Pre - Budget Memorandum 2020 - 21

Direct Taxes

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Direct Tax Recommendation

SL.No	Area of Challenge	Issue	Recommendation
Corporate Tax			
1.	Maximum Marginal Rate (MMR) (Section 2(29C))	Because of high rate of surcharge, the MMR is exorbitantly increased due to which trust and AOP are taxed at much higher rates.	Surcharge should not be added to compute MMR.
2.	Clarification for tax-neutral demerger for Ind AS-compliant companies	The Finance Act, 2019 inserted a proviso in Section 2(19AA) that companies following Ind-AS accounting shall not be required to record the assets and liabilities at book values. The above amendment becomes effect from 1 April 2020 i.e. from assessment year (AY) 2020-21 onwards. However, several demergers have been carried out by Ind-AS compliant companies in the last few years. Resulting Companies in such demergers have been bound by Ind-AS 103 to record the assets and liabilities taken over at fair values. In all other aspects, the demergers would be tax-neutral in terms of Section 2(19AA) of the Act. Ind-AS being a statutory	It is recommended that a clarification should be provided that the amendment is applicable from the date of application of Ind-AS to the respective companies such that demerger, if any, carried out by such companies would be entitled to the beneficial provisions of the recent amendment.

		requirement for such companies should not bar them from undertaking a tax-neutral demerger.	
3.	Clarification with respect to liabilities pertaining to an undertaking for demerger: Section 2(19AA)	One of the conditions for the transaction to qualify as 'demerger' under section 2(19AA) the Act is that all properties and liabilities relating to an undertaking of the Demerged Company should be transferred and vested in the Resulting Company. For this purpose, Explanation 2 provides for determination of liabilities to be included in the undertaking with respect to specific and general loans and borrowings. Practical difficulty arises in cases where loans / borrowing are secured against any asset and such asset and liability do not form part of the same undertaking. For example, where a borrowing pertaining to an undertaking being demerged is secured against fixed assets of undertaking being retained, then the company may not be able to transfer the borrowing through the demerger.	Section should be amended to the effect that the 'liabilities' to be included in the 'undertaking' for the purpose of Section 2(19AA) may, at the option of the company, include liabilities not relatable to the undertaking but secured against the assets of the demerged undertaking or exclude liabilities relatable to the undertaking but secured against assets not forming part of the demerged undertaking.
4.	Disallowance u/s.14A r.w. R.8D	Currently, section 14A of the Act read with Rule 8D of the Rules lead to *ad hoc* disallowance of expenses alleged to have been incurred by an assessee for earning any income not includible in total income, irrespective of actual expenditure incurred. Expenses are mechanically disallowed by AOs by applying Rule 8D without establishing the nexus of such expenses alleged to have been incurred by the assessee with the exempted income. In some cases, disallowances are made even where the assessee has earned no income. Circular No. 5/ 2014 dated 11 February, 2014 issued by CBDT clarifying that "the disallowances as per Rule 8D	(i) Section 14A, requiring the AO to mandatorily determine the disallowable expenditure by applying Rule 8D of Income Tax Rules should be removed, as the dividend is received after suffering dividend distribution tax (as also suggested in Justice R.V. Easwar Committee's Report) (ii) No disallowance under section 14A/ R&D should be made if the assessee has not earned any exempt income. Thus, the Circular No. 5/ 2014 dated 11

		prescribed under section 14A should be made even if the taxpayer has not earned any exempt income" has further complicated the matter. This clarification is against well-established canons of taxation that no tax should be levied on notional income and/ or expenditure. Considering that CBDT Circulars are binding on AOs, the mechanical disallowance mandated under Rule 8D is causing tremendous hardship. On this issue, there is judicial controversies across the country and most recent judicial pronouncements are in favour of the assessee.	February, 2014 issued by the CBDT should immediately be withdrawn. (iv) Without prejudice to above, the quantum of disallowance under section 14A read with Rule 8D should not exceed the quantum of exempt dividend income claimed by an assessee.
5.	Manner of computing brought forward loss pertaining to specified deduction	The Ordinance provides that an existing company opting for the reduced rate of 22% shall not be allowed to carry forward losses pertaining to specified deductions/exemptions and such losses shall be deemed to be fully set-off. Thus, such companies would need to bifurcate their brought forward losses into loss originating from specified sections and others. The method to apportion such brought forward losses has not been prescribed. This can be explained with the help of following example. Suppose a company had loss of INR 2,000 (including INR 500 related to the specified exemptions). Out of above losses, the company is able to set-off INR 1200 worth of losses till now. The balance INR 800 is carried forward to next year. The issue in this case being the manner to be adopted (i.e. FIFO, LIFO, proportionate, or any other manner) for bifurcating INR 800 into	It is recommended that an appropriate method for such bifurcation be prescribed. This would also be required for apportionment of total unabsorbed depreciation into unabsorbed normal depreciation and unabsorbed additional depreciation.

		normal loss vis-à-vis loss pertaining to these exemptions which would now not be available.	
6.	Extending tax neutrality in case of reorganization/ merger of LLP	The law bestowing sanctity to LLP in India has been around for more than a decade. Given the advantages that LLP offers in chartering internal affairs of the entity and combining the features of a company with a partnership form of enterprise, LLP has been emerging as an alternative form of setting up body corporate entities. The overall regulatory environment, such as eligibility for FDI, regulatory registrations etc., has also become more positive for LLPs. Flexibility for LLPs in corporate reorganization/ amalgamation are a growing need, especially since share-for-share deals with transfer of business as lock-stock-and-barrel are common in the Indian market.	With a view to bring LLP further on par with company form of entity, it is recommended that reorganization/ merger of LLP should also be brought under the list of beneficial exemptions under Section 47 of the Act.
7.	MRO (Maintenance, Repair and Overhaul) industry	In order to make, Indian MRO industry attractive, the Government should consider the provide tax concessions/benefits.	- Reduced corporate tax rate of 15% to be extended to MROs keeping at par with manufacturing companies; - Lower rate of withholding @ 2% on payments made by Indian operator to MRO, similar to contractor payments in order to address cash-flow issue
8.	Removal of cap on deduction for provisions for bad and doubtful debts under Section 36(1)(viia)	Currently provision for bad and doubtful debts for banks is capped at 8.5% of tax profits for local banks and 5% of tax profits for foreign banks. Banks are regulated entities and the provisions for bad and doubtful debts are required to be done in accordance with guidelines laid down by the Reserve Bank of India (RBI). In view of this and the current challenging	Cap of 5% of total income under clause (b) of section 36(1)(via) should be abolished.

		economic scenario, the deduction for bad and doubtful debts should be fully allowed to all banks to the extent mandated as per RBI regulations.	
9.	Deduction of provision for doubtful debts to a Housing Finance Companies (HFCs)	Section 36(1)(viia) of the Act provides for deduction in respect of provisions made by Banks, prescribed financial institutions and NBFCs (added vide the Finance Act 2016), in respect of provision for bad and doubtful assets based on the prudential norms as prescribed by the Reserve Bank of India (RBI). However, similar deduction has not been granted to HFCs.	The government should issue a clarification stating if provisions of section 36(1)(viia) of the Act are applicable to HFCs.
10.	Allowability of Corporate Social Responsibility (CSR) expenses as deduction – S. 37	Under the Companies Act, 2013 certain companies are mandated to spend a certain percentage of their profit on CSR activities. Explanation 2 to s.37 provides that any expenditure incurred by an assessee on CSR activities referred to in s.135 of the Companies Act, 2013 would not be deemed to be an expenditure incurred by companies for the purpose of their business or profession. In the Explanatory Memorandum explaining provisions contained in the Finance Bill, 2014, it is explained that the Bill seeks to provide for "C - Measures to Promote Socio-economic Growth"; and that "the objective of CSR Expenditure is to share the burden of the Government in providing Social Services by Companies having net worth/ turnover/ profit above a threshold". Considering that CSR expenses are statutorily required to be incurred they should be allowed unconditionally as expenditure incurred wholly and exclusively for the company's business like any other statutory payments.	It is suggested that s.37 be amended by withdrawing "Explanation 2", so that a company can claim deduction of its CSR expenses being incurred wholly and exclusively for the purpose of its business. Without prejudice, donations made to Charitable Trusts be treated as CSR Expenses, if the usage of the same is specified.

11.	Inclusion of limited liability partnership (LLP) for the applicability of section 44AD	While tax on presumptive basis is available to firms, LLPs have been excluded for which there appears to be no cogent reason. This would ensure that there is parity in taxation of LLPs and firms.	The benefit of section44AD should also be made available to LLPs.
12.	Removal of cap on deduction for head office expenses under Section 44C	Section 44C was introduced in Income-tax Act, 1961 ("the Act") in 1970s to protect India's tax base, particularly for the costs incurred outside India, with no specific mechanism under the Act to check related party transactions. Under the present day tax regime, sufficient checks are in place under the Act to assess any related party transactions. Hence, where the documentation and reporting requirements are any way being adhered to, any limitation on quantum of deduction is unwarranted and irrelevant and should accordingly be done away with.	Cap of 5% of tax profits on tax deduction for Head Office executive and general administrative expenses should be removed
13.	Clarification on tax neutral transfers for Section 56(2)(viib) of the Act	Certain transfers, such as schemes of amalgamation and demerger, that meet the conditions provided under the Act have been accorded tax neutrality. Where such corporate actions fall outside the scope of 'transfer' by virtue of the beneficial provisions of Section 47 of the Act, the same do not attract the provisions of Section 56(2)(x) for the shareholders of the companies. Despite a clear intention to allow a tax neutral treatment for mergers and demergers, unlike Section 56(2)(x) of the Act, the provisions of Section 56(2)(viib) of the Act do not contain a specific exclusion for such transactions not regarded as transfer.	With a view to avoid litigation on this aspect, it is recommended that a retrospective clarification from 1 April 2017 should be introduced, which should provide that the provisions of Section 56(2)(viib) of the Act do not apply in case of issuance of shares as a result of transactions not regarded as 'transfer' under clause (iv), (vicb), (vid) or (vii) of Section 47 of the Act.

14.	Transactions without consideration or for inadequate consideration – s.47/ s.56(2)(x) of the IT Act	Section 56(2)(x) of the Income Tax Act is an anti-abuse provision intending to curb tax avoidance. It should not be levied where clearly there is no tax avoidance case.	The following transactions should be excluded from its ambit: ○ Fresh issue of Shares inclusive of: ▪ Right issue; ▪ Preferential allotments; ▪ Conversion of financial institution; ▪ Bonus shares; ▪ Split/ Subdivision/ Consolidation of Shares; ▪ Receipt under stock lending scheme; ▪ Receipt by Trustee company; ▪ Buyback of shares; ▪ By offshore investors where purchase price is determined by Indian laws (such as FEMA guidelines, etc.); ○ Genuine business/ commercial transactions ○ **Receipt of subvention money from the holding company** - In the case of CIT v. Siemens Public Communications Networks Ltd. [2017] 390 ITR 1 (SC), the SC held that subvention receipts from a parent co. are for recoupment of loss of the

			subsidiary. This will inturn protect the capital investment of the parent in the subsidiary from being eroded. Such a receipt is a non taxable capital receipt. Hence it should not be taxed under section 56(2)(x) as well. **Waiver of loan** - Technically the loans are waived off when the borrower is unable to pay it. Such waiver does not result in any extra cash in the hands of the borrower. These loans become valueless once the borrower goes bankrupt or the loans go bad. Hence 56(2)(x) should not apply on waivers.
15.	Reduction in tax rate should be made applicable to Firms/ Limited Liability Partnerships also	The government has, vide the Ordinance, reduced the tax rate applicable to a domestic company to 15% (in case of new manufacturing company) and 22% (in other cases), subject to the condition that such company should not avail specified tax deductions/ exemptions. Benefit of reduction of tax rate has not been made available to firms/LLPs. The benefit of reduction of rate of tax for firms and Limited Liability Partnerships would facilitate ease of doing business in any form and not particularly restrict such facility to the corporates. It will also provide a level playing field amongst these forms of business.	It is suggested that rate of income tax for Firms/ LLPs should be aligned with the reduced corporate tax rates.

16.	Deduction under Section 80C for Deposits placed with Housing Finance Companies (HFCs)	This would encourage deposits in HFCs.	Section 80C(xxi) of the Act allows deduction on term deposits placed with a scheduled bank by an individual for a period of not less than 5 years. However, deposits placed by the retail investors with HFCs are eligible for deduction under section 80C of the Act. It is recommended that a similar deduction under section 80C of the Act be allowed in respect of deposits placed with HFCs.
17.	Taxation of co-operative housing societies	The interest earned from investments made by a co-operative society with any other co-operative society, is entitled to deduction of the whole of such income under section 80P(2)(d) of the Act. Due to the failure of some cooperative banks, many housing societies are seeking to invest in public/private sector banks. However, interest earned from investments made in any bank, not being a co-operative society, is not deductible under section 80P(2)(d) of the Act. It is recommended that a new section be inserted to exempt interest income received from any scheduled bank in the hands of cooperative societies. Also, the base rate of tax on cooperative housing societies be brought on par with domestic companies @22%.	100% deduction be allowed on interest on deposits with private/public sector banks Cooperative housing societies should be subject to base tax rate of 22% in line with domestic companies

18.	Introduction of threshold for the requirement to obtain Tax Residency Certificate (TRC) [Section 90(2)]	Section 90(2) provides that in respect of an assessee to whom a Tax Treaty applies, the provisions of the Act shall apply to the extent they are more beneficial. However, for this purpose, TRC is required to be furnished by the assessee. This provision applies to all non-residents irrespective of the level of income and the nature thereof.	It is suggested that a threshold of Rs. one crore per payer per annum or any other appropriate threshold be specified for applicability of this provision relating to obtaining a TRC. This provision creates unintended hardship to both non-resident recipients and the resident payer even where amounts involved are not very large, as it involves time and cost to obtain such TRCs.
19.	Section 94B – Exempt NBFC from applicability of Section 94B	The Finance Act, 2017, vide Section 94B, introduced provisions to restrict interest deductibility. The same are broadly based on the recommendations contained in Action Plan 4 of the Organisation for Economic Co-operation and Development's (OECD's) base erosion and profit shifting project (BEPS) and inter-alia seek to disallow interest payments to non-resident associated enterprises (AE), if the total interest payments are in excess of 30 per cent of earnings before interest, taxes, depreciation and amortization (EBITDA). Notably, the aforesaid section exempts banks and insurance companies from the applicability of these provisions keeping in view the special nature of these businesses. Issue/rationale However, no such exemption has been extended to any category of NBFCs. We are aware that this has	To exempt all categories of NBFCs and bring them on par with Banks for the purpose of Section 94B of the Act.

		perhaps, unintended consequences especially for recently set up foreign owned NBFCs as they are dependent on their parents for financing. Further, NBFC also play an important role as Banks in the financial sector and therefore, the exclusion to Banks should be extended to NBFCs also.	
20.	ICDS	The introduction of ICDS impacts largely only timing of tax. However, the ICDS, along with IndAS create a significant burden for taxpayers to prepare detailed reconciliations each year for purposes of tax, without any significant impact on overall tax over a period. It also has a significant potential for disputes and litigation.	ICDS should be scrapped altogether.
21.	Meaning of the term 'manufacture'	The Ordinance introduced Section 115BAB, providing for reduced corporate tax rate of 15% for manufacturing companies. Such company should not be engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it. It may be noted here that the term manufacture has been defined under section 2(29B) of the Income-tax Act, 1961(the Act) in a very wide manner. Further, there has been a lot of litigation in the past, as to what constitutes manufacture. Also, there is lack of clarity, as to whether where a company gets goods manufactured from a job-worker or a contract manufacturer, whether it would be eligible to avail the reduced rate of 15%.	It is recommended that the government issues detailed guidance on what constitutes 'manufacture' for availing benefit of the reduced rate of tax. Further, the government should also clarify if reduced tax rate would be available in cases where goods are manufactured on job-work basis or under contract manufacturing; covering situations where manufacturing activity is undertaken on a principal to agent basis or principal to principal basis. This would help reduced litigation on this issue in future.
22.	Manufacture or production under Section 115BAB	Section 115BAB(2)(a) prescribes the conditions with respect to set-up of a company and commencement of	It seems there is an inadvertent mismatch in the above-mentioned

		manufacturing activities. However, Section 115BAB(2)(b) states that the company should be engaged in the business of manufacturing or production of any article or thing. Does it mean that Section 115BAB(2) restricts the scope of business of the company to manufacturing activities and may not extend it to production activities?	provisions. Therefore, provisions of Section 115BAB(2)(a) should be suitably amended to include manufacturing as well as production activities.
23.	Rationalising Patent Box Regime [section 115BBF]	India introduced its patent box regime vide Finance Act 2016 with effect from 01 April 2017. Under the regime, royalty income in respect of a patent developed and registered in India shall be taxable at a flat rate of 10%. The existing patent box regime suffers from the following issues: (i) **The patents to be 'registered' in India -** It is unclear as to whether a patent which has been applied for, but for which registration has not been granted will qualify under this regime. (ii) **Coverage of regime has been restricted to Patents -** Patent Box regime is not available to other IPRs, like industrial design, copyrights, trademarks, etc. (iii) **No guidelines on outsourcing of IP development -** There are no guidelines on outsourcing of R&D functions. Thus, limited outsourcing may also raise an issue on availability of benefit under patent box regime. (iv) **Initial patent developed by individual-** The benefit is available to the true and first	Following suggestions are intended to rationalise existing Patent Box regime: (i) It may be clarified that benefit of regime may be obtained where a patent is applied for, but registration has not yet been granted under the Patent law. (ii) It is suggested that the Patent Box regime should be extended to other forms of IPRs, like industrial design, copyrights, trademarks, etc. to promote IPR registration in India. (iii) It may be clarified that benefit of the regime shall be available, subject to a reasonable threshold, in cases where IP development is outsourced. It is suggested that the existing regime may be liberalised to grant benefit to a

		inventor of the invention. Thus, where a company acquires a patent developed by an individual and invests to develop it further to make it marketable, it may not be eligible for the benefit. The suggestion would strengthen the existing Patent Box regime. Further, the suggestion is intended to encourage R&D in India, stimulate growth and reduce litigation.	person who acquires patent from the 'true and first inventor' and further makes is commercially useable.
24.	Dividend Distribution Tax - Section 115-O	• As per the provisions of Section 115-O of the Act, the domestic holding company will not have to pay DDT on dividends paid to its shareholders to the extent it has received dividends from its subsidiary company on which DDT has been paid by the subsidiary. The current provisions give relief in respect of the dividend received from only those companies in which the recipient companies are holding more than half of the nominal value of equity capital. • This condition may not get fulfilled by a majority of the promoter companies which hold an investment in operating companies listed on a stock exchange. Even shareholders of joint venture companies are impacted by the above restrictions. In both the scenarios, since the operating / joint venture company i.e. the company declaring the dividend is not a subsidiary of any company, the first condition i.e. dividend should be received from a subsidiary company is never fulfilled and accordingly when the promoter company / shareholder of joint venture	• All dividends on which DDT has been paid, be allowed to be reduced from dividends irrespective of the percentage of equity holding keeping in mind that investment companies which do not necessarily own/have subsidiaries as they invest in various companies in the open market, should also be eligible for such benefit. • Without prejudice to the above suggestion, lower threshold of equity holding should be considered to avoid multiple taxation on distribution of dividends.

		company declares dividend to their shareholders, it cannot deduct the dividend so received from the operating / joint venture company for the purpose of payment of DDT.	
25.	Reduction of rate of DDT	• DDT currently is payable at the basic rate of 15 per cent. Further, dividends distributed by domestic companies and mutual funds will be grossed up for the purpose of computing DDT, translating into an effective tax rate of about 20.56 per cent (after the levy of the surcharge of 12 per cent and cess of 4 per cent). • The Memorandum explaining the provision of the Finance (No.2) Bill, 2014 states that prior to the introduction of DDT, the dividends were taxable in the hands of the shareholder. However, after the introduction of the DDT, a lower rate of 15 per cent is applicable but this rate is being applied on the amount paid as dividend after reduction of tax distributed by the company. Therefore, the tax is computed with reference to the net amount. In order to ensure that tax is levied on proper base, the amount of distributable income and the dividends which are actually received by the shareholder of the domestic company need to be grossed up for the purpose of computing the additional tax. • The above memorandum appears to be contrary to the speech of the Finance Minister while introducing DDT in the Budget of 1997-98 stated as follows:	• The tax rate of DDT is recommended to be reduced to 10 per cent from the current effective rate of about 20 per cent (after grossing-up of the dividend).

		"Some companies distribute exorbitant dividends. Ideally, they should retain the bulk of their profits and plough them into fresh investments. I intend to reward companies who invest in future growth. Hence, I propose to levy a tax on distributed profits at the moderate rate of 10% on the amount so distributed. This tax shall be an incidence on the company and shall not be passed on to the shareholder'. Thus, the earlier moderate rate of 10 per cent has almost doubled i.e. effective rate of DDT @ 20 per cent. • The earlier DDT rate of 10 percent was comparative in line with the rate of TDS on dividends in most Indian and international tax treaties. The increased basic DDT rate of 15 per cent (effective rate of about 20 per cent) reduces the dividend distribution ability of domestic companies and the uncertainty with respect to its credit in overseas jurisdictions impacts the non-resident shareholders adversely. • The Finance Act, 2016 introduced Section 115BBDA to tax dividend received from domestic companies exceeding ten lakh rupees in the hands of recipient shareholders. This again increases the tax burden on dividend income which is detrimental to investors.	
26.	Abolition of DDT on industrial undertakings	Currently, DDT is also levied on undertakings engaged in infrastructure development which are eligible for tax benefit under Section 80-IA of the Act. This is	To incentivise the investment in the infrastructure sector, it is recommended that DDT on industrial undertakings or

		detrimental to the growth of infrastructure facility in India. Further, the Finance Act, 2011 has also burdened the Special Economic Zones (SEZ) developers by including them in the scope of DDT.	enterprises engaged in infrastructure development, eligible for deduction under Section 80-IA, should be abolished. It is also recommended that further exemption from DDT be granted to the 'infrastructure capital company/fund' with the condition that it invests the dividend received from its subsidiary in the infrastructure projects. The Ministry of Commerce and Industry (Department of Commerce) had recommended the restoration of original exemption from Minimum Alternate Tax (MAT) and DDT to SEZ developers and units. In line with these recommendations of the Government and to attract more investment in the SEZs, DDT on SEZ developers and units should be abolished.
27.	Amendment to section 115QA- Buy back of listed shares	Finance Act, 2013 introduced section 115QA to levy tax on income distributed by companies pursuant to buyback of unlisted shares. The intent was to curb the practice adopted by unlisted companies to buy back shares (instead of payment of dividends) in order to avoid payment of tax by way of Dividend Distribution Tax (DDT), particularly in cases where the capital gains arising to the shareholders are either not chargeable to tax or was taxable at a lower	mendment relating to tax on buy back of listed shares should be abolished on account of following reasons- **Practical difficulties in computation of tax payable**: In case of unlisted companies, it is generally possible to determine the amount received by the company on the issue of the shares, even after the original

		rate. Accordingly, the said tax was made applicable only to buyback of unlisted shares. In case of buyback of listed shares, no income-tax was levied on the listed company but the shareholders were liable to capital gains tax on income arising on such transfers. Finance (No.2) Act, 2019 extended the applicability of the above section to income distributed on buy-back of listed shares. Because of this, listed companies undertaking a buyback will, in addition to the buyback consideration, be required to pay tax on such buyback. Dividend is a form of distribution of surplus funds to shareholders without impacting their proportionate rights in the company. As against this, buyback leads to a change in the proportionate rights of the shareholders consequent to the change in shareholding pattern. Buyback leads to long term benefits like improvement in future EPS of the company which is generally value accretive to all the shareholders, optimization of share capital of the company, facilitating exit to public shareholders in illiquid stocks, etc. In a buyback the company buys back its own shares. Shareholders who desire to exit the company have the option to tender their shares in the buyback. Buybacks are generally undertaken at a premium to the prevailing market price, which makes a buyback	allottee has transferred the shares to another investor. However, in case of listed companies, for the purpose of determination of “amount received by the company for issue of such shares”, considering that the shares are freely transferable, it is not possible to determine the amount received on issue of shares being tendered in the buyback. Effectively, even if the company would have issued shares at a premium, owing to difficulties in identifying one-to-one historical transfer of shares, company would be compelled to consider face value as the amount received, which leads to higher tax outflow. Further structure of company may have gone complete change due to merger, amalgamation, issue of bonus shares and right issue over the period. It is administratively very difficult for a company to keep record of all these transactions throughout such long period

		attractive for shareholders as compared to selling shares in the open market. Distribution of dividends entails distribution of funds to all the shareholders alike in case of buyback by listed companies, where the shareholder has the option whether to tender the shares or not. Accordingly, in case of listed companies, buyback of shares cannot be regarded as a substitute for distribution of dividends. From the past records, it can be seen that those companies that had done buyback, also continued to pay dividend. Further, buyback of shares is done mainly with the following objectives: - • to reduce number of shares so that earning per share can be improved • ownership consolidation • boosting its key financial ratios so that companies look more financially healthy and attracting more investors. • buy back of shares is a defense to a hostile takeover. The buyback would reduce the shares available in the open markets thereby making it difficult for a potential acquirer to buy the shares required to take over the company. Accordingly, imposing tax on such buyback would lead to restricting the ability of the company to decide on efficient capital allocations.	considering very large base of shareholders. Inherent practical issues involving open market buyback - In an open market buyback offer, where the settlement of equity shares happen on the floor of the stock exchanges, a shareholder would not be able to determine if the shares have been sold to the company (under the buyback offer) or to any other existing / new shareholder. Therefore, it would not be possible for a shareholder to determine whether he should be liable to pay capital gains tax (long term / short term depending on the holding period) or would the company be liable to pay buyback tax. It could potentially lead to double taxation in the form of buyback tax on the company and capital gains tax paid by the shareholders. Double Taxation – During the period from date of allotment of shares till the date of buyback of

		Therefore, this amendment should be withdrawn.	shares, the shares normally would have exchanged number of hands and cost for each shareholder might be different. The buyback tax completely ignores the cost of acquisition of the shares in the hands of the shareholders, thereby leading to double taxation of the same income. Also, since the buyback tax is a tax on the company undertaking the buyback, credit of the same is not available to foreign shareholders tendering their shares in the buyback, leading to double taxation of the same income. Differential treatment of tax rates - There is capital gain tax @10% on long term capital gains. Also, while computing the long term gains, shareholders are given benefit of prices prevailing as on 31 January 2018. However, the buyback tax is @20%, leading to higher tax on buyback of shares by the company.

			The proposed amendment has completely ignored situations where the company has to do buyback for some genuine reasons like for maintaining some of the key financial ratios like Debt Equity ratio, for ownership consolidation, etc.
28.	Requirement to obtain PAN under section 139A	Finance Act, 2018 has made an amendment to Section 139A, to provide that every person, not being an individual, which enters into a financial transaction of an amount aggregating to two lakh and fifty thousand rupees or more in a financial year shall be required to apply to the Assessing Officer for allotment of PAN. Further, it is provided that the Managing Director, Director, Partner, Trustee, Author, Founder, Karta, chief executive officer, principal officer or office bearer or any person competent to act on behalf of such entities shall also apply to the Assessing Officer for allotment of PAN. The amended section provides a very onerous requirement to obtain PAN. For example, even the non-resident Directors of a company or a person representing the company in any legal case outside India will be required to obtain PAN under this section, who otherwise don't need to obtain PAN.	The requirement should be restricted only to those persons who enter into a financial transaction on behalf of the entity. In addition, financial transaction needs to be defined in the section. Similarly, the term 'office bearers' also need to be defined. The provision, though has come to widen the tax base and catch evaders who do not file any tax returns, should only cover entities that have a direct nexus to income, which is chargeable to tax in India. It must also be restricted in its applicability to only those individuals in actual management of the entity in question.

			It is recommended that requirement for obtaining PAN should be relaxed for non-resident directors of Indian company who have no presence or income from India
29.	GAAR provisions should not apply when a tax treaty contains the PPT/ LOB clause	The FAQ's issued by CBDT on 27 January 2017 while dealing with the question on whether GAAR would be applied to deny treaty eligibility in a case where there is compliance with (Limitation of Benefit) LOB test of the treaty, clarified as follows: *'Adoption of anti-abuse rules in tax treaties may not be sufficient to address all tax avoidance strategies and the same are required to be tackled through domestic anti-avoidance rules. If a case of avoidance is sufficiently addressed by LOB in the treaty, there shall not be an occasion to invoke GAAR.'* Whether the case of avoidance has been sufficiently addressed may further involve an element of subjectivity as the term 'sufficiently addressed' has not been explicitly defined and there could be an unintended situation where the case would be subjected to both the rigors of the anti-abuse provisions as well as GAAR. Further India has signed the 'Multilateral Instrument' (MLI) in accordance with the BEPS Action Plan 15 of the OECD, which, inter alia, deals with the denial of tax treaty benefits in certain cases of anti-abuse	It should be provided by way of an exception that when an arrangement/transaction is subjected to the anti-abuse provisions [particularly the LOB and the Principal Purpose Test (PPT) provisions] dealt with by the tax treaty between India and the respective country, the same should not be further subjected to GAAR provisions. GAAR provisions should not be made applicable to abusive transactions [in the case of Multinational enterprises (MNE's)] which are subjected to anti-abuse provisions under the tax treaty pursuant to the adoption of the MLI provisions. Once the anti-abuse provisions are inserted in the respective tax treaties through the MLI, the government could then assess the situation and examine if GAAR provisions should be made applicable in the case of MNE's. This would also pave the way for a conducive economic environment and persuade the global

		arrangements/transactions entered into by the taxpayer. The MLI provides for insertion of anti-abuse provisions (the PPT and the LOB provisions) in the tax treaties so as to deny tax treaty benefits in case of abusive arrangements/transactions being entered into by the taxpayer. The anti-abuse provisions inserted through the MLI would be effective once the same are ratified by both the signatories to the MLI. With India having signed and ratified the MLI, there could be a possibility that the same transaction/arrangement could be subjected to multiple anti-abuse provisions, one would be through the anti-abuse provisions inserted in the tax treaty network through the MLI and second by way of the same transaction being subjected to the GAAR provisions which also targets anti-abuse provisions. It is to be noted that the MLI synthesised text issued by India along with certain other countries like Japan, UAE already contain PPT clause.	multinationals to establish their footprint in India with clarity on the domestic tax laws prevalent in the country.
30.	The meaning of the terms ‘Substantial’ and 'Significant' in Section 97(1) of the Act	In section 97(1) of the Act, the terms ‘substantial commercial purpose’ and ‘significant effect’ have not been defined.	• It needs to be clarified what shall constitute as ‘substantial commercial purpose’ and “significant effect’ for the purpose of Section 97 of the Act. • The substantial commercial purpose may be explained with reference to the terms used viz. location of an asset/transaction or place of residence of a party (for e.g. specified the value of

			assets located; the value of a transaction as comparable to the total assets of the business or any other such related parameter). • Similarly, what will constitute as 'significant effect' vis-a-vis business risks / net cash flows needs to be clarified.
31.	Clarification on the term 'tax benefit' as defined under section 102(10) of the Act	The term 'tax benefit' as defined under section 102(10) of the Act includes, — "(a) a reduction or avoidance or deferral of tax or other amount payable under this Act; or (b) an increase in a refund of tax or other amount under this Act; or (c) a reduction or avoidance or deferral of tax or other amount that would be payable under this Act, as a result of a tax treaty; or (d) an increase in a refund of tax or other amount under this Act as a result of a tax treaty; or (e) a reduction in total income; or (f) an increase in loss, in the relevant previous year or any other previous year;" Clause (e) and (f) in the definition refer to 'reduction of total income' and 'increase in loss' as tax benefit. An ambiguity arises as to how tax benefit is conditioned at income / loss level. This may also defeat the objective	Clause (e) and (f) should be appropriately worded to correspond with the 'tax' amount. In other words, the reference to income/loss should not be the base for defining the term 'tax benefit'. In line with the Expert Committee recommendations, it is suggested that: The tax benefit should be computed in the year of deferral and the present value of money should be ascertained based on the rate of interest charged under the Act for shortfall of tax payment under section 234B of the Act.

		of INR 3 crore tax benefit threshold as provided in Rule 10U of the Income-tax Rules, 1962 (the Rules). Computation of tax benefit on deferral of tax (which is merely a timing difference) needs to be clarified. As observed by the Expert Committee , in cases of tax deferral, the only benefit to the taxpayer is not paying taxes in one year but paying it in a later year. Overall there may not be any tax benefit but the benefit is in terms of the present value of money.	
International Tax			
32.	Significant Economic Presence - Implementation of SEP provisions	The Organisation for Economic Co-operation and Development (OECD) issued Action Plan 1 to address Base Erosion and Profit Shifting (BEPS) issues in the digital economy (DE). The report proposes three options to tackle the DE BEPS (1) Significant Economic Presence (SEP) (2) withholding taxes on digital income from goods or services ordered online and (3) Equalisation Levy. The report states that these measures could be imposed through domestic legislation and are not recommended as an international standard. However, it is important to note that countries may wish to impose these measures to address DE BEPS concerns if they believe that the BEPS concerns are not adequately addressed by OECD's recommendations, or as a 'stop-gap' measure until the OECD's recommendations are fully implemented.	Either the SEP provisions should be abolished or its implementation should be deferred till the global consensus is formed on taxation of DE. Having said the above and without prejudice thereto, the following suggestion are made in relation to the provisions of SEP under the Act:

		India already has detailed withholding tax provisions under its domestic tax law. It also introduced Equalisation Levy in 2016. Until global consensus emerges on the introduction of SEP provisions, the introduction of such provisions may create unintended consequences and is likely to adversely impact the ease of doing business in India. The OECD final unified approach to tax the digital economy may take time and expected to come after November 2020. Till that time there would not be international consensus on the approach to tackle the challenges of digital economy. Therefore, introduction of SEP provisions without an international consensus may pose challenges like double taxation, compliance and administrative cost, uncertainty, litigation, etc.	
33.	SEP provisions should cover only digital transactions and not transactions relating to physical goods	Explanation 2A(a) to Section 9(1)(i) of the Act covers within its purview 'transaction in respect of any goods, services or property carried out by a non-resident in India' to determine the SEP. This provision is so broadly worded that it may cover not only digital transactions but also transactions relating to physical goods, within its ambit. However, in clause (b) the term 'through digital means' has been referred to tax digital transactions only.	It is suggested to appropriately clarify that SEP related provisions will apply to digital transactions/ businesses only.

		The Memorandum to the Finance Bill, 2018, while introducing the SEP related provisions states the following rationale: *'For a long time, nexus based on physical presence was used as a proxy to a regular economic allegiance of a non-resident. However, with the advancement in information and communication technology in the last few decades, new business models operating remotely through digital medium have emerged. Under these new business models, the non-resident enterprises interact with customers in another country without having any physical presence in that country resulting in avoidance of taxation in the source country. Therefore, the existing nexus rule based on physical presence does not hold good anymore for taxation of business profits in the source country. As a result, the rights of the source country to tax business profits that are derived from its economy is unfairly and unreasonably eroded.* *OECD under its BEPS Action Plan 1 addressed the tax challenges in a digital economy wherein it has discussed several options to tackle the direct tax challenges arising in digital businesses. One such option is a new nexus rule based on 'significant economic presence'. As per the Action Plan 1 Report, a non-resident enterprise would create a taxable presence in a country if it has a significant economic presence in that country on the basis of factors that*	

		have purposeful and sustained interaction with the economy by the aid of technology and other automated tools. It further recommended that revenue factor may be used in combination with the aforesaid factors to determine 'significance economic presence'. *The Memorandum further states that since emerging business models such as digitised businesses, which do not require the physical presence of itself or any agent in India, is not covered within the scope of Section 9(1)(i) of the Act, the scope of Section 9(1)(i) of the Act was amended to provide that SEP in India shall also constitute 'business connection'.* The above clearly shows that the Government's objective behind the introduction of SEP related provisions is to tax digital transactions. However, the manner in which Explanation 2A(a) to Section 9(1)(i) of the Act has been worded, it may also cover non-digital transactions within its ambit.	
34.	Business Connection	The Finance Act, 2018 amended the definition of 'Business Connection' to align it with BEPS Action Plan 7 to include any business activity carried out through a person who, acting on behalf of the non-resident has and habitually exercises in India, an authority to conclude contracts or habitually concludes contracts or habitually plays the principal role leading to conclusion of contacts by that non-resident. The amendment has substituted the earlier clause (a) of Explanation 2 to Section 9(1)(i) of the Act.	The existing exclusion in clause (a) for the purchase of goods or merchandise in India should be reinstated.

		However, on substitution, the exclusion for the purchase of goods or merchandise for the non-resident' appears to be inadvertently deleted. This would result in a significant number of cases where non-residents who are involved only in purchase activities to constitute business connection in India.	
35.	Provisions regarding the indirect transfer of capital asset situated in India	The Finance Act, 2015 has amended provisions dealing with the indirect transfer of capital asset situated in India as follows: • Share or interest in a foreign company or entity shall be deemed to derive its value substantially from Indian assets only if the value of Indian assets (whether tangible or intangible) as on the specified date exceeds the amount of INR 10 crores and represents at least 50 per cent of the value of all the assets owned by the foreign company or entity. • The value of an asset shall be its Fair Market Value (FMV). The date of valuation of assets (without reducing the liabilities) shall be as at the end of the accounting period preceding the date of transfer. • Exemption from applicability of the aforesaid provision has been provided in certain situations.	• Clarification should be provided for the phrase 'assets located in India' mentioned in Explanation 5 to Section 9(1)(i) of the Act, given that the following interpretations are possible: - Whether the section refers to shares of an Indian company as assets located in India; or - Whether it is referring to the assets owned and held by the Indian company whether in India or outside India. • Since the objective of the amendment is to tax indirect transfer through shell companies, a listed company should not be considered as a shell or conduit company. The same was also suggested by the Shome Committee. It is recommended that exemption should be provided in respect of transfer of shares in a foreign

			company (listed on a stock exchange outside India) having substantial assets located in India. • Intra-group transfers as part of group re-organisations (other than amalgamation and demerger) should also be exempt from the indirect transfer provisions. • While Explanation 5 to Section 9(1)(i) of the Act provides that shares of a foreign company which derives directly or indirectly its substantial value from the assets located in India shall be deemed to be situated in India. Section 47(vicc) of the Act provides an exemption only if the shares of foreign company derive substantial value from shares of an Indian company. While the intent may be to exempt all cases of demerger where foreign company derives substantial value from assets located in India, the reading of Section 47(vicc) of the Act indicates that the said exemption would be available only in cases where the shares of the foreign company derive substantial value from shares of Indian company.

			Due to this inconsistency in the language of Section 47(vicc) vis-à-vis Explanation 5 to Section 9(1)(i), transfer of shares of a foreign company which derives its value predominantly from assets located in India (other than shares of an Indian company) under a scheme of demerger may be deprived of the aforesaid exemption. It is recommended that Section 47(vicc) of the Act should be amended to provide that "any transfer in a demerger, of a capital asset, being a share of a foreign company, referred to in Explanation 5 to clause (i) of sub-section (1) of section 9, which derives, directly or indirectly, its value substantially from the assets located in India, held by the demerged foreign company to the resulting foreign company, if,—………………..“ • It is suggested that a similar amendment should also be made under Section 47(viab) of the Act (in case of amalgamation). • The Finance Act, 2015 prescribes a threshold for applicability for the

			indirect transfer provisions. There should also be a minimum threshold prescribed for reporting of transactions by the Indian entity. It should be clarified that the same threshold will apply for reporting of transactions under Section 285A of the Act. • The onus of reporting has been cast on the Indian entity. Generally, the Indian entity may not have information relating to overseas indirect transfer, therefore, the onus of reporting should not be cast on the Indian entity. Considering that the provisions relate to indirect transfers, the onus, if at all, should be cast on the parties to the transaction and not the Indian entity. • Provisions of Section 234A, 234B, 234C and 201(1A) of the Act should not be applied in cases where demand is raised on a taxpayer on account of the retrospective amendment relating to the indirect transfer. An appropriate amendment should be made in the respective provisions of the Act.

36.	Secondment of expatriate employees - facilitating ease of doing business in India and inflow of foreign expertise	Currently, there is uncertainty as to the treatment of the secondment of expatriate employees which has resulted in frequent litigation. As a result of the current uncertainly, Indian corporates lose out on knowledge and expertise of specialized employees of overseas group companies.	Announcement / clarity in the upcoming budget as to the treatment of secondment of expatriates to avoid uncertainty for global organisations wanting to do business in India
Minimum Alternate Tax			
37.	MAT credit	On 20 September 2019, the Taxation Laws (Amendment) Ordinance, 2019 (Ordinance) has been promulgated by the President of India to make certain amendments in the Act and the Finance (No. 2) Act 2019. The Ordinance, inter alia, introduced a new Section 115BAA in the Act with effect from Assessment Year (AY) 2020-21 to provide an option of a concessional tax at the rate of 22 per cent in the case of a domestic company subject to certain specified conditions. The Ordinance also amended Section 115JB of the Act relating to Minimum Alternate Tax (MAT) to, inter alia, provide that MAT provisions will not apply to a person who has exercised the option to avail the concessional tax rate of 22 per cent. The ordinance is not clear about allowability of brought forward MAT credit. On 2 October 2019, the Central Board of Direct Taxes (CBDT), vide Circular No. 29/2019 clarified that as the provisions of MAT itself shall not be applicable to the	It is suggested that the MAT credit should be allowed to company who have opted of lower tax rate under Section 115BAA

		domestic company which exercises option under Section 115BAA, the tax credit of MAT paid by such domestic company shall not be available consequent to exercising of such option. Further, as there is no time line within which option under Section 115BAA can be exercised, a domestic company having MAT credit may exercise the option after utilising the said credit against the regular tax payable under the taxation regime existing prior to promulgation of the Ordinance. Many companies may consider to remain under the old regime till their MAT credit is exhausted. Similarly, companies with units in SEZs may not opt for reduced rate. The same course of action may be opted by infrastructure and real estate companies. Overall intention of introduction of lower tax provisions is to boost the economy in an immediate period of time. Denial of MAT credit will delay the favourable impact of lower corporate tax rate as companies may not opt for lower tax rates immediately.	
38.	Abolishing of MAT [Section 115JB]	Abolishing MAT should streamline tax compliances by companies and reduce tax litigation in India. It has been the stated policy of the present Government that it intends to reduce the overall tax	MAT, an alternate tax calculated on book profits, was introduced as a measure to tax profit making companies, which, otherwise had nil or substantially low taxable income under the provisions of the Act, on account of

		rate and simultaneously phase out tax holidays and exemptions. Therefore, the intent of introducing MAT provisions is no longer relevant in today's tax environment or at least in the near future. Further, IND AS has now been mandatorily implemented in India in a phased manner and is increasingly becoming applicable to a large base of taxpayers. IND AS follows substance over form that results in bundling, unbundling and recharacterisation of various transactions. Additionally, it uses fair value measurement criteria for several items that results in profit and loss account including notional items vitiating the real income basis. This is contrary to the principles followed in the tax laws which prescribe taxing real income and expenses and not notional transactions. Given that MAT is levied on accounting profits, with the transition to IND AS, it would result in levy of taxes on various notional transactions. If continues, requirement to maintain and true up accumulated difference shall make tax quantification complex and burdensome. This conflict may lead to high levels of litigation in the future.	high deductions, incentives and exemptions available under the Act. MAT has outlived its utility and creates avoidable disputes and litigation, which may go up significantly on account of transition to IND AS. In view of the above, MAT should be abolished.

39.	Minimum Alternate Tax (MAT) on Ind AS book profits [Section 115JB]	Given that MAT is levied on book profits, with the transition to IND AS, it would result in levy of taxes on various notional transactions and capital items which would otherwise never have been a part of P&L and would not have been intended to be subject to MAT.	Without prejudice to above, MAT on notional transactions and capital items under Ind AS should not be levied.
40.	Computation of book profit for the purpose of MAT	As per the current provisions, while computing book profit for MAT, the company is entitled to set off brought forward loss or unabsorbed depreciation, whichever is less, from the book profit. In cases where the depreciation is very less or becomes nil there is no deduction available to the assessee company. This causes undue hardship to the companies, especially to servicing companies whose asset base is either very low or negligible and which is required to pay MAT even though it has book losses carried forward in the books of accounts.	Without prejudice to above, the provisions should be modified to provide that while calculating MAT, the entire book loss brought forward (including unabsorbed deprecation) should be allowed to be set off against the book profit.
41.	Removing limitation on time for utilization of MAT credit [Section 115JAA]	Book profits are subject to MAT at the effective rate of 21.55%. The shrinking gap between the existing MAT rate and the proposed normal tax rate (25%) will slow down the ability to utilize the MAT credit. Further, the apprehension of MAT Credit lapsing without being utilized also has an adverse impact on capital formation. Recently, the government has proposed to reduce the rate of tax under the regular provisions of the Act. Consequently, not only would the MAT credit increase, but also the utilisation of accumulated MAT credit would prolong, thereby, resulting in lapse of MAT credit.	MAT credit should be allowed to be carried forward indefinitely to avoid lapse of MAT credit.

Capital Gains			
42.	Capital gains tax exemption for consolidation/sub-division of shares As per the Companies Act, companies are permitted to consolidate their shares into shares of a larger amount / sub-divide their shares into shares of a smaller amount – such transactions may be undertaken by companies for various reasons, e.g. increasing liquidity of the shares through a stock split	While section 55(2)(b)(v) (introduced in 1964) provides that the "cost of acquisition" for capital gains tax purposes of the new consolidated / sub-divided shares shall be derived based on the "cost of acquisition" of the original shares, there is no specific exemption under section 47 that provides that a share consolidation / stock split does not amount to a "transfer" for capital gains tax purposes.	A specific exemption may be introduced under section 47 which provides that a share consolidation / stock split does not amount to a "transfer" for capital gains tax purposes retrospectively from 1962 out of abundant caution to clarify this well recognized position. Further, as a corollary to the existing provisions of section 55(2)(b)(v), suitable amendments may be made granting the period of holding benefit and the indexation benefit with reference to the original shares
43.	Segregation of portfolios for Mutual Fund schemes:	In case of an adverse credit event and to deal with liquidity risk, SEBI has, in its circular No. (SEBI/HO/IMD/DF2/CIR/P/2018/ 160) dated 28 December, 2018 permitted creation of segregated portfolio of debt and money market instruments by Mutual Fund schemes. By this, all existing unitholders in the affected scheme, as on the day of the credit event, shall be allotted equal number of units in the segregated portfolio (containing stressed assets) as held in the main portfolio (with healthy portfolio). This is also known as side-pocketing of units.	The industry believes that segregation of portfolios is required to be accorded tax neutrality in the hands of the unitholder and in that direction, requires the following clarificatory amendments: • The allotment of units in a segregated portfolio of a mutual fund scheme is not a transfer under section 47 of the Act. • The period of holding of such units shall be reckoned from the date of investment by the investor; and

		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 cost of acquisition in case of main scheme and segregated portfolio shall be the proportionate cost as determined on the date of segregation for the purposes of section 49.
44.	Extension of capital gain exemption to Foreign Currency Denominated Bonds	Indian corporates have been raising funds from a source outside India by way Foreign Currency Denominated Bonds (FCDB) through External Commercial Borrowing. There is no specific exemption on transfer of FCDB from non-resident to non-resident outside India.	Nature of Foreign Currency Denominated Bonds are like that of Rupee Denominated Bonds (RDB)/Masala Bond. RDB are given specific exemption under section 47(viiaa) of the Act wherein, any transfer of capital asset, being RDB of Indian company issued outside India, by a non- resident to another non-resident shall not be regarded as transfer. On similar lines, transfer exemption between non-residents to another non-resident should be extended to FCDB also. Further, transfer of bonds, being Global depositary receipts, by one non-resident to another non-residents are also not considered as transfer under section 47(viia) of the Act.

			Hence transfer exemption between non-residents to another non-resident should also be extended to non-resident investor investing in FCDB.
45.	Exemption to investors on exit from the start-ups	As per news reports, the government was considering to provide exemption to investors from capital gains tax when they exit a start-up, in a bid to attract more funds into the sector. Perhaps the DPIIT was weighing two alternatives to deliver this incentive — one, a blanket exemption, and two, a conditional exemption based on funds redeployed. In the UK, angel investments get tax breaks on exit. However, no such benefit is available to investors in India.	To encourage start-ups and to promote investments tax exemption should be provided to investors on capital gain tax arising on exit from the start-ups.
46.	Provide clarification on grandfathering benefit in case of listed shares held on 31 January 2018: Section 55(2)(ac)	Section 55(2)(ac) of the Act contains beneficial provisions as per which a transferor can avail a deemed cost base of the share price quoted on the stock exchange on 31 January 2018, provided that such shares were 'acquired' prior to February 1, 2018. In case of certain transfers, mentioned in Section 49 of the Act, the cost of acquisition of asset for the transferee is deemed to be that of the previous owner of the asset. Further, the period of holding of the previous owner is also included under Section 2(42A) of the Act in these cases. Hence, taking a logical corollary, in such cases, even listed shares should be deemed to be acquired as on the date of acquisition	In order to avoid litigation on this aspect, clarification should be inserted that shares of the listed company received by the shareholders, in the circumstances mentioned in section 49(1) or pursuant to an amalgamation or a demerger, shall be deemed to be acquired from the date of acquisition of the previous owner for the purposes of Section 55(2)(ac) of the Act.

		of the previous owner for the purposes of Section 55(2)(ac) of the Act.	
47.	Capital gains tax exemption for consolidation/sub-division of shares As per the Companies Act, companies are permitted to consolidate their shares into shares of a larger amount / sub-divide their shares into shares of a smaller amount – such transactions may be undertaken by companies for various reasons, e.g. increasing liquidity of the shares through a stock split	While section 55(2)(b)(v) (introduced in 1964) provides that the "cost of acquisition" for capital gains tax purposes of the new consolidated / sub-divided shares shall be derived based on the "cost of acquisition" of the original shares, there is no specific exemption under section 47 that provides that a share consolidation / stock split does not amount to a "transfer" for capital gains tax purposes.	A specific exemption may be introduced under section 47 which provides that a share consolidation / stock split does not amount to a "transfer" for capital gains tax purposes retrospectively from 1962 out of abundant caution to clarify this well recognized position. Further, as a corollary to the existing provisions of section 55(2)(b)(v), suitable amendments may be made granting the period of holding benefit and the indexation benefit with reference to the original shares
Financial Services			
48.	<u>Section 9A - Taxation of Fund Managers in India</u> Sub section 3 has prescribed 13 conditions to be fulfilled by the offshore fund to qualify for exemption from a business connection risk and the risk of having a Permanent Establishment (PE) under the Act. The amendments proposed in the budget do not	Section 9A was inserted with an objective to promote investment advisory services to offshore funds from India. Other than certain pooling vehicles permitted by SEBI under SEBI(MF) Regulation, the only route for offshore funds to make investment in India is the FPI route. The H R Khan committee has recommended that FPI route shall be the only route for offshore funds to make investments in India.	It may be clarified that the eligibility conditions prescribed in section 9A will not be applicable to FPI's and appointment of an Indian Fund Manager by SEBI registered FPIs will not alter the current tax structure prescribed for FPIs.

	make material impact to facilitate offshore fund management from India	The current tax law has clear provisions regarding taxation of FPIs. If section 9A imposes only additional restrictions on FPIs without offering any specific tax advantages to them, FPIs will not opt for the services of resident Indian fund managers. Hence, the entire objective of section 9A will be defeated unless appropriate amendments are carried out in the section.	
49.	Consistent Corporate tax rate for domestic and foreign banks	Branches of foreign companies should also be subject to base tax rate of 22%	For both domestic and foreign companies, there is no difference in the method of computation of business profits. Hence, the corporate tax rate should be identical as well. In order to bring parity, the Government may consider introducing “Branch Profit Tax” on profits actually repatriated on lines of Dividend Distribution Tax (DDT), so that the overall tax liability on both domestic and foreign companies could be brought at par.
50.	Business income of AIF taxable at higher rate	Under the current regime, business income of Category I and II AIFs are taxed at the AIF level at maximum marginal rate. The Finance Act, 2019 has proposed a significant change in surcharge rates applicable to inter-alia, an individual, AOP or Body of Individual (BOI).	A suitable amendment could be proposed where a specific tax rate (could be equal to the tax rate applicable to the companies) be applicable to AIFs.

		The term "maximum marginal rate" means the rate of income-tax (including surcharge on income-tax) applicable in relation to the highest slab of income in case of an individual, AOP or BOI as specified in the Finance Act of the relevant year. In light of the increase in the surcharge rates applicable to an individual, the maximum marginal rate (MMR) effectively works out to 42.744 per cent. Thus, business income of Category I and Category II AIFs shall be taxable at 42.744 per cent. Where the investors of the AIFs consist only of resident corporate entities, the business income of the AIFs would be taxable at a rate which is much higher than the rate which would be applicable had such income been earned by the resident corporate entities directly.	
51.	Chapter XII-B of the Income Tax Act is currently applicable only to Category I and II AIF.	While the rate of tax may be decided based on the nature of income, a pass-through status will not affect the revenue of the government. The investment strategy need not be a consideration for determining the pass-through status and even if it has to be considered, Cat-III AIF may be considered at par with Cat-I and II AIF for taxation purpose. We recommend amending the definition of investment fund u/s 115UB to include Category III Alternative Investment Fund.	The "pass-through" tax status may be extended to Category III AIFs.

		With the recent increase in surcharge tax rates proposed in Finance Budget II 2019, it becomes imperative to extend "pass-through" status for AIF CAT III Funds as the AIF Funds are pooled investment vehicles consisting of investors of varied taxable income slabs. For instance, each fund may consist investors in one of the below taxable income slabs: Upto INR 5 mln INR 5 mln to INR 10 mln INR 10 mln to INR 20 mln INR 20 mln to INR 50 mln Above INR 50 mln The surcharge rates for each of the above income slabs vary. However, at a fund level the total income would be more than INR 50 mn and hence surcharge at the highest rate would get applied which would adversely impact investors with lower taxable income with no provision to claim the excess tax paid. A "pass-through" status will ensure equitability and fairness in tax treatment.	
52.	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. 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	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. Given that SEBI already prescribes Guidelines in this regard, which are well

		residents in an FPI (recent guidelines to this effect was provided on 21 September 2018 vide Circular CIR/ IMD/ FPIC/ CIR/ P/ 2018/ 132).	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.
53.	Section 43D – incentives to NBFC: Interest on bad or doubtful dents in the case of deposit taking Non-banking Financial Company (NBFC) and systematically important non-deposit taking NBFC to be charged to tax on receipt basis	Section 43D provides for taxing interest on certain categories of bad or doubtful debt on receipt or credit to the P&L, whichever is earlier. Considering that most of these NBFCs would be falling under Ind-AS and therefore would be required to recognize interest income on certain stage III loans (Non-performing Assets (NPAs)) in the profit and loss account. Given the same, they may not be able to claim the benefit of Section 43D in relation to such interest.	In light of above, to avoid genuine hardship faced by such NBFCs, it is prayed that suitable exemption be provided in the said amendment for such NBFCs which are required to recognize the interest in the P&L purely on account of Ind-AS requirement and interest should be taxable on receipt basis.
54.	IFSC- Deduction under Section 80LA: The Finance Act, 2019 has amended Section 80LA to provide that the deduction shall be increased to 100 per cent for any ten consecutive years out of fifteen years beginning with the year in which the necessary permission was obtained, at the option of the unit.	This is because in the initial years of set-up of a unit, income/profit of the unit may not be substantial and since they have been set-up in (say) financial year (FY) 2017-18, they have already claimed deduction under Section 80LA for that year. This would enable such units to defer the claim of deduction of Section 80LA in later years where they are expected to make relatively higher profits.	The units which have claimed deduction under the existing provisions should be allowed to withdraw the benefit and should be allowed to claim exemption for ten consecutive years out of the first fifteen years. Also, section 80LA should also apply to a unit set up in IFSC even if the income were to be considered as capital gains.
55.	Income received from business trust by FPIs to be included under the specific provisions	Section 115AD provides for tax on income of Foreign Portfolio Investors from securities or capital gains arising from their transfer. This specific provision	As FPIs have specific provision under the law, income received from business trust should also be included

	applicable to FPIs – Section 115AD	covers taxation of all income received by FPIs (capital gains/interest income). Further, FPIs have been allowed to invest in units of business trusts (REITs, INVTs and Infrastructure Debt Fund). Interest income received by FPIs from these business trusts are not covered under the provisions of section 115AD. Section 115A of the Act inter alia provides for taxation of interest income in case of foreign companies and non-residents (not being company). Interest received from business trust by non-residents is taxed under section 115A(1)(a)(iiac), and hence FPIs take shelter under it. Further, section 194LBA provides for deduction of tax in case of income received from units of business trust as referred to in section 115UA.	under the section 115AD of the Act. Presently 115AD(1)(i) provides for an exemption to tax interest income at the rate of 5 percent if interest is received as referred in section 194LD. Similarly, section 194LBA should be included under the said proviso. In turn this shall, simplify understanding of the applicable taxes on income received by FPIs (including income received by business trust).
56.	The existing stringent conditions, which are difficult to fulfil or are open to interpretation are as under: 1. Minimum 25 non-connected persons in each fund; 2. 10 non-connected persons to hold more than 50% fund assets;	Refer Recommendation column. This will help practical implementation of the requirement of verifying the conditions of connected person for Mutual funds.	Alternatively, at least the following stringent conditions should be amended as under: • Mutual funds (including feeder funds) investing in offshore funds to be considered as 'institutional entity', thereby entitling a "look-through basis", prescribed in Rule 10V of the Income-tax Rules • 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" These conditions should not be made applicable in the initial year of launch and last year of winding up of the offshore fund.
57.	Exemption from DDT for "Fund of Funds"	In respect of Fund of Funds (FOFs) investing in equity securities of domestic companies via Equity Oriented Funds, there could be levy of Dividend Distribution Tax (DDT)/ Income-Distribution Tax (IDT) at multiple levels, viz., when the domestic companies distribute dividends to their shareholders (here, to the EOF) and again, when the EOF distributes the dividends to its unitholders (including the FOF) and again, when the FOF distributes dividend to its unitholders.	It is recommended that income distributed by FOFs be exempted from IDT. For this purpose, the definition of qualifying FOF may be aligned with explanation (a)(i) to section 112A.
58.	Pass-through treatment extended to losses of Category I and II Alternative Investment Funds: Pursuant to Finance Act, 2019, AIF regime under Section 11UB of the Act	Pursuant to Finance Act, 2019, the AIF regime under Section 115UB of the Act, provides the following in respect of carry forward and set off of losses: • Business loss shall continue to be carried forward and set-off at the AIF level • Loss (other than business loss) shall be allowed to be carried forward and set-off in the hands of the	With a view to avoid complete lapse of loss on units held for less than 12 months, it is advisable to allow the benefit of the complete pass through of losses (other than business losses) to the unitholder without any condition of 12 months holding. A suitable

		the unitholder of the AIF where the unitholder has held the units of the AIF for at least 12 months • Accumulated losses (other than business losses) as on 31 March 2019 at the AIF level shall be deemed to be the losses of the unitholders which have held the units of the AIF as on 31 March 2019 and allowed to be carried forward and set-off for the remaining eligible period. Such accumulated losses shall not be available to the AIF. The current language provides that losses (other than business losses) shall be ignored where the units have not been held by the unitholder for at least 12 months. Thus, if an investor holds units of AIF for less than 12 months, such investor shall not be able to set-off or carry forward such losses. Similarly, if an investor holds units of AIF for less than 12 months, accumulated losses (other than business losses) as on 31 March 2019 at the AIF level which are attributable to such units shall not be available to such investor for set-off and carry forward. Such loss may also not be available at AIF level for set off and accordingly the same may get lapsed.	amendment to this effect should be introduced. Alternatively, these losses should be available for set off at AIF level.
Returns/ Assessments			
59.	Timeline for filing a revised tax return and consequently time lines for completion of tax assessment	The Finance Act 2017 curtailed the time limit to file a revised return from the existing time available of two year from end of financial year to one year from end of financial year.	Considering the hardship, the deadline for filing a revised return should be restored to two years from end of the relevant financial year.

		This impacts many tax payers who have moved abroad for employment and qualify as Resident and Ordinary Resident (ROR) of India in the financial year of departure from India or any other ROR tax payer who has overseas income. This is because of the relief to be claimed (if any) on any overseas income offered to tax could depend on the tax return to be filed in the host country/ country of source of income. It is possible that the tax return filing deadline is such country may be later than the timeline for filing the revised tax return.	As a consequence of this, the reduced due dates for completion of scrutiny and other assessments would also need to be rolled back and restored as they were earlier i.e. 21 months from the end of the relevant Financial Year.
60.	Block assessment to be considered for some issues	As of now, assessment is carried out separately for each assessment year irrespective of the nature of the issue.	Block assessment for 3-5 years may be considered, if not in general, for transactions such as royalty, intra-group services, etc., as they are cyclical in nature and mostly have an impact over a period of time. A detailed assessment in the first year of the prescribed block should be made applicable for the remaining years of the block. Similar to what has been adopted as part of the APA process, the Government can get certain conditions to be fulfilled, included in the rules (no change in facts and circumstances year-on-year etc.). This practice is followed internationally as well.

61.	Time barring of assessment in case of foreign person: Section 149 of the Act	As per the statutory limitation provided in Section 149 of the Act, a notice for assessment or reassessment cannot be issued for an assessment year if 4 years have elapsed from the end of the relevant assessment year. However, the above period of 4 years can be extended to 6 years from the end of the relevant assessment year if tax amount of escaped assessment exceeds Rupees 1 lakh. A rational period of statutory limitation for initiating tax proceedings improves the ease of doing business in India for foreign investors, since it provides tax certainty on exits.	With a view to improve the environment of tax certainty for the exiting foreign investor, as well as the buyers who acquire the Indian assets, it is proposed that the time barring under Section 149(1) of the Act should be restricted to a period of 4 years provided that tax returns are duly filed by the foreign investors. Similarly, statutory limitation for withholding tax provisions under section 201(3) should be brought in line with the above.
62.	The removal of the mandatory filing requirement for foreign companies where income has been subject to withholding tax in India.	In the 2018/19 budget the limit of tax payable INR 3,000 was removed therefore, requiring foreign companies to file returns in India even the income had been subject to withholding tax in India and no additional tax liability was due.	To ensure ease of doing business in India, it is recommended that foreign companies should not be required to file returns in India where income has been subject to withholding tax in India and no additional tax is payable.
63.	Institutional mechanism for settlement of tax litigation	Among Asian countries, India stands out as one with the largest number of pending tax cases in absolute terms and in terms of the notional value of litigation. The life-cycle of a tax litigation from assessments to first appeal to Tribunal and then the Courts can take anywhere between 15-20 years or even more. For the sake of ease of doing business, this needs to be addressed on war footing. Hence, there should be a mechanism in place, whereby the taxpayer should also be allowed an option to opt for a negotiated	The taxpayer should also be allowed an option to opt for a negotiated settlement before a Collegium of Commissioners on receipt of the draft order.

		settlement before a Collegium of Commissioners on receipt of the draft order. Once settled, interest and penalty should not be applicable on the negotiated settlement amount.	
Tax Deduction at Source ("TDS")			
64.	Provision for the employer to provide tax treaty benefits while calculating TDS	Under the current tax regime, there is no provision under the Act which enables an employer to consider admissible benefits under the respective Double Taxation Avoidance Agreements (e.g. credit for taxes paid in another country/ treaty exclusions of income etc.), while computing tax to be deducted under Section 192 at the time of payment of salaries to employees. Further, the foreign tax credit (FTC) rules notified by the CBDT in June 2016 also does not contain explicit provision for providing credit for taxes paid in another country by the employer at the time of deduction of tax on salary payments. Due to the above, it creates cash out-flow issues to the employees (migrating employees coming to and leaving India) who are initially subject to full TDS by their employers and thereafter required to claim refunds on account of tax treaty benefits while filing their income tax return. Many of these employees may complete their assignments and leave India prior to obtaining their tax refunds which also creates hardships with respect to receiving back the refund amounts.	It is recommended to amend section 192 so as to enable the employer to take into consideration the amount of FTC under the tax treaty, at the time of TDS.

65.	*Nil* TDS For Non-Banking Financial Institutions/ Companies	Section 194A of the Income Tax Act, 1961 provides for deduction of tax at source ("TDS") at the rate of 10% on payment of interest (excluding interest on securities) to a resident. Sub-section 3 of Sec. 194A provides for non-applicability of Sec. 194A in some cases which include banking companies to which Banking Regulation Act applies. However, such exemption has not been extended to NBFCs. As a result, in contrast to the nil TDS rate enjoyed by banks on their interest receipts, NBFCs' interest receipts are subject to a TDS rate of 10%. NBFCs have the option to apply for a lower withholding certificate under Sec. 197 of the Income Tax Act, but practically it becomes difficult to obtain this certificate given the huge number of customers (in many cases in thousands). EMI on monthly loan instalments receivable to NBFCs has an interest component which is subject to TDS. In an ever-dynamic growing business scenario, it is practically impossible to predict the volume and number of new customers and collect details regarding name, addresses, exposure, TAN, etc. of the customers. Therefore, extensive paper work and administration coupled with huge collection costs involved in the issue of large number of certificates, filing quarterly returns, etc. make the entire TDS collection quite cumbersome and costly. Also many a times, TDS estimated for advance tax computations actually turns out to be much lower than what is actually deducted by the customers, resulting in huge refund	To amend Section 194A of the I T Act, 1961 so that NBFCs (including those which have been accorded Public Financial Institution status) are treated at par with banks and the benefit of 'Nil TDS' is extended to them as well like any other banks ; or (ii)A suitable notification should be issued for all NBFCs (including those which have been accorded Public Financial Institution status) u/s 194A(3)(iii)(f) of the Income Tax Act, 1961.

		claims. Getting refund can often become a time-consuming affair affecting the cash flow and working capital requirement of NBFCs. The additional limitations of the existing system are: (a)Follow up with every customer for TDS certificates every quarter (details of which are mandatory for claiming the same in the I.T. Return) becomes almost impossible. NBFCs have clients who number in thousands and it is practically very difficult to collect details from everyone. (b)Even if TDS certificate is issued by the customer, if TDS return has not been filed or not filed properly, the credit for such TDS would not be granted to the NBFC as details of such TDS would not appear in NSDL system. (c) Once TDS credit is disallowed, NBFCs have a hard time following up with the customers and the exchequer has a hard time clearing outstanding demands against NBFCs which, in reality, do not exist While most Banks are unable to reach the MSME sectors for their financing needs, Asset Finance and Infrastructure Finance NBFCs (AFCs & IFCs) bridge the gap and act as an extended arm of the banking system in India. Hence it is very important that these NBFCs are provided level playing field with the Banks. Such differentiation severely constrains these Non-Banking Financial Institutions / Companies in conducting their duties which essentially goes against	

		Government's National Goal ofFinancial Inclusion& Ease of doing Business.	
66.	TDS under Section 194DA- Payment in respect of life insurance policy : The Finance Act, 2019 amended section 194DA to provide that while making payment under life insurance policy, the payer (i.e. Life Insurance Company) needs to deduct tax at "5 per cent on the amount of income comprised therein".	The words "amount of income comprised therein" is not defined in the Finance Act, 2019 however, the Explanatory Memorandum to the Finance Bill (No. 2) 2019 mentions that the policyholder is liable to tax on net income only (i.e. after deducting the amount of insurance premium). While the Explanatory Memorandum states that the insurance premium needs to be deducted while calculating net income, a doubt may arise whether GST paid along the premium paid should also be included as part of premium or not. GST amount paid and borne by the policyholder is a part of insurance premium paid to keep in force a life insurance policy and hence, should be available as a deduction while calculating net income of the policyholder.	GST amount paid and borne by the policyholder should be considered as a part of insurance premium.
67.	**Rule 29B of the Rules: Issuance of annual Nil tax deduction at source** (i.e. TDS) certificate to Indian branch of foreign reinsurers (i.e. reinsurance branches) as issued to Indian branches of foreign banks	Our submission to the CBDT, therefore, would be to amend Rule 29B to enable reinsurance branches to obtain Nil TDS certificate in the same and like manner as issued to the Indian branches of foreign banks	Section 195(3) of the Act read with Rule 29B of the Rules enable certain non-residents to apply for a blanket Nil TDS certificate. However, where the assessee is not a banking company, certain additional conditions (one of the conditions being that the assessee should be carrying on business in India continuously for a period of at least five

			years) are required to be satisfied to obtain blanket Nil TDS certificate. Given this onerous condition, the reinsurance branches are not able to obtain blanket Nil TDS certificate under section 195(3) of the Act for initial five years of operations. Though the reinsurance branches are currently making application for obtaining Nil/lower TDS certificate under section 197 of the Act, however, they are facing serious challenges in obtaining Nil/lower TDS certificates which is impacting their business operation in India. The gist of the challenges is as under: The lower TDS certificates are being issued from the date of issuance as against the date of filing the application. This is resulting into huge financial hardship to these reinsurance branches as in the absence of valid lower TDS certificates prior to date of issuance, substantial amount has been subject to excess tax at 43.68 per cent. Limit specified in lower TDS certificate for each payer/insurance

			company is required to be tracked and follow up application is required to be made: (i) when such limit for any payer/insurance is exhausted; or (ii) in case of any new payer/insurance which was not envisaged at the time of filing the application. Under the current process, party-wise details are not required to be submitted if the number of parties (i.e. payers) are more than 100 and details of such payers are not available at the time of filing application. The reinsurance branches are not having more than 100 payers and hence the reinsurance branches have to mandatorily submit the party-wise details. It is practically impossible to precisely estimate party-wise details of income including investment income at the beginning of the year. Lot of details such as industry comparables, profitability of parent and other irrelevant details are being asked for at the time of processing the application. Tax officer despite getting convinced with the projected Profit &

			Loss figures and despite reinsurance branches having brought forward business losses of earlier years which are eligible for set-off, issues the lower TDS certificate at much higher rate.
68.	Extension of eligible period of concessional tax rate under section 194LD	As per section 194LD of Income Tax Act, 1961 ('the Act') any person who is responsible for paying to a person being a Foreign Institutional Investor (now Foreign Portfolio Investor), any income by way of interest payable on a rupee denominated bond of an Indian company or a Government security, shall, at the time of credit or payment of such income, deduct income tax thereon at the rate of 5%. Interest payable should be on or after the 1st day of June 2013 but before the 1st day of July 2020.	In view of the expiration of the said period and to boost the foreign investments in India under the bond market, it is suggested to extend the period to 1st July 2023. (by three years) – Budget 2017 had extended this period to 1 July 2020.
69.	Withholding of tax on the sale of immovable property of defaulting borrowers by banks	Section 194-IA of the Act requires tax to be deducted by the transferee at the time of making payment to a resident transferor, where the consideration exceeds INR 50 lakhs, for transfer of immovable property. Under the SARFAESI Act, when a bank is selling immovable property of a defaulting borrower to recover its dues, the credit of the tax deducted is available to the owner of the property (defaulting borrower) and not to the bank. Thus, the bank receives consideration net of TDS, thereby reducing bank's recovery.	It is recommended that exemption be provided from the provisions of section 194-IA of the Act to cases where a transfer is made by banks of properties under the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).
70.	Extension of eligible period of concessional tax rate on interest in case of External	The existing provisions of section 194LC of the Act provides that the interest payable to a non-resident by a specified company on borrowings made by it in	In view of the expiration of the said period and to boost the foreign investments with the Indian

	Commercial Borrowing and Extension of benefit to Rupee Denominated Bonds	foreign currency from sources outside India under a loan agreement or by way of issue of any long-term bond including long-term infrastructure bond shall be eligible for concessional TDS of five per cent. It further provides that the borrowings shall be made, under a loan agreement at any time on or after the 1st July 2012, but before the 1st July, 2020; or by way of any long-term bond including long-term infrastructure bond on or after the 1st October, 2014 but before the 1st July, 2020, respectively.	companies, it is suggested to extend the period to 1st July 2023, in lines with the extension of 194LD. (by three years) – Budget 2017 had extended this period to 1 July 2020.
71.	Extension of sun-set clause under Section 194LC and 194LD	Currently, both these sections have a sun-set clause of 30 June 2020. The benefit of the concessional withholding tax has been appreciated by the foreign investing community who has invested heavily into government debt thereby making full use of the aggregate government debt investment limit for foreign portfolio investors. To retain the attractiveness of Indian bonds for foreign investors and align consistency in interest payments to foreign investors irrespective of the currency of loan or interest payments i.e. Indian Rupees or Foreign Currency, the sunset date for both sections i.e. 194LC and 194LD should be extended perpetually. This would incentivize the investors to invest for a longer period and build market for this segment and therefore would broaden the investor base. This will provide a much-needed boost to the Indian bond market which is yet to achieve its full potential.	Make base rate of 5% for deduction of tax at source a permanent feature on interest on External Commercial Borrowing and Rupee Denominated Bonds, as well as, for Foreign Portfolio Investors (FPIs) on interest on Government Securities / INR denominated corporate bonds.

72.	Tax rate of 5% on INR denominated ECB	INR denominated ECBs and foreign currency denominated ECBs are both borrowing in foreign currency. In case of foreign currency denominated ECB, the currency in converted into INR by the borrower and the risk of fluctuation in exchange rate is also borne by the borrower. Whereas in case of INR denominated ECBs, the conversion as well as the risk is borne by the lender. However, in both cases the foreign currency is brought in India. Hence, the tax treatment should also be identical. Hence, it is recommended that the scope of provisions of section 194LC should be extended to include INR denominated ECBs as well.	Base tax rate of 5% under section 194LC is applicable on Foreign currency loans. The scope of provisions of section 194LC should be extended to include INR denominated ECBs.
73.	Threshold Limit for applicability of TDS on Interest earned from banks	It is recommended that the limit for deduction of TDS be increased from Rs. 10,000 to Rs. 100,000 where the payer is a banking company.	At present, banks are required to deduct TDS at the rate of 10% in case interest is payable on deposits exceeding Rs. 10,000 per year.
Personal Taxation			
74.	Rationalisation of income slabs/ tax rates	Income up to INR 2.5 lakh per annum (p.a.) is currently exempt from tax for individual taxpayers up to the age of 60 years. This limit has remained constant since FY 2014-15, though, higher exemption limits have been prescribed for senior citizen and super-senior citizen taxpayers up to INR 3 lakh p.a. and 5 lakh p.a. respectively. Current tax rates applicable to different slab rates viz. 5%, 20% and 30% seem to be slightly imbalanced post reduction of lowest tax rate from 10% to 5% vide	With the objective of enhancing the net disposable income in the hands of individual taxpayers, the basic exemption limit of INR 2.5 lakh may be revised to INR 3.5 lakh or higher. The limit at which the maximum tax rate of 30% is triggered may also be reasonably enhanced to INR 20 lakh p.a. Subsequently, the other tax and slab rates may be adjusted basis such revised limits (and also prevalent

		Finance Act 2017. Also, the maximum tax rate of 30 per cent is triggered at only an income exceeding INR 10 lakh p.a. Though, Finance (No. 1) Act, 2019 provided some relief to small/middle-class taxpayers by enhancing the tax rebate to INR 12,500 which effectively translates into payment of NIL tax by individuals having income below INR 5 lakh, no changes were made to the existing slab of income and tax rates. Also, Finance (No. 2) Act, 2019 did not increase/ modify the existing income slab rates. The amount of standard deduction should also be increased to give relief to salaried employees. Further, keeping in mind the current economic scenario additional net disposable income resulting from reduction in personal tax rates, could enhance consumption and spur overall demand for goods and services.	inflation) for a better progressive tax structure. Alternatively, it may be worthwhile to consider introducing 10 per cent slab for people having taxable income between Rs 5 lakh and Rs 10 lakh and the 20 per cent rate applicable for taxable income between Rs 10 lakhs to Rs 20 lakhs and the 30 per cent rate to be applied on taxable income above Rs 20 lakhs. This is basis that the tax rate directly jumps from 5 per cent to 20 per cent once taxable income exceeds 5 lakhs.
75.	Enhanced surcharge for high-income earners	For individual taxpayers, the Finance (No. 2) Act, 2019 enhanced the surcharge to 25% and 37% for those having taxable annual income above INR 2 crore (upto INR 5 crore) and above INR 5 crore respectively, from 15%. This has resulted in a maximum marginal rate of 39% and 42.744% respectively being applicable to such category of individuals. The premise for levying of higher surcharge is that high income earning individuals should contribute more	It is recommended to consider a rollback of the enhanced surcharge in entirety (in line with the rollback on capital gains arising from sale of listed equity shares/ units of equity oriented mutual funds/business trusts effected through aforementioned Tax Ordinance) or be moderated to a comparatively lower level to help India

		towards the nation building. However, such increase is substantial and is likely to have an adverse impact in terms of higher tax outgo especially by entrepreneurs of successful businesses/ start-ups, highly qualified Indians who work in multi-national companies and have option of being deputed anywhere in the world, expatriates who are working in India under the Tax Equalisation arrangement (i.e. their India tax liability being paid by the Company on their behalf as one of the benefits of an international assignment to India). Also, with recent Tax Ordinance reducing the corporate tax rates substantially, there is now a huge gap between the corporate tax rate and maximum marginal tax rate applicable to individuals (including such enhanced surcharge).	remain a competitive tax jurisdiction vis-a-vis other lower tax jurisdictions for hiring of specialist talent and to ensure continued flow of skilled resources to support the development of the nation and strategic programmes like Make in India.
76.	Limits for various exempt allowances and deduction under Section 80C of the Act	Deduction under Section 80C of the Act amounting to INR 1.5 lakh per annum for various common tax saving investments/ expenditure has not kept pace with the rising inflation and has been kept constant since FY 2014-15. Also, following are the limits for certain tax-free allowances: • Children Education Allowance – INR 100 per month per child; • Children Hostel Allowance – INR 300 per month per child; • Meal Coupons – INR 50 per meal.	In order to provide impetus to consumer spending and also encourage individuals to meet their savings goal, deduction available under Section 80C may be revised upwards up to INR 3 lakh p.a. Also, limits for tax-free allowances may also be revised per the below limits: • Children allowance may be increased to Rs 500 per month per child; • Children Hostel allowance may be increased to Rs 1500 per month per child;

			• Meal Coupons may be increased to Rs 100 per meal.
77.	Clubbing of Minor's Income-exemption under section 10(32)	The current limit of INR 1,500, under this section is extremely low and needs reconsideration. Any increase in such limit will not only result in savings but will also encourage the taxpayers to accurately report the income of minor(s) in their hands.	The increase in limit from Rs. 1,500 to at least Rs. 10,000 will rationalize the exemption amount.
78.	Additional deduction for affordable house (Section 80EEA)	An additional deduction of upto INR 1.5 lakh p.a. was introduced vide Finance (No. 2) Act 2019, for first time home buyers in respect of interest payable on a housing loan sanctioned during the period 1 April 2019 to 31 March 2020 with stamp valuation of the property not exceeding INR 45 lakh. However, it is difficult to buy a house in a metro city or Tier 1 city at such relatively low threshold. Thus, this deduction is likely to benefit only lower income borrowers in Tier 2 and Tier 3 cities/ towns. Also one of the stipulated condition for availing such additional deduction is that a loan shall be sanctioned during the period 1 April 2019 to 31 March 2020 i.e. during current financial year only. Thus, anyone who avails a housing loan post 31 Mar 2020 would not be eligible for such deduction. On the other hand, the Government endeavours to achieve housing for all by the year 2022.	It is recommended that the proposed stamp duty value of the house property for said additional deduction be enhanced from INR 45 lakh to at least INR 65 lakh for metro cities and certain Tier 1 cities (e.g. Bengaluru, Hyderabad, Pune etc.) to incentivise purchase of an affordable house across India. Further, the period during which loan shall be sanctioned for availing said deduction should be extended until 31 March 2022 vis-a-vis 31 Mar 2020.
79.	Deduction in respect of interest paid and set-off of loss from house-property	Currently, the Income deduction towards interest paid on home loan, on a self-occupied property, can be claimed upto maximum of INR 2 lakh p.a. This limit is	In order to incentivize home buyers and to boost the real-estate sector, the limit for deduction and set-off of losses

		quite low vis-à-vis cost of capital which has increased manifold over the years and continues to be high despite reduction in repo rate by the Reserve Bank of India. Also, set-off of loss under the head "Income from house property" against any other head of income was restricted upto INR 2 lakh per annum vide Finance Act 2017 which affected thousands of taxpayers who had availed housing loan(s) in the past based on the provisions of the Act on set-off as it stood then.	should be revised upwards up to say INR 3 lakh per annum respectively.
80.	Date of acquisition and period of completion for under-construction house properties	Date of acquisition has been a vexed issue over the years especially in case of under-construction properties in absence of any express provision under the Act. Due to varied prevailing practices as well as different schemes offered by the real-estate developers, this is subject to interpretation. Reference can be drawn from various judicial precedents available in this regard i.e. either date of possession, property registration, date of making majority payment, etc. Further, a home buyer can claim an exemption for long-term capital gains if he/ she invests the capital gains/ sale proceeds of one property/ other long-term asset to buy/ construct another property within specified timelines. However, such exemption is not available if the construction is completed beyond three years. This condition potentially penalises a home	In order to avoid ambiguity, it is suggested to provide specific provision under the Act to arrive at date of acquisition. Also, period for completion of under-construction properties should be either extended to 5 years or exemption should be provided even if construction completed beyond the stipulated threshold as also held in various judicial precedents.

		buyer for reasons beyond his control as there could be delay in construction for varied reasons.	
Insurance Sector			
81.	Deduction on pension scheme offered by Life Insurance companies	(a) Enhanced limit for premium paid on Pension Policy under section 80CCC read with section 80CCE should be provided as follows: (b) Additional deduction for Rs 50,000 for premium paid for pension policy issued by the Life insurance companies, similar to that provided in section 80CCD(1B) of the Act (c) Further additional deduction under section 80CCC to the extent of 10% of salary similar to section 80CCD(2) of the Act. Above limits should be in addition to existing limit. (d) Similar to section 80CCD(5), uncommuted portion[1] under a pension policy which is mandatorily used to buy an annuity plan should be treated as not having been received and hence, not taxable. 40% maturity proceeds exemption as provided in section 10(12A) of the Act.	It has been the stated objective of the government to create pensionable society. Further, pension policies and NPS both are similar products. Thus, tax should not be a differentiating factor. Life Insurance Companies should have level playing field.
82.	Treatment of Life Insurance policy (LIP) and pension policy	Definition of capital asset as provided under section 2(14) of the Act of widest amplitude. Hence, clarification required for such inclusion to avoid litigation. Life insurance policies not- exempt under section 10(10D) are taxable. Deduction of premiums is	A clarification is required whether LIP or a pension policy is a capital asset falling within the definition of property under section 2(14) of the Act. Similarly, a clarification is required that whether benefit of indexation is

[1]Generally, 2/3rd

		currently allowed from proceeds (CBDT circular of 2003). However, deduction of premium does not consider inflation resulting in higher taxability. Similarly, entire surrender proceeds of pension policy are currently taxable without any deductions, if deduction was claimed for premiums paid towards such policy. Granting of indexation benefit (for premiums or contribution paid) will take care of inflationary impact - resulting in parity with other capital assets.	available to LIP (which are not exempt under section 10(10D)) as well as the pension policy, being a capital asset.
83.	Taxation of annuity	This will give boost to government stated intention of creating a pensionable society. Further, it would bring parity between tax free bonds and annuities.	Annuities received subsequent to maturity of pension policy should be exempt.
84.	Widening scope of exemption to LIP	Under the current provisions, exemption under section 10(10D) of the Act is based on premium to actual capital sum assured ratio. Currently, sum assured has to be 10 times of annual premium payable in order to be eligible for the exemption. The provisions does not take into account cases where the higher premiums is on account of age factor, occupational/ lifestyle diseases (blood pressure, diabetes, etc.) Policyholders' in absolute need of insurance cover are denied tax relief due to higher premiums in such cases.	It is recommended that LIP with policy term of 10 years or more - should be exempt. Further, tax exemption should not be linked to ratio between premium and sum assured. Alternatively, the earlier ratio i.e. sum assured should be 5 times of annual premium payable should be reinstated instead of 10 times.
85.	Tax implication on receipt of maturity proceeds from Keyman insurance policies (KIP)	Under the current provisions, entire maturity proceeds from a Keyman Insurance Policy is taxed resulting in double taxation first at the time of assignment of KIP to	The government should eliminate double taxation of surrender value under KIP.

		employee and then at the time of maturity of such assigned policy. The recommendation is intended to eliminate double taxation.	
86.	Clarification on Group Insurance Policies	Group Life Insurance Policies (GLIP) cover all employees whereas Keyman Insurance Policies cover only "Key" employees critical to business. If group LIP is construed as a Keyman Insurance Policy, amount received by nominee on death of employee becomes taxable. It should be noted here that the amount received on death of deceased employeehelps in meeting future expenses of family.	The government should clarify that group LIP are not treated as a KIP and consequently, amount received by nominee on death of the employee should be exempt.
87.	Carry forward and Set-off of Losses in case of insurance business including non-life insurance businesses	Under the current provisions, a business (other than certain exceptions) can carry-forward its business losses upto a maximum period of 8 years. This limit of 8 years is not enough, considering the long gestation period and long time to achieve a break-even, in the insurance industry. Considering the importance of Insurance sector for the Indian economy, the recommendation would provide much needed boost to the sector.	The government should allow insurance businesses to carry forward and set-off business losses for an indefinite period.
88.	Adjustment of TDS in case of Free Look Cancellations	Insurance Regulatory and Development Authority of India (IRDAI) allows policyholders to cancel policy during the free look period[2]. In case of cancellations during the free look period, the commission income accrued/paid to agents needs to be reversed/ recovered.	It should be provided that taxes that have been already deducted under section 194D of the Act and paid to the Government on the commission amounts, which no longer would be payable on account of free look

[2]currently set to 15 days

		Thus, if the policy holder decides to cancel the policy and the commission income accrued/paid to agent is reversed, the TDS paid to the Government Treasury on the commission amount would add up as an expense to the insurance company.	cancellations, should be allowed to be adjusted in meeting the subsequent TDS liability of the insurers. Alternatively, a mechanism should be laid down for claiming refund of such excess TDS deposited. A plain reading of section 194D of the Act suggests that tax is required to be deducted at source on the entire amount credited to the agent's account and not on the net amount. A suitable amendment in section 194D of the Act or alternatively a mechanism would be useful to claim the refund of excess TDS deposited
89.	Increasing threshold on TDS on Insurance Commission under section 194D	Most of the insurance agents (mainly individuals) are in the low-income bracket and increase in the threshold limit from INR 15,000 will result in less administrative burden on the tax department in processing refunds and increase disposable income in hands of agents.	The threshold limit for deduction of tax at source under section 194D of the Act be increased from INR 15,000 to INR 100,000.
90.	Non-life insurance: Deduction in respect of Insurance Premium	Currently, deduction under section 80C of the Act is available for Life Insurance Premium and a deduction under section 80D of the Act is available for Health Insurance premiums. No such deduction of premium is available in case of travel insurance, home insurance or personal accident insurance policy.	A separate deduction to the policyholders should be available for payments relating to travel insurance, home insurance or personal accident insurance policy.

		Deduction for insurance premium will encourage people to secure their assets like car, home, etc. and also avail personal accident cover. This will aid in financial protection and secure the policyholder from any financial losses that may arise due to unforeseen/unexpected events.	
91.	Taxability of reinsurance premiums earned by Foreign reinsurers	An Indian insurance company can avail re-insurance either with an Indian reinsurance company or through a foreign reinsurer. In this regard, the IRDAI has issued a separate set of Regulations permitting foreign reinsurers to set-up branch offices in India to carry out re-insurance business in India. However, there are no specific provisions under the Act for taxation of reinsurance business. A separate regime of taxation for Reinsurance premiums earned by foreign reinsurer in India would resolve the confusion on taxability of reinsurance premium and would promote reinsurance sector.	It is recommended to provide clarity on taxation regime for the foreign reinsurer carrying on business in India through its branch office. Further, clarity is also required on taxability of reinsurance premium earned by a foreign reinsurer not having taxable presence in India.
Transfer Pricing			
92.	Secondary adjustment Section 92CE(1)	As per section 92CE(1) of the Income-tax Act, 1961 (the Act), a taxpayer is required to make a secondary adjustment, where the primary adjustment to transfer price has been made in the specified situations. The additional amount receivable from the associated enterprise (AE) as a result of the primary adjustment should be repatriated by the taxpayer into India within 90 days from the dates specified in Rule 10CB of the	As explained above, to clarify that there would not be situation of infinite cascading impact, a suitable clarification may be provided.

		Income-tax Rules, 1962 (the Rules). If the same is not received by the taxpayer within 90 days, then a notional interest on the amount deemed as an advance should be offered to tax as per computation mechanism provided in Rule 10CB. The language of section 92CE read with Rule 10CB currently does not clarify that there would not be any situation of "interest on interest" resulting into cascading impact of a secondary adjustment in any year. The joint reading of the sections 92CE(1) and 92CE(2) suggests that that if the interest charged by the taxpayer on deemed advance to the AE, is not repatriated to India, it would not tantamount to Primary Adjustment in subsequent year. The reasons for such interpretation are as follows: a) Definition of Primary Adjustment under Section 92CE(1) seems exhaustive (and not inclusive) as it clearly defines situations which shall construe as Primary Adjustment; b) Section 92CE and Rule 10CB nowhere exhibits an intent to encapsulate such scenario under the ambit of Primary Adjustment and c) Ideally, this would avoid an interest on interest situation and cascading effect.	
93.	Requirement of recording an entry in the books of accounts for Secondary Adjustment	A plain reading of Section 92CE(3)(v) seems to mandatorily require taxpayers, who fulfil both conditions of proviso to section 92CE(1), to make an	The following amendments are recommended to Section 92CE(3)(v) in

	Section 92CE(3)(v) and 92CE(1),	adjustment in the books of accounts of the taxpayer as well as in the books of accounts of the relevant AE(s), to reflect the actual allocation of profits between the taxpayer and its AE with the transfer price determined as a result of Primary Adjustment. In order to address the practical difficulties in implementing such mandate, the requirement of an adjustment in the books of accounts should be done away with. To make it rather clear, consider the following two scenarios: a) In case funds are received by the taxpayer, the same would necessarily be accounted for in books of accounts; b) In case taxpayer does not bring the funds into India, neither its AE nor the taxpayer itself may be required to make an entry in the books of accounts. We believe that the applicable accounting norms in India as well as in the country of the AE may not allow any notional entry in books of accounts, in absence of an agreement between the taxpayer and its AE. Further, the AE of the taxpayer would be governed by their local statute and accounting norms. Also, requiring the AE to make accounting entries consistent with Indian requirements may be beyond the control of the taxpayer.	order to address the above two practical difficulties: *Section 92CE(3)(v) - "secondary adjustment" means an adjustment in the books of account of the assessee ~~and its associated enterprise~~ to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee. An adjustment in the books of accounts of the assessee would not be made in case the assessee does not repatriate the excess money into India from its associate enterprise.*
94.	Clarity on the term "has been accepted by the assessee" Section 92CE(1)(ii)	Section 92CE(1)(ii) provides that the assessee is required to make a secondary adjustment where primary adjustment to transfer price has been made by the Assessing Officer (AO) during assessment proceedings, and has been accepted by the assessee.	As explained above, to the term 'has been accepted by the assessee', a suitable clarification may be provided.

		The above may not sufficiently provide clarity as to whether the following scenarios will be covered under the definition of acceptance: a) Where the assessee has not preferred an appeal not because of the fact that such adjustment is acceptable to the assessee but to avoid litigation efforts; b) Where the assessee has received an unfavorable order from an appellate authority and the assessee does not have the right to prefer further appeal (for e.g., in several TP issues, an appeal before the Hon'ble High Court may not be filed or may not be admitted as underlying issues are fact-based and do not involve any question of law, etc.) c) Where the adjustment made is below the monetary amounts for which appeal cannot be filed. There is lack of clarity on what exactly the term 'has been accepted by the assessee' means.	
95.	Rule 10CB clause (v) - secondary adjustment interest computation in case of MAP	The recent amendment through the Notification dated 30 September 2019 to the draft notification provides that the limitation of 90 days period for repatriation of amount in cases of MAP should commence from the date of giving effect by the AO under rule 44H of the Rules. In this context, we note that the AO's order may not be received by taxpayer the very same day. Any	Based on the above, we recommend the following amendment to Rule 10CB clause (v) so that the 90 day period effectively starts from the date taxpayer receives order passed by AO under rule 44H –

		possible delay in receiving the order may jeopardise the clear 90 day period provided under rule 10CB.	*"(v) from the date on which the order ~~date of~~ giving effect, by the Assessing Officer under Rule 44H to the resolution arrived at under Mutual Agreement procedure, is served on the assessee, where primary adjustment to transfer price is determined by such resolution, under a Double Taxation Avoidance Agreement into under section 90 or 90A."*
96.	Limitation of interest deduction	As per Section 94B of the Act, where an Indian company, or a permanent establishment of a foreign company in India, being the borrower, incurs any expenditure by way of interest, exceeding INR one crore in respect of any debt issued/guaranteed (implicitly or explicitly) by a non-resident AE, then the interest shall not be deductible in computing income chargeable under the head 'Profits and gains of business or profession' to the extent, it qualifies as excess interest. India is a developing country with a need for foreign investments to fund various initiatives, in particular the development of India's infrastructure. However, the restrictions imposed under section 94B in respect of interest on overseas loans is creating uncertainty for foreign as well as Indian parties at a policy level on overseas borrowings. As per the term 'debt' provided in clause (ii) of section 94B(5), interest may include many other payments	• The section should be amended to specify that in guarantee cases limitation would apply only to the extent of the guarantee commission (if any) paid by the Indian entity to the overseas guarantor (being its AE) and not on the interest paid to the third party lender. • Further, the word 'implicit guarantee' should be dropped from the provisions. Without prejudice, the term 'explicit guarantee' should be appropriately defined to obviate future litigation on this front. • Appropriate guidelines may be issued to clarify what the term 'interest or of similar nature' should include or exclude as the definition provided in the existing section 2(28A) may not be adequate for the purposes of section

		made on various kinds of financial arrangements and instruments. Further, there is lack of clarity on the mechanism to calculate EBITDA i.e. book profits calculated on the basis of accounting standards, Ind-AS or otherwise. This may result in unnecessary litigation. Section 94B(1) specifically requires the lending to be from a non-resident AE for the section to trigger. However, branches or permanent establishments of foreign banks are also "non-residents" for the purposes of the Act. Whilst branches or permanent establishments of foreign banks operate essentially as Indian companies and compete directly with Indian banks, debt by related Indian branches of banks or guarantees given by AEs towards borrowings by Indian companies from branches or permanent establishments of foreign banks would qualify for disallowance under the above provision.	94B based on the definition of the term 'debt'. • The mechanism to calculate EBITDA should be clearly laid down. • The borrowings by Indian companies from Indian branches or permanent establishments of foreign banks should be wholly excluded from the purview of the section 94B (either by way of direct borrowing from or by way of guarantee by AE to such branches or permanent establishments of foreign banks).

97.	Procedural Changes to expedite conclusion of Advance Pricing Agreement (APA)	Administrative measures to expedite conclusion of APAs	As per the APA programme report for published by CBDT total 684 applications were pending to be disposed off till March 2018. We understand that the pending cases have increased to 830 till March 2019. This includes APAs where the APA period applied for is already over. The huge backlog needs to be resolved/ concluded as huge amount

			of tax is involved. Conclusion of APA will save considerable litigation time and efforts of both the taxpayers and tax authorities. The following administrative measures are recommended to expedite conclusion of APAs: A time limit of 3 years after filing APA should be mandated to conclude/sign APAs.
98.	Other matters pertaining to APA	A modified return is required to be filed as per the terms of the APA. Interest under section 234B and section 234C for delay/ deferment of tax should not be levied in cases where tax is payable as per the modified return. Sections 234B and section 234C should specifically exclude levy of interest in cases where modified return is filed on signing of APA.	Waiver of interest under section 234B and section 234C on any adjustment to taxable income pursuant to APA negotiation
Other Provisions			
99.	No adjustment of refund from the demand already stayed by the AO	Generally, all the big corporates are assessed by the income tax department and may have pending litigations where stay has been granted upon payment of partial demand. Even after payment of partial demand, the balance demand appears on the system resulting in non-granting of refund of other assessment years.	It is suggested that a provision be placed for resolving the concern of corporates that where any stay has been granted until the disposal of appeal, the refunds arising to taxpayer for any other assessment year or any other matter (say corporate v. TDS) should not be adjusted against stayed demand.

100.	New tax laws and circulars – Industry to be consulted before implementation	In respect of new tax laws or amendments substantial compliance costs are being incurred only to get a correct understanding of the legislative intent and sometimes it also impacts in the form investing in new systems to meet the requirements. This is often challenging for taxpayers and it involves huge cost of implementation with business impact. All stake holders should be involved at the formative stage of the legislation and the best practices globally available should be followed and made mandatory.	• The draft of proposed change should be made available in the public domain for a reasonable time for suggestions. • Procedural changes and information should not be in the middle of a financial year. • Trade facilitation policies should not be linked to tax disputes and demand since there are independent Appellate mechanism to address disputes and demands under those respective legislations.
101.	General Direct & Indirect Tax	To re-introduce the concept of Large Taxpayers Unit – LTU, LTU a Self-Contained tax office to provide a single window facilitation to taxpayers who pays Direct (Corporate Tax) and Indirect taxes (GST) above a threshold limit. LTU to act as a single window facilitation centre for all large entities paying Corporate Tax and GST of all units holding a single PAN with operation in multiple location / states. LTU should have a commitment to provide better service to the tax payer through personalised attention, transparency in transaction and cordial atmosphere.	LTU should have the option to file all tax returns (Direct and Indirect taxes), complete tax assessments at single place irrespective of the geographical location of their units. All documents, correspondence to be filed at a single place irrespective of the geographical location of their units. The audit of the tax payer should be based on the risk assessment. This will reduce tax compliance cost, ensure uniformity in the matters of tax determination.

102.	Perpetual tax demands for meeting collecting targets	- Relevant clauses to be introduced to ensure that tax assessment orders issued by the first level assessment authority passes the test of sustainability and judicial scrutiny. To facilitate this approach a mandatory pre approval process to be introduced within the current statute. Under the proposed process every assessment closure to be signed off with proper justification by the higher authority for cases after considering judicial precedence and equity of principals of being heard before any decision on incremental demand of tax. - Adjustment of demands against refunds should be backed by appeal and adjudication process and principals of natural justice to be adhered to as per the law. Unilateral adjustments of refunds without being right to be heard in person should be dispensed with. - Additionally, certain changes made on pre deposit criteria in the last budget is operationally ineffective in view of restriction on jurisdiction Laws to be amended up to ITAT level since this is the last level to examine of tax disputes relating to facts. Legislative measure to be introduced to bring in certain pre deposit clauses akin to indirect tax laws which should restrict the stay demand to maximum of 5% with a ceiling of Rs 10m. This will also regulate the trend of illogical tax	Corporate tax assessment orders being issued without following judicial precedents leading to unrealistic tax demands and this trend continues in spite of ease of doing measures promised by Federal Government In this cycle working capital is blocked for over 10 years due to lengthy litigation process thereby resulting in significant cash crunch and impact on profitability . This trend needs reversal with a remedial plan to boost domestic and export growth in terms revenue and profits

		demands and more robust assessment process	
103.	Automatic stay of tax demand upon payment of prescribed % of demand outstanding	The current office memorandum covers only the appeals pending before CIT(A) and this mechanism is not available for appeals pending before ITAT. It is also important to note that in certain cases, the tax payers first appeal against the final adverse assessment order lies before ITAT and not CIT(A). There is a lot of cost and effort expended by the tax payer in applying for stay of tax demand. Lot of time and resources of the appellate authority is also consumed in adjudicating the same. This would expedite the process of disposal of appeals by freeing appellate authorities from hearing stay applications and to take up regular appeals for final disposal. Hence, it would be appropriate and necessary to extend the office memorandum for the cases pending before ITAT as well, directing the AO to collect only 20% of the outstanding demands subject to certain exceptions already mentioned in the current office memorandum given that the success rate of department before Tribunal is very poor. Exception : (a) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount higher than 20% is warranted (e.g. in a case where addition on the same issue has been confirmed by appellate authorities in earlier years or the decision of the Supreme Court /or jurisdictional High Court is in favour of Revenue or addition is based on credible	Any tax, interest, penalty, fine or any other sum payable by virtue of an order passed under the Income Tax Act as specified in the Notice of Demand issued u/s 156 of the Act has to be paid within 30 days of the service of the notice. Impact on non payment of demand outstanding: As per sec. 220(4) of the Act, on failure to pay the dues within time, the assessee is deemed to be "an assessee in default". The assessee in default is not only liable to pay interest as per sec. 220(2) but may also be subjected to penalty u/s 221(1) to the extent of the amount of tax in arrears. Current provision for Stay of demand: However, discretion has been provided to the assessing officer by sec. 220(6) for not treating the assessee in default provided an appeal has been preferred before the CIT(A). But before exercising such discretion in favour of the assessee he is IBM confidential 3 empowered to impose such conditions as he may think fit to

		evidence collected in a search or survey operation, etc.)	impose in the circumstances of the case. Further the CIT(A) and ITAT as applicable have the powers to stay the tax demand depending on the facts of the case. Further the CBDT issued instruction in 2016 directing the AO to grant stay of demand till disposal of appeal by CIT(A) on payment of 15% of disputed demand, subject to certain exceptions. This was further revised in 2017 to increase the partial payment percentage from 15% to 20% of the disputed demand.
Special Economic Zone (SEZ)			
104.	Simplification of process to avail tax concessions and benefits for units engaged in Export business	The current procedure prescribed is repetitive and cumbersome and it requires different layers of approvals by various government agencies. In this process several tax benefits are not realized. The current process does not guarantee certainty and there is no dispute resolution mechanism in place to settle in reasonable time frame.	The following revenue neutral measures are suggested to sustain healthy growth in terms of foreign exchange earnings and state of art operational efficiencies out of these regulated zones 1. Upfront exemption of GST for all services and goods working out of various tax holiday zones (STP and EOUs) including tax on import of services. This initiative will facilitate addressing the competitive environment globally. Current process of seeking refund for

			STP1/EOUs is very tedious, time consuming with no proper mechanism to look into refund claims and in a way not pragmatic considering this being a revenue neutral exercise. This will also help productive use of resources 2. Revisit the depreciation schedule of ITA bound products by classifying them in one bucket. There is a urgent need to accelerate the depreciation of ITA from the current range of 5 to 10 years to 3 years. By doing so it is bound to address the current trends of technology and its obsolescence. The current customs dispensation of assets is 5 years for IT assets and 10 years for others respectively . 3. Allow domestic services business from SEZs without foreign currency requirements but subject to fulfillment of Net foreign exchange on the overall business undertaken across SEZ(s). In this regard the stipulation to receive the receivables in foreign exchange to be dispensed with and similar clauses akin to clearance goods to domestic zones

			to be replicated to bring in consistency of the SEZ statute. This will help utilization of capacity productively. Following amendments would be necessary • The definition of 'Service' under the SEZ Act, 2005 may be suitably amended to mandate the requirement of collection of foreign currency only with respect to services exported out of India and not with respect to supplies made to DTA units. In respect to DTA units foreign currency to be replaced with INR akin to supply of goods under the law • Similar to the requirement under the Software Technology Park of India ('STPI') Scheme, where STPI units are permitted to make DTA sales up to 50% of the exports in FOB value terms made during the previous

			financial years, there could be a similar threshold prescribed for sales by units in SEZ to other DTA units. This is to avoid dilution of export business from SEZ units Further, this proposal has no adverse implication to the revenue of Government of India, since, all applicable taxes (Income tax and Goods and Service Tax) on domestic sales is applicable and such sales to DTA units could also be easily monitored through the present reporting mechanism required to be followed by the SEZ units (filing of APR)
105.	Separate books of account under SEZ laws and 80:20 laws	Suitable amendments to retain the 80:20 rule for assets and all other circulars relating to head count etc to be relooked and revoked since they are ultra-virus to the taxing statute.	Rule 19(7) of SEZ rules on the need to maintain separate books of account for each unit(s) is recommended to be amended. Instead it is suggested that recommendation of Rangachari committee on this aspect be adopted where reliance is placed on demonstration of internal process to segregate the revenue and costs accurately. This is logical since it

			gives the required flexibility for the units to maintain the requirements as per internal dynamics of each business. This will facilitate bringing down the tax disputes to a large extent. This rule can be amended in line with circular issued for STPs based on the committee 's report. Currently this rule has no significance where the units prefer to discharge full corporate tax rate without claiming exemption under income tax laws . This dispensation has come into effect recently . Alternatively, suitable laws can be incorporated specifically to exempted units from not maintaining separate books of account provided concessional tax rates are not claimed .
106.	Setting up of Business Continuity Plan ('BCP')/ Disaster Recovery Centre ('DRC') for STPI unit in a SEZ		It is recommended that in line with the existing circular guidelines for BCP/ DRC for SEZ units providing flexibility of setting up for BCP/ DRC units in any unit, the same flexibility should be extended to STPI units as well. • Workforce movements from STPI unit may be allowed into SEZ unit of the same legal

			entity. This could be for a limited period of time as per the guidelines as already established in the current dispensation • Based on the need-based business requirement to support continuity of operations from recovery location – Hardware such as Computer Systems, Laptops, Desktops, Servers, Storage Devices, Network equipment like Router, Switches etc. may be allowed on returnable basis without tax implication. This would permit the STPI units to move into BCP/DRCs in SEZ and facilitate ease of doing business. This would also reduce the levels of disparity within tax holiday zones. For the purpose of allowing BCP/ DRC provisions, similar circular allowing movement of people under the Guideline dated February 20, 2013 to be followed for this exercise.

107.	Inter unit transfer of used capital goods (laptops/ computers) from SEZ unit to DTA unit of same company for further use	Section 30 of SEZ Act provides that any goods removed from a SEZ to the DTA shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975, where applicable, as leviable on such goods when imported. Further Rule 49 of SEZ Rules specifically covers situations where a SEZ unit is permitted to remove capital goods to DTA after use upon payment of duties on depreciated value stated therein.	It is recommended that the issue of a circular clarifying the legal provision and granting relief from requirement of NOC from the MoEF for transfer of used capital goods from SEZ unit to DTA unit of same entity.
108.	Inclusion of export from client location as 'export' under the SEZ Act		It is recommended that the projects carried out of client's SEZ location for the project requirements be considered as export as per SEZ Act. However, this shall be subject to benefit not being availed by the client on such exports. Hence, it is suggested that work from client's location, being a unit in SEZ may be considered as exports under SEZ Act subject to conditions
109.	Issuance of SEZ ID Cards to employees working from SEZ may be dispensed with and other facilitation measures :	-	- With respect to permanent employees working within SEZ, the entry and exits at SEZ can be controlled and monitored by the specially designed company ID cards issued to employees having chips in them which reads the biometrics of the employees and restricts access through turnstile to

			the authorized person only. System reports can be generated from turnstiles about SEZ attendance and data can be submitted periodically to SEZ authorities as may be prescribed. Therefore, circular may be issued to this effect so that the controls from one dedicated source for the current and separated employees can be implemented with suitable reporting controls and there is no need to maintain separate ID cards specified under the SEZ law. - With respect to casual visitors and contractors, separate ID cards can be implemented with proper entries in registers which can be inspected by authorities from time to time.
110.	Exemption of all services for STP/ EOU units		It is suggested that a suitable amendment be made so that the all services used in relation to authorized operations get upfront exemption from levy of goods and service tax without any exception.
111.	Requirement of endorsement on invoices by Specified Officer in case of SEZ supplies	It is suggested that the requirement of endorsement on invoices pertaining to goods and services for claim of refund or otherwise with respect to SEZ supplies to be done away with. Instead, industry-wise default list of goods and services may be published by the	Rule 30 of SEZ rules to appropriately removed since it contains the erstwhile provisions which is not relevant under the present GST dispensation and a new clause

		Ministry of Commerce . Based on the industry list the supplies are automatically approved and based on proof of delivery and payments, upstream process like refund should be allowed .	under the same rule to be inserted to state that based on the notified list the goods are deemed to have been re warehoused on the basis of the invoice and inward entry of the Company post the SEZ gate entry or E way bill as appropriate for cases where the value is greater than INR 50,000/- Similar provision to be inserted for services which are intangible in nature . The proof of receipt should be based on bill settlement to vendors for the services rendered into SEZ based on entry in the portal . Current rule and instructions issued to lodge the service related invoices in the SEZ online portal and thereafter supported by endorsement by SEZ officer should be dispensed with. This process if implemented would create undue hardship for units operating in SEZ in terms of the volume and laborious process which is not productive . There is no revenue loss since the services will be further used for authorized purposes and exported and foreign exchange repatriated.-

112.	Service Exports from India Scheme ('SEIS') scrips	-	It is suggested that a timeline of 60 days from the date of application being made by the Company be provided to DGFT authorities to clear the SEIS scrips. It is also suggested that IT/ITES be allowed as a "service" to qualify for the purpose for SEIS benefit and also include STP zones as a part of the scope. Currently this covers services rendered from SEZ and DTA sites.