA. It is not easy for semi-qualified, part-time accountant or similar undergraduate staff (on whom charitable entities normally depend) to understand and apply such provisions in day to day affair of the charitable activities ➢ The provisions are likely to result in permanent disallowance for expenses on which there is withholding tax default if there is no ‘taxable income’ in subsequent years when TDS default is regularized. The permanent disallowance is more likely if they are one-time transactions where the charity does not have regular relations with the vendor to regularize the TDS default.

		Recommendation: ➢ Blanket disallowance of application of income will lead to dilute the basic objective of '*charity*'. It is hence recommended that the present proposal of withholding tax default disallowance be dropped as it has adverse impact on many of the genuine charitable entities. ➢ A specific and self-contained provision may be introduced in s. 11 of the ITA which can align with smooth working of the provision for charitable trust. Once there is default in compliance of withholding provision, application of income for that year with reference to 30% defaulted amount may be de-recognised. However, once there is compliance with proviso to s. 40(a)(ia) of the ITA, it would relate back to the year of default and recognition of application of income may be restored in Year 1.
122.	Definition of 'income' liable to TDS u/s.194DA	**Rationale / Recommendation:** ➢ Prior to amendment by Finance (No.2) Act 2019, the life insurance companies were liable to deduct TDS @ 1% on the gross amount paid to the policy holders. ➢ However, as per amended s. 194DA post Finance (No.2) Act 2019, TDS is required to be made @ 5% on the 'income' component. However, the term "income" is not defined in the section. It is recommended to explicitly define the term 'income comprised therein' for the purposes of TDS liability u/s. 194DA as sum paid or payable to the policyholder reduced by aggregate premiums received till the date inclusive of service tax and GST.
123.	Clarification for applicability of definition of "consideration for immovable property" under Section 194IA	**Rationale:** ➢ The term "consideration for immovable property" is proposed to be amended to include all charges of the nature of club membership fee, car parking fee, electricity and water facility fees, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property. The amended definition is proposed to be made applicable with effect from September 1, 2019.

		Recommendation: ➢ Necessary clarification should be provided to exclude cases where the transaction has been undertaken before September 1, 2019 but only part payment is made after the said date. It should be clarified that TDS will apply on the amount paid or credited on or after 1 September 2019 and not with reference to shortfall vis-à-vis expanded scope for payments made before 1 September 2019.
124.	Aligning the provisions of s.194LC with s.10(4C)	**Rationale / Recommendation:** ▪ S.10(4C) has been introduced vide Finance Act 2019 to provide exemption to income in respect of interest payable on Rupee Denominated Bonds issued outside India between 17 Sep 2018 and 31 March 2019. ▪ It is recommended that to avoid any unwarranted litigation, an amendment be made in s.194LC for dispensing away the withholding requirement on interest income covered u/s. 10(4C) of the Act.
125.	Clarification required with respect of S. 194N	**Rationale** ▪ Section 194N has been introduced in Chapter XVII to provide for deduction of tax at source at the rate of two per cent on cash withdrawals in excess of one crore rupees in aggregate made during the year, by a banking company or cooperative bank or post office, to any person from an account maintained by the taxpayer. Such insertion has been made in order to further discourage cash transactions and move towards cashless economy. ➢ The provisions of s.194N is not applicable on cash withdrawals by “Government”. However, the term “Government” is not defined which often leads to friction between entities claiming themselves to be “Government” and banks. **Recommendation** ➢ For effective TDS compliance, it is recommended that proper guidance be provided on what constitutes “Government”. ➢ Relaxation must be provided from applicability of TDS on withdrawal of cash, in a cases where business operation is situated in the area where banking facility is remotely available and network connectivity is an issue.

126.	Reward the Deductor	**Rationale / Recommendations** ➢ The Income-tax Act casts liability on the person paying any sum of money, to deduct tax at source and deposit the same with the government treasury. ➢ The deductor of tax is required to ensure compliance on four fronts: o Deduction in time o Payment in time o Filing statement in time o Issuing certificate in time ➢ Any delay / default on the part of the taxpayer attracts payment of fee, interest, penalties and prosecution. ➢ The fact that the deductor is doing the work of the tax gatherer is lost sight of. Such work should be rewarded rather than punished. Hence it is suggested that the deductor should be granted a rebate of 0.01% of the tax deducted and paid to the government when the credit for the tax is granted to the deductee; i.e. re-conciliation of the tax deducted and claimed.

Personal Taxation		
127.	Higher Surcharge on individuals, AOP, BOI and AJPs (A.Y. 2020-21)	**Rationale:** ➢ As a measure of revenue mobilization, FA 2019 hasenhanced surcharge on class of taxpayers under the status of 'individuals, Hindu undivided family, association of persons, body of individuals and artificial juridical persons' from existing level of 15% to 25% in case of total income between Rs. 2 Cr to Rs. 5 Cr and 37% in case of total income exceeding Rs. 5 Cr ➢ The effective tax rate for such taxpayers (inclusive of surcharge and cess @ 4%) will increase from 35.88% to 39% (for income between Rs. 2 Cr to Rs. 5 Cr) and 42.74% (for income exceeding Rs. 5 Cr) ➢ The higher surcharge applies on the whole of total income which may include incomes which are taxable at special rates like capital gains, interest paid to non-residents, etc.. ➢ An individual taxpayer whose regular income is below Rs. 2 Cr but earns capital gains from selling immovable property which takes the total income beyond Rs. 2 Cr will also face higher tax due to non-recurring income. ➢ The recent Ordinance has provided relief from higher surcharge on capital gains income from capital markets but not from any other capital gains like gains from sale of residential house, land, etc ➢ While it is understandable that taxpayers earning higher income should contribute more by way of taxes, application of higher surcharge across the board for all types of incomes including capital gains will result in unintended consequences and hardships for certain individuals **Recommendation:** ➢ The higher surcharge should be applied on incomes chargeable to tax at regular slab rates. Capital gains income on all assets (& not merely listed securities) can be excluded for the purposes of computing the total income of Rs. 2 Cr / Rs. 5 Cr.

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128.	Clarification required with respect to one-time option introduced u/s. 54 for availing exemption by re-investment in two residential houses	**Rationale/ Recommendation:** ➢ Provisions of s. 54 provides for an exemption from capital gains tax where the assessee makes investment in a specified asset. The proviso to s. 54(1) substitutes the term “new asset” by “two residential houses” to extend the benefit to the taxpayer investing in two residential houses instead of one. However, the present language is not clear in terms of the following aspects: o The exact timing of exercise of option. o Where taxpayer with the anticipation to buy two houses deposits the amount in capital gains account scheme, thus exercising the one-time option but subsequently is able to purchase only one house, whether the deduction u/s 54 be denied because it mandates acquisition of two houses. o Will the exemption will be denied to the taxpayer in respect of one house if no option was exercised by him but he actually used the amount deposited in capital gains account scheme to buy two residential houses? o Where the taxpayer has exercised the option and bought two houses, if he sells one of the houses within a period of 3 years, will he lose the entire exemption, or will it be withdrawn only with reference to house sold? Will the benefit of exercising the option be available to the taxpayer in the future? ➢ It is recommended that to enable the taxpayer avail the benefit of this provision, suitable clarification be provided either by way of legislative amendment and/or through a Circular.
129.	Incentives to National Pension System (NPS) subscribers (A.Y. 2020-21)	**Rationale:** ➢ The Finance Bill proposes to enhance deduction for employer’ contributions to New Pension System for Central Government employees from existing 10% of salary to 14% of salary pursuant to Central Government’s decision to make enhanced contribution for the benefit of Central Government employees. ➢ NPS is a post retirement social security instrument which works under partial EET system. Higher contributions during the working life of employee ensures higher benefit

		on retirement since 40% of corpus on date of retirement is mandatorily required to be applied to buy a pension plan. ➢ Higher deduction for Central Government employees acts as discrimination against private sector employees. The tax benefit for employer's contribution to approved superannuation fund is restricted to Rs. 1.50 lakhs per annum. ➢ Since the long-term object of the Government is to gradually move towards EET system as per international practice, the benefit of higher deduction for employer's contribution should be extended to employee of private sector also. If necessary, the ceiling cap on contributions to approved superannuation fund can be clubbed with NPS contributions for reckoning 14% of salary. **Recommendation:** The higher deduction for employer's contribution to NPS of 14% may be extended to employees in private sector as well. If required, the ceiling cap on employer's contribution to approved superannuation fund can be clubbed with extra 4% deduction.
130.	Rationalisation of Provident Fund encashment provisions post cessation of employment	**Rationale/ Recommendation:** ➢ The withdrawal of Provident fund accumulations has been held to be taxable as income from other sources, as Section 10(12) exemption has been interpreted to be available only to "employees". ➢ However, TDS provisions are not attracted as the Trust which disburses the amount is assessed as an Individual and therefore TDS provisions are not attracted. ➢ This causes difficulty to a retired employee who withdraws the large amount accumulated over the active years of employment, on a bonafide belief of exemption, and gets it taxed in the year of withdrawal. ➢ Currently, PF rules do not permit accumulation of interest post retirement for more than 3 years (beyond which it is treated as dormant). Hence, it is recommended to grant full exemption for interest accruing even post retirement of employee which, by virtue of PF rules, will be restricted to 3 years only. There will be no revenue loss

		to the Government, since currently the interest income is claimed to be exempt by large number of employees in absence of tax being deducted thereon under the bonafide impression of such income being exempt from tax
131.	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 3 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.
- 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

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 and 2018 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)..
132.	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 3 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 three 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
133.	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
134.	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. The report along with the Draft Bill has been submitted by the Taskforce to the Government in August 2019 but it is yet to be published by the Government for public debate and stakeholder consultations. ➢ 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 Arun Jaitley 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. o 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. o 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. o 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 III

PRE–BUDGET MEMORANDUM 2018-19: Indirect Taxation

CUSTOMS: POLICY RELATED RECOMMENDATIONS

Sr. No.	Subject	Rationale	Recommendation
1.	One-time amnesty-cum-dispute resolution scheme for disputes and litigations under Customs law	• Government of India has recently notified "Sabkha Vishwas (Legacy Dispute Resolution) Scheme 2019" covering litigations under the erstwhile Central Excise and Service Tax law. This is a welcome measure as this would give a major relief to Industry from long pending and protracted litigations. In addition, it would facilitate the industry to focus on GST compliance and the Government can also allocate the resources involved in litigation sharply for ensuring compliance of GST and subsequent audits. • Similarly, customs litigations pending at various forums for a very long time will also require time and efforts to be spent by both the assessee as well as Government in resolving them. • A Scheme similar to "Sabkha Vishwas (Legacy Dispute Resolution) Scheme 2019" for customs litigation would go a long way in freeing up time for Industry from such protracted litigations and to focus on business.	Chamber recommends that a one-time amnesty-cum-dispute resolution scheme similar to Sabkha Vishwas (Legacy Dispute Resolution) Scheme 2019 may be extended for resolution of long pending and protracted litigation under the Customs law.

CUSTOMS: RATE RELATED RECOMMENDATIONS

Sr. No.	Subject	Rationale	Recommendation
2.	Restoration of BCD exemption on import of Palm Fatty Acid Distillate ('PFAD') and Crude Palm Stearin ('CPS')	• Basic Customs Duty (BCD) on Palm Fatty Acid Distillate (PFAD)- HSN 3823.19 and Crude Palm Stearin (CPS) - HSN 1511, which are used in the manufacture of Soaps and Oleochemicals (collectively referred to as 'finished products') was exempted vide Notification No. 50/2017 dated 30 June 2017 as per Sr. No. 57, 67 and 252. • Pursuant to the Union Budget 2019-2020, this exemption had been withdrawn vide Notification No. 25/2019-Customs dated 6th July 2019. • PFAD and CPS are key inputs for use in the manufacture of Toilet Soaps, Shampoos etc. which are of mass consumption and also for most of the Oleochemicals such as fatty alcohols, fatty acids, etc. • It is relevant to add here that India has signed Free Trade Agreement ('FTA') with ASEAN countries and effective from January 2010, customs duties on all these finished products such as Toilet Soaps, Fatty Alcohols and many other Oleochemicals have been gradually reduced and have almost become Zero. Similarly, imports of such finished products from Least Developed Countries (LDC) will also attract Zero percent Customs duty on imports of Soaps. When the finished products themselves are exempt from customs duty, levying duties on its raw material would indirectly drive the manufacturers to import finished product like soaps which are of mass consumption in an established market and huge foreign exchange would outflow from India. • It is pertinent to note that there is no import	Chamber recommends that customs duty exemption for Palm Fatty Acid Distillate (PFAD) and Crude Palm Stearin (CPS) on 'Actual User Condition' basis as was allowed under Notification No. 50/2017-Cus dated 30.6.2017 should be restored.

Sr. No.	Subject	Rationale	Recommendation
		substitution possibility for subject input materials in the manufacture of Soaps and Oleochemicals globally and hence there had been duty exemption for the imports of these inputs against "Actual User condition" all these years as the intent always has been to encourage manufacturing of mass consumption items like soaps in India at a competitive price. • These exemptions are based on 'Actual User Condition' which ensures benefit is limited to actual producers of specific products and avoid any leakage of revenue because of exemption. Basis this historic concession, Soap making industries in India have invested and set-up splitting facility in their factories. This concession goes a long way in setting up huge capacities for manufacture of soaps and oleochemicals thereby creating ancillary industries and generating employment opportunities across India in line with promoting 'Make in India' policy. Leveraging the duty concession, the soap manufacturers were able to manufacture and offer soaps at a highly competitive price. • However, change in the duty structure for CPS and PFAD as levied will have severe and adverse impact on the domestic Toilet Soaps and Oleochemicals Industries and push up end consumer prices for categories of mass consumption result into retail inflation. • Therefore, in order to sustain plant capacity utilization, reduce dependency from imports of finished products and save valuable foreign exchange	

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Sr. No.	Subject	Rationale	Recommendation
		for the country, we request to restore duty exemption on Palm Fatty Acid Distillate (HS Code 3823.19) and Crude Palm Stearin [HS code 1511] imported for manufacture of soaps and Oleochemicals on "Actual User Condition" as was allowed under Notification No. 50/2017-Cus dated 30.6.2017.	
3.	Relaxation from customs duty on import of Skimmed Milk Powder (SMP)	• Dairy whitener are products made from milk and used across industry for consumers of ice-creams, baby food, vending machines etc. With weather vagaries increasing, milk production in the country is getting impacted. When milk production reduces, priority of supply is given to packaged milk for consumers. • Further, the import of SMP is prohibitively expensive @ 65% custom duty and also capped at 10,000 tonne which can be imported by Government only. Also, importing liquid milk is practically not possible for the Industry. • Due to this, the availability of skimmed milk powder/ dairy whitener gets reduced to the extent of creating stock outs for weeks. • If industry can be facilitated to import SMP, business continuity can be maintained, and demand of end consumers can be met. This arrangement should not impact the farmers adversely, as this demand is currently not catered to, because of unavailability.	Chamber recommends that to support the Industry and to ensure continuous supply to consumers, suitable relaxation should be given on import of Skimmed Milk Powder. It also recommended that given the market of Skimmed Milk Powder is estimated to be more than 6L tonnes, the import ceiling of 10K tonnes should be relaxed.

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GOODS AND SERVICES TAX: POLICY RECOMMENDATIONS

Sr. No.	Subject	Rationale	Recommendation
4.	Relaxation in Aadhar based authentication for existing GST registrants	• The Finance Act (No. 2), 2019 has amended Section 25 of the CGST Act and introduced a requirement of Aadhar based authentication for grant of GST Registration. This is a welcome move and would improve the ease of doing business for small traders as they would not be required to submit proof of identity, proof of address and several other documents for obtaining the GST Registration. • However, the requirement introduced in Section 25 to make Aadhar based authentication mandatory for existing registrants also is going to add the compliance burden without any substantive benefit as those assessee have already gone through the detailed process of submitting the necessary documents before obtaining the registration. Therefore, the provision to cancel the registration due to failure to get the Aadhar based authentication should be relaxed for existing registrants.	Chamber recommends the following for relaxation in Aadhar based authentication <u>for existing GST registrants</u>: • Aadhar authentication should be done away with. • Alternatively, such authentication should be limited to only one authorised person instead of all the designated persons.
5.	Clarificatory amendment to Section 140 to state that registered person included Input Service Distributor ('ISD')	• The objective of the transitional provisions introduced under the GST laws was to allow the seamless flow of credit and avoid blockage of any ITC accrued under the previous tax regime. The whole scheme was aimed at avoiding cascading impact of taxes. • However, in this regard, there is ambiguity for the transitional credit availed by ISD and distributed to units in the GST Regime. • It is submitted that like any other assessee, due to	Chamber recommends that a clarificatory *Explanation* to Section 140 should be inserted to clarify that for the purpose of Section 140(1) the expression "registered person" includes an Input Service Distributor. The taxpayer should be

Sr. No.	Subject	Rationale	Recommendation
		practical and commercial reasons, ISD also received numerous invoices for the service received in the pre-GST regime after the appointed date (July 1, 2017). Since the invoices were not received prior to appointed date, there was no possibility for ISD to avail and distribute this credit in the pre-GST regime. Section 140(7) of CGST Act specially allowed an ISD to distribute the credit on invoices received post the appointed day for services received in pre-GST regime. • Further, since there was no mandate under the service tax law to distribute the credit pertaining to a month in the same month itself, there was closing balance of service credit lying with ISD as part of service tax return which was required to be transitioned into GST. However, there is no express provision in law dealing with the carry forward of closing balance of the service tax credit by ISD in the GST regime and is therefore to be carried forward under section 140(1) which allows for transition of closing balance of CENVAT credit under the erstwhile laws. • Though the ISD has been allowed to transition the credit availed by the company on account of invoices received after the appointed date and the closing balance as on June 30, 2017, the same is not being allowed to be distributed by ISD while filing the GSTR-6. This is leading to credit blockage, mismatch of credits and avoidable litigation.	allowed to distribute the transitional credit so availed by ISD through the mechanism of 'Form GSTR-6'.

Sr. No.	Subject	Rationale	Recommendation
6.	Input Tax Credit should be allowed for construction of an immovable property which is intended to be used for furtherance of business or commerce	• As per Section 17(5)(c) and (d) of the CGST Act, 2017, input tax credit (ITC) shall not be available on (i) works contract services in respect of an immovable property or (ii) goods and services used for construction of an immovable property on his own account including when such goods and services are used in the course of furtherance of business. • ITC, though, is available when works contract service is an input service for further supply of works contract service. This exception to denial of ITC enables a developer to avail input tax credit of works contract services and charge tax on the output works contract service to the customer. Bit denial of credit when used for construction on own account even though the same are used in the course of furtherance of business is against the philosophy of the GST law which is aimed at reducing cascading effect of taxes. • Allowing ITC where building is used in the course or furtherance of business (generating income liable to GST) such as renting, will keep the tax chain intact and serve the purposes of equity. • In the case of Safari Retreats Orissa HC has read down section 17(5)(d) of CGST Act, 2017 by confining the provision to cases where the building is constructed for the purpose of sale post issuance of completion certificate. HC held that where the building was constructed for the purpose of letting out and tax chain was not broken (as GST is payable on rentals), the restriction under section 17(5)(d) is not applicable.	• It is recommended that the provisions of section 17(5)(d) should be appropriately amended to allow ITC where the taxpayer is going to use the immovable property in the course or furtherance of business (e.g. real estate and hospitality sector). • This should settle potential disputes and litigations around the eligibility of credit.

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Sr. No.	Subject	Rationale	Recommendation

7.	GST on business restructuring such as merger, amalgamation, demerger and so on	• Corporate Restructuring through amalgamation, mergers, acquisition and takeover has been an important strategy for driving market efficiency and growth.
		• Though the law allows transition of closing balance of ITC from the amalgamating company to the amalgamated company, there are lot of other issues where the law is totally silent. For example:
		    o What happens to the credit pending to be availed by the amalgamating company for which the vendor has already uploaded the details using the GSTN of the amalgamating company?
		    o Would credit be admissible on any invoices received by the amalgamated company post the merger which carries the GSTN number of the amalgamating company?
		    o Is the amalgamated company allowed to continue with the separate registration for the place of businesses pertaining to the amalgamating company while retaining GST registration for its other place of businesses in the same state?
		    o Should the amalgamated company apply for new registration in case of change in name which requires ROC to issue Certificate of Incorporation?
		    o When should the registration of the amalgamated company be used for the amalgamating business i.e. date of fulfilling of
			• Considering so many open issues, it is requested to issue detailed Rules for transition of credit in situations of amalgamations so that the transition is GST neutral and seamless.

Sr. No.	Subject	Rationale	Recommendation
		condition precedent as per the scheme / agreement or on the date of filing of order with ROC? o How to account for the sales return of the goods sold by amalgamating company but received by the amalgamated company? Would the amalgamated company be allowed to adjust its output tax liability for any such sales return?	
8.	Challenges in availing GST ITC on services received by stock brokers from stock exchanges	• Stock broker engaged in securities broking registered with SEBI offers equity and derivatives trading through NSE and BSE (collectively referred to as 'stock exchanges') and holds Portfolio Management Services (PMS) license from SEBI and offers portfolio management services. • NSE charges penalty with GST on the stock broker for short margin on a daily basis. However, the invoice for fines and penalties are raised on clearing member (i.e. Bank) by NSE and thereafter brokers are required to get the respective clearing member to issue an invoice. Stock Exchanges do share the details of penalty levied along-with GST. • Basically, clearing house is a bank which makes the payment on behalf of Broking Company, and thus the actual service recipient is the stock broking company and not the clearing bank. In this process, bank is not availing the input tax credit of GST charged by stock exchanges on fines and penalties and since such amount of fines / penalty with GST is	Chamber recommends that suitable amendment should be made to stipulate the stock exchanges to raise invoices addressed to the stock broker who is the actual recipient of service and not clearing agents or banks.

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		recovered as pass-through by the banks from the Broking Company. Further, the Broking Company is also not able to avail the ITC as the invoice is not in their name and thus does not get reflected in Form GSTR2A. Given this, the GST on such fines/ penalties is lost as no party is in a position to claim the credit of the same.	
9.	Obligation to reverse GST ITC to the extent of transaction in securities in case of life insurance companies should be done away with	• Life Insurance Companies invest in securities as a statutory obligation towards provision of life insurance service. In the case of Shriram Life Insurance Company Limited, CESTAT Hyderabad has held that no reversal of CENVAT credit is required for statutory investment under IRDA. • Explanation to Chapter V of CGST Rules 2017 states that for determining the value of an exempt supply under section 17(3) of the CGST Act, the value of security shall be taken as one percent of the sale value of such security, any the interest earned on the mutual funds or bonds would not be treated as income from transaction in securities. Only in the year that the security is sold, the company would be required to consider one percent of such sale value of security for the purpose of credit reversal.	Chamber recommends that the obligation of proportionate reversal of GST ITC on such input services to the extent they pertain to transaction in securities in case of life insurance and health insurance business should be done away with. Suitable amendment may be carried out in Chapter V of the CGST Rules, 2017.

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