Pre - Budget Memorandum 2023 - 24

Direct Tax

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AMCHAM Pre-Budget Memorandum
Recommendations for Union Budget 2023-24

Direct Tax

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Business Income

SL. No	Area of Challenge	Issue	Recommendations
A.1	Issue in claiming deductions under section 43B in case payments are made after due date of filing tax audit report but paid before filing of return of income	Finance Act, 2020 (FA 2020) has extended the due date for filing return of income for taxpayers (which are subject to tax audit) where transfer pricing provisions do not apply from 30 September to 31 October. However, due date for furnishing tax audit report under section 44AB remains to be 30 September. (Extended to 7th October 2022) Also, where transfer pricing provisions apply, due date for furnishing tax audit report has been advanced from 30 November to 31 October whereas due date for furnishing return of income remains unchanged (i.e., 30 November). As per section 43B of the Income Tax Act, 1961 ("Act"), the deduction in respect of specified sum of the nature referred to in section 43B (i.e. payment of bonus etc.) is deductible only if paid before due date of filing of return of income. Hence, where payment of any specified sum of the nature referred to in section 43B of the Act is made by the taxpayer after filing of tax audit report but before filing return of income (i.e. payments of bonus, etc. made in the month of November before filing of income tax return, whereas the tax audit report is required to be filed by 31 October), such payments, which otherwise are eligible for deduction under section 43B of the Act, would not be reported in the tax audit report as deductible under section 43B, since	In order to avoid the mismatch of claim made under section 43B of the Act between the Income-tax return and tax audit report, the due date of filing tax audit report should be the same as due date of filing of income tax return as it was available in the earlier regime of income tax laws. Thus, the due date of filing both tax audit report and tax return should be 31st October (or 30th November for transfer pricing cases). Alternatively, suitable amendment should be carried out in section 43B of the Act to align the time limit prescribed under the proviso to section 43B of the Act with the time limit of filing tax audit report under section 44AB of the Act.

SL. No	Area of Challenge	Issue	Recommendations
		the tax audit report would have been filed prior to making this payment. Once the income-tax return is filed electronically, the same is processed by the centralized processing centre (CPC) whereby the data inputted in the income-tax return is electronically mapped and verified with tax audit report filed with the Revenue Authorities. Introducing a gap of one month between due dates for tax audit report and tax returns will substantially increase such cases of mismatch as the deductible amounts paid after tax audit report will not be verifiable by CPC. This causes hardship to bonafide taxpayers, resulting into disallowance of genuine deductible amounts and consequential frivolous demands on the taxpayers.	
A.2	Extension of reduced corporate tax rate for new manufacturing units.	• The Taxation Laws (Amendment) Ordinance, 2019 passed on 20 September 2019 has inserted Section 115BAB of the Act \offering a low tax rate of 15% (plus surcharge and cess) to new manufacturing companies. • Under this favourable tax regime announced for new domestic company incorporated on or after October 1, 2019, making fresh investment in manufacturing, will have an option to pay income-tax at the rate of 15 per cent if they commenced their production on or before March 31, 2023. • The Budget 2022-23 presented has further proposed that the concessional 15 per cent corporate tax rate would be available for one more year till March 2024 for newly incorporated manufacturing units.	• Extending the benefit of the concessional corporate tax rate of 15% till March 2024 for newly incorporated manufacturing companies is set to give India the much-needed competitive edge in changing global dynamics. • The manufacturing sector attracted foreign direct investments worth USD 21.34 billion in 2021-22, an increase of 76 per cent year-on-year on account of various schemes announces. Further extension of reduced corporate tax rate will give it another desired push and continue the momentum. • Therefore, it is recommended to extend 15% tax rate for new

SL. No	Area of Challenge	Issue	Recommendations
			companies set to boost India's manufacturing aspirations till 2025.
A.3	Tax audit report, under clause 30C of Form 3CD	In Tax audit report, under clause 30C of Form 3CD, there is a need to report on 'nature of impermissible avoidance arrangement and the amount of tax benefit in aggregate arising to all the parties to the arrangement in the previous year'. This requires access to the auditors of one entity to the books and accounts of other parties involved in the transaction, which is not practical feasible.	It is recommended that this clause should be modified to allow the auditor to report basis the information/documents available with the auditee only.
A.4	Non applicability of General Anti Avoidance Rules (GAAR) provisions for units in the GIFT IFSC	GIFT IFSC has been set-up mainly to bring onshore all financial services transactions related to India that were till now being carried out offshore i.e., from other countries like Singapore, Hong Kong, Dubai, and London. It extends to the entire Financial Services spectrum including Banking, Capital Markets, Insurance, Asset Management, and other ancillary services. In their developmental role, the IFSC has been inviting various industry participants to set up a unit in GIFT IFSC. The Act also provides various tax incentives for GIFT IFSC units such as - 10-year tax holiday for units; exemption from transfer of specified securities; concessional rate of MAT/ AMT, etc. However, the Act also contains provisions relating to GAAR wherein taxpayers could be denied tax exemption/ incentives if a transaction (or a step in it) is considered to have been entered into with the main purpose to derive tax benefit. The provisions of GAAR are drafted in wide manner and confers wide discretionary powers on the Indian Revenue Authorities. As a result, there is an exposure that the GAAR provisions can be invoked against taxpayers who have set up a unit in GIFT IFSC and are eligible for tax incentives under the Act itself.	Therefore, it is recommended that, GIFT IFSC unit should be exempted from applicability of GAAR

SL. No	Area of Challenge	Issue	Recommendations
A.5	Lack of clarity regarding coverage of 'advanced biofuel units' for additional depreciation have potential tax litigation exposure.	• Currently 40% depreciation rate is prescribed for renewable energy devices under section 32 of the Act. In addition to that, tax provisions do provide for additional deprecation of 20% in the year of purchase itself for new plant & machinery purchased and put-to-use by power generation/ generation and distribution/ transmission units in India. • The similar benefit should also be extended to the commercial projects set up for 2G/3G/Advanced biofuel production so that industry can depreciate their investment at a much higher rate.	It is recommended that the government should include 'advanced biofuel units' for accelerated depreciation benefit under section 32 of the Act.
		The Advanced Biofuel Units is still in its nascent stage and requires government support for encouraging more entrepreneurs to take up this industry. This will not only ensure equitable regional development but also be a big contributor in employment generation and help in utilisation of surplus and varied feedstock (agricultural residue, municipal solid waste) available in abundance on pan India basis.	In the past, in order to incentivize specific industries or promote specific regions in India, GOI had extended a tax holiday for a period of 10-15 years on 100% profits generated by such units. Technologies for advanced biofuel also require an ecosystem for their accelerated deployment and create an economic impact. Therefore, it is imperative that similar tax-based incentives be extended to such units also. It is recommended that the government should allow tax holiday for a period of 10 years on 100% profits earned by Advanced Biofuel Units (similar to the one available under Section 80 IA-IE of the Act).

SL. No	Area of Challenge	Issue	Recommendations
A.6	Deduction for Corporate Social Responsibility Expense as well as other expenditure incurred on account of the Covid-19 pandemic – Section 37 of the Act, 1961 (Act) Currently, expenditure incurred by a company towards Corporate Social Responsibility (CSR) is not allowed as a business expenditure under section 37 of the Act. However, deduction under section 80G of the Act may be claimed against such expenditure (if applicable).	Considering the Covid-19 pandemic, many companies have spent money in helping / serving the community / society which are in the nature of CSR. Further, the Ministry of Corporate Affairs has also issued various circulars/ notifications covering expenditure incurred on COVID-19 as CSR activity.	It is recommended that either the entire amount or an appropriate proportion of expenditure incurred for helping / serving the community / society during Covid-19 pandemic may be allowed as a deductible expenditure under section 37 of the Act. Appropriate reporting in the tax audit report may be considered for this purpose.
		Many companies have incurred expenditure towards the following: • Vaccination at office premises/ Reimbursement to employees of vaccination costs for himself or his family members / direct payment to hospitals for vaccination to employees and their family member. • Vaccination for contract employees / housekeeping and security staff. • Provision of medical equipment like oximeter, thermometers, oxygen concentrators, etc. to employees or his family members. • Ex-gratia payments to families of employees, contract employees, housekeeping and security staff on the death of the employee (including contract employees, housekeeping and security staff) • Press Release dated 25 June 2021 has been issued by the Ministry of Finance regarding the taxation of the amount received by an employee (from the employer) for medical treatment or ex-gratia payments received by family members on	Alternatively, it is recommended that the expenditure incurred by a company towards a. Vaccination of its employees, contract employees, housekeeping and security staff as well as their families. b. Other expenditure on account of Covid-19 such as hospitalization costs, provision of medical equipment, etc.; and c. Ex-gratia payments made on death of employees, contract employees, housekeeping and security staff, be specifically treated as expenditure incurred towards welfare of employees and be allowed as a business expenditure allowable under section 37 of the Act.

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		death of the employee due to Covid-19. However, no clarification has been provided pertaining regarding to the taxation of such payments in the hands of the employer.	
A.7	Special Incentives for companies engaged in export of services.	Currently, a number of MNCs are engaged in undertaking export activities in India. There is no export related direct tax incentives which exist in the Income tax laws today. Incentivizing exports will result in inflow of foreign exchange and would also promote 'Make in India' campaign which is being run by the government.	It is recommended that the Indian Government should endeavour to provide tax holiday/ exemption for export of services, thereby encouraging MNCs to set up their export hub in India.

Non-Resident Taxation

SL. No	Area of Challenge	Issue	Recommendations
B.1	Mandatory E-Filing of Form 10F	• Notification No. 03/2022 dated July 16, 2022, issued by CBDT, mandates that certain forms, including Form 10F, shall be furnished electronically in the manner prescribed under Rule 131(1) of the Rules. Prior to the above-mentioned notification, there was no specified mode of furnishing the form along with the TRC to obtain the benefits of a Double Tax Avoidance Agreement (DTAA). However, post this Notification, it shall now be mandatory to furnish Form 10F electronically. • Thus, if one wishes to file Form 10F electronically, as mandated by the Notification, one is required to create a login id and password on the Income-tax portal, for which obtaining a Permanent Account Number ('PAN') is mandatory. In other words, the portal does not allow a taxpayer who does not have	It is recommended that the electronic furnishing of Form 10F for those who do not have a PAN should be allowed to create a non-PAN based login with OTP / email-based verification for authenticating / signing

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		a PAN to file Form 10F. The Notification, therefore, indirectly mandates all non-resident taxpayers, who wish to claim the benefits of the DTAA, to obtain a PAN in India. Further, the authorized signatory of the non-resident taxpayer will also be required to procure a DSC for signing electronically.	
		Mandating a non-resident payee to obtain a PAN in India creates an unnecessary compliance burden, especially in situations where, after tax deduction at source under section 195 by the resident payer, there is no further compliance required to be undertaken by such non-resident payee.	The government should come up with the necessary clarification on the matter as it creates the obstacles in the business of the non-resident taxpayer and its ease of doing business in India.
B.2	Equalization Levy (EL) Scope and Guidance	The current scope of the 2% EL as introduced per April 1, 2020, has been defined so wide that it covers non-digital transactions like the sale of goods which has been confirmed over e-mail etc.	The scope of EL to be limited to digital companies engaged in providing digital goods/services and not to include non-digital taxpayers Reference is made for instance to DST rules as introduced in European jurisdictions (e.g., France, Italy, and UK) focussing on true digital companies / E-commerce platform providers rather than including manufacturers that partly use internet (platform) to arrange for sales of parts/products. Current EL-scope disincentives sellers from selling b2b through new channels and could result in businesses not expanding to other channels and therefore reducing trading activity and economic growth.
	Roadmap for EL	The progress on OECD Inclusive Framework proposals on Pillar 1 and Pillar 2 are at an advanced level. There is line of sight on implementation by end	In order to promote ease of doing business in India and in the spirit of collaboration with other countries, it is

SL. No	Area of Challenge	Issue	Recommendations
		of 2023. The Multi-lateral Convention is expected to be developed and signed by participating countries in 2022. Increasing number of countries are moving ahead with withdrawal of Digital Service Taxes ('DSTs') and relevant similar measures. As per the Joint statement, Austria, France, Italy, Spain and UK have reached a political agreement with USA on providing credit for interim period against future tax liabilities to Multinational Enterprises ('MNEs') once the DST solution is implemented. In exchange, United States has agreed to terminate its proposed trade actions. Further, India and USA have agreed on a transitional approach on Equalisation Levy.	recommended that government should come out with a roadmap for EQL provisions.
	Exemption to Banking and Financial services from EL	The scope of EL has been expanded to introduce a 2% levy on consideration received/ receivable by NR e-commerce operator (EOP) for providing or facilitating e-commerce supply or services (ESS) to certain specified persons. The current provision of ESS EL do not provide for any industry or sector specific exclusion from EL. The way the provisions are worded, these are extremely wide and could have undesired consequences especially for certain sectors like financial services. Given the way the financial services entities operate in India, in almost all cases are required to be both regulated and have a presence in India to operate in India, ESS EL should not apply to the financial services industry. Tax on digital services is a matter of global debate at various forums. Various consultations were made by the financial service industry across jurisdictions and were duly considered by the Governments, thereby providing exclusions to financial services industry from DST. An exclusion has been provided by United Kingdom, France, Italy, Spain, and New Zealand to financial services industry from the levy of DST.	Therefore, it is recommended to exempt, banks, non-banking financial companies, primary dealers, insurance and reinsurance companies, broker dealers, AMCs, and their back-offices in India from the levy of EL till the complete withdrawal of the EL under BEPS commitment.

SL. No	Area of Challenge	Issue	Recommendations
B.3	Consistent Corporate tax rate for domestic and foreign companies/ banks	Foreign banks contribute significantly to the growth of the Indian economy by boosting international transactions and increasing employment opportunities in the country. The growing Indian economy has benefitted by the sophisticated high-quality financial services offered by foreign banks due to their business model and range of product suite. Foreign banks have been innovative in identifying needs of corporates, creating products, and have enabled Indian corporate client's access to global markets. Branches of foreign banks are treated on par with Indian banks for nearly all matters and are subject to the same prudential regulations and norms. For income-tax purposes, the method for computation of business profits and taxable income is the same for both Indian and foreign banks. Domestic Indian banks have opted for a lower rate option @22% (plus surcharge and cess) under the tax laws. Similar lower tax rate option is not available to foreign companies creating significant disparity between Indian banks and Foreign Banks. Branches of foreign companies/ banks are taxed at the base rate of 40% (plus surcharge and cess). There should be parity in corporate tax rates for branches of foreign companies with domestic companies in line with global practice of corporate tax parity. Examples of countries with tax rate parity include all BRIC countries ex India, majority of OECD countries (e.g., UK, Japan) and countries like Singapore & Hong Kong.	Akin to domestic companies/banks, branches of foreign companies/banks should be allowed an option to opt for base tax rate of 22%

SL. No	Area of Challenge	Issue	Recommendations
B.4	Clarity on furnishing of the income tax return ('ITR') for non-residents – Certain clarification which will enable the non-resident in ease of undertaking tax compliances and clarity will enable in avoidance of litigation.	As per the amendment in Budget 2020, tax return filing exemption is available to non-resident taxpayers deriving income in the dividend, interest, royalty, and fees for technical services as referred to sections 115A(1)(a) and 115A(1)(b) of the Act, and if taxes are deducted under section 115A of the Act. However, in a scenario where tax rate under Treaty is less than the rate under the Act, the same may not be available which will defeat the purpose of amendment and introduce compliance burden for non-resident. Similarly, no such exemption is available to non-residents taxpayers who have been subjected to withholding tax on income (and having no permanent establishment in India) under the Act.	• Provide clarification and use cases when a non-resident is required to file tax return in India. • Provide exemption where applicable taxes are deducted under Treaty where beneficial Treaty rate is applied. • Provide exemption where applicable taxes are deducted under the Act. For example, non-residents earning interest on income tax refund or interest received from Government or an Indian concern on monies borrowed or debt incurred other than in foreign currency which has been subjected to withholding tax under the Act should be exempted from filing of tax return in India.
B.5	Indexation benefit on capital gains u/s Section 112(1)(c)(iii) is not available to non-residents w.r.t. investment in Debt Mutual Funds	Section 112(1)(c)(iii) of the Act provides that long-term capital gains arising in the hands of non-residents from investments in unlisted securities (which includes unlisted debt mutual funds) will be taxed at 10% without indexation and foreign exchange fluctuation benefits. The distinctive feature of this provision is that this clause is neither applicable to residents nor corporates which are allowed indexation in open ended debt funds even though they are not listed. This kind of provision is effectively closing a potentially huge market for debt assets.	There is need to bring parity in tax treatment by extending indexation benefits to all the categories of investors and encourage inflows from non-resident investors. The comparison can be drawn with deposit in NRE Bank account by NRIs. The interest earned deposits by NRIs in NRE bank account is tax free in India as per section 10(4) of the Act. On the similar line the capital gain taxation in debt scheme should also be tax friendly for non-resident investor which will give a boost to up the Indian debt markets.

SL. No	Area of Challenge	Issue	Recommendations
			In view of the issues explained above, it is requested to issue suitable notification / circular amending the existing provisions w.r.t. indexation benefit be extended to non-resident investors by way of a suitable amendment in law.
B.6	Exemption / lower rate of tax on capital gains to FPIs pursuant to inclusion of India in Global Bond Index	India's inclusion in the GBI is expected to boost incremental foreign investment inflows. However, investors may be required to sell-off the bonds mandatorily as part of rebalancing activities which could trigger capital gains tax in India and may impact of the level of investment flowing into India. To encourage foreign investment and attract overseas investors relief in form of exemption/ lower tax rate on the bonds should be extended to the investors. If the tax on capital gains on debt securities to FPIs is eased by exemption/ lower rate, the economy will enjoy benefits in the form of sizeable fund inflows, reduction in balance of payments deficit and increased forex reserves.	Therefore, it is recommended to implement, exemption / lower rate of tax on capital gains arising to FPIs on compulsory sales arising on rebalancing of portfolio after inclusion of India in the Global Bond Index.
B.7	Change compliance structure for making foreign remittances	There is too much of compliance hassles, excessive cost, and efforts to process each foreign remittance. Further, there are no plausible benefits to Income tax department in terms or money or information.	It is recommended that form 15CA and Form 15CB should be changed to make a self-declaration. Such self-declaration may be collected by the banker at the time of remittance and can be reported by the taxpayers in Quarterly TDS return of foreign payments. Form 27Q, prescribed for this purpose may be amended to include all foreign payments irrespective of whether tax has been deducted or not.
	Requirement of Form 15CA & 15CB for payment to Non-resident by the Mutual Fund	• The Provision of Section 195 (6) of the Act, provides that form 15CA and 15CB is required to be submitted at the time of making payment to Non-Resident investors irrespective of taxability for such payment under The Act.	The multiple representations in the past have been made which have been further raised with SEBI and Finance Ministry. The representation was made to relax the requirement of compliance with the form

SL. No	Area of Challenge	Issue	Recommendations
		• Mutual Fund industry is making payment of redemptions/dividend to Non-resident investors in India. Due to the volume of transactions and stringent timelines for payments, MF industry is unable to comply with requirement of form 15CA and 15CB. • Mutual Funds at the time of dividend distribution or redemptions to non-resident investors deducts withholding tax. Therefore, Mutual Funds are already reporting the information for payment to non-resident investors through TDS returns on quarterly basis.	15CA and 15CB as the payments are being made in Indian Bank accounts of Non-resident investor only. Again, Mutual Fund industry is already complying with the requirement of withholding tax on capital gains for Non-Resident investors. Therefore, it is recommended that the Mutual Fund should be excluded from requirement of filing Form 15CA and Form 15CB.
B.8	Extension of sun-set clause under Section 194LC and 194LD	Currently, both these sections have a sunset clause of 30 June 2023. The benefit of the concessional withholding tax has been appreciated by the foreign investing community.	The rate of 5% for deduction of tax at source be extended perpetually to boost Indian debt market.
B.9	Significant Economic Presence (SEP)	• Progress on OECD Inclusive Framework proposals on Pillar 1 and Pillar 2 are at an advanced level. There is line of sight on implementation by end of 2023. The Multi-lateral Convention is expected to be developed and signed by participating countries in 2022. Increasing number of countries are moving ahead with withdrawal of Digital Service Taxes ('DSTs') and relevant similar measures. As per the recent Joint statement, Austria, France, Italy, Spain, and UK have reached a political agreement with USA on providing credit for interim period against future tax liabilities to Multinational Enterprises ('MNEs') once the DST solution is implemented. In exchange, United States has agreed to terminate its proposed trade actions. SEP provisions increases the compliance burden for taxpayers.	• Terms like 'systematic and continuous soliciting of business activities', 'engaging in interactions', 'users' should be defined and guidance using appropriate examples and quantifiable metric for explaining the meaning should be issued. Further, it should be clarified that only active users are to be considered and clearly define level of engagement that needs to be considered as an active user. Furthermore, transactions with group companies should be excluded from the definition of users. • Draft guidance / FAQs should be released for public consultation so that

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		• Further, the language of the SEP provisions is broad which may impact conventional transactions and activities carried on by foreign entities in India. Such ambiguity in language of SEP provisions may bring non-digital transactions/activities carried on foreign companies within the ambit of nexus rules in India which is not aligned with intention of legislature for bringing SEP provisions to cover transaction and activities carried on by foreign entities in digital form.	industry could provide its insights and consensus on quantification of number of users, determine when activities could be said to be systematic and continuous, etc. • Rules for attribution of income should be prescribed at the earliest to provide certainty and smooth implementation of the SEP provisions. • Person making payment to non-residents having SEP in India will have an obligation to deduct TDS. However, in the absence of any means to determine whether the non-resident satisfies the thresholds contained in Explanation 2A, lack of guidance on what profits are attributable and at what % tax should be withheld, it would be very difficult for the payer to deduct TDS on the income earned non-resident. Hence, it should be clarified that the TDS provisions shall not apply to non-residents when such non-residents have a business connection in India in terms of Explanation 2A to section 9(1)(i) of the Act. • Clarification should be brought as to whether return of income is mandatorily required to be filed in cases where the SEP thresholds are satisfied but the non-resident does not have any tax liability in India either basis the provisions of the Act or the DTAA.

SL. No	Area of Challenge	Issue	Recommendations
			• It should be clarified that the provisions of Chapter XV of the Act related to "agent" and "representative assessee" does not get trigged when business connection is created as a result of Explanation 2A to section 9(1)(i).
B.10	Issue in implementation of Section 9A of the Act	Section 9A(3)(e), 9A(3)(f) and Section 9A(3)(g) The existing stringent conditions, which are difficult to fulfil or are open to interpretation are as under: 1. Minimum of twenty-five members who are, directly or indirectly, not connected persons 2. Any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding ten percent. 3. The aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than fifty percent. Definition of connected persons is extremely wide and adapted out of context; when it is applied in the context of fund management regime – it is out of sync with commercial realities and may lead to unintended/ absurd consequences. These conditions are extremely difficult to comply with, especially because of the word "indirectly".	• Given that the offshore funds comply with 'know your customer' ('KYC') as required in the prospectus, no additional documentation should be required to satisfy that the members of the offshore funds are not "connected persons". • This will help practical implementation of the requirement of verifying the conditions of connected person for Mutual Fund

SL. No	Area of Challenge	Issue	Recommendations
		Section 9A(3)(c) Direct and indirect holding by Indian resident along with connected persons to be less than 5% of the corpus of the fund. It is practically impossible to verify participation by Indian residents on an ongoing basis in case where the eligible investment fund is an open -ended fund or listed on overseas stock exchanges.	• Inclusion of a prospective prohibition in the prospectus of a fund on sale / distribution of the fund units/shares to Indian Resident investors should be sufficient to satisfy this requirement. • Separately, participation or investment by Indian residents in an FPI is adequately regulated and monitored by SEBI. SEBI, from time-to-time, issues guidelines on restrictions of investment by Indian residents in an FPI. • Given that SEBI already prescribes guidelines in this regard, which are well understood and followed by market participants, there should not be any additional requirement under section 9A of the Act with respect to the participation of Indian residents.
		Section 9A(3)(l) No business connection of the offshore fund in India and no person acting on its' behalf. This clause limits the ability to outsource different activities/ functions relating to fund to India	Suitable clarification/ amendment may be provided that: • Outsourcing a part of the back office / support functions of the fund manager (such as fund administration, fund accounting etc.), to an outsourcing entity in India (which is a group entity of the fund manager), or appointment of banker, custodian, or broker in India by the fund or fund manager would not result in non-fulfilment of this condition. • In addition to the delegation of fund management activity, the offshore Fund

SL. No	Area of Challenge	Issue	Recommendations
			is mandated (by SEBI Regulations) to appoint a custodian or broker to make portfolio investments in Indian securities. Further, the offshore fund may also procure routine support services for fund administration or fund accounting from related or third party shared service centres in India. • In order to provide certainty that engaging these routine functions with Indian entities do not constitute a business connection, such services should specifically be clarified as not constituting a business connection of the offshore fund in India.
		Section 9A(3)(m) and Section 9A(4)(d) Remuneration paid to fund manager is. i. Not less than the amount calculated in prescribed manner (refer Annexure 1) and ii. Restricted to maximum of 20% of profits of the fund Rule 10V(15) - any remuneration paid to the fund manager which is in the nature of fixed charge shall not be included in the profits referred to in clause 9A(4)(d) if the condition specified in 9A(3)(m) are satisfied and such fixed charge has been agreed in writing at the beginning. • In case of loss, condition of section 9A(4)(d) may be contrary to the amounts calculated in prescribed manner as per section 9A(3)(m) read with Rule	• In case fixed fee is charged by fund-to-fund manager, it should not look at the conditions of payment of remuneration as per prescribed manner as specified in 9A(3)(m) • As fees will be paid by fund as per prescribed methodology the wordings in section 9A(4)(d) should be amended to provide flexibility to fund to pay more than 20% of the profits of the fund to the fund manager

SL. No	Area of Challenge	Issue	Recommendations
		10V(12) and may mandate the fund manager not to charge any fee in case of loss to the fund. • The provisions in Rule 10V (15) merely states that fixed charge shall not be included in the profits referred to section 9A(4)(d) but does not clarify whether: Fixed fees may be charged in the case of loss Fixed fees may be charged in addition to 20% profits of the funds. This seems to be an unintended error in the drafting of the Rule 10V(15).	

Tax deducted at source (TDS) and Tax collected at source (TCS)

SL. No	Area of Challenge	Issue	Recommendations
C.1	Section 194R of the Act deals with TDS on providing any benefit or perquisite to a resident The circular has widened the scope of Section 194R much beyond the scope of Section 194R as laid down in the Budget 2022.	The memorandum to Finance Act, 2022 had indicated that the intention for introduction of Section 194R is to deduct tax on the benefits or perquisites taxable under section 28(iv) of the Act. Accordingly, Section 194R should apply to non-monetary benefit or perquisite arising from the business or exercise of profession by the recipient as required under Section 28(iv) of the Act. However, the CBDT vide circular no. 12 of 2022 has expanded this position and requires taxpayers to apply deduction whether or not the benefit or perquisite is taxable in the hands of the recipient under Section 28(iv) of the Act, or other Sections like 41(1), or be not taxable all together. The Circular also	It is recommended to withdraw the circular and retain the scope of Section 194R as understood in its original form. Appropriate clarifications should be issued on the conditions to test the benefit/perquisite arising in the course of business or exercise of profession. There should be clarity for the provider of benefits as to how to test the condition of benefits arising from the business or exercise of profession.

SL. No	Area of Challenge	Issue	Recommendations
		expands the scope to cover benefits in the form of cash, contrary to the requirement under Section 194R to cover non-monetary benefit or perquisites.	
	Clarification on whether promotional free goods/ services amount to benefits/perquisites.	Instances where an assessee gives free goods/ services as a promotional offer with the intent to monetize such offerings after the offer period. For e.g., a company provides certain software/ services to a customer free of cost for first 3 months (promotional period) and start charging for software/ service after the end of promotional period (i.e., after end of 3 months). The CBDT circular (Question 4) clarifies that no tax is required to be deducted under Section 194R on sales discount, cash discount and rebates. The free promotional goods/services offered for the initial period are not per se in the nature of discounts but merely marketing and promotional offerings of the assessee. The intention to offer the free goods/services is not to provide any benefit or perquisite to the recipient, but to promote the goods/ service offering and later on monetize such goods/ services.	An appropriate clarification should be issued to exempting such promotional offers from the ambit of Section 194R of the Act as such offers are made with the intent to advertise and promote the goods/services and not with the intent to provide any benefit or perquisite to the recipient. Alternatively, the government may consider increasing the threshold from the current Rs. 20,000/- during the FY to Rs. 1,00,000/- during the FY.
	Compliance challenge in respect of implementing the provision on product samples issued and usage of business assets as part of product trial.	Transaction related to samples issued to Doctors and usage of Demo assets should be specifically excluded from the application of this section. Issuance of samples to doctors is a well-established practice and is in the best interest of patients. The samples issued to Doctors are marked as "Not for Sale" and accordingly, there is no income accruing to Doctors on use of samples for their patients.	It is recommended that the samples marked as "Not for Sale" should be excluded from the coverage of these provisions as this would result in undue cost to the suppliers/ customers. Similarly, the demo equipment is used by doctors as a normal customer to take a purchase decision, and such use of demo equipment should not be covered under the provisions under "use of business asset" and specific clarification should be released by CBDT under FAQ to clear Industry doubts and hardships.

SL. No	Area of Challenge	Issue	Recommendations
	Issue in provisions of Section 194R to be applied in case write-off of receivable from debtors	In case the investor/ lender of money writes-off any receivable from the investee/ creditor, one may argue that the investor/ lender has provided benefit/ perquisite to the investee/ creditor and therefore, such write-off might be liable to TDS under Section 194R. Example can be Mutual Fund (MF)/ Asset Management Company (AMC) invested into debenture of another company (i.e., investee) which may turn insolvent/ bad and therefore, MF/ AMC is not able to recover the money from the investee company. This may be argued as benefit/ perquisite provided by MF/ AMC to investee company. As investee/ creditor is already in default, it will be difficult to recover the amount of TDS from him and therefore, investor/ lender would be required to pay TDS on his behalf. This will further increase the loss to be borne by the investor/ lender and would cause undue hardship to the investor/ lender.	In order to avoid undue hardship and loss that may arise to the investor/ lender, it is recommended that the write-off of any receivable from the investee/ creditor by the investor/ lender should be kept outside the purview of Section 194R and suitable amendment should be made in Section 194R.
C.2	Simplification of TDS on all services	Several domestic TDS sections create operating hassles. Errors in classification of payments & differential rates causing litigation. TDS is a compliance which impacts all sectors of business. A lot of time & energy gets consumed in tracking payments based on various sections of TDS such as 194-I, 194J, 194C, 194A etc. and compliances related to each section such as challan, returns forms etc.	Therefore, it is recommended to simplify the structure by consolidating certain TDS sections. Majority TDS today is close to 5% only. Hence, making domestic TDS as uniform will not harm the interest of government. GST has already been implemented where various goods and services are already considered as same. Hence, considering domestic services/ contracts & interest at par will not be detrimental to the interest of Income Tax department.

SL. No	Area of Challenge	Issue	Recommendations
C.3	Applicability of TDS on Purchase of Goods [Section 194Q] and TCS on sale of Goods [Section 206C(1H)] to the mutual funds	As per section 194Q & section 206C(1H) of the Act, sellers and buyers of goods are required to deduct/collect a sum equal to 0.1 per cent of the consideration as TDS and TCS. As per the memorandum to the Finance Bill, 2020, the intent of introducing the aforesaid provision was to widen and deepen the tax net to levy TCS (collection of tax at source) on sale of goods above a specified limit. The Act does not define the term "Goods" but the intent of introducing this provision does not seem to be to cover mutual fund transactions as also, any transaction of purchase and sale of securities by Mutual Funds, (i.e., units of mutual fund & purchase and sale of securities by a mutual fund) Hence, Association of Mutual Funds in India (AMFI) had made a few representations to CBDT and in response, CBDT had issued a few clarifications stating transactions in mutual funds through recognised stock exchanges and unit creation & redemption done by a mutual fund shall be exempt from these provisions.	It would be prudent to issue a clarification for non-applicability of Section 194Q & 206C(1H) of the Act for the below transactions considering the intent of the law • Transaction in unlisted securities and transaction in securities not cleared and settled on recognised clearing corporation or stock exchange. • Transaction in subscription and repurchase of mutual fund units by the unit holders a. Intent to implement these provisions was to cover goods and not securities as per the memorandum to the Finance bill. b. The applicability will lead to double taxation in some cases. <u>Non-resident Investor:</u> In case these provisions are made applicable to mutual fund units then on issue of mutual fund units (i.e., purchase by investor from the MF), as per section 206C(1H) - TCS may have to be collected by the seller i.e., mutual fund, including non-resident investors. Subsequently, at the time of repurchase of such units by the non-resident (i.e., sale by investor to MF), the capital gain is currently subject to TDS u/s 195. Therefore, the non-resident

SL. No	Area of Challenge	Issue	Recommendations
			investors are subject to taxation under provisions of both TCS as well as TDS. Resident Investor: In case these provisions are made applicable to mutual fund units then it would also lead to double taxation for resident investors as the investors shall be subject to taxation under Section 206C(1H) for TCS on issue of mutual fund units (i.e., purchase by investor from the MF) and under Section 194Q for TDS at the time of repurchase of such units (i.e., sale by investor to MF) c. Transactions in mutual fund units with the mutual fund entity is same in nature as transactions that through stock exchanges, resulting into non-parity d. Income earned by Mutual Funds are exempt under section 10(23D) of the Act e. Mutual Funds are highly regulated f. Specified transactions as defined in the Act are being reported g. Levy of TDS/ TCS shall cause undue and unintended burden and hardship on the investors/unitholders in Mutual Funds
C.4	TDS on purchase of goods (Section 194Q)	The previous budget brought introduced the TDS on purchase of goods with an intention to create trail of purchase/ sale of high value goods. This has created a lot of hardship in the industry. The intention of the	It is recommended to remove this provision.

SL. No	Area of Challenge	Issue	Recommendations
		government to create a trail of goods could well be achieved through the robust GST system and does not need an introduction of a separate provision in the Act for the same.	
C.5	TDS on Payments Made to e-commerce Participants (Section 194-O)	Given the vision of the Government to promote exports, TDS under Section 194-O is adding working capital burden on the e-commerce participants and thereby, reducing their competitive advantage vis-à-vis other countries. This would only negatively impact the growth of the export sector for India. It shall also be noted that the provisions of section 206C(1H) specifically excludes from its ambit "Goods being exported out of India"	In light of the same, it is recommended to clarify that the provisions of Section 194-O will not apply when the e-commerce operator facilitates sale of goods or provision of services by a resident seller to a customer outside India i.e., only sales to customers in India are covered under the provisions.
		As per the provisions of Section 194-O an exemption of INR 5 lakhs is provided to Individual and HUFs on the gross sales in a financial year. However, once the amount exceeds INR 5 lakhs, TDS is required to be deducted on the entire amount during the financial year. An interest of @1% per month will also be unfairly triggered on deducting TDS for the sales below INR 5 lakhs once the sales cross INR 5 lakhs.	• In this regard, it is requested that the threshold be increased to at least INR 40 lakhs for individuals and HUFs, aligned with the threshold for GST registration prevailing in majority of the states. • Further, it may be clarified that the TDS under Section 194-O for individuals or HUFs, being e-commerce participants shall apply only on the incremental amount exceeding the minimum threshold during the financial year.
C.6	TDS on payments to foreign vendors (Section 195)	Payment for services to foreign vendors entails documentation like No PE declaration, TRC & Form 10F. However, there is lack of clarity and some Indian companies are insisting on this documentation even for shipments	It is recommended to remove this provision.

SL. No	Area of Challenge	Issue	Recommendations
C.7	Ambiguity in interpretation of Section 196A which deals with income in respect of units of non-residents	Section 196A provides for TDS rate of 20% on any income in respect of units of mutual funds in case of non-residents (other than Foreign Institutional Investor / Foreign Portfolio Investor). Hence, based on language provided in said section, it seems that TDS at 20% may be applicable on capital gains also notwithstanding that such capital gains may be taxable at a rate lower than 20% (e.g., equity-oriented funds where TDS rate is 10% or 15%)	Therefore, it is recommended that a clarification of non-applicability of 196A on capital gains should be provided. A similar clarification has been provided in Section 194K which is applicable for resident individual stating the TDS is not applicable for capital gains. Hence, clarification should be provided for Section 196A as well.
C.8	Higher Surcharge on TDS rate as per Part II of the Finance Act for NRIs on capital gain and dividend income.	There have been numerous complaints from NRI taxpayers who are demanding for a uniform rate of Surcharge on TDS to be applied across all mutual funds. From an investors' perspective, the plethora of tax rates, compounded with varied surcharge and cess rates leads to significant amount of confusion. In view of the aforesaid challenges, some mutual funds have been conservatively deducting the Surcharge on TDS at the maximum rate of 37% surcharge, irrespective of the amount of capital gain, while some are deducting the Surcharge at the applicable rate for the actual redemption amount paid for a given transaction. In short, there is a lack of uniformity in the rate of Surcharge on the TDS applied by various Mutual Fund houses.	To address the concerns faced by investors and to ease the TDS compliance burden for the mutual funds, it is recommended that a flat surcharge rate of 10% could be applied to TDS on capital gains/ dividends paid to NRIs. A suitable notification/ circular be issued amending the existing provisions with respect to Surcharge on TDS in respect of NRIs and prescribe a uniform rate of Surcharge on TDS in respect of dividend from mutual fund units under Section 56 to NRIs as well as the capital gains under Section 111A & 112A arising upon redemption of mutual fund units in respect of NRIs. It is pertinent to mention here that, in any case, the actual /final applicable rate of Surcharge on Tax payable by a NRI assessee would depend entirely upon the final aggregate income of the NRI taxpayer under the heads 'Income from Capital gains' & 'Income from Other sources' (for dividend) in the income tax

SL. No	Area of Challenge	Issue	Recommendations
			return. Hence, rationalizing the rate of Surcharge on TDS by prescribing a flat rate (just like the flat rate for TDS itself) will facilitate ease of tax administration, without any loss of revenue to the Government. At the same time, it would also mitigate the hardship currently being faced by the mutual funds and the NRIs and eliminate the lack of uniformity amongst mutual funds in compliance of the TDS obligation. This will alleviate the hardship for Mutual Funds and NRI tax assessees and also facilitate ease of tax administration, without any loss of revenue to the Government.
C.9	Various other recommendations regarding TDS; Threshold limit in case of concessional TDS certificate	It is practically very difficult for large organisations to keep tab on the payments in excess of threshold for concessional TDS	It is recommended that the threshold limit should be done away with, and rather there should be only one concessional TDS rate for all payments during one fiscal year
	Distribution of TDS Certificates automatically	There is a separate requirement to issue TDS certificates in addition to TDS returns. Several companies incur cost in distribution for this and have to maintain records as non-compliance attracts penalties.	The inputs provided in TDS returns (under certification by company) is used by ITD for generation of Form 26AS of deductees. It is recommended that the Inputs of TDS returns should be utilized for distribution of TDS certificates as well by providing a link in Form 26AS which can facilitate download of certificate automatically by the assessee/ deductee.

SL. No	Area of Challenge	Issue	Recommendations
	Compounding of TDS defaults	Decriminalization of provisions and improving ease of doing business. Currently, there is no provisions on compounding of violations	TDS is in the nature of advance tax (pay as you earn) and to ensure that the tax net is stronger. The assessee that deducts, and deposits tax is doing a service to the tax collection and support the efforts towards ensuring that no income escapes tax. As this being an economic levy, it is recommended that the Government should replace the existing prosecution related provisions with penalties and compounding provisions. This will help to deter the assessee from non-compliance and would also improve ease of doing business for the industry in long run. Moreover, for the newly introduced Sections, there should be a moratorium of at least 5 years, before any prosecution related provisions are applicable on these.

Litigation

SL. No	Area of Challenge	Issue	Recommendations
D.1	Disposal of appeals by Commissioner of Income-tax (Appeals) ('CIT(A)')/ National Faceless Appeal Centre ('NFAC')	• It has been around a couple of years now that the NFAC has been set up, however, there appears to be a sizeable pendency of appeal(s) at the level of the CIT(A)/NFAC. • Also, the taxpayer, is called upon to pay 20% of the demand when the appeal is pending before the 1st appellate authority and hence, delay in disposal of the appeal(s) is aggravating the situation.	• Steps may be taken to ensure a timely disposal of appeals by the NFAC including, if required, to at least continue with the old system of disposal of appeals by the jurisdictional CIT(A) for cases which were filed long back and which are yet pending disposal. A suitable cut-off date can be worked out.

SL. No	Area of Challenge	Issue	Recommendations
		• While steps have been taken to enable the Applicant(s) to argue the appeal(s) virtually, however, the system does not seem to work at times leading to the delay in disposals.	• The rationale for this is also that generally in such cases, the submissions / paper books would have been filed and hence, digitizing these same documents again and uploading it and also for the concerned CIT(A)s to accessing them in soft version will have its own set of challenges which can be avoided by permitting these appeals to be heard physically and setting up internal deadlines for disposal of the same. • Cases where directions are being given by various Courts to ensure early disposals of the appeals should be monitored more rigorously so that there is no violation of Court Order(s). Enabling provisions may be provided in the Act to make rules to ensure the same. • Cases where requests have been made by the taxpayer(s) seeking early hearing/ disposal of cases too, should be monitored to ensure the timely disposals. Enabling provisions may be provided in the Act to make rules to ensure the same. • Generally, a deadline should be provided for in the Act statutorily mandating disposal of appeals within the prescribed time limit.

SL. No	Area of Challenge	Issue	Recommendations
D.2	Online filing of rectification application and timelines for disposal	Rectification matters are pending for more than 10 years and require successive and relentless follow ups with the authorities to ensure that the rectification applications are processed.	Guidelines should be issued for the tax officer to strictly adhere to the timelines prescribed for passing the rectification order.
D.3	Rationalisation of amendments made with respect to re-assessment proceedings – Rules relating to Sections 148 and 148A. The Government should consider rationalizing provisions in relation to re-assessment proceedings which provides wide powers to the tax authorities to open proceedings for last 11 years.	The current provisions are worded in a very wide manner and can be used by tax authorities to re-audit/ open proceedings beyond normal audit period, which was not the intent of tax authorities as the intent of introducing this provision was section was to reduce litigation	Adequate instructions/ mechanisms should be issued to ensure that this provision is not misused by the tax authorities.

Others

SL. No	Area of Challenge	Issue	Recommendations
E.1	Undue hardship to taxpayer in case of Capital Gain Taxation on account of involuntary redemption of mutual fund units in winding up of scheme scenario	Winding up of schemes is an involuntary action in the hands of an investor/ unit holders and distribution on account of such winding up by extinguishment of units is also, thereby, involuntary for the investors/ unit holders. Mentioned alongside are the scenarios where capital gain tax is levied for such involuntary redemptions; During the winding up process, the proceeds (i.e., sale/ prepayment/ dividend) received from securities in the scheme is periodically distributed to the investor by extinguishing the partial units. The gains arising out of all such extinguishments are taxed as capital gains in the hands of investors/ unit holders even though the event is involuntary in nature. Once all performing assets (non-zero valued securities) are liquidated, all the units in the scheme get extinguished.	In order to obviate undue hardships to taxpayers and to ensure equitable and just treatment of proceeds for taxation while ensuring that there is no tax loss to the exchequer, it is recommended that the gains arising to investors on distribution of recoveries made post extinguishment of all units should be taxed on receipt basis. An analogy can be drawn from below provisions of the Act which defined under specific cases (as outlined below) capital gains are subject to tax on receipt basis- Section 45(5) of the Act - where capital gain arises from transfer of capital asset being transfer by way of compulsory acquisition under any law or a transfer the consideration for which was determined or approved by the Central Government

SL. No	Area of Challenge	Issue	Recommendations
		There may be certain non-performing securities in the portfolio of the schemes which have defaulted on interest or maturity payments and are valued at zero. The proceeds from such securities would be received/ recovered post extinguishment of all units. The amount so recovered would be distributed to the investors/ unit holders post winding up and would be in lieu of the units held prior to extinguishment of all units. Accordingly, such distribution posts all units are extinguished is chargeable to tax under the head capital gains and as per Section 45(1) of the Act, any profits or gains arising from the transfer of a capital asset effected in the previous year shall be chargeable to income tax under the head capital gains and shall be deemed to be income of the previous year in which the transfer took place. This may cause undue hardship for investors, requiring them to file a revised return of income for the year in which original consideration was offered to tax at the time of extinguishment of the units. However, due to the revision in the time prescribed for filling the revised return of income, an investor or unit holder may not be in a position to timely file revised return of income to report the additional consideration where such time limit is lapsed. Separately, Finance Act 2022 has introduced sub-Section 8A under Section 139 of the Act to provide the taxpayer an option to file an updated return of income at any time within 24 months from the end of relevant assessment year, subject to certain conditions. Further, such updated return of income requires the taxpayer to pay an additional amount of 25%/ 50% of the aggregate tax and interest liability, in order to	or the Reserve Bank of India, and the compensation or consideration for such transfer is enhanced or further enhanced by any court, Tribunal or other authority, then such enhanced compensation or additional consideration shall be deemed to be income chargeable under the head “Capital Gains” of the previous year in which such amount is received by taxpayer. Section 46(2) of the Act - which deals with taxability of distribution of liquidation proceeds in the hands of shareholders of a liquidating company. Section 46(2) of the Act creates charge of capital gains tax on receipt of each distribution of liquidation surplus [over and above deemed dividend under Section 2(22)(c) of the Act]. A provision should be inserted under Section 45 of the Act stating that the capital gains in case of involuntary winding up of mutual fund scheme are subject to tax on receipt basis. It is recommended that a specific clause be inserted under Section 45 of the Act to provide taxation of distribution made without extinguishment of units on receipt basis on similar lines as the provision which deals with transfer of capital asset by way of compulsory acquisition under any law or a transfer, the consideration for which was determined or approved (by

SL. No	Area of Challenge	Issue	Recommendations
		facilitate the reporting of income which has been missed by a taxpayer. Based on the above, where the option of updated return of income is considered by the investors (to report the additional consideration received within 24 months from the end of the assessment year relevant to the year of transfer), the same will be detrimental to their interest as the Act casts an additional tax and interest liabilities to report such income which was known to the investor only upon its receipt. Accordingly, the updated return of income is also not a viable option.	the Central Government or the Reserve Bank of India), and the compensation or consideration for such transfer is enhanced or further enhanced by any court, Tribunal or other authority [section 45(5) of the Act]. Further, for determining the period of holding while computing the taxable gains on receipt of additional consideration, it is recommended to insert an explanation in Section 2(42A) of the Act to include a period commencing from the last extinguishment of units (in case of winding up of a mutual fund scheme) till the actual receipt of additional consideration in order to provide a benefit of period of holding to the unitholder, given that, winding-up is an involuntary action and not at the discretion of unitholders like a case of redemption of unit, which takes place in ordinary course of business.
E.2	Segregation of Mutual Fund Scheme should not be considered as transfer, as per Section 47	SEBI vide circular dated 28 December 2018 permitted creation of segregated portfolio of debt and money market instruments by Mutual Fund schemes in case of an adverse credit event is fixed income securities as specified in the circular. This is also known as side-pocketing of the security which is stressed. As per SEBI circular, all existing unit holders in the affected scheme as on the date of the segregation shall be allotted equal number of units in the segregated portfolio as held in the main portfolio. On segregation, the unit holder shall hold the same	Segregation of portfolio does not result in transfer as the investor continues to hold units of main portfolio and segregated portfolio and therefore, the same is mere splitting of schemes. An analogy can be drawn from below clauses of Section 47 wherein some transactions as not considered as “transfer” as these are similar of creation of units under segregated portfolio; i) Clause (xviii) – any transfer by a unit

SL. No	Area of Challenge	Issue	Recommendations
		number of units in the two portfolios i.e., the main portfolio and the segregated portfolio. Finance Act 2020 introduced provisions for deriving the cost of segregated portfolio and period of holding as mentioned below. Section 49 (2AG) - The cost of acquisition of a unit or units in the segregated portfolio shall be the amount which bears to the cost of acquisition of a unit or units held by the assessee in the total portfolio, the same proportion as the net asset value of the asset transferred to the segregated portfolio bears to the net asset value of the total portfolio immediately before the segregation of portfolios. Section 49 (2AH) - The cost of the acquisition of the original units held by the unit holder in the main portfolio shall be deemed to have been reduced by the amount as so arrived at under sub-section 49 (2AG) Section 2(42A) - explanation 1(i) - sub-clause (hh) - In determining the period for which any capital asset is held by the assessee, being a unit or units in a segregated portfolio referred to in sub-section (2AG) of section 49, there shall be included the period for which the original unit or units in the main portfolio were held by the assessee The provisions under Sections 49(2AG)/ 49(2AH)/ 2(42A) - explanation 1(i) - sub-clause (hh)) provide clarity for taxation at the time of sale/ extinguishment of units of segregated portfolio. However, it is pertinent to note that the Act does not	holder of units held by him on consolidation of schemes of a mutual fund shall not be treated as a transfer provided, they are allotted units in the consolidated scheme of the mutual fund. ii) Clause (vib) - any transfer, in a demerger, of a capital asset by the demerged company to the resulting company, if the resulting company is an Indian company Generally, when such transaction occurs and results into additional shares of a company (amalgamation/ demerger etc.) or additional units of a plan or scheme (merger), the Law exempts these transactions from the definition of "Transfer" under Section 47 of the Act The principle of segregation of portfolio of mutual fund and side-pocketing is akin to securities issued upon demerger of corporates. The concept of tax neutrality in case of demerger of companies as also merger of schemes should be extended to segregation of portfolios or side-pocketing of mutual fund units. The allotment of units in a segregated portfolio of a mutual fund scheme is not a transfer under Section 47 of the Act.

SL. No	Area of Challenge	Issue	Recommendations
		specify anything on the tax impact (if any) on the receipt of units of segregated portfolio.	
E.3	Maintenance, Repair, and Overhaul (MRO) industry	In order to make Indian MRO industry attractive, the Government should consider the provide tax concessions/ benefits in the direct tax area.	Reduced corporate tax rate of 15% to be extended to MROs keeping at par with manufacturing companies.
E.4	Intimation under Section 143(1)(a) of the Act	Section 143(1)(a) of the Act provides for computerized processing of return of taxpayers after giving effect to inter-alia adjustments on account of disallowance of expenditure or increase in income specified in the tax audit report but not taken into account in computing the total income in the return. Before carrying out the adjustments, Section 143(1)(a) of the Act provides for issuance of intimation to the taxpayer providing them opportunity for response However, it has been observed that even after giving appropriate response by taxpayer objecting to adjustment, the Central processing Centre (“CPC”), still proceed to make adjustments and the same results in undue hardships to the taxpayer Further, while taking the matter to the jurisdiction tax officer by the taxpayers, it is normally observed that jurisdiction tax officer states that since they have no rectification rights which generally gets transferred to them from CPC/NFAC only after completion of adjustment, hence, they are unable to rectify the adjustments, which ultimately causes not only illegitimate tax demand but also consumes time and efforts of the taxpayers and also adjustment of their refunds with such demand .	It is recommended that a system should be built wherein the response should be correctly taken into consideration by senior officials of CPC and valid reasoning should be provided by CPC for non-consideration of the taxpayer response. Further, if the response is not considered correctly, an option for transferring rights to the jurisdictional tax officer should be given who should take up action in a time bound manner

Transfer Pricing

SL. No	Area of Challenge	Issue	Recommendations
F.1	No Form 3CEB filing for taxpayers exempt from filing income-tax return – Section 92E	• Pursuant to amendment through the Finance Act, 2020, a non- resident assessee is not required to file income tax return in India if it is assessable to tax in India for dividend, interest, royalty or fee for technical services, and the taxes have been appropriately withheld from such taxable income under the provisions of Chapter XVIIA of the Income Tax Act, 1961. • With the above exemption from filing obligation of the income tax return in India by the non-residents under section 115A, a question arises about the assessee's obligation for filing Accountant's Report in Form 3CEB under section 92E of the Act. • Section 92E has not been amended consequent to the above exemption under section 115A(5) of the Act. Non-reporting of international transaction in Form 3CEB attracts multiple penalties under sections 271BA, 271AA, 271G and 270A of the Act. • So, a situation arises where a non-resident need not file a tax return in India but would still need to file Form 3CEB to avoid any penalty for non-reporting of the international transaction.	• Considering the above anomalous situation, it is recommended that section 92E be amended to provide exemption to non-resident assessees from filing Form 3CEB where they are exempted under section 115A(5) from filing tax return in India.
F.2	Statutory provisions for filing revised Accountant's report i.e., Form 3CEB – 92CE	• Section 92E of the Act provides compliance requirement for every person who has entered into an international transaction or specified domestic transaction during a previous year to file Accountant's Report in Form 3CEB on or before the due date provided under section 92F. However, there is no provision in the Act for revising Form 3CEB as in the case if income tax	• It is recommended that statutory provision regarding filing of revised Form 3CEB be included under the Act to avoid any genuine hardship to the taxpayers

SL. No	Area of Challenge	Issue	Recommendations
		return under section 139 (5) of the Act. Though, the online utility of Income tax department allows filing of revised Form 3CEB. • There may be situations of an inadvertent omission or misreporting in filing Form 3CEB which the assessee may require to revise in bonafide cases. Misreporting/inaccurate reporting in Form 3CEB are subject to penal consequences. Hence, the assessees do revise form 3CEB in such cases. However, since there is no statutory provision in this regard, many times the tax authorities question the legality and timeline for filing revised Form 3CEB.	
F.3	Mechanism to fast-track conclusion of Unilateral APAs covering less complex/standard transactions –Section 92CC & 92CD	• APA program has been an important dispute prevention mechanism and till March 2022, around 1500 APA applications have been received. However, only 421 APA applications have been concluded till that date. Average time period taken by the Indian tax authorities for concluding the unilateral APAs, as per the CBDT APA Annual Report 2019, is about 32.5 months. • Delay in concluding the APAs creates uncertainty for the taxpayers and risk of litigation looms over them, impeding the “Ease of Doing Business” initiative of the government. Taxpayers also bear the burden of interest on differential tax payment for past years, besides secondary adjustments. Suitable means to fast track unliteral APA conclusions need to be explored.	• Some countries have undertaken measures to speed up APA conclusion processes. For example, China’s State Taxation Administration (STA) recently introduced a fast-track unilateral APA processes and under that they aim to conclude the APAs within 6 months from the date of filing the APA applications. This process is applicable only to small taxpayers, having annual related party transaction not exceeding CNY 40 million, etc. • The government can consider similar fast track mechanism for APA applications, covering international transactions such loans, corporate guarantee, intra group service charges etc. or for companies having cost-plus remuneration mechanism in the service companies involved in IT or ITeS business. These

SL. No	Area of Challenge	Issue	Recommendations
			transactions/sectors normally have almost standardised APA resolutions. • The fast-track mechanism will reduce the burden of the existing APA pipeline as IT/ITeS applications for unilateral APAs constitute an estimated 35% by numbers. Once the administration is relieved of routine IT/ITeS cases, it can concentrate on the complex cases. This will reduce the time taken to conclude unilateral APAs significantly.
F.4	Keeping regular assessment in abeyance till APA conclusions – Section 143	• As per the CBDT APA Annual Report 2019, the inventory of APA cases is building year after year, given that only 15% of the APA applications get disposed off during the year; and the balance gets added to the inventory. For the rest, assessment and litigation proceedings continue till APA conclusions. For the taxpayer, two procedure tracks—APA process and the normal audit & litigation—run side-by-side. • After APA is concluded and arm's length price specified, all appeals on the matter are required to be withdrawn. These create infructuous work process for the tax department, and many times without any revenue gain; large compliance work also ensue for the APA applicant, creating time and resources wastage for both the sides.	• Assessment process can be suspended till the APA process for a reasonable period (say for 2 years or so) or till the APA has either been concluded or withdrawn, whichever is earlier. This will relive the taxpayers of large compliance work and will make the APA process more attractive. • Tax jurisdictions like Japan, the US, the UK keep the assessment proceeding on hold, till the conclusion or withdrawal of the APA. Indian tax law could be aligned with these global best practices.
F.5	Removal of restriction under Section 92(3) for unilateral APAs	• Section 92(3) of the Act is a restrictive tax provision. Under this provision, the taxable income of the taxpayer already reported in the tax return cannot be reduced or the losses cannot be increased on account of transfer pricing adjustment. This was brought in keeping in mind transfer pricing audits.	• APA is a dispute prevention mechanism. It should be taken on a separate footing, so that the outcome of APA is more robust. It will be useful to have a carve out for APAs and

SL. No	Area of Challenge	Issue	Recommendations
		• There are circumstances in the APAs when the arm's length price agreed in the APA is lower than the price at which the transaction had actually taken place in the past covered years and/or the rollback years. That may result in lowering of the taxable income of the taxpayer. • Due to restrictions imposed by section 92(3), benefit of lower arm's length price and taxable income for past covered years or roll back years are not allowed to the taxpayer. This often results in substantial tax cost to the taxpayer for the past APA years/rollback years and denies the benefit of independent thinking in determination of arm's length price by the tax department. The taxpayer ends up paying higher tax even when the agreed arm's length price ought to be lower. This is prejudicial to the taxpayers.	MAPs and remove the restrictive effect of section 92(3) of the Act.
F.6	Adjustment for withholding tax on conclusion of APA – Section 92CD	• Arm's length price is determined in APAs for various international transactions. Some international transactions, such as intra-group royalty charges, fees for technical service, or any other intra-group service charge, are subject to withholding tax in India. These taxes are withheld at the time of accrual in the books of accounts of the Indian taxpayer. • If the arm's length price determined in the APA is lower than the actual service fee accrued to the taxpayer, the Indian taxpayer is required to claim lower deduction for such intra-group payments in the modified return for all the past covered years as well as for the rollback years. This often results in excess withholding tax for the non-resident AE. There is no mechanism for the refund of withholding taxes to the non-resident taxpayers as they are not allowed to file a modified tax return for the correlative reduction in the transaction	• The government should consider rationalising the APA scheme to allow AEs to claim refund, if there is an excess withholding tax by the Indian entity.

SL. No	Area of Challenge	Issue	Recommendations
		value. Under the present provisions, the non-resident taxpayers are required to pray for relief and request refund of the excess taxes withheld by the Indian entity from the CBDT under section 119 of the Act. • As explained above, getting refund of the excess withholding tax is very cumbersome. Normal course of filing for refund through revision of tax return often gets hit by the limitation period for revising the tax return. Thus, excess withholding tax becomes an additional tax burden for the group due to lapse of the limitation period.	
F.7	After conclusion of APA, reference for TP scrutiny should be made only for international transactions not covered in APA	• Section 92CD read with Rule 10P provides detailed procedure for the completion of assessment for the years covered in the APA. As per section 92CD, after the conclusion of the APA, the assessing officer has to complete the assessment in accordance with the APA for the covered transactions after considering modified return. Further, as per Rule 10P, the TPO has to carry out the compliance audit for each of the year covered in the APA and submit its report to the Pr. Chief Commissioner of Income tax (International tax) for unilateral APA and to the Competent authority for bilateral and multilateral APA. The AO considers the compliance audit report while completing the assessment for the years covered in the APA. Further Rule 10P states that regular audit of the covered transactions shall not be undertaken by the TPO which are covered under the APA. • In many cases, it has been experienced that even after the compliance audit, the assessee's case is selected for detailed TP scrutiny and reference is made to the TPO under section 92C of the Act, for all the international transactions undertaken by	• The government should have record of assessees that have entered into APA along with the transactions and years covered under APA. The scrutiny selection system should select such assessees for regular TP scrutiny for only those international transactions that are not covered under the APA.

SL. No	Area of Challenge	Issue	Recommendations
		the assessee in a particular year including the covered transactions. This creates unnecessary compliance burden for taxpayers and duplication of efforts. • TPOs undertake detailed scrutiny of all the compliances as per APA for the covered transactions even after compliance audit before issuing TP order. This duplicates the assessment efforts.	
F.8	Interest charge under section 234B and 234C on additional income under APA should be absolved – section 234 B and 234C	• As per Section 92CD (1) of the Act, the taxpayer is required to file a modified return in pursuance to conclusion of the APA. Section 92CD(2) of the Act provides that all other provisions of this Act shall apply accordingly as if the modified return is a return furnished under section 139 of the Act. • The taxpayer is required to pay advance tax during the previous year in four instalments based on estimate of its income. In case the advance tax paid during the previous year is short paid, then the taxpayer is required to pay interest under sections 234B and 234C of the Act • The conclusion of the APA currently takes substantial time. Some cases even get concluded after the expiry of the covered APA period. There is no specified timeline for APA conclusion unlike tax assessments. It poses substantial challenge before the taxpayer. At the time of payment of advance tax, the taxpayer is not aware about the conclusion of the APA. For all the past covered years of APA including rollback, the advance tax would have already been paid by the taxpayers during the relevant years. Delay in APA conclusion leads to delay and deferment in payment of advance tax due to impossibility of performance resulting in interest burden under section 234B and 234C of the Act.	• It is a settled principle that the law should not provide for performance of the impossible. Consequently, provisions of section 234B and 234C of the Act needs to be modified suitably so as to remove charge of levy of interest in case of additional income offered to tax under APA to remove the difficulties faced by the taxpayers.

SL. No	Area of Challenge	Issue	Recommendations
F.9	Clarity on the implications of High Court proceedings where MAPs are closed based on ITAT order	• CBDT issued MAP guidance on Mutual Agreement Procedure on 7th August 2020 (MAP Guidance). It has been categorically mentioned in the MAP Guidance on page 10, that if the ITAT order is issued on merits with respect to the same dispute that is subject matter of MAP, the Competent Authority of India will follow the order of the ITAT and will not deviate from that position. In such cases, the Competent Authority will only request the Competent Authority of the other country to provide correlative relief based on the ITAT order. These MAP cases shall be closed as having been resolved through domestic remedy. • In cases where MAP is resolved after negotiations between the two competent authority, Rule 44G provides a detailed procedure for giving effect to MAP resolution by the assessing officer once it is accepted by the taxpayer. As per Rule 44G(11), after the submitting of the proof of payment by the taxpayer, the assessing officer shall withdraw all the pending appeals pertaining to the dispute resolved under MAP. • However, in cases where MAP is closed by domestic remedy as mentioned above pursuant to the ITAT order; there is no clarity about the pending appeals before the High Court or Supreme Court. Practically, in many instances, the Indian Competent Authority is closing the cases where ITAT orders are received on merits while the appeal continues in the High Court or Supreme Court. In these situations, there is no clarity whether MAP fails in these situations, or the taxpayer can again request for MAP negotiations after these appellate proceedings.	• Rule 44G should provide for withdrawal of all pending appeals after the resolution of MAP under domestic appeal if the taxpayer accepts the ITAT order. This would create parity in the MAP resolution in both circumstances i.e., when resolved by the negotiations between the Competent Authority and when resolved through domestic remedy. Ultimately, in both the situations, it is the position adopted by the Competent Authority. If accepted by the taxpayer, it cannot be appealed further by any of the parties to the dispute.
F.10	Penalty protection under MAP	• Hon'ble Karnataka High Court (HC) recently dismissed a writ petition filed by Toyota Kirloskar	• An explanation may be added in section 271(1)(c) (now 270A) to say

SL. No	Area of Challenge	Issue	Recommendations
		against the levy of concealment penalty on TP adjustment under mutual agreement procedure (MAP) under the relevant tax treaty. In this case, the HC held that unless a specific provision is made in the Double Taxation Avoidance Agreement (DTAA) with respect to penalty, provisions of section 271(1)(c) would continue to apply to TP adjustment under MAP. • The Hon'ble HC held that the onus lies on the taxpayer to establish that the TP adjustment arrived under MAP is not due to concealment of income or furnishing of inaccurate particulars. • Under MAP, the competent authorities of the two countries discuss, negotiate, and finally decide the transfer pricing adjustment to the international transaction to avoid double taxation under article 25 of the DTAA. The two competent authorities review the case and resolve the dispute as an alternative dispute resolution procedure. • Considering that the decision on TP adjustment in MAP is arrived at by two sovereign countries based on negotiations, any levy of penalty in a routine manner should not be applicable unless the taxpayer has not acted in good faith and with due diligence	that no penalty for concealment of income for TP adjustments under MAP be levied unless there are reasons to say that the taxpayer has not acted in good faith and with due diligence, and thereby concealed facts or furnished inaccurate particulars. • Effective MAP program in a country is one of the minimum standards under BEPS. Unless exceptions are created for such implementation issues, it would render the MAP program less effective.
F.11	Increasing exemption threshold for secondary adjustment – Section 92CE	• As per the first proviso to section 92CE of the Act, no secondary adjustment is applicable where the amount of primary adjustment made in any previous year does not exceed one crore rupees. However, considering the fact that TP adjustments are generally high in quantum, the threshold of INR 1 crore is very low. • Due to a small threshold of INR 1 crore, almost all the assessees are covered under secondary adjustment and exemption under section 92CE does not give any effective relief to the taxpayers.	• The government should consider rationalising the secondary adjustment provision and allow a higher exemption threshold of not less than INR 5 crores.

SL. No	Area of Challenge	Issue	Recommendations
F.12	TP adjustment for tax holiday unit on cash repatriation under APA, MAP or under section 92CE – Section 92C(4)	• Section 92C(4) prohibits tax exemption on the value of TP adjustments under sections 10A and 10B or 10AA or Chapter VIA. Intent of the legislature, as per the CBDT Circular 14 of 2001, in inserting section 92C(4) was to restrict tax holiday benefit on TP adjustments as that would only result in tax adjustment without any consequent foreign currency inflow. • Later, secondary adjustment provisions were introduced from FY 2016-17 in the Act under section 92CE. These provisions provide for mandatory cash repatriation from the AE for any TP adjustment in the Indian entity, resulting in forex inflow. • Since the very reason for denying tax holiday benefits gets addressed through introduction of section 92CE, there is a requirement to revisit Circular 14/2001 of the CBDT and remove the tax holiday benefit stipulation through an amendment in the Act.	• The government may make suitable changes in section 92C(4) to allow tax deduction/exemption holiday benefit to the taxpayers in line with the legislative intent of 2001 while introducing TP provisions.
F.13	Interquartile Range to determine arm's length price be allowed – Section 92C	• Proviso to section 92C(2) read with Rule 10CA of the Rules provides the range concept from 35th percentile to 65th percentile for 6 or more comparable and arithmetic mean for less than 6 comparable. However, most of the tax administrations around the world follow interquartile range for determining the arm's length price. • International groups confront challenge to justify different range in different jurisdictions.	• It is recommended that India also follow internationally accepted range concept i.e., interquartile range (25th – 75th percentile) to align itself with international standards.
F.14	Streamlining Safe Harbour to reduce APA filings	• The Indian Government tried to streamline the safe harbour rates in June 2017 to make it reasonable and closer to comparable benchmarks. However, even after 2017, not many taxpayers have adopted the benefit of safe harbour to avoid litigation. The safe harbour	• In view of the above, the Government may re-evaluate the safe harbour provisions on three aspects (1) to reduce the class of transactions from the safe harbour and restrict it only for IT, ITeS and business support etc. (2)

SL. No	Area of Challenge	Issue	Recommendations
		benefit has been restricted to very small companies which is making it inaccessible to medium scale companies. Further, safe harbour rates are still higher than the comparable benchmark which make it commercially unviable for taxpayers to adopt. Moreover, handful of safe harbour applications filed by the taxpayers are only for IT and ITeS. There is hardly any taxpayer for most of the other transactions covered in Safe harbour. • Due to present Safe harbour regime, many taxpayers have to apply for APA to attain tax certainty that increases the burden of APA applications. The APA should involve cases with complex transactions and business models that require in-depth business and economic analysis for setting the transfer prices.	to provide the safe harbour rates closer to comparable benchmarks with a little premium for certainty and (3) to increase the threshold to cover almost 75% of the companies under this spectrum. This can serve dual purpose of providing tax certainty to taxpayers and easing the burden of the APA.
F.15	Applicability of plus / minus tolerance band of 3% for single comparable company - Section 92C(2)	• As per the proviso to section 92C(2), where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such prices. • Further, the second proviso to section 92C(2) states that if the variation between the arm's length price so determined and price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed such percentage not exceeding 3% of the latter, as may be notified by the Central Government in the Official Gazette in this behalf, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price. • The assessing officer and TPO have been interpreting that the second proviso to section	• It is recommended that the availability of plus / minus tolerance range in case where there is only one comparable be clarified through an explanation.

SL. No	Area of Challenge	Issue	Recommendations
		92C(2) is dependent on the first proviso, to conclude that the advantage of the plus / minus tolerance range prescribed under the second proviso to section 92C(2) is only available in a case where the first proviso is applicable, i.e., more than one price is determined by the most appropriate method. • Consequently, the range benefit is disallowed to the assessees in a case where there is only one price determined by the most appropriate method, thereby expecting the assessee to transact at an identical price as that of the comparable without any flexibility which is extremely unreasonable. • Courts have also been passing contrary decisions in this matter.	
F.16	Definition of AEs to cover LLP - Section 92A	• AE is defined under section 92A of the Act, which provides the basic test for AE relationship and covers direct or indirect participation in capital management and/or control. Section 92A(2) provides thirteen conditions in which the two or more enterprise would be AEs. These conditions primarily relate to the participation in capital, management and or control of one enterprise into other. • LLP firms are extensively used forms of enterprises that are being constituted in recent times. The various conditions for AE relationship as provided in section 92A(2) does not apply to LLPs. Section 92A(2)(a)/(b) cover direct, indirect, or common holding of enterprises involving 'shares carrying not less than 26% of the voting power'. However, LLPs are constituted by partnership interest and consequently do not issue shares carrying any voting power. • Section 92A(2)(l) covers AE relationship in case of firms (which include LLPs). However, as per	• It is recommended that the provisions of section 92A be amended to cover newly constituted form of organisations, i.e., LLPs.

SL. No	Area of Challenge	Issue	Recommendations
		section 92A(2)(l), the two enterprises can be said to be associated enterprises where one enterprise is a firm, association of persons or body of individuals and the other enterprise holds not less than 10% interest in such firm, AOPs or body of individuals. Therefore, the section only provides AE relationship for direct holding. It does not cover persons holding indirect participation in capital, management, or control of a person, which is not aligned with the basic test provided in section 92A(1). • Also, a provision similar to section 92A(2)(b) constituting an AE with a fellow subsidiary is not covered by any of the clauses involving an LLP • Due to current provisions of section 92A(2), there is a risk of litigation regarding the coverage of persons as AE in the case of LLPs.	
F.17	Definition of Intangible properties to be amended - Section 92B	• Explanation (ii) of section 92B provides the definition of intangible properties, wherein human capital related intangible assets, such as, trained, and organised work force, employment agreements, union contracts and location related intangible assets, such as, leasehold interest, mineral exploitation rights, easements, air rights, water rights are considered as intangible properties. However, the OECD Guidelines 2017 has inserted new definition of “Intangibles” that provides that organised workforce and location savings are no longer treated as intangibles. • Definition of intangible properties as per the Act and new OECD guidelines should be aligned.	• Clause (h) & (i) should be removed from explanation (ii) of section 92B of the Act.
F.18	Guidance on Profit attribution for Permanent Establishments (PEs)	• Infrastructure development is one of the important growth themes of the Indian Government. The Government invites large infrastructure companies including MNEs to bid for these infrastructure projects. Generally, these large	• Government should provide guidelines for profit attribution to PEs in India and set out its approach for global profit allocations. Transfer pricing analysis is a globally accepted

SL. No	Area of Challenge	Issue	Recommendations
		infrastructure projects are undertaken by consortium of infrastructure companies. The MNEs set up their branch offices or project offices in India for execution of these projects. These project offices/ branch offices form PEs in India for the purpose of taxation. There has always been litigation in these branch offices or project offices regarding the taxation of offshore and onshore element of project work and the attribution of profits to these PEs. • Indian tax law only provides Rule 10 under the Income-tax Rules, 1962 (Rules) for the attribution of profits to PEs. Rule 10 requires profit attribution to PE as a reasonable share of global turnover or profits or any other basis as may be reasonable. This mechanism is an *adhoc* mechanism without any scientific basis. Indian Government issued a consultation paper in 2019 for providing guidance on profit attribution. However, there were multiple representations made by the taxpayers against the approach provided therein. Hence, that profit attribution approach was not finalised and issued by the Government. India also does not adopt separate entity approach for profit attribution as formulated by the OECD. The separate entity approach is more akin to transfer pricing approach of determining profit allocation to PE based on function asset and risk (FAR) analysis of the PE. Accordingly, as of today, there is no guidance on profit attribution in India which ultimately results into adhoc global profit allocation to PEs in India and protracted litigation. The PE litigation is one of the major concerns for MNEs investing in India. •	way for profit attribution. Even the APA negotiations are being impacted due to the absence of India's approach.

SL. No	Area of Challenge	Issue	Recommendations
F.19	DRP to provide speedy and judicial dispute resolution; Alternative and innovative mechanism of speedy appellate procedure in the faceless assessment scheme	• DRP has been empowered to reduce, enhance, or confirm the variation proposed by the TPO/AO. However, DRP does not have power to set aside any proposed variation or issue any direction for further enquiry. The orders of DRP are not appealable. • The legislative intent of the DRP constitution is to provide speedy resolution to the taxpayers. However, since the orders of the DRP are not appealable by the revenue, DRP does not provide substantial relief to the taxpayer and generally confirms the order of the TPO/ AO. Thus, effectively, and practically, the DRP has become the channel for reaching Income tax Appellate Tribunal in a period of 9-10 months and deferring the payment of taxes. This has led to extended transfer pricing audit cycle and high number of transfer pricing cases with the ITAT on routine matters.	• This defeats the basic intent of the DRP mechanism. The DRP should be made an effective mechanism to settle disputes by critically reviewing the proposed variation by the TPO and AO and pass order based on the merits of the case so that large number of cases do not clog the ITAT. The government should re-work the DRP scheme to make it more effective in line with its purpose and intent. • In the new regime of faceless assessment with no personal interaction between the assessing officer and taxpayers, the assessment orders are expected to be more critical and independent. In such a case, the DRP route may even be abolished with a new mechanism for speedy appeal process. • The Government may also introduce an Alternate Dispute Resolution (ADR) body may be constituted which may comprise of members from Revenue and industry experts. This can be in the form of a mediation mechanism between the taxpayers and tax authorities, which once agreed cannot be litigated further by either party. The Vivaad se Vishwas scheme is an example of a successful ADR scheme.
F.20	Mandatory timeline for CIT(A) to pass the order	• The Act does not provide any mandatory timeline for CIT(A) to pass the order. It only suggests a	• This snag can be cleared by introducing a concept for time barring

SL. No	Area of Challenge	Issue	Recommendations
		timeline of one year from the year in which appeal is filed. • Though there are timelines for AO to pass order, there is no similar schedule for appellate authorities. It is seen that many appeals are pending for 4 to 5 years before the CIT(A), thus delaying the litigation process, and making the entire CIT(A) route ineffective.	appeals which can be brought at CIT(A) stage as well. CIT(A) is an administrative appellate mechanism and imposing timeline for disposal at CIT(A) level can be a part of bringing certainty of delivery, being an important taxpayer service. This concept is already prevailing under the DRP route and hence there should not be any difficulty for CIT(A) route as well. A time limit should be introduced, say, 12 months, extendable to further 3 months depending upon the complexity of the case. • Further no interest should be charged for the delay caused which is not attributable to the Assessee
F.21	Amendment in Form 3CEB for reporting of issue and subscription of equity shares	• The CBDT issued Instruction No. 2/2015, on 29.01.2015. As per this Instruction, the CBDT, based on a decision of the Bombay High Court in the case of Vodafone India Service Private Limited [TS-308-HC2014(BOM)-TP-Vodafone India Services] stated that the premium arising on issue of shares is a capital account transaction and does not give rise to income and would hence not liable to transfer pricing adjustment. • Clause 16 of Form 3CEB still requires reporting of transaction of equity shares as under: "***International transactions of purchase or sale of marketable securities, issue and buyback of equity shares, optionally convertible/ partially convertible/***	• It is recommended that Form 3CEB be appropriately amended to bring it in line with the CBDT instruction No. 2/ 2015.

SL. No	Area of Challenge	Issue	Recommendations
		compulsorily convertible debentures/ preference shares" • In view of the specific reporting requirement in clause 16, the assessees are bound to report issue of shares transaction as international transaction even after the CBDT instruction No. 2/2015	
F.22	Electronic filing of APA application and digitization of APA records – Rule 10 I	• Indian government has already moved to e-fling mode for various compliances, be it annual tax return filing, withholding tax return filing, etc. Recently, it has also commenced faceless-assessment procedure, and allowed online filing of all the submissions to the tax authorities during the audit process. Even appellate procedures have come under faceless scheme. • APA programme is a major initiative of the government. Currently, it requires all filings to be done in paper, be it the initial application or the subsequent information such as responses to questionnaires or other submissions. These filing are in multiple copies. All these creates a huge burden on record keeping and record maintenance for both the applicant and the APA authorities. • The APA applications are filed in multiple copies with the office of Pr. Chief Commissioner of Income tax (International tax) in case of unilateral APA and with the Competent Authority office in case of bilateral APA. Most of the time these are voluminous documents. Many times, this delays the process of allocation of cases to the APA Commissioners. It also involves transferring physical records to the APA Commissioners' office, involving logistic costs. It has also been experienced quite often that APA authorities subsequently need to take soft copies of all the	• APA scheme should be allowed for e-filing of the APA applications and all other submissions and documents. This would also help the authorities to make use of the data for internal management, resource planning, policy decisions, etc.

SL. No	Area of Challenge	Issue	Recommendations
		documents for processing the APA application. All these point towards paper filing process being inefficient, cumbersome and burden on resources	
F.23	Threshold for applicability of Part B of Master File – Rule 10DA	• As per Rule 10DA of the Income tax Rules (1962) (Rules), the constituent entity of international group is required to file Part B of Master File if the aggregate value of the international transactions exceeds fifty crore rupees, or the transactions relating to intangible property exceeds ten crore rupees. The transaction value considered for the purpose are as per the books of accounts during the accounting year. • Accounting Year has been defined as per section 286 (9) of the Act. Section 286(9) states that accounting year means previous year where the parent entity is resident in India but in case where parent entity is not resident in India, accounting year would mean annual accounting period with respect to which the parent entity of the international group prepares its financial statements. • The above definition of accounting year creates an anomaly for Master file compliance in cases where the parent is resident outside India and the financial accounting year followed by the Indian constituent entity is different from its parent entity. The threshold for fifty crore rupees or ten crore rupees of transaction, as the case may be, cannot be determined from the books of the Indian entity based on the accounting period followed by the parent constituent entity. Indian entity prepares its financial statements based on the accounting year followed by it in India. There cannot be any audited financials of Indian constituent entity to verify the transactions value for determining the	• The transaction value threshold should be determined based on the audited financial statements and Accountant's Report (Form 3CEB) under section 92E of the Act. Hence, for Master file applicability, the accounting year should be defined to cover "accounting year" for the Indian constituent entity.

SL. No	Area of Challenge	Issue	Recommendations
		threshold based on the accounting period of Parent entity.	
F.24	Part A filing by non-resident constituent entity is currently not covered under Rule 10DA.	• Rule 10DA(4) provides that where there is more than one constituent entity of the international group that are required to file Master File as per Rule 10DA(2), then only one constituent entity can file Master file if the international group designates such entity and the information regarding designation is filed in Form 3CEAB as prescribed. • Rule 10DA (4) refers to Rule 10DA(2). Rule 10DA(2) covers only those constituent entities that are required to file part B of Master File on crossing the threshold limits as specified in Rule 10DA(1). The requirement to file Part A of Master File, even if the thresholds are not met, is specified in Rule 10DA(3). In the absence of reference of Rule 10DA(3) in Rule 10DA(4), it may be implied that designation is applicable only for entities that are required to file Part B. In case any entity is required to file Part A, it will have to file it separately. It also implies that if all the constituent entities of the international group are required to file only Part A, each constituent entity will file a separate Part A. This does not seem to be the intent of the legislature as it would only lead to compliance burden, duplication and administrative burden without any additional information or benefit to Indian Government.	• Rule 10DA (4) be amended to include reference to Rule 10DA(3).
F.25	Modification required in Form 3CEAA – Part A.	• Form 3CEAA is Form for Master file. In case a constituent entity is designated under Rule 10DA(4) to file on behalf of other constituent entities (both resident and non-resident constituent entities) of the international group, the details of other constituent entities of the international group are required to be given in serial number 7 and 8 of Form 3CEAA.	• Rule 10DA(4) was amended by Income Tax (Ninth Amendment) Rules, 2021 with effect from 1.4.2021, to allow designated entity to file Master File on behalf of non-resident constituent entities that are required to file Master file in India. Prior to amendment, designated

SL. No	Area of Challenge	Issue	Recommendations
		• Serial No. 7 requires to provide the number of constituent entities of the international group **"operating in India"**. Further, serial number 8 requires the name, address and PAN of the entities specified in serial number 7. This terms "Operating in India" has not been defined in the Act/ rules. "Operating in India" generally refers to the entities having business operations in India. There may be non-resident constituent entities of the international group that are not operating in India but has only limited taxable income in India. Rule 10DA(4) allows designated entity to file Master file on behalf of these non-resident entities. However, Form 3CEAA Part (A) does not provide any space to fill in the details of the non-resident constituent entities of the international group that may be having limited taxable income in India and are required to file Master File in India.	entity could file Master File only on behalf of other constituent entities that are resident in India. With the amendment in Rule 10DA(4), the heading of Form 3CEAB (Form for intimation of designation) was also changed. However, Form 3CEAA was not modified with the amendment. • Form 3CEAA, Part A, serial number 7 and 8 be modified to cover non-resident constituent entities as well on whose behalf, the designated entity of the international group is eligible to file Master File.

Personal Taxation

<table>
<tr><th>SL No</th><th>Area of concern</th><th>Issues</th><th>Recommendation</th></tr>
<tr><td>G.1</td><td>Revision in tax rates</td><td>As per the current income-tax provisions, an individual (other than resident senior citizen) is required to pay taxes based on following slab rate:
<table>
<tr><th>Annual Income</th><th>New Tax Regime</th><th>Historical Tax Regime</th></tr>
<tr><td>Up to Rs.2.5 lakh</td><td>NIL</td><td>NIL</td></tr>
<tr><td>Rs.2.5 lakh - Rs.5 lakh</td><td>5%*</td><td>5%*</td></tr>
<tr><td>Rs.5 lakh - Rs.7.5 lakh</td><td>10%</td><td>20%</td></tr>
<tr><td>Rs.7.5 lakh - Rs.10 lakh</td><td>15%</td><td>20%</td></tr>
<tr><td>Rs.10 lakh - Rs.12.5 lakh</td><td>20%</td><td>30%</td></tr>
<tr><td>Rs.12.5 lakh - Rs.15 lakh</td><td>25%</td><td>30%</td></tr>
<tr><td>Above Rs.15 lakh</td><td>30%</td><td>30%</td></tr>
</table></td><td>• The tax rate for individuals have not been changed since FY 2017-18 (new tax regime brought in 2020-21). Hence to give more purchasing power to individuals and provide some relief to the salaried taxpayers, it is suggested that the highest tax rate of 30% be reduced to 25% and the threshold limit for the highest tax rate be increased from INR 10 lakhs to INR 20 lakhs. Therefore, the proposed highest slab rate (including surcharge and cess) can be reduced to 35.62% from 42.744%.</td></tr>
</table>

SL No	Area of concern	Issues	Recommendation
		*Subject to rebate under Section 87A Applicable Surcharge and educational cess will be levied on the above. Therefore, the highest slab rate (after including surcharge and cess) in India is currently at 42.744%.	• Revision of tax slab rates could be as under-

Under new tax regime

Annual Income	New Tax Regime	Proposed under new Regime
Up to Rs.2.5 lakh	NIL	NIL
Rs.2.5 lakh - Rs.5 lakh	5%*	5%*
Rs.5 lakh - Rs.7.5 lakh	10%	10%
Rs.7.5 lakh - Rs.10 lakh	15%	15%
Rs.10 lakh - Rs.12.5 lakh	20%	20%
Rs.12.5 lakh - Rs.15 lakh	25%	20%
Rs. 15 lakh – Rs 20 Lakh	30%	20%
Above Rs. 20 lakhs	30%	25%

Under old tax regime

Annual Income	Historical Tax Regime	Proposed Historical Tax Regime
Up to Rs.2.5 lakh	NIL	NIL
Rs.2.5 lakh - Rs.5 lakh	5%*	5%*
Rs.5 lakh - Rs.10 lakh	20%	20%
Rs.10 lakh - Rs.20 lakh	30%	20%
Above Rs.20 lakh	30%	25%

* Subject to Rebate under Section 87A
Applicable Surcharge and educational cess will be levied on the above.

SL No	Area of concern	Issues	Recommendation
			The proposed highest slab rate (including surcharge and cess) would be 35.62% It may be noted that the highest tax rate in neighbouring countries are as follows – Hongkong – 17% Singapore – 22% Malaysia – 30% Hence it is recommended that India needs to also be in this range.
G.2	Increasing the limit for various deductions	• Currently deduction available under the following sections are as follows – ➢ Section 80C of the Act for payments/investments towards life insurance premia, contributions to provident fund, subscription to certain equity shares or debentures, etc. is capped at INR 150,000. ➢ Section 80D – Deduction in respect of health insurance premium – capped upto INR 25,000/INR 50,000 etc. ➢ Section 80TTA deduction of up to INR 10,000 in the hands of individuals and HUFs in respect of interest on savings account with banks, post offices and co- operative societies carrying on business of banking. ➢ Section 80EEA – Deduction in respect of affordable housing – One of the conditions mentioned is that the loan should be sanctioned during the period April 2019 to March 2022 ➢ Section 80EEB - Deduction in respect of purchase of electric vehicle – this deduction is available only if loan has been sanctioned by the financial institution from April 2019 to 31st March 2023.	• Section 80C – The current limit mentioned above seems very low. With the increase in cost of living and the increase in inflation the Government should look at increasing the limit under section 80C. This will have two-fold benefits, viz. the individual taxpayers would be willing to save more and in turn will benefit from a lower tax outgo, thereby increasing disposable income to meet the increase in the price of various commodities. It is recommended that the government should increase the deduction limit to Rs. 2.5 lakhs • Section 80D – Considering the increase in the cost of medical treatment on account of the pandemic, the cost of comprehensive insurances has increased manifold and hence the erstwhile limit under this section may be revisited to INR 50,000/INR 100,000.

SL No	Area of concern	Issues	Recommendation
			• Section 80TTA – It is unlikely that salaried individuals would keep their entire savings in a savings bank account, which earns a much lower rate of interest as compared to term deposits. They are likely to transfer some portion of their savings to term deposits/recurring deposits in banks to earn comparatively better returns. Therefore, it is recommended that the interest on all types of bank deposits (eg. FDRs) should be included within the scope of section 80TTA. Further, the limit should be increased from INR 10,000 to INR 50,000. • Section 80EEA – With the rise in demand for residential real estate in metropolitan and Tier-II cities in the post COVID world, it is expected that the deduction be allowed for the following years as well. Therefore, it is recommended that the condition for availing loan should be extended for at least 3 years i.e., upto 31st March 2025. • Section 80EEB – Demand for electric vehicles is growing day by day. In view of the high demand, the government has brought in provisions to provide deduction in respect of interest payable on loan taken for purchase of electric vehicle. However, the condition for availing loan for purchasing electric vehicle is up to 31st March 2023.

SL No	Area of concern	Issues	Recommendation
			Therefore, it is recommended that the condition for availing loan for purchasing electric vehicle should be extended for at least 2 years i.e., up to 31st March 2025.
G.3	Taxability of PF contribution under section 17(2)(vii)	• Budget 2020 provided that employer contribution to RPF, Superannuation and NPS exceeding INR 7.50 Lakhs will be taxable in the year of contribution. • Section 17(2)(vii) is reproduced for your ready reference: "(vii) **the amount or the aggregate of amounts of any contribution** made to the account of the assessee by the employer— (a) in a recognised provident fund; (b) in the scheme referred to in sub-section (1) of section 80CCD; and (c) in an approved superannuation fund, to the extent it exceeds **seven lakh and fifty thousand rupees** in a previous year; • Section 17(3) provides for taxability of funds received from Provident fund if certain conditions are not complied with as mentioned in Fourth Schedule (i.e. not rendering continuous service of 5 years etc.) **Issue** • In case of contributions by employer in excess of limits specified, the excess contribution and the accretions thereon is taxable in the hands of employee. • The same PF balance when withdrawn would be subject to tax withholding if the conditions for	It is recommended that there should be specific provision in the Act providing exemption in respect of contributions/accretions which are already taxed under section 17(2)(vii) at the time of PF withdrawal.

SL No	Area of concern	Issues	Recommendation
		exemption (for e.g., 5 years of continuous service) are not complied with and there is no specific exemption provided for excluding the income already taxed mentioned above. Hence, there could be double taxation, at the withdrawal stage to the extent the contribution/accretion has already been taxed.	
G.4	National Pension Scheme (NPS) – Section 80CCD	• Currently, at the contribution stage, deduction under section 80 CCD(2) is available to the extent of 14% of salary where contribution is made by Central Government and 10% of salary where contribution is made by any other employer • Further, the pension received from NPS by way of annuity is taxable. **Issue** • There is no parity between deductions allowed for NPS in respect of CG employer and other employers • The above is not in parity with other pension schemes such as provident fund, which is under the EEE regime. The government has positioned NPS as an alternative to PF. • Therefore, it is seen that individuals are not very keen on contributing to NPS as the annuity received is taxable.	• It is recommended that there should be parity in the deduction allowed between employees employed by Central Government and any other employer. Therefore, in case any other employer contributes to NPS, deduction to the extent of 14% of salary should be allowed. • To bring in parity and incentivize the employees to be a part of NPS, annuity received should not be taxable.