POST-BUDGET MEMORANDUM 2015-16

AMERICAN CHAMBER OF COMMERCE IN INDIA

PHD House, 4th Floor, 4/2, Siri Institutional Area, August Kranti Marg, New Delhi – 110 016

Tel: 91-11-26525201 Fax: 91-11-26525203 Email: amcham@amchamindia.com

Key Recommendations……………………………………………………………………4-8

Tax Residency of companies - Place of effective Management (POEM) – section 6……4

Capital gain tax exemption to the 'shareholders' of the amalgamating / demerged foreign company which derives significant value from assets situated in India. – Section 47…………………………………………………………………………………..5

Rationalization of MAT provisions…………………………………………………………..6

Substantive Provisions – Direct tax……………………………………………..9-35

Section 195(6) and Section 271-I :Reporting requirement to apply to all payments made to a non-resident……………………………………………………………………………9

Section 32(1)(iia)
Balance additional depreciation of 50% to be allowed in immediate subsequent year…..9

Section 32AD: Investment in new plant and machinery in notified backward areas in the states of Andhra Pradesh and Telangana……………………………………………………10

Tax rates……………………………………………………………………………………11

35(2AB) :Tax benefits for in-house R&D facility……………………………………………12

Global Depository Receipts ("GDRs")………………………………………………………..13

General Anti Avoidance Rules ("GAAR")……………………………………………………17

Taxability of Offshore Funds……………………………………………………………… 18

Concealment Penalty……………………………………………………………………..21

Revision u/s 263………………………………………………………………………… 22

Acceptance or Repayment of money in relation to transaction of immovable property Section 269SS/T……………………………………………………………………………. 22

Raising the threshold of specified domestic transaction section 92BA…………………..23

Section 9: Retrospective amendments……………………………………………………..23

Section 9: Indirect transfer of shares………………………………………………………..23

Real Estate Investment trust ("REIT") / Infrastructure Investment Trust ("InvIT")………27

Interest payable by an Indian PE of NR bank to its HO…………………………………...31

Pass through status for Category I and Category II Alternative Investment Funds……..33

Tax neutrality on consolidation of mutual fund schemes – section 47(xviii), 49(2AD)2(42A)…………………………………………………………………………………………33

Additional deduction uptoRs. 50,000 for contribution to New Pension Scheme………..34

Increase in limit of medical insurance premium under section 80D…………………….. .34

Reduction of withholding tax (“WHT”) on Royalty & Fees for Technical Services (“FTS”)…………………………………………………………………………………………...35

Share Capital Infusion and Transfer Pricing………………………………………………...35

Annexure 1 – Recommendations not considered by Finance Bill 2015……....36

Annexure 2 - Background of provisions relating to foreign amalgamations…103

A. Key Recommendations – Direct tax		
Section/ Topic	**Background/Issue**	**Recommendations**
Tax Residency of companies - Place of effective Management (POEM) – section 6	**Background** a. Place of Effective Management' ("POEM") is an internationally recognized concept for determination of residence of a company incorporated in foreign jurisdiction. b. Finance Bill 2015 seeks to widen the ambit of POEM and treat a company incorporated inforeign jurisdiction as a resident in India if its POEM, at any time in that year, is in India. **Issues** a. The proposed amendment leads to foreign company being treated as a resident in India if its POEM is in India, at any time during the year. b. If the proposed provisions are construed literally, even single / stray BOD meeting in India of a foreign company may have the consequence of that foreign company being a tax resident of India. c. The proposed provisions would result in a fairly low threshold for regarding a foreign incorporated company as a resident in India. If the same is enacted, it is apprehended that there could be a severe impact on foreign incorporated subsidiaries of India in a big way. Some of the apprehensions are as follows: • Mere presence of Indian resident individual to be on Board of Directors of foreign subsidiary of an Indian parent can adversely impact the residential status of the foreign subsidiary. • There could be situations where one of the many Board meetings of such foreign subsidiaries is held in India. This could be the case, even where all the significant decision-making in relation to foreign companies are by Board of Directors or GM of the foreign company outside India and only one off meeting happens in India. • It is common for Indian multinational companies to have a common group policy, for instance Human Resources policy, Finance policy, Risk Management , Common Code of Conduct, etc. for the purpose of uniformity, mobility, consistency and endurance. These policies are, by custom, formulated at HQ and circulated to the group companies for ensuring compliance. In the context of outbound investment, these policies are likely to be formulated and circulated by Indian flagship company. It should not happen that the presence of such common policies may lead to allegation of group companies being considered a resident in India. d. Further, dual residence may and often does result in liability for double taxation. Also ambiguity on availment of foreign tax credit in such a scenario would post a substantial challenge to such companies.	

	Recommendations In the Memorandum to the Finance Bill 2015, it is mentioned that before effecting this amendment, tax authorities would release a set of guiding principles to be followed for determination of POEM for benefit of taxpayers and tax administration. a. Since the amended provision is likely to have a bearing on foreign companies and many other stakeholders, it is recommended that a draft of the guidelines may be released to the public for discussion and comments be invited on the same. After considering the representations and suggestions made by industry groups and various stakeholders, the final guidelines should be notified. b. Since the amended provision is likely to have a bearing on foreign companies and many other stakeholders, it is recommended that a draft of the guidelines may be released to the public for discussion and comments be invited on the same. After considering the representations and suggestions made by industry groups and various stakeholders, the final guidelines should be notified. c. It is common for Indian multinational companies to have a common group policy, for instance Human Resource Policy, Finance Policy, Risk Management, Common Code of Conduct etc for the purpose of uniformity, mobility consistency and endurance. These policies, are by custom, formulated at HQ and circulated to the group companies for ensuring compliance. In the context of outbound investment, these policies are likely to be formulated and circulated by Indian flagship company. It should not happen that the presence of such common policies may lead to allegation of group companies being considered a resident in India. d. Further, dual residence may and often does result in liability for double taxation. Also ambiguity on availment of foreign tax credit in such a scenario would post a substantial challenge to such companies. e. Given that the intention was to align the provisions with the international standards, the words “any time in that year” should be replaced with the words “during the year”. f. The guiding principles proposed to be issued for POEM, should be introduced at the earliest, preferably in March itself, considering that the proposal is effective from 1st April 2015 onwards. Such guidance would go a long way in providing clarity on the new POEM provisions.
Capital gain tax exemption to the ‘shareholders’ of the amalgamating / demerged foreign company which derives significant value from assets situated in India. – Section 47	**Background** a. In an internal group re-organization involving amalgamation of Indian companies, specific capital gains tax exemption has been provided to both the amalgamating company as well as the shareholders of the amalgamating company. b. To give level playing field for overseas amalgamation, Finance Bill 2015 provides for exemption to an amalgamating foreign company which was holding shares directly of an Indian company but not to the shareholders of such an amalgamating company. **Issues**

	a. Capital gains tax exemption is already available to shareholders in case of amalgamations involving Indian companies. b. Specific capital gain tax exemption to the 'shareholders' of the amalgamating / demerged foreign company, which derives significant value from assets situated in India, will be in the spirit of the change brought in by the Finance Bill and take the implementation to its logical conclusion. Without this change, the new provision will not be implementable. **Recommendations** a. It is recommended to introduce a specific provision which provides that in case of group re-organization, capital gains tax exemption will be available to the 'shareholders' of the amalgamating foreign company which derives substantial value from assets situated in India. Please refer **Annexure 2** for detailed explanation.
Rationalization of MAT provisions	**Background** a. Basic purpose of introducing MAT was to bring all zero tax companies within the tax net. It was introduced to neutralize the impact of incentives. b. Presently, MAT is levied on the long term capital gain on shares/units eligible for exemption under section 10(38) of the Act. c. Penalty for concealment of income or furnishing inaccurate particulars of income is levied on 'amount of tax sought to be evaded' which is the difference between (a) tax due on assessed income and (b) tax chargeable on total income after reducing the concealed/inaccurate particulars of income.\\ d. Finance Bill 2015 has proposed to amend the Explanation to provide that MAT will not be payable on the amount of income, being the share of the assessee in the income of an association of persons (AOP) or body of individuals (BOI), on which no income-tax is payable in accordance with section 86, if such amount is credited in the P&L account. **Issues** a. In Finance Bill 2015, it was announcedto reduce the rates of corporate tax from 30% to 25% in phased manner. However, no such reduction of MAT rates is announced. b. This, amendment give rise to controversy whether provisions of MAT would be applicable to foreign company, not required to maintain books of accounts in India c. Law is proposed to be amended to overcome the difficulty in computation of amount sought to be avoided in a case where concealment of income occurred under general provision of ITA and under book profit computation under S.

	115JB/115JC. d. Further, it was provided that where issue is in relation to both, general and MAT provisions, the concealed income will be considered for general provisions only. e. However, language for the above proposed amendment reads as under: *"Second proviso to Clause (a) of Explanation 4 reads as where the provisions contained in S. 115JB are not applicable, the item (C-D) in the formula shall be ignored."* From the above language, a view may be taken that MAT provisions apply by default to company and thus, penalty may be levied for income under normal provisions as well as income. Despite the exemption granted under normal provisions of the Act, under MAT such income is not eligible for exclusion. **Recommendations** a. We would recommend, with the phasing out of incentives and tax rates, the burden of MAT should also be gradually reduced and that MAT should be eventually phased out. b. It is also recommended to extend the period available for set-off of MAT credit from current 10 years to 15 years in line with the Direct Taxes Code and upon abolishing of MAT provisions, grandfather all existing MAT credit for future set-off without any time limit. Also allow set off of book loss and depreciation as the same would amount to companies earning book profits in real sense. c. It is that the MAT exemption on section 10(38) should also be extended to other assessees along with the FIIs to bring parity. d. A more welcome amendment would be be one which introduces a clarification embodying the principle that a foreign company which has no business presence, such as PE in India, is not liable to MAT. e. In caseMAT is made applicable to foreign companies then guidelines/methodology for ascertaining/computing the books profits should be provided, given that the foreign companies having nopresence in India do not and are not required to prepare India specific books of accounts. f. The clarification should have the retrospective effective, to ensure that cases of earlier years are not re-opened to levy MAT. g. With respect to capital gains exemption earned by FIIs on sale of securities, CBDT should issue a circular clarifying that the proposed amendment shall be applied to past years as well or the proposed amendment should be made effective retrospectively. h. Irrespective of above, the scope of amendment should be broadened to include

	all nature of income (such as interest income) earned by the FIIs. i. It should clearly stated in the proposed amendment that concealment or inaccurate particulars should be in accordance with the additions as mandated under Explanation 1 below Section 115JB(2). This would avoid any confusion and discretionary exercise of jurisdiction by the Assessing Officer. j. It may be noted that the Supreme Court in case of Apollo Tyres has stated that no adjustments could be made by the Assessing Officer to net profits if the financials have been prepared in accordance with the Companies Act and limited adjustments in accordance with the mandate of Section 115JB is permitted. k. Further , the language of the proviso should be modified to read as where the tax is not payable under the provisions of section 115JB, the item (C-D)ie the difference between MAT income as per the Assessing Officer and MAT income as per the Assessee as in the formula (related to concealed income as per MAT) shall be ignored. l. The proposed provision should be delinked from the provision of Section 86 (read with Section 67A) of the Act. Instead, the amendment should state that the amount of assessee's share in the income of AOP/BOI, as credited to the profit and loss account should be reduced while calculating the amount of book profits. Also, the expenditure relatable to such income should be added back while computing the book profit. Alternatively, it should be clarified that the term 'total income' as appearing in Section 67A would include income which is exempt or deductible under various provisions of the Act.

B. Substantive Provisions – Direct tax			
Section/ Topic	**Background**	**Issue**	**Recommendations**
Section 195(6) and Section 271-I **Reporting requirement to apply to all payments made to a non-resident:-**	It is proposed to amend Section 195(6) to provide that person responsible for paying any sum whether chargeable to tax or not, to a NR is required to furnish the information in such form and manner as may be prescribed.	a. With new law, practical difficulties to arise due to tremendous proliferation of compliance burden including CA Certificate in respect of payments such as • Payment for imports other business payments • Remittances towards gifts or education • Reporting required for payments made on foreign trips • Payments made at overseas restaurants, • Payments made for online shopping owned by NRs • Payment to NR's branches in India • May apply equally to payment between NRs or involving branches of NR in India • May apply even if covered by S.195(2)/(3) or 197 order	a. Currently, reporting requirement is being implemented strictly by the banking industry without any specific mandate in law. There is no need to expand the scope of the provision. b. However if the proposed amendment is enacted the following relaxations may be considered: • The list of exempted payments specified in Rule 37BB may continue to be kept out of reporting requirement. The list may be enlarged in consultation with the trade bodies. • All non-business remittances may be kept out of the purview of reporting • Small value transactions – say, remittance of less than Rs. 1 lakh or 10 lakh should be kept out of the reporting compliance. • There should be no insistence on CA certificate in respect of remittances which are not chargeable to tax. • Necessary information should be collected from bank/taxpayer preferably bank so that the tax payer is relieved of the compliance. c. Penalty should not be qua remittance and may be capped at Rs. 1 lakh except where there is gross negligence or wilful omission.
Section 32(1)(iia) **Balance**	Owing to ambiguity under the extant provisions on additional depreciation,	It is noted that the amendment is brought in to eliminate the discrimination	a. While the amendment is welcome and it seeks to resolve ambiguity in favour of the

additional depreciation of 50% to be allowed in immediate subsequent year	non-avaiability of full 100% of additional depreciation for acquisition and installation of new plant and machinery in the second half of the year motivated taxpayers to defer such investment to next year to ensure availment of 100% additional depreciation in next year	which was operative between the taxpayer who installs the machinery in first half and another who installs in the second half of the year.	taxpayer by offering equal treatment to all taxpayers, it is recommended that the amendment be introduced as a a clarification considering that there are cases pending in litigation. b. Alternatively, appropriate instructions may be issued to field officers to allow such benefit in pending proceedings also.
Section 32AD **Investment in new plant and machinery in notified backward areas in the states of Andhra Pradesh and Telangana**	To promote industrialization and growth in notified backward areas of Telengana and Andhra Pradesh Central Government has introduced certain tax incentives to encourage setting up of industrial undertakings in these areas.	The proposed provision denies deduction where 100% depreciation has been claimed in a financial year. Such ddenial will hit the industries which are in a priority sector and which earn higher depreciation because of the significance of their industry. For example, ironically the amendment will deny benefit to the Industry which employs fuel efficient machinery eligible for deprecation @ 100%.	a. It's recommended to extend Investment allowance under section 32AD to whole of India instead of only Andhra Pradesh and Telangana. The theme of BJP government is "make in India" and not "make in selective states". b. Over a last decade, Andhra Pradesh has grown and developed as an IT Hub and it would be recommended to provide such incentives to the service industry as well. c. It is recommended that deduction be allowed in respect of plant and machinery where 100% depreciation has been claimed in a financial year. d. Also, the benefit should not be denied to industries enjoying investment linked tax holiday. e. Further, in order to avoid dilution of incentive benefit, the investment allowance should be deductible even in the computation of 'book profit' under MAT provisions. f. Aclarification may be issued that the deduction may be held admissible so long as acquisition and installation are during the specified period

			covered in the section.
Tax rates	Finance Minister has announced reduction in corporate tax rate from 30% to 25% in phased manner accompanied by withdrawal of exemptions		Proposal for reduction in corporate tax rate is a welcome step. a. Planned reduction in corporate tax rates may be accompanied with at least 1% rate cut effective from FY 2015-16 to boost the confidence among tax paying industry. Atleast the hike in rate of surcharge from 10% to 12% may not be made with immediate effect. b. Along with reduction in corporate tax rate, it is recommended that there may also be a re-look at a number of disallowances as a result of which the chargeable income is found to be in excess of commercial income. An ideal situation is one where there is no mismatch between commercial and statutory income. c. . Also with the phasing out of incentives, the burden of MAT should be gradually reduced and that MAT will be eventually phased out. d. But while abolishing MAT, appropriate grandfathering should be provided to MAT credit u/s 115JAA so that the companies who have paid MAT can set off the same in post MAT period and the period for availing such set off should also be extended from 10 years to 15 years to compensate for reduction in corporate tax rate under normal provision. e. Consistent with the reduction of rates of tax, the rate of DDT, may also be reduced suitably so as to be competitive in terms of

			the comprehensive tax burden.
35(2AB) **Tax benefits for in-house R&D facility**	The weighted deduction of 200% under Section 35(2AB) of the Income Tax Act, 1961 is available for expenditure on in-house R&D facility approved by the Department of Scientific and Industrial Research ('DSIR') only to such companies who incur R&D expenditure and utilise the final result/ outcome of the said R&D in the manufacturing operations of the Indian company incurring such R&D expenditure.	a. R&D involves a significant investment and risk and also the same being very time consuming, it may be commercially feasible to share the R&D costs among various group companies which in accordance can be used for the business of the entire group. This would encourage and motivate companies to invest in setting up large in-house R&D units in India which would utilise talent in the form of scientists / engineers in India and also help in creation of India as a global R&D hub. b. Presently, only expenditures, which are directly identifiable with approved R&D facility, shall be eligible for the weighted tax deduction. However, several types of expenditure such as the following are not allowable for weighted deduction: • Expenditure purely related to market research, sales promotion, quality control, testing, commercial production, style changes, routine data collection etc; • Capitalised expenditure of intangible nature; • Foreign patent filing expenditure, foreign consultancy expenditure, REACH	a. A specific provision should be introduced for weighted deduction of R&D expenditure even where a part / whole of R&D activity / costs is shared within group companies. b. An amendment should be brought into the effect that entire expenditure incurred in connection with R&D should be eligible for a weighted deduction to reduce complexity and make it a more attractive commercial proposition to invest in setting up R&D facilities in India.

		compliance expenditure; • Consultancy expenditure, retainership, contract manpower/ labour; • Expenditure in the nature of cost of any land or building; etc	
Global Depository Receipts ("GDRs")	The definition as proposed to be amended by the Bill is not aligned with the 2014 Scheme and creates ambiguity around taxation of unsponsored GDRs Currently, transfer of GDRs outside India between two non-residents is specifically exempted from capital gains tax in India.	The proposed amendment does not appear to be aligned with the Scheme introduced recently. In view of a narrower definition of GDR proposed in the Act, there is a doubt on tax implications of transfer outside India between two non-residents	We suggest that the definition of GDR in the Income tax Act, 1961 ('the Act') should be aligned with the definition of DR as per the 2014 Scheme to include all the permissible securities within its sphere. This move will foster wider acceptance of the 2014 Scheme. In this regard, recommendations are as follows: i. DRs are instruments created outside India by a Overseas Depository Bank and are not securities located in India. Thus, capital gains arising to non-resident investors on transfer of DRs outside India should not be regarded as India sourced income as envisaged in the scheme of the Act (Section 5 read with Section 9 of the Act) ii. We suggest that if the suggestion made above regarding the definition of GDR cannot be carried through, then it should be made explicitly clear that all DRs traded outside India (including the ones which are not sponsored and backed by listed equity shares) will be outside the purview of Indian tax net. This will mirror recommendation made by the Sahoo Committee and soothe foreign investors who would otherwise be agonized by

			potential extra territorial application of the Act. It is recommended that since conversion of GDRs/DRs into underlying shares/securities does not entail transfer of one person to another and merely represents exercise of right in the DR instrument, such transactions should not be regarded as 'transfer' to be taxable under the Act.
	The 1993 Scheme provided framework for issue of GDRs as well as FCCBs. Under the 1993 Scheme, conversion of FCCBs into shares of the underlying company was not treated as a taxable event. The Act and the 1993 Scheme were however silent on the tax treatment to be followed on conversion of GDRs into the underlying shares. This seemed to be unintentional as the tax treatment for FCCBs and GDRs was otherwise at par. Hence, in practice even the conversion of GDRs into shares was regarded as a non-taxable event.	The absence of clarity in the Act coupled with repealing of the 1993 Scheme, creates ambiguity on tax treatment to be followed on conversion of GDRs/DRs into underlying shares/securities. This could be interpreted to mean that conversion of GDRs/DRs into underlying shares/securities would be taxable under the Act. This would result in the notional capital gains arising on conversion based on fair market value of underlying shares or securities on the date of conversion getting taxed.	Further it is suggested that Section 47(xa) of the Act (which currently cover conversion of FCCBs into shares) should be amended to explicitly include transaction by way of conversion of GDR into underlying shares. Further, similar benefit should also be extended to conversions of other type of DRs (other than GDRs defined in the Act) into underlying securities. Till such benefit is accorded, the tax authorities should be instructed to continue with the past practice of treating such conversions as exempt from tax. Our recommendations are as follows: • As recommended by the Sahoo Committee, conversion of shares/securities into GDRs/DRs should not be regarded as a taxable event in India.
	The tax law provides for tax neutrality for certain conversions of one type of financial instruments into another like conversion of bonds/debentures into shares. Conversion of	Conversion of shares into GDRs is usually an off-market transaction not subject to Securities Transaction Tax ('STT') and therefore not entitled to	• It is requested that Section 47(xa) of the Act be amended to include transaction by way of re-conversion of shares into GDR for the purpose of issue of GDRs outside India. Further, similar benefit

	shares into GDR however, is not included and hence, there is a possibility of such conversion being construed as a taxable event giving rise to capital gains.	concessional tax treatment. If the conversion of shares acquired in India into GDR is regarded as a taxable event, then the short term capital gains arising to non-resident tax payer on such conversion would generally be taxable at 30%, being an off market transaction. This will dissuade investors from offering their shares under the DR program, who would rather opt of selling their shares on-market (on which STT is charged) and paying short term capital gains tax at a concessional rate of 15% (or no tax if held for more than one year).	should also be extended to re-conversions of other securities (other than listed equity shares) into DRs. • In case it is not possible to accept the above suggestion, then clarity needs to be provided on computation methodology to be followed for capital gains tax purposes, as under: o In case of GDR converted shares, the cost of acquisition of shares should be market price of such shares prevailing on the stock exchange on the date of conversion of GDRs into shares o Rupee equivalent of market value of GDR on the day of its issuance should be considered as the sale price of the shares so converted; • The above computation methodology should also be extended to reconversion of other securities (other than listed equity shares) into DRs and guidance should be provided on determination of cost of acquisition or sale consideration for securities which are not traded over the stock exchange (eg. unlisted securities, etc). In this regard, we suggest the following: • We suggest that the practice followed in the past on determination of period of

			holding and cost of acquisition of shares be continued and explicitly codified in law. • Further, since the transfer of securities contemplated here is anyway taxable in India, we suggest that the computation mechanism should be extended to sale of other DR converted securities as well. Guidance should also be provided on determination of cost of acquisition for securities which are not traded over the stock exchange (eg. unlisted securities, etc).
	Currently, sale of equity shares released against the GDRs was taxable in India. As provided in the 1993 Scheme, for computing the capital gains in such a case, period of holding was reckoned from the date on which the Overseas Depository Bank advises the Domestic Custodian Bank for redemption to the date of sale of GDR converted shares. Further, the cost of acquisition of shares was computed by considering the market price of equity shares of the issuing company prevailing on the stock exchange on the date of advice. The gains computed on transfer of GDR converted shares were treated as short term capital gains or long Term capital gains based on period of holding of GDR converted shares. Long term capital gains (on which STT is paid) were exempt from tax and short term capital gains (on which STT is paid) were taxable at 15%.	The 1993 Scheme provided some guidance on determination of period of holding as well as cost of acquisition in case of sale of GDR converted shares in India. The 2014 Scheme or the Act are however silent on these aspects. This creates ambiguity on whether past practice can be followed on sale of GDR converted shares going forward. Further, clarity is also needed on whether practice followed on sale of GDR converted shares can be extended to sale of other DR converted securities.	
	The 1993 Scheme permitted only issuance of sponsored GDRs. The 2014 Scheme permitted the holder of securities to participate in an unsponsored DR program wherein the issuer	Under the Act, both the buyer and seller are required to pay STT on purchase and sale of equity shares. Long-term capital gains realised upon sale of equity shares on a	The SahooCommittee had recommended for capital gains tax, tender of shares of a listed company for issue of DRs should be treated at par with sale of shares on a recognized stock exchange.

	company is not involved. The holder of securities simply deposits his securities with the domestic custodian in India and thereafter a foreign depository issues DRs abroad on back of such deposited securities.	recognized stock exchange are exempt from tax whereas short-term capital gains on similar transactions are taxed at 15%. The long capital gains tax exemption or concessional tax rate of 15% tax on short term capital gains mentioned above is not available for an off-market transaction. Hence, long term capital gains arising on tendering of shares by a non-resident investor would be subject to tax at 10% and short term capital gains arising on similar transactions would be subject to tax at 30%. The differential tax treatment results in limited appetite for transferring shares to a foreign depository for issue of DRs.	In order to boost the unsponsored DR program, we suggest that the concessional tax treatment for transactions executed on market should be extended to tendering of shares of a listed company under the DR program.
General Anti Avoidance Rules ("GAAR")	Applicability of GAAR has been deferred by another 2 years, now would be applicable from 1st April 2017. Further, provisions of GAAR would be applicable on investments made upto 1 April 2017 on the lines of the recommendations of the Expert Committee (EC)	The deferral of GAAR for 2 years is a welcome step. However certain recommendations by the Shome Committee have still not adopted	As also recommended by the Shome Committee the Government should : • Carve out an exemption for FPIs from GAAR. Such a specific carve-out will go a long way to provide the tax certainty needed for the healthy functioning of the Indian capital markets. Given the regulatory requirements and supervision by the Securities and Exchange Board of India (SEBI) of FPIs, the risk of any abusive transaction is greatly reduced. • In case a general exemption for FPI's mentioned above is not possible, the Government should look at clarifying that GAAR will not apply if the FPI investments meet the treaty

			requirements for claiming the benefits under the treaty: e.g., Tax Residency Certificate (TRC) in the case of India-Mauritius treaty. • Clarify that where Specific Anti-Avoidance Rules (SAAR) apply to a transaction, GAAR should not be applied. This is particularly applicable where a tax treaty entered into by India contains SAAR provisions to determine whether a resident of the treaty country is entitled to treaty benefits. In the treaty context, the SAAR often takes the form of Limitation of Benefits (LOB) clause. Where the LOB conditions are met, GAAR should not be used to override treaty benefits. This clarification is extremely essential in the context of the India-Singapore treaty given the increasing importance of Singapore as a jurisdiction for Indian investments pursuant to the signing of the CECA between the two countries.
Taxability of Offshore Funds	To facilitate location of fund managers of offshore funds, section 9A has been introduced to provide that in the case of an 'eligible investment fund' the fund management activity carried out through an 'eligible fund manager' acting on behalf of such fund should not constitute business connection in India of the said fund and such fund shall also not be regarded as a resident in India	For eligibility to avail benefit of these provisions several onerous conditions have however been prescribed for the fund managers. a. The Finance Minister in his Budget speech stated that "mere presence of fund manager in India would not constitute a PE of offshore fund resulting in	While the Budget speech states that "mere presence of fund manager in India would not constitute a PE of offshore fund resulting in adverse tax consequences. In order, to encourage the maximum availment of these provisions, simplification / rationalization of these conditions required. a. It is recommended that Section 9A should further clarify that fund management activity in India shall not constitute a permanent establishment in India of the offshore fund.

		adverse tax consequences", section 9A(1) simply clarifies that fund management activity in India shall not constitute a business connection in India of the offshore fund. b. Section 9A(3)(e)mandates offshore fund to have 25 members. This would not be fulfilled where the fund invests into India *via* intermediate holding company/ies, though the fund itself may have more than 25 members. Additionally, sovereign wealth funds, university funds, etc., may stand excluded. Also, use of the words, 'directly or indirectly' also makes implementation difficult. The clause needs to be amended to remove these difficulties. c. The requirement in clause (f) of section 9A(3) for any member along with connected persons not having participation interest of more than 10% would not be satisfied where the fund has few large investors holding more than 10%. d. The requirement in Section 9A(3)(g) regarding aggregate participation interest of ten or less members along with their connected persons shall be less than 50% would not be satisfied where the fund has less than	b. It si suggested that the clause is reworded to exempt offshore funds investing through intermediate holding companies and sovereign wealth funds from requirement of 25 members. Remove the words, 'directly or indirectly'. c. The clause should be suitably amended to remove this difficulty. d. The clause needs to be amended to remove this difficulty.

		10 institutional investors comprising the total corpus. e. The condition that aggregate participation or investment in the fund, directly or indirectly, by persons resident in India should not exceed five per cent of the corpus of the fund may be unworkable, because most funds have initial 'anchor investors' who come in with stakes higher than 5%. f. The requirement in clause (k) of section 9A(3) for the fund not controlling and managing any business in/from India, would not be satisfied in case of buy-out funds which typically acquire controlling stake in investee companies. g. In the condition that the fund should not invest more than 20% of its corpus in any entity, the intention seems to restrict funds from investing over 20% of its corpus in any entity 'in India'; but 'in India' is missing. h. In the condition that the fund should not be engaged in any activity which constitutes a business connection in India, nor have any person acting on its behalf whose activities constitute a business connection in India,	e. As per Shome Committee a26% limit may be more viable f. The clause needs to be reworded to ensure that it does not apply to buy-out funds. g. This condition may be suitably amended to include the words, 'in India'. h. It should be clarified that activities like custodianship, banking and incidental activities should not be treated as business connection.

		other than the activities undertaken by the eligible fund manager on its behalf, it is not clear whether custodianship, banking and incidental activities can be treated as business connection. i. The requirement in clause (d) of section 9A(4), of the fund manager not being entitled more than 20% of the profits of the fund, results in capping of the profits of the fund manager which is based on commercial arrangement.Also, there is ambiguity around the period to be considered for ascertaining profits, particularly in case of open-ended funds and in the event of a loss or marginal profits. j. The condition that remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf is not less than the arm's length price for the activity.	i. Clause (d) should be deleted, since this condition is already taken care of in clause (m) of section 9A(3). The period to be considered in such circumstances should be specified. j. Remove arm's length pricing as a condition. Alternatively, if remuneration is found 'not at arm's length' under transfer pricing (TP) assessments, tax and penal consequences as per TP provisions may be applied.
Concealment Penalty	Finance Act, 2012 have introduced some key retrospective amendments in the name of clarificatory amendments.	While a more correct step would have been to reverse the retrospectively in this budget, however,these suggestion has not found in favour with the Government.	In the circumstances, the least that may be done is to announce that the following default consequences will operate prospectively viz., (i) Interest levy on demand arising as a result of amendment should be restricted to prospective period. (ii)No penalty proceedings may be

			initiated in respect of alleged understatement of income. (iii)Tax withholding obligation should be applied prospectively. (iv)Payer of income should be considered as a representative assesse, on a prospective basis.
Revision u/s 263	Explanation 2 is proposed to be inserted in s.263 to provide that an order of subordinate authority will be considered to be erroneous in the following circumstances: The order is passed without making inquiries or verification which should have been made; The order is passed allowing any relief without inquiring into the claim; The order has not been made in accordance with any order, direction or instruction issued by CBDT under s.119; The order has not been passed in accordance with any decision which is prejudicial to the taxpayer, rendered by the jurisdictional HC or SC in the case of the taxpayer or any other person.	The law relating to the circumstances on which Commissioner may revise the order is fairly well settled in terms of judicial precedents. There is no need to disturb the provision. The insertion of any new provision will destabilize the law and add to fresh issues of litigation. Further, The language used is susceptible of highly vague and uncertain meaning and will almost authorise the Commissioner to direct revision at his pleasure on the slightest pretext. The language will virtually authorize revision in all those cases where it may be difficult to assume jurisdiction to re-assess income.	In the interest of simplicity of law and with a view to avoiding proliferation of tax litigation, it is recommended that Explanation 2 may be dropped and that the subject of revision may continue to be dealt with in accordance with the judicial precedents which have thrown sufficient guidance on the subject.
Acceptance or Repayment of money in relation to transaction of immovable property section 269SS/T	Finance Bill proposes to prohibit taxpayer from acceptance or repayment of any sum of money in relation to transaction of immovable property in excess of Rs. 20,000 otherwise than by account payee cheque or account payee draft or online transfer through a bank account. This restriction is in addition to existing	Modes prescribed under S.269SS/T do not recognize acceptance or repayment in the form of book adjustment against any dues from/to the counter party.	Settlement through the medium of book entry has no implications in terms of circulation of Black Money and there is no reason why it may be tested at par with cash payment for the purposes of the section. Thus,mode of settlement by book adjustment is recognised in Rule 6DD(d) while carving out exception to disallowance of expense in terms of s. 40A(3). It is recommended to provide similar exception for s. 269SS/T in

	restriction on acceptance or repayment of loan or deposit.		general.
Raising the threshold of specified domestic transaction section 92BA	Specified domestic transaction (“SDT”) under existing provisions means any specified transactions, not being international transaction, where aggregate of such transaction entered by the taxpayer during the previous year exceeds Rs. 5 crores	The limit of Rs. 5 crores seems very low considering elaborate and extensive documentation and compliance requirements for the taxpayer resulting into increased compliance burden and administrative costs to the taxpayer.	The increase in the limit for SDT is a welcome proposal. However it is recommended that the limit is made effective from April 01, 2015 instead of April 01, 2016.
Section 9 **Retrospective amendments**		a. Retrospective amendments having major impact have been introduced in 2012 in the name of clarificatory amendments. In reality, they are substantive amendments and it was unfair that the amendments were made retrospective effective from 1 April, 1962. While a more correct step would have been to reverse the retrospectivity, we find that the suggestion has not found in favour with the Government. In the circumstances, the least that may be done is to announce that the default consequences will operate prospectively.	It is suggested that the following default consequences should be effective prospectively viz., a. Interest levy on demand arising as a result of amendment should be restricted to prospective period. b. No penalty proceedings may be initiated in respect of alleged understatement of income. c. Tax withholding obligation should be applied prospectively. d. Payer of income should be considered as a representative assesse, on a prospective basis.
Section 9 **Indirect transfer of shares**	Budget 2015 has proposed following amendments based on the recommendations of Expert Committee (EC) under the Chairmanship of DrShome and after consideration of concerns raised by various stakeholders: • The term ‘substantial’ to	a. Since the date of introduction of unprecedented retrospective amendment, the foreign investors have been struggling to ascertain the meaning of expression ‘substantial interest derived from India’. We welcome the initiative to define the parameter of	a. The clarification provided in the budget with regard to taxability of indirect transfers should be given retrospective effect to provide much needed clarity and avoid unnecessary disputes for the past proceedings. b. The comparison between India asset value and value of target entity which is transferred, should be based on commercial

	be defined as value of Indian assets exceeding Rs. 10 crores and representing 50% of the value of all the assets owned by the foreign entity. • Exemption for direct or indirect transfer of small shareholdings below 5%	'substance'. But, there is no reason why the parameter should not be made applicable to pending proceedings, such that the taxpayers may not have to struggle on the interpretation as may be adopted in assessments as may pertain to past years.	principles after taking into consideration the liabilities which may have been incurred by all companies. If this recommendation is accepted, the value comparison will become logical. For example, if the Indian assets are sold in isolation, the fair value thereof will be negotiated after taking into consideration the liabilities of the company. The intent of the law is to capture this gain if it is enclosed within an indirect transfer (instead of a direct transfer) and the India asset value is substantial at more than 50%. For this comparison, the fair value of the subject matter of indirect transfer should also be determined after taking liabilities into account. The commercial deal is unlikely to ignore the liabilities. c. **Shome committee recommendations**: Some of the healthy recommendations of Shome Committee do still appear to remain incomplete in form and spirit. As the Committee recommended: • Value comparison between companies should to be ascertained based on net assets of the companies, after taking into account their liabilities • Exempt all transfers of shares of listed foreign companies, from the purview of this charge • Exempt transfer of shares or interest in a foreign company or entity under intra group restructuring, subject to the condition that such transfers are not taxable in the jurisdiction where such companies resident • Suitable exemption may be

			provided to FIIs and PE investors d. Evaluation of 'substantiality' may be based on the reckoning of value w.r.t. last balance sheet date. Where there are significant post-balance sheet events, the specified date should be the date of balance sheet prepared after considering such events. e. Both the expressions 'value' and 'fair market value' have been used as part of the section and, in the interest of clearer interpretation, it may be desirable to provide clarity on the harmony between the two.Thus reasonable guidelines should be provided for determination of fair market value in connection with indirect transfers on priority basis. f. The proposal to introduce reporting requirement by Indian companies relating to indirect transfers of shares should be avoided, as many times Indian companies may not be aware about overseas indirect transfer of shares and this may lead to unnecessary litigation without any cause. g. In line with Shome Committee Report, it is suggested that the parameter of small shareholder should be judged based on share capital or voting power exceeding 26%. As next best preference, the parameter of 10% of equity capital or voting power calculated w.r.t. immediate or close associated enterprises may be considered. h. We believe that provision for exempting small shareholders

			needs to be more liberal and pragmatic if the intent is to keep small players away from litigation and to engender a climate of tax friendly administration. Accordingly, it is suggested that the value limit should be increased to Rs. 100 crores. from the present proposed level of Rs. 10 crores. i. Further, it is suggested that, in cases of indirect transfer, the tax withholding requirement may be relieved completely, leaving it to the seller group and the tax administration to handle the issue. As next best alternative, the value limit which is fixed for attracting tax withholding provisions should be prescribed at a reasonably high value transaction say, Rs. 100 crores. per transaction. j. We apprehend some cases of inconsistency and injustice on a joint reading of the provisions triggering taxations and the provisions stipulating fixation of specified date. This may lead to double taxation in India.In order to avoid such situation, it is recommended that the words ‘date of transfer’ may be added at the end of Explanation 5 to section .9(1)(i). Alternatively or concurrently, in proposed Explanation 7, the words ‘date of transfer’ may be added after the words ‘assets located in India’ in the last line of Clause (b) to ensure that taxation of gain is not disproportional to assets located in India as of the date of transfer. k. It is impractical that onus is placed on the Indian concern to report certain events or transaction. Thus it recommended that the

			requirement should be made applicable only in those cases where Indian company is a party to the transaction or has full knowledge of the transaction and yet there is a wilful non-disclosure. As next best alternative, it must be limited to a case where the transaction results in change in control and management of Indian company. l. Elaborate rules regarding the computation of tax liability in India with numeric examples taking into account alternate factual matrix should be provided. m. The manner of determination of cost of acquisition in the hands of the non-resident transferor should be specifically provided to avoid any ambiguity. Also, the benefit of foreign exchange fluctuation under second proviso to section 48 should be extended to indirect transfers.
Real Estate Investment trust ("REIT") / Infrastructure Investment Trust ("InvIT")	Finance Act 2014 had introduced a special regime for taxation of REIT/InvIT by granting them a pass through status with respect to dividend income. Also in case of sponsors, capital gains arising on transfer of shares of SPV is exempted at the stage of contribution	a. Finance Bill 2015 has provided a pass through framework in respect of rental income from real estate assets held directly in Business Trusts. As provisions stand today, pass through status is not accorded to rental income earned by InvIT. Thus rental income would be taxable in the hands of InvIT at the entity level. b. Also Finance Bill 2015 also extends preferential capital	It is recommended that the pass through regime be extended also to rental income arising to InvIT from direct holding of the property. There does not seem to be any rationale for differential treatment. Further with respect to the preferential capital gain regime for the sponsor, it is recommended that the benefit of lower holding period of 12 months be extended also to units of business trust. This clarification would put units of business trust at par with listed shares or unit of mutual fund specified under section 10(23D) and thereby will be in line with

		gains regime to the sponsor on subsequent sale of units of business trust. However, under the current provisions the period of holding which has to elapse to turn ReIT units into long term continues to be at 36 months. c. Further at present there is no provision which enables the unit holders to claim 30% standard deduction in respect to rental income. Thus neither ReIT nor unit holders would be able to avail benefit of standard deduction of 30% which under earlier provisions was claimed by ReIT on the rental income. d. Furthermore the existing provisions of the Act provides for exemption to sponsor in case of transfer of shares of SPV against units of business trust. SEBI regulations in relation to REITs permit ReIT to hold assets directly. Thus, transfer by sponsor of real estate asset is also one of the permissible methods of holding property in business trust. However, section 47(xvii) of the Act does not cover case of transfer of asset to ReIT. This virtually compels sponsors to operate through SPV. e. Based on combined	legislative intent. Also it is recommended that the anomaly with respect to availment of standard deduction of 30% under section 24(a) is rectified and the tax withhunit holders are made eligible to claim standard deduction of 30% on the rental income. It is recommended that an exemption is granted to sponsor in respect of transfer of assets to ReIT as similar to the exemption available to it in respect of sale of shares of SPV. Further there is ambiguity with respect to definition of SPV under the Act as registration of business trust will take place after transfer of shares by sponsor to business trust, it is unlikely that the business trust would hold controlling interest in SPV prior to date of transfer of shares. Consequently the company whose shares are to be transferred may not qualify as SPV. Thus it is recommended that the anomaly is corrected. It is recommended that timing of withholding to be done by ReIT on rental income and interest income to be paid to unit holders is rationalized. It is recommended that a provision may be introduced clarifying that tax withholding would be required in the year of actual distribution and not in year the the income is credited by ReIT. With a view to avoid overlapping impact of provision and possible litigation thereon, it is recommended that Section 195(1) of the Act be amended to exclude payments made to non-residents/foreign company which

		reading of section 47(xvii) and Explanation to section 10(23FC) of the Act, in order to be eligible for exemption under section 47(xvii) the SPV whose shares are transferred should be an Indian company in which the business trust has controlling interest as on date of transfer of shares by sponsor to business trust. f. In terms of S.194LBA, ReIT is required to withhold tax in respect of distribution of rental income and interest income to the unit holders. Tax withholding will trigger on earlier of the date of credit or payment of amount to the unit holders. In terms of S.115UA(3), distributed income will be chargeable to tax in the hands of the unit holder in the year in which income is received by the unit holders. This may result in mismatch between the year of taxability and year of withholding of tax amount, requiringreconciliation and will result in administrative burden on the taxpayer and the tax authority. g. Section194LBA(2) provide for tax withholding at specified rates on	are subject to withholding under Section 194LBA of the Act. Based on the common industry practice followed in the case of venture capital funds it is recommended that expenses that are laid out or expended "wholly and exclusively" for the purpose of making/ earning income should be allocated towards such income and which are not directly attributable should be allocated to all sources of income on proportionate basis. In order to eliminate dual levy of DDT in case of corporate unitholders, it is recommended that business trust should be made to hold the asset directly, so that income is merely subject to corporate tax, and the business trust can distribute dividends to the unit holders without any further tax. Accordingly the income distributed by SPV to business trust be exempted from DDT levy. In order to provide an impetus to ReIT, MAT should not be applicable on the sponsor on transfer of shares of SPV to the reIT/InvIT. Further in light of exemption provided to unit holders under section 10(23FD) of the Act, MAT should not apply to unit holders in respect of income (other than interest and rental income) distributed by REIT.

		distributedincome being interest income to a non-resident or a foreigncompany. Further, Section 195 also provides for tax withholding on any sum paid to non-resident /foreign company which is chargeable to tax in India. Thus, event of distribution by way of interest to non-resident/foreign company unit holders is covered also by Section195. h. Further proposed tax regime of ReIT has no clarity on deductibility of expenses and allocation of the same in the hands of unit holders. There could also be challenges in determining quantum of distributed income for implementing tax withholding provisions u/s. 194LBA. i. Under the existing provisions, dividends paid by SPV to business trusts would be subject to Dividend Distribution Tax ("DDT") which may lead to multiple level of tax and makes business trust structure inefficient. j. Capital gains arising on transfer of shares of SPV by sponsor to REIT are exempt as provided under section 47(xvii). However, similar exemption is not extended under S.115JB for computation of book	

		profit for levy of MAT. In absence of such exemption, it becomes tax inefficient for sponsors to move to REIT structure.	
Interest payable by an Indian PE of NR bank to its HO	Under the present tax regime, interest payable by an Indian Permanent Establishment (PE) of an NR bank to its head office (HO) outside India or any other part of the NR outside India, is deemed to accrue in India and taxable in addition to income attributable to the PE in India under a tax treaty.	Budget 2015 proposes that the payment of interest by the India branch to the Head Office or any branch outside India shall be chargeable to tax in India and withholding tax in India. As Head Office and branch(es) are part of the same legal entity, the taxability of the intra-group interest income would be against the principle of mutuality.	This proposal needs to be deleted for the following reasons: A. There is no base erosion when the entity is in non-treaty jurisdiction; the provision leads to double whammy: i. Intention of the Explanation is to curb base erosion. The Memorandum explains that interest paid by PE to its HO is available as deduction in the hands of Indian PE and non-taxability of income in the hands of HO merely leads to base erosion. ii. Typically such a situation of expense deduction arises only when the NR is located in a treaty jurisdiction. It is in such case that while computing profits of Indian PE under the provisions of the applicable tax treaty, expense is recognized by PE. iii. While intent is to counter tax such deductible payments, the Explanation as it presently reads will impact NRs present in non-treaty jurisdictions as well. As a consequence, a NR from non-treaty jurisdiction will face a double whammy since, while the PE does not get deduction - but, the interest income is taxable under the Act. This needs to be corrected by inserting a fiction in Explanation to s. 9(1)(v), that PE of such bank from non-treaty jurisdiction will also

			be entitled to deduction in respect of interest paid to HO / other enterprises of the same entity. B. Non resident fictional entity should be taxed at a low rate keeping in view the operating margin of on-lending funds of constituents. i. Non-resident interest recipient bank should not be taxed on a gross basis in a manner which creates unbearable tax burden. ii. It is a well known fact that financial institution like banks will have nominal spread of income which it earns by on-lending funds which are primarily sourced from the constituents. Since interest expenditure constitutes major component of operating expenditure of the bank, tax withholding with reference to gross interest income turns out to be fairly stiff. Such stiff source taxation creates liquidity issue as also adds to the cost of business if the bank is not able to fully utilise credit in respect of such taxes in home jurisdiction. Enhanced cost of business has impact of increasing incidence of borrowing on the constituents and thus impact international trade and investment. As a result, internationally, where interest income of financial institutions is subjected to gross basis of taxation in source state (ignoring the cost of funds for the lending bank), it is seen as a deterrent to international trade. To avoid this,it is well recognized and is also advisable that the interest income is taxed in the hands of non-resident at a nominal rate taking into account the fact that

			typically margin spread of net interest income will be small. The methodology of gross basis taxation is implemented merely in the interest of simplicity, but, the tax rate is so adjusted that the non-resident bank is effectively taxed on net income which it is expected to earn by on-lending the funds. C. Relieve Indian PE from tax withholding and procedural requirements. Since PE will be filing its tax return and complying with tax provisions, withholding obligation should not be made applicable in respect of such interest. It should also be clarified that provisions of proposed S. 195(6) will not apply to such remittances. Also, it should be clarified whether the bank will require a separate PAN for HO or will its compliance need to be done using PAN of PE which now is deemed to be a separate person.
Pass through status for Category I and Category II Alternative Investment Funds		A Chapter XII-FB is proposed to inserted in the Act to provide for a partial pass-through regime for Category I and Category II Alternative Investment Funds This will include Venture Capital Funds/Venture Capital Companies registered after 21 May 2012 which were hitherto covered by Chapter XII-F which provided for a complete pass-through for incomes sourced by VCC/VCFs from Venture Capital Undertakings (VCUs)	This is a welcome amendment and fulfils the persistent demand of Venture Capital/Private Equity industry to provide clarity and certainty in tax laws. Whilst the overall scheme is favourable to AIF and its investors, there are certain pitfalls which, if resolved, will pave the way for successful implementation of this regime by encouraging more investors to invest in India through this route.

Tax neutrality on consolidation of mutual fund schemes – section 47(xviii), 49(2AD), 2(42A)	Tax neutrality on consolidation of mutual fund schemes is proposed to be provided to mutual fund investors along with cost and holding period substitution.	However, the provision is proposed to be made effective from A.Y. 2016-17.	There have been many mergers in the mutual fund sector in the past pursuant to enabling SEBI regulations issued in June 2003. In order to protect these consolidations in pending proceedings the proposed amendment may be introduced as a measure of clarificatory amendment. It may further be clarified that the concession would extend not only in a case where there is merger of one scheme of MF with another scheme, but, also when there is consolidation of schemes across different mutual funds. Also, necessary instructions may be issued to field officers not to reopen past cases and/or make additions in pending assessments.
Additional deduction uptoRs. 50,000 for contribution to New Pension Scheme	Under the existing provisions of section 80CCD a deduction of payment deposited by the individual was allowed provided such amount did not exceed 10 percent of his salary (in case of employee) and 10 percent of gross total income in case of any other individual.	As per Finance Bill 2015, an additional deduction uptoRs. 50,000 is proposed to provided for employee's/self-contribution to New Pension Scheme which is outside the limit of 10 percent of Salary/Gross Total Income and also outside the aggregate limit of Rs. 150,000under section 80CCE. Further the internal cap on deduction contribution to pension schemes under section 80CCC is also proposed to be enhanced from Rs. 1,00,000 to overall cap of Rs. 150,000 under section 80CCE.	While intent appears to be grant additional deduction such that if an individual has made contribution to NPS of Rs. 50,000 and other investments u/s. 80C of Rs. 1,50,000, he can avail total deduction of Rs. 2,00,000the language of the proposed provision creates an ambiguity in this regard. Since the intent is to encourage higher contribution to pension schemes within the basket of investments qualifying u/s. 80CCE, it is recommended that contributions to NPS and pension schemes u/s. 80CCC may be kept outside the overall limit of s.80CCE for which a separate cap may be provided.
Increase in limit of medical insurance premium under	Currently the deduction on account of expenditure towards the health insurance premium is allowed up to Rs. 15,000	It is proposed to enhance the overall aggregate limit of deduction for mediclaim insurance premium from Rs. 15,000 /20,000 to Rs.	The provision as amended may become difficult to comprehend with several internal and overall caps. For instance, it is not clear whether the limit for mediclaim

section 80D	per annum (Rs. 20,000 for senior citizen)	30,000 and also to include within its scope medical expenditure incurred on very senior citizen who is not covered by mediclaim insurance.	insurance premium has been increased from Rs. 15000 to 25000 as stated in Budget Speech and Explanatory Memorandum. It is recommended that the entire section be redrafted in a simple manner to clearly set out the qualifying expenditure and provide only for a consolidated overall cap without any internal caps. This will make it taxpayer-friendly and easy to implement. Alternatively the amended provision may be explained with appropriate illustrations in the Explanatory Circular post enactment.
Reduction of withholding tax ("WHT") on Royalty &Fees for Technical Services ("FTS")	The Memorandum to Finance Bill, 2015 intends to provide reduction in WHT on Royalty & FTS from 25% to 10% to reduce hardships in case of small entities. However, the amendment suggests WHT @ 10% is applicable for payment of royalty & FTS to all non-residents.		a. The intent of the proposal should be spelt out clearly so as to specify that WHT has been reduced not only in case of small entities but in respect of payment to non-residents, whether small or large.
Share Capital Infusion and Transfer Pricing	**Background/Issue** The controversy of share valuation was first brought up in India in a case where the tax department alleged that an Indian company (I.Co.) had undervalued the shares at the time of its issuance. The amount attributable to the value by which shares were underpriced was considered as short receipt and added to the income of the taxpayer. Also, such transaction was re-characterised as a loan granted by I.Co. to a foreign company (F.Co.) and a secondary adjustment was made imputing interest income as a receivable in the hands of I.Co. This high-pitched assessment has been in the news around the globe and is being austerely opposed by taxpayers. An immediate clarification of the Government's stand on this issue is desirable. Else, foreign investors will continue to see this as a tax on FDI, which will continue to dampen the prospects of increased FDI. The Bombay High Court's recent well-reasoned decision in Vodafone's case on this matter could be adopted as the Government's view. **Recommendation** On Share Capital Infusion issue, Bombay High Court's recent well-reasoned decision in		

	Vodafone's case could be adopted as the Government's view and the law should, accordingly, be amended to provide that such a transaction not having a bearing on profit should get exempted for evaluation from an Indian transfer pricing perspective.

Annexure 1 – Recommendations not considered by Finance Bill 2015

C. Key Recommendations		
Section/ Topic	**Background/Issue**	**Recommendations**
Implementation of policy measures for dispute resolution		
i. Strengthening of Authority for Advance Rulings ('AAR')	**Background** a. As part of measures for reducing litigation, it was announced in Budget 2014 that additional benches of AAR will be set up. Section 245N(b) has also been amended by Finance (No.2) Act 2014 to permit categories of residents notified by Government to approach AAR. b. We understand that there are about 450 applications pending for disposal before AAR as of date. c. During its last tenure of 17 months from 5 Dec 2012 to 9 May 2014, the AAR disposed 18 applications (12 on merits and 6 on admissions). d. Post retirement of its Chairman, the AAR is not functioning since 9 May 2014. **Recommendations** a. Notification permitting categories of residents permitted to approach AAR to be issued at the earliest b. Additional benches should be constituted in all four metros, Bangalore and Hyderabad. Minimum two benches in Delhi and Mumbai and one each in other stations c. Vacancies be filled up at a fast pace so that there is a full strength at all times of the Bench d. The prescribed time limit of 6 months for disposal of application should be made mandatory (Section 245R(6) needs to be amended suitably) e. Admission and merit hearing should be taken up simultaneously. In cases where the tax department opposes the admission then admission may be taken up separately. This may speed up disposal. f. Expansion of scope of AAR. Meaning of 'proposed to be undertaken'/'already pending' should be clarified g. To make AAR forum more effective, it should be provided that mere filing of return would not make the issue pending until the subject matter has been raised by revenue department for clarification	

<table>
<tr><td>ii. Extension of MAT and DDT to SEZ</td><td><u>Background</u>

a. Broadening of MAT provision by bringing SEZ units and developers under the ambit of MAT has significantly diluted benefits offered under the SEZ scheme.

b. Likewise, bringing developers / units under the ambit of DDT has diluted the benefits.

c. Manufacturing is one of the key areas of focus of the Government. 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.

d. Press Release dated September 10, 2014 by Ministry of Commerce and Industry has given an indication that modification of MAT and DDT rules for SEZ units / developers are under active consideration.

<u>Recommendations</u>

It is recommended that MAT should be removed in case of SEZ units / developers for the exemption period. Further, DDT should not be applicable on dividends distributed by SEZ developers / units for the exemption period.</td></tr>
<tr><td>iii. Strengthening of Advance Pricing Agreement (APA) mechanism</td><td><u>Background</u>

a. Since its introduction from 1 July 2012, the CBDT signed first batch of 5 APAs by 31 March 2014 (Refer Press Release dated 31 March 2014). This is a laudable effort considering international accepted norm of at least 2 years.

b. We understand that 146 applications were filed in 2012-13 and 232 applications have been filed in 2013-14. This means that about 373 applications are still pending with CBDT at different stages.

<u>Recommendations</u>

a. While the taxpayer community has responded with enthusiasm by filing more applications, it is expected that CBDT shall reciprocate with expeditious disposal which will greatly assist Multinational enterprises to plan their affairs and contribute to ‘Make in India’ story.

b. Further, guidelines stating the conditions, specified circumstances, procedure and the manner in which the roll back relief may be availed to be issued at the earliest, so that the assessee who has already filed APA can also take benefit of this roll back.</td></tr>
</table>

iv. Specific timelines at each stage of dispute resolution	**Background** a. There is an increasing perception that India has become (from a tax perspective) a hostile environment for foreign investors. In response to this, the Government should come up with path-breaking changes to restore faith in the Indian tax and regulatory system. b. Taxpayers are put to undue hardship due to continued delay in the proceedings. There is no certainty as of now as to how the litigation battle with Indian Revenue authorities would continue, ie, 8 years, 10 years, 15 years or 20 years. c. There should be certainty regarding the timelines by which litigation would continue in India, which would further assist the taxpayers to take prudent decision as to whether to go ahead with litigation in India or not. **Recommendations** a. Specific timelines should be introduced for each forum including at Commissioner of Income-tax (Appeals), Income Tax Appellate Tribunal and guidelines must be framed for ensure strict adherence to such prescribed timelines. Amendment to that effect may be made in all the relevant laws, wherever required. b. Adequate administrative machinery be provided to meet the above deadlines. c. This will reduce the overall period of litigation, improve the investor sentiments and restore the faith, to some extent, in the Indian tax system.
v. Retrospective amendments	**Background** The retrospective amendment brought in by Finance Act, 2012 have heavily eroded the interest of foreign investors. The Government has sought to soothe the nerves of the investor community by giving a commitment that the Government will not ordinarily bring about any change retrospectively which creates a fresh liability. However, it is necessary to provide that the retrospective amendments should not apply qua the withholding tax obligations (as already recommended by the Shome Committee) and the consequent levy of interest, penalty apart from disallowance under section 40(a). Apart from the above, specific recommendations are as under: **Recommendations** **(i) Explanation 5 to clause (i) of subsection (1) of Section 9 – Indirect transfer** a. Repeal retrospective application b. Value of assets should be defined to mean fair market value of assets c. Clarification should be inserted to the effect that only capital gains proportionate to the value of assets located in India should be chargeable to tax in India

	d. Intra-group re-organisations/ restructuring transactions should fall outside the ambit of the provision e. Exclude transfers where shareholding in Indian company is less than 26% of total share capital during last 12 months f. Current law, does not provide for any computation mechanism for calculating capital gains from indirect transfer of shares deriving substantial value from assets located in India, which could lead to double or multiple taxation in case of successive transactions involving indirect transfers. Appropriate computation mechanism taxing only the proportionate Indian value getting transferred should prescribed. Further, for subsequent transfers, appropriate step up in cost of acquisition should be available to the transferor. g. Fictional liability should not be fastened on an agent of a non-resident under S. 163 (except where an agent is a subsidiary or a close associate) **(ii) Explanation 4 to clause (vi) of subsection (1) of Section 9 – Royalty** a. It is suggested to roll back Explanation 4. In view of the international tax practices and keeping in mind the impact on India, it should be clarified that the payments for use of software made to non-residents would not be covered under the definition of 'royalty' b. Definition of FTS and Royalty should specifically exclude payment for any services or royalty for the purpose of use in manufacturing and production services. *It would also be in alignment with the 'Make in India' initiative.* c. Without prejudice, the tax authorities, based on retrospective amendments, should not be allowed to reopen, reassess, rectify and revise the assessments which are completed and concluded at appellant levels. In case where the issues are pending at the appellant stage, the same should be decided based on the law prevailing on the date of transaction (and not on the basis of amended provisions)
vi. High Level Committee	a. Such committee be formed at the earliest and should be functional throughout the year b. Whenever any industry faces any issue or requires any tax clarification, the same can be represented to this committee and be clarified / resolved at the earliest c. In addition to above, the previous Government has already formed a forum under the chairmanship of Dr. ParthasarathiShome to settle tax issues and disputes, wherein industry representatives from most of the sectors made representations in relation to the tax issues faced by them. Logical conclusion should be brought by clarifying various tax issues represented by industry representatives of most the sectors, to the extent possible. This will go a long way in bringing clarity to the existing tax laws. Such clarity in case of litigative issues would provide certainty in relation to various issues governing domestic and international taxation.
vii. 35(2AB) - Tax benefits for in-house R&D facility	a. An amendment should be brought to the effect that entire expenditure in / for the purpose of an approved R&D facility is eligible for weighted deductions and clinical trials carried out in approved hospitals and institutions outside the R&D unit are also covered within the ambit of expenditure eligible for weighted deduction.

	b. Enhancement of Weighted Deduction u/s 35(2AB) from existing 200% to 250% for a period of next 10 years i.e. upto 31st March, 2024. c. Weighted deduction u/s 35(2AB) to be allowed on scientific research expenditure incurred on outsourced R&D work (including outsourced clinical trials) and patent fee paid outside India which are directly related to in-house research. d. Presently, as per DSIR guidelines amount spent by a recognized in -house R&D towards foreign consultancy, building maintenance, foreign patent filing are not eligible for weighted deduction u/s 35(2AB). DSIR guidelines need to be modified accordingly to allow the above said expenses for weighted deduction u/s.35 (2AB). e. 200% of the expenditure incurred is allowed as a deduction for in-house approved scientific research by a company in the business of bio-technology or in the manufacture of any article or thing other than those specified in the 11th Schedule (which includes most of the oral care products such as toothpaste, toothpowder and toothbrushes). Oral health is one of major concerns in the recent past due to lifestyle changes etc. hence investment in oral care product research is very critical to improve oral health. Request to delete oral care products such as tooth paste, toothpowder and toothbrushes from the 11th Schedule to encourage in-house research in oral care segment and there- by increasing oral health. f. In respect of the units engaged in the business of R&D and contract manufacturing, tax benefit should be granted by way of deduction from profits linked to investments. Introduction of benefits in the form of research tax credits which can be used to offset future tax liability (similar to those given in developed economies) could also be explored. g. Due to numerous and stringent regulatory requirements of safety, efficacy and quality, R&D in the pharmaceutical sector is very expensive and time consuming. Thus, weighted deduction of such expenditure should be allowed while computing book profits under MAT Provisions.
viii. Specified domestic transactions	**Background and issue** Section 92BA has been inserted vide Finance Act 2012 by which the coverage of transfer pricing has been expanded to include certain 'Specified Domestic Transactions' if the aggregate amount of all such transactions entered by the taxpayer in the previous year exceeds Rs. 5 crores in the previous year. Domestic Transfer Pricing (DTP) provisions are more relevant and prevalent in countries like USA and Canada, where both federal and state income-taxes separately exist. In India since income-tax is a central tax, DTP provisions have no relevance as any adjustment due to domestic transfer pricing provisions should, logically have offsetting effect and should have no material revenue impact as both the assessees would be resident in India in most cases. The term *"specified domestic transaction"* has been defined to inter alia mean any expenditure in respect of which payment has been made or is to be made to a person referred to in clause (b) of sub-section (2) of section 40A of the Act. Such expenditure

	could possibly include capital expenditure made to such a related person. It should therefore be clarified that these provision pertain to revenue expenditure only. This amendment also covers a scenario wherein the payment of remuneration by the company to its director or relative of such directors is also required to be at arm's length. The same casts an onerous responsibility on the company vis - à- vis justification of the arm's length nature of such payments which is challenging as dependent on several factors such as particular business needs of a company, role, functions and qualification of a director etc. The limit of Rs. 20 crores seems very low considering the extensive elaborate documentation and compliance requirements for the taxpayers resulting into increased compliance burden and administration costs for the taxpayers. Section 80-IA (10) of the Act provides that where the revenue authorities believe that the tax holiday undertaking produces more than ordinary profits due to a close connection with any person, only a reasonable level of profits will be eligible for the tax holiday benefit. Ordinary profits generally mean the profits which are ordinarily earned by a taxpayer in the normal course of business. Typically, such ordinary profits would not be uniform and would be specific to each taxpayer having regard to the specific business and commercial circumstances of each taxpayer. With the introduction of domestic transfer pricing, ordinary profits for tax holiday units need to be determined with regard to the arm’s length principle and transfer pricing methods. As a result of this, many taxpayers are finding it difficult to apply the transfer pricing regulations which prescribe the arm’s length price to be the arithmetic mean of the margin of the comparable companies. In a case where the margin of the taxpayer from the eligible tax holiday undertaking is higher than the arithmetic mean of the comparable companies, then it would mean that the taxpayer will not get tax holiday benefit on such excess profit (i.e. the difference between profits earned by the eligible taxpayer less arm’s length profits earned by comparable companies). **Recommendations** a. Domestic transfer pricing provisions should be removed from the income tax law or threshold for their applicability be raised from Rs 20 crores(as proposed in Finance Bill 2015) to Rs 100 crores. b. Alternatively, scope of domestic transfer pricing should be restricted to the transactions between entities in tax free zone and entities outside tax free zone. Also, provisions for correlative relief should be provided for specified domestic transactions. It is very important that in any case covered under the domestic transfer pricing provisions, if any adjustment is made, then correlative adjustment in the hands of the other party should be invariably be made. Necessary amendments should be made in the domestic transfer pricing provisions to provide for the correlative adjustments. c. Without prejudice, SDT seeks to cover a situation wherein there could not be any loss to the exchequer. The same is not in line with the suggestion provided by the Supreme Court in case of Glaxo Smithkline. The Supreme Court had provided the situation wherein transfer pricing should be applicable in case of transactions between a profit making and a loss unit/company. The other scenario which was envisaged by the Supreme Court was transactions between units/assesses having different tax rates. Other than the scenarios contemplated above, a

	corresponding adjustment should be allowed and hence provided for in the statute. d. It should be suitably clarified that the transfer pricing provisions would only apply to revenue expenditure (and not to capital expenditure) referred to in section 40A(2)(a) of the Act, and not to payments made to persons specified in section 40A(2)(b) of the Act. e. The provisions of Section 40A(2)(b) should be amended to exclude remuneration payments made by companies to their directors. f. Without prejudice, the Advance Pricing Agreement (APA) provisions are being made applicable to only international transactions. The same should also be made applicable to domestic transactions covered by transfer pricing regulations. This term 'close connection' in Section 80IA (10) should be defined at the earliest to provide clarity on applicability of transfer pricing provisions to transactions between one entity having an eligible unit any other entities with which there is a close connection

D. Substantive Provisions			
Section/ Topic	**Background**	**Issue**	**Recommendations**
		a.	
Section 10(6C): Exemption in respect of royalty/ fees for technical services	Currently, Section 10 (6C) grants foreign companies the exemption from income tax in respect of royalty or fees for technical services received in pursuance of an agreement entered into with the Government for providing services in India in projects connected with the security of India.	In line with the stated position of the Government of India (GoI) towards developing indigenous defence manufacture, foreign defence companies have recently begun to directly contract with Defense Public Sector Undertakings (DPSUs) in relation to technology transfers through in-licensed production and delivery of onshore services.However, where Project Offices (POs) are being set up in pursuance of the contract with the DPSUs to deliver onshore services, it is not clear as to whether the exemption under Section 10 (6C) will also apply to such POs or not, the contracting entity being the DPSU (GoI entity) rather than GoI itself.	Section 10 (6C) should explicitly include DPSUs within the definition of Government, in order to remove any ambiguity in its interpretation.
Accelerated Tax Depreciation rates on Batteries for industrial/commercial use	Each telecom site created by telecom infrastructure service providers need to ensure 24x7 power supply and maintenance of temperature and humidity conditions required for sophisticated telecom equipment's placed by telecom operators on telecom sites. For the said services, the companies use various equipment's like batteries, DG sets, air-conditioners, Power Management Systems (PMS), UPS etc. All these items get clubbed in the	a. The higher usage of batteries at telecom sites ensures cleaner and environmentally friendly power with no carbon emission as against use of diesel in DG sets for power back up. The accelerated depreciation on batteries for industrial use will reduce the effective cost of batteries for buyers and thereby, help in reducing diesel consumption. This in turn helps country to	It is recommended to Increase the depreciation rate to 65% on batteries used by telecom infrastructure service so that approx. 95% cost can be depreciated over 3 years.

	plant and machinery category along with towers and shelters and are eligible for 15% depreciation as per Income Tax rules.In this connection, we would like to mention that batteries have an economic life of approx.3 years and after which they need to be compulsorily replaced. With the present income tax depreciation rates, the companies are able to claim only 38.6% depreciation (15% tax on written down value method for 3 years) within economic life of the batteries and before their replacement with the new batteries. Ideally, the depreciation rate should enable companies to recover almost entire capital cost of the equipment over its useful life.	reduce oil imports and foreign exchange outflow. b. The depreciation rates under the Income-tax Act have often been designed keeping in mind the effective useful life of the assets. For Example computers enjoy 60% depreciation due to accelerated obsolescence due to ever changing technology. c. The objective of allowing depreciation is to provide funds for replacement of assets and also, to ensure recovery of cost of original asset. In the context of rapidly changing technology and increasing obsolescence, the present depreciation rates allow only 38.6% cost recovery in 3 years of economic life of batteries.	
Section 72A - Carry forward of business losses pursuant to approved Merger/ Amalgamation	Section 72A of the Act allows accumulated losses of amalgamating company to be carried forward and set off in the hands of the amalgamated company. Currently, the carry forward of losses is limited to industrial undertakings or a ship, hotel, aircraft or banks. The term industrial undertaking has been defined to include the companies which are engaged in the business of providing telecommunication services, whether basic or	a. The benefit of Section72A was introduced to telecom operators in FY 2002-03 with a view to encourage rapid consolidation and growth in telecom sector. At that time, each telecom operator used to set up its own telecom towers to cater its own need of passive infrastructure (i.e. telecom towers, shelters, power back up) services. Accordingly, the concept of Telecom	It is recommended to include the 'Telecom Infrastructure service providers' in order to provide the benefit of carry forward of business losses under section 72A in the cases of mergers and amalgamations. As telecom tower industry is an integral and inseparable part of telecom services, the specific inclusion will bring parity for the tower companies with telecom operators and other key industrial sectors.

	cellular, including radio paging, domestic satellite service, and network of trunking, broadband network and internet services. However, the telecom infrastructure service providers are presently not included.	Infrastructure Service Providers (TISPs) was not envisaged in FY 2002-03 when the benefit of Section 72A was extended to telecom sectors. b. Considering that passive infrastructure industry is integral and inseparable from telecom industry and has also been conferred the status of infrastructure, an amendment under section72A is desired to the effect that the brought forward business losses of the amalgamating telecom tower companies shall be allowed to be carried forward with the amalgamated telecom tower companies.	
Loss carry back	A tax loss carry back is a provision which is similar to carry-forward of losses, however it allows the business to carry a net operating loss back to offset profits in previous years. It is a technique with which a company retroactively applies net operating losses to a preceding year's income in order to reduce tax liabilities present in that previous year. Hence, the company does not carry the loss forward. Instead the loss is adjusted with the preceding year's taxable profits by filing revised return thereby resulting in a refund in the preceding year.	Manufacturing companies are capital intensive which requires heavy investment drives at certain intervals for substantial expansion. Once the expansion is undertaken there may be substantial losses over the subsequent years. During such a period, it is desirable that the company has an inflow of funds. However, as per the present law, wherein losses can only be carried forward and the benefits of current losses can be encashed only once the company starts earning profits.	In case the provisions of loss carry back is introduced, the assessee may avail the benefits to encash the losses in current year by claiming refund of taxes paid in earlier years. This would be a big boost for the manufacturing sector to undertake substantial enhancement, since the assessee would be entitled to encash the losses on real-time basis during the loss period.

Section 32AC	Section 32AC introduced by Finance Act 2013 allows the deduction (popularly known as 'investment allowance') on the investments made by the assessee in a new plant or machinery.		a. The threshold of Rs.25 crores per annum is high for small entrepreneurs. The threshold should be lowered, and/or expenditure of Rs. 25 crores across a period of 2 years should be eligible. b. Further sectors such as services/construction etc. may not be able to avail investment allowance since they may not be fulfill the condition of production. These sectors should also be allowed this benefit. c. Further, from the language of the section, it may lead to interpretation that the condition of 'acquired and installed' both should fulfil in the same year. It may happen that the assessee has acquired the asset in the relevant year but installed in subsequent year. The benefit of deduction in such a case should also be given to the assessee. It is recommended not to introduce DTC at all.
Agricultural income	The law provides exemption in respect of agricultural income earned by an assessee. This deduction is qua income and not qua assessee. There is no distinction in respect of such incomes earned by corporates or otherwise.	Revenue Department is often reluctant to grant agricultural exemption to Corporate Assessee. It has been contended that the basic intention of law in granting such exemption was to create benefit for small farmers and not for corporate assessee, who make huge sum out of agricultural activities.	The law should bring in specific amendment to settle the issue and bring out the clear intent that the benefit of exemption is available on agricultural income even if it is earned by corporate assessee.
Section 37(1) - CBDT Circular No. 5/2012 dated 1 August 2012	Expenditure incurred on account of provision of freebies to doctors are inadmissible under Section 37(1) of the Act being an expenditure prohibited by law under the MCI Regulations.	Many pharmaceutical and allied health care sector companies incur substantial expenses on sales promotion such as providing free samples to doctors, which are not prohibited as per the	Proposed amendment: a. An amendment to the effect that disallowance can be made by the AO only post adjudication by an authority constituted by representatives from the Income-tax department and the

	CBDT Circular provides vast discretionary power to the Assessing Officer (‘AO’) to disallow expenditure thereby resulting in unnecessary and unwarranted litigation.	current MCI Regulations. There is a risk of ad hoc disallowance of such genuine business promotion expenses.	pharmaceutical industry having practical expertise in the health care sector; or b. A panel with adequate representation from the Revenue and Department of Pharmaceuticals and Trade may be constituted by the Board to define which expenses would be considered as ‘ethical’/ ‘unethical’ to provide certainty as regards allowability of expenditure incurred by pharmaceutical companies; or c. An amendment to the effect that assessee (specifically pharmaceutical and allied health care industries) are allowed a deduction of sales promotion expenses on the basis of a certificate from a Chartered Accountant or any other specified body, would help reduce litigation around the matter. d. Notwithstanding the above, the provisions of the Circular should not be effective from the date of Regulations i.e. 10 December 2009 but should be prospective in nature.

First Schedule – Surcharge	The Finance Act, 2013 levied a surcharge@10% on an individual with total income exceeding Rs.1 crore and for corporate (domestic companies), surcharge@10% only if, the total income exceeded Rs.10 crores. While levying this additional surcharge the Finance Minister in his speech had mentioned that the additional surcharges will be in force for only one year, that is Financial Year 2013-14.		Since the intent of the Ministry of Finance, while introducing these additional surcharges, was to limit it only for the financial year 2013-14, however the same were not removed from financial year 2014-15. Therefore these surcharges should be abolished from this year.
Basic Exemption Limit	Higher exemption limit would go a long way in minimising the compliance and transaction costs of the Income Tax Department.	The small tax payers are facing the burden of increased cost of inflation. An increase in the basic exemption limit would help in giving the small tax payers some relief to overcome the increased cost of inflation and having some extra disposable income.	Therefore, tax slab rates should be revised.
Section 115BBD – concessional rate of tax in respect of foreign dividends	Section 115BBD grants concessional tax rate of 15% on dividend received by an Indian company from its foreign subsidiary	As per current provisions, such concessional rate of tax is not available after April 1, 2014.	The benefit of the concessional rate of tax, should be restored.
Employee Stock Option (ESOP) expenditure	ESOP is granted by various companies as an employee retention measure. The difference of value on a reporting date and the cost is debited to P&L account and claimed as deduction by companies	Various tribunals in the country have given different rulings both in favour and against the allowance of ESOP u/s 37 of Income Tax Act. Tax authorities take a view that ESOP cost being notional in nature is not allowable as per Sec.37	It is suggested that an amendment be brought in Income Tax Act to clarify that any ESOP expenditure debited to Profit and Loss account in accordance with the SEBI & Accounting Guidelines should be permitted as a business deduction
ESOP taxability in hands of individual on the basis of residential status		a. Notwithstanding the above, taxation of ESOPs creates an issue in the case of migrating employees, who move from one country to another, while	A specific clarification should be inserted with respect to taxability of only proportionate ESOP benefit based on residential status of the individual, where an employee was based in India for only a part of the period between

		performing services for the company during the period between the grant date and the allotment date of the ESOP. The domestic tax law is unsettled on the taxation of such migrating employees and does not clearly provide for such cases. b. There was a specific clarification on proportionate taxability of benefits under the erstwhile FBT regime, where the employee was based in India only for a part of the period between grant and vesting. However, there is no specific provision in this regard under the amended taxation regime from 1 April 2009. c. Recently, it has been held by Delhi Tribunal in case of Robert Arthur Keltz[1] that only the proportionate benefit of ESOP pertaining to the services rendered by assessee in India should be taxable in India and not the entire benefit.	grant and vesting.
Taxation of stock rewards		a. Section 17(2)(vi) of the Act, read with Rule 3 of the Rules deal with taxation of Employee Stock Option Plans (ESOPs). It is provided that the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer, or former	a. ESOPs should not be subject to tax on notional perquisite value and taxed only on capital gains arising from the sale of shares, as was the position till 31 March 2006. b. It may be mentioned that only when Fringe Benefit Tax (FBT) was introduced by the Finance Act 2005, these provisions were changed for

[1] ACIT v. Robert Arthur Keltz (2013) 35 Taxmann.com 424 (Del)

		employer, free of cost or at concessional rate shall be taxable as perquisite in the hands of the employee. For this purpose, the value of any specified security or sweat equity shares shall be the fair market value of the specified security or sweat equity shares, as the case may be, on the date on which the option is exercised by the taxpayer as reduced by the amount actually paid by, or recovered from, the taxpayer in respect of such security or shares. b. In this connection, what has not been appreciated is that ESOP shares stand on a different footing because on the date of exercise, the shares are subject to lock-in condition and cannot be considered to be a benefit and therefore, ought not to be fictionally treated as benefit and brought under the ambit of perquisites for taxation purposes. The Supreme Court, in CIT v. Infosys Technologies Ltd., [2008] 2 SCC 272, at page 277, had aptly held: *"During the said period, the said shares had no realisablevalue, hence, there was no cash inflow to the employees on account of mere exercise of options. On the date when the options were exercised,*	the purposes of taxation of ESOPs under FBT regime. Unfortunately, however, those very provisions have now been brought back by way of insertion in sub-clause (vi) of sub-section (2) of Section 17 of the Act, after the abolition of FBT, which has caused a lot of anxiety. It is imperative that the earlier tax treatment be restored to facilitate the employers in retaining talented persons in the organization.

		it was not possible for the employees to foresee the future market value of the shares. Therefore, in our view, the benefit, if any, which arose on the date when the option stood exercised was only a notional benefit whose value was unascertainable. Therefore, in our view, the Department had erred in treating INR 165 crores as perquisite value being the difference in the market value of shares on the date of exercise of option and the total amount paid by the employees consequent upon exercise of the said options." c. That apart, it has to be appreciated that if an employee is subjected to tax on the notional benefit as perquisite, there could be situations where he may suffer double loss, first by way of tax out-go and again as a loss on actual sale of shares, which may neither be fair nor warranted.	
Rural healthcare infrastructure	Rural and semi urban areas in India either do not have basic healthcare infrastructure or the existing infrastructure is inadequate.	a. Setting up of healthcare infrastructure in such areas involves substantial monetary investments and is prone to long delays due to conflict of interests. Further, investments in rural and semi-urban areas inherently have a long gestation period.	A weighted deduction of capital expenditure incurred in setting up healthcare infrastructure rural / semi urban areas should be provided.

		b. Such tax incentives could provide the necessary impetus for investments in rural/ semi urban sectors, shorten the gestation period of the investments and increase the possibility of earning higher rate of return.	
Reduction of withholding tax ("WHT") on Royalty &Fees for Technical Services ("FTS")	The Memorandum to Finance Bill, 2015 intends to provide reduction in WHT on Royalty & FTS from 25% to 10% to reduce hardships in case of small entities. However, the amendment suggests WHT @ 10% is applicable for payment of royalty & FTS to all non-residents.		b. The intent of the proposal should be spelt out clearly so as to specify that WHT has been reduced not only in case of small entities but in respect of payment to non-residents, whether small or large.
Exemption u/s 54G	Currently capital gains are exempt u/s 54G for transfer of assets in cases of shifting of industrial undertaking from urban area.	Presently any cities of Andhra Pradesh are not included in the notified urban areas	Hyderabad and its adjoining areas should be notified as Urban Area for the purposes of exempting capital gains under the said section.
Holding period – Debt oriented MF	Holding period in case of MFs was extended to 36 months.		Holding period for debt oriented MFs to be rolled back to 1 year.
Corporate Restructuring		Certain transactions of transfer of capital assets between Holding and Subsidiary companies are disregarded for the purpose of computation of capital gains as provided under section 47 of the Act.	For the convenience of corporate restructuring, exemption should be provided under clause (viia) and (viib) of Section 56(2) (dealing with income from other sources) for transfer of assets/ introduction of capital as between holding and subsidiary companies on similar lines as clause (iv) and (v) of sec. 47 of the Act
47(xiiib)	Conversion of private companies/ unlisted public companies into an LLP	a. Under section 47(xiiib) transfer of assets on conversion of a company into a limited liability partnership ("LLP") is not regarded as a transfer for the purposes of capital	It is recommended that the condition that the total sales, turnover or gross assets in business of the company in any of the three previous years preceding the year of conversion does not exceed Rs. 60 lakhs should be removed.

		gains tax; b. For the exemption provisions to apply, it is provided that the total sales, turnover or gross receipts of the company in any of the three preceding previous years of conversion should not exceed Rs. 60 lakhs; c. The limit of turnover at Rs. 60 lakhs is unwarranted inasmuch as conversion of a firm into a company is fully exempt and there is no need to provide any ceiling. The benefit of the provision will be largely impaired due to this condition; d. Conversion into an LLP is primarily not driven to claim tax saving on account of DDT but is driven due to commercial reasons, and for reduced compliances under the LLP regulations vis-a-vis the company law compliances; e. Already, safeguards are provided by the section as under: f. Aggregate profit sharing ratio of the shareholders should not be less than 51% in the LLP for a period of five years after conversion; and g. No amount is paid out of accumulated profits to the partner(s) for a period of three years after conversion.	

194A, 194C, 194D, 194H, 194I, 194J	Threshold limit for deduction of tax at source	The threshold limit for the purpose of TDS is very low in respect of most payments under sections 194A, 194C, 194D, 194H, 194I, 194J etc The current threshold limits are not inflation adjusted from the time they were set and need to be rationalised.	The threshold limits for TDS should be reconsidered and enhanced.
Section 195		Basic Exemption Limit for PAN requirement u/s 195	To introduce a basic exemption limit for deduction of TDS u/s 195 in case of foreign remittances similar to the basic limit prescribed under section(s) 194A, 194C, 194J, 194H, 194-I etc
Maintaining an optimal Minimum Alternate Tax ("MAT") rate	The Minimum Alternate Tax rate has seen considerable increase through the years i.e. from 7.5 % prior to 2007 to the last increase in the Finance Act, 2011 wherein the MAT rate was increased to 18.5 %. With a surcharge of 10% or 5% as a case the effective MAT rate is close to 21 % It is also interesting to note that the tax rate as per the normal income tax provisions of the Act for a Company is in its highest tax bracket is about 33.99 %. Therefore the MAT rate is about 2/3rds of the applicable corporate tax rate	a. The very motive of introduction of MAT was to bring the Companies not reporting any taxable income through computational mechanisms as per the income tax legislation but distributing significant amounts to the shareholders as dividends into the taxable net. b. However, neither the computational mechanism for MAT taxation nor the MAT rate which is about 2/3rd of the corporate income tax rate accurately facilitates the above intent entirely. The above anomaly is glaring especially since the units claiming exemption under Section 10AA of the Act in other words the software industry is not exempt from payment of Dividend Distribution Tax ("DDT").	a. MAT provisions being an alternate remedy i.e. minimum tax as the rate connotes, there is no logic to support a tax rate which is close to the normal tax rate. In an ideal scenario, the MAT rate should be kept at a range of about 1/3rd of the normal tax rate i.e. 30 percent. b. Given the above, it could be considered ideal if the MAT rate is lowered to 10%. c. It is also recommended that the utilization of MAT credit be given an unlimited life to ensure that corporates are not unduly impaired for the inability to utilize MAT credit.

		c. The above intent has also been diluted with the entire MAT computation being a separate code in itself. The introduction of Alternate Minimum Tax ("AMT") which extends an equivalent treatment to firms and LLP which claim deduction under various schemes of the Act including Chapter VIA, section 10AA of the Act furthers this issue. d. Although there is a provision for MAT credit as a saving grace, MAT is a regressive tax policy as capital infusion for further investment created by the incentive mechanisms under the normal tax provisions would be delayed.	
111A of the Act read with section 115JC/ 115JEE of the Act	Alternate Minimum Tax Exclusion for STCG	A non-corporate taxpayer who earns Short Term Capital Gains u/s. 111A liable to tax @ 15% on transfer of listed securities which has suffered Securities Transaction Tax (STT) and also claims profit-linked tax holiday under Chapter VI-A or s.10AA will be liable to pay AMT @ 18.5% as per section 115JC of the Income Tax Act.	a. Since the intent of AMT is to collect minimum amount of tax from non-corporate taxpayers who enjoy profit-linked tax holiday and given that transfer of listed securities suffers STT, it is recommended that Short Term Capital Gains u/s. 111A be kept out of the purview of AMT. b. Section 115JEE(2) provides that whole of AMT Chapter (including provisions of s.115JD relating to set off of AMT credit) will not apply in a year where Adjusted Total Income of the non corporate taxpayer does not exceed threshold limit of Rs.20 Lakhs. This will prevent the taxpayer from even claiming set off of AMT paid by him in earlier years if his income does not

			exceed Rs.20 Lakhs in view of inadequacy of profits and / or set off of losses. c. It is, therefore, recommended that exclusion may be provided for section 115JD from the applicability of section 115JEE(2).
"Goodwill", "brand" and "non-compete fees"			"Goodwill", "brand" and "non-compete fees" should be included in the definition of intangible assets.
Enhanced depreciation on Medical / Surgical / Pathological equipment's	Life saving medical equipment as listed out in New Appendix I (Table of rates at which depreciation is admissible) are eligible for depreciation at 40% while other medical / surgical / pathological equipment's are allowed depreciation at 15%.	The fast pace of technological advancement has increased the need for quicker replacement of old / redundant medical equipment's thereby resulting in a need for faster amortization of medical / surgical / pathological equipment's.	Depreciation rate for all medical / surgical / pathological equipment's including medical equipment should be increased to 60%.
Amendment of Section 35CCD of the Income Tax Act			Industrial Safety is one of the Directive Principles under Indian Constitution and therefore Companies engaged in providing training services directly to Industrial workers and executives in ensuring safe working conditions needs to be promoted by grant of similar incentives.
Carbon Credits	Tax Exemption for Sale of Carbon Credits / Weighted Deduction for Certified Investments	a. Carbon Credit is an incentive available to the industries reducing CO2 emission by investing in energy efficient technologies. b. Further, the cost of putting additional technology for clean development mechanism is relatively high.	a. It is suggested that tax exemption may be given for revenue generated from sale of carbon credits. b. There is a necessity for giving tax incentives by way of weighted deduction for all certified investments in specified areas. This would benefit the nation in terms of creating eco-friendly environment and earning foreign exchange.

Standard deduction		As there is no specific deduction available in respect of Income under the head “Salaries” to meet the day to day expenses incurred by an employee while performing his duties	It is recommended to reintroduce the standard deduction.
Section 17 - Medical Reimbursement	Medical reimbursement is currently tax free up to Rs 15,000 under section 17 of the Income Tax Act.	This limit was fixed more than a decade ago and considering the rise in cost of medical services, it needs to be revised upwards.	Medical reimbursement should be increased to Rs 50,000 from existing Rs 15,000 to meet the increased cost of Medical services.
Section 80C	Section 80C was reintroduced in place of section 88 w.e.f. 1-4-2006. This section gives a deduction to an individual on specific investments up to Rs 150,000.	Limit of Rs 150,000 of Investment under section 80C is very low considering the inflation rate.	The limit needs to be increased to at least Rs 300,000.
Section 24(b) – Housing Loan interest			The limit should be raised to at least Rs 500,000.
Children Education Allowance	Exemption of Rs. 100 per month (up to 2 children) is allowed to an employee towards children education allowance	Education system plays a vital role in development of an economy and children’s education always remains a top priority for an individual. With the education cost rising sharply, the current limit of Rs. 100 per month does not reveal the true scenario.	Children education allowance should be increased to Rs. 3,000 per month per child.
Tuition Fees	The Act allows deduction up to a maximum of Rs. 100,000 under section 80C towards tuition fees.	Increase in the education cost has become a major concern for parents, particularly for lower and middle income groups, as they are already battling with the rise in the prices of food and essential commodities.	Separate deduction for tuition fees should be provided in addition to Section 80C of the Act

House Rent Allowance (HRA)	Currently HRA exemption of 40% is allowed in case of Tier 1 cities and 50% is case of Metro cities (i.e. Mumbai, Kolkata, Delhi and Chennai)	With Tier 1 cities becoming major hub for industries, the rentals have increased manifold. Accordingly, Tier 1 cities should be considered at par with Mumbai, Kolkata, Delhi and Chennai as cost of living is at par.	HRA exemption of 50% to be extended to Tier I cities on par with metros.
Leave Travel Concession (CY v FY)	As per the provisions of section 10(5) of the Income Tax Act, 1961, an exemption of the value of Leave Travel Concession/Assistance received by the employee from his employer is allowed subject to fulfilment of prescribed conditions. Rule 2B lays down the specified conditions to be fulfilled. One of the conditions is that the exemption can be availed only in respect of two journeys performed in a block of four Calendar Years.	The concept of "Calendar Year" was introduced in the year prior to 1989 when there was no uniform Previous Year. Since 1989 uniform Previous Year has been introduced i.e. April – March. Hence, the concept of "Calendar Year" results in a lot of confusion on part of the tax payer.	To be in line with the concept of "financial year" adopted by other provisions of the Income tax Act, it is suggested that the concept of calendar year should be replaced with financial year (April – March).
Leave Travel Concession (Foreign travel also)		a. Presently, the economy class air fare for going to anywhere in India is tax exempt (twice in block of four years). However, this exemption is being allowed only for travel within India. b. Lately, owing to low airfares and package tours, a number of Indians prefer to avail LTC for going abroad particularly to neighboring countries like Thailand, Malaysia, Sri Lanka, Mauritius, etc., as the fares thereto are at times less than for traveling to some far	a. It is therefore recommended to grant tax exemption for economy class airfare for travel abroad also on holidays so long these are within the overall airfare tax exemption conditions for traveling in India. Here, it is pertinent to note that in a recent ruling by the Chandigarh Bench of the Income-tax Appellate Tribunal (the Tribunal), in the case of Om Prakash Gupta2 it has been held that amount received by the taxpayer on account of Leave Travel Concession (LTC), which was received by taxpayer on account of travel to both Foreign and Indian destination

[2] Sh.OmParkash Gupta, v. ITO

		away destination within India.	and the journey concluded by visit to a place in India, is not eligible for income tax exemption as the taxpayer has also travelled to a foreign destination. However, considering the current prevailing trend in respect of foreign travel, there is a need to include overseas travel as well or atleast to exempt proportionate expenses pertaining to travel within India in case of joint travel (within India and overseas destination). b. Further, under Rule 2B of the Rules, the amount exempt in respect of LTC by air is to the extent of the economy fare of National Carrier i.e. Indian Airlines. It is suggested that word “National Carrier” should be deleted from Rule 2B. c. Moreover, as per the current provisions, Leave Travel Concession/Assistance is eligible for tax relief for 2 calendar years in a block of 4 calendar years. It is suggested that the concept of calendar year should be replaced with financial year (April – March) in line with the other provisions of the Income Tax Law and further exemption should be made available in respect of at least one journey in each financial year.
		a.	
Section 40(a)(i)		In the event of non-deduction or non-payment of TDS on payments made to residents, the Finance Act, 2014 has provided that the disallowance would be restricted to 30% of the amount of expenditure	Disallowance should be restricted to 30% of the amount of expenditure incurred, in case of non-deduction or non-payment of TDS on payments made to non-residents.

		incurred. However, the disallowance on payment to non-resident continues to be 100%. The non-resident payee should be given level-playing field and accordingly, it is recommended that the disallowance in case of non-deduction or non-payment of TDS on payments made to non-residents, the disallowance should be restricted to 30% of the amount of expenditure incurred.	
Mutual Agreement Procedure (MAP)			a. Steps should be taken by Indian competent authorities dealing with MAP proceedings to ensure that MAP proceedings are accelerated. b. MAP should also be an open minded, two-way process and should result in a 'win-win' situation with a view to provide a conducive environment to the foreign investors. c. Tax officers to follow the provisions of Article 7 of tax treaty, which states that the method adopted for taxing the profits to be attributed to the permanent establishment shall be followed year by year unless there is good and sufficient reason to not adopt the same
Section 92B	The Finance Act 2014 made an amendment to Section 92B(2) to cover transactions of prior arrangement, even when two residents were to be involved in the transacton.		The issue here is similar to the tax neutrality issue discussed for domestic transfer pricing. Having regard to the fact that transactions between two resident taxpayers would be revenue/tax neutral, such cases should not be covered under the transfer pricing provisions. Hence, it is recommended that the amendment made by the Finance

			Act 2014 to amend Section 92B(2) should be reversed.
Transfer Pricing Documentation	The Income Tax provisions places the onus on the taxpayers to maintain information relating to the international transactions, irrespective of the materiality of the transaction subject to the overall cap of Rs. 10 million (Rule 10D).	This requires the taxpayer to commit significant resources towards ensuring that documentation is maintained for each transaction	In the better interest of the enterprises with small volume of international transactions, the overall limit of Rs. 10 million should be raised to Rs. 100 million.
Transfer Pricing Penalties	Transfer Pricing adjustments are treated as concealment of income and harsh penalties of 100-300% are levied. Further, the Finance Act 2012 has introduced a penalty of 2 percent of the value of transactions in case of non-reporting of any international transaction. The same is over and above the existing penalties.	Internationally, the penalties vary from 0% - 40%. Transfer pricing determination is a highly subjective decision and results from genuine interpretation and application of recommended methods. Any contradictory interpretation by the tax authorities should not therefore be seen as concealment of income and punished harshly	The penalty structure requires to be toned down and should be leviable only in exceptional cases. The penalty of 2 percent is very high and is likely to subject the taxpayers to onerous financial hardship. Penalty for non-documentation and non-maintenance/ presentation should be levied only when the relevant transactions are finally not complying with arm's length standard
Transfer Pricing Scrutiny	Most of the Multi National Company's have repeated nature of international transactions with its Associated Enterprises every year. Transactions between two AEs are subject to scrutiny for both the entities, viz. foreign AE and the Indian entity. The Transfer Pricing Officer ('TPO') is also same in most of the cases.	Scrutiny by TPO is done every year for the same nature of transactions. A particular transaction which is held to be at arm's length in the assessment of foreign AE, is held to be not at arm's length in the case of Indian Entity, resulting in undue tax demands causing unwarranted hardship to the Indian entity.	a. If at the time of the scrutiny of these transactions for a particular assessment year, it is found to be at arm's length, then in alignment to international practice, it can be fixed for three successive years. This step will save MNC's from huge cost. b. Suitable clarificatory amendment may be inserted in the Act to remove this anomaly. c. Further, Government should introduce rules to clarify that if any transfer pricing adjustment is made in a transaction for one party the corresponding adjustments shall also be made to the income of other party to the

			transaction. This will be in conformity to the principle enunciated in Article 9(2) of the Double Taxation Avoidance Agreements entered by India with certain countries.
Aligning customs and income-tax valuation	Income tax & Customs credit (set off) and relevance of intra group transfer pricing policy	Income tax and customs work in divergent directions on the same transaction viz. import of goods/ raw material into the country. Whereas the Income tax authorities would want a lower value for the imports in order to give a lower deduction to the taxpayer thereby increasing the tax revenue, the customs authorities would want a higher value in order to increase the customs duty revenues. Accordingly, taxpayers who are dependent on imports are adversely impacted.	In order to address the situation, the following two alternative solutions could be considered: Alternative 1 – The transfer pricing policy adopted by the transacting parties should be considered while giving the Special Valuation Branch order by the customs authorities. In such situation to an extent both transfer pricing and customs would be aligned. To explain further, where an Indian importer (whose import prices undergo a reduction post-year end - as a result of using actual/ updated price setting data), should be allowed post-importation downward adjustments to the customs value declared at the time of import, provided the adjustment is based on a transfer pricing policy or an Advance Pricing Arrangement (APA) which was in effect prior to importation. To simplify and explain the above, provided below is an EXAMPLE: a. On April 1 (i.e., at the beginning of the financial year), Company X (an Indian importer) imports product "P" from its AE at USD 100. This is the value declared to the customs authorities at the time of import, and on which duty is paid. b. This price is based on a prevailing price setting policy as per which the price is determined based on a market back (resale minus) approach. To apply/ implement this

			policy, budgeted data of Company X is used and benchmarking is undertaken using comparables available at that point of time, i.e., prior to April 1. c. Post year end, Company X replaces budgeted data with actual data and uses the updated results of latest comparables to apply the policy. It thus arrives at the price at which the import should have been undertaken, which in the current example is lets say USD 95. d. The price at which the import should have been undertaken, i.e., USD 95, is lower than the price declared to the customs authorities at the time of import and on which duty has been paid, i.e., USD 100. Therefore on USD 5 (which is the difference), the importer has paid excess duty. e. The importer should now seek a post importation downward adjustment in the transfer price to the extent of USD 5, and would also seek either a consequent refund of the excess duty paid or duty credit on subsequent imports to the extent of excess duty paid. f. Since the post importation adjustment is based on a TP policy which was in place prior to the import, the customs authorities should allow the same, subject to certain conditions as may be framed by authorities. Alternative 2 - Further, if customs have arrived at a different value for the goods imported as against the one reflected on the invoice to levy the duty, the subsequent confirmation of the invoice value during transfer pricing assessment proceedings, which is

			in line with the transfer pricing policy of the group should be given due consideration and the assessee should be provided appropriate credit for the extra duty paid. To simplify and explain the above, provided below is an EXAMPLE: a. On April 1 (i.e., at the beginning of the financial year), Company X (an Indian importer) imports product "P" from its AE at USD 100. This is the value declared to the customs authorities at the time of import, and on which duty is paid. b. The customs authorities based on their assessment increase the assessed value of the goods to USD 120 instead of USD 100. On the other hand, the transfer pricing authorities confirm the transfer price adopted by Company X i.e. USD 100 which would be incorporated by the assessing officer in his assessment order. c. In the above case, Company X would need to pay additional customs duty on the differential price of USD 20 (USD 120 determined by the Customs Authorities less USD 100 being the invoice value). If suppose the customs duty rate is 25%, then Company X would need to pay additional duty of USD 5 (25% duty on differential price of USD 20). b. In such a scenario, in order to equalize the tax impact, Company X should approach the tax authorities and should seek a tax credit of USD 5 (from its total tax liability) on account of excess duty paid on the differential price of goods.

Safe Harbour - Mark-ups for covered transactions. **Transfer pricing compliances when opting for Safe Harbour**	Safe Harbour has been defined to mean 'circumstances' in which the revenue authorities shall accept the transfer pricing declared by the taxpayer. Internationally used safe harbours take two forms – • Exclusion of certain classes of transactions based on quantitative limits from Transfer Pricing regulations. • Stipulation of margins / thresholds for prescribed classes of transactions / specified industries Specific Safe Harbour Rules (SHR) helps to ease the compliance burden for taxpayers, curtail disputes and reduce administrative hassles for both, the taxpayers and the taxmen. Even when opting for SHR, the taxpayers are required to do TP compliances of preparation of TP documentation and filing of Form 3CEB The SHR were prescribed for FY 2012-13 which were based on reports of Rangachari committee, which was instead based on arithmetical mean witnessed in industry	The mark-ups/SHR rates prescribed by the CBDT are on the higher side, resulting in very limited taxpayers opting for the same. The SHR take away the right of a taxpayer of filing an application for MAP in case a safe harbour is accepted and applied for. The SHR do not relieve the taxpayers of preparing their TP documentation and Form 3CEB SHRs have been prescribed for limited instances of software, BPO, KPO, automotive components, outbound loans and corporate guarantees Creation of KPO as an carve out of BPO creates more confusion. The SHR have not yet been prescribed for FY 2013-14.	**High Mark-up** While it is accepted that safe harbours generally propound a higher than arm's length margin as a cost to taxpayers for the reduced compliance burden and certainty of tax outflows, the quantum of the premium as per the SHR appears to be high from a taxpayers perspective. The SHR margins should be revised to a smaller number. **Insignificant Risk** Circular No 6 dated 29th June 2013 has provided the conditions relevant to identifying development centers engaged in Contract R&D services with insignificant risk. The same was welcomed by the industry as well as tax professionals. However, the only bone of contention is whether partial compliance with the conditions would suffice for construing as a Contract R&D services. Besides, the term 'insignificant risk' should be defined. The SHR provides only for generic pharmaceutical drugs, effectively leaving out other activities in the pharmaceutical sector such as clinical trials. The right to file an MAP should be restored with the taxpayer given that in certain cases the other country may not accept the safe harbour margin, resulting in economic double taxation The SHR should be amended to relieve the taxpayers to prepare full fledged documentation and filing of Form 3CEB in case the safe harbour is opted for. Or otherwise, it may be prescribed that the TP documentation and

			Form 3CEB compliance be done in case the transactions cross a particular threshold (say Rs. 5 Crores) SHR could also prescribe for such sources of information which may be considered as CUPs for benchmarking, especially where the industry is such that the market convention (such as agri products, metals, fertilizers etc.) is to follow the prices prevalent in the market. The SHR for FY 2013-14 should be prescribed at the earliest so that the taxpayers may opt for the same. Also, for FY 2014-15, when the range concept would become applicable, the safe harbour rates should be revisited to reflect the range concept (and not be based on the arithmetical mean concept)
Share Capital Infusion and Transfer Pricing	The controversy of share valuation was first brought up in India in a case where the tax department alleged that an Indian company (I.Co.) had undervalued the shares at the time of its issuance. The amount attributable to the value by which shares were underpriced was considered as short receipt and added to the income of the taxpayer. Also, such transaction was re-characterised as a loan granted by I.Co. to a foreign company (F.Co.) and a secondary adjustment was made imputing interest income as a receivable in the hands of I.Co. This high-pitched assessment has been in the news around the globe and is being austerely opposed by taxpayers. An immediate clarification of the Government's stand on this issue is desirable. Else, foreign investors will continue to see this as a tax on FDI, which will continue to dampen the prospects of increased FDI. The Bombay High Court's recent well-reasoned decision in Vodafone's case on this matter could be adopted as the Government's view.		On Share Capital Infusion issue, Bombay High Court's recent well-reasoned decision in Vodafone's case could be adopted as the Government's view and the law should, accordingly, be amended to provide that such a transaction not having a bearing on profit should get exempted for evaluation from an Indian transfer pricing perspective.

E. Procedural provisions			
Section/ Topic	**Background**	**Issue**	**Recommendations**
Explanation 3, Section 90(3)	The current provisions provide that Any meaning assigned through notification to a term used in an agreementbut not defined in the Act or tax treaty, shall be effective from the date of coming into force of the tax treaty.	a. Any meaning notified will have a retrospective effect from the date when the tax treaty was signed causing uncertainty and hardship to the taxpayers. b. This provision is also contrary to Government's intent of reviewing retrospective amendments, which have caused grave concerns to overseas companies over stability in tax policy and considered positions.	a. Making such changes with retrospective effect will lead to needless hardship on the taxpayers and an unfair expectation to be aware of a definition, which was not in existence when the arrangement/transaction was put into place. This will lead to uncertainty, re-opening of assessments etc, which can be avoided. b. Even pursuant to a notification, there is more liberal interpretation supplied to a particular term, a taxpayer may not necessarily be able to easily claim refund/credit of taxes paid in earlier years. c. It is recommended that any definition notified under Section 90(3) and Section 90A(3) of the Act should apply prospectively. d. Thus, Explanation 3 needs to be deleted.
Withholding tax on payment to non-residents having branch or permanent establishment in India	The corporate tax rate for non-resident companies being 40 (*exclusive of surcharge and education cess*) results in requiring a non-resident company to file tax returns to claim refund of excess tax collected. This creates cash flow issues for the non-resident company making operations through an Indian branch unviable, when compared with its Indian counterparts. This additionally requires the non-resident company to		a. For an effective solution to this issue, one may refer to the Vijay Mathur Report on Non-Resident **Taxation (January 2003)** which advocates treating non-residents with a branch office at par with residents for the purpose of Withholding tax payments. Illustratively, it provides as follows: *"4.13.2 Non-residents having Branch Office/Project Office in India and performing work covered u/s 194C should be considered at par with*

	mandatorily approach the Tax Authority to seek a lower withholding tax order, the process being time-consuming and non-taxpayer friendly. Often, the non-resident company faces a lot of difficulties justifying its request for a lower withholding tax certificate in the initial years of its operations, when it has no past India assessments justifying its request for a lower withholding tax certificate. From the Tax Authority's perspective, this results in excess tax collection by way of withholding taxonly to be refunded later together with interest in addition to significant administrative burden which may not be commensurate with the benefits of an efficient tax collection mechanism.		*the residents for withholding tax purposes and as such the same rate of withholding tax should apply to payments made to them. The Working Group recommends that suitable amendment should be made for this purpose."* b. In line with the aforesaid principle, it is recommended that payments which are in the nature of business income of non-residents having an India branch office or 'a place of business within India' should be subject to similar tax withholding requirements as in case of payments to domestic companies (residents). At the beginning of a tax year, the non-resident taxpayer who has an India branch office or 'a place of business within India' should be permitted to admit PE and opt for a withholding tax mechanism as is applicable to a resident company. It would go a long way in facilitating ease of doing business in India and the Tax Authority would be in a position to better monitor and regulate such non-resident companies. Further, it would also achieve the stated objective in the ***Kelkar Report (December 2002)*** to abolish the system of approaching the Tax Authority for obtaining certificates for deduction at lower rates and minimize the interface between the taxpayer and Tax Authorities.
Grant of refund of tax withheld under section	Currently, for grant of refund of tax withheld under the provisions of		The intention of the Legislature appears to be that the non-resident recipient should not have

195	Section 195 of the Act to the payer in the case of net-off tax contracts, one of the conditions to be fulfilled is that the recipient should not have filed a return of income in India. In this connection, it needs to be appreciated that if the payer has not issued the TDS certificate to the recipient, the refund of the amount withheld under Section 195 of the Act should be granted to him irrespective of whether or not the non-resident recipient has filed a return of income in India. This is more so because the recipient may have earned certain other income(s) from India which are liable to tax in India and it is in the regard that the non-resident may have filed a return of income in India. In such a scenario, the person making the payment faces an undue hardship vis-à-vis obtaining refund of the tax withheld under Section 195 of the Act.		claimed the credit in respect of the tax withheld under the provisions of Section 195 of the Act. Thus, it is suggested that the requirement of non-resident having not filed a return of income in India should be done away with in a case where the payer has not issued any TDS certificate to the payee. Further, to safeguard the interest of revenue, a condition may be imposed on the payer for claiming refund that he should substantiate his claim by showing that a revised Withholding tax return was filed wherein the credit entry for TDS for the non-resident was reversed.
Reference to Companies Act 2013	Various provisions of the Act, explicitly makes reference to Companies Act 1956. For instance, Section 2(18)(b).	Given that the Income Tax Act refers to various provisions of the Companies Act 1956, which have now been replaced with Companies Act 2013, there is ambiguity whether for such provisions in the Income Tax Act, one should refer to Companies Act 1956 or to Companies Act 2013	Suitable amendment should be made in each section of Income Tax Act to make reference to Companies Act 1956 or Companies Act 2013, as the case may be.
Section 194LAA: Payment of compensation on acquisition of Certainimmovabl	194LAA: Payment of compensation on acquisition of Certain immovable property	This provision needs to be deleted.	It is worth noting that mechanism of reporting all real estate transactions are in place through Annual Information Report (AIR).

e property			
Exempt foreign lenders from PAN in respect of interest paid on foreign currency loans	a. The government reduced the TDS rate from 20% to 5% on foreign currency loans borrowed between 1 July 2012 up to 1 July 2015 by virtue of Section 194LC. However, Section 206AA of the Act specifies that TDS shall be 20% in the case the recipient does not have PAN. b. Section 206AA takes away the benefit of reduced TDS rate as per Section 194LC in most cases where the foreign lenders like foreign banks, financial institutions etc. do not want to apply PAN in India to avoid multi-country tax filings and compliances. Further, in most cases, the foreign lenders insist that impact of any TDS in India shall be borne by the borrower and which practically, means that Indian borrower does not get the intended benefit of 5% TDS and ends up paying more than 20% tax after grossing up.	Foreign loans constitute a very important source of funds for passive infrastructure industry in India both for financing import of capital goods as well as raising funds for embarking on expansion. Foreign lenders generally negotiate on interest rates (net of taxes of the borrower country) and in most cases, Indian borrowers have to bear the cost of TDS in India. Section 206AA results in substantially higher cost of borrowing for Indian infrastructure companies.	It is recommended for the exclusion of transactions covered by section 194LC from the purview of Section 206AA.
194LC and 194LD	In section 194LC and 194 LD it is specified that withholding tax on interest paid at notified/ approved rate should be at the rate of 5%.	Only excess interest paid over the notified/ approved rate should not be eligible for 5% withholding tax rate and will be liable under section 195.	a. It should be clarified that only the excess interest paid over the notified/ approved rate will not be eligible for the 5% withholding and would be liable under section 195. b. Further for purposes of section 194LD Bonds should be defined to include debentures.
TDS on Bank's	a. Deduction of tax at source on the income of banks		Indian and Foreign Banks should

Income	causes considerable inconvenience in view of huge volumes of TDS certificates collected for interest received on securities, commission received on cross selling, etc. b. Exemption has been granted to banks on interest income other than on securities under section 194A. Further, CBDT vide notification no. 56/2012, has exempted TDS on specified payments such as bank guarantee commission; cash management service charges; depository charges on maintenance of DEMAT accounts; charges for warehousing services for commodities; underwriting service charges; clearing charges (MICR charges); credit card or debit card commission for transaction between the merchant establishment and acquirer bank made to banks. However such TDS exemption is not available for various other payments received by banks like advisory fee, commission, etc. c. A similar blanket TDS exemption under section 196 to banks on all payments received will facilitate a hassle-free administrative mechanism. Foreign banks operating in India are able to get exemptions from all TDS as provided in section 195 specifically applicable to them. The Income-tax department is also inconvenienced, as they are required to process the forms submitted before granting TDS credit. d. This proposal is revenue neutral as Indian as well as foreign banks would discharge tax liability by way of advance tax payment.		be granted exemption from TDS under section 196.
Credit for taxes paid	a. As per the scheme of the Act, the TDS credit should be claimed only in the year in which the income against which the TDS has been made has been offered to tax. b. There are various discrepancies which arise on account of which a one to one reconciliation between the TDS made and the income offered by the recipient may not necessarily match. Some of the instances have been illustrated	In all of such cases, the assessee being the claimant of TDS should be provided eligible TDS credit. However, the department officials disregarding the judicial precedents deny the TDS credit on various grounds including the fact that the relevant TDS has not been paid by the deductors, the TDS returns have not been uploaded by the deductors and therefore not appearing in the online database etc. Additionally, the fact that assessee cannot match the TDS credit with the exact	In this regard, it is recommended that the TDS credit provisions be streamlined to the effect that a. The condition of matching the income and the corresponding TDS credit be done away especially considering the nascent stage of the electronic scheme of the TDS certificate and the defaults made by the remitters in issue of TDS certificates; b. TDS credit can be claimed in the year in which TDS certificate is issued i.e. date

	below c. The payer has made TDS on various invoices falling within multiple years d. The payer has made the TDS on the entire payment of invoice but the income recognition of the assessee as per the accounting policy does not correspond to the payment e. The payer has made TDS on the entire payments as per the scheme of the Act but the entire payment does not comprise income in the hands of recipient f. The recipient has offered the income to tax but the payer has not made TDS or has not deposited the TDS g. Additionally, with payer may not have uploaded the TDS return reflecting the appropriate TDS credit in the electronic format leading to a delay. h. As per the scheme of the Act, the eligible TDS credit should be claimed in the return of income and should be supported by original TDS certificates	amount of income offered to tax in the relevant year, the department officials seek to deny TDS credit and in some cases seek to add additional income as undisclosed income	on the TDS certificate or as appearing in the online data base as long as the recipient can demonstrate that TDS credit is not claimed twice against a particular certificate
Uploading of erroneous demands on CPC databases, inaction in	The tax payers have generally observed such heart burning issue:- a. No action has been		a. It is suggested that a proper action plan should be laid down by the CBDT and all the field officers should be

respect of pending rectification applications and adjustment of erroneous demands against refunds of later years	taken in respect of pending rectification applications u/s 154 of the Act. Moreover, pending demands have been uploaded on the CPC database and adjusted against the pending refunds of the assessees. b. In cases where the rectification has been carried out and the demands have been nullified / reduced / cancelled, the information is not updated on the CPC database and demands are continued to be shown as pending and adjusted against the legitimate refunds due to the assessees. c. Refund orders have been passed but the actual refunds are not granted and there is considerable delay in many cases.		instructed to carry out the rectifications with in a time bound manner and same should be closely monitored by the senior officials of the department. b. After the rectifications, the erroneous demands uploaded on the CPC database should be forthwith updated and refunds should be granted to assessees in all such cases at the earliest possible. c. A mechanism may be introduced wherein the refund due can be set off against the advance tax liability of the assessee.
Bring NBFC's at par with banks		a. NBFC's are regulated by RBI almost in the same way as Banks albeit under a different law. b. Both NBFC's and Banks make a spread between interests earned on its lending and paid on its borrowings and the spreads are thin. In as much as a 10% withholding tax cannot be justified on payments to banks given the spreads, the same holds true for NBFC's. c. RBI mandates provisioning norms for	a. Firstly there should be no TDS on interest payment to NBFC's. This will provide taxpayers better liquidity, and savings in cost of funds. Government would also benefit as pressure on refunds would ease and there will be no interest outflow at the time of refunds b. Secondly, there should be tax deduction for RBI mandated NPA provisioning. This will give clarity to tax payers as unnecessary disputes would be avoided. Further, Government will also not suffer as it will be revenue

		both banks and NBFC's, hence the tax laws should treat the two at par for tax deduction purposes.	neutral.
Clarity in taxability of various financial services transactions		The extant law established more than 50 years ago does not address various distinct transactions which are in vogue and unique only to the financial services sector: a. Taxability of profit/ loss on securitization/ assignment/ sale of receivables b. Activities in normal course of business. … akin to sale purchase of stock in a traditional business c. No specific provision on tax treatment of gains/losses on these transactions …Revenue takes inconsistent approach, inclined to tax gain but deny loss deductions, most rulings against Revenue Depreciation claim for assets given on lease to be available to lessors a. Assets given on lease are used in the leasing business of Taxpayer and hence depreciation should be permitted …also upheld by Supreme Court b. Revenue continue to litigate the matter	Clarity and certainty on taxability of profit/ loss on securitization/ assignment/ sale of receivables transactions should be provided to avoid protracted No significant impact, most rulings against Revenue Clarity and certainty be provided to allow depreciation claim for assets given on lease to lessors to avoid unnecessary disputes. No impact on revenue as depreciation has to be provided for assets in use
Clarity on equity oriented Fund of funds	Fund of Funds (FOFs) invest in other income oriented/equity oriented schemes and provide investors simple multi-asset class solutions. While they have been growing, one of the key	FOFs investing majority of their assets in equity funds are not treated as equity-oriented funds and thereby do not get the relevant exemptions from capital gains tax or dividend distribution tax.	FOFs investing 65% or more of their investible funds in units of equity oriented schemes should be treated on par with equity oriented funds.

	hindrances has been the tax treatment of these funds		
Extension of PF exemption as per Income tax act for recognized Private PF trusts		The first proviso of Rule 3 of Part- A of Fourth Schedule of the Act specifically provides that if recognition has been granted to any Provident Fund on or before March 31, 2006 and such Provident Fund does not satisfy the condition specified in clause (ea) of Rule 4, then the recognition to the fund will be withdrawn. This rule specifically asks for getting an approval from the related PF authorities before 31st March 2014 for these exemptions to continue.	a. However this last date of getting the approval from PF authorities has not been extend beyond 31st March 2014 till date. b. In case the last date to get exemption is not extended beyond 31st March 2014 it may affect scores of employees in these organizations by taking away the tax benefits to concerned employees in these companies. c. There are around 180 such applications, which are being processed by the EPFO at present but due to very slow progress from the department most of these applications have not moved for many years. d. Pre-condition for taking an approval from the PF authorities may be removed (at least for the funds which have got their approvals prior to 2006) and/or instruction should be issued to PF authorities to close decision making on all these pending application in a time bound manner. (Probably in next 10-12 months).
Definition of "Securitisation Trust" under Section 115TC: Conditions to be fulfilled by a Securitisation Trust- Rules to be issued by CBDT	Extract of finance bill- Memorandum regarding delegated legislation is copied below. *"The Explanation to new section 115TC seeks to define various terms specified therein. Clause (d) of the said Explanation defines the term "securitisation trust". It is*	The definition of securitisation Trust given in section 115TC mandates the securitisation Trust to fulfil certain conditions. As stated in the budget memorandum regarding delegated legislation, such conditions were supposed to be announced in the form of rules. The rules are	Till the eligibility conditions for a securitisation Trusts are notified, the investments in to PTC trust will have an uncertainty regarding its tax treatment. As CBDT is yet to issue the rules for the budget announced last year, section 115TC may be amended to delete the words "which fulfils such conditions, as may be prescribed"

	proposed to confer power on the Board to make rules in respect of the conditions to be fulfilled by a trust, being a special purpose distinct entity or Special Purpose Vehicle, to mean a securitisation trust."	yet to be announced.	after sub clause (d) (ii).
Section 161(1A)	Applicability of section 161 (1A) over section 115TA when the income of securitisation trust includes profits and gains of business	a. While assessing the income of the securitisation trust constituted under the RBI guidelines for securitisation of standard assets, the income tax department has taken a stand that the interest income derived by the securitisation trust on the PTC instruments issued by them is a business income and are liable to be taxed at the maximum marginal rate as mentioned in section 161(1A) of the Income Tax as amended by the Finance Act. b. The revenue authorities have also taken a stand in various pending matters before the court that section 161(1A) is a *non obstante* provision under which, if the income of the representative assesse includes profits and gains of business, tax shall be charged on the whole of the income at the maximum marginal rate on such assesse irrespective of his/its representative capacity.	a. As the SPVs for securitization of loans had been constituted under Reserve Bank of India's guidelines, treating the entire income as a business income and negating the rights of SPV to claim representative status will jeopardize the interest of Mutual Fund investors and defeat the whole purpose of the proviso to subsection (1) of section 115TA. In view of the same it would be better if the budget clarifies the supremacy of section 115TA over section 161 (1A). b. The following amendment is suggested to the first proviso to sub section (1) of section 115TA. "Provided that nothing contained in this sub-section and section 161(1A) shall apply in respect of any income distributed by the securitisation trust to any person in whose case income, irrespective of its nature and source, is not chargeable to tax under the Act."
195(2) & 197(1)	Time limit for processing applications made or nil /lower rate of withholding	a. The timelines prescribed in instruction No 1/2014 issued by the CBDT and in the	a. Strict timelines be incorporated for issue of certificate including time lines

		Income-tax citizen charter is not followed in sprit. In experience, the department counts the timelines from the date of last communication from the department to the assessee. Very recently many cases have come to light where the application has been rejected on frivolous grounds, viz. initiation of penalty proceeding u/s 271(1)(c) of the Act. b. In view of the aforesaid following is requested to be incorporated into the Act for the smooth functioning of provision of section 197 of the Act.	for approvals of files by the senior officers. b. Rejection orders should not be on frivolous ground and a well speaking order be passed. c. Proper checklist of all the documents required to be filed along with the application be prescribed. d. Where the certificate has been issued in earlier years, certificate for subsequent year in the absence of any change of facts shall be expedited and to be issued within a week from the date of application.
201	Time limit for order u/s 201 – Non-residents	Presently no order can be made deeming a person to be an assessee in default for failure to deduct the whole or part of the tax from a person resident in India after the expiry of 2 or 4 years. However, no such time limit has been prescribed in case of non-deduction of tax from a non-resident.	The present time limit applicable in case of resident payees should be extended to non-resident payees also, as four years can be considered a sufficient time frame to carry out any verification proceedings.
47(vii)	Relaxation in condition of issuance of shares in amalgamation / demerger	a. In the cases of amalgamation / demerger no shares have to be issued when the shareholder itself is the amalgamated company or when the resulting company itself is a shareholder.The amendment made by Finance Act 2012 is of clarificatory nature with an intent to overcome impossibility of act. b. The said amendment is effective from AY 2013-	It is recommended that amendment being of curative nature, its application be made retrospective from the date of insertion of respective sections. The amendment to section 2(19AA)(iv) and section 47(vii) may be made on lines of existing provisions of 2(19AA)(v) and 2(1B)(iii) where issuance of shares is not required in case shareholder is a subsidiary of amalgamated/resulting company.

		14 and does not extend to past years. The intent behind the proposal is to remove an obvious lacuna in the law. Hence, it would be appropriate to make its application from retrospective effect. c. There is need to also extend similar corrective amendment to cases of amalgamation / demerger which are in favour of upper tier holding company. To illustrative, if CCO is held by BCO and BCO is held by ACO, amalgamation of CCO with ACO will not require issuance of shares by ACO to BCO (being shareholder of CCO) as BCO is subsidiary of ACO. Presently, section 2(1B)(iii) as also section 2(19AA)(v) recognize this limitation and does not require issuance of shares when shareholder is amalgamated / resulting company itself or any of its subsidiary. Similar amendment is required in section 2(19AA)(iv) and section 47(vii).	
Section 10(32) - Exemption on Income of minors	At present income of minors included in the hands of parents is exempt to the extent of Rs 1,500 for each minor.	The average expenditure to meet cost of a minor's education/health/living expenses which has gone up considerably in recent years.	It is suggested that this should be raised to at least Rs 10,000 for each minor child.
Taxability of gratuity, leave encashment and other termination benefits in the hands of the legal heirs of a deceased employee		a. There are CBDT circulars (CBDT letter No. 35/1/65-IT(B), dated 5-11-1965 and Circular No. 309 [F. No. 200/125/79-IT(A-I)], dated 3-7-1981) stating that leave salary paid to the legal heirs of the deceased employee in	It may be noted that since death of an employee creates a lot of financial hardship to the legal heirs and it will be difficult for the legal heirs to calculate and pay taxes on the termination benefits received, hence it is suggested that CBDT should come out with a clear instruction that leave

		respect of privilege leave standing to the credit of such employee at the time of his/her death is not taxable as salary/not taxable. b. Taxability of gratuity - CBDT circular No. 573 dated 21.08.90 states that a lump-sum payment made gratuitously or by way of compensation or otherwise to the widow or other legal heirs of an employee, who dies while still in active service, is not taxable as income under the Act. In, fact this circular will cover all other lump sum termination benefits being paid to the legal heir of a deceased employee, who dies while still in active service. c. It may be noted that after the insertion of Section 56(2)(v)/(vi)/(vii) in the Act, taxability of the leave encashment, gratuity and other termination benefits received by the legal heir of the deceased is not clear though the aforesaid CBDT circulars exempted such payments from tax. As the earlier CBDT circulars have not been withdrawn there is confusion as to whether these payments to legal heir constitute taxable income in their hands or not.	encashment, gratuity or other termination benefits received by the legal heir of a deceased employee is not taxable in the hands of the legal heir.
Section 68	Section 68 – Not to apply on receipt of share premium in excess of fair market value to which	Section 68 of the Act provides for taxability of unaccounted / unexplained money i.e. where nature	The provisions of Section 56(2)(viib) and Section 68 of the Act be suitably amended to

	Section 56(2)(viib) applies	and source of funds remained unexplained in respect of credit entries recorded in the books of account. Section 68 as amended w.e.f. April 1, 2013, also provides that in addition to the recipient, the person contributing to the share capital of a private or an unlisted company also has to explain the nature and source of funds. On the other hand, Section 56(2)(viib) of the Act provides that share premium received by an unlisted company upon issue of shares in excess of the fair market value shall be treated as income in the hands of such company and subject to tax accordingly. This law is applicable w.e.f. AY 2013-14.Section 68 can be invoked in a situation wherein nature and source of funds remain unexplained by the recipient and the contributor. If the nature and source of funds stands explained, tax department could then have recourse under Section 56(2)(viib) only in situations where difference in technical aspect of valuation exist. However, the converse may not be true i.e. if Section 56(2)(viib) is invoked to tax the difference in technical aspect of valuation, the test of nature and source of funds stand automatically satisfied. The rigours of Section 68 should stop with the investigation into nature and source of funds and not extend to cater to the	provide safeguard against its invocation interchangeably. Only if the tests laid down under Section 68 do not stand to be fulfilled, section 68 can be invoked. Furthermore, once 56(2)(viib) has been invoked, then the test of Section 68 should be considered as automatically satisfied. The provisions of law should not be allowed to be used interchangeably.

		technical aspect of valuation dealt specifically under section 56(2)(viib) as the Legislature may not have intended to provide two sections i.e. Section 56(2)(viib) and Section 68 to be used interchangeably. Section 68 also cannot be invoked in cases of genuine issue of shares by a company to joint venture partners or financial investors i.e. private equity, venture capital funds etc.	
Section 142(2A)	Special Audit	Section 142(2A) of the Income-tax Act has been amended vide Finance Act, 2013 to provide that volume of the account or doubt about the correctness of the account could also be one of the reasons for which the Assessing Officer may make a reference for a special audit by an accountant. Courts in the past have held that an Assessing Officer should form an opinion about the nature of accounts of a taxpayer is complex and the opinion should be formed objectively after an honest attempt has been made to understand the accounts. The contention that Assessing Officer is a layman and has no experience in dealing with accounts cannot be accepted. Only if the records are produced and accounts are examined, the complexity of the accounts can be ascertained. The guiding principle, therefore, for reference to a special audit was hinged on objectivity and complexity of accounts and not left at	Criteria linking reference to special audit merely on the basis of volume of accounts should be removed. Moreover, subjectivity element involved in doubt on the correctness of accounts should be suitably safeguarded by introducing factors / circumstances resulting in doubt on the correctness of the accounts.

		the subjectivity of the Assessing Officer. With the amendment brought vide Finance Act, 2013 the aforesaid principles seems to have been obliterated and left to the subjectivity of the Assessing Officer.Reference to special audit merely on the basis of volume of accounts would make the provisions applicable to almost all large corporates as no definition / threshold has been provided to construe what constitutes volume. Any manufacturing organization with 3-4 manufacturing locations or more would have voluminous nature of operations and shall attract the rigors of amended provisions of Section 142(2A). This would result in creation of fear psychosis in the mind of all large corporate groups as virtually all of them would be subject to special audit under the amended provisions if the Assessing Officer decides so. Moreover, due to the subjectivity element involved, it would be like providing free hand to Assessing Officers to shirk their responsibility in favour of the accountant seeking assistance in completion of assessment. Resultantly, the taxpayer would be burdened by committing additional time, efforts and resources to get the accounts audited over and above multiplicity of audits conducted under various Legislations i.e. Companies Act, Excise, Service tax etc.	

		It would not be fair to burden the taxpayer with one additional audit because of the subjectivity of the Assessing Officer.	
Section 115JB	Clause (iii) to Explanation 2 below sub-section (2) to Section 115JB of the Income-tax Act provides for reduction of loss brought forward or unabsorbed depreciation, whichever is less as per books as a reduction from net profits while computing book profits. The Explanation further states that if loss brought forward or unabsorbed depreciation is nil, no amount shall be reduced.	a. Tax on book profits is a tax on notional income and was introduced to levy tax in case of companies which though earning net profits and declaring handsome dividends do not pay taxes under normal provisions of the Act on account of various incentives / deductions. b. The law currently provides reduction of book loss or unabsorbed depreciation, whichever is lower. Vide Finance Act, 2002, by way of an Explanation it was clarified that if one of the elements is nil, no reduction shall be allowed. However, no reason was provided in the Memorandum for such clarification. Prior to such amendment, benefit for entire book loss and depreciation continued to be provided by Legislature. c. For the purposes of discussing the economic argument behind availability of aforesaid provision, companies should be dissected in two baskets i.e. one set of companies would be companies earning net profits year on year but not paying taxes under normal provisions of	Clause (iii) should be suitably amended to provide that book loss and unabsorbed depreciation shall be allowed as a reduction from net profits even if one of the element is nil.

		Income-tax Act and the other being companies historically making net loss but subsequently turning into making net profits. d. It may be noted that a company is said to make profits only if it has wiped off all the past losses, both book loss and unabsorbed depreciation and earned net profits during a particular year. To consider set-off of only one element i.e. either book loss or unabsorbed depreciation while computing book profits, usually the latter, would only be a half-hearted relief while taxing a company notionally on its net profits. e. The provision of Companies Act also allows a company to freely distribute profits to shareholders post set-off of all past losses. In such a situation, taxing a company on its net profits for a year, that too notional, without reduction of past book losses would not be fair. The very intent behind introduction of minimum alternate tax to tax companies earning net profits and declaring dividends but not paying taxes seems to be defeated in the instant case. f. The Legislature should	

		on the contrary incentivize historically loss making company turning into net profits by allowing reduction for entire book loss and depreciation before subjecting them to MAT. This shall enable a company to recoup all its past losses, stabilize for next few years and then be on a growth trajectory.	
Validity of orderissued u/s 197.	The order under section 197 is at present issued with a validity date from the date of issuance. Though the assessee is applying in the month of April, i.e., at the beginning of the financial year, the order is issued much late.The date of issue is taken as the validity date owing to which, the deductors are deducting the tax for the earlier part of income/payments. By any reasonable estimate, an assesse cannot have taxable income for some part of the financial year and exempt income for remaining part of the year.		a. The application may be allowed to be made atleast before 1st April of the financial year i.e. within three months of commencement of the financial year for before planning for advance tax. b. Such application should bedisposed-off within 30 days.
Section 201(1A)	As per the amendment in Section 201(1), even in case a resident tax payer complies with the conditions specified (such as payment of taxes, filing of return of income etc.) under said section, still the employer will be liable to pay interest u/s section 201(1A) till the time of filing of the tax return by such individual.	The new proviso in Section 201(1A) of the Act requires interest to be calculated from the date on which such tax was deductible to the date of furnishing of return of income by such resident	Interest levy under Section 201(1) is compensatory in nature and hence there is no loss to revenue after the taxes have been deposited. Hence, interest liability should not be triggered once the taxes have been deposited (through advance tax route). Consequential amendment in Section 271C may be made to the effect that the provisions of Section 271C will not apply in a case of any person who fails to

			deduct whole or any part of tax on the sum paid to a resident if the resident complies with the specified conditions.
Section 201	While calculating the delay in number of months for the purpose of interest under Section 201(1A), the tax department has been calculating a full month's delay for the month of deduction as well.	An example - If the taxes were deductible on December 31 2013 and the actual deduction / tax remittance happens on January 9 2014, the tax department is calculating interest for 2 months. This treatment is very harsh.	'month' should be read as 30 days and not British Calendar month.
234E: Levy of fee in case of delay in filing of TDS or TCS statement		Provision need to be deleted Alternatively a. fees shall not be levied if there is reasonable cause for failure filing of statement u/s 200(3) and 206C (3). b. Further the amount of fees be reduced to Rs.100 rupees per day.	Though it is termed as fee it is of a penal nature and is mandatory. Even if a person is prevented by reasonable and sufficient cause for not submitting TDS statement on time, he will be liable for fee of Rs.200/- per day and in addition to this the deductor may be liable to interest as well as penalty leviable under the proposed new penal provision of section 271Hand the mechanism of making the payment first and then submitting the quarterly statement to NSDL is not practical workable.
271H: Penalty for filing incorrect particulars or failure to file TDS or TCS statement:		This provision need to be deleted; Alternatively, the minimum amount of penalty be reduced from Rs.10,000 to Rs.5000 and maximum amount of penalty be reduced from Rs.100,000 to Rs.25,000	Above provisions are very harsh since deductor or collector needs to also pay interest on delayed payment of TDS/TCS, additional Fees of Rs.200 per day and further penalty u/s 271H. Further it also tries to levy penalty for furnishing incorrect statement of TDS / TCS. As you all are aware that TDS and TCS statements are to be "E filed" every quarter and in a specified format which itself is a tedious process and in process of filing statement any data punching errors made by a person filing TDS/TCS return shall also be punished. Thus this will build additional

			pressure on the deductor/ collector and increases cost of compliances tremendously.
Circular to clarify non applicability of TDS provisions on the service income of telecom infrastructure service providers	The telecom infrastructure service providers provide 24x7 power supply, air-conditioning and access to their sites on shared basis to multiple telecom operators and such service income does not fall under any of the existing TDS provisions.	In order to avoid stringent provisions of non-deduction of TDS and resultant disallowance of expenses, customers tend to deduct TDS @ 10% under Section 194-I and other provisions of the Act.The Passive Infrastructure sector, being a highly capital intensive sector, involves huge capital outlay and operates on a very low profit margin. Further, TDS deducted at high rates by customers and delays in issuance of lower TDS rate certificates by the tax authorities results in blockage of precious working capital in tax refunds for long periods.	a. A circular may be issued to clarify that none of the TDS sections apply to payments made by telecom operators to telecom infrastructure service providers. b. TDS provisions were primarily introduced to have an alternate collection mechanism in place for unorganised sectors where collecting tax directly from the recipient is challenging and carries the risk of evasion/leakages. c. The applicability of existing tax withholding provisions under the Act clearly confirm the aforesaid view- Section 192 applies for individuals earning salaries, 194C applies for civil contractors, 194-I historically applied to rental transactions (where mostly individuals are involved), 194J applies to professions involving firms and individuals. Further, it is worth noting that currently there are no TDS provisions for most of the organized sectors- manufacturing sector, trading sector, exporters, hotels, banks, insurance etc. d. In the light of above rationale and considering that the business of telecom infrastructure service providers is based on Business to Business model

			("B2B model") where both-the telecom operators (customers) and telecom infrastructure service providers are all well established companies with large turnovers and audited financials. e. There is no possibility of revenue loss or leakage as the telecom infrastructure service providers are obligated to get a cost audit and tax audit done annually and are subjected to scrutiny assessments almost every year. These companies can discharge their tax liability through quarterly advance tax as applicable to most other sectors in the country. f. CBDT has considered the relaxation of withholding tax provisions from time to time depending upon the needs / requirements of the industry by way of issue of clarifications. Example – Circular No. 736, dated 13-02-1996, Circular No. 1/2008, dated 10-01-2008 issued for cold storage industry.
Time Limit for disposal of cases by CIT(A), ITAT and for appeal effect orders		CIT(Appeal) and the ITAT doesn't have time limit to dispense the case and even after the Tribunal gives the order there is no time limit for the A.O for effecting the Order	There should be time limit for CIT(A) & the ITAT for passing the order and also time limit for effecting the order passed by them.
Issue of accumulation of litigation	Unnecessary additions / disallowances / High Pitch assessments / Dispute Resolution Panel	In majority of the case the tax taxpayer necessarily undertakes litigation against an addition due to; linkage of tax withholding default with income assessment; and the fear of	The remedies to avoid unnecessary litigation by the tax payer may be: - (i) Department circulars clarifying from time to time areas of law points which are prone to bonafide interpretation – being the

		penalty and prosecution which he may be visited with. In order to achieve the revenue targets, in many cases it is experienced that high pitched assessments are made, demands raised and collected. This leads to further litigation and in most of such cases additions are not upheld by the higher appellate forums. This causes tremendous harassment to the tax payers and a huge cost of litigation culminating into bad image for the country as an investment destination. This practice need serious reconsideration and should be stopped.	cases in which penalty and prosecution may be relieved; (ii) delinking of tax withholding default and income addition.
Dispute Resolution Panel		DRP has been historically vetting the orders passed by the Assessing Officers and have been refraining from taking an unbiased and neutral view on the matters. Hence, the objective of reducing litigation has been defeated	To enhance the credibility of the DRP mechanism, we recommend the following measures: a. Specific provisions should be introduced to clarify the fact that DRP directions are applicable only to the assessment year in question b. DRP mechanism should be like an arbitration process. The law on DRP should be modified to give the DRP more settlement powers. If the stated intention of introducing the DRP mechanism is to reduce litigation at Tribunals and Courts, the only way in which this can be reduced is by making the DRP a more settlement oriented forum. c. The DRP should constitute of neutral panelists like economists, accountants, lawyers along with the representatives from the Department in order to arrive at a reasoned order especially considering the fact that DRP

			deals with issues in relation to transfer pricing and foreign companies.
Section 244A	Presently, the section grants interest on refunds due to the tax-payers @ 6% p.a. (Against 12% p.a. charged under other sections such as section 234A/ 234B etc.)	As per the "Service Delivery Standards" laid down in the 'CITIZEN'S Charter' standard is to issue refunds within 6 months to 9 months. If it is not so issued, presently nobody is accountable. It is a well-known fact that in thousands of cases the refunds are not issued for years and the standards (present or earlier) are not observed.At times also unofficial instructions are given by higher authorities to assessing officers, not to issue refunds in the last quarter of the financial year to show better picture of the net tax collection.If the tax-payer has to pay a price for any default, the department must also pay a price for default.The department also should be accountable and have enforceable obligations.	a. First of all, timelines should be prescribed to process refunds due on returns. Delay beyond specified timelines should invoke higher interest. b. Section 244AA should be amended to include the following:- c. If the refunds due are not issued until 12 months from the end of the month in which the return of income is furnished or appellate order is passed or due for any other reason, rate of interest shall be enhanced to 12% p.a. for next 12 months and 18% p.a. for the period thereafter.
Foreign Institutional Investors			Any investment in securities made by FII's in accordance with the regulations made under SEBI would be treated as a capital asset. Consequently, any income arising from transfer of these securities by FII's would be in the nature of capital gains. Similar treatment should be extended to all funds (and not merely FIIs).
Status of Trust			The status of trust as 'individual' or 'AOP' is always under litigation. Status only determines the taxability of trust and applicability of certain provisions of the Act. Therefore, it is recommended to define the status of trust as an "Association of Persons".
Reduce effective cost of imported		Our Make in India dream requires to	It is recommended that the definition of FTS and Royalty

technology or technical services		increasemanufacturing efficiency and productivity. Adoption of technology is key. Given the high rate of tax on technology and technical services, it is uncompetitive for Indian businesses to adopt technology as the technology cost of import when grossed up increases by 33% more. To maintain cost competitiveness in manufacturing and production sector, a view aligned to mission of 'make in India' be taken. The cost impact of withholding taxes on suppliers of technology should be relieved by sparing such imports of technology and technical services from being taxed in India.	should specifically exclude payment for any services or royalty for the purpose of use in manufacturing and production services.
Tax filing for foreign companies			Relaxation on filing tax return by foreign companies having only FTS/ Royalty Income - In addition to the interest and dividend income, section 115A(5) of the Act should be extended to cover Royalty and Fees for technical services as well. This would provide relief to foreign companies earning passive income from performing various Income tax compliances in India and contribute to the ease of doing business in India.
AIR information in 'My Account' facility	Section 285BA requires various entities to furnish Annual information return with regard to specified financial transactions in a prescribed form to the Income tax authorities	More transparency is needed in order to enable the professionals handling the tax matters of the assessee to guide them regarding the probable compliance of the relevant provisions of the Income Tax Act with regard to the said transactions, leading to correct payment of taxes.	The AIR information of the assessee may be allowed to be reflected under "My Account" Facility provided by Department in CPC portal. A consolidated view of the transactions entered into by the assessee would help the professionals handling the tax matters of the assessee.

Scope of Annual Information Returns (AIR) under section 285BA to include the information which is required to be filed under other provisions of the Act.	a. Banks fully appreciate the need of the Government to have relevant information for enforcement under the income tax law. As such, the Banks appreciate the requirement to file 'Annual Information Return' (AIR) under section 285BA of the Act. Banks provide various information under other provisions by way of filing of Form 60, Form 61 under Rule 114D for the specified transactions entered into between parties in case PAN is not provided, submission of quarterly return related to payment of interest where no TDS applies, providing transaction and other details to Notices issued by the tax officers of CIB under section 133 (6). b. This results in multiplicity of provision of data at different points in time as well as incurring additional administration costs, efforts and time. These activities of collating information required leads to duplicity of work. Many times information sought in different formats is not readily available in system and it not feasible to modify the system every time to generate the information as per the requirement of tax authorities.		Existing limits and scope for submissions of information specified in the AIR return be amended to incorporate the information requirement by the tax authorities and thereby the provision of other returns and notices for submission should be discontinued.
Concept of arithmetical mean & range	The Finance Act 2014, by way of amendments has proposed to do away with the arithmetical mean concept and has proposed to introduce a concept of range to be notified. Also, the Finance Minister in his budget speech mentioned about the use of multiple year data, but no clarity on the same has been provided yet.		It would serve the purpose of taxpayers if the 'concept of range' is clarified and is prescribed and the amendment relating to the use of multiple year data is given effect to, especially given that this has been a sour point between the taxpayers and the Indian Tax Authorities ever since the inception of transfer pricing provisions.
Use of Secret Comparables	The Indian TP code does not expressly prohibit use of secret comparables by transfer pricing authorities.	Since the law provides for maintenance of contemporaneous documentation based on information available in public domain, use of secret comparables by transfer pricing authorities would be unfair and hence should be restricted.	Use of secret comparables by transfer pricing authorities to determine conformity with the arm's length principle should be restricted. Provision should be introduced to ensure that the tax payer is given sufficient opportunity to analyse the secret comparables
Section 92E read with Rule 10E and Form 3CEB	Simplification of disclosure requirements in Accountant's Report (Form 3CEB)	The Finance Act, 2012 amended the transfer pricing provisions to include specified domestic transactions ('SDT'). Consequently, the CBDT notified the revised Form No. 3CEB ('Form') and	To make life simple for the tax payers the following changes to the Form would be most welcome: a. Explanatory Notes - Considering the issues surrounding reporting

		provided for its electronic filing.	requirements, the tax payer should be allowed to insert explanatory notes to Form 3CEB along with electronic uploading of the Form. b. Summary of the transactions - During the past eight round of transfer pricing audits, it has been observed that transfer pricing adjustments are made vis-a-vis a transaction and not the Associated Enterprises (AEs). In light of the above, it would be advisable to revise the Form to enable tax payers to provide only summary of transactions (i.e. no detailed AE wise requirement as laid down in the existing Form). The existing detailed reporting requirements of the Form should apply to following cases - • where the AE is located in any country/territory notified under section 94A; or • in a no tax; or • low tax country/territory. • Tax authorities can seek details of transactions during the assessments, if required. This is also the criteria prescribed in the Safe Harbor Rules. c. Section 94A for transactions of an assessee with a person in a notified jurisdiction requires the parties to the transaction to be deemed associated enterprises. However, there is lack of clarity as to where a disclosure for such transaction has to be made in the Form 3CEB. It is requested that aclarificatory notification be issued to make the disclosure requirements clear to taxpayers.

Section 9: Income deemed to accruing in India	Secondment/ deputation of employees: Increasing globalization has resulted in fast growing mobilization of personnel across various countries. Typically, the company deputing the personnel initially pays the salary and other costs on behalf of the company to which such personnel are deputed, which are thereafter reimbursed by the latter company.	b. Whether such reimbursements made by Indian entity to an overseas entity towards salary and other costs in relation to the deputed employees should be taxable in India as being payment in the nature of service fees; and c. Whether presence of such deputed personnel create PE of deputing entity in India.	b. Since the employees deputed to the Indian company work under the control and supervision of the Indian company and hence are essentially 'employees' of the Indian company, the amounts paid by the Indian company to the foreign company are merely 'cost reimbursements' for the salaries paid on the Indian company's behalf. c. As the employee reports and works directly for the Indian company and operationally works under the 'control and supervision' of the Indian company, therefore, deputed personals are not carrying any work of deputing entity in India and therefore shall not create PE of deputing entity in India. d. Suitable provisions shall be incorporated in Act to clarify the above position.
14A	Disallowance of expenses related to exempt income.	a. Section 14A of the Act was introduced by the Finance Act, 2001 w.r.e.f. April 1, 1962, to provide that expenditure incurred by the assessee in relation of exempt income shall not be allowed as deduction in computing the Total Income. b. This provision was brought in the statute book to curb the possible abuse of claiming deduction of such expenses against the other taxable income. The purpose behind this provision is to disallow such expenses as the income itself is not	a. It is suggested that the scope of section 14A of the Act, should be limited to cases where the Income is really not taxable and should not be extended to cases where Income is technically treated as exempt. Accordingly, section 14A of the Act should not be triggered in case of dividend income. b. Disallowance under section 14A of the Act should not be made with respect to interest and other expenses claim on the amount of promoter contribution in the infra SPV formed for undertaking Infrastructure projects as per bidding/JV/ regulatory/ business requirements.

		liable to tax. c. In this backdrop, one may note that, the dividend income from shares/units is exempt in the hands of the share/unit holders not because the same is not taxable at all but because of the fact that on distribution of such dividend, tax is now collected by the Government from the Company/Mutual Fund. Therefore, it can be said that dividend, in real terms, is a tax-paid income, though technically the same is treated as exempt in the hands of the share/unit holder. d. At times, infra SPV is formed for undertaking Infrastructure projects as per bidding/JV/ regulatory/ business requirements. The promoters contribution in such SPV is subject to disallowance under Section 14A. The intention is not to earn dividend income in such cases. e. This puts Indian corporate at disadvantageous position vis-a-vis foreign corporate which are not subject to such disallowance in home country.	
Rule 8D of the Rules	Disallowance of expenses related to exempt income – Rule 8D	a. Section 14A of the Act provides that no deduction shall be allowed in respect of expenditure incurred in relation to income	Therefore, it is absolutely necessary to make clarificatory amendment in section 14A of the Act to specifically provide that only those expenses which are directly related to earning of

		which does not form part of total income. b. Rule 8D of the Rules prescribes the relevant method for computing the expenses in relation to exempt income. As per the prescribed method the disallowance is aggregate of following: c. Amount of expenditure directly relating to exempt income d. Amount of interest expenses in the proportion of average value of investments to average of total assets. e. Half percent of average value of investments f. Rule 8D of the Rules has created severe genuine hardships for taxpayers and post insertion of this Rule, the implementation of the provisions of section 14A has far exceeded its intended scope. In particular, considering half percent of the investments as expenditure in relation to earning exempt income is totally arbitrary. In fact, in some cases it works out to be much more than the actual exempt income received.	exempt income be disallowed. Alternatively, it is suggested that the third limb of the method prescribed under Rule 8D namely, half percent of the average value of the investments should be removed from the Rules for the purpose of determining disallowance under section 14A of the Act and replaced with 0.5% of investment income.
Higher TDS for non-quoting of PAN – Section 206AA	Section 206AA of the Act cast obligation on the payer to deduct tax @ 20% if the payee does not have Permanent Account No. ('PAN') (In case otherwise applicable withholding tax	a. Finance (No. 2) Act 2009 inserted section 206AA w.e.f. from 1.4.2010. This section provides that in the event of non-submission of PAN by	a. It is desirable that section 206AA be withdrawn at least for non-resident payees. b. TRACES website to allow the deductors to download certificates for no PAN cases.

	rate is lower than 20%) In most of agreements it is observed that Indian entity bears the Indian Income tax cost of foreign entity.	the payee, tax would be deducted at the higher of the following rates: • Rates specified in the relevant provisions the Act; • Rates in force; or, • 20% b. This provision does not recognize the practical difficulties of the deductor especially relating to non-residents. In many cases onetime payment to non-residents are negotiated on a net of tax basis. In other words, a non-resident in such cases receives the payment net of withholding tax. The tax in this case is borne by the Indian deductors and the same is grossed up. The payees are not keen to obtain PAN in such cases since these are one-time transactions as also the fact that the tax is borne by the Indian payer. c. It is worth noting that this provision adversely hits the Indian payer who is required to bear an additional tax burden merely because the non-resident payee has not furnished PAN. d. Provisions of section 115A(5) of the Act, specifically exempt foreign companies from the requirement of	This anomaly should be given an immediate attention.

		furnishing return if the income is derived from certain specified receipts. Even in such cases, there is reluctance on part of the foreign entities to comply with the requirement of obtaining PAN. e. This requirement and the consequential higher rate would add to the cost of services and procurement for Indian Industry, thereby affecting their competitiveness.	
37(1)	Expenditure on CSR activities as per section 135 of the Companies Act, 2013	Any expenditure incurred by a company relating to CSR referred to in Section 135 of the Companies Act 2013 is not deemed to be an expenditure incurred for the purpose of business and thus, is not an allowable as deduction while computing the taxable income. Since the incurrence of CSR expense is mandatory under the Companies Act, non-allowance of deduction would result in such expense becoming in nature of 'tax'. Accordingly, it is recommended that 100% deduction should be allowed for CSR.	100% deduction should be allowed for CSR.
Section 35(1)(iia)	Weighted deduction of 175% is available on sponsored scientific research undertaken through an approved National Laboratory, University, Indian Institute of Technology and other specified institutions.	The increase in the weighted deduction to 175% from 125% was made by the Finance Act 2010. However, weighted deduction for similar sum paid to an approved company continues to be at 125%.	Approved companies should be brought on an equal footing with approved National Laboratory, University, Indian Institute of Technology and other specified institutions. Proposed Amendment: The Government should similarly increase the percentage of

			weighted deduction on contributions made to such companies to 175%.
115-O of the Act	Dividend Distribution Tax		The DDT effectively results in double taxation of the same income. It can hardly be called an equitable legislation.
		a. As per the provisions of section 115-O, double taxation of dividends persist in case of inter-corporate dividends except in cases of corporates having a single-tier holding structure. b. The amendment made by Finance Act 2013, as worded, still does not remove the cascading effect of DDT. c. Double DDT applies to all cases of inter-corporate dividend like that from non-subsidiaries and mutual funds. d. The requirement of 'dividend received by the domestic company during the financial year' leads to the cascading effect. e. The existence of the proviso to section 115O(1A) providing that 'same amount of dividend shall not be taken into account for reduction more than once further leads to the cascading effect	a. It is recommended that the provisions be appropriately amended to remove the cascading effect of DDT in a multi-tier corporate structures, as seems intended by the Government. b. It is recommended that the cascading effect be removed by allowing credit of DDT-borne dividends in all cases of dividends received like that from non-subsidiaries or mutual funds. c. A clarification be inserted to state that DDT is in nature of tax on the profits of the company so that the foreign shareholders are able to claim credit of DDT paid in India against their tax liability in home country.
Taxation of social security contributions in		b. In respect of an expatriate employee deputed to India, the	It needs to be clarified under the Act, that employer contributions to such social security schemes

the hands of Expatriates		home employer and employee may be required to contribute to social security schemes under the local law of country. In most cases, the contributions made to these schemes may not vest on the employee at the time of making the contributions and thereby do not provide any immediate benefit to the employee. Further, the employee contributions may also be mandatory under the law of the home country. Both the employer and employee contributions may be available as a deduction from taxable income in the home country of the expatriates. c. However, currently, there is no provision under the Act, which provides for the taxability or otherwise in respect of such contributions from the taxable income though there have been several favorable judicial precedents to this effect such as L.W. Russel, Galloutti Raoul, LukesFole etc3. d. Recently, even the Delhi High Court (High Court) pronounced in	should be exempt in the hands of the individual employee based on the principle of vesting. Further, the employee contributions should be available as a deduction where the same are mandatory and constitute diversion of income by overriding title.

[3]CIT v. L.W. Russel [1964] 53 ITR 91 (SC),
Gallotti Raoul v. ACIT [1997] 61 ITD 453 (Mum),
DCIT v. Mr. Moroux c/o Air France (Delhi) (2008),
ITO v. Lukas Fole (Pune) (2009),
CIT v. NHK Japan Broadcasting Corporation [Civil Appeal No. 1712 of 2009 – SC],
ACIT v. Scott R. Bayman (Delhi) (May 2009), ACIT vs Harashima Naoki Tashio (Feb 2010)

		case of Yoshio Kubo, based on the ratio laid down in the rulings of L.W. Russel and Mehar Singh Sampuran Singh Chawla4 that employer's contribution to overseas social security, pension and medical/ health insurance do not qualify as perquisite under Section 17(1)(v) of the Act and are not taxable in the hands of the employees.	
Tax Residence Certificate	The Finance Act, 2012 had provided that in order to be eligible to claim relief under the tax treaty, a taxpayer is required to produce a Tax Residency Certificate (TRC) issued by the Government of the respective country or the specified territory in which such taxpayer is resident, containing certain prescribed particulars. Subsequently, the Central Board of Direct Taxes (CBDT) prescribed the details to be included in the TRC. The Finance Act, 2013 has done away with the requirement of obtaining prescribed particulars in the TRC. In other words, the taxpayer can continue to obtain the TRC as issued by the foreign authorities. The Finance Act, 2013 also introduced a provision to clarify that the taxpayer shall now be required to furnish such	a. Even though the requirement to furnish TRC containing prescribed particulars has been dispensed with, however, depending on the jurisdiction, obtaining a TRC certificate may also be a time consuming/difficult process. TRC requirement increases the administrative difficulty for non-residents, especially from the perspective of non-residents having very few/limited transactions connected to India. b. The deductor would like to obtain the TRC at the time of the transaction/ depositing the tax (to ensure that the payee is eligible for the tax treaty benefits), the payee would typically be able to obtain TRC only after	a. The requirement to obtain TRC for a taxpayer to prove that he is a resident of the other state should be deleted as there may be circumstances wherein the taxpayer who is a bona fide tax resident of the other contracting state is unable to procure a TRC owing to circumstances outside his control. At assessment stage, it is anyway incumbent upon the AO to ascertain complete details before allowing tax treaty benefits. In such a scenario, even though the AO may otherwise be satisfied that the tax treaty benefits must be allowed, only owing to the procedural lapse of not obtaining the TRC which is beyond the tax payer's control, the AO would be compelled to deny tax treaty benefits, which will cause needless hardship. b. The deductor would like to obtain the TRC at the time of the transaction/deducting the tax (to ensure that the payee

[4] Yoshio Kubo and others (the taxpayer) v. CIT (ITA 441 and other appeals),
CIT v. L.W. Russel [1964] 53 ITR 91 (SC)
CIT v. Mehar Singh Sampuran Singh Chawla [1973] 90 ITR 219 (Del),

	other information or document as may be prescribed. The CBDT subsequently issued a notification amending the Income-tax Rules, 1962 (the Rules) prescribing the additional information required to be furnished by non-residents along with the TRC. The details are required to be furnished in Form 10F.	the relevant year. c. As per the new Rule an Indian resident who wishes to obtain TRC from Indian income tax authorities, is required to make an application in Form No. 10FA to the tax officer, containing prescribed details. However, no time limit for issue of TRC is specified from the date of application by the assessee. Furthermore, the issue of TRC in Form No. 10FB has been left to the discretion of satisfaction of the tax officer, without providing a substantive definition for satisfaction in this regard. d. It has not been specified as to who shall sign Form 10F. Hence, it should be clarified who is authorized to sign the form.	is eligible for the tax treaty benefits), it would pose a hardship to the payee to obtain a TRC before the end of the relevant financial year. The procedure so cast would pose onerous responsibility both on the payers/payee resulting in holding of payments by the payer. c. Without prejudice, even if the requirement to obtain TRC must stay, it is recommended that the TRC shall be made mandatory only for cases where the total payment to a non-resident exceeds Rs. 1 crore in a financial year. This would mitigate hardship in respect of small payments. d. It is further recommended that the requirement to furnish TRC should be cast upon the payee at the time of the assessment of the payee and the deductor/payer should not be made liable to collect TRC from the payee at the time of withholding tax. e. The time limit to issue TRC in Form 10FB should be specified and to further specify that in case the tax officer refuses to issue a TRC, the application of the assessee should be disposed by the tax officer by passing a speaking order and clearly specifying the reasons for rejecting the application of assessee. f. It may be specified that persons prescribed under section 140 of the Act for the purpose of signing the return of income would be eligible to sign Form 10F.

<u>Annexure 2</u>

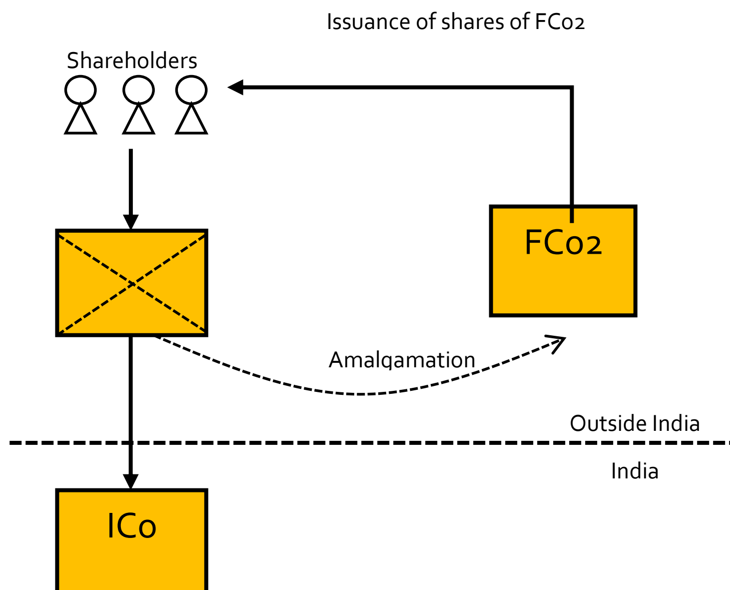
<u>Background of provisions relating to foreign amalgamations</u>

1. Prior to the introduction of Explanation 5 to Section 9(1)(i) of the Act, any "direct transfer" of shares in an Indian company resulting from an amalgamation of a foreign company (holding the shares in an Indian company) with another foreign company, was exempted from the capital gains tax provisions <u>in the hands of the amalgamating foreign company</u> where the conditions laid down in Section 47(via) were satisfied.

2. Further, prior to the introduction of Explanation 5 to Section 9(1)(i), <u>the shareholders of the amalgamating foreign company</u> whose shares in such amalgamating foreign company stood extinguished and in lieu received shares of foreign amalgamated company, were not subject to capital gains tax in India, as the subject matter of transfer were shares in a foreign company (which were considered to be assets situated outside India).

3. However, after the introduction of Explanation 5 to Section 9(1)(i), the shares of an amalgamating foreign company which derived substantial value from assets located in India, was deemed to be an asset situated in India and any transfer of the shares in India.

4. The above situation can be explained by way of the following diagram.

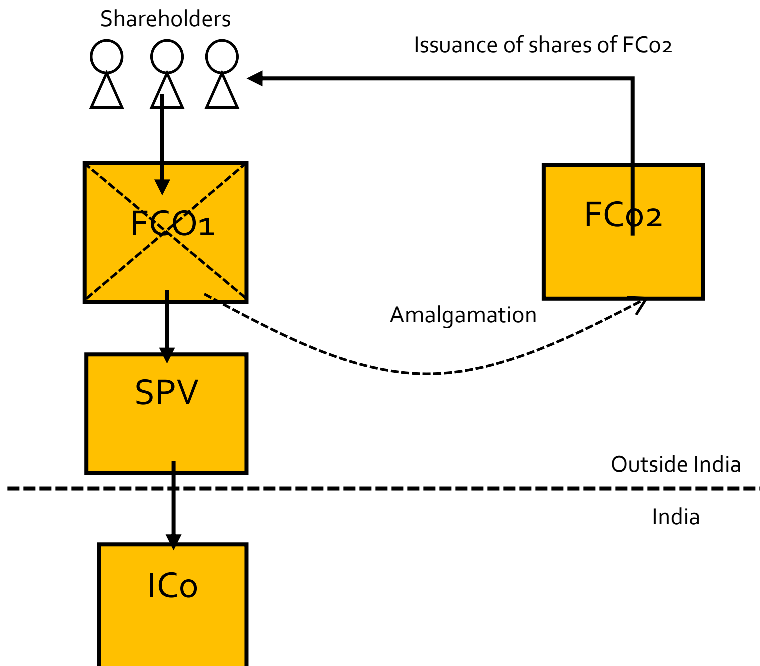


In the above illustration, the amalgamating company FCo1 which holds shares of ICo enjoys exemption u/s. 47(via) if the conditions specified therein are satisfied. However, the shareholders of F Co 1 do not enjoy any exemption though may trigger tax liability in India on account of F Co

deriving substantial value from assets located in India. There is need to provide for exemption for the shareholders along the lines of exemption which is available u/s. 47(vii).

5. It is true that amendment proposed by the Finance Bill 2015 will protect the amalgamating foreign companies which hold shares of the foreign entity (being SPV deriving value from India) and covered by Explanation 5 to S. 9(1)(i).

6. As illustrated below, there can be exemption for such amalgamating foreign companies which was not available in absence of S. 47(viab) as proposed. Upon merger of F Co 1 with F Co 2, there would be tax trigger in respect of transfer of shares of SPV. If SPV is covered by Explanation 5 to s. 9(1)(i), the tax trigger for F Co 1 is relieved under S. 47(viab). However, the shareholders of F Co 1 are still not protected. In any case it is not litigation free.



Recommendations

7. Keeping in view the above discussion, it is requested that a new provision be introduced which extends the capital gains tax exemption in the situations discussed above to the “shareholder” as well. This provision could be in line with the existing provision Section 47(vii) which provides capital gains tax exemption to the shareholder on the transfer of shares in an Indian company where the amalgamated company is an Indian company.

8. An attempt to draft the required provision is made as follows:

“any transfer by a shareholder, in a scheme of amalgamation of a capital asset being a share of a foreign company, referred to in Explanation 5 to clause (i) of sub-section (1) to Section 9, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company held by him in the amalgamating foreign company, if—

(a) the transfer is made in consideration of the allotment to him of any kind of shares in the amalgamated company except where the shareholder itself is the amalgamated company, and

(b) such transfer does not attract tax on capital gains in the country in which the amalgamating company is incorporated”

POST-BUDGET MEMORANDUM 2015-16

AMERICAN CHAMBER OF COMMERCE IN INDIA

PHD House, 4th Floor, 4/2, Siri Institutional Area, August Kranti Marg, New Delhi – 110 016
Tel: 91-11-26525201 Fax: 91-11-26525203 Email: amcham@amchamindia.com

Key Recommendations……………………………………………………………4-8

Tax Residency of companies - Place of effective Management (POEM) – section 6……4

Capital gain tax exemption to the 'shareholders' of the amalgamating / demerged foreign company which derives significant value from assets situated in India. – Section 47……………………………………………………………………………………..5

Rationalization of MAT provisions……………………………………………………………..6

Substantive Provisions – Direct tax……………………………………………..9-35

Section 195(6) and Section 271-I :Reporting requirement to apply to all payments made to a non-resident………………………………………………………………………………9

Section 32(1)(iia)
Balance additional depreciation of 50% to be allowed in immediate subsequent year…..9

Section 32AD: Investment in new plant and machinery in notified backward areas in the states of Andhra Pradesh and Telangana…………………………………………………10

Tax rates…………………………………………………………………………………………11

35(2AB) :Tax benefits for in-house R&D facility…………………………………………12

Global Depository Receipts ("GDRs")………………………………………………………..13

General Anti Avoidance Rules ("GAAR")……………………………………………………17

Taxability of Offshore Funds……………………………………………………………… 18

Concealment Penalty…………………………………………………………………………..21

Revision u/s 263……………………………………………………………………………… 22

Acceptance or Repayment of money in relation to transaction of immovable property section 269SS/T……………………………………………………………………………… 22

Raising the threshold of specified domestic transaction section 92BA…………………..23

Section 9 :Retrospective amendments…………………………………………………..23

Section 9: Indirect transfer of shares……………………………………………………..23

Real Estate Investment trust ("REIT") / Infrastructure Investment Trust ("InvIT")………27

Interest payable by an Indian PE of NR bank to its HO…………………………………...31
Pass through status for Category I and Category II Alternative Investment Funds……..33

Tax neutrality on consolidation of mutual fund schemes – section 47(xviii), 49(2AD)2(42A)…………………………………………………………………………………………33

Additional deduction uptoRs. 50,000 for contribution to New Pension Scheme………..34

Increase in limit of medical insurance premium under section 80D…………………….. .34

Reduction of withholding tax ("WHT") on Royalty & Fees for Technical Services ("FTS")…………………………………………………………………………………...35

Share Capital Infusion and Transfer Pricing………………………………………………...35

Annexure 1 – Recommendations not considered by Finance Bill 2015……....36

Annexure 2 - Background of provisions relating to foreign amalgamations…103

F. Key Recommendations – Direct tax		
Section/ Topic	**Background/Issue**	**Recommendations**
Tax Residency of companies - Place of effective Management (POEM) – section 6	**Background** c. Place of Effective Management' ("POEM") is an internationally recognized concept for determination of residence of a company incorporated in foreign jurisdiction. d. Finance Bill 2015 seeks to widen the ambit of POEM and treat a company incorporated inforeign jurisdiction as a resident in India if its POEM, at any time in that year, is in India. **Issues** e. The proposed amendment leads to foreign company being treated as a resident in India if its POEM is in India, at any time during the year. f. If the proposed provisions are construed literally, even single / stray BOD meeting in India of a foreign company may have the consequence of that foreign company being a tax resident of India. g. The proposed provisions would result in a fairly low threshold for regarding a foreign incorporated company as a resident in India. If the same is enacted, it is apprehended that there could be a severe impact on foreign incorporated subsidiaries of India in a big way. Some of the apprehensions are as follows: • Mere presence of Indian resident individual to be on Board of Directors of foreign subsidiary of an Indian parent can adversely impact the residential status of the foreign subsidiary. • There could be situations where one of the many Board meetings of such foreign subsidiaries is held in India. This could be the case, even where all the significant decision-making in relation to foreign companies are by Board of Directors or GM of the foreign company outside India and only one off meeting happens in India. • It is common for Indian multinational companies to have a common group policy, for instance Human Resources policy, Finance policy, Risk Management , Common Code of Conduct, etc. for the purpose of uniformity, mobility, consistency and endurance. These policies are, by custom, formulated at HQ and circulated to the group companies for ensuring compliance. In the context of outbound investment, these policies are likely to be formulated and circulated by Indian flagship company. It should not happen that the presence of such common policies may lead to allegation of group companies being considered a resident in India. h. Further, dual residence may and often does result in liability for double taxation. Also ambiguity on availment of foreign tax credit in such a scenario would post a	

	substantial challenge to such companies. **Recommendations** In the Memorandum to the Finance Bill 2015, it is mentioned that before effecting this amendment, tax authorities would release a set of guiding principles to be followed for determination of POEM for benefit of taxpayers and tax administration. g. Since the amended provision is likely to have a bearing on foreign companies and many other stakeholders, it is recommended that a draft of the guidelines may be released to the public for discussion and comments be invited on the same. After considering the representations and suggestions made by industry groups and various stakeholders, the final guidelines should be notified. h. Since the amended provision is likely to have a bearing on foreign companies and many other stakeholders, it is recommended that a draft of the guidelines may be released to the public for discussion and comments be invited on the same. After considering the representations and suggestions made by industry groups and various stakeholders, the final guidelines should be notified. i. It is common for Indian multinational companies to have a common group policy, for instance Human Resource Policy, Finance Policy, Risk Management, Common Code of Conduct etc for the purpose of uniformity, mobility consistency and endurance. These policies, are by custom, formulated at HQ and circulated to the group companies for ensuring compliance. In the context of outbound investment, these policies are likely to be formulated and circulated by Indian flagship company. It should not happen that the presence of such common policies may lead to allegation of group companies being considered a resident in India. j. Further, dual residence may and often does result in liability for double taxation. Also ambiguity on availment of foreign tax credit in such a scenario would post a substantial challenge to such companies. k. Given that the intention was to align the provisions with the international standards, the words “any time in that year” should be replaced with the words “during the year”. l. The guiding principles proposed to be issued for POEM, should be introduced at the earliest, preferably in March itself, considering that the proposal is effective from 1st April 2015 onwards. Such guidance would go a long way in providing clarity on the new POEM provisions.
Capital gain tax exemption to the ‘shareholders’ of the amalgamating / demerged foreign company which derives significant value from	**Background** c. In an internal group re-organization involving amalgamation of Indian companies, specific capital gains tax exemption has been provided to both the amalgamating company as well as the shareholders of the amalgamating company. d. To give level playing field for overseas amalgamation, Finance Bill 2015

assets situated in India. – Section 47	provides for exemption to an amalgamating foreign company which was holding shares directly of an Indian company but not to the shareholders of such an amalgamating company. **Issues** c. Capital gains tax exemption is already available to shareholders in case of amalgamations involving Indian companies. d. Specific capital gain tax exemption to the 'shareholders' of the amalgamating / demerged foreign company, which derives significant value from assets situated in India, will be in the spirit of the change brought in by the Finance Bill and take the implementation to its logical conclusion. Without this change, the new provision will not be implementable. **Recommendations** b. It is recommended to introduce a specific provision which provides that in case of group re-organization, capital gains tax exemption will be available to the 'shareholders' of the amalgamating foreign company which derives substantial value from assets situated in India. Please refer **Annexure 2** for detailed explanation.
Rationalization of MAT provisions	**Background** e. Basic purpose of introducing MAT was to bring all zero tax companies within the tax net. It was introduced to neutralize the impact of incentives. f. Presently, MAT is levied on the long term capital gain on shares/units eligible for exemption under section 10(38) of the Act. g. Penalty for concealment of income or furnishing inaccurate particulars of income is levied on 'amount of tax sought to be evaded' which is the difference between (a) tax due on assessed income and (b) tax chargeable on total income after reducing the concealed/inaccurate particulars of income.\\ h. Finance Bill 2015 has proposed to amend the Explanation to provide that MAT will not be payable on the amount of income, being the share of the assessee in the income of an association of persons (AOP) or body of individuals (BOI), on which no income-tax is payable in accordance with section 86, if such amount is credited in the P&L account. **Issues** f. In Finance Bill 2015, it was announcedto reduce the rates of corporate tax from 30% to 25% in phased manner. However, no such reduction of MAT rates is announced. g. This, amendment give rise to controversy whether provisions of MAT would be

	applicable to foreign company, not required to maintain books of accounts in India h. Law is proposed to be amended to overcome the difficulty in computation of amount sought to be avoided in a case where concealment of income occurred under general provision of ITA and under book profit computation under S. 115JB/115JC. i. Further, it was provided that where issue is in relation to both, general and MAT provisions, the concealed income will be considered for general provisions only. j. However, language for the above proposed amendment reads as under: *"Second proviso to Clause (a) of Explanation 4 reads as where the provisions contained in S. 115JB are not applicable, the item (C-D) in the formula shall be ignored."* From the above language, a view may be taken that MAT provisions apply by default to company and thus, penalty may be levied for income under normal provisions as well as income. Despite the exemption granted under normal provisions of the Act, under MAT such income is not eligible for exclusion. **Recommendations** m. We would recommend, with the phasing out of incentives and tax rates, the burden of MAT should also be gradually reduced and that MAT should be eventually phased out. n. It is also recommended to extend the period available for set-off of MAT credit from current 10 years to 15 years in line with the Direct Taxes Code and upon abolishing of MAT provisions, grandfather all existing MAT credit for future set-off without any time limit. Also allow set off of book loss and depreciation as the same would amount to companies earning book profits in real sense. o. It is that the MAT exemption on section 10(38) should also be extended to other assessees along with the FIIs to bring parity. p. A more welcome amendment would be be one which introduces a clarification embodying the principle that a foreign company which has no business presence, such as PE in India, is not liable to MAT. q. In caseMAT is made applicable to foreign companies then guidelines/methodology for ascertaining/computing the books profits should be provided, given that the foreign companies having nopresence in India do not and are not required to prepare India specific books of accounts. r. The clarification should have the retrospective effective, to ensure that cases of earlier years are not re-opened to levy MAT. s. With respect to capital gains exemption earned by FIIs on sale of securities,

	CBDT should issue a circular clarifying that the proposed amendment shall be applied to past years as well or the proposed amendment should be made effective retrospectively. t. Irrespective of above, the scope of amendment should be broadened to include all nature of income (such as interest income) earned by the FIIs. u. It should clearly stated in the proposed amendment that concealment or inaccurate particulars should be in accordance with the additions as mandated under Explanation 1 below Section 115JB(2). This would avoid any confusion and discretionary exercise of jurisdiction by the Assessing Officer. v. It may be noted that the Supreme Court in case of Apollo Tyres has stated that no adjustments could be made by the Assessing Officer to net profits if the financials have been prepared in accordance with the Companies Act and limited adjustments in accordance with the mandate of Section 115JB is permitted. w. Further , the language of the proviso should be modified to read as where the tax is not payable under the provisions of section 115JB, the item (C-D)ie the difference between MAT income as per the Assessing Officer and MAT income as per the Assessee as in the formula (related to concealed income as per MAT) shall be ignored. x. The proposed provision should be delinked from the provision of Section 86 (read with Section 67A) of the Act. Instead, the amendment should state that the amount of assessee's share in the income of AOP/BOI, as credited to the profit and loss account should be reduced while calculating the amount of book profits. Also, the expenditure relatable to such income should be added back while computing the book profit. Alternatively, it should be clarified that the term 'total income' as appearing in Section 67A would include income which is exempt or deductible under various provisions of the Act.

<table>
<tr><th colspan="4">G. Substantive Provisions – Direct tax</th></tr>
<tr><th>Section/ Topic</th><th>Background</th><th>Issue</th><th>Recommendations</th></tr>
<tr><td>Section 195(6) and Section 271-I

Reporting requirement to apply to all payments made to a non-resident:-</td><td>It is proposed to amend Section 195(6) to provide that person responsible for paying any sum whether chargeable to tax or not, to a NR is required to furnish the information in such form and manner as may be prescribed.</td><td>e. With new law, practical difficulties to arise due to tremendous proliferation of compliance burden including CA Certificate in respect of payments such as
• Payment for imports other business payments
• Remittances towards gifts or education
• Reporting required for payments made on foreign trips
• Payments made at overseas restaurants,
• Payments made for online shopping owned by NRs
• Payment to NR's branches in India
• May apply equally to payment between NRs or involving branches of NR in India
• May apply even if covered by S.195(2)/(3) or 197 order</td><td>d. Currently, reporting requirement is being implemented strictly by the banking industry without any specific mandate in law. There is no need to expand the scope of the provision.

e. However if the proposed amendment is enacted the following relaxations may be considered:

• The list of exempted payments specified in Rule 37BB may continue to be kept out of reporting requirement. The list may be enlarged in consultation with the trade bodies.
• All non-business remittances may be kept out of the purview of reporting
• Small value transactions – say, remittance of less than Rs. 1 lakh or 10 lakh should be kept out of the reporting compliance.
• There should be no insistence on CA certificate in respect of remittances which are not chargeable to tax.
• Necessary information should be collected from bank/taxpayer preferably bank so that the tax payer is relieved of the compliance.

f. Penalty should not be qua remittance and may be capped at Rs. 1 lakh except where there is gross negligence or wilful omission.</td></tr>
<tr><td>Section 32(1)(iia)

Balance</td><td>Owing to ambiguity under the extant provisions on additional depreciation,</td><td>It is noted that the amendment is brought in to eliminate the discrimination</td><td>c. While the amendment is welcome and it seeks to resolve ambiguity in favour of the</td></tr>
</table>

additional depreciation of 50% to be allowed in immediate subsequent year	non-avaiability of full 100% of additional depreciation for acquisition and installation of new plant and machinery in the second half of the year motivated taxpayers to defer such investment to next year to ensure availment of 100% additional depreciation in next year	which was operative between the taxpayer who installs the machinery in first half and another who installs in the second half of the year.	taxpayer by offering equal treatment to all taxpayers, it is recommended that the amendment be introduced as a a clarification considering that there are cases pending in litigation. d. Alternatively, appropriate instructions may be issued to field officers to allow such benefit in pending proceedings also.
Section 32AD **Investment in new plant and machinery in notified backward areas in the states of Andhra Pradesh and Telangana**	To promote industrialization and growth in notified backward areas of Telengana and Andhra Pradesh Central Government has introduced certain tax incentives to encourage setting up of industrial undertakings in these areas.	The proposed provision denies deduction where 100% depreciation has been claimed in a financial year. Such ddenial will hit the industries which are in a priority sector and which earn higher depreciation because of the significance of their industry. For example, ironically the amendment will deny benefit to the Industry which employs fuel efficient machinery eligible for deprecation @ 100%.	g. It's recommended to extend Investment allowance under section 32AD to whole of India instead of only Andhra Pradesh and Telangana. The theme of BJP government is "make in India" and not "make in selective states". h. Over a last decade, Andhra Pradesh has grown and developed as an IT Hub and it would be recommended to provide such incentives to the service industry as well. i. It is recommended that deduction be allowed in respect of plant and machinery where 100% depreciation has been claimed in a financial year. j. Also, the benefit should not be denied to industries enjoying investment linked tax holiday. k. Further, in order to avoid dilution of incentive benefit, the investment allowance should be deductible even in the computation of 'book profit' under MAT provisions. l. Aclarification may be issued that the deduction may be held admissible so long as acquisition and installation are during the specified period

			covered in the section.
Tax rates	Finance Minister has announced reduction in corporate tax rate from 30% to 25% in phased manner accompanied by withdrawal of exemptions		Proposal for reduction in corporate tax rate is a welcome step. f. Planned reduction in corporate tax rates may be accompanied with at least 1% rate cut effective from FY 2015-16 to boost the confidence among tax paying industry. Atleast the hike in rate of surcharge from 10% to 12% may not be made with immediate effect. g. Along with reduction in corporate tax rate, it is recommended that there may also be a re-look at a number of disallowances as a result of which the chargeable income is found to be in excess of commercial income. An ideal situation is one where there is no mismatch between commercial and statutory income. h.. Also with the phasing out of incentives, the burden of MAT should be gradually reduced and that MAT will be eventually phased out. i. But while abolishing MAT, appropriate grandfathering should be provided to MAT credit u/s 115JAA so that the companies who have paid MAT can set off the same in post MAT period and the period for availing such set off should also be extended from 10 years to 15 years to compensate for reduction in corporate tax rate under normal provision. j. Consistent with the reduction of rates of tax, the rate of DDT, may also be reduced suitably so as to be competitive in terms of

			the comprehensive tax burden.
35(2AB) **Tax benefits for in-house R&D facility**	The weighted deduction of 200% under Section 35(2AB) of the Income Tax Act, 1961 is available for expenditure on in-house R&D facility approved by the Department of Scientific and Industrial Research ('DSIR') only to such companies who incur R&D expenditure and utilise the final result/ outcome of the said R&D in the manufacturing operations of the Indian company incurring such R&D expenditure.	c. R&D involves a significant investment and risk and also the same being very time consuming, it may be commercially feasible to share the R&D costs among various group companies which in accordance can be used for the business of the entire group. This would encourage and motivate companies to invest in setting up large in-house R&D units in India which would utilise talent in the form of scientists / engineers in India and also help in creation of India as a global R&D hub. d. Presently, only expenditures, which are directly identifiable with approved R&D facility, shall be eligible for the weighted tax deduction. However, several types of expenditure such as the following are not allowable for weighted deduction: • Expenditure purely related to market research, sales promotion, quality control, testing, commercial production, style changes, routine data collection etc; • Capitalised expenditure of intangible nature; • Foreign patent filing expenditure, foreign consultancy expenditure, REACH	c. A specific provision should be introduced for weighted deduction of R&D expenditure even where a part / whole of R&D activity / costs is shared within group companies. d. An amendment should be brought into the effect that entire expenditure incurred in connection with R&D should be eligible for a weighted deduction to reduce complexity and make it a more attractive commercial proposition to invest in setting up R&D facilities in India.

		compliance expenditure; • Consultancy expenditure, retainership, contract manpower/ labour; • Expenditure in the nature of cost of any land or building; etc	
Global Depository Receipts ("GDRs")	The definition as proposed to be amended by the Bill is not aligned with the 2014 Scheme and creates ambiguity around taxation of unsponsored GDRs Currently, transfer of GDRs outside India between two non-residents is specifically exempted from capital gains tax in India.	The proposed amendment does not appear to be aligned with the Scheme introduced recently. In view of a narrower definition of GDR proposed in the Act, there is a doubt on tax implications of transfer outside India between two non-residents	We suggest that the definition of GDR in the Income tax Act, 1961 ('the Act') should be aligned with the definition of DR as per the 2014 Scheme to include all the permissible securities within its sphere. This move will foster wider acceptance of the 2014 Scheme. In this regard, recommendations are as follows: iii. DRs are instruments created outside India by a Overseas Depository Bank and are not securities located in India. Thus, capital gains arising to non-resident investors on transfer of DRs outside India should not be regarded as India sourced income as envisaged in the scheme of the Act (Section 5 read with Section 9 of the Act) iv. We suggest that if the suggestion made above regarding the definition of GDR cannot be carried through, then it should be made explicitly clear that all DRs traded outside India (including the ones which are not sponsored and backed by listed equity shares) will be outside the purview of Indian tax net. This will mirror recommendation made by the Sahoo Committee and soothe foreign investors who would otherwise be agonized by

			potential extra territorial application of the Act. It is recommended that since conversion of GDRs/DRs into underlying shares/securities does not entail transfer of one person to another and merely represents exercise of right in the DR instrument, such transactions should not be regarded as 'transfer' to be taxable under the Act.
	The 1993 Scheme provided framework for issue of GDRs as well as FCCBs. Under the 1993 Scheme, conversion of FCCBs into shares of the underlying company was not treated as a taxable event. The Act and the 1993 Scheme were however silent on the tax treatment to be followed on conversion of GDRs into the underlying shares. This seemed to be unintentional as the tax treatment for FCCBs and GDRs was otherwise at par. Hence, in practice even the conversion of GDRs into shares was regarded as a non-taxable event.	The absence of clarity in the Act coupled with repealing of the 1993 Scheme, creates ambiguity on tax treatment to be followed on conversion of GDRs/DRs into underlying shares/securities. This could be interpreted to mean that conversion of GDRs/DRs into underlying shares/securities would be taxable under the Act. This would result in the notional capital gains arising on conversion based on fair market value of underlying shares or securities on the date of conversion getting taxed.	Further it is suggested that Section 47(xa) of the Act (which currently cover conversion of FCCBs into shares) should be amended to explicitly include transaction by way of conversion of GDR into underlying shares. Further, similar benefit should also be extended to conversions of other type of DRs (other than GDRs defined in the Act) into underlying securities. Till such benefit is accorded, the tax authorities should be instructed to continue with the past practice of treating such conversions as exempt from tax.
	The tax law provides for tax neutrality for certain conversions of one type of financial instruments into another like conversion of bonds/debentures into shares. Conversion of	Conversion of shares into GDRs is usually an off-market transaction not subject to Securities Transaction Tax ('STT') and therefore not entitled to	Our recommendations are as follows: • As recommended by the Sahoo Committee, conversion of shares/securities into GDRs/DRs should not be regarded as a taxable event in India. • It is requested that Section 47(xa) of the Act be amended to include transaction by way of re-conversion of shares into GDR for the purpose of issue of GDRs outside India. Further, similar benefit

	shares into GDR however, is not included and hence, there is a possibility of such conversion being construed as a taxable event giving rise to capital gains.	concessional tax treatment. If the conversion of shares acquired in India into GDR is regarded as a taxable event, then the short term capital gains arising to non-resident tax payer on such conversion would generally be taxable at 30%, being an off market transaction. This will dissuade investors from offering their shares under the DR program, who would rather opt of selling their shares on-market (on which STT is charged) and paying short term capital gains tax at a concessional rate of 15% (or no tax if held for more than one year).	should also be extended to re-conversions of other securities (other than listed equity shares) into DRs. • In case it is not possible to accept the above suggestion, then clarity needs to be provided on computation methodology to be followed for capital gains tax purposes, as under: o In case of GDR converted shares, the cost of acquisition of shares should be market price of such shares prevailing on the stock exchange on the date of conversion of GDRs into shares o Rupee equivalent of market value of GDR on the day of its issuance should be considered as the sale price of the shares so converted; • The above computation methodology should also be extended to reconversion of other securities (other than listed equity shares) into DRs and guidance should be provided on determination of cost of acquisition or sale consideration for securities which are not traded over the stock exchange (eg. unlisted securities, etc). In this regard, we suggest the following: • We suggest that the practice followed in the past on determination of period of

			holding and cost of acquisition of shares be continued and explicitly codified in law. • Further, since the transfer of securities contemplated here is anyway taxable in India, we suggest that the computation mechanism should be extended to sale of other DR converted securities as well. Guidance should also be provided on determination of cost of acquisition for securities which are not traded over the stock exchange (eg. unlisted securities, etc).
	Currently, sale of equity shares released against the GDRs was taxable in India. As provided in the 1993 Scheme, for computing the capital gains in such a case, period of holding was reckoned from the date on which the Overseas Depository Bank advises the Domestic Custodian Bank for redemption to the date of sale of GDR converted shares. Further, the cost of acquisition of shares was computed by considering the market price of equity shares of the issuing company prevailing on the stock exchange on the date of advice. The gains computed on transfer of GDR converted shares were treated as short term capital gains or long Term capital gains based on period of holding of GDR converted shares. Long term capital gains (on which STT is paid) were exempt from tax and short term capital gains (on which STT is paid) were taxable at 15%.	The 1993 Scheme provided some guidance on determination of period of holding as well as cost of acquisition in case of sale of GDR converted shares in India. The 2014 Scheme or the Act are however silent on these aspects. This creates ambiguity on whether past practice can be followed on sale of GDR converted shares going forward. Further, clarity is also needed on whether practice followed on sale of GDR converted shares can be extended to sale of other DR converted securities.	
	The 1993 Scheme permitted only issuance of sponsored GDRs. The 2014 Scheme permitted the holder of securities to participate in an unsponsored DR program wherein the issuer	Under the Act, both the buyer and seller are required to pay STT on purchase and sale of equity shares. Long-term capital gains realised upon sale of equity shares on a	The SahooCommittee had recommended for capital gains tax, tender of shares of a listed company for issue of DRs should be treated at par with sale of shares on a recognized stock exchange.

	company is not involved. The holder of securities simply deposits his securities with the domestic custodian in India and thereafter a foreign depository issues DRs abroad on back of such deposited securities.	recognized stock exchange are exempt from tax whereas short-term capital gains on similar transactions are taxed at 15%. The long capital gains tax exemption or concessional tax rate of 15% tax on short term capital gains mentioned above is not available for an off-market transaction. Hence, long term capital gains arising on tendering of shares by a non-resident investor would be subject to tax at 10% and short term capital gains arising on similar transactions would be subject to tax at 30%. The differential tax treatment results in limited appetite for transferring shares to a foreign depository for issue of DRs.	In order to boost the unsponsored DR program, we suggest that the concessional tax treatment for transactions executed on market should be extended to tendering of shares of a listed company under the DR program.
General Anti Avoidance Rules ("GAAR")	Applicability of GAAR has been deferred by another 2 years, now would be applicable from 1st April 2017. Further, provisions of GAAR would be applicable on investments made upto 1 April 2017 on the lines of the recommendations of the Expert Committee (EC)	The deferral of GAAR for 2 years is a welcome step. However certain recommendations by the Shome Committee have still not adopted	As also recommended by the Shome Committee the Government should : • Carve out an exemption for FPIs from GAAR. Such a specific carve-out will go a long way to provide the tax certainty needed for the healthy functioning of the Indian capital markets. Given the regulatory requirements and supervision by the Securities and Exchange Board of India (SEBI) of FPIs, the risk of any abusive transaction is greatly reduced. • In case a general exemption for FPI's mentioned above is not possible, the Government should look at clarifying that GAAR will not apply if the FPI investments meet the treaty

			requirements for claiming the benefits under the treaty: e.g., Tax Residency Certificate (TRC) in the case of India-Mauritius treaty. • Clarify that where Specific Anti-Avoidance Rules (SAAR) apply to a transaction, GAAR should not be applied. This is particularly applicable where a tax treaty entered into by India contains SAAR provisions to determine whether a resident of the treaty country is entitled to treaty benefits. In the treaty context, the SAAR often takes the form of Limitation of Benefits (LOB) clause. Where the LOB conditions are met, GAAR should not be used to override treaty benefits. This clarification is extremely essential in the context of the India-Singapore treaty given the increasing importance of Singapore as a jurisdiction for Indian investments pursuant to the signing of the CECA between the two countries.
Taxability of Offshore Funds	To facilitate location of fund managers of offshore funds, section 9A has been introduced to provide that in the case of an 'eligible investment fund' the fund management activity carried out through an 'eligible fund manager' acting on behalf of such fund should not constitute business connection in India of the said fund and such fund shall also not be regarded as a resident in India	For eligibility to avail benefit of these provisions several onerous conditions have however been prescribed for the fund managers. k. The Finance Minister in his Budget speech stated that "mere presence of fund manager in India would not constitute a PE of offshore fund resulting in	While the Budget speech states that "mere presence of fund manager in India would not constitute a PE of offshore fund resulting in adverse tax consequences. In order, to encourage the maximum availment of these provisions, simplification / rationalization of these conditions required. k. It is recommended that Section 9A should further clarify that fund management activity in India shall not constitute a permanent establishment in India of the offshore fund.

		adverse tax consequences", section 9A(1) simply clarifies that fund management activity in India shall not constitute a business connection in India of the offshore fund. l. Section 9A(3)(e)mandates offshore fund to have 25 members. This would not be fulfilled where the fund invests into India *via* intermediate holding company/ies, though the fund itself may have more than 25 members. Additionally, sovereign wealth funds, university funds, etc., may stand excluded. Also, use of the words, 'directly or indirectly' also makes implementation difficult. The clause needs to be amended to remove these difficulties. m. The requirement in clause (f) of section 9A(3) for any member along with connected persons not having participation interest of more than 10% would not be satisfied where the fund has few large investors holding more than 10%. n. The requirement in Section 9A(3)(g) regarding aggregate participation interest of ten or less members along with their connected persons shall be less than 50% would not be satisfied where the fund has less than	l. It si suggested that the clause is reworded to exempt offshore funds investing through intermediate holding companies and sovereign wealth funds from requirement of 25 members. Remove the words, 'directly or indirectly'. m. The clause should be suitably amended to remove this difficulty. n. The clause needs to be amended to remove this difficulty.

		10 institutional investors comprising the total corpus. o. The condition that aggregate participation or investment in the fund, directly or indirectly, by persons resident in India should not exceed five per cent of the corpus of the fund may be unworkable, because most funds have initial 'anchor investors' who come in with stakes higher than 5%. p. The requirement in clause (k) of section 9A(3) for the fund not controlling and managing any business in/from India, would not be satisfied in case of buy-out funds which typically acquire controlling stake in investee companies. q. In the condition that the fund should not invest more than 20% of its corpus in any entity, the intention seems to restrict funds from investing over 20% of its corpus in any entity 'in India'; but 'in India' is missing. r. In the condition that the fund should not be engaged in any activity which constitutes a business connection in India, nor have any person acting on its behalf whose activities constitute a business connection in India,	o. As per Shome Committee a26% limit may be more viable p. The clause needs to be reworded to ensure that it does not apply to buy-out funds. q. This condition may be suitably amended to include the words, 'in India'. r. It should be clarified that activities like custodianship, banking and incidental activities should not be treated as business connection.

		other than the activities undertaken by the eligible fund manager on its behalf, it is not clear whether custodianship, banking and incidental activities can be treated as business connection. s. The requirement in clause (d) of section 9A(4), of the fund manager not being entitled more than 20% of the profits of the fund, results in capping of the profits of the fund manager which is based on commercial arrangement.Also, there is ambiguity around the period to be considered for ascertaining profits, particularly in case of open-ended funds and in the event of a loss or marginal profits. t. The condition that remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf is not less than the arm's length price for the activity.	s. Clause (d) should be deleted, since this condition is already taken care of in clause (m) of section 9A(3). The period to be considered in such circumstances should be specified. t. Remove arm's length pricing as a condition. Alternatively, if remuneration is found 'not at arm's length' under transfer pricing (TP) assessments, tax and penal consequences as per TP provisions may be applied.
Concealment Penalty	Finance Act, 2012 have introduced some key retrospective amendments in the name of clarificatory amendments.	While a more correct step would have been to reverse the retrospectively in this budget, however,these suggestion has not found in favour with the Government.	In the circumstances, the least that may be done is to announce that the following default consequences will operate prospectively viz., (i) Interest levy on demand arising as a result of amendment should be restricted to prospective period. (ii)No penalty proceedings may be

			initiated in respect of alleged understatement of income. (iii)Tax withholding obligation should be applied prospectively. (iv)Payer of income should be considered as a representative assesse, on a prospective basis.
Revision u/s 263	Explanation 2 is proposed to be inserted in s.263 to provide that an order of subordinate authority will be considered to be erroneous in the following circumstances: The order is passed without making inquiries or verification which should have been made; The order is passed allowing any relief without inquiring into the claim; The order has not been made in accordance with any order, direction or instruction issued by CBDT under s.119; The order has not been passed in accordance with any decision which is prejudicial to the taxpayer, rendered by the jurisdictional HC or SC in the case of the taxpayer or any other person.	The law relating to the circumstances on which Commissioner may revise the order is fairly well settled in terms of judicial precedents. There is no need to disturb the provision. The insertion of any new provision will destabilize the law and add to fresh issues of litigation. Further, The language used is susceptible of highly vague and uncertain meaning and will almost authorise the Commissioner to direct revision at his pleasure on the slightest pretext. The language will virtually authorize revision in all those cases where it may be difficult to assume jurisdiction to re-assess income.	In the interest of simplicity of law and with a view to avoiding proliferation of tax litigation, it is recommended that Explanation 2 may be dropped and that the subject of revision may continue to be dealt with in accordance with the judicial precedents which have thrown sufficient guidance on the subject.
Acceptance or Repayment of money in relation to transaction of immovable property section 269SS/T	Finance Bill proposes to prohibit taxpayer from acceptance or repayment of any sum of money in relation to transaction of immovable property in excess of Rs. 20,000 otherwise than by account payee cheque or account payee draft or online transfer through a bank account. This restriction is in addition to existing	Modes prescribed under S.269SS/T do not recognize acceptance or repayment in the form of book adjustment against any dues from/to the counter party.	Settlement through the medium of book entry has no implications in terms of circulation of Black Money and there is no reason why it may be tested at par with cash payment for the purposes of the section. Thus,mode of settlement by book adjustment is recognised in Rule 6DD(d) while carving out exception to disallowance of expense in terms of s. 40A(3). It is recommended to provide similar exception for s. 269SS/T in

	restriction on acceptance or repayment of loan or deposit.		general.
Raising the threshold of specified domestic transaction section 92BA	Specified domestic transaction ("SDT") under existing provisions means any specified transactions, not being international transaction, where aggregate of such transaction entered by the taxpayer during the previous year exceeds Rs. 5 crores	The limit of Rs. 5 crores seems very low considering elaborate and extensive documentation and compliance requirements for the taxpayer resulting into increased compliance burden and administrative costs to the taxpayer.	The increase in the limit for SDT is a welcome proposal. However it is recommended that the limit is made effective from April 01, 2015 instead of April 01, 2016.
Section 9 **Retrospective amendments**		b. Retrospective amendments having major impact have been introduced in 2012 in the name of clarificatory amendments. In reality, they are substantive amendments and it was unfair that the amendments were made retrospective effective from 1 April, 1962. While a more correct step would have been to reverse the retrospectivity, we find that the suggestion has not found in favour with the Government. In the circumstances, the least that may be done is to announce that the default consequences will operate prospectively.	It is suggested that the following default consequences should be effective prospectively viz., e. Interest levy on demand arising as a result of amendment should be restricted to prospective period. f. No penalty proceedings may be initiated in respect of alleged understatement of income. g. Tax withholding obligation should be applied prospectively. h. Payer of income should be considered as a representative assesse, on a prospective basis.
Section 9 **Indirect transfer of shares**	Budget 2015 has proposed following amendments based on the recommendations of Expert Committee (EC) under the Chairmanship of DrShome and after consideration of concerns raised by various stakeholders: • The term 'substantial' to	b. Since the date of introduction of unprecedented retrospective amendment, the foreign investors have been struggling to ascertain the meaning of expression 'substantial interest derived from India'. We welcome the initiative to define the parameter of	n. The clarification provided in the budget with regard to taxability of indirect transfers should be given retrospective effect to provide much needed clarity and avoid unnecessary disputes for the past proceedings. o. The comparison between India asset value and value of target entity which is transferred, should be based on commercial

	be defined as value of Indian assets exceeding Rs. 10 crores and representing 50% of the value of all the assets owned by the foreign entity. • Exemption for direct or indirect transfer of small shareholdings below 5%	'substance'. But, there is no reason why the parameter should not be made applicable to pending proceedings, such that the taxpayers may not have to struggle on the interpretation as may be adopted in assessments as may pertain to past years.	principles after taking into consideration the liabilities which may have been incurred by all companies. If this recommendation is accepted, the value comparison will become logical. For example, if the Indian assets are sold in isolation, the fair value thereof will be negotiated after taking into consideration the liabilities of the company. The intent of the law is to capture this gain if it is enclosed within an indirect transfer (instead of a direct transfer) and the India asset value is substantial at more than 50%. For this comparison, the fair value of the subject matter of indirect transfer should also be determined after taking liabilities into account. The commercial deal is unlikely to ignore the liabilities. p. **Shome committee recommendations**: Some of the healthy recommendations of Shome Committee do still appear to remain incomplete in form and spirit. As the Committee recommended: • Value comparison between companies should to be ascertained based on net assets of the companies, after taking into account their liabilities • Exempt all transfers of shares of listed foreign companies, from the purview of this charge • Exempt transfer of shares or interest in a foreign company or entity under intra group restructuring, subject to the condition that such transfers are not taxable in the jurisdiction where such companies resident • Suitable exemption may be

			provided to FIIs and PE investors q. Evaluation of 'substantiality' may be based on the reckoning of value w.r.t. last balance sheet date. Where there are significant post-balance sheet events, the specified date should be the date of balance sheet prepared after considering such events. r. Both the expressions 'value' and 'fair market value' have been used as part of the section and, in the interest of clearer interpretation, it may be desirable to provide clarity on the harmony between the two.Thus reasonable guidelines should be provided for determination of fair market value in connection with indirect transfers on priority basis. s. The proposal to introduce reporting requirement by Indian companies relating to indirect transfers of shares should be avoided, as many times Indian companies may not be aware about overseas indirect transfer of shares and this may lead to unnecessary litigation without any cause. t. In line with Shome Committee Report, it is suggested that the parameter of small shareholder should be judged based on share capital or voting power exceeding 26%. As next best preference, the parameter of 10% of equity capital or voting power calculated w.r.t. immediate or close associated enterprises may be considered. u. We believe that provision for exempting small shareholders

			needs to be more liberal and pragmatic if the intent is to keep small players away from litigation and to engender a climate of tax friendly administration. Accordingly, it is suggested that the value limit should be increased to Rs. 100 crores. from the present proposed level of Rs. 10 crores. v. Further, it is suggested that, in cases of indirect transfer, the tax withholding requirement may be relieved completely, leaving it to the seller group and the tax administration to handle the issue. As next best alternative, the value limit which is fixed for attracting tax withholding provisions should be prescribed at a reasonably high value transaction say, Rs. 100 crores. per transaction. w. We apprehend some cases of inconsistency and injustice on a joint reading of the provisions triggering taxations and the provisions stipulating fixation of specified date. This may lead to double taxation in India.In order to avoid such situation, it is recommended that the words 'date of transfer' may be added at the end of Explanation 5 to section .9(1)(i). Alternatively or concurrently, in proposed Explanation 7, the words 'date of transfer' may be added after the words 'assets located in India' in the last line of Clause (b) to ensure that taxation of gain is not disproportional to assets located in India as of the date of transfer. x. It is impractical that onus is placed on the Indian concern to report certain events or transaction. Thus it

			recommended that the requirement should be made applicable only in those cases where Indian company is a party to the transaction or has full knowledge of the transaction and yet there is a wilful non-disclosure. As next best alternative, it must be limited to a case where the transaction results in change in control and management of Indian company. y. Elaborate rules regarding the computation of tax liability in India with numeric examples taking into account alternate factual matrix should be provided. z. The manner of determination of cost of acquisition in the hands of the non-resident transferor should be specifically provided to avoid any ambiguity. Also, the benefit of foreign exchange fluctuation under second proviso to section 48 should be extended to indirect transfers.
Real Estate Investment trust ("REIT") / Infrastructure Investment Trust ("InvIT")	Finance Act 2014 had introduced a special regime for taxation of REIT/InvIT by granting them a pass through status with respect to dividend income. Also in case of sponsors, capital gains arising on transfer of shares of SPV is exempted at the stage of contribution	k. Finance Bill 2015 has provided a pass through framework in respect of rental income from real estate assets held directly in Business Trusts. As provisions stand today, pass through status is not accorded to rental income earned by InvIT. Thus rental income would be taxable in the hands of InvIT at the entity level. l. Also Finance Bill 2015 also extends	It is recommended that the pass through regime be extended also to rental income arising to InvIT from direct holding of the property. There does not seem to be any rationale for differential treatment. Further with respect to the preferential capital gain regime for the sponsor, it is recommended that the benefit of lower holding period of 12 months be extended also to units of business trust. This clarification would put units of business trust at par with listed shares or unit of mutual fund specified under section 10(23D)

		preferential capital gains regime to the sponsor on subsequent sale of units of business trust. However, under the current provisions the period of holding which has to elapse to turn ReIT units into long term continues to be at 36 months. m. Further at present there is no provision which enables the unit holders to claim 30% standard deduction in respect to rental income. Thus neither ReIT nor unit holders would be able to avail benefit of standard deduction of 30% which under earlier provisions was claimed by ReIT on the rental income. n. Furthermore the existing provisions of the Act provides for exemption to sponsor in case of transfer of shares of SPV against units of business trust. SEBI regulations in relation to REITs permit ReIT to hold assets directly. Thus, transfer by sponsor of real estate asset is also one of the permissible methods of holding property in business trust. However, section 47(xvii) of the Act does not cover case of transfer of asset to ReIT. This virtually compels sponsors to operate through SPV.	and thereby will be in line with legislative intent. Also it is recommended that the anomaly with respect to availment of standard deduction of 30% under section 24(a) is rectified and the tax withhunit holders are made eligible to claim standard deduction of 30% on the rental income. It is recommended that an exemption is granted to sponsor in respect of transfer of assets to ReIT as similar to the exemption available to it in respect of sale of shares of SPV. Further there is ambiguity with respect to definition of SPV under the Act as registration of business trust will take place after transfer of shares by sponsor to business trust, it is unlikely that the business trust would hold controlling interest in SPV prior to date of transfer of shares. Consequently the company whose shares are to be transferred may not qualify as SPV. Thus it is recommended that the anomaly is corrected. It is recommended that timing of withholding to be done by ReIT on rental income and interest income to be paid to unit holders is rationalized. It is recommended that a provision may be introduced clarifying that tax withholding would be required in the year of actual distribution and not in year the the income is credited by ReIT. With a view to avoid overlapping impact of provision and possible litigation thereon, it is recommended that Section 195(1) of the Act be amended to exclude payments made to non-

		o. Based on combined reading of section 47(xvii) and Explanation to section 10(23FC) of the Act, in order to be eligible for exemption under section 47(xvii) the SPV whose shares are transferred should be an Indian company in which the business trust has controlling interest as on date of transfer of shares by sponsor to business trust. p. In terms of S.194LBA, ReIT is required to withhold tax in respect of distribution of rental income and interest income to the unit holders. Tax withholding will trigger on earlier of the date of credit or payment of amount to the unit holders. In terms of S.115UA(3), distributed income will be chargeable to tax in the hands of the unit holder in the year in which income is received by the unit holders. This may result in mismatch between the year of taxability and year of withholding of tax amount, requiringreconciliation and will result in administrative burden on the taxpayer and the tax authority. q. Section194LBA(2) provide for tax withholding at specified	residents/foreign company which are subject to withholding under Section 194LBA of the Act. Based on the common industry practice followed in the case of venture capital funds it is recommended that expenses that are laid out or expended "wholly and exclusively" for the purpose of making/ earning income should be allocated towards such income and which are not directly attributable should be allocated to all sources of income on proportionate basis. In order to eliminate dual levy of DDT in case of corporate unitholders, it is recommended that business trust should be made to hold the asset directly, so that income is merely subject to corporate tax, and the business trust can distribute dividends to the unit holders without any further tax. Accordingly the income distributed by SPV to business trust be exempted from DDT levy. In order to provide an impetus to ReIT, MAT should not be applicable on the sponsor on transfer of shares of SPV to the reIT/InvIT. Further in light of exemption provided to unit holders under section 10(23FD) of the Act, MAT should not apply to unit holders in respect of income (other than interest and rental income) distributed by REIT.

		rates on distributedincome being interest income to a non-resident or a foreigncompany. Further, Section 195 also provides for tax withholding on any sum paid to non-resident /foreign company which is chargeable to tax in India. Thus, event of distribution by way of interest to non-resident/foreign company unit holders is covered also by Section195. r. Further proposed tax regime of ReIT has no clarity on deductibility of expenses and allocation of the same in the hands of unit holders. There could also be challenges in determining quantum of distributed income for implementing tax withholding provisions u/s. 194LBA. s. Under the existing provisions, dividends paid by SPV to business trusts would be subject to Dividend Distribution Tax ("DDT") which may lead to multiple level of tax and makes business trust structure inefficient. t. Capital gains arising on transfer of shares of SPV by sponsor to REIT are exempt as provided under section 47(xvii). However, similar exemption is not extended under S.115JB for	

		computation of book profit for levy of MAT. In absence of such exemption, it becomes tax inefficient for sponsors to move to REIT structure.	
Interest payable by an Indian PE of NR bank to its HO	Under the present tax regime, interest payable by an Indian Permanent Establishment (PE) of an NR bank to its head office (HO) outside India or any other part of the NR outside India, is deemed to accrue in India and taxable in addition to income attributable to the PE in India under a tax treaty.	Budget 2015 proposes that the payment of interest by the India branch to the Head Office or any branch outside India shall be chargeable to tax in India and withholding tax in India. As Head Office and branch(es) are part of the same legal entity, the taxability of the intra-group interest income would be against the principle of mutuality.	This proposal needs to be deleted for the following reasons: D. There is no base erosion when the entity is in non-treaty jurisdiction; the provision leads to double whammy: iv. Intention of the Explanation is to curb base erosion. The Memorandum explains that interest paid by PE to its HO is available as deduction in the hands of Indian PE and non-taxability of income in the hands of HO merely leads to base erosion. v. Typically such a situation of expense deduction arises only when the NR is located in a treaty jurisdiction. It is in such case that while computing profits of Indian PE under the provisions of the applicable tax treaty, expense is recognized by PE. vi. While intent is to counter tax such deductible payments, the Explanation as it presently reads will impact NRs present in non-treaty jurisdictions as well. As a consequence, a NR from non-treaty jurisdiction will face a double whammy since, while the PE does not get deduction - but, the interest income is taxable under the Act. This needs to be corrected by inserting a fiction in Explanation to s. 9(1)(v), that PE of such bank from

			non-treaty jurisdiction will also be entitled to deduction in respect of interest paid to HO / other enterprises of the same entity. E. Non resident fictional entity should be taxed at a low rate keeping in view the operating margin of on-lending funds of constituents. ii. Non-resident interest recipient bank should not be taxed on a gross basis in a manner which creates unbearable tax burden. v. It is a well known fact that financial institution like banks will have nominal spread of income which it earns by on-lending funds which are primarily sourced from the constituents. Since interest expenditure constitutes major component of operating expenditure of the bank, tax withholding with reference to gross interest income turns out to be fairly stiff. Such stiff source taxation creates liquidity issue as also adds to the cost of business if the bank is not able to fully utilise credit in respect of such taxes in home jurisdiction. Enhanced cost of business has impact of increasing incidence of borrowing on the constituents and thus impact international trade and investment. As a result, internationally, where interest income of financial institutions is subjected to gross basis of taxation in source state (ignoring the cost of funds for the lending bank), it is seen as a deterrent to international trade. To avoid this,it is well recognized and is also advisable that the interest income is taxed in the hands of non-resident at a nominal rate

			taking into account the fact that typically margin spread of net interest income will be small. The methodology of gross basis taxation is implemented merely in the interest of simplicity, but, the tax rate is so adjusted that the non-resident bank is effectively taxed on net income which it is expected to earn by on-lending the funds. F. Relieve Indian PE from tax withholding and procedural requirements. Since PE will be filing its tax return and complying with tax provisions, withholding obligation should not be made applicable in respect of such interest. It should also be clarified that provisions of proposed S. 195(6) will not apply to such remittances. Also, it should be clarified whether the bank will require a separate PAN for HO or will its compliance need to be done using PAN of PE which now is deemed to be a separate person.
Pass through status for Category I and Category II Alternative Investment Funds		A Chapter XII-FB is proposed to inserted in the Act to provide for a partial pass-through regime for Category I and Category II Alternative Investment Funds This will include Venture Capital Funds/Venture Capital Companies registered after 21 May 2012 which were hitherto covered by Chapter XII-F which provided for a complete pass-through for incomes sourced by VCC/VCFs from Venture Capital Undertakings (VCUs)	This is a welcome amendment and fulfils the persistent demand of Venture Capital/Private Equity industry to provide clarity and certainty in tax laws. Whilst the overall scheme is favourable to AIF and its investors, there are certain pitfalls which, if resolved, will pave the way for successful implementation of this regime by encouraging more investors to invest in India through this route.

Tax neutrality on consolidation of mutual fund schemes – section 47(xviii), 49(2AD), 2(42A)	Tax neutrality on consolidation of mutual fund schemes is proposed to be provided to mutual fund investors along with cost and holding period substitution.	However, the provision is proposed to be made effective from A.Y. 2016-17.	There have been many mergers in the mutual fund sector in the past pursuant to enabling SEBI regulations issued in June 2003. In order to protect these consolidations in pending proceedings the proposed amendment may be introduced as a measure of clarificatory amendment. It may further be clarified that the concession would extend not only in a case where there is merger of one scheme of MF with another scheme, but, also when there is consolidation of schemes across different mutual funds. Also, necessary instructions may be issued to field officers not to reopen past cases and/or make additions in pending assessments.
Additional deduction uptoRs. 50,000 for contribution to New Pension Scheme	Under the existing provisions of section 80CCD a deduction of payment deposited by the individual was allowed provided such amount did not exceed 10 percent of his salary (in case of employee) and 10 percent of gross total income in case of any other individual.	As per Finance Bill 2015, an additional deduction uptoRs. 50,000 is proposed to provided for employee's/self-contribution to New Pension Scheme which is outside the limit of 10 percent of Salary/Gross Total Income and also outside the aggregate limit of Rs. 150,000under section 80CCE. Further the internal cap on deduction contribution to pension schemes under section 80CCC is also proposed to be enhanced from Rs. 1,00,000 to overall cap of Rs. 150,000 under section 80CCE.	While intent appears to be grant additional deduction such that if an individual has made contribution to NPS of Rs. 50,000 and other investments u/s. 80C of Rs. 1,50,000, he can avail total deduction of Rs. 2,00,000the language of the proposed provision creates an ambiguity in this regard. Since the intent is to encourage higher contribution to pension schemes within the basket of investments qualifying u/s. 80CCE, it is recommended that contributions to NPS and pension schemes u/s. 80CCC may be kept outside the overall limit of s.80CCE for which a separate cap may be provided.
Increase in limit of medical insurance premium under	Currently the deduction on account of expenditure towards the health insurance premium is allowed up to Rs. 15,000	It is proposed to enhance the overall aggregate limit of deduction for mediclaim insurance premium from Rs. 15,000 /20,000 to Rs.	The provision as amended may become difficult to comprehend with several internal and overall caps. For instance, it is not clear whether the limit for mediclaim

section 80D	per annum (Rs. 20,000 for senior citizen)	30,000 and also to include within its scope medical expenditure incurred on very senior citizen who is not covered by mediclaim insurance.	insurance premium has been increased from Rs. 15000 to 25000 as stated in Budget Speech and Explanatory Memorandum. It is recommended that the entire section be redrafted in a simple manner to clearly set out the qualifying expenditure and provide only for a consolidated overall cap without any internal caps. This will make it taxpayer-friendly and easy to implement. Alternatively the amended provision may be explained with appropriate illustrations in the Explanatory Circular post enactment.
Reduction of withholding tax ("WHT") on Royalty &Fees for Technical Services ("FTS")	The Memorandum to Finance Bill, 2015 intends to provide reduction in WHT on Royalty & FTS from 25% to 10% to reduce hardships in case of small entities. However, the amendment suggests WHT @ 10% is applicable for payment of royalty & FTS to all non-residents.		c. The intent of the proposal should be spelt out clearly so as to specify that WHT has been reduced not only in case of small entities but in respect of payment to non-residents, whether small or large.
Share Capital Infusion and Transfer Pricing	**Background/Issue** The controversy of share valuation was first brought up in India in a case where the tax department alleged that an Indian company (I.Co.) had undervalued the shares at the time of its issuance. The amount attributable to the value by which shares were underpriced was considered as short receipt and added to the income of the taxpayer. Also, such transaction was re-characterised as a loan granted by I.Co. to a foreign company (F.Co.) and a secondary adjustment was made imputing interest income as a receivable in the hands of I.Co. This high-pitched assessment has been in the news around the globe and is being austerely opposed by taxpayers. An immediate clarification of the Government's stand on this issue is desirable. Else, foreign investors will continue to see this as a tax on FDI, which will continue to dampen the prospects of increased FDI. The Bombay High Court's recent well-reasoned decision in Vodafone's case on this matter could be adopted as the Government's view. **Recommendation** On Share Capital Infusion issue, Bombay High Court's recent well-reasoned decision in		

	Vodafone's case could be adopted as the Government's view and the law should, accordingly, be amended to provide that such a transaction not having a bearing on profit should get exempted for evaluation from an Indian transfer pricing perspective.

Annexure 1 – Recommendations not considered by Finance Bill 2015

H. Key Recommendations		
Section/ Topic	**Background/Issue**	**Recommendations**
Implementation of policy measures for dispute resolution		
ix. Strengthening of Authority for Advance Rulings ('AAR')	**Background** e. As part of measures for reducing litigation, it was announced in Budget 2014 that additional benches of AAR will be set up. Section 245N(b) has also been amended by Finance (No.2) Act 2014 to permit categories of residents notified by Government to approach AAR. f. We understand that there are about 450 applications pending for disposal before AAR as of date. g. During its last tenure of 17 months from 5 Dec 2012 to 9 May 2014, the AAR disposed 18 applications (12 on merits and 6 on admissions). h. Post retirement of its Chairman, the AAR is not functioning since 9 May 2014. **Recommendations** h. Notification permitting categories of residents permitted to approach AAR to be issued at the earliest i. Additional benches should be constituted in all four metros, Bangalore and Hyderabad. Minimum two benches in Delhi and Mumbai and one each in other stations j. Vacancies be filled up at a fast pace so that there is a full strength at all times of the Bench k. The prescribed time limit of 6 months for disposal of application should be made mandatory (Section 245R(6) needs to be amended suitably) l. Admission and merit hearing should be taken up simultaneously. In cases where the tax department opposes the admission then admission may be taken up separately. This may speed up disposal. m. Expansion of scope of AAR. Meaning of 'proposed to be undertaken'/'already pending' should be clarified n. To make AAR forum more effective, it should be provided that mere filing of return would not make the issue pending until the subject matter has been raised by revenue department for clarification	

x. **Extension of MAT and DDT to SEZ**	**Background** e. Broadening of MAT provision by bringing SEZ units and developers under the ambit of MAT has significantly diluted benefits offered under the SEZ scheme. f. Likewise, bringing developers / units under the ambit of DDT has diluted the benefits. g. Manufacturing is one of the key areas of focus of the Government. 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. h. Press Release dated September 10, 2014 by Ministry of Commerce and Industry has given an indication that modification of MAT and DDT rules for SEZ units / developers are under active consideration. **Recommendations** It is recommended that MAT should be removed in case of SEZ units / developers for the exemption period. Further, DDT should not be applicable on dividends distributed by SEZ developers / units for the exemption period.
xi. **Strengthening of Advance Pricing Agreement (APA) mechanism**	**Background** c. Since its introduction from 1 July 2012, the CBDT signed first batch of 5 APAs by 31 March 2014 (Refer Press Release dated 31 March 2014). This is a laudable effort considering international accepted norm of at least 2 years. d. We understand that 146 applications were filed in 2012-13 and 232 applications have been filed in 2013-14. This means that about 373 applications are still pending with CBDT at different stages. **Recommendations** c. While the taxpayer community has responded with enthusiasm by filing more applications, it is expected that CBDT shall reciprocate with expeditious disposal which will greatly assist Multinational enterprises to plan their affairs and contribute to 'Make in India' story. d. Further, guidelines stating the conditions, specified circumstances, procedure and the manner in which the roll back relief may be availed to be issued at the earliest, so that the assessee who has already filed APA can also take benefit of this roll back.

<table>
<tr><td>xii. Specific timelines at each stage of dispute resolution</td><td>
<u>Background</u>
d. There is an increasing perception that India has become (from a tax perspective) a hostile environment for foreign investors. In response to this, the Government should come up with path-breaking changes to restore faith in the Indian tax and regulatory system.
e. Taxpayers are put to undue hardship due to continued delay in the proceedings. There is no certainty as of now as to how the litigation battle with Indian Revenue authorities would continue, ie, 8 years, 10 years, 15 years or 20 years.
f. There should be certainty regarding the timelines by which litigation would continue in India, which would further assist the taxpayers to take prudent decision as to whether to go ahead with litigation in India or not.
<u>Recommendations</u>
d. Specific timelines should be introduced for each forum including at Commissioner of Income-tax (Appeals), Income Tax Appellate Tribunal and guidelines must be framed for ensure strict adherence to such prescribed timelines. Amendment to that effect may be made in all the relevant laws, wherever required.
e. Adequate administrative machinery be provided to meet the above deadlines.
f. This will reduce the overall period of litigation, improve the investor sentiments and restore the faith, to some extent, in the Indian tax system.
</td></tr>
<tr><td>xiii. Retrospective amendments</td><td>
<u>Background</u>
The retrospective amendment brought in by Finance Act, 2012 have heavily eroded the interest of foreign investors. The Government has sought to soothe the nerves of the investor community by giving a commitment that the Government will not ordinarily bring about any change retrospectively which creates a fresh liability. However, it is necessary to provide that the retrospective amendments should not apply qua the withholding tax obligations (as already recommended by the Shome Committee) and the consequent levy of interest, penalty apart from disallowance under section 40(a). Apart from the above, specific recommendations are as under:
<u>Recommendations</u>
(iii) Explanation 5 to clause (i) of subsection (1) of Section 9 – Indirect transfer
h. Repeal retrospective application
i. Value of assets should be defined to mean fair market value of assets
j. Clarification should be inserted to the effect that only capital gains proportionate to the value of assets located in India should be chargeable to tax in India
</td></tr>
</table>

	k. Intra-group re-organisations/ restructuring transactions should fall outside the ambit of the provision l. Exclude transfers where shareholding in Indian company is less than 26% of total share capital during last 12 months m. Current law, does not provide for any computation mechanism for calculating capital gains from indirect transfer of shares deriving substantial value from assets located in India, which could lead to double or multiple taxation in case of successive transactions involving indirect transfers. Appropriate computation mechanism taxing only the proportionate Indian value getting transferred should prescribed. Further, for subsequent transfers, appropriate step up in cost of acquisition should be available to the transferor. n. Fictional liability should not be fastened on an agent of a non-resident under S. 163 (except where an agent is a subsidiary or a close associate) **(iv) Explanation 4 to clause (vi) of subsection (1) of Section 9 – Royalty** d. It is suggested to roll back Explanation 4. In view of the international tax practices and keeping in mind the impact on India, it should be clarified that the payments for use of software made to non-residents would not be covered under the definition of 'royalty' e. Definition of FTS and Royalty should specifically exclude payment for any services or royalty for the purpose of use in manufacturing and production services. *It would also be in alignment with the 'Make in India' initiative.* f. Without prejudice, the tax authorities, based on retrospective amendments, should not be allowed to reopen, reassess, rectify and revise the assessments which are completed and concluded at appellant levels. In case where the issues are pending at the appellant stage, the same should be decided based on the law prevailing on the date of transaction (and not on the basis of amended provisions)
xiv. High Level Committee	d. Such committee be formed at the earliest and should be functional throughout the year e. Whenever any industry faces any issue or requires any tax clarification, the same can be represented to this committee and be clarified / resolved at the earliest f. In addition to above, the previous Government has already formed a forum under the chairmanship of Dr. ParthasarathiShome to settle tax issues and disputes, wherein industry representatives from most of the sectors made representations in relation to the tax issues faced by them. Logical conclusion should be brought by clarifying various tax issues represented by industry representatives of most the sectors, to the extent possible. This will go a long way in bringing clarity to the existing tax laws. Such clarity in case of litigative issues would provide certainty in relation to various issues governing domestic and international taxation.
xv. 35(2AB) - Tax benefits for in-house R&D facility	h. An amendment should be brought to the effect that entire expenditure in / for the purpose of an approved R&D facility is eligible for weighted deductions and clinical trials carried out in approved hospitals and institutions outside the R&D unit are also covered within the ambit of expenditure eligible for weighted deduction.

	i. Enhancement of Weighted Deduction u/s 35(2AB) from existing 200% to 250% for a period of next 10 years i.e. upto 31st March, 2024. j. Weighted deduction u/s 35(2AB) to be allowed on scientific research expenditure incurred on outsourced R&D work (including outsourced clinical trials) and patent fee paid outside India which are directly related to in-house research. k. Presently, as per DSIR guidelines amount spent by a recognized in -house R&D towards foreign consultancy, building maintenance, foreign patent filing are not eligible for weighted deduction u/s 35(2AB). DSIR guidelines need to be modified accordingly to allow the above said expenses for weighted deduction u/s.35 (2AB). l. 200% of the expenditure incurred is allowed as a deduction for in-house approved scientific research by a company in the business of bio-technology or in the manufacture of any article or thing other than those specified in the 11th Schedule (which includes most of the oral care products such as toothpaste, toothpowder and toothbrushes). Oral health is one of major concerns in the recent past due to lifestyle changes etc. hence investment in oral care product research is very critical to improve oral health. Request to delete oral care products such as tooth paste, toothpowder and toothbrushes from the 11th Schedule to encourage in-house research in oral care segment and there- by increasing oral health. m. In respect of the units engaged in the business of R&D and contract manufacturing, tax benefit should be granted by way of deduction from profits linked to investments. Introduction of benefits in the form of research tax credits which can be used to offset future tax liability (similar to those given in developed economies) could also be explored. n. Due to numerous and stringent regulatory requirements of safety, efficacy and quality, R&D in the pharmaceutical sector is very expensive and time consuming. Thus, weighted deduction of such expenditure should be allowed while computing book profits under MAT Provisions.
xvi. Specified domestic transactions	**Background and issue** Section 92BA has been inserted vide Finance Act 2012 by which the coverage of transfer pricing has been expanded to include certain 'Specified Domestic Transactions' if the aggregate amount of all such transactions entered by the taxpayer in the previous year exceeds Rs. 5 crores in the previous year. Domestic Transfer Pricing (DTP) provisions are more relevant and prevalent in countries like USA and Canada, where both federal and state income-taxes separately exist. In India since income-tax is a central tax, DTP provisions have no relevance as any adjustment due to domestic transfer pricing provisions should, logically have offsetting effect and should have no material revenue impact as both the assessees would be resident in India in most cases. The term *"specified domestic transaction"* has been defined to inter alia mean any expenditure in respect of which payment has been made or is to be made to a person referred to in clause (b) of sub-section (2) of section 40A of the Act. Such expenditure

	could possibly include capital expenditure made to such a related person. It should therefore be clarified that these provision pertain to revenue expenditure only. This amendment also covers a scenario wherein the payment of remuneration by the company to its director or relative of such directors is also required to be at arm's length. The same casts an onerous responsibility on the company vis - à- vis justification of the arm's length nature of such payments which is challenging as dependent on several factors such as particular business needs of a company, role, functions and qualification of a director etc. The limit of Rs. 20 crores seems very low considering the extensive elaborate documentation and compliance requirements for the taxpayers resulting into increased compliance burden and administration costs for the taxpayers. Section 80-IA (10) of the Act provides that where the revenue authorities believe that the tax holiday undertaking produces more than ordinary profits due to a close connection with any person, only a reasonable level of profits will be eligible for the tax holiday benefit. Ordinary profits generally mean the profits which are ordinarily earned by a taxpayer in the normal course of business. Typically, such ordinary profits would not be uniform and would be specific to each taxpayer having regard to the specific business and commercial circumstances of each taxpayer. With the introduction of domestic transfer pricing, ordinary profits for tax holiday units need to be determined with regard to the arm’s length principle and transfer pricing methods. As a result of this, many taxpayers are finding it difficult to apply the transfer pricing regulations which prescribe the arm’s length price to be the arithmetic mean of the margin of the comparable companies. In a case where the margin of the taxpayer from the eligible tax holiday undertaking is higher than the arithmetic mean of the comparable companies, then it would mean that the taxpayer will not get tax holiday benefit on such excess profit (i.e. the difference between profits earned by the eligible taxpayer less arm’s length profits earned by comparable companies). **Recommendations** g. Domestic transfer pricing provisions should be removed from the income tax law or threshold for their applicability be raised from Rs 20 crores(as proposed in Finance Bill 2015) to Rs 100 crores. h. Alternatively, scope of domestic transfer pricing should be restricted to the transactions between entities in tax free zone and entities outside tax free zone. Also, provisions for correlative relief should be provided for specified domestic transactions. It is very important that in any case covered under the domestic transfer pricing provisions, if any adjustment is made, then correlative adjustment in the hands of the other party should be invariably be made. Necessary amendments should be made in the domestic transfer pricing provisions to provide for the correlative adjustments. i. Without prejudice, SDT seeks to cover a situation wherein there could not be any loss to the exchequer. The same is not in line with the suggestion provided by the Supreme Court in case of Glaxo Smithkline. The Supreme Court had provided the situation wherein transfer pricing should be applicable in case of transactions between a profit making and a loss unit/company. The other scenario which was envisaged by the Supreme Court was transactions between units/assesses having different tax rates. Other than the scenarios contemplated above, a

	corresponding adjustment should be allowed and hence provided for in the statute. j. It should be suitably clarified that the transfer pricing provisions would only apply to revenue expenditure (and not to capital expenditure) referred to in section 40A(2)(a) of the Act, and not to payments made to persons specified in section 40A(2)(b) of the Act. k. The provisions of Section 40A(2)(b) should be amended to exclude remuneration payments made by companies to their directors. l. Without prejudice, the Advance Pricing Agreement (APA) provisions are being made applicable to only international transactions. The same should also be made applicable to domestic transactions covered by transfer pricing regulations. This term 'close connection' in Section 80IA (10) should be defined at the earliest to provide clarity on applicability of transfer pricing provisions to transactions between one entity having an eligible unit any other entities with which there is a close connection

I. Substantive Provisions			
Section/ Topic	**Background**	**Issue**	**Recommendations**
		d.	
Section 10(6C): Exemption in respect of royalty/ fees for technical services	Currently, Section 10 (6C) grants foreign companies the exemption from income tax in respect of royalty or fees for technical services received in pursuance of an agreement entered into with the Government for providing services in India in projects connected with the security of India.	In line with the stated position of the Government of India (GoI) towards developing indigenous defence manufacture, foreign defence companies have recently begun to directly contract with Defense Public Sector Undertakings (DPSUs) in relation to technology transfers through in-licensed production and delivery of onshore services.However, where Project Offices (POs) are being set up in pursuance of the contract with the DPSUs to deliver onshore services, it is not clear as to whether the exemption under Section 10 (6C) will also apply to such POs or not, the contracting entity being the DPSU (GoI entity) rather than GoI itself.	Section 10 (6C) should explicitly include DPSUs within the definition of Government, in order to remove any ambiguity in its interpretation.
Accelerated Tax Depreciation rates on Batteries for industrial/commercial use	Each telecom site created by telecom infrastructure service providers need to ensure 24x7 power supply and maintenance of temperature and humidity conditions required for sophisticated telecom equipment's placed by telecom operators on telecom sites. For the said services, the companies use various equipment's like batteries, DG sets, air-conditioners, Power Management Systems (PMS), UPS etc. All these items get clubbed in the	d. The higher usage of batteries at telecom sites ensures cleaner and environmentally friendly power with no carbon emission as against use of diesel in DG sets for power back up. The accelerated depreciation on batteries for industrial use will reduce the effective cost of batteries for buyers and thereby, help in reducing diesel consumption. This in turn helps country to	It is recommended to Increase the depreciation rate to 65% on batteries used by telecom infrastructure service so that approx. 95% cost can be depreciated over 3 years.

	plant and machinery category along with towers and shelters and are eligible for 15% depreciation as per Income Tax rules.In this connection, we would like to mention that batteries have an economic life of approx.3 years and after which they need to be compulsorily replaced. With the present income tax depreciation rates, the companies are able to claim only 38.6% depreciation (15% tax on written down value method for 3 years) within economic life of the batteries and before their replacement with the new batteries. Ideally, the depreciation rate should enable companies to recover almost entire capital cost of the equipment over its useful life.	reduce oil imports and foreign exchange outflow. e. The depreciation rates under the Income-tax Act have often been designed keeping in mind the effective useful life of the assets. For Example computers enjoy 60% depreciation due to accelerated obsolescence due to ever changing technology. f. The objective of allowing depreciation is to provide funds for replacement of assets and also, to ensure recovery of cost of original asset. In the context of rapidly changing technology and increasing obsolescence, the present depreciation rates allow only 38.6% cost recovery in 3 years of economic life of batteries.	
Section 72A - Carry forward of business losses pursuant to approved Merger/ Amalgamation	Section 72A of the Act allows accumulated losses of amalgamating company to be carried forward and set off in the hands of the amalgamated company. Currently, the carry forward of losses is limited to industrial undertakings or a ship, hotel, aircraft or banks. The term industrial undertaking has been defined to include the companies which are engaged in the business of providing telecommunication services, whether basic or	c. The benefit of Section72A was introduced to telecom operators in FY 2002-03 with a view to encourage rapid consolidation and growth in telecom sector. At that time, each telecom operator used to set up its own telecom towers to cater its own need of passive infrastructure (i.e. telecom towers, shelters, power back up) services. Accordingly, the concept of Telecom	It is recommended to include the 'Telecom Infrastructure service providers' in order to provide the benefit of carry forward of business losses under section 72A in the cases of mergers and amalgamations. As telecom tower industry is an integral and inseparable part of telecom services, the specific inclusion will bring parity for the tower companies with telecom operators and other key industrial sectors.

	cellular, including radio paging, domestic satellite service, and network of trunking, broadband network and internet services. However, the telecom infrastructure service providers are presently not included.	Infrastructure Service Providers (TISPs) was not envisaged in FY 2002-03 when the benefit of Section 72A was extended to telecom sectors. d. Considering that passive infrastructure industry is integral and inseparable from telecom industry and has also been conferred the status of infrastructure, an amendment under section72A is desired to the effect that the brought forward business losses of the amalgamating telecom tower companies shall be allowed to be carried forward with the amalgamated telecom tower companies.	
Loss carry back	A tax loss carry back is a provision which is similar to carry-forward of losses, however it allows the business to carry a net operating loss back to offset profits in previous years. It is a technique with which a company retroactively applies net operating losses to a preceding year's income in order to reduce tax liabilities present in that previous year. Hence, the company does not carry the loss forward. Instead the loss is adjusted with the preceding year's taxable profits by filing revised return thereby resulting in a refund in the preceding year.	Manufacturing companies are capital intensive which requires heavy investment drives at certain intervals for substantial expansion. Once the expansion is undertaken there may be substantial losses over the subsequent years. During such a period, it is desirable that the company has an inflow of funds. However, as per the present law, wherein losses can only be carried forward and the benefits of current losses can be encashed only once the company starts earning profits.	In case the provisions of loss carry back is introduced, the assessee may avail the benefits to encash the losses in current year by claiming refund of taxes paid in earlier years. This would be a big boost for the manufacturing sector to undertake substantial enhancement, since the assessee would be entitled to encash the losses on real-time basis during the loss period.

Section 32AC	Section 32AC introduced by Finance Act 2013 allows the deduction (popularly known as 'investment allowance') on the investments made by the assessee in a new plant or machinery.		d. The threshold of Rs.25 crores per annum is high for small entrepreneurs. The threshold should be lowered, and/or expenditure of Rs. 25 crores across a period of 2 years should be eligible. e. Further sectors such as services/construction etc. may not be able to avail investment allowance since they may not be fulfill the condition of production. These sectors should also be allowed this benefit. f. Further, from the language of the section, it may lead to interpretation that the condition of 'acquired and installed' both should fulfil in the same year. It may happen that the assessee has acquired the asset in the relevant year but installed in subsequent year. The benefit of deduction in such a case should also be given to the assessee. It is recommended not to introduce DTC at all.
Agricultural income	The law provides exemption in respect of agricultural income earned by an assessee. This deduction is qua income and not qua assessee. There is no distinction in respect of such incomes earned by corporates or otherwise.	Revenue Department is often reluctant to grant agricultural exemption to Corporate Assessee. It has been contended that the basic intention of law in granting such exemption was to create benefit for small farmers and not for corporate assessee, who make huge sum out of agricultural activities.	The law should bring in specific amendment to settle the issue and bring out the clear intent that the benefit of exemption is available on agricultural income even if it is earned by corporate assessee.
Section 37(1) - CBDT Circular No. 5/2012 dated 1 August 2012	Expenditure incurred on account of provision of freebies to doctors are inadmissible under Section 37(1) of the Act being an expenditure prohibited by law under the MCI Regulations.	Many pharmaceutical and allied health care sector companies incur substantial expenses on sales promotion such as providing free samples to doctors, which are not prohibited as per the	Proposed amendment: e. An amendment to the effect that disallowance can be made by the AO only post adjudication by an authority constituted by representatives from the Income-tax department and the

	CBDT Circular provides vast discretionary power to the Assessing Officer (‘AO’) to disallow expenditure thereby resulting in unnecessary and unwarranted litigation.	current MCI Regulations. There is a risk of ad hoc disallowance of such genuine business promotion expenses.	pharmaceutical industry having practical expertise in the health care sector; or f. A panel with adequate representation from the Revenue and Department of Pharmaceuticals and Trade may be constituted by the Board to define which expenses would be considered as ‘ethical’/ ‘unethical’ to provide certainty as regards allowability of expenditure incurred by pharmaceutical companies; or g. An amendment to the effect that assessee (specifically pharmaceutical and allied health care industries) are allowed a deduction of sales promotion expenses on the basis of a certificate from a Chartered Accountant or any other specified body, would help reduce litigation around the matter. h. Notwithstanding the above, the provisions of the Circular should not be effective from the date of Regulations i.e. 10 December 2009 but should be prospective in nature.

First Schedule – Surcharge	The Finance Act, 2013 levied a surcharge@10% on an individual with total income exceeding Rs.1 crore and for corporate (domestic companies), surcharge@10% only if, the total income exceeded Rs.10 crores. While levying this additional surcharge the Finance Minister in his speech had mentioned that the additional surcharges will be in force for only one year, that is Financial Year 2013-14.		Since the intent of the Ministry of Finance, while introducing these additional surcharges, was to limit it only for the financial year 2013-14, however the same were not removed from financial year 2014-15. Therefore these surcharges should be abolished from this year.
Basic Exemption Limit	Higher exemption limit would go a long way in minimising the compliance and transaction costs of the Income Tax Department.	The small tax payers are facing the burden of increased cost of inflation. An increase in the basic exemption limit would help in giving the small tax payers some relief to overcome the increased cost of inflation and having some extra disposable income.	Therefore, tax slab rates should be revised.
Section 115BBD – concessional rate of tax in respect of foreign dividends	Section 115BBD grants concessional tax rate of 15% on dividend received by an Indian company from its foreign subsidiary	As per current provisions, such concessional rate of tax is not available after April 1, 2014.	The benefit of the concessional rate of tax, should be restored.
Employee Stock Option (ESOP) expenditure	ESOP is granted by various companies as an employee retention measure. The difference of value on a reporting date and the cost is debited to P&L account and claimed as deduction by companies	Various tribunals in the country have given different rulings both in favour and against the allowance of ESOP u/s 37 of Income Tax Act. Tax authorities take a view that ESOP cost being notional in nature is not allowable as per Sec.37	It is suggested that an amendment be brought in Income Tax Act to clarify that any ESOP expenditure debited to Profit and Loss account in accordance with the SEBI & Accounting Guidelines should be permitted as a business deduction
ESOP taxability in hands of individual on the basis of residential status		d. Notwithstanding the above, taxation of ESOPs creates an issue in the case of migrating employees, who move from one country to another, while	A specific clarification should be inserted with respect to taxability of only proportionate ESOP benefit based on residential status of the individual, where an employee was based in India for only a part of the period between

		performing services for the company during the period between the grant date and the allotment date of the ESOP. The domestic tax law is unsettled on the taxation of such migrating employees and does not clearly provide for such cases. e. There was a specific clarification on proportionate taxability of benefits under the erstwhile FBT regime, where the employee was based in India only for a part of the period between grant and vesting. However, there is no specific provision in this regard under the amended taxation regime from 1 April 2009. f. Recently, it has been held by Delhi Tribunal in case of Robert Arthur Keltz[5] that only the proportionate benefit of ESOP pertaining to the services rendered by assessee in India should be taxable in India and not the entire benefit.	grant and vesting.
Taxation of stock rewards		d. Section 17(2)(vi) of the Act, read with Rule 3 of the Rules deal with taxation of Employee Stock Option Plans (ESOPs). It is provided that the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer, or former	c. ESOPs should not be subject to tax on notional perquisite value and taxed only on capital gains arising from the sale of shares, as was the position till 31 March 2006. d. It may be mentioned that only when Fringe Benefit Tax (FBT) was introduced by the Finance Act 2005, these provisions were changed for

[5]ACIT v. Robert Arthur Keltz (2013) 35 Taxmann.com 424 (Del)

		employer, free of cost or at concessional rate shall be taxable as perquisite in the hands of the employee. For this purpose, the value of any specified security or sweat equity shares shall be the fair market value of the specified security or sweat equity shares, as the case may be, on the date on which the option is exercised by the taxpayer as reduced by the amount actually paid by, or recovered from, the taxpayer in respect of such security or shares. e. In this connection, what has not been appreciated is that ESOP shares stand on a different footing because on the date of exercise, the shares are subject to lock-in condition and cannot be considered to be a benefit and therefore, ought not to be fictionally treated as benefit and brought under the ambit of perquisites for taxation purposes. The Supreme Court, in CIT v. Infosys Technologies Ltd., [2008] 2 SCC 272, at page 277, had aptly held: *"During the said period, the said shares had no realisablevalue, hence, there was no cash inflow to the employees on account of mere exercise of options. On the date when the options were exercised,*	the purposes of taxation of ESOPs under FBT regime. Unfortunately, however, those very provisions have now been brought back by way of insertion in sub-clause (vi) of sub-section (2) of Section 17 of the Act, after the abolition of FBT, which has caused a lot of anxiety. It is imperative that the earlier tax treatment be restored to facilitate the employers in retaining talented persons in the organization.

		it was not possible for the employees to foresee the future market value of the shares. Therefore, in our view, the benefit, if any, which arose on the date when the option stood exercised was only a notional benefit whose value was unascertainable. Therefore, in our view, the Department had erred in treating INR 165 crores as perquisite value being the difference in the market value of shares on the date of exercise of option and the total amount paid by the employees consequent upon exercise of the said options." f. That apart, it has to be appreciated that if an employee is subjected to tax on the notional benefit as perquisite, there could be situations where he may suffer double loss, first by way of tax out-go and again as a loss on actual sale of shares, which may neither be fair nor warranted.	
Rural healthcare infrastructure	Rural and semi urban areas in India either do not have basic healthcare infrastructure or the existing infrastructure is inadequate.	c. Setting up of healthcare infrastructure in such areas involves substantial monetary investments and is prone to long delays due to conflict of interests. Further, investments in rural and semi-urban areas inherently have a long gestation period.	A weighted deduction of capital expenditure incurred in setting up healthcare infrastructure rural / semi urban areas should be provided.

		d. Such tax incentives could provide the necessary impetus for investments in rural/ semi urban sectors, shorten the gestation period of the investments and increase the possibility of earning higher rate of return.	
Reduction of withholding tax ("WHT") on Royalty &Fees for Technical Services ("FTS")	The Memorandum to Finance Bill, 2015 intends to provide reduction in WHT on Royalty & FTS from 25% to 10% to reduce hardships in case of small entities. However, the amendment suggests WHT @ 10% is applicable for payment of royalty & FTS to all non-residents.		d. The intent of the proposal should be spelt out clearly so as to specify that WHT has been reduced not only in case of small entities but in respect of payment to non-residents, whether small or large.
Exemption u/s 54G	Currently capital gains are exempt u/s 54G for transfer of assets in cases of shifting of industrial undertaking from urban area.	Presently any cities of Andhra Pradesh are not included in the notified urban areas	Hyderabad and its adjoining areas should be notified as Urban Area for the purposes of exempting capital gains under the said section.
Holding period – Debt oriented MF	Holding period in case of MFs was extended to 36 months.		Holding period for debt oriented MFs to be rolled back to 1 year.
Corporate Restructuring		Certain transactions of transfer of capital assets between Holding and Subsidiary companies are disregarded for the purpose of computation of capital gains as provided under section 47 of the Act.	For the convenience of corporate restructuring, exemption should be provided under clause (viia) and (viib) of Section 56(2) (dealing with income from other sources) for transfer of assets/ introduction of capital as between holding and subsidiary companies on similar lines as clause (iv) and (v) of sec. 47 of the Act
47(xiiib)	Conversion of private companies/ unlisted public companies into an LLP	h. Under section 47(xiiib) transfer of assets on conversion of a company into a limited liability partnership ("LLP") is not regarded as a transfer for the purposes of capital	It is recommended that the condition that the total sales, turnover or gross assets in business of the company in any of the three previous years preceding the year of conversion does not exceed Rs. 60 lakhs should be removed.

		gains tax; i. For the exemption provisions to apply, it is provided that the total sales, turnover or gross receipts of the company in any of the three preceding previous years of conversion should not exceed Rs. 60 lakhs; j. The limit of turnover at Rs. 60 lakhs is unwarranted inasmuch as conversion of a firm into a company is fully exempt and there is no need to provide any ceiling. The benefit of the provision will be largely impaired due to this condition; k. Conversion into an LLP is primarily not driven to claim tax saving on account of DDT but is driven due to commercial reasons, and for reduced compliances under the LLP regulations vis-a-vis the company law compliances; l. Already, safeguards are provided by the section as under: m. Aggregate profit sharing ratio of the shareholders should not be less than 51% in the LLP for a period of five years after conversion; and n. No amount is paid out of accumulated profits to the partner(s) for a period of three years after conversion.	

194A, 194C, 194D, 194H, 194I, 194J	Threshold limit for deduction of tax at source	The threshold limit for the purpose of TDS is very low in respect of most payments under sections 194A, 194C, 194D, 194H, 194I, 194J etc The current threshold limits are not inflation adjusted from the time they were set and need to be rationalised.	The threshold limits for TDS should be reconsidered and enhanced.
Section 195		Basic Exemption Limit for PAN requirement u/s 195	To introduce a basic exemption limit for deduction of TDS u/s 195 in case of foreign remittances similar to the basic limit prescribed under section(s) 194A, 194C, 194J, 194H, 194-I etc
Maintaining an optimal Minimum Alternate Tax ("MAT") rate	The Minimum Alternate Tax rate has seen considerable increase through the years i.e. from 7.5 % prior to 2007 to the last increase in the Finance Act, 2011 wherein the MAT rate was increased to 18.5 %. With a surcharge of 10% or 5% as a case the effective MAT rate is close to 21 % It is also interesting to note that the tax rate as per the normal income tax provisions of the Act for a Company is in its highest tax bracket is about 33.99 %. Therefore the MAT rate is about 2/3rds of the applicable corporate tax rate	e. The very motive of introduction of MAT was to bring the Companies not reporting any taxable income through computational mechanisms as per the income tax legislation but distributing significant amounts to the shareholders as dividends into the taxable net. f. However, neither the computational mechanism for MAT taxation nor the MAT rate which is about 2/3rd of the corporate income tax rate accurately facilitates the above intent entirely. The above anomaly is glaring especially since the units claiming exemption under Section 10AA of the Act in other words the software industry is not exempt from payment of Dividend Distribution Tax ("DDT").	d. MAT provisions being an alternate remedy i.e. minimum tax as the rate connotes, there is no logic to support a tax rate which is close to the normal tax rate. In an ideal scenario, the MAT rate should be kept at a range of about 1/3rd of the normal tax rate i.e. 30 percent. e. Given the above, it could be considered ideal if the MAT rate is lowered to 10%. f. It is also recommended that the utilization of MAT credit be given an unlimited life to ensure that corporates are not unduly impaired for the inability to utilize MAT credit.

		g. The above intent has also been diluted with the entire MAT computation being a separate code in itself. The introduction of Alternate Minimum Tax ("AMT") which extends an equivalent treatment to firms and LLP which claim deduction under various schemes of the Act including Chapter VIA, section 10AA of the Act furthers this issue. h. Although there is a provision for MAT credit as a saving grace, MAT is a regressive tax policy as capital infusion for further investment created by the incentive mechanisms under the normal tax provisions would be delayed.	
111A of the Act read with section 115JC/ 115JEE of the Act	Alternate Minimum Tax Exclusion for STCG	A non-corporate taxpayer who earns Short Term Capital Gains u/s. 111A liable to tax @ 15% on transfer of listed securities which has suffered Securities Transaction Tax (STT) and also claims profit-linked tax holiday under Chapter VI-A or s.10AA will be liable to pay AMT @ 18.5% as per section 115JC of the Income Tax Act.	d. Since the intent of AMT is to collect minimum amount of tax from non-corporate taxpayers who enjoy profit-linked tax holiday and given that transfer of listed securities suffers STT, it is recommended that Short Term Capital Gains u/s. 111A be kept out of the purview of AMT. e. Section 115JEE(2) provides that whole of AMT Chapter (including provisions of s.115JD relating to set off of AMT credit) will not apply in a year where Adjusted Total Income of the non corporate taxpayer does not exceed threshold limit of Rs.20 Lakhs. This will prevent the taxpayer from even claiming set off of AMT paid by him in earlier years if his income does not

			exceed Rs.20 Lakhs in view of inadequacy of profits and / or set off of losses. f. It is, therefore, recommended that exclusion may be provided for section 115JD from the applicability of section 115JEE(2).
“Goodwill”, “brand” and “non-compete fees”			“Goodwill”, “brand” and “non-compete fees” should be included in the definition of intangible assets.
Enhanced depreciation on Medical / Surgical / Pathological equipment’s	Life saving medical equipment as listed out in New Appendix I (Table of rates at which depreciation is admissible) are eligible for depreciation at 40% while other medical / surgical / pathological equipment’s are allowed depreciation at 15%.	The fast pace of technological advancement has increased the need for quicker replacement of old / redundant medical equipment’s thereby resulting in a need for faster amortization of medical / surgical / pathological equipment’s.	Depreciation rate for all medical / surgical / pathological equipment’s including medical equipment should be increased to 60%.
Amendment of Section 35CCD of the Income Tax Act			Industrial Safety is one of the Directive Principles under Indian Constitution and therefore Companies engaged in providing training services directly to Industrial workers and executives in ensuring safe working conditions needs to be promoted by grant of similar incentives.
Carbon Credits	Tax Exemption for Sale of Carbon Credits / Weighted Deduction for Certified Investments	c. Carbon Credit is an incentive available to the industries reducing CO2 emission by investing in energy efficient technologies. d. Further, the cost of putting additional technology for clean development mechanism is relatively high.	c. It is suggested that tax exemption may be given for revenue generated from sale of carbon credits. d. There is a necessity for giving tax incentives by way of weighted deduction for all certified investments in specified areas. This would benefit the nation in terms of creating eco-friendly environment and earning foreign exchange.

Standard deduction		As there is no specific deduction available in respect of Income under the head "Salaries" to meet the day to day expenses incurred by an employee while performing his duties	It is recommended to reintroduce the standard deduction.
Section 17 - Medical Reimbursement	Medical reimbursement is currently tax free up to Rs 15,000 under section 17 of the Income Tax Act.	This limit was fixed more than a decade ago and considering the rise in cost of medical services, it needs to be revised upwards.	Medical reimbursement should be increased to Rs 50,000 from existing Rs 15,000 to meet the increased cost of Medical services.
Section 80C	Section 80C was reintroduced in place of section 88 w.e.f. 1-4-2006. This section gives a deduction to an individual on specific investments up to Rs 150,000.	Limit of Rs 150,000 of Investment under section 80C is very low considering the inflation rate.	The limit needs to be increased to at least Rs 300,000.
Section 24(b) – Housing Loan interest			The limit should be raised to at least Rs 500,000.
Children Education Allowance	Exemption of Rs. 100 per month (up to 2 children) is allowed to an employee towards children education allowance	Education system plays a vital role in development of an economy and children's education always remains a top priority for an individual. With the education cost rising sharply, the current limit of Rs. 100 per month does not reveal the true scenario.	Children education allowance should be increased to Rs. 3,000 per month per child.
Tuition Fees	The Act allows deduction up to a maximum of Rs. 100,000 under section 80C towards tuition fees.	Increase in the education cost has become a major concern for parents, particularly for lower and middle income groups, as they are already battling with the rise in the prices of food and essential commodities.	Separate deduction for tuition fees should be provided in addition to Section 80C of the Act

House Rent Allowance (HRA)	Currently HRA exemption of 40% is allowed in case of Tier 1 cities and 50% is case of Metro cities (i.e. Mumbai, Kolkata, Delhi and Chennai)	With Tier 1 cities becoming major hub for industries, the rentals have increased manifold. Accordingly, Tier 1 cities should be considered at par with Mumbai, Kolkata, Delhi and Chennai as cost of living is at par.	HRA exemption of 50% to be extended to Tier I cities on par with metros.
Leave Travel Concession (CY v FY)	As per the provisions of section 10(5) of the Income Tax Act, 1961, an exemption of the value of Leave Travel Concession/Assistance received by the employee from his employer is allowed subject to fulfilment of prescribed conditions. Rule 2B lays down the specified conditions to be fulfilled. One of the conditions is that the exemption can be availed only in respect of two journeys performed in a block of four Calendar Years.	The concept of "Calendar Year" was introduced in the year prior to 1989 when there was no uniform Previous Year. Since 1989 uniform Previous Year has been introduced i.e. April – March. Hence, the concept of "Calendar Year" results in a lot of confusion on part of the tax payer.	To be in line with the concept of "financial year" adopted by other provisions of the Income tax Act, it is suggested that the concept of calendar year should be replaced with financial year (April – March).
Leave Travel Concession (Foreign travel also)		c. Presently, the economy class air fare for going to anywhere in India is tax exempt (twice in block of four years). However, this exemption is being allowed only for travel within India. d. Lately, owing to low airfares and package tours, a number of Indians prefer to avail LTC for going abroad particularly to neighboring countries like Thailand, Malaysia, Sri Lanka, Mauritius, etc., as the fares thereto are at times less than for traveling to some far	d. It is therefore recommended to grant tax exemption for economy class airfare for travel abroad also on holidays so long these are within the overall airfare tax exemption conditions for traveling in India. Here, it is pertinent to note that in a recent ruling by the Chandigarh Bench of the Income-tax Appellate Tribunal (the Tribunal), in the case of Om Prakash Gupta6 it has been held that amount received by the taxpayer on account of Leave Travel Concession (LTC), which was received by taxpayer on account of travel to both Foreign and Indian destination

[6]Sh.OmParkash Gupta, v. ITO

		away destination within India.	and the journey concluded by visit to a place in India, is not eligible for income tax exemption as the taxpayer has also travelled to a foreign destination. However, considering the current prevailing trend in respect of foreign travel, there is a need to include overseas travel as well or atleast to exempt proportionate expenses pertaining to travel within India in case of joint travel (within India and overseas destination). e. Further, under Rule 2B of the Rules, the amount exempt in respect of LTC by air is to the extent of the economy fare of National Carrier i.e. Indian Airlines. It is suggested that word "National Carrier" should be deleted from Rule 2B. f. Moreover, as per the current provisions, Leave Travel Concession/Assistance is eligible for tax relief for 2 calendar years in a block of 4 calendar years. It is suggested that the concept of calendar year should be replaced with financial year (April – March) in line with the other provisions of the Income Tax Law and further exemption should be made available in respect of at least one journey in each financial year.
		e.	
Section 40(a)(i)		In the event of non-deduction or non-payment of TDS on payments made to residents, the Finance Act, 2014 has provided that the disallowance would be restricted to 30% of the amount of expenditure	Disallowance should be restricted to 30% of the amount of expenditure incurred, in case of non-deduction or non-payment of TDS on payments made to non-residents.

		incurred. However, the disallowance on payment to non-resident continues to be 100%. The non-resident payee should be given level-playing field and accordingly, it is recommended that the disallowance in case of non-deduction or non-payment of TDS on payments made to non-residents, the disallowance should be restricted to 30% of the amount of expenditure incurred.	
Mutual Agreement Procedure (MAP)			d. Steps should be taken by Indian competent authorities dealing with MAP proceedings to ensure that MAP proceedings are accelerated. e. MAP should also be an open minded, two-way process and should result in a 'win-win' situation with a view to provide a conducive environment to the foreign investors. f. Tax officers to follow the provisions of Article 7 of tax treaty, which states that the method adopted for taxing the profits to be attributed to the permanent establishment shall be followed year by year unless there is good and sufficient reason to not adopt the same
Section 92B	The Finance Act 2014 made an amendment to Section 92B(2) to cover transactions of prior arrangement, even when two residents were to be involved in the transacton.		The issue here is similar to the tax neutrality issue discussed for domestic transfer pricing. Having regard to the fact that transactions between two resident taxpayers would be revenue/tax neutral, such cases should not be covered under the transfer pricing provisions. Hence, it is recommended that the amendment made by the Finance

			Act 2014 to amend Section 92B(2) should be reversed.
Transfer Pricing Documentation	The Income Tax provisions places the onus on the taxpayers to maintain information relating to the international transactions, irrespective of the materiality of the transaction subject to the overall cap of Rs. 10 million (Rule 10D).	This requires the taxpayer to commit significant resources towards ensuring that documentation is maintained for each transaction	In the better interest of the enterprises with small volume of international transactions, the overall limit of Rs. 10 million should be raised to Rs. 100 million.
Transfer Pricing Penalties	Transfer Pricing adjustments are treated as concealment of income and harsh penalties of 100-300% are levied. Further, the Finance Act 2012 has introduced a penalty of 2 percent of the value of transactions in case of non-reporting of any international transaction. The same is over and above the existing penalties.	Internationally, the penalties vary from 0% - 40%. Transfer pricing determination is a highly subjective decision and results from genuine interpretation and application of recommended methods. Any contradictory interpretation by the tax authorities should not therefore be seen as concealment of income and punished harshly	The penalty structure requires to be toned down and should be leviable only in exceptional cases. The penalty of 2 percent is very high and is likely to subject the taxpayers to onerous financial hardship. Penalty for non-documentation and non-maintenance/ presentation should be levied only when the relevant transactions are finally not complying with arm's length standard
Transfer Pricing Scrutiny	Most of the Multi National Company's have repeated nature of international transactions with its Associated Enterprises every year. Transactions between two AEs are subject to scrutiny for both the entities, viz. foreign AE and the Indian entity. The Transfer Pricing Officer ('TPO') is also same in most of the cases.	Scrutiny by TPO is done every year for the same nature of transactions. A particular transaction which is held to be at arm's length in the assessment of foreign AE, is held to be not at arm's length in the case of Indian Entity, resulting in undue tax demands causing unwarranted hardship to the Indian entity.	d. If at the time of the scrutiny of these transactions for a particular assessment year, it is found to be at arm's length, then in alignment to international practice, it can be fixed for three successive years. This step will save MNC's from huge cost. e. Suitable clarificatory amendment may be inserted in the Act to remove this anomaly. f. Further, Government should introduce rules to clarify that if any transfer pricing adjustment is made in a transaction for one party the corresponding adjustments shall also be made to the income of other party to the

			transaction. This will be in conformity to the principle enunciated in Article 9(2) of the Double Taxation Avoidance Agreements entered by India with certain countries.
Aligning customs and income-tax valuation	Income tax & Customs credit (set off) and relevance of intra group transfer pricing policy	Income tax and customs work in divergent directions on the same transaction viz. import of goods/ raw material into the country. Whereas the Income tax authorities would want a lower value for the imports in order to give a lower deduction to the taxpayer thereby increasing the tax revenue, the customs authorities would want a higher value in order to increase the customs duty revenues. Accordingly, taxpayers who are dependent on imports are adversely impacted.	In order to address the situation, the following two alternative solutions could be considered: Alternative 1 – The transfer pricing policy adopted by the transacting parties should be considered while giving the Special Valuation Branch order by the customs authorities. In such situation to an extent both transfer pricing and customs would be aligned. To explain further, where an Indian importer (whose import prices undergo a reduction post-year end - as a result of using actual/ updated price setting data), should be allowed post-importation downward adjustments to the customs value declared at the time of import, provided the adjustment is based on a transfer pricing policy or an Advance Pricing Arrangement (APA) which was in effect prior to importation. To simplify and explain the above, provided below is an EXAMPLE: g. On April 1 (i.e., at the beginning of the financial year), Company X (an Indian importer) imports product "P" from its AE at USD 100. This is the value declared to the customs authorities at the time of import, and on which duty is paid. h. This price is based on a prevailing price setting policy as per which the price is determined based on a market back (resale minus) approach. To apply/ implement this

			policy, budgeted data of Company X is used and benchmarking is undertaken using comparables available at that point of time, i.e., prior to April 1. i. Post year end, Company X replaces budgeted data with actual data and uses the updated results of latest comparables to apply the policy. It thus arrives at the price at which the import should have been undertaken, which in the current example is lets say USD 95. j. The price at which the import should have been undertaken, i.e., USD 95, is lower than the price declared to the customs authorities at the time of import and on which duty has been paid, i.e., USD 100. Therefore on USD 5 (which is the difference), the importer has paid excess duty. k. The importer should now seek a post importation downward adjustment in the transfer price to the extent of USD 5, and would also seek either a consequent refund of the excess duty paid or duty credit on subsequent imports to the extent of excess duty paid. l. Since the post importation adjustment is based on a TP policy which was in place prior to the import, the customs authorities should allow the same, subject to certain conditions as may be framed by authorities. Alternative 2 - Further, if customs have arrived at a different value for the goods imported as against the one reflected on the invoice to levy the duty, the subsequent confirmation of the invoice value during transfer pricing assessment proceedings, which is

			in line with the transfer pricing policy of the group should be given due consideration and the assessee should be provided appropriate credit for the extra duty paid. To simplify and explain the above, provided below is an EXAMPLE: a. On April 1 (i.e., at the beginning of the financial year), Company X (an Indian importer) imports product "P" from its AE at USD 100. This is the value declared to the customs authorities at the time of import, and on which duty is paid. b. The customs authorities based on their assessment increase the assessed value of the goods to USD 120 instead of USD 100. On the other hand, the transfer pricing authorities confirm the transfer price adopted by Company X i.e. USD 100 which would be incorporated by the assessing officer in his assessment order. c. In the above case, Company X would need to pay additional customs duty on the differential price of USD 20 (USD 120 determined by the Customs Authorities less USD 100 being the invoice value). If suppose the customs duty rate is 25%, then Company X would need to pay additional duty of USD 5 (25% duty on differential price of USD 20). c. In such a scenario, in order to equalize the tax impact, Company X should approach the tax authorities and should seek a tax credit of USD 5 (from its total tax liability) on account of excess duty paid on the differential price of goods.

Safe Harbour - Mark-ups for covered transactions. **Transfer pricing compliances when opting for Safe Harbour**	Safe Harbour has been defined to mean 'circumstances' in which the revenue authorities shall accept the transfer pricing declared by the taxpayer. Internationally used safe harbours take two forms – • Exclusion of certain classes of transactions based on quantitative limits from Transfer Pricing regulations. • Stipulation of margins / thresholds for prescribed classes of transactions / specified industries Specific Safe Harbour Rules (SHR) helps to ease the compliance burden for taxpayers, curtail disputes and reduce administrative hassles for both, the taxpayers and the taxmen. Even when opting for SHR, the taxpayers are required to do TP compliances of preparation of TP documentation and filing of Form 3CEB The SHR were prescribed for FY 2012-13 which were based on reports of Rangachari committee, which was instead based on arithmetical mean witnessed in industry	The mark-ups/SHR rates prescribed by the CBDT are on the higher side, resulting in very limited taxpayers opting for the same. The SHR take away the right of a taxpayer of filing an application for MAP in case a safe harbour is accepted and applied for. The SHR do not relieve the taxpayers of preparing their TP documentation and Form 3CEB SHRs have been prescribed for limited instances of software, BPO, KPO, automotive components, outbound loans and corporate guarantees Creation of KPO as an carve out of BPO creates more confusion. The SHR have not yet been prescribed for FY 2013-14.	**High Mark-up** While it is accepted that safe harbours generally propound a higher than arm's length margin as a cost to taxpayers for the reduced compliance burden and certainty of tax outflows, the quantum of the premium as per the SHR appears to be high from a taxpayers perspective. The SHR margins should be revised to a smaller number. **Insignificant Risk** Circular No 6 dated 29th June 2013 has provided the conditions relevant to identifying development centers engaged in Contract R&D services with insignificant risk. The same was welcomed by the industry as well as tax professionals. However, the only bone of contention is whether partial compliance with the conditions would suffice for construing as a Contract R&D services. Besides, the term 'insignificant risk' should be defined. The SHR provides only for generic pharmaceutical drugs, effectively leaving out other activities in the pharmaceutical sector such as clinical trials. The right to file an MAP should be restored with the taxpayer given that in certain cases the other country may not accept the safe harbour margin, resulting in economic double taxation The SHR should be amended to relieve the taxpayers to prepare full fledged documentation and filing of Form 3CEB in case the safe harbour is opted for. Or otherwise, it may be prescribed that the TP documentation and

			Form 3CEB compliance be done in case the transactions cross a particular threshold (say Rs. 5 Crores) SHR could also prescribe for such sources of information which may be considered as CUPs for benchmarking, especially where the industry is such that the market convention (such as agri products, metals, fertilizers etc.) is to follow the prices prevalent in the market. The SHR for FY 2013-14 should be prescribed at the earliest so that the taxpayers may opt for the same. Also, for FY 2014-15, when the range concept would become applicable, the safe harbour rates should be revisited to reflect the range concept (and not be based on the arithmetical mean concept)
Share Capital Infusion and Transfer Pricing	The controversy of share valuation was first brought up in India in a case where the tax department alleged that an Indian company (I.Co.) had undervalued the shares at the time of its issuance. The amount attributable to the value by which shares were underpriced was considered as short receipt and added to the income of the taxpayer. Also, such transaction was re-characterised as a loan granted by I.Co. to a foreign company (F.Co.) and a secondary adjustment was made imputing interest income as a receivable in the hands of I.Co. This high-pitched assessment has been in the news around the globe and is being austerely opposed by taxpayers. An immediate clarification of the Government's stand on this issue is desirable. Else, foreign investors will continue to see this as a tax on FDI, which will continue to dampen the prospects of increased FDI. The Bombay High Court's recent well-reasoned decision in Vodafone's case on this matter could be adopted as the Government's view.		On Share Capital Infusion issue, Bombay High Court's recent well-reasoned decision in Vodafone's case could be adopted as the Government's view and the law should, accordingly, be amended to provide that such a transaction not having a bearing on profit should get exempted for evaluation from an Indian transfer pricing perspective.

J. Procedural provisions			
Section/ Topic	**Background**	**Issue**	**Recommendations**
Explanation 3, Section 90(3)	The current provisions provide that Any meaning assigned through notification to a term used in an agreementbut not defined in the Act or tax treaty, shall be effective from the date of coming into force of the tax treaty.	c. Any meaning notified will have a retrospective effect from the date when the tax treaty was signed causing uncertainty and hardship to the taxpayers. d. This provision is also contrary to Government's intent of reviewing retrospective amendments, which have caused grave concerns to overseas companies over stability in tax policy and considered positions.	e. Making such changes with retrospective effect will lead to needless hardship on the taxpayers and an unfair expectation to be aware of a definition, which was not in existence when the arrangement/transaction was put into place. This will lead to uncertainty, re-opening of assessments etc, which can be avoided. f. Even pursuant to a notification, there is more liberal interpretation supplied to a particular term, a taxpayer may not necessarily be able to easily claim refund/credit of taxes paid in earlier years. g. It is recommended that any definition notified under Section 90(3) and Section 90A(3) of the Act should apply prospectively. h. Thus, Explanation 3 needs to be deleted.
Withholding tax on payment to non-residents having branch or permanent establishment in India	The corporate tax rate for non-resident companies being 40 (*exclusive of surcharge and education cess*) results in requiring a non-resident company to file tax returns to claim refund of excess tax collected. This creates cash flow issues for the non-resident company making operations through an Indian branch unviable, when compared with its Indian counterparts. This additionally requires the non-resident company to		c. For an effective solution to this issue, one may refer to the Vijay Mathur Report on Non-Resident **Taxation (January 2003)** which advocates treating non-residents with a branch office at par with residents for the purpose of Withholding tax payments. Illustratively, it provides as follows: *"4.13.2 Non-residents having Branch Office/Project Office in India and performing work covered u/s 194C should be considered at par with*

	mandatorily approach the Tax Authority to seek a lower withholding tax order, the process being time-consuming and non-taxpayer friendly. Often, the non-resident company faces a lot of difficulties justifying its request for a lower withholding tax certificate in the initial years of its operations, when it has no past India assessments justifying its request for a lower withholding tax certificate. From the Tax Authority's perspective, this results in excess tax collection by way of withholding taxonly to be refunded later together with interest in addition to significant administrative burden which may not be commensurate with the benefits of an efficient tax collection mechanism.		*the residents for withholding tax purposes and as such the same rate of withholding tax should apply to payments made to them. The Working Group recommends that suitable amendment should be made for this purpose."* d. In line with the aforesaid principle, it is recommended that payments which are in the nature of business income of non-residents having an India branch office or 'a place of business within India' should be subject to similar tax withholding requirements as in case of payments to domestic companies (residents). At the beginning of a tax year, the non-resident taxpayer who has an India branch office or 'a place of business within India' should be permitted to admit PE and opt for a withholding tax mechanism as is applicable to a resident company. It would go a long way in facilitating ease of doing business in India and the Tax Authority would be in a position to better monitor and regulate such non-resident companies. Further, it would also achieve the stated objective in the ***Kelkar Report (December 2002)*** to abolish the system of approaching the Tax Authority for obtaining certificates for deduction at lower rates and minimize the interface between the taxpayer and Tax Authorities.
Grant of refund of tax withheld under section	Currently, for grant of refund of tax withheld under the provisions of		The intention of the Legislature appears to be that the non-resident recipient should not have

195	Section 195 of the Act to the payer in the case of net-off tax contracts, one of the conditions to be fulfilled is that the recipient should not have filed a return of income in India. In this connection, it needs to be appreciated that if the payer has not issued the TDS certificate to the recipient, the refund of the amount withheld under Section 195 of the Act should be granted to him irrespective of whether or not the non-resident recipient has filed a return of income in India. This is more so because the recipient may have earned certain other income(s) from India which are liable to tax in India and it is in the regard that the non-resident may have filed a return of income in India. In such a scenario, the person making the payment faces an undue hardship vis-à-vis obtaining refund of the tax withheld under Section 195 of the Act.		claimed the credit in respect of the tax withheld under the provisions of Section 195 of the Act. Thus, it is suggested that the requirement of non-resident having not filed a return of income in India should be done away with in a case where the payer has not issued any TDS certificate to the payee. Further, to safeguard the interest of revenue, a condition may be imposed on the payer for claiming refund that he should substantiate his claim by showing that a revised Withholding tax return was filed wherein the credit entry for TDS for the non-resident was reversed.
Reference to Companies Act 2013	Various provisions of the Act, explicitly makes reference to Companies Act 1956. For instance, Section 2(18)(b).	Given that the Income Tax Act refers to various provisions of the Companies Act 1956, which have now been replaced with Companies Act 2013, there is ambiguity whether for such provisions in the Income Tax Act, one should refer to Companies Act 1956 or to Companies Act 2013	Suitable amendment should be made in each section of Income Tax Act to make reference to Companies Act 1956 or Companies Act 2013, as the case may be.
Section 194LAA: Payment of compensation on acquisition of Certainimmovabl	194LAA: Payment of compensation on acquisition of Certain immovable property	This provision needs to be deleted.	It is worth noting that mechanism of reporting all real estate transactions are in place through Annual Information Report (AIR).

e property			
Exempt foreign lenders from PAN in respect of interest paid on foreign currency loans	c. The government reduced the TDS rate from 20% to 5% on foreign currency loans borrowed between 1 July 2012 up to 1 July 2015 by virtue of Section 194LC. However, Section 206AA of the Act specifies that TDS shall be 20% in the case the recipient does not have PAN. d. Section 206AA takes away the benefit of reduced TDS rate as per Section 194LC in most cases where the foreign lenders like foreign banks, financial institutions etc. do not want to apply PAN in India to avoid multi-country tax filings and compliances. Further, in most cases, the foreign lenders insist that impact of any TDS in India shall be borne by the borrower and which practically, means that Indian borrower does not get the intended benefit of 5% TDS and ends up paying more than 20% tax after grossing up.	Foreign loans constitute a very important source of funds for passive infrastructure industry in India both for financing import of capital goods as well as raising funds for embarking on expansion. Foreign lenders generally negotiate on interest rates (net of taxes of the borrower country) and in most cases, Indian borrowers have to bear the cost of TDS in India. Section 206AA results in substantially higher cost of borrowing for Indian infrastructure companies.	It is recommended for the exclusion of transactions covered by section 194LC from the purview of Section 206AA.
194LC and 194LD	In section 194LC and 194 LD it is specified that withholding tax on interest paid at notified/ approved rate should be at the rate of 5%.	Only excess interest paid over the notified/ approved rate should not be eligible for 5% withholding tax rate and will be liable under section 195.	c. It should be clarified that only the excess interest paid over the notified/ approved rate will not be eligible for the 5% withholding and would be liable under section 195. d. Further for purposes of section 194LD Bonds should be defined to include debentures.
TDS on Bank's	e. Deduction of tax at source on the income of banks		Indian and Foreign Banks should

<table>
<tr>
<td>Income</td>
<td colspan="2">causes considerable inconvenience in view of huge volumes of TDS certificates collected for interest received on securities, commission received on cross selling, etc.

f. Exemption has been granted to banks on interest income other than on securities under section 194A. Further, CBDT vide notification no. 56/2012, has exempted TDS on specified payments such as bank guarantee commission; cash management service charges; depository charges on maintenance of DEMAT accounts; charges for warehousing services for commodities; underwriting service charges; clearing charges (MICR charges); credit card or debit card commission for transaction between the merchant establishment and acquirer bank made to banks. However such TDS exemption is not available for various other payments received by banks like advisory fee, commission, etc.

g. A similar blanket TDS exemption under section 196 to banks on all payments received will facilitate a hassle-free administrative mechanism. Foreign banks operating in India are able to get exemptions from all TDS as provided in section 195 specifically applicable to them. The Income-tax department is also inconvenienced, as they are required to process the forms submitted before granting TDS credit.

h. This proposal is revenue neutral as Indian as well as foreign banks would discharge tax liability by way of advance tax payment.</td>
<td>be granted exemption from TDS under section 196.</td>
</tr>
<tr>
<td>Credit for taxes paid</td>
<td>i. As per the scheme of the Act, the TDS credit should be claimed only in the year in which the income against which the TDS has been made has been offered to tax.

j. There are various discrepancies which arise on account of which a one to one reconciliation between the TDS made and the income offered by the recipient may not necessarily match. Some of the instances have been illustrated</td>
<td>In all of such cases, the assessee being the claimant of TDS should be provided eligible TDS credit. However, the department officials disregarding the judicial precedents deny the TDS credit on various grounds including the fact that the relevant TDS has not been paid by the deductors, the TDS returns have not been uploaded by the deductors and therefore not appearing in the online database etc.

Additionally, the fact that assessee cannot match the TDS credit with the exact</td>
<td>In this regard, it is recommended that the TDS credit provisions be streamlined to the effect that

c. The condition of matching the income and the corresponding TDS credit be done away especially considering the nascent stage of the electronic scheme of the TDS certificate and the defaults made by the remitters in issue of TDS certificates;

d. TDS credit can be claimed in the year in which TDS certificate is issued i.e. date</td>
</tr>
</table>

	below k. The payer has made TDS on various invoices falling within multiple years l. The payer has made the TDS on the entire payment of invoice but the income recognition of the assessee as per the accounting policy does not correspond to the payment m. The payer has made TDS on the entire payments as per the scheme of the Act but the entire payment does not comprise income in the hands of recipient n. The recipient has offered the income to tax but the payer has not made TDS or has not deposited the TDS o. Additionally, with payer may not have uploaded the TDS return reflecting the appropriate TDS credit in the electronic format leading to a delay. p. As per the scheme of the Act, the eligible TDS credit should be claimed in the return of income and should be supported by original TDS certificates	amount of income offered to tax in the relevant year, the department officials seek to deny TDS credit and in some cases seek to add additional income as undisclosed income	on the TDS certificate or as appearing in the online data base as long as the recipient can demonstrate that TDS credit is not claimed twice against a particular certificate
Uploading of erroneous demands on CPC databases, inaction in	The tax payers have generally observed such heart burning issue:- d. No action has been		d. It is suggested that a proper action plan should be laid down by the CBDT and all the field officers should be

respect of pending rectification applications and adjustment of erroneous demands against refunds of later years	taken in respect of pending rectification applications u/s 154 of the Act. Moreover, pending demands have been uploaded on the CPC database and adjusted against the pending refunds of the assessees. e. In cases where the rectification has been carried out and the demands have been nullified / reduced / cancelled, the information is not updated on the CPC database and demands are continued to be shown as pending and adjusted against the legitimate refunds due to the assessees. f. Refund orders have been passed but the actual refunds are not granted and there is considerable delay in many cases.		instructed to carry out the rectifications with in a time bound manner and same should be closely monitored by the senior officials of the department. e. After the rectifications, the erroneous demands uploaded on the CPC database should be forthwith updated and refunds should be granted to assessees in all such cases at the earliest possible. f. A mechanism may be introduced wherein the refund due can be set off against the advance tax liability of the assessee.
Bring NBFC's at par with banks		d. NBFC's are regulated by RBI almost in the same way as Banks albeit under a different law. e. Both NBFC's and Banks make a spread between interests earned on its lending and paid on its borrowings and the spreads are thin. In as much as a 10% withholding tax cannot be justified on payments to banks given the spreads, the same holds true for NBFC's. f. RBI mandates provisioning norms for	c. Firstly there should be no TDS on interest payment to NBFC's. This will provide taxpayers better liquidity, and savings in cost of funds. Government would also benefit as pressure on refunds would ease and there will be no interest outflow at the time of refunds d. Secondly, there should be tax deduction for RBI mandated NPA provisioning. This will give clarity to tax payers as unnecessary disputes would be avoided. Further, Government will also not suffer as it will be revenue

		both banks and NBFC's, hence the tax laws should treat the two at par for tax deduction purposes.	neutral.
Clarity in taxability of various financial services transactions		The extant law established more than 50 years ago does not address various distinct transactions which are in vogue and unique only to the financial services sector: d. Taxability of profit/ loss on securitization/ assignment/ sale of receivables e. Activities in normal course of business. … akin to sale purchase of stock in a traditional business f. No specific provision on tax treatment of gains/losses on these transactions …Revenue takes inconsistent approach, inclined to tax gain but deny loss deductions, most rulings against Revenue Depreciation claim for assets given on lease to be available to lessors c. Assets given on lease are used in the leasing business of Taxpayer and hence depreciation should be permitted …also upheld by Supreme Court d. Revenue continue to litigate the matter	Clarity and certainty on taxability of profit/ loss on securitization/ assignment/ sale of receivables transactions should be provided to avoid protracted No significant impact, most rulings against Revenue Clarity and certainty be provided to allow depreciation claim for assets given on lease to lessors to avoid unnecessary disputes. No impact on revenue as depreciation has to be provided for assets in use
Clarity on equity oriented Fund of funds	Fund of Funds (FOFs) invest in other income oriented/equity oriented schemes and provide investors simple multi-asset class solutions. While they have been growing, one of the key	FOFs investing majority of their assets in equity funds are not treated as equity-oriented funds and thereby do not get the relevant exemptions from capital gains tax or dividend distribution tax.	FOFs investing 65% or more of their investible funds in units of equity oriented schemes should be treated on par with equity oriented funds.

	hindrances has been the tax treatment of these funds		
Extension of PF exemption as per Income tax act for recognized Private PF trusts		The first proviso of Rule 3 of Part- A of Fourth Schedule of the Act specifically provides that if recognition has been granted to any Provident Fund on or before March 31, 2006 and such Provident Fund does not satisfy the condition specified in clause (ea) of Rule 4, then the recognition to the fund will be withdrawn. This rule specifically asks for getting an approval from the related PF authorities before 31st March 2014 for these exemptions to continue.	e. However this last date of getting the approval from PF authorities has not been extend beyond 31st March 2014 till date. f. In case the last date to get exemption is not extended beyond 31st March 2014 it may affect scores of employees in these organizations by taking away the tax benefits to concerned employees in these companies. g. There are around 180 such applications, which are being processed by the EPFO at present but due to very slow progress from the department most of these applications have not moved for many years. h. Pre-condition for taking an approval from the PF authorities may be removed (at least for the funds which have got their approvals prior to 2006) and/or instruction should be issued to PF authorities to close decision making on all these pending application in a time bound manner. (Probably in next 10-12 months).
Definition of "Securitisation Trust" under Section 115TC: Conditions to be fulfilled by a Securitisation Trust- Rules to be issued by CBDT	Extract of finance bill- Memorandum regarding delegated legislation is copied below. *"The Explanation to new section 115TC seeks to define various terms specified therein. Clause (d) of the said Explanation defines the term "securitisation trust". It is*	The definition of securitisation Trust given in section 115TC mandates the securitisation Trust to fulfil certain conditions. As stated in the budget memorandum regarding delegated legislation, such conditions were supposed to be announced in the form of rules. The rules are	Till the eligibility conditions for a securitisation Trusts are notified, the investments in to PTC trust will have an uncertainty regarding its tax treatment. As CBDT is yet to issue the rules for the budget announced last year, section 115TC may be amended to delete the words "which fulfils such conditions, as may be prescribed"

	proposed to confer power on the Board to make rules in respect of the conditions to be fulfilled by a trust, being a special purpose distinct entity or Special Purpose Vehicle, to mean a securitisation trust."	yet to be announced.	after sub clause (d) (ii).
Section 161(1A)	Applicability of section 161 (1A) over section 115TA when the income of securitisation trust includes profits and gains of business	c. While assessing the income of the securitisation trust constituted under the RBI guidelines for securitisation of standard assets, the income tax department has taken a stand that the interest income derived by the securitisation trust on the PTC instruments issued by them is a business income and are liable to be taxed at the maximum marginal rate as mentioned in section 161(1A) of the Income Tax as amended by the Finance Act. d. The revenue authorities have also taken a stand in various pending matters before the court that section 161(1A) is a *non obstante* provision under which, if the income of the representative assesse includes profits and gains of business, tax shall be charged on the whole of the income at the maximum marginal rate on such assesse irrespective of his/its representative capacity.	c. As the SPVs for securitization of loans had been constituted under Reserve Bank of India's guidelines, treating the entire income as a business income and negating the rights of SPV to claim representative status will jeopardize the interest of Mutual Fund investors and defeat the whole purpose of the proviso to subsection (1) of section 115TA. In view of the same it would be better if the budget clarifies the supremacy of section 115TA over section 161 (1A). d. The following amendment is suggested to the first proviso to sub section (1) of section 115TA. "Provided that nothing contained in this sub-section and section 161(1A) shall apply in respect of any income distributed by the securitisation trust to any person in whose case income, irrespective of its nature and source, is not chargeable to tax under the Act."
195(2) & 197(1)	Time limit for processing applications made or nil /lower rate of withholding	c. The timelines prescribed in instruction No 1/2014 issued by the CBDT and in the	e. Strict timelines be incorporated for issue of certificate including time lines

		Income-tax citizen charter is not followed in sprit. In experience, the department counts the timelines from the date of last communication from the department to the assessee. Very recently many cases have come to light where the application has been rejected on frivolous grounds, viz. initiation of penalty proceeding u/s 271(1)(c) of the Act. d. In view of the aforesaid following is requested to be incorporated into the Act for the smooth functioning of provision of section 197 of the Act.	for approvals of files by the senior officers. f. Rejection orders should not be on frivolous ground and a well speaking order be passed. g. Proper checklist of all the documents required to be filed along with the application be prescribed. h. Where the certificate has been issued in earlier years, certificate for subsequent year in the absence of any change of facts shall be expedited and to be issued within a week from the date of application.
201	Time limit for order u/s 201 – Non-residents	Presently no order can be made deeming a person to be an assessee in default for failure to deduct the whole or part of the tax from a person resident in India after the expiry of 2 or 4 years. However, no such time limit has been prescribed in case of non-deduction of tax from a non-resident.	The present time limit applicable in case of resident payees should be extended to non-resident payees also, as four years can be considered a sufficient time frame to carry out any verification proceedings.
47(vii)	Relaxation in condition of issuance of shares in amalgamation / demerger	d. In the cases of amalgamation / demerger no shares have to be issued when the shareholder itself is the amalgamated company or when the resulting company itself is a shareholder.The amendment made by Finance Act 2012 is of clarificatory nature with an intent to overcome impossibility of act. e. The said amendment is effective from AY 2013-	It is recommended that amendment being of curative nature, its application be made retrospective from the date of insertion of respective sections. The amendment to section 2(19AA)(iv) and section 47(vii) may be made on lines of existing provisions of 2(19AA)(v) and 2(1B)(iii) where issuance of shares is not required in case shareholder is a subsidiary of amalgamated/resulting company.

		14 and does not extend to past years. The intent behind the proposal is to remove an obvious lacuna in the law. Hence, it would be appropriate to make its application from retrospective effect. f. There is need to also extend similar corrective amendment to cases of amalgamation / demerger which are in favour of upper tier holding company. To illustrative, if CCO is held by BCO and BCO is held by ACO, amalgamation of CCO with ACO will not require issuance of shares by ACO to BCO (being shareholder of CCO) as BCO is subsidiary of ACO. Presently, section 2(1B)(iii) as also section 2(19AA)(v) recognize this limitation and does not require issuance of shares when shareholder is amalgamated / resulting company itself or any of its subsidiary. Similar amendment is required in section 2(19AA)(iv) and section 47(vii).	
Section 10(32) - Exemption on Income of minors	At present income of minors included in the hands of parents is exempt to the extent of Rs 1,500 for each minor.	The average expenditure to meet cost of a minor's education/health/living expenses which has gone up considerably in recent years.	It is suggested that this should be raised to at least Rs 10,000 for each minor child.
Taxability of gratuity, leave encashment and other termination benefits in the hands of the legal heirs of a deceased employee		d. There are CBDT circulars (CBDT letter No. 35/1/65-IT(B), dated 5-11-1965 and Circular No. 309 [F. No. 200/125/79-IT(A-I)], dated 3-7-1981) stating that leave salary paid to the legal heirs of the deceased employee in	It may be noted that since death of an employee creates a lot of financial hardship to the legal heirs and it will be difficult for the legal heirs to calculate and pay taxes on the termination benefits received, hence it is suggested that CBDT should come out with a clear instruction that leave

		respect of privilege leave standing to the credit of such employee at the time of his/her death is not taxable as salary/not taxable. e. Taxability of gratuity - CBDT circular No. 573 dated 21.08.90 states that a lump-sum payment made gratuitously or by way of compensation or otherwise to the widow or other legal heirs of an employee, who dies while still in active service, is not taxable as income under the Act. In, fact this circular will cover all other lump sum termination benefits being paid to the legal heir of a deceased employee, who dies while still in active service. f. It may be noted that after the insertion of Section 56(2)(v)/(vi)/(vii) in the Act, taxability of the leave encashment, gratuity and other termination benefits received by the legal heir of the deceased is not clear though the aforesaid CBDT circulars exempted such payments from tax. As the earlier CBDT circulars have not been withdrawn there is confusion as to whether these payments to legal heir constitute taxable income in their hands or not.	encashment, gratuity or other termination benefits received by the legal heir of a deceased employee is not taxable in the hands of the legal heir.
Section 68	Section 68 – Not to apply on receipt of share premium in excess of fair market value to which	Section 68 of the Act provides for taxability of unaccounted / unexplained money i.e. where nature	The provisions of Section 56(2)(viib) and Section 68 of the Act be suitably amended to

	Section 56(2)(viib) applies	and source of funds remained unexplained in respect of credit entries recorded in the books of account. Section 68 as amended w.e.f. April 1, 2013, also provides that in addition to the recipient, the person contributing to the share capital of a private or an unlisted company also has to explain the nature and source of funds. On the other hand, Section 56(2)(viib) of the Act provides that share premium received by an unlisted company upon issue of shares in excess of the fair market value shall be treated as income in the hands of such company and subject to tax accordingly. This law is applicable w.e.f. AY 2013-14.Section 68 can be invoked in a situation wherein nature and source of funds remain unexplained by the recipient and the contributor. If the nature and source of funds stands explained, tax department could then have recourse under Section 56(2)(viib) only in situations where difference in technical aspect of valuation exist. However, the converse may not be true i.e. if Section 56(2)(viib) is invoked to tax the difference in technical aspect of valuation, the test of nature and source of funds stand automatically satisfied. The rigours of Section 68 should stop with the investigation into nature and source of funds and not extend to cater to the	provide safeguard against its invocation interchangeably. Only if the tests laid down under Section 68 do not stand to be fulfilled, section 68 can be invoked. Furthermore, once 56(2)(viib) has been invoked, then the test of Section 68 should be considered as automatically satisfied. The provisions of law should not be allowed to be used interchangeably.

		technical aspect of valuation dealt specifically under section 56(2)(viib) as the Legislature may not have intended to provide two sections i.e. Section 56(2)(viib) and Section 68 to be used interchangeably. Section 68 also cannot be invoked in cases of genuine issue of shares by a company to joint venture partners or financial investors i.e. private equity, venture capital funds etc.	
Section 142(2A)	Special Audit	Section 142(2A) of the Income-tax Act has been amended vide Finance Act, 2013 to provide that volume of the account or doubt about the correctness of the account could also be one of the reasons for which the Assessing Officer may make a reference for a special audit by an accountant. Courts in the past have held that an Assessing Officer should form an opinion about the nature of accounts of a taxpayer is complex and the opinion should be formed objectively after an honest attempt has been made to understand the accounts. The contention that Assessing Officer is a layman and has no experience in dealing with accounts cannot be accepted. Only if the records are produced and accounts are examined, the complexity of the accounts can be ascertained. The guiding principle, therefore, for reference to a special audit was hinged on objectivity and complexity of accounts and not left at	Criteria linking reference to special audit merely on the basis of volume of accounts should be removed. Moreover, subjectivity element involved in doubt on the correctness of accounts should be suitably safeguarded by introducing factors / circumstances resulting in doubt on the correctness of the accounts.

		the subjectivity of the Assessing Officer. With the amendment brought vide Finance Act, 2013 the aforesaid principles seems to have been obliterated and left to the subjectivity of the Assessing Officer.Reference to special audit merely on the basis of volume of accounts would make the provisions applicable to almost all large corporates as no definition / threshold has been provided to construe what constitutes volume. Any manufacturing organization with 3-4 manufacturing locations or more would have voluminous nature of operations and shall attract the rigors of amended provisions of Section 142(2A). This would result in creation of fear psychosis in the mind of all large corporate groups as virtually all of them would be subject to special audit under the amended provisions if the Assessing Officer decides so. Moreover, due to the subjectivity element involved, it would be like providing free hand to Assessing Officers to shirk their responsibility in favour of the accountant seeking assistance in completion of assessment. Resultantly, the taxpayer would be burdened by committing additional time, efforts and resources to get the accounts audited over and above multiplicity of audits conducted under various Legislations i.e. Companies Act, Excise, Service tax etc.	

		It would not be fair to burden the taxpayer with one additional audit because of the subjectivity of the Assessing Officer.	
Section 115JB	Clause (iii) to Explanation 2 below sub-section (2) to Section 115JB of the Income-tax Act provides for reduction of loss brought forward or unabsorbed depreciation, whichever is less as per books as a reduction from net profits while computing book profits. The Explanation further states that if loss brought forward or unabsorbed depreciation is nil, no amount shall be reduced.	g. Tax on book profits is a tax on notional income and was introduced to levy tax in case of companies which though earning net profits and declaring handsome dividends do not pay taxes under normal provisions of the Act on account of various incentives / deductions. h. The law currently provides reduction of book loss or unabsorbed depreciation, whichever is lower. Vide Finance Act, 2002, by way of an Explanation it was clarified that if one of the elements is nil, no reduction shall be allowed. However, no reason was provided in the Memorandum for such clarification. Prior to such amendment, benefit for entire book loss and depreciation continued to be provided by Legislature. i. For the purposes of discussing the economic argument behind availability of aforesaid provision, companies should be dissected in two baskets i.e. one set of companies would be companies earning net profits year on year but not paying taxes under normal provisions of	Clause (iii) should be suitably amended to provide that book loss and unabsorbed depreciation shall be allowed as a reduction from net profits even if one of the element is nil.

		Income-tax Act and the other being companies historically making net loss but subsequently turning into making net profits. j. It may be noted that a company is said to make profits only if it has wiped off all the past losses, both book loss and unabsorbed depreciation and earned net profits during a particular year. To consider set-off of only one element i.e. either book loss or unabsorbed depreciation while computing book profits, usually the latter, would only be a half-hearted relief while taxing a company notionally on its net profits. k. The provision of Companies Act also allows a company to freely distribute profits to shareholders post set-off of all past losses. In such a situation, taxing a company on its net profits for a year, that too notional, without reduction of past book losses would not be fair. The very intent behind introduction of minimum alternate tax to tax companies earning net profits and declaring dividends but not paying taxes seems to be defeated in the instant case. l. The Legislature should	

		on the contrary incentivize historically loss making company turning into net profits by allowing reduction for entire book loss and depreciation before subjecting them to MAT. This shall enable a company to recoup all its past losses, stabilize for next few years and then be on a growth trajectory.	
Validity of orderissued u/s 197.	The order under section 197 is at present issued with a validity date from the date of issuance. Though the assessee is applying in the month of April, i.e., at the beginning of the financial year, the order is issued much late.The date of issue is taken as the validity date owing to which, the deductors are deducting the tax for the earlier part of income/payments. By any reasonable estimate, an assesse cannot have taxable income for some part of the financial year and exempt income for remaining part of the year.		c. The application may be allowed to be made atleast before 1st April of the financial year i.e. within three months of commencement of the financial year for before planning for advance tax. d. Such application should bedisposed-off within 30 days.
Section 201(1A)	As per the amendment in Section 201(1), even in case a resident tax payer complies with the conditions specified (such as payment of taxes, filing of return of income etc.) under said section, still the employer will be liable to pay interest u/s section 201(1A) till the time of filing of the tax return by such individual.	The new proviso in Section 201(1A) of the Act requires interest to be calculated from the date on which such tax was deductible to the date of furnishing of return of income by such resident	Interest levy under Section 201(1) is compensatory in nature and hence there is no loss to revenue after the taxes have been deposited. Hence, interest liability should not be triggered once the taxes have been deposited (through advance tax route). Consequential amendment in Section 271C may be made to the effect that the provisions of Section 271C will not apply in a case of any person who fails to

			deduct whole or any part of tax on the sum paid to a resident if the resident complies with the specified conditions.
Section 201	While calculating the delay in number of months for the purpose of interest under Section 201(1A), the tax department has been calculating a full month's delay for the month of deduction as well.	An example - If the taxes were deductible on December 31 2013 and the actual deduction / tax remittance happens on January 9 2014, the tax department is calculating interest for 2 months. This treatment is very harsh.	'month' should be read as 30 days and not British Calendar month.
234E: Levy of fee in case of delay in filing of TDS or TCS statement		Provision need to be deleted Alternatively c. fees shall not be levied if there is reasonable cause for failure filing of statement u/s 200(3) and 206C (3). d. Further the amount of fees be reduced to Rs.100 rupees per day.	Though it is termed as fee it is of a penal nature and is mandatory. Even if a person is prevented by reasonable and sufficient cause for not submitting TDS statement on time, he will be liable for fee of Rs.200/- per day and in addition to this the deductor may be liable to interest as well as penalty leviable under the proposed new penal provision of section 271Hand the mechanism of making the payment first and then submitting the quarterly statement to NSDL is not practical workable.
271H: Penalty for filing incorrect particulars or failure to file TDS or TCS statement:		This provision need to be deleted; Alternatively, the minimum amount of penalty be reduced from Rs.10,000 to Rs.5000 and maximum amount of penalty be reduced from Rs.100,000 to Rs.25,000	Above provisions are very harsh since deductor or collector needs to also pay interest on delayed payment of TDS/TCS, additional Fees of Rs.200 per day and further penalty u/s 271H. Further it also tries to levy penalty for furnishing incorrect statement of TDS / TCS. As you all are aware that TDS and TCS statements are to be "E filed" every quarter and in a specified format which itself is a tedious process and in process of filing statement any data punching errors made by a person filing TDS/TCS return shall also be punished. Thus this will build additional

			pressure on the deductor/ collector and increases cost of compliances tremendously.
Circular to clarify non applicability of TDS provisions on the service income of telecom infrastructure service providers	The telecom infrastructure service providers provide 24x7 power supply, air-conditioning and access to their sites on shared basis to multiple telecom operators and such service income does not fall under any of the existing TDS provisions.	In order to avoid stringent provisions of non-deduction of TDS and resultant disallowance of expenses, customers tend to deduct TDS @ 10% under Section 194-I and other provisions of the Act.The Passive Infrastructure sector, being a highly capital intensive sector, involves huge capital outlay and operates on a very low profit margin. Further, TDS deducted at high rates by customers and delays in issuance of lower TDS rate certificates by the tax authorities results in blockage of precious working capital in tax refunds for long periods.	g. A circular may be issued to clarify that none of the TDS sections apply to payments made by telecom operators to telecom infrastructure service providers. h. TDS provisions were primarily introduced to have an alternate collection mechanism in place for unorganised sectors where collecting tax directly from the recipient is challenging and carries the risk of evasion/leakages. i. The applicability of existing tax withholding provisions under the Act clearly confirm the aforesaid view- Section 192 applies for individuals earning salaries, 194C applies for civil contractors, 194-I historically applied to rental transactions (where mostly individuals are involved), 194J applies to professions involving firms and individuals. Further, it is worth noting that currently there are no TDS provisions for most of the organized sectors- manufacturing sector, trading sector, exporters, hotels, banks, insurance etc. j. In the light of above rationale and considering that the business of telecom infrastructure service providers is based on Business to Business model

			("B2B model") where both-the telecom operators (customers) and telecom infrastructure service providers are all well established companies with large turnovers and audited financials. k. There is no possibility of revenue loss or leakage as the telecom infrastructure service providers are obligated to get a cost audit and tax audit done annually and are subjected to scrutiny assessments almost every year. These companies can discharge their tax liability through quarterly advance tax as applicable to most other sectors in the country. l. CBDT has considered the relaxation of withholding tax provisions from time to time depending upon the needs / requirements of the industry by way of issue of clarifications. Example – Circular No. 736, dated 13-02-1996, Circular No. 1/2008, dated 10-01-2008 issued for cold storage industry.
Time Limit for disposal of cases by CIT(A), ITAT and for appeal effect orders		CIT(Appeal) and the ITAT doesn't have time limit to dispense the case and even after the Tribunal gives the order there is no time limit for the A.O for effecting the Order	There should be time limit for CIT(A) & the ITAT for passing the order and also time limit for effecting the order passed by them.
Issue of accumulation of litigation	Unnecessary additions / disallowances / High Pitch assessments / Dispute Resolution Panel	In majority of the case the tax taxpayer necessarily undertakes litigation against an addition due to; linkage of tax withholding default with income assessment; and the fear of	The remedies to avoid unnecessary litigation by the tax payer may be: - (i) Department circulars clarifying from time to time areas of law points which are prone to bonafide interpretation – being the

		penalty and prosecution which he may be visited with. In order to achieve the revenue targets, in many cases it is experienced that high pitched assessments are made, demands raised and collected. This leads to further litigation and in most of such cases additions are not upheld by the higher appellate forums. This causes tremendous harassment to the tax payers and a huge cost of litigation culminating into bad image for the country as an investment destination. This practice need serious reconsideration and should be stopped.	cases in which penalty and prosecution may be relieved; (ii) delinking of tax withholding default and income addition.
Dispute Resolution Panel		DRP has been historically vetting the orders passed by the Assessing Officers and have been refraining from taking an unbiased and neutral view on the matters. Hence, the objective of reducing litigation has been defeated	To enhance the credibility of the DRP mechanism, we recommend the following measures: d. Specific provisions should be introduced to clarify the fact that DRP directions are applicable only to the assessment year in question e. DRP mechanism should be like an arbitration process. The law on DRP should be modified to give the DRP more settlement powers. If the stated intention of introducing the DRP mechanism is to reduce litigation at Tribunals and Courts, the only way in which this can be reduced is by making the DRP a more settlement oriented forum. f. The DRP should constitute of neutral panelists like economists, accountants, lawyers along with the representatives from the Department in order to arrive at a reasoned order especially considering the fact that DRP

			deals with issues in relation to transfer pricing and foreign companies.
Section 244A	Presently, the section grants interest on refunds due to the tax-payers @ 6% p.a. (Against 12% p.a. charged under other sections such as section 234A/ 234B etc.)	As per the "Service Delivery Standards" laid down in the 'CITIZEN'S Charter' standard is to issue refunds within 6 months to 9 months. If it is not so issued, presently nobody is accountable. It is a well-known fact that in thousands of cases the refunds are not issued for years and the standards (present or earlier) are not observed.At times also unofficial instructions are given by higher authorities to assessing officers, not to issue refunds in the last quarter of the financial year to show better picture of the net tax collection.If the tax-payer has to pay a price for any default, the department must also pay a price for default.The department also should be accountable and have enforceable obligations.	d. First of all, timelines should be prescribed to process refunds due on returns. Delay beyond specified timelines should invoke higher interest. e. Section 244AA should be amended to include the following:- f. If the refunds due are not issued until 12 months from the end of the month in which the return of income is furnished or appellate order is passed or due for any other reason, rate of interest shall be enhanced to 12% p.a. for next 12 months and 18% p.a. for the period thereafter.
Foreign Institutional Investors			Any investment in securities made by FII's in accordance with the regulations made under SEBI would be treated as a capital asset. Consequently, any income arising from transfer of these securities by FII's would be in the nature of capital gains. Similar treatment should be extended to all funds (and not merely FIIs).
Status of Trust			The status of trust as 'individual' or 'AOP' is always under litigation. Status only determines the taxability of trust and applicability of certain provisions of the Act. Therefore, it is recommended to define the status of trust as an "Association of Persons".
Reduce effective cost of imported		Our Make in India dream requires to	It is recommended that the definition of FTS and Royalty

technology or technical services		increasemanufacturing efficiency and productivity. Adoption of technology is key. Given the high rate of tax on technology and technical services, it is uncompetitive for Indian businesses to adopt technology as the technology cost of import when grossed up increases by 33% more. To maintain cost competitiveness in manufacturing and production sector, a view aligned to mission of 'make in India' be taken. The cost impact of withholding taxes on suppliers of technology should be relieved by sparing such imports of technology and technical services from being taxed in India.	should specifically exclude payment for any services or royalty for the purpose of use in manufacturing and production services.
Tax filing for foreign companies			Relaxation on filing tax return by foreign companies having only FTS/ Royalty Income - In addition to the interest and dividend income, section 115A(5) of the Act should be extended to cover Royalty and Fees for technical services as well. This would provide relief to foreign companies earning passive income from performing various Income tax compliances in India and contribute to the ease of doing business in India.
AIR information in 'My Account' facility	Section 285BA requires various entities to furnish Annual information return with regard to specified financial transactions in a prescribed form to the Income tax authorities	More transparency is needed in order to enable the professionals handling the tax matters of the assessee to guide them regarding the probable compliance of the relevant provisions of the Income Tax Act with regard to the said transactions, leading to correct payment of taxes.	The AIR information of the assessee may be allowed to be reflected under "My Account" Facility provided by Department in CPC portal. A consolidated view of the transactions entered into by the assessee would help the professionals handling the tax matters of the assessee.

Scope of Annual Information Returns (AIR) under section 285BA to include the information which is required to be filed under other provisions of the Act.	c. Banks fully appreciate the need of the Government to have relevant information for enforcement under the income tax law. As such, the Banks appreciate the requirement to file 'Annual Information Return' (AIR) under section 285BA of the Act. Banks provide various information under other provisions by way of filing of Form 60, Form 61 under Rule 114D for the specified transactions entered into between parties in case PAN is not provided, submission of quarterly return related to payment of interest where no TDS applies, providing transaction and other details to Notices issued by the tax officers of CIB under section 133 (6). d. This results in multiplicity of provision of data at different points in time as well as incurring additional administration costs, efforts and time. These activities of collating information required leads to duplicity of work. Many times information sought in different formats is not readily available in system and it not feasible to modify the system every time to generate the information as per the requirement of tax authorities.		Existing limits and scope for submissions of information specified in the AIR return be amended to incorporate the information requirement by the tax authorities and thereby the provision of other returns and notices for submission should be discontinued.
Concept of arithmetical mean & range	The Finance Act 2014, by way of amendments has proposed to do away with the arithmetical mean concept and has proposed to introduce a concept of range to be notified. Also, the Finance Minister in his budget speech mentioned about the use of multiple year data, but no clarity on the same has been provided yet.		It would serve the purpose of taxpayers if the 'concept of range' is clarified and is prescribed and the amendment relating to the use of multiple year data is given effect to, especially given that this has been a sour point between the taxpayers and the Indian Tax Authorities ever since the inception of transfer pricing provisions.
Use of Secret Comparables	The Indian TP code does not expressly prohibit use of secret comparables by transfer pricing authorities.	Since the law provides for maintenance of contemporaneous documentation based on information available in public domain, use of secret comparables by transfer pricing authorities would be unfair and hence should be restricted.	Use of secret comparables by transfer pricing authorities to determine conformity with the arm's length principle should be restricted. Provision should be introduced to ensure that the tax payer is given sufficient opportunity to analyse the secret comparables
Section 92E read with Rule 10E and Form 3CEB	Simplification of disclosure requirements in Accountant's Report (Form 3CEB)	The Finance Act, 2012 amended the transfer pricing provisions to include specified domestic transactions ('SDT'). Consequently, the CBDT notified the revised Form No. 3CEB ('Form') and	To make life simple for the tax payers the following changes to the Form would be most welcome: d. Explanatory Notes - Considering the issues surrounding reporting

		provided for its electronic filing.	requirements, the tax payer should be allowed to insert explanatory notes to Form 3CEB along with electronic uploading of the Form. e. Summary of the transactions - During the past eight round of transfer pricing audits, it has been observed that transfer pricing adjustments are made vis-a-vis a transaction and not the Associated Enterprises (AEs). In light of the above, it would be advisable to revise the Form to enable tax payers to provide only summary of transactions (i.e. no detailed AE wise requirement as laid down in the existing Form). The existing detailed reporting requirements of the Form should apply to following cases - • where the AE is located in any country/territory notified under section 94A; or • in a no tax; or • low tax country/territory. • Tax authorities can seek details of transactions during the assessments, if required. This is also the criteria prescribed in the Safe Harbor Rules. f. Section 94A for transactions of an assessee with a person in a notified jurisdiction requires the parties to the transaction to be deemed associated enterprises. However, there is lack of clarity as to where a disclosure for such transaction has to be made in the Form 3CEB. It is requested that aclarificatory notification be issued to make the disclosure requirements clear to taxpayers.

Section 9: Income deemed to accruing in India	Secondment/ deputation of employees: Increasing globalization has resulted in fast growing mobilization of personnel across various countries. Typically, the company deputing the personnel initially pays the salary and other costs on behalf of the company to which such personnel are deputed, which are thereafter reimbursed by the latter company.	e. Whether such reimbursements made by Indian entity to an overseas entity towards salary and other costs in relation to the deputed employees should be taxable in India as being payment in the nature of service fees; and f. Whether presence of such deputed personnel create PE of deputing entity in India.	f. Since the employees deputed to the Indian company work under the control and supervision of the Indian company and hence are essentially 'employees' of the Indian company, the amounts paid by the Indian company to the foreign company are merely 'cost reimbursements' for the salaries paid on the Indian company's behalf. g. As the employee reports and works directly for the Indian company and operationally works under the 'control and supervision' of the Indian company, therefore, deputed personals are not carrying any work of deputing entity in India and therefore shall not create PE of deputing entity in India. h. Suitable provisions shall be incorporated in Act to clarify the above position.
14A	Disallowance of expenses related to exempt income.	f. Section 14A of the Act was introduced by the Finance Act, 2001 w.r.e.f. April 1, 1962, to provide that expenditure incurred by the assessee in relation of exempt income shall not be allowed as deduction in computing the Total Income. g. This provision was brought in the statute book to curb the possible abuse of claiming deduction of such expenses against the other taxable income. The purpose behind this provision is to disallow such expenses as the income itself is not	c. It is suggested that the scope of section 14A of the Act, should be limited to cases where the Income is really not taxable and should not be extended to cases where Income is technically treated as exempt. Accordingly, section 14A of the Act should not be triggered in case of dividend income. d. Disallowance under section 14A of the Act should not be made with respect to interest and other expenses claim on the amount of promoter contribution in the infra SPV formed for undertaking Infrastructure projects as per bidding/JV/ regulatory/ business requirements.

		liable to tax. h. In this backdrop, one may note that, the dividend income from shares/units is exempt in the hands of the share/unit holders not because the same is not taxable at all but because of the fact that on distribution of such dividend, tax is now collected by the Government from the Company/Mutual Fund. Therefore, it can be said that dividend, in real terms, is a tax-paid income, though technically the same is treated as exempt in the hands of the share/unit holder. i. At times, infra SPV is formed for undertaking Infrastructure projects as per bidding/JV/ regulatory/ business requirements. The promoters contribution in such SPV is subject to disallowance under Section 14A. The intention is not to earn dividend income in such cases. j. This puts Indian corporate at disadvantageous position vis-a-vis foreign corporate which are not subject to such disallowance in home country.	
Rule 8D of the Rules	Disallowance of expenses related to exempt income – Rule 8D	g. Section 14A of the Act provides that no deduction shall be allowed in respect of expenditure incurred in relation to income	Therefore, it is absolutely necessary to make clarificatory amendment in section 14A of the Act to specifically provide that only those expenses which are directly related to earning of

		which does not form part of total income. h. Rule 8D of the Rules prescribes the relevant method for computing the expenses in relation to exempt income. As per the prescribed method the disallowance is aggregate of following: i. Amount of expenditure directly relating to exempt income j. Amount of interest expenses in the proportion of average value of investments to average of total assets. k. Half percent of average value of investments l. Rule 8D of the Rules has created severe genuine hardships for taxpayers and post insertion of this Rule, the implementation of the provisions of section 14A has far exceeded its intended scope. In particular, considering half percent of the investments as expenditure in relation to earning exempt income is totally arbitrary. In fact, in some cases it works out to be much more than the actual exempt income received.	exempt income be disallowed. Alternatively, it is suggested that the third limb of the method prescribed under Rule 8D namely, half percent of the average value of the investments should be removed from the Rules for the purpose of determining disallowance under section 14A of the Act and replaced with 0.5% of investment income.
Higher TDS for non-quoting of PAN – Section 206AA	Section 206AA of the Act cast obligation on the payer to deduct tax @ 20% if the payee does not have Permanent Account No. ('PAN') (In case otherwise applicable withholding tax	f. Finance (No. 2) Act 2009 inserted section 206AA w.e.f. from 1.4.2010. This section provides that in the event of non-submission of PAN by	c. It is desirable that section 206AA be withdrawn at least for non-resident payees. d. TRACES website to allow the deductors to download certificates for no PAN cases.

	rate is lower than 20%) In most of agreements it is observed that Indian entity bears the Indian Income tax cost of foreign entity.	the payee, tax would be deducted at the higher of the following rates: • Rates specified in the relevant provisions the Act; • Rates in force; or, • 20% g. This provision does not recognize the practical difficulties of the deductor especially relating to non-residents. In many cases onetime payment to non-residents are negotiated on a net of tax basis. In other words, a non-resident in such cases receives the payment net of withholding tax. The tax in this case is borne by the Indian deductors and the same is grossed up. The payees are not keen to obtain PAN in such cases since these are one-time transactions as also the fact that the tax is borne by the Indian payer. h. It is worth noting that this provision adversely hits the Indian payer who is required to bear an additional tax burden merely because the non-resident payee has not furnished PAN. i. Provisions of section 115A(5) of the Act, specifically exempt foreign companies from the requirement of	This anomaly should be given an immediate attention.

		furnishing return if the income is derived from certain specified receipts. Even in such cases, there is reluctance on part of the foreign entities to comply with the requirement of obtaining PAN. j. This requirement and the consequential higher rate would add to the cost of services and procurement for Indian Industry, thereby affecting their competitiveness.	
37(1)	Expenditure on CSR activities as per section 135 of the Companies Act, 2013	Any expenditure incurred by a company relating to CSR referred to in Section 135 of the Companies Act 2013 is not deemed to be an expenditure incurred for the purpose of business and thus, is not an allowable as deduction while computing the taxable income. Since the incurrence of CSR expense is mandatory under the Companies Act, non-allowance of deduction would result in such expense becoming in nature of 'tax'. Accordingly, it is recommended that 100% deduction should be allowed for CSR.	100% deduction should be allowed for CSR.
Section 35(1)(iia)	Weighted deduction of 175% is available on sponsored scientific research undertaken through an approved National Laboratory, University, Indian Institute of Technology and other specified institutions.	The increase in the weighted deduction to 175% from 125% was made by the Finance Act 2010. However, weighted deduction for similar sum paid to an approved company continues to be at 125%.	Approved companies should be brought on an equal footing with approved National Laboratory, University, Indian Institute of Technology and other specified institutions. Proposed Amendment: The Government should similarly increase the percentage of

			weighted deduction on contributions made to such companies to 175%.
115-O of the Act	Dividend Distribution Tax		The DDT effectively results in double taxation of the same income. It can hardly be called an equitable legislation.
		f. As per the provisions of section 115-O, double taxation of dividends persist in case of inter-corporate dividends except in cases of corporates having a single-tier holding structure. g. The amendment made by Finance Act 2013, as worded, still does not remove the cascading effect of DDT. h. Double DDT applies to all cases of inter-corporate dividend like that from non-subsidiaries and mutual funds. i. The requirement of 'dividend received by the domestic company during the financial year' leads to the cascading effect. j. The existence of the proviso to section 115O(1A) providing that 'same amount of dividend shall not be taken into account for reduction more than once further leads to the cascading effect	d. It is recommended that the provisions be appropriately amended to remove the cascading effect of DDT in a multi-tier corporate structures, as seems intended by the Government. e. It is recommended that the cascading effect be removed by allowing credit of DDT-borne dividends in all cases of dividends received like that from non-subsidiaries or mutual funds. f. A clarification be inserted to state that DDT is in nature of tax on the profits of the company so that the foreign shareholders are able to claim credit of DDT paid in India against their tax liability in home country.
Taxation of social security contributions in		f. In respect of an expatriate employee deputed to India, the	It needs to be clarified under the Act, that employer contributions to such social security schemes

the hands of Expatriates		home employer and employee may be required to contribute to social security schemes under the local law of country. In most cases, the contributions made to these schemes may not vest on the employee at the time of making the contributions and thereby do not provide any immediate benefit to the employee. Further, the employee contributions may also be mandatory under the law of the home country. Both the employer and employee contributions may be available as a deduction from taxable income in the home country of the expatriates. g. However, currently, there is no provision under the Act, which provides for the taxability or otherwise in respect of such contributions from the taxable income though there have been several favorable judicial precedents to this effect such as L.W. Russel, Galloutti Raoul, LukesFole etc7. h. Recently, even the Delhi High Court (High Court) pronounced in	should be exempt in the hands of the individual employee based on the principle of vesting. Further, the employee contributions should be available as a deduction where the same are mandatory and constitute diversion of income by overriding title.

[7] CIT v. L.W. Russel [1964] 53 ITR 91 (SC),
Gallotti Raoul v. ACIT [1997] 61 ITD 453 (Mum),
DCIT v. Mr. Moroux c/o Air France (Delhi) (2008),
ITO v. Lukas Fole (Pune) (2009),
CIT v. NHK Japan Broadcasting Corporation [Civil Appeal No. 1712 of 2009 – SC],
ACIT v. Scott R. Bayman (Delhi) (May 2009), ACIT vs Harashima Naoki Tashio (Feb 2010)

		case of Yoshio Kubo, based on the ratio laid down in the rulings of L.W. Russel and Mehar Singh Sampuran Singh Chawla8 that employer's contribution to overseas social security, pension and medical/ health insurance do not qualify as perquisite under Section 17(1)(v) of the Act and are not taxable in the hands of the employees.	
Tax Residence Certificate	The Finance Act, 2012 had provided that in order to be eligible to claim relief under the tax treaty, a taxpayer is required to produce a Tax Residency Certificate (TRC) issued by the Government of the respective country or the specified territory in which such taxpayer is resident, containing certain prescribed particulars. Subsequently, the Central Board of Direct Taxes (CBDT) prescribed the details to be included in the TRC. The Finance Act, 2013 has done away with the requirement of obtaining prescribed particulars in the TRC. In other words, the taxpayer can continue to obtain the TRC as issued by the foreign authorities. The Finance Act, 2013 also introduced a provision to clarify that the taxpayer shall now be required to furnish such	e. Even though the requirement to furnish TRC containing prescribed particulars has been dispensed with, however, depending on the jurisdiction, obtaining a TRC certificate may also be a time consuming/difficult process. TRC requirement increases the administrative difficulty for non-residents, especially from the perspective of non-residents having very few/limited transactions connected to India. f. The deductor would like to obtain the TRC at the time of the transaction/ depositing the tax (to ensure that the payee is eligible for the tax treaty benefits), the payee would typically be able to obtain TRC only after	g. The requirement to obtain TRC for a taxpayer to prove that he is a resident of the other state should be deleted as there may be circumstances wherein the taxpayer who is a bona fide tax resident of the other contracting state is unable to procure a TRC owing to circumstances outside his control. At assessment stage, it is anyway incumbent upon the AO to ascertain complete details before allowing tax treaty benefits. In such a scenario, even though the AO may otherwise be satisfied that the tax treaty benefits must be allowed, only owing to the procedural lapse of not obtaining the TRC which is beyond the tax payer's control, the AO would be compelled to deny tax treaty benefits, which will cause needless hardship. h. The deductor would like to obtain the TRC at the time of the transaction/deducting the tax (to ensure that the payee

[8] Yoshio Kubo and others (the taxpayer) v. CIT (ITA 441 and other appeals),
CIT v. L.W. Russel [1964] 53 ITR 91 (SC)
CIT v. Mehar Singh Sampuran Singh Chawla [1973] 90 ITR 219 (Del),

	other information or document as may be prescribed. The CBDT subsequently issued a notification amending the Income-tax Rules, 1962 (the Rules) prescribing the additional information required to be furnished by non-residents along with the TRC. The details are required to be furnished in Form 10F.	the relevant year. g. As per the new Rule an Indian resident who wishes to obtain TRC from Indian income tax authorities, is required to make an application in Form No. 10FA to the tax officer, containing prescribed details. However, no time limit for issue of TRC is specified from the date of application by the assessee. Furthermore, the issue of TRC in Form No. 10FB has been left to the discretion of satisfaction of the tax officer, without providing a substantive definition for satisfaction in this regard. h. It has not been specified as to who shall sign Form 10F. Hence, it should be clarified who is authorized to sign the form.	is eligible for the tax treaty benefits), it would pose a hardship to the payee to obtain a TRC before the end of the relevant financial year. The procedure so cast would pose onerous responsibility both on the payers/payee resulting in holding of payments by the payer. i. Without prejudice, even if the requirement to obtain TRC must stay, it is recommended that the TRC shall be made mandatory only for cases where the total payment to a non-resident exceeds Rs. 1 crore in a financial year. This would mitigate hardship in respect of small payments. j. It is further recommended that the requirement to furnish TRC should be cast upon the payee at the time of the assessment of the payee and the deductor/payer should not be made liable to collect TRC from the payee at the time of withholding tax. k. The time limit to issue TRC in Form 10FB should be specified and to further specify that in case the tax officer refuses to issue a TRC, the application of the assessee should be disposed by the tax officer by passing a speaking order and clearly specifying the reasons for rejecting the application of assessee. l. It may be specified that persons prescribed under section 140 of the Act for the purpose of signing the return of income would be eligible to sign Form 10F.

<u>Annexure 2</u>

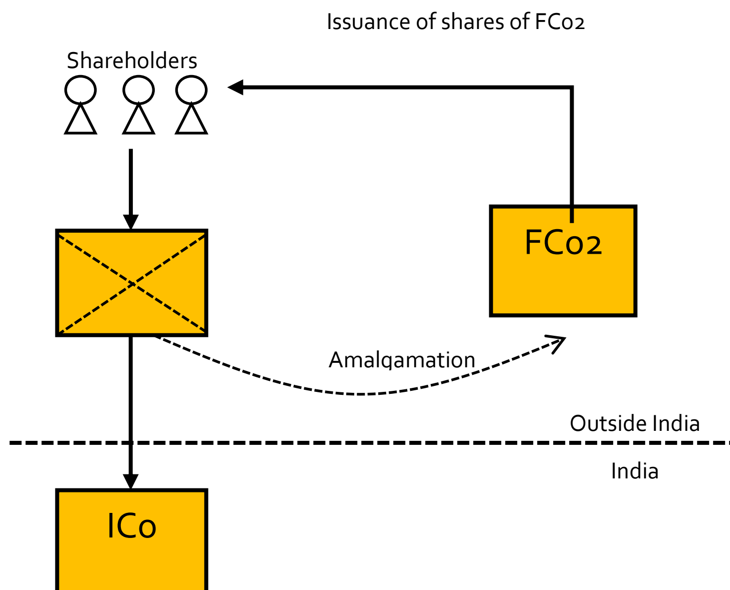
<u>Background of provisions relating to foreign amalgamations</u>

9. Prior to the introduction of Explanation 5 to Section 9(1)(i) of the Act, any “direct transfer” of shares in an Indian company resulting from an amalgamation of a foreign company (holding the shares in an Indian company) with another foreign company, was exempted from the capital gains tax provisions <u>in the hands of the amalgamating foreign company</u> where the conditions laid down in Section 47(via) were satisfied.

10. Further, prior to the introduction of Explanation 5 to Section 9(1)(i), <u>the shareholders of the amalgamating foreign company</u> whose shares in such amalgamating foreign company stood extinguished and in lieu received shares of foreign amalgamated company, were not subject to capital gains tax in India, as the subject matter of transfer were shares in a foreign company (which were considered to be assets situated outside India).

11. However, after the introduction of Explanation 5 to Section 9(1)(i), the shares of an amalgamating foreign company which derived substantial value from assets located in India, was deemed to be an asset situated in India and any transfer of the shares in India.

12. The above situation can be explained by way of the following diagram.

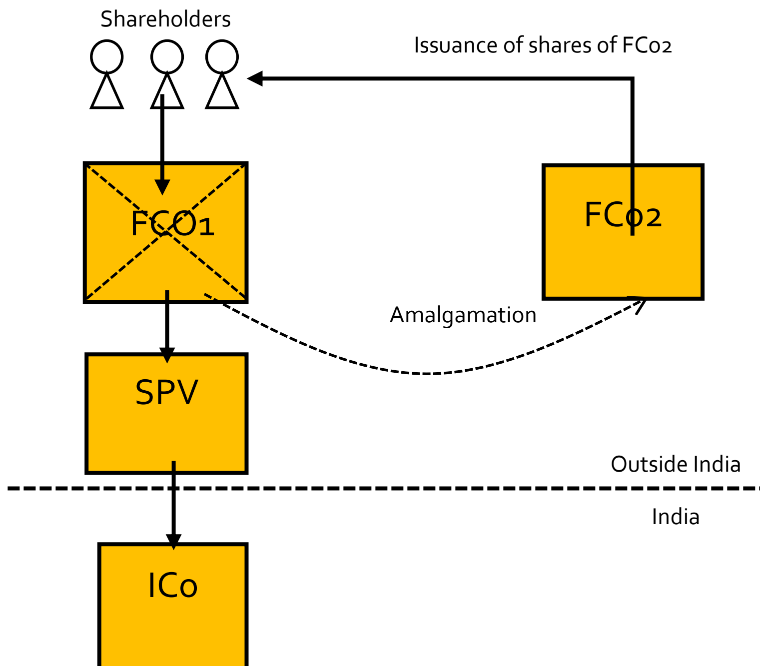


In the above illustration, the amalgamating company FCo1 which holds shares of ICo enjoys exemption u/s. 47(via) if the conditions specified therein are satisfied. However, the shareholders of F Co 1 do not enjoy any exemption though may trigger tax liability in India on account of F Co

deriving substantial value from assets located in India. There is need to provide for exemption for the shareholders along the lines of exemption which is available u/s. 47(vii).

13. It is true that amendment proposed by the Finance Bill 2015 will protect the amalgamating foreign companies which hold shares of the foreign entity (being SPV deriving value from India) and covered by Explanation 5 to S. 9(1)(i).

14. As illustrated below, there can be exemption for such amalgamating foreign companies which was not available in absence of S. 47(viab) as proposed. Upon merger of F Co 1 with F Co 2, there would be tax trigger in respect of transfer of shares of SPV. If SPV is covered by Explanation 5 to s. 9(1)(i), the tax trigger for
F Co 1 is relieved under S. 47(viab). However, the shareholders of F Co 1 are still not protected. In any case it is not litigation free.



Recommendations

15. Keeping in view the above discussion, it is requested that a new provision be introduced which extends the capital gains tax exemption in the situations discussed above to the “shareholder” as well. This provision could be in line with the existing provision Section 47(vii) which provides capital gains tax exemption to the shareholder on the transfer of shares in an Indian company where the amalgamated company is an Indian company.

16. An attempt to draft the required provision is made as follows:

"any transfer by a shareholder, in a scheme of amalgamation of a capital asset being a share of a foreign company, referred to in Explanation 5 to clause (i) of sub-section (1) to Section 9, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company held by him in the amalgamating foreign company, if—

(c) the transfer is made in consideration of the allotment to him of any kind of shares in the amalgamated company except where the shareholder itself is the amalgamated company, and

(d) such transfer does not attract tax on capital gains in the country in which the amalgamating company is incorporated"

Contents

KEY ISSUES: 212

1 Fast track implementation of Goods and Service Tax (GST) 212

2 SAD exemption / refund to boost manufacturing sectors facing inverted duty structure 213

3 Increase in the rate of service tax 214

4 Utilization of Education Cess ('EC') and Secondary & Higher Education Cess ('SHEC') balance. 214

5 Introduction of the Swachh Bharat Cess 215

BUDGET CHANGES: 215

6 Rationalizing duties for local manufacturers operating in Wind energy segment ... 215

7 Inverted duty structure created on Reverse Osmosis (RO) Membrane Elements (Other than household type filters) 216

8 Anomaly in S.No. 239 sub clause (a) of Notification 12/2012 CE 218

9 Service tax being made applicable on sales/ indenting agents commission 219

10 Ambiguity on the Excise duty Exemptions granted to Wind Operated Electricity Generator (WOEG) and its parts 220

11 Amendments in Rule 11 of Central Excise Rules (CER) and Rule 4 of Cenvat Credit Rules (CCR) for goods directly sent to job worker 220

12 SAD exemption on Wind Operated Electricity Generator (WOEG) parts 221

13 Exemption to Wind Energy Projects to be at par with Solar Energy projects 221

14 Rationalization of Excise duties on manufacturing of Soft drinks 222

15 Restrictions to transfer of CENVAT credit from one factory of LTU to its another factory 223

16 Withdrawal of levy of Service tax on reverse charge mechanism in case of aggregator services 223

17 Increase in abatement on MRP based commodities 223

18 Time limit for availing CENVAT Credit on inputs and input services increased to one year 224

19 Increase in Import duties on mobile phones should be rolled back 224

20 Clarify the ambit of the term 'Export' under Rule 18 of the CER, to include the supplies made to SEZ 225

21 Authentication of excise and service tax records by digital signature 226

LITIGATION CHANGES: 226

22 High interest rates on delayed payment of service 226

23 Pre-deposit for filing appeals 227

Sr. No.	Issue	Justification
KEY ISSUES:		
1	**Fast track implementation of Goods and Service Tax (GST)** • Although in the Union Budget for FY 2015-16 the Finance minister has reaffirmed Government's commitment to introduce GST from 1 April 2016. However, the Finance Minister has not stipulated any clearly defined the road map for the introduction of the same in the said budget. • Further, few steps have been taken by the Finance Minister like subsuming the EC and SHEC on the Excise duty. • However, still the both the industry and judiciary vexed in equal measure. • Further, the panel set up by the State governments have proposed a very high revenue neutral rate ('RNR') of 26.68% (Centre - 12.77% and State – 13.91%) which is not in sync with the inception	Hence, AMCHAM suggests the following: • Widen tax base to ensure a lower RNR. RNR should be aligned to the Parliament Standing Committee Recommendations • Industry collaboration must on key areas such as: - Draft GST legislation - RNR discussions - Integrated GST model - Place of supply rules • Further, a detailed report for industrial and manufacturing growth of India should be prepared in order to estimate revenue collection under the GST regime and RNR should be finalised accordingly. • The classification of products under the GST regime should be aligned with HSN classification to ensure uniformity. • Expedite setting up of the GSTN

	RNR rates in most nations. • Successful GST models adopted by other countries had a very broad base and a relatively modest tax rate, especially at the time of inception. For example, the New Zealand GST was introduced at the rate of 10%, with a base consisting of virtually all goods and services with the exception of financial services. Singapore GST rate was 3% at inception, which has now been raised to 7%.	
2	**<u>SAD exemption / refund to boost manufacturing sectors facing inverted duty structure</u>** • Presently, many manufacturing industries like heavy earth moving equipment industries, etc are forced to import raw materials due to unavailability of indigenous raw material. It is pertinent to highlight that for such industries the Cenvatable import duty on raw materials is approx.18.34% (i.e., CVD 12% & SAD 4%), whereas the excise duty payable on finished products in India is 12.36%. • In order to enable the industry to utilize the full CENVAT Credit of the Cenvatable component of import duty there has to be necessarily a minimum	• In order to promote Companies to set up their manufacturing facilities in India and to promote the 'Make in India' objective of the central Government, AMCHAM suggests that the Government may consider the following: (i) Exempt SAD on raw material used for manufacturing final product which are meant for subsequent sale liable to VAT / CST in India; or (ii) Allow refund of SAD on raw material used for manufacturing final product which are meant for subsequent sale liable to VAT / CST in India • The above amendment will be in line with the principles for levy of SAD, which was levied in order to protect the domestic industry which suffers levy of sales tax. • The said amendment will also be in line with exemption from SAD

	value addition of 48.38% in India. • This anomaly leads to an inverted duty structure whereby the CENVAT Credit on inputs is higher than the total excise duty liability on finished product wherever the value addition is lower than 48.38% in India, leading to accumulation of the CENVAT Credit which becomes a tax cost for the industries. • This creates a huge working capital burden on the manufacturers of these high value items.	granted to MRP based products which are meant for re-sale in Indian markets and suffer levy of VAT/ CST on sale in domestic market. • The above amendment is in sync with the objective of the Central Government to promote indigenous manufacturing i.e., "Make-in –India" concept. Further, this will bring manufacturing and trading at par thereby ensuring that companies prefer to manufacture in India rather as compared to importing and trading.
3	**<u>Increase in the rate of service tax</u>** In the Finance Bill 2015-16, service tax rate is proposed to be increased from 12.36% to 14%. This increase in the service tax rate is not in sync with the intention of the policy makers under the GST regime where the intention of the law makers is to widen the tax base and lower the tax rate.	Accordingly, it is suggested that the former rate of service tax should be restored and service tax should be applicable @12.36%.
4	**<u>Utilization of Education Cess ('EC') and Secondary & Higher Education Cess ('SHEC') balance.</u>** • EC and SHEC are proposed to be subsumed in the flat rate of 14% in the case of Service tax and 12.50% in the case of Excise.	• The Government should allow credit of the unutilised balance of EC and SHEC against Output Excise/Service Tax, which would otherwise be loss of substantial amount of Credit and thus would create unnecessary burdensome on the assesses.

	• However, as per proviso under Rule 3(7) of CENVAT Credit Rules, 2004, the credit of EC and SHEC can be used to pay Output EC and SHEC only. • The balance of Input EC and SHEC, as on 1st Mar' 2015, will not be get adjusted against output EC and SHEC since EC and SHEC would not exist. Thus the same would lead to loss of credit.	
5	**Introduction of the Swachh Bharat Cess** • The Finance Bill 2015-16 has proposed to levy 'Swachh Bharat Cess' at the rate not exceeding 2% on the value of all or any of the taxable services from a date to be notified • However, there is no clarity in the Finance Bill if the Swachh Bharat Cess would be levied on all the taxable services or few selected taxable services. • Further, there is no clarity on the CENVAT credit eligibility of the cess paid. • Additionally, an extra 2% Cess would be extremely burdensome on the end customer already fighting inflation	Hence, it is suggested that Swachh Bharat cess should be rolled back
BUDGET CHANGES:		
6	**Rationalizing duties for local**	**Recommendation:**

	manufacturers operating in Wind energy segment • Currently concessional Import duty and zero CVD is allowed to wind mill component makers on import of Intermediates. • Furtherlocally manufactured intermediates are also exempted from Excise duty • However, the raw materials required for manufacturing such intermediates are not provided any exemption. Thus intermediate manufactures pays full excise duty/CVD (12.3%) on their raw materials which cannot be set off against output liability since the final product is exempt from duties • This results in undue cost and loss of credit for the manufacturers literally resulting in failure of the local manufacturers • The aforesaid anomaly was acknowledged by the Ministry of Finance and they even provided their intention to remove this anomaly through Circular D.O.F No 334/3/2012-TRU dated 16-Mar-2012, however, no such amendments have been made till date	• Benefits available on imports/ manufacturing of intermediates should be extended to raw materials used for manufacturing the same • Accordingly,the following changes need to be made to remove the anomalies: (a) Add "intermediates" at the beginning of the description of Point 5(b) of Serial No. 362 Customs Notification 12/ 2012 dated 17 March 2012 (b) In Serial No. 327 of Central Excise Notification 12/2012 dated 17 March 2012, incorporate the following: • Add Serial No 19 in list 9 with the description "*Raw materials falling under chapter 28 and 29 formanufacture of goods at sl.no. 1 to 18*" • Add chapter 28 and 29 in column 2
7	**Inverted duty structure**	The Government could consider any of

	created on Reverse Osmosis (RO) Membrane Elements (Other than household type filters) • The excise duty exemption granted by the Government vide Notification no. 12/2014 CE dated July 10, 2014 on RO membrane elements has adversely impacted the domestic manufacturers of RO membrane elements vis-a vis traders importing RO Membrane elements. • After the exemption, the domestic manufacturers are now unable to avail input credit of excise duty/CVD/SAD paid on domestic and imported raw materials used in manufacture of such membrane elements. • This exemption has resulted in creating a grossly unfair duty advantage for Traders selling imported RO membrane elements and making domestic manufacturing wholly unviable. • The effective import duty paid by the traders on the imported RO membrane elements post budget is 12.03% out of which 4.31% is available as refund. However, the domestic manufacturers are now burdened with 28.85% import duty on raw	the following alternate approaches to re-create the level playing field between the domestic manufacturers and importers – • Restore the pre-budget duty regime by withdrawing the excise duty exemption to RO water membrane element extended vide Notification no. 12/2014 -CE dated July 10, 2014. • Extend full exemption from payment excise duty/CVD and special additional duty of Customs (SAD) on at least the major raw materials used in manufacture of RO Membrane elements, namely, Thin Film Composite classifiable under Chapter 39 and RO Product Carriers classifiable under Chapter 59 of the Customs and Excise Tariffs.

	materials which is wholly non creditable / refundable • While the Budget amendments have removed the anomalies of Inverted Duty structure for some of the Electronic / IT goods, similar redressal is required for RO Membrane elements. This is clearly against the "Make-in-India" campaign as it disincentives domestic manufacturing of these goods.	
8	**Anomaly in S.No. 239 sub clause (a) of Notification 12/2012 CE** • Clause (a) of S.No. 239 of Notification 12/2012 CE grants exemption from excise duty on Water treatment equipment which use Ultra Filtration technology for water purification. • However, this exemption is available subject to a condition that the manufacturer to use a specific raw materials namely "polyacrylonite membranes" or "polysulphone membranes" • The list of raw materials mentioned in the above entry does not include "polyvinylidenedifluoride (PVDF) membranes" which is a superior quality raw material capable of giving better results than the other	Not including PVDF membrane in the eligible raw material list is adversely affecting the industry since PVDF being widely used in Water treatment plant. • Entry no. 239 (a) should be amended to include PVDF membranes also as a qualifying raw material for granting excise duty exemption on Ultra filtration water treatment equipment

	two raw materials.	
9	**<u>Service tax being made applicable on sales/ indenting agents commission</u>** • Till 30 September 2014, services provided by Indian Agents to its overseas customers in relation to promotion of goods were qualifying as export of service and accordingly were not liable for service tax. • The definition of Intermediary has been amended w.e.f. 1 October, 2014 to include services provided by broker or agent who arranges or facilitates a provision of service or supply of goods. • Due to the aforementioned amendment, the Intermediary services by Indian Agents to overseas customers in relation to supply of goods are getting covered under Rule 9 of Place of provision of services Rule, 2012 (POPS) and therefore are subjected to service tax.	• Agents in India are promoting goods of its customers which are located outside India. Further Agents are also receiving commission from overseas entity in form of foreign exchange and are complying the conditions prescribed for export of service. • Services provided by commission agents to overseas suppliers has always been held to be exports until now and has repeatedly been held clarified by Board circulars, *Circular No. 111/5/2009-S.T. dated 24-2-2009*, and again vide *Circular No. 141/10/2011-TRU dated 13-5-2011* • Levying service tax on agents providing intermediary services to foreign service recipients is contrary to well established consumption based destination principle followed in EU, NZ, Australia, Canada, S,Africa, Malaysia, Singapore where such services are unequivocally treated as exports. • Service tax on intermediaries providing services to foreign suppliers results in higher costs of exports and for infrastructure imports required by domestic industry (as such service tax is not creditable or refundable). Service tax on intermediaries thus makes India globally uncompetitive and flies in the face of Govt. of India's –'Make in India' campaign. • Thus it is suggested that Intermediary services for promotion goods as well as services of a

		foreign Principal may please be excluded from Rule 9 of POPS as the services in essence are in the nature of export of services, to be consistent with the globally accepted VAT precept of not exporting duties and taxes.
10	**Ambiguity on the Excise duty Exemptions granted to Wind Operated Electricity Generator (WOEG) and its parts** • Wind Industry enjoys Excise and SAD[9] exemption on parts & components of Wind Operated Electricity Generator (WOEG). • Further, certain parts of WOEG enjoy 5% Basic Customs Duty (BCD) • In recent times, lots of issues are being raised on meaning (coverage) of Parts & Components of a WOEG for the Excise exemption. Notices and demands are being raised on certain critical components such as Towers, Converters, etc.	• It is suggested that for Excise (CVD) & SAD exemption notification, a clarification is required thatall parts that form part of the WOEG (i.e. are housed in it and are required for its smooth operations) e.g. Towers, Converters, Transformers, etc, are covered by the current notification(s).
11	**Amendments in Rule 11 of Central Excise Rules (CER) and Rule 4 of Cenvat Credit Rules (CCR) for goods directly sent to job worker** • Rule 11(2) of CER has been amended to provide that where goods are sent	• Though it is a good Trade facilitation move. However, it is request that necessary clarification is also issued for cases where the inputs go directly to the job worker who does the complete manufacturing and the manufactured goods are supplied from the Job worker premises

[9]SAD – Special Additional duty of Customs levied in lieu local sales tax

	to a job worker on directions of a Manufacturer or an Output Service provider, the vendor invoices will show the Manufacturer / Output Service Provider as Buyer and Job worker as Consignee. • Further Rule 4(1) of CCR has been amended to allow the Principal Manufacturer / Output Service Provider to take credit as soon as goods are received in the premises of the Job worker	directly to the ultimate customer. • In such cases credit is being taken by the Job worker (by virtue of vendor invoice mentioning job worker as 'consignee' and the job worker qualifying as 'manufacturer' for the purpose of Excise). • Clarification is required to avoid any disputes that can be raised by field authorities at ground level
12	**<u>SAD exemption on Wind Operated Electricity Generator (WOEG) parts</u>**	• SAD was exemptedw.e.f. July' 14 on parts & components required for manufacture of WOEG. • However, no such exemption has been provided on parts and components used in maintenance • It is requested that the exemption is also granted to parts/ components used in maintenance • In this regard, it is submitted that BCD and Excise has specifically been exempted even in cases of parts/ components used in maintenance.
13	**<u>Exemption to Wind Energy Projects to be at par with Solar Energy projects</u>** The concessions granted to Wind Energy Projects are not at par with the Solar Energy Projects as demonstrated	It is suggested that • To bring Wind projects at par with Solar Projects as regards the following: - Excise exemption to BoP

	below: • Excise exemption is not available for certain Plant (BoP) equipment for Wind Farm such as Transformer, transmission line / equipment, meters, testing & control equipment, etc. • Howeverin the case of Solar energy farms wherein no Excise duty is levied for all types of equipment (including quality control, research, Transmission line / equipment, etc). • While all equipment imported by a Solar Project enjoys BCD[10] of 5%, whereas in the case of Wind farm only certain project enjoy the said concession. • Supplies to Solar Energy project is zero rated i.e. availability of Input Cenvat credit despite NIL Excise duty on Output.	equipment (e.g. control gears, cables, Transformer, transmission line / equipment, meters, testing & control equipment, etc.) - Zero rating i.e. availability of Input Cenvat credit despite NIL Excise duty on supplies to the Wind Projects 5% BCD on all equipment for Wind Turbines since current list is very restricted
14	**<u>Rationalization of Excise duties on manufacturing of Soft drinks</u>** • Basic Excise Duty leviable on Carbonated Soft Drinks is proposed to be increased from 12% to 18% *vide* Budget 2015-16. • However, Government has not increased the	It is suggested thatas a result of increase in the rate of Basic Excise Duty on Carbonated Soft Drinks from 12% to 18%, corresponding abatement % prescribed for such goods must also be reviewed by the abatement committee and suitably increased to incorporate the impact of high incidence of Central Excise Duty and Value Added Taxes.

[10] BCD - Basic Customs Duty

	abatement percentage	
15	**Restrictions to transfer of CENVAT credit from one factory of LTU to its another factory** • Rule 12A of CENVAT credit Rules , 2004 was amended vide Finance Act, 2014 whereby transfer of credit from one factory premises to another of the same LTU is restricted. • The above restriction has resulted into blockage of working capital in the form of CENVAT credit in one factory while for other factories the excise duty / service tax need to be paid in cash. • Thus, the said amendment has created operational imbalance among different units of the same entity	These amendments made by Notification No. 21/2014-Central Excise (N.T.) dated 11.07.2014 should be reversed, since the same has adversely affected working cash flows and business operations of the entities which are registered as LTU.
16	**Withdrawal of levy of Service tax on reverse charge mechanism in case of aggregator services** • Introduction of service tax on reverse charge mechanism on service involving aggregator will adversely affect one of the upcoming industry which caters to the need of customers with introduction of great technology platforms and provides comfort to the customer.	• Accordingly, AMCHAM suggests to withdraw the proposed Service tax levy on reverse charge in the case of ‘aggregator services’.

17	**Increase in abatement on MRP based commodities** • Abatements have not been increased despite of increased in warehousing costs, freight forwarding charges, increased land costs for importing goods. • Thus, increasing the overall price of the MRP based commodities	• AMCHAM suggests that there should be considerable enhance in abatements on MRP commodities since other costs have substantially increased. • The above enhancement would help in regulating the price of MRP based commodities
18	**Time limit for availing CENVAT Credit on inputs and input services increased to one year** • Under the present Budget it is proposed to extend time limit for availing CENVAT Credit on inputs and input services from six months to one year from the date of issue of invoice/ challan/ other documents as specified in Rule. • Earlier under the Union Budget 2014-15, time limit of 6 months was introduced for availment of CENVAT credit. However, this amendment was contrary to various decisions wherein it has been held that a time limit on availment of credit cannot be imposed.	The extension of time limit from 6 months to 1 year is a welcome step, however, since the delay in availment of credit does not change the fact of payment of duty/taxes on the inputs and input services, thus the same should be available to the assessee irrespective of any time limits.
19	**Increase in Import duties on mobile phones should be rolled back** • The government has proposed to increase import duties on Mobile Handsets.	• Considering the importance of Mobile phones in today's world and in order to achieve success in Digital India initiative, it is suggested that government should roll back the increase in import duties

	• However, the above increase would adversely affect the mobile industry and the consumers. • Considering the Digital India' initiative of the government which is aimed to connect various Government departments with the people of India, mobile phones would be a key to its success. Mobiles phones have made daily routine activities like banking, booking tickets, internet etc. more convenient and hassle free.	
20	**<u>Clarify the ambit of the term 'Export' under Rule 18 of the CER, to include the supplies made to SEZ</u>** • The newly introduced Explanation provides the meaning to the term 'export' that export means taking goods out of India to a place outside India • Thus, as a result of the aforesaid amendment, the term export has been restricted to mean physical movement of goods outside India. • Therefore, by way of the aforesaid, it has resulted in an ambiguity whether supplies from DTA to SEZ would qualify as exports. • Hence, the aforesaid	• The amendment made in Rule 18 of CER, can be interpreted to restrict use of Rebate route for supplies by DTA to SEZ units. • Hence, it is suggested that suitable clarification is issued or amendment made to ensure that supplies from DTA to SEZ can be done following the Rebate Route under Rule 18 of CER.

	explanation is not in consensus with the scheme of the SEZ law which specifically provides that SEZs would be deemed to be outside India • Further, Rule 30 of the SEZ Rules specifically allow the option of filing a rebate claim in case of clearance of goods from DTA to SEZ	
21	**<u>Authentication of excise and service tax records by digital signature</u>** • With effect from 1 March 2015, a provision for issuing digitally signed invoices is being added along with the option of maintaining of records in electronic form and their authentication by means of digital signatures. • As per the amended provision, every page of the records preserved in the electronic form has to be authenticated by means of a digital signature. • The requirement of affixing digital signature on each and every page of the electronic records is practically impossible	• It is recommended to remove the requirement of digitally signing every page of the electronic records.
LITIGATION CHANGES:		
22	**<u>High interest rates on delayed payment of service</u>** • Variable interest rate for delayed payment of service	AMCHAM suggests the following: • The prescribed interest rate of 30 percent is too high. The existing 18 percent of interest rate should be

	tax has been introduced (effective from 1st October, 2014). Interalia, it proposes that in case of delayed payment of Service tax beyond a year, the interest rate would be 30 percent. • In the Union Budget 2015-16 the Finance Minister has totally ignored the demand of the industry to reduce the interest rates as the increase interest rates further adds on to the burden of the service providers.	restored. • In India, for a litigation to reach finality it takes around 7-9 years and if the judgment is revenue favourable then, the demand is duty plus 3 times of interest. In such a case, the proposed high interest rate would break the back of the assessee and many companies would cease to exist. Therefore, interest rate on delayed payment should not be more than 18 percent and hence, it is requested not to increase the existing rate. • Without prejudice to the above, if at all the interest rate needs to be increased then such high rate should be applicable only in specific cases, for example, in Excise duty legislation, high interest rate is attracted only if the Excise duty is collected from consumers but not paid to the Govt. Similar provision maybe introduced in the Service tax legislation
23	**<u>Pre-deposit for filing appeals</u>** Common procedural amendments have been made across Customs/Excise/ Service tax. Interalia, compulsory pre-deposit has been made applicable before filing appeals: (subject to a ceiling of INR 10 crores) • 7.5% of duty/penalty/both for 1st appeal (at Commissioner (A)/ Tribunal level) • 10% of duty/penalty/both for 2nd appeal (Tribunal level)	Clarifications / changes in the provisions with regard to the following are required: • Whether stay would be granted after payment of the prescribed pre-deposit ceiling? • Whether for the 92.5 percent of the duty demanded, separate stay needs to be obtained? • If there are three Show Cause Notices for the same matter however, the assessing authority has passed single order for the said SCNs, whether the limit of INR 10 crores would apply to each SCN or to each order passed? • If pre-deposit of 7.5 percent is paid

	However, there are multiple ambiguities in the industry with regard to the said provision which has not been clarified by the Finance Minister in the Union Budget 2015-16.	for 1st appeal at Commissioner level and then, due to unfavourable order the assessee appeals to Tribunal, then in that case, the assessee is required to pay the balance 2.5 percent (10 percent minus 7.5 percent) or full 10 percent? If it is full 10 percent, then the total pre-deposit amounts to 17.5 percent? • Pre-deposit provisions should be extended to High Court and Supreme Court as well. It is because if the ruling is in favor of the assessee, the refund process at lower level of authorities is slower however, at High Court level such refunds will be faster. The deposit should be Court deposit and not revenue deposit. • Provision of paying mandatory pre-deposit through Bank Guarantee should be an option to be provided under the new Section 35-F of Central excise act, 1944 and parimateria sections under Customs and Service tax. This way assesse will save cash and government will save on and banking sector will get benefited from BG business.

While the issues mentioned above are the key issues for your consideration, it is submitted that there are several issues which require your urgent attention.
All such issues were already a part of our Pre-Budget Memorandum and hence are not being repeated here for the sake of brevity. However, we have attached a copy of the remaining issues as **Annexure 1**.

Contents

KEY ISSUES: 231

24 Administrative Committee – Tax Administration Reforms Committee ('TARC') Report 231

25 Streamline the CENVAT Credit Scheme 231

26 No service tax on financial intermediaries 233

CHANGE IN LAW: 234

27 Cenvat Credit on endorsed Bill of Entry 234

28 Clarification on the eligibility to claim output rebate while under the Annual Advance Authorisation Scheme ('AAAS') 235

29 Eligibility to claim CST refunds on purchases made from EOU/ SEZ/ EHTP/ STP Units. 236

30 Valuation under Central Excise - impact of the judgment of the Supreme Court in Fiat case 237

31 Introduction of the concept of input tax distributor 237

32 Clarification whether commissioning or installation of locomotives or Metro train cars would be eligible for exemption under Notification No. 25/ 2012 239

33 Dual levies on software – VAT and service tax 240

34 Beneficial Customs duty rates on equipment used in medical care/ diagnosis 240

35 Denial of benefit of export of service on cross border transactions between an Entity and its BO/LO 241

36 Elimination of the Research & Development Cess (R&D Cess) 242

37 Aggrandize the scope of SFIS and FPS scheme notified under the Foreign Trade Policy 243

38 Taxability of liquidated damages under the Service Tax law 244

39 Capital goods cleared as waste and scrap 244

40 Export of inputs or capital goods as such from factory of manufacture 246

41 Customs duty exemption to import of Plant and machinery for food processing sector 246

42 Reduction in import duties on food supplements 247

43 Service tax exemptions to project offices of defence companies in India 248

44 Excise Duty Reduction on Packaged Drinking Water 248

45 Transfer of CENVAT Credit under dealer registration.. 249

46 Rectification of the typographical error in Rule 6(8) of the Cenvat Credit Rules, 2004250

47 Customs duty exemption for Medical Cyclotron.. 251

48 Cenvat credit against the service tax paid on Deposit Insurance and Credit Guarantee Corporation (DICGC) premium 251

49 Fruit pulp based drinks – Exemption under notification10/96 dated 23 May 2006.. 252

50 Denial of Cenvat credit of cess paid on sugar.. 253

51 Interpretation of the term 'Food Stuff' used in Notification No. 25/2012-ST dated 20.6.2012 253

52 Form 'C' for Construction Activities 254

53 Level playing field for Indian Compressor Manufacturers 254

54 Customs Duty exemption to notified Life Saving drugs 255

PROCEDURAL ISSUES: 255

55 Reverse Charge Mechanism... 255

56 Fast track disposal of service tax refund claims.. 256

57 Strengthening the existing Special Valuation Branch proceedings........................... 258

58 Introduction of Time limit for claiming the Cenvat Credit within 6 months from the date of issue of invoice 259

59 Amendment in Point of Taxation Rules, 2011 ('POT Rules') 260

60 Requirement for exact matching of the name of Inputs procured against Advance Authorization / Duty Free Import Authorisation Scheme.. 260

61 Departmental audits to be conducted by Chartered Accountants............................. 261

62 Simplification of import procedures for STPI units... 262

LITIGATIVE ISSUES: 263

63 Revamp the existing Dispute Resolution Mechanism 263

ADDITIONAL ISSUE: 264

64 Import of used equipment under E-waste rules 264

Sr. No.	Issue	Justification
KEY ISSUES:		
1	**Administrative Committee – Tax Administration Reforms Committee ('TARC') Report** • The Hon'ble Finance Minister in the Union Budget FY 2014-15 has proposed to setup a High Level Committee to interact with trade and industry on a regular basis to ascertain areas where clarity in tax laws is required. • Further, post discussion recommendations would be made to the Central Board of Excise and Customs ('CBEC') and the CBEC would issue appropriate clarifications wherever required in a time bound manner. • While this is a positive step towards involving the business in tax administration, it is important to note that Tax Administration Reforms Commission ('TARC') was a similar body set up under the chairmanship of Mr. ParthasarthiShome	• Accordingly, AMCHAMsuggests that: - Prior to setting up the committee, TARC suggestions are reviewed and due action is taken on them - Setting up the new Committee should not result in duplication of efforts

2	**Streamline the CENVAT Credit Scheme** • The implementation of the concept of Negative List regime is very much in line with the proposed GST Scheme whereby all services are brought under the service tax net. However, the restrictions, exceptions and limitations on availability of input tax credit still continue • The restrictions and limitations on availability of input tax credit is against the principle of value added tax • The above anomaly leads to undue litigations and administrative difficulties both for the taxpayer and the revenue	In this regard, the following suggestions may be considered: • **Removal of restrictions on input credit for input services** - The definition of input service should be expanded to cover the service tax credit for all input services used in connection with activities related to business i.e., all business expenditure. Further, there should not be any restriction on availment of CENVAT Credit as the tax gets typically paid into the Government exchequer by the service provider on an accrual basis • **Discarding classification of goods and services as inputs, capital goods and input services** - The biggest hindrance in meeting the objective of the CENVAT Credit scheme is the qualification of goods and services as 'inputs', 'capital goods' and 'input services'. Thus it is important to eradicate the abundance of interpretation issues resulting from the classification/ qualification as 'inputs', 'capital goods' and 'input services'. - Accordingly, it is advisable that categorizations like 'inputs', 'capital goods' and 'input services' are done away with and all input taxes should be allowed as credit. • **Cascading of Service Tax for Brand Owners when Manufacture is by Job-Workers** - CENVAT credit pertaining to inputs

		and capital goods is available to the assessee irrespective of whether manufacture is in-house or at job worker premises whereas the benefit of service tax credit is available only if the manufacture is at the assessee's own unit. - This inequity dilutes the cost competitiveness of assessees who own brands and use job-workers exclusively for manufacture of goods - more so since, the scope of the service tax has been expanded following the introduction of 'negative list' based approach to Service Tax - Hence, it is imperative that Cenvat credit Rules be amended to provide a mechanism that enables availment and distribution of credit of service tax by brand owners to job-workers. This will motivate manufacturing sector who relies upon job-work to obtain the economies of scale and competitiveness • **Distribution of Cenvat credit by Input Service distributor ('ISD')** - With effect from 1 July 2012, restriction has been put for distribution of Cenvat credit availed by ISD. Accordingly Cenvat credit has to be distributed pro-rata in proportion to the turnover of all the units - This restriction impacts the cash flow of the company - Position prior to 1 July 2012 may be restored to ensure unrestricted transfer of Cenvat credit to any unit manufacturing taxable goods or providing taxable service.

		- These changes and rationalisation of the Cenvat credit scheme is also in line with the **'Make in India'** objective of the Central Government
3	**No service tax on financial intermediaries** • Globally, the services provided by financial intermediaries are exempt from levy of VAT except in few countries like Canada, New Zealand. However, in India a mixed approach is adopted for taxation of services provided by financial intermediaries i.e., certain specific services like deposits, loans etc. are exempt from levy of tax whereas other services are subject to levy of service tax e.g., finance charges charged by credit card companies akin to loan, cheque bouncing charges etc. • The dual treatment of services rendered by financial intermediaries leads to administrative difficulties for the taxpayers while determining the taxable base for levy of service tax.	• It is suggested that Government may consider exempting all services provided by financial intermediaries from levy of service tax which will be in line with the global provisions.
CHANGE IN LAW:		
4	**Cenvat Credit on endorsed Bill of Entry** • There is no provision under Credit Rules for availing CENVAT Credit on	• In the past, Customs officers at the port of import were allowing endorsement of the Bill of entry to enable the importer to pass on the credit of CVD to the registered manufacturer / service provider /

	endorsed bill of entry against import of goods. Traders who import goods and desire to pass on the credit of CVD component of customs duty are required to get registered with the Central excise department. • Increased procedural compliance for getting registered as Importer with the Central Excise Department (similar manner as registration required for manufacturer). • However, the authorities are demanding all the details strictly as per the form on account of which the industry is facing procedural difficulties in convincing the authorities.	dealer, as the case may be. The said procedure could now be continued. • Further, it is suggested that Credit Rules may be amended to recognize endorsed Bill of Entry as a valid document for availing credit of duty paid at the time of import. The erstwhile procedure of endorsement of Bill of Entry in such cases should be continued
5	**Clarification on the eligibility to claim output rebate while under the Annual Advance Authorisation Scheme ('AAAS')** • In this regard, Notification No. 99/2009- Cus dated 11 September 2009 restricts the importer to claim output rebate where the inputs have been procured under the AAAS. However, no such restriction exists in case the exporter opts for Notification No. 96/2009-Cus dated 11 September 2009 (i.e., for exporters opting under the normal scheme) • As a result of the aforesaid conflicting notifications for the same export promotion	• Accordingly, AMCHAM suggests that this restriction appears to be as a result of a typographical error since denial of rebate merely because an assessee avails A AAS is against the intention of the law makers when the same rebate is eligible to an assessee in case of imports under AAS in the normal scheme. • Hence, it is suggested to issue An amendment be made in Notification No. 99/2009-Cus dated 11 September 2009 to allow the assessee to claim output rebate under Rule 18 even when the inputs have been procured under the AAAS, as is currently allowed under the Notification No. 96/2009-Cus dated 11 September 2009 where

	scheme, the field formations are denying AAAS benefit irrespective of whether input/ output rebate is claimed by the assessee	in the assessee procures inputs under the AAS in normal scheme.
6	**Eligibility to claim CST refunds on purchases made from EOU/ SEZ/ EHTP/ STP Units.** Para 6.11 of the FTP[11]provides that reimbursement of CST shall be available to EOU/ EHTP/ STP/ SEZ units ***"on goods manufactured in India".*** In this, regard it is relevant to note that the said provisions do not restrict the reimbursement of CST only w.r.t. the goods manufactured in the Domestic Tariff Area. Accordingly, the goods manufactured in SEZ/ EOU/ ETHP/ BTP/ STP Units should be eligible for reimbursement of CST as these goods are considered to be manufactured in India for the purpose of FTP until and unless specifically provided otherwise. As per ***Allahabad High Court ruling in the case of India Exports v. State of Uttar Pradesh and Others [2011 INDLAW ALL 201],*** wherein the court while dealing with the issue as to whether Sales tax can be levied on sales made from SEZ to DTA has	**Accordingly, AMCHAM suggests that** • The following Circulars deny the benefit of CST reimbursement for goods procured from EOU/ EHTP/ STP/ SEZ and are contrary to the provisions of the FTP. - Circular No. STPI-B/CST/GEN/2014-15/19031 dated September 3, 2014 - Circular No 1/2014 bearing no 4/1/2014:PLY:CSEZ/2080 dated 25/4/2014. • These circulars should be withdrawn with retrospective effect:

[11]FTP – Foreign Trade Policy

	categorically held that SEZ cannot be said to be located outside the territory of India for the purpose of the SEZ Act or the CST Act. Applying the ratio of the aforesaid judgment, it is clearly evident that SEZ/ EOU/ ETHP/ BTP/ STP Units shall all be considered to be part of India for all purposes until and unless specifically provided otherwise	
7	**Valuation under Central Excise - impact of the judgment of the Supreme Court in Fiat case** • The Hon'ble Supreme Court of India in the case of CCE v. Fiat India (P) Ltd. [AIT-2012-354-SC] has interpreted the principles of excise valuation in a manner which is at variance with the existing understanding of the trade, industry as well as the Department. • The judgment of the Hon'ble Supreme Court has created an upheaval in the trade as it has reversed the settled position of law for Central Excise valuation. • As a result of the above judgment, the authorities have launched a flurry of investigations across industry sectors.	• In the Budget for FY 2015-15, keeping in view this concern positive change has been brought to levy Excise Duty on the value actually charged from the customer unless there is any additional direct/ indirect consideration flowing from the customer. • However, the aforesaid amendment is prospective and still exposes the industry to litigation for the prior period. • Hence, it is suggested that the amendment should be made effective retrospectively from the date of the judgment and specific instructions should be issued to the authorities to recall all show cause notices/ letters seeking information from the assesses.

<table>
<tr><td></td><td></td><td></td></tr>
<tr><td>8</td><td>Introduction of the concept of input tax distributor

The CENVAT Credit Rules provide for an Input Service Distributor (ISD) mechanism whereby the credit of service tax can be distributed by an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under Rule 4A of the Service Tax Rules 1994 towards purchase of input services. However, by virtue of the definition of ISD, CENVAT credit only in relation to the input services can be distributed by an office of the manufacturer or producer of final products or provider of output service.
Further, many times due to space constraints the manufacturers import the inputs directly into their warehouse and also deploy some capital goods for the management of such inputs.
However, since the warehouses do not have any output excise duty output excise duty/ service tax liability they are not able to avail the CENVAT credit and also there is no provision in law which</td><td>The warehouses of the manufacturers are not allowed to distribute CENVAT credit pertaining to the inputs and capital goods used in the warehouse.
The following definition may be considered for an “input tax distributor” for amendment to Rule 2

“‘input tax distributor’ means an office or any other premises or the warehouse of the manufacturer/ service provider or producer of final products, which receives invoice or document for availment of CENVAT Credit referred to in Rule 9 of CENVAT Credit Rules, 2004 towards purchase of inputs or capital goods or input services and issues invoice, bill or, as the case may be, challan for the purpose of distributing the credit of the duty paid on procurement of such goods/ services to such manufacturer or producer or service provider, as the case may be;”
Further, pursuant to insertion of the aforesaid definition, appropriate amendments would also be required to enable a ‘input tax distributor’ to distribute credit to the other entities
Rule 7B for “Distribution of credit on inputs, capital goods or input services by the office or any other premises or warehouse of the manufacturer or producer of final product or the service provider” may be considered in this regard.
The same has been provided below</td></tr>
</table>

	permits the distribution of such CENVAT credit to the factories of the manufacturer.	for ease of reference: "*(1) A manufacturer or producer of final product or service provider shall be allowed to take credit on inputs, capital goods or input services received, on the basis of an invoice or a bill or a challan issued by an office or any other premises or warehouse of the said manufacturer/ producer or service provider, which receives invoice or any other document for availment of CENVAT Credit referred to in Rule 9 of CENVAT Credit Rules, 2004, towards the purchase of inputs, capital goods and input services.* *(2) The provisions of these rules or any other rules made under the Central Excise Act, 1944, as made applicable to a first stage dealer or a second stage dealer, shall mutatis mutandis apply to such office or premises or warehouse of the manufacturer or producer.*"
9	**Clarification whether commissioning or installation of locomotives or Metro train cars would be eligible for exemption under Notification No. 25/ 2012** Entry no. 14 contained in Notification No. 25 / 2012, which reads as under:- *'Services by way of construction, erection, commissioning, or installation of **original works** pertaining to, -* *(a)an airport, port or railways, including monorail or metro'*: However, the term original works contract is not defined	• Hence, AMCHAM suggests that the following clarifications be issued in this regard: • Whether Testing, Commissioning or Installation of Locomotive or Metro Train cars carried out at the customer's site fall within the ambit of the exemption provided vide the Notification No. 25/2012; • Whether the above exemption would be available even if no goods are supplied during the provision of the services in question i.e. the services of testing, commissioning or installation are pure services and do not involve any supply of goods; and • Where the main contractor providing the said services is eligible for the

	under the said notification. Hence, reference needs to be made to definition of the original works as covered under the Service Tax (Determination of Value) Rules, 2006.	said exemption, whether the instant exemption can be claimed by the sub-contractor rendering the services in relation to the Locomotive or Metro train cars.
10	**Dual levies on software – VAT and service tax** • The tax position on the software has always been in flux and there has been double taxation in respect of software (both packaged and customized) • It has been clarified through the Guidance note ("Taxation of services – An Education Guide") issued by CBEC at Para 6.4.1 "sale of pre-packaged or canned software" is in the nature of sale of goods and is not covered in the 'Information technology service'. • Further, through the Guidance note in Para 6.4.4 it appears that in case separate consideration is charged for license to use packaged software, thesame may attract Service tax, as license to use software may not fulfill all the conditions of 'transfer of right to usegoods'. However, it is a settled position under the VAT laws of all the States that providing right to use the license/ copyright in software is to be construed as a deemed sale	• In the interest of smooth functioning of trade and industry and in the interest of certainty, it is recommended thatCBEC clarify the position that provision of standard software, including license to use such software, whetherelectronically or on a media, would not be liable to Service tax.

	transaction and therefore is to be levied with VAT at the applicable rates.	
11	**Beneficial Customs duty rates on equipment used in medical care/ diagnosis** • Currently, most of the health care services provided to the end customers are exempt from service tax. • Thus, duties paid on import of medical equipment are not eligible as set-off to healthcare service providers and therefore add to the cost of providing medical services. • Accordingly, it is desirable that the duty structure is rationalized.	• It is suggested that Countervailing duty (CVD) and Special Additional duty (SAD) should be exempted while the basic customs duty should be rationalized at 5% for all medical products/ equipment including parts, accessories, consumables or assembly components. • The procedure for end user certification should be rationalized/ simplified to relieve the sector from burdensome compliance. • Re-examine the existing classification of life-saving equipment and provide import duty relief to other devices, equipment and consumables which are meant for saving life. • Consumables that are used together with Life Saving Medical Technology products must also be taxed at the rate of duty equivalent to that in case of life saving medical equipment.
12	**Denial of benefit of export of service on cross border transactions between an Entity and its BO/LO** • Explanation 3 to Clause 44 of Sec 65B of the Finance Act, 1994 stipulates that the establishments of a person located in taxable territory and another establishment of such person located in non-taxable territory to be considered as establishments of distinct persons. Further, a person	• Hence, it is suggested that an appropriate amendment be made in the Export of Service Rules to allow the transactions between the branch office in India and business entity outside India to qualify as exports and align such transactions with principles of taxing imports.

	carrying on business through a branch or agency or representational office in any territory is treated as having an establishment in that territory. • Thus, while services imported by the branch office/ project office from its parent entity located outside India would qualify as imports and be liable to Service tax under the reverse charge mechanism, service provided by the branch office/ project office to its parent entity are specifically excluded from the definition of exports vide clause (f) of Rule 6A of the Service Tax rules, 1994.	
13	**Elimination of the Research & Development Cess (R&D Cess)** • R&D cess is levied at 5% on all payments made for import of technology under a foreign collaboration. • The purpose of levying the aforesaid cess was to encourage the commercial application of indigenously developed technology and for adapting imported technology to wider domestic application. • Further, a fund was specifically developed to apply the proceeds to the specified purpose of promoting indigenously developed technology.	• Given the under-utilization of the proceeds for the desired objectives, it is recommended to eradicate the R&D cess as it serves as a deterrent for the import of technology. Further, R&D cess is non creditable and forms part of the cost of the final product resulting in higher cost of the final product to the end customer.

<table>
<tr><td></td><td>It has been observed over the years that R&D cess collected has not been appropriately disbursed but rather has been utilized to finance the revenue deficit of the Government.
The Comptroller and Auditor General in its report on Union Government Accounts for 2011-12 revealed that out of the total collection of INR 3453.33 crore by way of R&D cess during the period from 1996-97 to 2011-12 only INR 506.41 crore (14.66 per cent) was disbursed for the specified purpose.</td><td></td></tr>
<tr><td>14</td><td>Aggrandize the scope of SFIS and FPS scheme notified under the Foreign Trade Policy
Served From India Scheme (SFIS)
SFIS
(i) Only the Indian service providers are eligible for the scheme under SFIS and not the subsidiaries of foreign MNCs registered in India

(ii) The scrips are transferable only to group companies who are manufacturers

(iii) The scrips are not freely tradable so as to allow the service provider to encash the Scrip and to use the money realized in their business</td><td>(a) SFIS

(i) Scrips obtained through SFIS be made freely tradable in line with FMS, MLFPS etc., so that service exporter who cannot use the Scrip for imports, can be benefitted by selling the Scrip in the market to the potential importers.

(ii) Subsidiaries of foreign MNCs registered in India should be brought at par with the India service providers to remove the inequitable situation.

(iii) Scripsbe allowed to be used for payment of service tax towards locally procured services, including Reverse Charge payment for Import of Services as it is allowed to be used for payment of Excise duty on domestic procurements.

(b) FPS</td></tr>
</table>

	(iv) The scrip is not allowed to be used for payment of service tax **(b) FPS** List of items which are eligible for FPS benefit is very restricted and needs a re-look	• Expanding the coverage of FPS to include following products to provide further boost to domestic manufacturing for exports of products related to Aviation and Oil & Gas Sector: • Turbines/Parts of turbine falling under Chapter Heading 8406 • Parts of Aircraft engine falling under Chapter Heading 8412 • Valves /Parts of Valves falling under Chapter Heading 8481 • Measuring, Monitoring systems/ apparatus falling under Chapter Heading 9031 and 9032
15	**Taxability of liquidated damages under the Service Tax law** • There is an ambiguity with respect to the levy of service tax on the liquidated damages. At times it is argued that LDs are in the nature of penalty and accordingly not exigible to service tax liability. Contrary to this there is a view that the act of acceptance of the non-performance of service by the service provider qualifies as 'a service of tolerance for receipt of consideration' and accordingly, should be leviable to Service tax.	• Levying service tax on the liquidated damages under the service tax laws is in variance with the treatment of liquidated damages under the Central Excise Act, 1944 (the Excise Act) wherein it has been held in various cases that such a value would not form part of the assessable value under the excise law. Accordingly, this issue is no longer res integra under the Excise Act. • Accordingly, it is suggested that Government may issue a Circular clarifying that liquidated damages are penal in nature and hence not exigible to the service tax.
16	**Capital goods cleared as waste and scrap** • Sub-rule (5A) of Rule 3 CENVAT Credit Rules was substituted vide Notification No 12/2013-CE- (NT) dated 27.09.2013 by the following:-	• It is suggested to amend clause (b), so as to bring an output service provider also in par with a manufacturer, by allowing the output service provider to pay an amount equal to the duty leviable on transaction value on removal of capital good as waste and scrap.

AMCHAM INDIA

	"*(5A) (a) If the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely:-* *(i) for computers and computer peripherals:* *- for each quarter in the first year @ 10%* *- for each quarter in the second year @ 8%* *- for each quarter in the third year @ 5%* *- for each quarter in the fourth and fifth year @ 1%* *(ii) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter:* *Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.* *(b) If the capital goods are cleared as waste and scrap, the manufacturer shall pay*	• The amount to be paid on clearing capital goods (on which CENVAT credit has been availed) as waste and scrap may continue to be the amount equivalent to the duty liable on transaction value. • This is logical as a normal commercial person would scrap any plant and machinery only after fully utilizing the asset. It means that the cost of asset has been fully built in the assessable value of the final product.

	an amount equal to the duty leviable on transaction value" • The said amendment provides that in case the Capital Goods are cleared as waste and scrap by a manufacturer, then the amount to be reversed by him should be equal to the duty leviable on the transaction value. However, the Rule is silent in respect of similar clearance by an output service provider. • Prior to the amendment, both the manufacturer as well as output service provider were required to reverse an amount equal to the higher of the duty leviable on the transaction value or credit of the duty availed, reduced by the percentage specified for each quarter i.e.2.5%.	
17	**Export of inputs or capital goods as such from factory of manufacture** • Absence of a specific provision with respect to reversal or non-reversal of duty availed as CENVAT Credit when inputs or capital goods are exported as such results in ambiguity and litigation in the form of demand for reversal of credit by the field formation	• Export of goods is generally not liable to duty due to the settled principle 'export the goods and not the taxes'. • However, currently, export of goods (imported/ procured locally) as such, results in demands for reversal of CENVAT Credit from the field formation. • Hence, it is suggested that the CENVAT Credit Rules 2004, should be amended to specifically provide that payment of an amount as provided under Rule 3(5) of the CENVAT Credit Rules 2004 is not required in the event capital goods or inputs are exported as such.

18	**Customs duty exemption to import of Plant and machinery for food processing sector** • The Indian food industry is in a nascent stage and the high capital cost of investment in food processing plants due to high import duties acts as a deterrent to investment. In India only 2.2% of the total food and vegetables produced are processed as compared to 65% in US and 23% in China. • In India approx. 40% of the food and vegetables perish due to lack of processing facilities. Hence, there is an imperative need to develop and incentivize the food processing industry in India so as to minimize food wastages.	• It is suggested that import duty exemption may be granted on all equipment and machinery used in the food processing industry. • Illustrative examples of the current duty structure, along with HSN classification are mentioned below: • Potato Crate dumper & Hopper (8438 60 00) - 22.85% • Potato chips Fryer with Oil heat exchanger (8419 81 10) - 22.85% • Optyx sorter (9031 80 00) - 22.85% • Seasoning equipment (8438 60 00) - 22.85% • Continuous mixer (8438 80 90) – 22.85%
19	**Reduction in import duties on food supplements** • The Indian government has launched Scheme for Food Security but we feel they need to think beyond that and look for Nutritional Security and also how India can make food more affordable rather than just give the Carbohydrate based diets at subsidized rates. • For producing efficiently Eggs and Meats producers, in addition to major raw materials like Corn & Soybean Meal, have to use	• It is suggested that the government should slash the rates on food supplements to 0% as existing in other developing countries which will result in availability of the meat and eggs at affordable price. • Animal Production industry should also be recognized as priority sector which can help India to overcome the need of affordable food and malnutrition. They also should be given easy access to finances and should be helped by government to develop the marketing channels

	Additives like Vitamins, Amino Acids, Chelated Minerals, Enzymes etc. These kind of additives are used by all the producers in India and globally. • Currently the import duty structure for feed supplements is very high especially. Amino Acids - 26.11% Enzymes - 29.14% Chelated Minerals- 20.81%	
20	**Service tax exemptions to project offices of defence companies in India** • Unlike Income Tax, there is no exemption to the project office of foreign defence companies in India under the Service Tax laws. • With the GoI contractually liable to pay all taxes and duties in India, levying Service tax does not generate any additional revenues. In fact, the current process of making Service tax payments to the Ministry of Finance and recovering it from the Ministry of Defence only adds to the administrative burden on the GoI.	• It is therefore recommended that the Service Tax authorities consider including all services provided by the PO of a foreign defence company, for which the Income Tax authorities have granted exemption under Section 10 (6C) of the Income Tax Act, under the negative list of services under the Finance Act.
21	**Excise Duty Reduction on Packaged Drinking Water** • Packaged drinking water is a common man's product. • Considering the shortage in supply of clean drinking water, a citizen has no option but to revert to	• It is suggested to exempt packaged drinking water from Excise duty

AMCHAM INDIA

	packaged drinking water • However, even though the sector is extremely important, there are no Excise duty exemptions currently being provided to this sector	
22	**Transfer of CENVAT Credit under dealer registration** • The Cenvat Credit allows transfer of credit by Traders by obtaining a First Stage Dealer registration or Second Stage Dealer registration. • Recently, CCR were amended to allow registration of Importers to enable smooth transfer of credit to the buyers. • However, there is an ambiguity to cater to situations where the Importer takes the goods post imports to one warehouse and then stock transfers to its own warehouse for further sale. Issue is whether the second warehouse is to obtain Importer registration or FSD. Many jurisdictions are asking for FSD registration. • Similarly if a FSD has bought the goods from a manufacturer and received the goods at one warehouse. Thereafter the goods are stock transferred to another warehouse of the FSD. Issue is whether	**AMCHAM suggest the following** • The receiving warehouse / branch should take similar registration as that of the sending warehouse. • For example, in case of the Importer example, if goods are stock transferred (and hence no sale) from first warehouse to second warehouse then the second warehouse should also take Importer registration to transfer credit to the buyers. • This will support the current business practices of centralised procurement, etc and help the industry in a big way.

	the second warehouse is to obtain FSD registration or a SSD registration. Many jurisdictions are asking for SSD registration • The above practice restricts the ability of the Traders to undertake transfers to its various branches/ warehouse from the perspective of transfer of credit.	
23	**Rectification of the typographical error in Rule 6(8) of the Cenvat Credit Rules, 2004** Rule 6(8) of the CCR provides conditions when an Export of Service will not be treated as "exempted service" for the purpose of credit reversal. The relevant rule is outlined below: *"(8) For the purpose of this rule, a service provided or agreed to be provided shall not be an exempted service when:-* *(a) the service satisfies the conditions specified under rule 6A of the Service Tax Rules, 1994 and the payment for the service is to be received in convertible foreign currency; and* *(b) <u>such payment has not been received for a period of six months or such extended period</u> as maybe allowed from time-to-time by the Reserve Bank of India, from the date of provision."*	A corrigendum is issued to rectify this typographical error from the date of introduction of this condition i.e. 20 June' 2012

	The underlined text in sub-rule (8) appears to be a typographical error. The intent of the Government is to allow Export of Service as non-exempt services only when payment is received in six months or the time extended by RBI. However, sub-rule (8) in the current form is giving a totally opposite interpretation.	
24	**Customs duty exemption for Medical Cyclotron** • Medical Cyclotron is a type of particle accelerator that is used to produce short-lived radioisotopes which (combined with other components) are used as part of the process in undertaking a PET scan. • The medical isotopes are converted into medical doses and thereafter injected into the human body. • The medical doses emit gamma rays which are detected by a PET scanner and helps in diagnosing cancer etc. • A medical cyclotron can only be used for medical purposes. Current classification 85431090 (applicable customs duty – 21.5%)	• Accordingly, AMCHAM suggests that since Medical Cyclotron is exclusively used for medical purposes and are essential for rendering effective medical diagnostics. These should be extended the benefit of the applicable Customs duty concessions/ exemption which are otherwise available for medical equipment. • The basic intention here is to make medical/ healthcare services affordable in the larger public interest by extending the custom duty concessions/ exemptions to those products which directly go into provision of medical/ healthcare services.
25	**Cenvat credit against the service tax paid on Deposit Insurance and Credit Guarantee Corporation**	Accordingly, it is suggested to issue suitable clarification for restricting 50% of Cenvat credit for banking industry

	(DICGC) premium • Banks pay service tax on the premium amount paid to DICGC under compulsory deposit insurance scheme, which offers protection to banks' depositors. This premium covers all types of deposits including current accounts. The banks earn the taxable as well as exempt income from the insured accounts. For providing taxable services banks needs deposits which are integral part of banking and output services. However, direct one-to-one nexus with specific output service can-not be substantiated, and therefore, in certain cases credit of service tax paid on DICGC premium is denied. • As banks render services which are both taxable and exempt, the Cenvat credit on input for banks is restricted to 50% considering the disallowance of Cenvat credit relating to the exempt services. Further disallowing any credit on business expenses would increase the proportion of unavailable CENVAT credit for Banks leading to additional and unwarranted burden on the Indian banks.	without any further disallowance particularly for service tax paid on DICGC premium.
26	**Fruit pulp based drinks – Exemption under notification10/96 dated 23 May 2006**	• Exemption under notification 10/96 dated 23 July 2006 be suitably amended and aligned with the Tariff to provide exemption to intermediate goods used for 'fruit pulp and fruit

	• With a view to encourage Fruit and Agro Industry, 'Fruit pulp based drinks' falling under Chapter 22 were exempt from excise duty. As a corollary, intermediate goods used in the manufacture of above products were also exempt from duty *vide* Notification No. 10/96 dated 23 May 1996 • Thereafter, in view of the confusion between 'fruit pulp' & 'fruit juice' based drinks, the entry under Chapter 22 was amended w.e.f 19 May 1997 to include 'Fruit pulp or fruit juice based drinks'. However, inadvertently corresponding changes were not made in the intermediate goods exemption which continued to refer to '*Fruit pulp based drinks*'	juice based drinks' • Additionally, it is also requested that a suitable notification be issued under Section 11C to safeguard the interest of the industry for the past period
27	**Denial of Cenvat credit of cess paid on sugar** • Sugar Cess is not creditable to manufacturers of food articles and beverages and therefore, levy of Sugar Cess leads to cascading effect of taxes and higher input costs • Given that sugar represents significant manufacturing cost for food and beverage industry, higher sugar cost has a significant impact on prices of these commodities, thereby fuelling inflation	• Any non-creditable taxes are against the stated present and proposed indirect tax policy besides causing a cascading effect on tax costs and distorting the economic environment. • Accordingly AMCHAM suggests that Cenvat credit should be allowed on the cess paid on sugar.

28	**Interpretation of the term 'Food Stuff' used in Notification No. 25/2012-ST dated 20.6.2012** • In Union budget 2012, an amendment was made in the Notification No. 25/2012-ST dated 20.6.2012 to provide the exemption from service tax on GTA service used for transportation of food stuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages. However, the expression 'food stuff' has not been defined in the Notification	• Though the above amendment has been made for the larger interest of the society to reduce the service tax burden on transportation of certain commodities, in the absence of any definition of the expression 'foodstuff', the same is going to lead ongoing litigation with the departmental officers due to different possible interpretations and contrary judgments on the same under different tax laws. • Accordingly, AMCHAM suggests that an appropriate amendment be made in the notification no. 25/2012 - ST defining the expression 'food stuff' in an exhaustive manner or align the same with the HSN codes or issue some clarification defining the scope of the above expression.
29	**Form 'C' for Construction Activities** • The definition of goods as defined under Section 8(3) of the CST Act, 1956 does not cover the goods, which are purchased by the dealers to use them in construction services thereby not permitting issuance of Form 'C' in such cases, which increases the cost of the transaction	• Accordingly, AMCHAM suggests to amend the definition of the goods in Section 8(3) so as to include the goods purchased by the dealer for construction activities. This would promote the construction activities in India.
30	**Level playing field for Indian Compressor Manufacturers** • The overseas	• Accordingly, AMCHA suggest to exclude such products i.e., Compressors (for Refrigeration - 8414 3000 and Air-conditioning -

	manufacturers get substantial benefit from their governments and hence are able to manufacture Compressors (for Refrigeration -8414 3000 and Air-conditioning - 8414 8011) at cheaper rates thereby making import of such products cheaper and adversely affecting the domestic manufacturers	8414 8011) in the RCEP agreement so as to avoid the incentives of overseas countries on such products in their home country and to provide a level playing field to the domestic manufacturers.
31	**Customs Duty exemption to notified Life Saving drugs** • With increased focus of the Government on Health Care, it is imperative that critical lifesaving drugs be made available to the patients at reduced prices, which will help in bringing down the cost of treatment for ailments. • Currently, Basic Customs Duty on certain drugs (and bulk drugs for their manufacture)/ vaccine is 5%. However, these drugs are exempted from the excise duty/ additional customs duty.	• Accordingly, AMCHAM suggest that Basic Customs Duty on import of Life Saving Drugs and medical devices should be reduced to NIL.
PROCEDURAL ISSUES:		
32	**Reverse Charge Mechanism** The reverse charge mechanism has resulted in: (i) Increased complexity and compliance cost for body corporates in terms of identification of status of service provider, maintenance of records, submission of returns, departmental audits and so on	• Hence, it is recommended by AMCHAM that in order to remove this inequity and promote simplicity/ transparency in the tax laws, this list of services notified under the reverse charge mechanism should be pruned. • For the sake of administrative convenience, it is further suggested that the list o be restricted to services provided in India by parties outside India, services provided by non-executive directors to a

	(ii) Scope of litigation and disputes with the authorities on taxation and interpretation issues. Just to say whether a particular service is a manpower supply service (to be taxed under reverse charge mechanism) or not would depend on the facts of the case and is open for interpretation (iii) Ignoring the threshold limits and exemptions prescribed under service tax laws. This is due to the fact that in case of payment of tax under the reverse charge mechanism threshold limits are not applicable, leading to situations where the service recipient, being a corporate body, has to pay service tax in respect of specified services provided by non-corporate service providers even if such service providers are below the prescribed threshold limits (iv) Increased complexity and compliance cost for body corporates in terms of identification of status of service provider, maintenance of records, submission of returns, departmental audits and so on	company and road transportation services provided by GTA.
33	**Fast track disposal of service tax refund claims**	• **Input tax refund on export of Services**

	• There are various scheme / instances wherein industry is required to claim refund of taxes / duties from the Government. This include: - Input tax refund on export of services - Special Additional Duty (SAD) - Extra Duty Deposit (EDD) in case of SVB	- Documentation requirement across various range offices should be standardized - After initial validation by range office, no further audit by Audit teams except in exceptional cases or alternatively increase threshold limit for pre-audit to INR 5 Crore per claim - Pay 80% within 15 days of filing the refund claim in line with the guidelines issued under Excise Circular No. 828/5/2006-CX., dated 20-4-2006 - Different yardsticks should not be adopted for meaning of input services for granting refund in case of Exports vs allowing Cenvat credit against domestic service tax liability - Pay interest - if refunds not granted within three months from the date of application - Bring EOU/STPI/EHTP units at par with SEZs for granting Service tax benefits on input services - Classification of ITES services (Call center, data processing and other outsourcing services) up to May 2008 - Different yardsticks should not be adopted for classification of service when it is exported vs. when the same is rendered to Indian service recipients (& tax paid thereon). In case of exports, the Tax office contention is that these were non-taxable up to May 2008 (ie the date when IT Software services category was introduced) - Relief obtained in one case should

		automatically apply on all pending refunds /SCNs • **Refund of Special Additional Duty of Customs (SAD)** - Existing SAD Refund claims should be disposed-off in a time bound manner - Minimize the list of documents required for filing the refund claims - For future, replace the process of granting refund of SAD with upfront exemption in all cases where VAT/CST is to be paid on resale of imported goods (similar benefit currently granted only in case of retail packages meant for re-sale wherein the industry is required to comply with Legal Metrology Act) - Post audits should be conducted to ensure compliance • **Refund of Extra Duty Deposit (EDD)** - SVB assessment process (including renewal of SVB order) should be completed in a time bound manner - EDD refunds should be automatically granted in case process not completed in a time bound manner
34	**Strengthening the existing Special Valuation Branch proceedings** • Pending SVB proceedings, generally, the importer is charged an additional duty of 1% of the CIF value which is refundable post completion of the SVB	• Accordingly, as a measure of trade facilitation it is suggested that strict instructions should be issued that the assessments be completed within a period of four months from the date of registration of the case. • Further, non-completion or the adherence to the prescribed times should be considered as deemed

	proceedings. This EDD adds to the pressure on the working capital requirements of the importer and becomes a cash flow issue. • Practically it is observed that SVB authorities take a considerable timeframe of upto 1 year to complete the assessments. This is in complete variance with the timelines prescribed by the CBEC Circular.	acceptance to the value declared by the importer. • In case of delay for no fault of the importer, the extra 1% duty should be discontinued. • Separately, an alternate Advance Pricing Agreement (APA) Mechanism on the lines of the Transfer Pricing Regulations may also be introduced. In such a case, the Transfer Pricing regulations of CBDT may be adopted since those regulations also require determination of arm's length prices in the course of international transactions of goods and services between related persons. Hence, a single administrative body could be constituted for valuation under Customs and Transfer Pricing in order to bring administrative ease for the tax payer.
35	**Introduction of Time limit for claiming the Cenvat Credit within 6 months from the date of issue of invoice** Post the Union Budget for FY 2014-15, Rule 4 of the Cenvat Credit Rules has amended to provide for explicit time limitation of 6 months from the date of issue of invoice for availment of Cenvat Credit. The said amendment is a matter of great concern for the manufacturing units where the inputs are procured first at the warehouse and then subsequently transferred to the manufacturing due to storage	Accordingly, it is suggested to adopt any one of the following approaches: • The provision should be rolled back and the erstwhile provision should be restored • Alternately the following should be considered • Increase the time limit to 2 years • The period should be started from the date of payment and not the date of invoice

	space constraints at factory. Hence, even in such cases the time-lag in procurement of inputs and their subsequent use in the factory would result in a loss of Cenvat Credit. Furthermore, in case of new industries, generally there is a time lag of 2-3 years between commencement of construction and obtaining registration for commencement of activities. In such a scenario, the entire eligible Cenvat Credit for the setting up activities/ capital goods procured during the setting up stage would be lost and would make doing business in India very expensive. This is against the **Make-in India** objective of the Central government.	
36	**Amendment in Point of Taxation Rules, 2011 ('POT Rules')** • Rule 7 of the POT Rules has been amended to provide that in cases where the liability to pay Service tax is on the recipient of service, the same shall be discharged on the date of payment or within 3 months from date of invoice whichever is earlier. • Prior to the Union Budget for the FY 2014-15, the aforesaid period was 6 months from the date of invoice. • This provision has	• It is suggested that the said provision/ amendment be rolled back • Alternately, the aforesaid provision should be suitably amended to provide a single period of 3 months from date of payment as due date for deposit of Service tax

	restrained the time- frame for making payments to vendor from the existing 6 months to 3 months.	
37	**Requirement for exact matching of the name of Inputs procured against Advance Authorization / Duty Free Import Authorisation Scheme** • The mandatory requirement of exactly matching the Name/description of the input used (or to be used) in the Authorisation with the name/description endorsed in the shipping Bill leads to non- acceptance of shipping bill at the time of redemption of license	• Accordingly, AMCHAM suggests that the mandatory requirement of exactly matching the Name/description of the input used (or to be used) in the Authorisation with the name/description endorsed in the shipping Bill should be dispensed with.
38	**Departmental audits to be conducted by Chartered Accountants** • Under the prevailing tax regime tax payers are subject to various audits by the tax authorities i.e. Central Excise and Service Tax Audit, CAG Audit, departmental enquiries, etc • Further, generally these audit parties consists of officers who are not qualified chartered accountants. Thus, they are not experts in taxation law and do not understand the nuances of the legal provisions. • Recently, the Allahabad High Court took cognizance of the blunders of the Audit	• Conducting audit by non- qualified chartered accountant leads to issuance of baseless SCNs even on issues which have received judicial settlement. • For the purpose of audit, a suitable amendment should be made so as to ensure that only information is collected by the departmental officers, but the audit is performed by a qualified Chartered Accountant.

	Party, and dismissed the case with guidance that the Commissioner will refer the matter to an officer to collect the material and appoint the Chartered Accountant for the purpose of audit.	
39	**Simplification of import procedures for STPI units** • Currently there are no SION norms for import of consumables / inputs for R&D units operating under STPI Scheme. The residual SION norms of 2% are not adequate and scientific • Currently there is no Green Channel/RMS facility available for the import of R&D samples/Prototype/Semi Finished goods under free of charge route. All EOU and Home consumption method free of charge shipments imported by STPI/EOU from their parent /associated enterprise/third party vendor are subjected to lengthy process of value appraisal and routing through SVB route • The payment of customs duty are subjected to pre clearance and there is no option of making payment as post clearance route • Import of R&D samples under hand carry through personal baggage is critical for R&D industry. This will	Accordingly, AMCHAM suggests the following: • Fixation of separate SION norms for import of consumables / inputs for STPI units which are carrying R&D /Testing validation activity • Suitable guidelines need to be issued to port commissioners to relax mandatory first check processes/SVB process at the ports pertaining to free of charge shipments imported from associated enterprise/parent company/third party vendors by STPI/EOU units with the post entry checks guidelines. • Suitable provisions need to be brought under Customs Act in line with existing Central Excise Act to enable payment of duty by importers on post clearance. • The respective customs Commissionerate should adopt time saving procedure for hand carry of R&D samples and allow clearance under personal baggage of passenger.

	significantly reduce the product development life cycle for R&D units and put India R&D market into comparative space • The Current Foreign Trade Policy allows the hand carry of R&D samples under personal baggage rules and Central Board of Customs and Excise also facilitated this through circular.	
LITIGATIVE ISSUES:		
40	**Revamp the existing Dispute Resolution Mechanism** • The current dispute resolution mechanism for indirect taxes is ineffective and leads to prolonged litigation. • The adjudication process takes years to conclude and matters are generally settled only by the Higher courts or at the Tribunal level. As a result of the flawed dispute resolution process, cases involving tax of INR 1.27 lakh crore (Excise & Service tax) were pending for adjudication before the Appellate	• **Increase in number of CESTAT Benches** - At present, there are only 10 CESTAT Benches to adjudicate Indirect tax matters as compared to 27 ITAT benches. Further, there are no CESTAT benches near big cities like Hyderabad, Lucknow, Ranchi, etc. which leads to increased cost of litigation for the industry on account of increased time spent by the management and cost of travel & stay. - Further, in order to expedite the litigation process it now becomes essential to increase the number of benches in major metropolitan cities such as Delhi, Bangalore, Chennai, etc.

	authorities above Tribunal level as on March 2012.	• **Expand the scope for advance ruling** - In the budget for FY 2014-15 the scope for advance ruling was extended to resident private limited company. This scope should further be extended to include foreign companies, its project offices and branches as well. • The time limits prescribed under Section 73(4B) for adjudication of the Show cause notice should be made mandatory
ADDITIONAL ISSUE:		
41	**Import of used equipment under E-waste rules** • The current Network Operations Centre ('NOC') process adds 2 months in real terms to the process of importing equipment. • This increased lead time is rendering India and Indian R&D service industry uncompetitive – and neutralizes our cost advantage • There is an urgent need to correct this because other countries like Europe etc. do permit an exception for R&D imports • This simplification of the import procedures for R&D would permit India to compete internationally for R&D centre projects.	• Permit exceptions for Department of Scientific and Industrial research ('DSIR') approved labs • Simplify the process and Enable on-port self-declaration/ clearance at customs without delay to R&D imports

AMCHAM
INDIA