Pre - Budget Recommendations 2024-25

Direct Taxes

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INPUTS / SUGGESTIONS FOR PRE BUDGET MEMORANDUM 2024 - 25

Direct Taxes

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<td>1.</td>
<td>Revision Of Tax Slab Rates

As per the current income-tax provisions, an individual is required to pay taxes based on the slab rates. The highest slab rate (after including surcharge and cess) for income exceeding INR 5 crores in India is currently at 42.744% (under old tax regime) & 39% (under new tax regime).</td>
<td>• Revision of tax slab rates could be as under-
<table>
<tr><th>Annual Income</th><th>New Tax Regime</th><th>Proposed slab rate under new Regime</th></tr>
<tr><td>Up to INR 3 lakh</td><td>NIL</td><td>NIL</td></tr>
<tr><td>INR 3 lakh - INR 6 lakh</td><td>5%*</td><td>5%*</td></tr>
<tr><td>INR 6 lakh - INR 9 lakh</td><td>10%</td><td>10%</td></tr>
<tr><td>INR 9 lakh - INR 12 lakh</td><td>15%</td><td>15%</td></tr>
<tr><td>INR 12 lakh - INR 15 lakh</td><td>20%</td><td>20%</td></tr>
<tr><td>INR 15 lakh - INR 20 lakh</td><td>30%</td><td>20%</td></tr>
<tr><td>Above INR 20 lakhs</td><td>30%</td><td>25%</td></tr>
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<tr><th>Annual Income</th><th>Historical Tax Regime</th><th>Proposed under Historical Tax Regime</th></tr>
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<td>The tax rate for individuals under old tax regime have not been changed since FY 2017-18 (tax rates under new tax regime have changed in Budget 2023). Hence, to give more purchasing power to individuals and provide some relief to the employed taxpayers, it is suggested that the highest tax rate of 30% be reduced to 25% and the threshold limit for the highest tax rate be increased from INR 10 lakhs to INR 20 lakhs. Therefore, the proposed highest slab rate (including surcharge and cess) can be reduced to 35.62% from 42.744% / 39%.</td>
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<tr><td>Up to Rs.2.5 lakh</td><td>NIL</td><td>NIL</td></tr>
<tr><td>INR 2.5 lakh - INR 5 lakh</td><td>5%*</td><td>5%*</td></tr>
<tr><td>INR 5 lakh - INR 10 lakh</td><td>20%</td><td>10%</td></tr>
<tr><td>INR 10 lakh - INR 20 lakh</td><td>30%</td><td>20%</td></tr>
<tr><td>Above INR 20 lakh</td><td>30%</td><td>25%</td></tr>
</table>
* Subject to Rebate under Section 87A

Applicable Surcharge and educational cess will be levied on the above.

It may be noted that the highest tax rate in neighbouring countries are as follows –
Hongkong – 17%

Singapore – 22%

Hence, it is suggested that India also needs to be in this range.
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<td>2.</td>
<td>Exemption in respect of PF contribution already taxed</td>
<td>It is suggested that there should be a specific provision in the Act, providing <u>exemption</u> in respect of contributions/ accretions, which are already taxed under section 17(2)(vii) at the time of PF withdrawal.</td>
<td>
• Section 17(3) of the Income tax Act, 1961 (the Act) provides for taxability of funds received from Provident Fund if certain conditions outlined in the Fourth Schedule (i.e., not rendering continuous service of 5 years etc.) are not complied with.

• In case of contributions by employer more than limits specified, the excess contribution and the accretions thereon is taxable in the hands of the employee.

• The same PF balance when withdrawn would be subject to tax, if the conditions for exemption (for e.g. 5 years of continuous service) are not complied with and there is no specific exemption provided for excluding the income already taxed mentioned above. Hence, there could be double taxation, at the withdrawal stage to the extent the contribution/accretion has already been taxed.
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			• Pursuant to the amendment vide Finance Act 2020, employer contribution to recognised provident fund (RPF), superannuation and national pension system (NPS) exceeding INR 750,000 is taxable in the year of contribution.
3.	Grant of tax treaty benefits at withholding stage - **Section 192 of ITA**	Section 192 should be amended to expressly provide that **while computing TDS at the time of payment of salary, benefit under DTAA should be provided for** (such as Article 16(1) as per applicable DTAA and Article 23/ 24 as per DTAA).	• Since the current provisions do not provide for relief under DTAA at withholding stage, higher tax is deposited which is claimed as refund at the tax return stage. It also poses hardship such as cash flow and administrative challenges in follow up of refunds. • Section 192 of the Act provides for tax deduction at source on taxable salary by the employer. • However, it does not explicitly provide claiming Double Taxation Avoidance Agreement (DTAA) benefit while calculating tax at source (TDS) in case of individuals. • Typical benefits under DTAA would include the following- - Article 15(1)/Article 16(1) of the DTAA – Exemption of salary paid in India for services rendered outside India under Dependent Personal services clauses in case of individuals who qualify as a Non-resident ('NR') of India - Article 23/ Article 24 of the DTAA - Foreign tax credit in case of individuals who qualify as Resident and Ordinarily resident ('ROR') of India. Further, there are favourable rulings[1] which provides that where salary is paid in India to non-resident employees for services rendered outside India, since the same is not taxable in India under DTAA, there should be no withholding obligation on the employer.

[1] *Advance Authority Ruling (AAR) in India in the cases of Hewlett Packard India Software Operation (P.) Ltd. [2018] 91 taxmann.com 473 (AAR - New Delhi) and Texas Instruments (India) (P.) Ltd. [2018] 90 taxmann.com 353 (AAR - New Delhi), Bangalore Tribunal decision in Sasken Communication Technologies Ltd vs. ITO Bangalore[(2011)48 SOT 86 (BANG.)(URO)] and Bholanath Pal vs. Income Tax Officer[(2012) 23 Taxmann 177 (Bangalore Tribunal)]*

4.	Taxation of employees' stock options – section 17(2)(vi)	It is suggested that Act should specifically provide for **pro-rata taxation in respect of mobile employees who qualify as NR or NOR.**	• Currently, stock options are subject to tax at the time of exercise of options (excluding allotment of specified security by eligible start up), taxable value being excess of fair value of shares over the exercise price. • In case of mobile employees who qualify as NR or NOR who exercise stock options, only **pro-rata value in respect of days spent in India during the period grant to vest is subject to tax in India** based on judicial precedent (ACIT v. Robert Arthur Keltz, ITA No.3452/ Del/ 2011 dated 24 May 2013). • Since the Act does not specifically provide for pro-rata taxation in respect of mobile employees, it leads to litigation with lower-level authorities. • Where an employee (NR/ NOR) is in India at the time of exercise, the tax authorities may consider the entire perquisite value (i.e., FMV less grant price) as taxable in India since the employee is in India at the time of exercise. • However, the income pertaining to the period the employee is in India from grant to vest should only be considered as taxable.
5.	**Taxability of employee's PF contribution**	• EPFO has been deducting TDS at the time of crediting the interest on such excess contribution (i.e. at accrual stage). • Since TDS is already deducted by the EPFO, is it taxable at accrual stage or a view can be considered that such interest on excess contribution is taxable only at withdrawal stage (i.e. at the time of receipt of such funds following the cash basis of accounting). Also, it will cause undue financial hardship to individuals to pay tax on the interest accrued but not received. • Therefore, it is suggested that there should be specific provision in the IT **Act providing clarity as to whether the interest on employee contribution exceeding INR 250,000 is taxable at accrual stage or at the PF withdrawal stage.**	Budget 2021 brought in taxability of **interest accrued** during the previous year on **employee contributions exceeding INR 250,000.** *The provisions of section 10(12) of the Income-tax Act as amended by the Finance Act 2021 is reproduced below for ready reference:* *"(12) the accumulated balance due and becoming payable to an employee participating in a recognised provident fund, to the extent provided in rule 8 of Part A of the Fourth Schedule.* *Provided that the provisions of this clause shall not apply to the income by way of interest accrued during the previous year in the account of a person to the extent it relates to the amount or the*

		In case it is taxable at the accrual stage, exemption should be provided in respect of accretion which is already taxed at the time of PF withdrawal.	*aggregate of amounts of contribution made by that person **exceeding two lakh and fifty thousand rupees** in any previous year in that fund, on or after the 1st day of April, 2021 and computed in such manner as may be prescribed.* There is <u>no clarity</u> provided in the IT Act on **whether the Interest on employee contribution more than INR 2,50,000 is taxable at accrual stage or at the time of withdrawal.** The PF balance when withdrawn would be subject to tax, if the conditions for exemption (for e.g. 5 years of continuous service) are not complied with and there is no specific exemption provided for excluding the income already taxed mentioned above. Hence, there could be double taxation, at the withdrawal stage to the extent the accretion has already been taxed at the accrual stage.
6.	**Revised/ Belated Return**	There is a requirement to extend the due date of filing the revised/ belated return at least till 31st March instead of 31st December.	Due date for filing the revised return or belated returns have been kept as 31 December of the following financial year. In a situation where the assessee is ROR in India claiming foreign tax credit, it will be difficult to finalise the FTC to be claimed in his India tax return when the return for the calendar year is not yet finalised in overseas jurisdiction (**for e.g. in US, 2024 return would be finalised only in April 2025. However, the revised/belated returns can be filed for FY 2023-24 only till 31 December 2024 to claim the credit for taxes paid for the period Jan-March 2024).** If there will not be extension of due date for belated/revised return filing, then the FTC claimed on the return may not be final one as it would be claimed on estimated basis or basis the taxes withheld at source in overseas jurisdiction

7.	Provisions for filing of **updated return**	A lower incremental tax (say 10 per cent and 20 per cent) should be considered. Issuance of intimation under Section 143(1) should not debar the taxpayer from filing the updated return.	The incremental tax of 25 per cent and 50 per cent is on a higher side. **In order to encourage the taxpayers to avail these provisions voluntarily, a lower incremental tax should be considered, because interest in any case is payable.** Issuance of intimation under Section 143(1) should not debar the taxpayer from filing the updated return otherwise a very few cases would get covered under these provisions.
8.	**Filing of Form 67**	Suitable amendments to be made in the provisions to state that the **Form 67 needs to be filed only in a situation where the FTC has been claimed in the tax return instead of referring only to Section 139(1).** Also, suitable changes to be implemented in tax portal and in the internal systems used for processing the tax return. Alternatively, provisions of Section 155(14A) of the Act be amended to delete the words, "*and such dispute is settled.*" If the same is done, then the taxpayer under Section 155(14A) can furnish to the Assessing officer evidence of payment of tax and AO can suitably amend the assessment order or 143(1) intimations under the rectification mechanism.	**Currently when a credit for taxes paid overseas is claimed in the revised tax return and Form 67 is also filed at the time of filing the revised tax return, the credit for the taxes paid overseas is not being allowed by the tax department.** **The understanding is that Form 67 should be filed at the time of filing the original tax return within the due date specified under section 139(1) of the Income Tax Act 1961.** The current provisions require the individuals to file the nil Form 67 at the time of filing the original tax return even when FTC is not claimed which increases the burden of the taxpayer.
9.	**Bengaluru to be considered as metro city for the purpose of 10(13A) of the ITA.**	To include at least "Bengaluru" for metro city list for the purpose of HRA exemption if not others.	The Constitution of India recognizes Bengaluru as Metro city amongst other cities like NCR, Mumbai, Kolkata, Pune, Hyderabad and Chennai etc. Currently, as per the Income Tax provisions, only four cities in India (Delhi, Mumbai, Chennai, and Kolkata) are metro cities and are allowed to have 50% of the basic salary as the House Rent Allowance (HRA) and 40% of basic salary for non-metro cities (all other cities).

10	**Enable tax withholding u/s 192 on salary based on whether employee opts for concessional new regime**	Existing scenario FA 2023 has amended the Concessional Tax Regime (CTR) through introduction of sub-section (1A) wherein it would be the default tax regime unless he opts out of the same. Sec 2(9) of FA 2023 requires the employer to deduct tax at source u/s. 192 at the rates as specified in Part III of the First Schedule, which does not cover the concessional tax regime (CTR) u/s 115BAC of the ITA. Our suggestion **An amendment may be made to enable the employer to deduct tax as per Sec 115BAC(1A), which is now the default slab rate for all individuals or under old regime, as per option exercised by the employee at the beginning of the financial year.** It is also suggested that **CBDT should issue a clarification** (similar to CBDT Circular C1 of 2020) to enable the employer to deduct tax u/s. 192 at slab rates specified under new regime u/s. 115BAC (1) of ITA unless an option has been exercised by employees to apply the old taxation regime.	At present, Sec 2(9) of FA 2023 does not refer to the CTR Regime u/s 115BAC and hence the salary tax withholding is still required based on old regime (despite S. 115BAC being the default tax regime). If the employer is precluded from considering the lower tax rates u/s. 115BAC(1A), it will result in higher withholding and consequent refund claims in the return. Such blockage of funds in the form of taxes leads to reduction in employee's disposable income and hence defeats the object of introducing the lower tax regime. The issue may be further compounded since, the employee who is keen to opt for lower tax regime u/s. 115BAC(1A) will not furnish any evidence to the employer to claim any deductions in absence of which the employer will consequently be required to deduct even higher tax under the old regime than he would have otherwise deducted after considering exemptions and deductions. It is submitted that there is no revenue loss if the employer is permitted to consider benefit of Sec. 115BAC CTR Regime at the time of withholding. This is because the employee is unlikely to switchover to old slab rate in his return, if Sec. 115BAC(1A) is more beneficial. If the normal tax regime is more beneficial than s.115BAC(1A), the employee will be required to recompute his income in return of income and claim refund. Hence, there may practically be no case where the employer's salary TDS will fall short of actual tax liability of employee on salary income.

11.	Remove anomaly in proposed amendment to Sec. 54 in relation to determination of Cost of Acquisition of new residential house where transfer is within the limitation period of 3 years, actual cost of new house is more than INR 10 Cr and capital gains on sale of old house is more INR 10 Crs.	If the LTCG on selling the 1st house is 12 Crs and LTCG restricted to 10 Crs on buying the 2nd house, our suggestion is that the cost of new house should be considered as Rs. 2 Cr (i.e., excess over Rs. 10 Cr) to avoid double taxation.	If the assessee has purchased a new house for Rs. 12 Cr, LTCG tax is paid on Rs. 2 Cr and the new house is sold within 3 years, due to operation of Sec. 54(1)(i), the cost of new house is deemed to be NIL, even though taxpayer has already suffered LTCG on Rs. 2 Cr.
12.	Employer Responsibility on validating the expense proofs	It is advisable to explore alternative approaches to **increase the standard deduction from the existing amount of 50,000 to a more reasonable figure.** This adjustment would help accommodate essential employee expenses such as transportation and child education, ultimately alleviating the burden on employers to validate bills for expenditures that they may not have direct visibility or control over. The aim is to simplify the process and provide relief to both employees and employers in managing these expenses.	In today's environment, verifying the authenticity of employee expense claims, investment proofs, and loan interest payment documents has become increasingly challenging for employers.
13.	PF contribution by employees and deducted by the employer	**Late deposit of PF contribution by employee be considered as income u/s 36(1)(va) of ITA and no deductions permissible even in case of late deposit**	As per the judgement passed in case of **M/s Checkmate Services Pvt. Limited**, any late deposit of PF contribution by employee shall be considered as income under section 36(1)(va) and no deductions permissible even in case of late deposit. With this judgement, the assessee would lose any deduction in case of late deposit of employee contribution even if late by a day, while the employer contribution would be deductible upon payment. This is causing unnecessary burden and is unforgiving on the assessee employers as the deduction is permanently lost.

			Is also denial of natural justice to the employers, as they need to pay interest etc. under the PF laws and yet do not entitle to any deduction. It is suggested that the govt removes this anomaly in treatment of employer vs employee PF contribution and brings them on same parity. There should be punitive interest on delay in deposit, but the amount as such should be deductible from the income of assessee. Necessary provisions to this effect may be introduced.
14.	Threshold limit in case of concessional TDS certificate.	It is suggested that the **threshold limit should be done away with**, and rather there should be only one concessional TDS rate for all payments during one fiscal.	It is practically very difficult for large organisations to keep tab on the payments more than threshold for concessional TDS.
		Ease of Doing Business	
1.	Providing tax benefits to entities involved in mitigating climate change/ environment protection	Deduction of expenditure - revenue or capital, on efforts in mitigating climate change and environment conservation on the lines of section 35 “Expenditure on scientific research” may be provided	At present, there is no provision in Act for providing tax benefits to entities making expenditure (such as research and development or otherwise) towards **efforts in mitigating climate change and environment conservation.** Though environment conservation is covered under the Schedule VII of CSR provision of Companies Act, 2013 but expenditure in respect of that is not allowed under the section 37(1) of the Act Considering the commitments of India to Paris Agreement on climate change, UN Sustainable Development Goals (SDGs) on climate action, it is of utmost importance to encourage the entities to contribute to achievement of such commitments of the nation by providing tax incentive on expenditure incurred.
2.	Rationalize provisions regarding withholding of refunds by revenue authorities (Sec 245 of ITA)	• Provision permitting withholding of refunds against pending proceedings of other years (not being the year in which refund arises) be withdrawn.	<u>Existing provisions</u> As per FA 2023, withholding of refund on pendency of proceedings (which was earlier restricted only to pendency of

		• Practice of adjusting refunds against stayed demands is also suggested to be discontinued. • Set-off of refunds may also not be carried out in cases where there exist favourable judicial precedents (especially in the taxpayer's own case for earlier years) regarding the same issue. • It is suggested to insert a provision requiring the tax authorities to give taxpayer an adequate opportunity of being heard before acting of adjustment or withholding of refund. • Further, adjustment or withholding of refund must be vide a speaking order only [and not an intimation as u/s 245(1)] • It is also suggested that withholding of refunds determined for any year should be capped at 20% of estimated tax payable in pending assessment or reassessment proceedings as per the draft assessment order. • Given the cash flow challenges & the need to obtain past tax refunds to maintain liquidity, Income Tax department may seek to obtain indemnity from the taxpayer in lieu of estimated demand in the pending assessment or reassessment proceedings instead of withholding the entire refund determined in any other year. • The provisions of grant of interest on refunds be brought at par with interest payable by taxpayer on taxes payable to revenue authorities. Alternatively,	proceedings in respect of the same AY and being after AY 2017-18) where refund was determined u/s 143(1), is now proposed to be permitted in respect of pendency of assessment or reassessment proceedings of any other AY too, irrespective of the proceedings in which the refund is determined. It is often seen on the ground that tax officers routinely make various adjustments to the returned income resulting in demands. In this light, the instant amendment will effectively result in withholding of refunds pending assessment /reassessment for one or other AY on perennial basis. It is practically seen that such refunds are adjusted even against demands even where a stay has been granted in terms of CBDT instruction or by the ITAT. Withholding of refund for open assessment / reassessment proceedings suggest there is going to be an adjustment while practically this may not be true in each & every case. Each year is a separate year and should not affect proceedings for other years. Also, if there are favourable rulings in assesses own case from HC or ITAT for same issue for which adjustment is done by AO year on year basis, then withholding due refund will be unjust to taxpayer as refund will get stuck for very longer duration. Blockage of funds results in reducing the ease of doing business and hampers the image of India as a business-friendly destination for attracting foreign investment. Lastly, while taxpayer receives interest on refund at maximum rate of 9% p.a. (including additional interest for the period post 3 months), interest payable by the taxpayer u/s 234B is at 12% p.a. which is discriminatory.

		the refund withheld should be treated as regular payment of tax to reduce interest u/s. 234B @ 12% p.a. for the period from date of withholding till date of completion of assessment/reassessment. • There seems to be no warrant for the Government in not paying interest for the period when refund is withheld pending completion of assessment /reassessment. Accordingly, the proposed proviso to Sec. 244A(1A) denying additional interest @ 3% p.a. should be omitted.	
3.	**Roll back expansion of prosecution provisions to TDS defaults on payments in kind [Sec. 276B]**	The Finance Bill 2023 proposes to expand the scope of prosecution under section 276B to also cover cases of default in not deducting tax on in-kind payments under section 194R, section 194S, and the proposed section 194BA in addition to section 194B as was previously provided. Proposed expansion of prosecution provisions for mere default of non-deduction of tax on in-kind payments should be dropped. Prosecution should be applicable only in cases where tax is deducted but not paid to the Government.	So far, barring cases of winnings, the tax policy has been that failure to deduct tax will attract penalty but not prosecution. Prosecution is attracted only if there is failure to pay taxes which are already deducted/collected – since such monies are held as agent for the Government. Sec. 194R and Sec. 194S are relatively nascent provisions while Sec. 194BA is only proposed to be introduced vide FA 2023. The provisions still have implementation and interpretational challenges (for instance, issues persist u/s 194R around what is to be considered as benefits or perquisites, what is value of benefit in-kind, etc) till date. Widening prosecution provisions for non-compliance (failure to deduct tax on payment in kind) are draconian and defeats larger objective. Though Govt has tried to clarify quite a few issues but still there are practical challenges which needs clarity. Govt should allow

			some time for taxpayers to settle down on compliances before prosecution provisions are introduced.
4.	**Unlocking revenue locked in litigation through a new permanent dispute resolution process**	Introduce a permanent dispute resolution process that can help the government recover tax dues locked up in litigation and mitigate pendency in the Courts.	India has large 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 10-15 years or even more. To reduce litigation, this needs to be addressed on a war footing basis. Hence, the government may consider a new mechanism to introduce a permanent dispute resolution process to enable negotiated settlement of disputes on a case-by-case basis. To start with, this process can be limited to large disputes beyond a defined monetary threshold with various safeguards built in. For instance, the process can be driven by senior officials from the Ministry of Finance and Law, with the active participation of an outside expert [e.g., retired High Court Judge or a member of the Income-tax Appellate Tribunal (ITAT)] This can help the government avoid prolonged litigation and unlock revenues that would have otherwise not been realized within a reasonable period.
5.	**Administrative procedures related to TDS on provisions**	It is suggested that rules may be framed to exempt TDS on year end provisions even in case the payee is identified. There could be a possibility that the contract gets cancelled next year and no TDS was required to be done. Also, this may lead to reconciliation issues once the invoice is received from the payee, in the next year.	Rules should be made to **exempt TDS on year end provisions** even in case the Payee is identified. There could be a possibility that the contract gets cancelled subsequent year and no TDS was required to be done. Also, this may lead to reconciliation issues once the invoice is received from the payee, in the next year.
6.	**Decriminalization of provisions and improving ease of doing business**	Replacing the existing prosecution related provisions with penalties and compounding provisions.	The tax deduction at source is in the nature of advance tax (pay as you earn) and to ensure that the tax net is stronger. The assessee that deducts and deposits tax is doing a service to the

			tax collection and support the efforts towards ensuring that no income escapes tax. This being an economic levy, the govt should consider replacing the existing prosecution related provisions with penalties and compounding provisions. This will help to deter the assessee from non-compliance and would also improve ease of doing business for the industry in long run. At the for the newly introduced sections, there should be a moratorium of at least 5 years, before any prosecution related provisions are applicable on these.
7.	**Streamlining of administrative procedures**	It is suggested to **reduce the withholding tax rate back to 10% on payment of royalty/ fees for technical services to non-resident/ foreign companies under section 115A.**	FA 2023 increased the applicable base tax rate on gross payments received by foreign companies (being in nature of FTS/Royalty) from 10% to 20%. Such increased tax rate can negatively impact the non-resident/foreign companies conducting business in India apart from making the provisions of section 115A largely redundant.
		Introducing a functionality to enable all non-residents not having a PAN for filing electronic Form-10F and not limited to Non-residents who do not have PAN and are not required to obtain a PAN in India	Recently, e-filing portal has been updated to enable compliance relating to furnishing e-Form 10F for companies not holding and not required to have a PAN in India. This non-PAN based functionality is a welcome move, however, this functionality should be updated to cover all non-residents not having a PAN to cover the cases for grossing up contracts where the TDS liability is borne by the resident payer. This will ensure that there is no unwarranted burden on the payer given that the TDS liability is borne by such payer and not the non-residents.
		Modification of TDS Return Form to **capture invoice-wise details (for amount paid/ credited and TDS/ TCS made thereon**) which then also gets reflected in the Form 26AS – Tax Credit Statement.	Unlike GST returns, the **TDS Returns does not include any reference of invoice numbers on which the taxes have been deducted by the deductor and only captures the date of credit or payment as per the books of the deductor**.

			Accordingly, the Form 26AS of the deductee which is updated based on such TDS returns filed by the deductor **makes it challenging for the deductee to track & reconcile the credits & the corresponding revenue in its books of accounts.** Thus, since the deductor would do TDS on almost all the transactions including goods & services, it becomes a laborious manual exercise for the deductee to reconcile the same with its books of accounts. This will simplify tracking & claiming of Tax Credit from Customers/ Third Parties and ease Revenue Reconciliation between Form 26AS and Financials & GST returns.
8.	**Interpretation issues in Section 94B**	It is suggested that clarification be provided under Section 94B to address the existing interpretational issues and uncertainties	The provisions of section 94B are ambiguously defined causing interpretational issues and uncertainties: Meaning of the Expression 'Expenditure by Way of Interest or <u>of Similar Nature.</u> It is suggested that clarification or non-exhaustive list be provided to cover the expenses which would be covered within the scope of the expression 'similar nature'. This could be in line of examples provided in the by the OECD in BEPS Action Plan 4. Limit of interest deduction is linked to EBITDA which is not defined under the Act. Though EBIDTA emerges from the financial accounts of a company, BEPS Action 4 recommends that EBITDA should be based on tax rules. Accordingly, it is suggested that clarification be provided as to which EBITDA can be adopted by the borrower to compute the dis-allowance. It is suggested to provide appropriate clarifications to mitigate unnecessary litigations.
		Thin capitalization norms may be exempted for companies in tax loss position.	Applicability of thin capitalization rules could impact certain start-ups in their initial years or other loss making companies who need support in the form of guarantees from their related parties to

			leverage their third-party borrowings, which could be deemed as related-party debt under these provisions.
9.	**Faceless Assessments & Appeals under Income Tax Act, 1961**	Faceless assessment & appeal is a forward looking reform from the Income Tax Department. However, in order to provide certain tax payers with complex facts/ data represent their matters fairly, it is suggested that a threshold is fixed based on Income or tax payment criterion for giving an option to taxpayer to have his assessment in person or faceless. This will also allow the taxpayer to articulate his tax position and provide documents which can be voluminous. A threshold may be fixed based on Income or tax payment criterion for giving an option to taxpayer to have his assessment in person or faceless.	At present, the scope of faceless assessments & appeals under the Income Tax Act, 1961 is quite broad. All assessees irrespective of their income or tax payment have been brought under the ambit of faceless assessment. Certain tax payers with highly voluminous data and/ or complex facts find it challenging to represent their matters fairly in a faceless manner.
10.	**Reduction of timelines on appeals and litigation:**	The suggestion here is to amend section 250 and 254 to **introduce the sacrosanct time limitation for disposal of appeals instead of an open time limit of 1 and 4 years in case of CIT(A) and ITAT respectively, especially wherein the matter under considering relates / similar to preceding years.** Considering the Apex Court ruling in Pepsi Foods case, the provisions can accordingly be amended so that the maximum time limit of 365 days for extension of stay by the Tribunal should not be applicable if the delay in disposing of the appeals is not attributable to the applicant company. In addition, there should be an alternate dispute resolution mechanism for all the cases pending for all prior years.	G20 Finance Ministers have recognized the importance of international cooperation to ensure tax certainty. Enhancing taxation landscape certainty brings benefits for both taxpayers and tax administrations and acts as an important factor in promoting investment and growth of the country and fostering the trust internationally. Tax certainty ensures that businesses and individuals can anticipate their tax obligations and ensure a timely planning of their financial strategies accordingly. As per the data published by the Directorate of Systems, there are around 5 Lacs + Income-tax litigation cases pending at appellate levels as of March 2023. There is a requirement of payment of 20% of outstanding demand in order to file the appeal at Commissioner (Appeals) / similar authority. As per the **CBDT Recent Action Plan 2023**, the CIT(A) has been instructed to dispose of the appeals on priority that are either

			pending as of April 2022 or the one which has been referred for passing the orders as per the directions. JC(A) has also been entrusted the task to take up some appeal matters to enable commissioner (appeals) to hear and dispose off the more complex matters. In addition, Finance Act 2023 has brought in an amendment in section 250 to state that where it is possible, JC(A) or CIT(A) may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed. However, the pace for closure / disposal of matters is not as quick as expected. Further, there is a requirement of payment of 20% of outstanding demand in order to file the appeal at Commissioner (Appeals) / similar authority. ITAT also grant stay on demand and extension thereof subject to depositing not less than 20% of the outstanding amount and if the appeal filed is not disposed of within the period of stay granted by the Tribunal (which cannot exceed 365 days), the order of stay shall stand vacated even if the delay in disposing of the appeal is not attributable to the applicant company. The above provisions are creating a lot a challenge considering that the amount paid under protest got stuck for years without disposal of appeals and sometimes without delay being on account of the appellant company.
11.	**Prescribing timelines for issuance of refunds**	It is suggested that timelines for issuance of refund from the date of determination be provided under the Act. Such timelines can be in line with the time provided for recover of demand. For instance, where a demand is raised vide an order, a time limit of 30 days is provided to the tax payer to deposit the demand. A similar prescribed timeline under the Act will go a long way in boosting tax payers confidence.	A prescribed time limit in processing and release of the refund will give taxpayer more liquidity. The improved cash flows will indirectly lead to better supply chains and faster economic growth. A non-resident taxpayer has an added exposure to currency fluctuations with respect to any refunds that he may be pursuing in the courts. In the past, gradual but steady depreciation of the

			rupee against all leading currencies of the world, has resulted in significant economic loss to non-resident taxpayers even in cases where the rulings have been adjudged in their favour.
12.	**Pass-through taxation structure for Category III AIFs**	Currently, Category I and Category II AIFs have been granted complete pass-through status for taxation (for all income streams other than business income) and such pass-through should be accorded to Category III AIFs as well. A complete tax pass through status be accorded to Category III AIF for administrative ease/ simplification	The current tax framework for tax liabilities does not extend 'tax pass through status' for Category III AIFs and there is no separate taxation code for Category III AIFs (i.e. general principles of trust taxation are followed). Thus, the current tax regime and the uncertainty around it serves as a 'disincentive' or a 'deterrent' for new investors to consider investing in a Category III AIF. Accordingly, a pass-through taxation structure will help reduce a tremendous pain point for the PE/ VC industry. It will also develop the Indian Category III Industry and attract more foreign investors to this asset class.
Withholding tax			
1.	**Rationalizing the provisions of Chapter XVII of the Act** Cumbersome withholding tax provisions under the Act	The purpose some of the withholding tax is to track the transactions, which is <u>now addressed under the GST regime</u>. **Therefore, it is suggested that wherever GST is levied on a transaction / invoice TDS provision should not apply.** Alternatively, to simplify the process it is suggested to rationalize all the provisions under Chapter XVII (pertaining to TDS provisions) and these should be broadly consolidated into three broad **categories**: *First category:* This category to cover all transactions that involves purchase of tangible/ material goods. On all such transactions, a simple rate of 0.5% be sought to withheld, without any threshold limit. *Second category:* This category to cover all transactions that involves supply of any type of services (ex: professional services, technical services, commissions, contracts etc.,). On all such transactions, a withholding tax rate of 2% be sought to be withheld, without any threshold limit.	Currently, there are various sections under chapter XVII of the Act, which deals with collection and recovery of taxes at source, multiple sections and various exemptions/threshold are prescribed and interplay between certain sections has lead to confusion and litigation.

		Third category: This category to cover all transactions that would be undertaken through electronic medium/ platform (ex: through e-commerce platforms, international digital transactions etc.,) A withholding tax rate of 0.1% can be prescribed. By providing the above categories largely all transactions would be tracked, and compliance would be easier. Exemption to small scale businesses can be provided for ease of doing business.	
2.	**Provisions of Section 194R – Deduction of tax on benefit or perquisites in respect of business or profession**	It is suggested that a clarification is issued on non-applicability of withholding tax u/s 194R of the Act on the following items as they are not per-se benefit/perquisite but help in creating market for the products being provided: • Promotional goods/services • **promotional credits** which can be adjusted against purchase of goods/ services in future	Circular No. 12 of 2022 dated June 16, 2022, clarified that no tax is required to be deducted under S. 194R on sales discount, cash discount and rebates. However, there may be instances where a taxpayer gives free goods/services as a promotional offer with the intent to monetize such offerings after the offer period. Under such circumstances, these goods/ services are not per-se benefit/perquisite but help in creating market for the products being provided with a commercial objective of recovering revenue subsequently. Further, there may be instances where a taxpayer gives promotional credits for agreeing to purchase/subscribing to any goods/service and such credits can be adjusted against the value of goods/service in future. For e.g., a company gives credit of Rs. 1,000 on subscribing to a service and the same can be adjusted against the value of service in future say Rs. 10,000 (i.e., customer will pay only INR 9,000). The promotional credits are offered on agreement/subscription to purchase goods/avail service, which should qualify as a discount against future purchases.
		It is suggested **to clarify that waiver of loans (by persons other than financial institutions), interest waiver, expense waiver or bad debts are not subject to withholding under section 194R.**	Circular No. 18 of 2022 dated September 13, 2022, clarified that one-time loan settlement/ waiver of loan by specified persons (scheduled banks, public financial institutions, NBFCs etc.) will not be subject to section 194R. The Circular further provides that

			waiver of loan in case of inter-company loans would be subject to withholding u/s 194R. The objective of introducing section 194R is to tax benefits and perquisites in the hands of the recipient which are otherwise not getting covered under the tax net. Therefore, where such interest, expenses etc. have been waived off, the taxpayer who incurred such interest, expenses etc. will have to offer the same for tax purposes, which will automatically result into higher income for the taxpayer and would be subject to tax. Accordingly, considering such waiver of interest or expenses as benefit/ perquisite under section 194R will create additional administrative burden for taxpayers specifically the person waiving or writing off the debt as he would be obligated to bear the burden of TDS.
	Applicability of 194R on reimbursement of expenses.	TDS on reimbursement of actual expenses would result in unnecessary blockage of working capital. Therefore, it is suggested that TDS on actual expenses to be exempted from tax subject to producing actual bills.	Circular No. 12 of 2022 providing clarification u/s 194R of the Act, provides that reimbursement of expenses are benefits/perquisite and liable for withholding taxes u/s 194R. The said circular provides that the reimbursement of out-of-pocket expense incurred by service provider in the course of rendering of service is a benefit/perquisite and accordingly subject to withholding u/s 194R of the Act, where the invoice is in the name of the service provider.
3.	**Rate of TDS rate under Section 194R**	It is suggested to lower the TDS rate from 10% to 5% avoid working capital issues. Threshold of INR 20,000 should be increased to INR 50,000 to reduce compliance burden on tax deductors.	To prevent blockage of excess WHT in the hands of the recipient, it is suggested that the WHT rates be lowered and the threshold be increased. The threshold of Rs. 20,000 is too low in the new Section 194R and should be raised to at least Rs. 100,000 for it to be effective and achieve its stated goal of curbing tax evasion which generally takes place through high value/ big-ticket transactions.
4.	**Provisions of section 194J of the Act.**	Reduced rate of TDS of 2% u/s 194J of the Act should apply on consideration for sale, distribution or exhibition of	The Finance Act, 2020 provided a reduction in rate of TDS u/s 194J from 10% to 2% in cases of royalty, where such royalty is in the nature of consideration for sale, distribution, or exhibition of

		cinematographic films including cinematographic films released on OTT platforms.	cinematographic films._The term 'cinematographic films' has not been defined u/s 194J leading to ambiguity as to whether cinematographic films released on OTT platforms are covered under the ambit of 'cinematographic films' for lower TDS rate of 2% or whether only theatrical releases are covered under the said scope.
5.	**Alignment of TDS rate on Professional services and Technical Services**	A standard TDS rate of 2% should be made applicable for both professional and technical services.	Currently, there are two rates of TDS prescribed under ITA for professional services (i.e.10%) and technical services (2%) on domestic transactions which lead to ambiguity and higher chances of litigation due to interpretational issues for the taxpayers.
6.	**Tax deducted at source (TDS) under 194Q and Tax Collection at Source (TCS) under section 206C(1H) of the Act on sale of goods.**	It is suggested that section 194Q of the Act be suitably amended to keep sale transaction relating to any kind of securities (both listed and unlisted) outside the ambit of section 194Q of the Act and similar amendment should be considered u/s 206C(1H).	The meaning of goods has not been defined and there exist an ambiguity around whether all kind of securities are under the ambit of goods. CBDT has clarified that in the context of TCS provisions under section 206C(1H) of the Act, listed securities transacted on recognised stock exchange shall not be subject to TCS, however, there is yet no clarity around unlisted securities or listed securities traded off market.
		The term "and has deducted such amount" should be removed to ensure that where 194Q is applicable but the buyer has defaulted in deducting TDS, the seller is absolved from undertaking TCS compliances on such transaction as seller should not be put under additional burden due to default of buyer.	Section 206C(1H) does not apply if buyer is liable to deduct TDS under any other provision of the Act on goods purchased by him from the seller and has deducted such amount. The term "and has deducted such amount" should be removed to ensure that where 194Q is applicable but the buyer has defaulted in deducting TDS, the seller is absolved from undertaking TCS compliances on such transaction as seller should not be put under additional burden due to default of buyer.
		It is suggested that section 206C(1G) and 206C(1H) of the Act are included for the purpose of benefit of lower rate under section 206C(9) of the Act, so as to enable the taxpayer to seek the benefit of lower rate and thereby reduce litigation and hardship in terms of cash flow position and litigation effort in obtaining refunds for the tax collected.	206C(1G) and 206C(1H) of the Act is not included under the provision of 206C(9) which inter alia provides for benefit of lower rate of tax by obtaining certificate for collection of tax at source.

		Further, it is suggested that a strict timeline to issue the certificate may be imposed under section 206C(9) for timely disposal of the applications for lower deduction or collection certificate. It may be provided that certificate would be deemed to be issued if they are not disposed within prescribed time limits.	
7.	**Rationalisation of TCS provisions for non-resident investors under Section 206C(1H)**	Clarificatory amendment should be made for relaxing application of TCS provisions under Section 206C(1H) where buyer is a non-resident and does not have a permanent establishment in India.	Currently, any non-resident investor acquiring shares of an Indian company or foreign company (where shares derive substantial value from Indian assets in accordance with Explanation 5 to section 9(1)(i) of the Act) is subject to TCS provisions under Section 206C(1H), i.e. the seller is required to collect tax at the rate of 0.1% of consideration from such non-resident investor, subject to certain conditions. Typically, such non-resident investors do not have any income accruing or arising in India in initial years of making investments. However, such non-resident investors become obligated to file income-tax return in India solely for the purpose of claiming refund of the TCS collected by the seller. The TCS provisions not only become onerous for the non-resident investor, but also impacts its liquidity since tax is collected in advance despite absence of any accrual or deemed accrual of income. A relaxation from TDS is given to certain non-resident buyers under Section 194Q. A similar type of relaxation should also be given under above TCS provisions.
		Where the **eligible buyer has defaulted in deducting TDS on purchase of goods, the seller should be absolved from undertaking TCS compliances on such transaction**. This shall avoid litigation on interpretational issues and provide ease of compliance for the businesses.	Currently, in case of transactions for purchase of goods, the liability to deduct tax at source (TDS) lies with the buyer of goods (meeting specified threshold) as per the provisions of the Indian tax law. However, where such buyer does not deduct such TDS, obligation gets triggered in the hands of seller to comply with the TCS provisions.

			It gets practically difficult to comply and reconcile such TDS and TCS provisions due to above complexities and may lead to disputes between buyers and sellers
8.	**Provisions of section 197 of the Act**	• It is suggested that section 194Q and 194R of the Act, should be added in sub section (1) of section 197 of the Act to enable taxpayers to obtain NIL withholding certificate. • A strict timeline to issue the certificates may be imposed under section 197 for timely disposal of the applications for lower deduction or collection certificates. It may be provided that certificates would be deemed to be issued if they are not disposed within prescribed time limits.	• Section 194Q and 194R of the Act are not covered within the ambit of section 197 of the Act for obtaining NIL/Lower withholding tax certificate. • A need for strict timeline for issuance of certificate u/s 197 of the Act. The taxpayer may have situations wherein they may have losses or circumstances which otherwise do not justify withholding of tax at 0.1% / 10% and hence an option should be made available to these taxpayers to apply for Nil withholding certificate.
9.	**TDS certificates**	TDS/TCS certificates in Forms 16A/ Form 27D are required to be issued by the deductor / collector within prescribed timelines and have to be maintained by the deductee's / collectee's for claiming the corresponding tax credit. However, in practice, tax authorities only rely on Form 26AS for granting tax credit during tax assessments. In light of the same and in order to reduce the compliance cost and efforts, it is suggested that the government: • Removes the requirement for payers to issue TDS/TCS certificates and instead prescribe Form 26AS (generated through secure safeguards to ensure payee information is not allowed to be tampered with) as the basis for tax authorities to grant tax credit. Issue TDS/TCS certificates only to persons not holding a PAN (especially NRs to be able to claim credit in their country of residence).	Maintaining these certificates and subsequent reconciliation with Form 26AS for claiming TDS/TCS credit increases the compliance burden for the taxpayers. Due to voluminous nature of transactions and huge number of deductee's/collectee's, it becomes difficult for the taxpayers to set up a process for issuance of TDS/TCS certificate to every deductee /collectee on a quarterly basis, particularly given that information captured in such certificates is already disclosed in Form 26AS of the deductee / collectee.
10.	**TCS provisions under section 206C(IG)of the Act**	It is suggested that clarity should be issued that the provisions of section 206C would not be attracted in case of a non-resident seller of overseas tour packages in order to reduce additional compliance burden on non-resident	The provisions of section 206C of the Act do not provide any clarity around applicability of TCS provisions on non-resident seller of tour packages, operating outside India but offering services to Indian tourist.

	Applicability of TCS provisions in case of non-resident seller of tour packages		
11.	**Extension of the sunset clause for sections 194LC and 194LD** •	It is requested that the Government extend the period of beneficial tax rate of 5% specified in u/s **194 LC[2] and 194LD[3] of ITA** beyond 30 June 2023 with a long-term sunset date.	At a time when the Government is promoting the involvement of private sector in the India-growth story through "Sabka Prayas" resulting in "Jan Bhagidari", funds inflow to finance such private sector involvement may be necessary. The increased WHT rates of 20%/ 40% (once the tenure of monies borrowed is over and beneficial rate is over) can have an adverse impact on the debt flows by foreign investors and disincentivize private capex investments by adding to the cost of the borrower. This will either result in higher cost implication for Indian borrower or lower returns for international investors. Either way, the borrowings or investment avenues would become less attractive.
12.	**Withholding on cloud-based transactions**	It is suggested to provide clarification that no TDS should be applicable on cloud-based transactions as these are pure services not amounting to technical services or royalties.	Applicability of withholding on cloud-based transaction, specifically on the services provided by non-resident has lead to litigation as the taxpayers have been treating such income as business income, not offering the same to tax in the absence of a PE in India. However, the **revenue has been taxing such receipts as FTS/Royalty**. The advent of **equalization levy has further lead to ambiguity** as to which provisions would govern cloud services.
13.	**TDS proceedings in relation to payment to non-residents**	It is suggested to **align the time period** for completion of TDS proceedings under section 201 in relation to payment made **to NR's with that of the resident.**	Presently, no time limit has been specified under the Act for assessment of whether appropriate TDS has been deducted and

Sec. 194LC of the Income-tax, Act 1961 (Act) provides for a concessional tax rate of 5% on interest income arising to non-residents in respect of **monies borrowed in Foreign Currency** up to 30 June 2023 or in respect of monies borrowed by way of issue of **rupee denominated bonds** upto 30 June 2023.

[3] Sec. 194LD of the Act provides for a concessional tax rate of 5% on interest income arising to **Foreign Portfolio Investor (FPIs)** on specified securities (~ Rupee denominated bonds of an Indian Company and Government Securities) up to 30 June 2023.

			deposited with the Indian treasury u/s 201 of the Act in respect of payments made to NR's. Consequently, the TDS returns are scrutinized by the assessing officers for past years without any limit, which has resulted into practical challenges for the taxpayers as it becomes difficult to store & retrieve data for unforeseeable time. Various judicial precedents have held that TDS proceedings u/s 201 should be completed within 4 years from the end of the financial year in which proceedings u/s 201 were initiated.
14.	**Removal of section 206C (IH) on Tax Collection at source under the income tax act**	Considering the above hardship and ambiguity, since section 194Q effectively captures such transactions, the 'TCS provisions' under Section 206C(IH) should now be removed/ deleted.	The Finance Act 2020 introduced **section 206C (1H)** which inter alia provides that, every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value **exceeding fifty lakh rupees in any previous year**, collect from the buyer, a sum equal to 0.1 per cent of the sale consideration exceeding fifty lakh rupees as income-tax. **Provided further** that the provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount. Further, the Finance Act, 2021 introduced **Section 194Q** in the Income-Tax Act,1961 which applies to any person who is responsible for paying any sum to any resident seller for purchase of any goods of value exceeding Rupees **Fifty lakh rupees** in any previous year. Such buyer is required to deduct an amount equal to 0.1 % of such sum exceeding fifty lakh rupees as income tax.

			Given that both section 194Q and section 206C(1H) applies on transaction pertaining to 'buy/ sale of goods, potentially the below issues may arise – • **Overlapping sections** - Both sections 194Q & 206C(1H) can apply to a transaction leading to administrative difficulty for the seller of goods in tracking & reporting each transaction in TCS return. The seller of goods will be aware about TDS & details of TDS only upon such buyer providing details of TDS upon TDS certificate being issued by the buyer. • **Default of buyer shifts to Seller -** Default of the buyer to deduct TDS under section 194Q may automatically shift on the seller to collect TCS under section 206(1H). This may lead to dispute between the parties in settlement of the same causing huge administrative burden for collection of 0.1% of the transaction amount. • The TCS returns requires details of TDS challan & date of TDS deposited to be reported. Since the sale of goods would be subject to TDS under section 194Q, obtaining those details from the buyer & reporting the same in the TCS returns would be administratively challenging
		It is suggested that the TDS provisions of S. 194Q and TCS provisions of S. 206C(1H) be made applicable only to payees or payers who are not registered with GST. This will then align with the Government's intention of widening and deepening the tax net. Alternatively, instead of TDS/TCS, the purchasers/sellers may be required to file Annual Information Returns	The entities with threshold limits of Rs. 10 Cr turnover and/or Rs. 50 lakhs transaction value are already within GST regime and relevant information is populated in AIS/Form 26AS from GST returns pursuant to automatic information sharing arrangement between CBDT and CBIC.
Industry Specific Suggestions			

Financial Services			
1.	**Section 36(1)(viia) of the ITA - Higher deduction of provision for bad and doubtful debt for NBFCs**	Amend section 36(1)(viia) to provide **additional deduction for provision for bad and doubtful debts relating to rural advances of NBFC similar to that provided for banks.**	There is a disparity in the deduction allowed to banks and NBFCs relating to provision for doubtful debts. Banks are allowed deduction for provision for bad and doubtful debts not exceeding 8.5% of the specified total income and not exceeding 10% of the aggregate average rural advances computed in the prescribed manner. Deduction of provision for bad and doubtful debt of an amount not exceeding 5% of the total income is available to NBFCs. NBFCs are also engaged in financial lending to different sectors of society, especially the rural areas and Tier 3 cities and beyond. Therefore, the availability of deduction under section 36(1)(viia) should be harmonised for banks and NBFCs.
2.	**Extending the tax holiday period of IFSC- GIFT City units**	**Amend section 80LA to extend period of deduction to units set up in an IFSC, from the existing 10 years to a longer period (say 20 years).**	• Section 80LA provides for a deduction in respect of income of International Financial Service Centre [IFSC] Units/ its investors in accordance with the provision of this section. • There have been slew of regulatory changes introduced which has made it an attractive investment destination. • The income-tax holiday available to units in IFSC can be extended to make it lucrative for foreign players, as the current tax holiday is for a very short-term period. (Just to compare, Dubai International Financial Centre provides tax holiday for 50 years.) • Extending the tax holiday to IFSC units likely to make GIFT City competitive with other overseas financial centres, leading to growth in India's GDP, job creation, increase in foreign currency reserves, and related economic benefits.

3.	**Section 196 of the ITA - Exemption from TDS**	Amend section 196 of the ITA to grant exemption from TDS to **all Banks.**	• Indian banks' income is subjected to TDS under various provisions of the Income-tax Act, 1961 except on interest income other than on securities under section 194A and certain income as specified in notification 47 of 17 June 2016. • Foreign banks are required to obtain certificate under section 195(3) for nil withholding on the income received by their India branches. • TDS on the income of banks causes considerable inconvenience due to huge volumes of TDS certificates collected for interest received on securities, commission received on cross selling, etc. and also causes cash flow challenges. • The Income-tax department is also inconvenienced, as they are required to process the forms submitted before granting TDS credit. Blanket TDS exemption under section 196 to banks will facilitate a hassle-free administrative mechanism.
4.	**Amendments for Offshore Derivative Instruments (ODI) issued by IFSC Banking Unit (IBU)**	<u>Existing situation</u> U/s 10(4E) of the ITA, in case of distribution of income by the IBU to the ODI holder, an exemption to the ODI holders shall be available only on so much of the amount distributed, which is chargeable to tax in the hands of the IBU u/s 115AD of ITA. However, in scenarios where income is distributed to ODI holders out of income that is not subject to tax in the hands of the IBU (on account of exemption provided under section 10(4D) of the ITA), the income shall become taxable in the hands of the ODI holders on account of non-satisfaction of the conditions prescribed under proviso to section 10(4E) of the Act. This scenario could arise where the IBU has issued ODIs to non-residents ODI holders against investments in securities, the income from which is exempt under section 10(4D) of the ITA.	The tax treatment provided to units of an IFSC that are registered as an FPI is similar to the tax treatment provided to an entity based out of Singapore or Mauritius with respect to their investments in Indian securities, securities listed on IFSC exchange and investments in global securities. The ODI holders of FPIs based in Singapore or Mauritius currently do not suffer any taxes in India. The burden of discharging any tax liability within the ambit of the provision of the Act / Tax Treaty is solely on the Singapore / Mauritius based FPIs. • FPIs set-up in IFSC cannot be at a disadvantage vis a vis FPIs investing from Singapore / Mauritius. The tax treatment to NR ODI holders holding ODIs in offshore locations and those

		<u>Our suggestion basis the above</u> Exemption should be provided to the non-resident ODI holders in respect of all incomes distributed by the IBU on the ODI contract, whether or not the income remains taxable in the hands of the IBU. Pls refer to the reasoning in column (3).	holding ODI in IBU should be at parity and this would bring the ODI business to IFSC in India from offshore jurisdictions.
5.	**Benefits to be provided to foreign Fund Managers moving to International Finance Services Centre (IFSC)**	**Foreign fund managers and other foreign employees moving to IFSC should be treated as non-residents and their income should be taxed at a lower tax rate** as prevailing in the other popular offshore jurisdictions for e.g., income derived by a Singapore fund manager from managing or advising a qualifying fund is taxed at a concessionary tax rate of 10%.	This change can provide an incentive to organisations to seriously consider the relocation of their existing fund managers and staff operating in popular fund manager hubs such as New York, London, Hong Kong, Singapore, etc. to the IFSC.
		Education sector	
1.	**Clarification in relation to tax implications/incentives to foreign universities**	• It may be expressly clarified that setting up IBC/Offshore Education Centre ought not to be covered within the purview of Section 9 of the Income-tax Act, 1961 • Amend section 80LA to extend period of deduction to units set up in an IFSC, from the existing 10 years to a longer period. Certain key clarifications ought to be provided from a tax perspective as mentioned below: • It would be helpful for foreign players if clarifications were provided on 'Permanent Establishment' exposure assuming such units are set up in India • Most foreign universities enjoy perpetual tax exemption in their home countries. Hence, to incentivise the top universities to set up under the IFSCA, a similar perpetual tax exemption ought to be provided. However, a perpetual	India is relaxing its laws to allow foreign universities to set up campuses in the country (currently allowed in GIFT city). Foreign University(s) have received approval of the International Financial Services Centres Authority (IFSCA) to set up an International Branch Campus (IBC) in GIFT City, Gujarat.

		tax holiday would prove more attractive and at par with home country.	
		Technology, Media, Telecom sector	
1.	**IUC Charges** Provide quietus to the ongoing litigation around characterisation of telecom Inter-connect Usage Charges (IUC) payable to foreign Telcos	It is suggested that suitable amendments be made in Section 9(1)(vi) and 9(1)(vii) of the ITA to clarify that the payments made for IUC and/or other telecom/satellite payments shall not constitute Royalty and/or FTS unless the payer/ recipient in India is having rights or access to the telecom equipment or network owned by the foreign operator.	While the revenue authorities' stand is that IUC paid to foreign telcos is taxable as royalty and/or as Fee for Technical Services (FTS), various courts/tribunals over the years have held that IUC constitutes charge for a standard facility, which is not taxable in India.
2.	**TDS on prepaid distributor Margins/ discounts from telecom operators (telcos)**	It is suggested that a clarification is issued that such discounts should not fall within the ambit of TDS provisions u/s 194H. However, if the government still wants to pursue this route for tax collection, it should introduce the TDS rate at 1% instead of the current 5%, which would be closer to the actual tax liability of distributors as margins earned by the distributors are low and they sustain only on volumes.	There has been continuous litigation on whether the relationship between the telcos and distributors is on "Principal to Principal" or "Principal to Agent" basis. TDS is applicable only if the relationship is of principal to agent basis else not.
3.	**Availability of Section 10AA benefits in cases where employees are required to work from home**	An explanation should be inserted to provide that the benefit of deduction for Special Economic Zone (SEZ) units under Section 10AA should continue to be available in respect of work undertaken by employees working from home if there exists a direct nexus between the SEZ unit and the work done outside the SEZ unit.	The pandemic has brought a paradigm shift in the ways of working across sectors, thus enabling employees to work from home. This trend can play an important role in ensuring balanced regional development, by enabling skilled professionals to work from anywhere in India, thus reducing congestion and infrastructural pressures on urban and semi-urban areas. In July 2022, the Ministry of Commerce and Industry amended the SEZ Rules, 2006, which allows employees (including contractual employees) working in a SEZ unit to work from home.

			Therefore, export benefits available for SEZ units under Section 10AA should continue to be available in respect of work done remotely by employees if there is a direct nexus between such work, and the SEZ units. Such a clarification would be in line with similar clarifications issued in the past in relation to 'onsite' development of software, where tax benefits were made available.
Manufacturing sector			
1.	**Tolling / Contract Manufacturing to be outside the purview of business connection in Section 9(1)(i) of ITA**	Given the intention of boosting the manufacturing segment and promote exports from India it is suggested that an explanation is provided for in Section 9(1)(i) to exclude tolling/contract manufacturing arrangements where goods are meant for exports.	Tolling/Contract Manufacturing involves a contract for sale where the manufacturer acts a third party for processing goods, but the entire process is governed by the taxpayer. In such an arrangement the product concept, specifications, brand name and IP rights in the products are owned by the taxpayer. Taxpayer also supervises and control and has the right to reject the goods in case of unsatisfactory quality. The risk of taking up warranty obligations on the products are all indicators of a taxpayer's deep involvement as a manufacturer. It's a common arrangement followed and implemented in country(s) where cost of production is low like India. Given the nature of activities, it involves the principal (non-resident taxpayer) deploying/seconding its employees to the local contract manufacturer to supervise and guide the process and to ensure quality and standards are adhered to. This sometimes, can expose the foreign principal to having a physical presence in India in the form of a business connection and thus, posing a hinderance/road-block to such arrangements. .
2.	**Under Section 115BAB Inclusion of trading activities which are ancillary or related to manufacturing entity**	It is suggested that the existing provisions of section 115BAB are relaxed to capture a situation where the **domestic co. has any other secondary stream of income (trading/service), a limit could be prescribed saying that where the other income is within a prescribed threshold of the gross turnover from**	By 2030, India is expected to be the manufacturing hub for the global market with its capacity increasing to $1 Trillion, and to $20 Trillion by 2047. In the after math of COVID 19, the manufacturing sector continues to revive and pick up growth. The sector needs incentives to fuel growth.

		manufacturing activity (say 30%) then such income to be continued to be taxed at 15% on net basis. Additionally, the sunset clause to be **extended up till March 2027**.	Presently, a lower tax rate of 15% is provided to the domestic companies set up on or after 1 October 2019 and has commenced manufacturing or production of an article or thing on or before 31 March 2024 subject to satisfaction of other prescribed conditions. The provisions also suggest that where the total income of such company includes any other income *(not derived/incidental to manufacturing)* such income shall be taxed at a flat rate of 22% with no deduction or allowance of any expenditure. Nowadays, products are initially marketed for some time and thereafter, the decision to manufacture is taken on the basis of feasibility and other driving factors. This gives rise to a low volume or miniscule amount of trading income for such products in comparison to overall business income. Therefore, trading relates to transactions that business prudently takes for commercial sense. The extant provisions denying the lower tax rate in case of other income is quite harsh given the diverse nature of business activities one undertakes. For instance, service income not being incidental to manufacturing function could be a secondary revenue stream but a blanket 22% tax on a gross basis seems unreasonable and not aligned with the intention of the govt. to boost manufacturing sector.
	Extension of benefit under section 115BAB of the ITA to existing manufacturing companies and extension of sunset clause.	It is suggested to provide an option to the existing manufacturing companies to adopt the reduced tax rate/extend the beneficial provisions of section 115BAB of the Act even for existing domestic manufacturing companies. Sufficient safeguards can be built in in case of old set ups like captured in Section 10AA with respect to exports, plant and machinery etc.	Currently, the concessional tax rate of 15% is applicable to domestic manufacturing companies registered on or after 1 October 2019 and on or before 31 March 2024. Domestic manufacturing companies existing prior to 1 October 2019 may not be able to take benefit of concessional tax rate, even if they propose substantial capital investment in plant and machinery. Further, it may not be practical to set-up a new subsidiary for undertaking substantial expansion.

			The intent is to boost manufacturing sector and accordingly legal entity structure new and old should not be a basis to provide for a concessional tax rate.
	Clarity on timeline to opt for section 115BAB of the ITA	To avoid unnecessary litigation for taxpayers' explanation may be inserted that claim may be made in **Form 10-ID in the year in which the company starts manufacturing or starts activity incidental to manufacturing.**	A manufacturing company is set up in Year 1 and will commence manufacturing operations in Year 2. **As per section 115BAB of the Act, the company needs to exercise the option, to be governed by section 115BAB of the Act in the prescribed manner (Form 10-ID), on or before the due date specified under section 139(1) for furnishing the first of the returns of income for any previous year relevant to the assessment year** Whether company should opt for the benefit of concessional tax rate under section 115BAB of the Act in the tax return for Year 1 or the option can be availed in the subsequent year i.e. Year 2?
	Deduction for expense for income which has been derived from activities related to the manufacturing or production	To facilitate the manufacturing operations, the companies should be allowed deduction for expense incurred for activities, which are related to but not incidental to its manufacturing activities. Further, additional conditions can also be incorporated such as **income from the related activities should not exceed a specific percent (say 20%) of the total income of the company. Such conditions will ensure that the company's main objective is manufacturing of article/ object for which the beneficial tax rate of 15% has been availed.**	As per section 115BAB of the Act, income which has neither been derived from nor is incidental to manufacturing or production shall be taxed at the rate of 22% and no deduction or allowance in respect of any expenditure shall be allowed in computing such income. **Where a company has income from activities which are related but not from manufacturing/ production activities such as a laptop manufacturer has income from trading of accessories or related goods, then such company should be allowed deduction for expenses incurred for such incidental activities.**
3.	**Investment based Incentive for manufacturing**	It is suggested that lower tax rate incentive should be granted to **existing companies** which make substantial capital investment in their running companies **.** Where it is not be possible to grant them the lower tax rate of 15% (plus applicable surcharge and cess) on their entire	Global manufacturing industry is undergoing a paradigm shift toward alternative energy. Indian Government is also bringing regulations at par with developed nations with respect to emission regulations. Where companies manufacturing products in India are required to keep pace with these changes, this would require intensive Capital Investment.

		profits. Hence, it is proposed that a lower tax rate e.g., 18.5% (plus applicable surcharge and cess) being mean of 15% and 22%, may be introduced, where prescribed investment thresholds are met.	As per the new tax regime introduced by the Government, corporate tax rates were reduced to 22% (plus applicable surcharge and cess) for existing companies u/s 115BAA of the Act vide (Subject to certain conditions) and corporate tax rate of 15% (plus applicable surcharge and cess) was introduced for new manufacturing Companies u/s 115BAB of the Act (subject to certain conditions). It may not be possible some time due to administrative concern to set up a new company for an existing manufacturing company which intends to make intensive capital investment. Consequently, it leads to a tax rate disparity between making capital investment in existing company vis-à-vis a new company.
Green Energy and addressing Climate Change			
1.	**Taxation of carbon credits**	• Concessional tax, like section 115BBG, should be broad-based to include income earned from transfer of RECs or VERs as well. • Additionally the gross basis of taxation u/s 115BBG should be restricted to companies which are generating such carbon credits. • In respect of companies which are pureplay trading in carbon credits i.e. buying and selling the carbon credits the gross basis of taxation would cause undue hardship and probably tax which would far exceed the income. Accordingly, it may be provided that such companies would not be subject to taxation u/s 115BBG of the Act unless the wish to opt for the same. • This will bode well with government's plans to develop indigenous carbon market in India under the recently	• Currently, the domestic income tax law provides beneficial provision (under section 115BBG) for taxation of income arising from transfer of carbon credits which are validated by the United Nations Framework on Climate Change (UNFCC). • However, there are no similar provisions in relation to Renewable Energy Certificates (RECs), or Voluntary Emission Reduction (VER) certificates which are not expressly validated by the UNFCC. • Prior to introduction of section 115BBG, there was extensive litigation before Courts / Tax Tribunals in India around taxation of carbon certificates – essentially on characterisation between business and capital receipts. It led to uncertainty in taxation of carbon credits and protracted litigation. • While the introduction of section 115BBG helps to settle tax position around taxability of UNFCC validated certificates, taxability of other voluntary certificates like RECs or VERs,

		notified Carbon Trading Scheme 2023, with an objective to decarbonise the Indian economy by pricing the Green House Gas (GHG) emission through trading of the carbon credit certificates.	which are not specifically validated by UNFCC, continue to be uncertain.
2.	**Tax Incentives for development of Green Hydrogen ('GH') ecosystem**	• It will be helpful to clarify that 'business of manufacture or production of any article or thing' for eligibility to corporate tax rate of 15% (plus surcharge and cess) under section 115BAB of the Income-tax Act, 1961 shall include production of green hydrogen and hydrogen derivatives such as urea, ammonia etc • Also, considering the Government's ambitious plan of achieving installed renewable energy capacity of 500 GW by 2030, and green hydrogen production capacity of 5 MMT per annum by 2030 – the current sunset date of 31 March 2024 to commence manufacturing or production should be extended to a later date, to at least 31 March 2027 or later.	• The Government of India had launched the National Green Hydrogen Mission ('NGHM') to make India a global hub for production, usage and export of GH and its derivatives; and to develop indigenous manufacturing capabilities. • The target is to achieve production capacity of at least 5 MMT per annum with an associated renewable energy capacity addition of about 125 GW by 2030. • In the production of GH, costs of the electrolysers and input renewable energy are the two major components, other than costs of capital, and enabling infrastructure. At present, cost of green hydrogen hovers around INR 300 per kilogram. For widescale adoption of green hydrogen, cost reduction is vital. In January 2023, capital outlay of INR 197.44 bn (~USD 2.3 bn) was approved by the Union Cabinet. Further, to incentivize the supply chain, the Government has also launched incentive scheme(s) under the Strategic Interventions for Green Hydrogen Transition (SIGHT) programme, to provide direct financial incentives for electrolyser manufacturing and for production of green hydrogen in India. • The NGHM intended to ensure availability of renewable energy for GH projects at '*least possible costs.'* • However, on indirect tax front- the Government has levied customs duty of 44% (including basic customs duty and cess)

			on import of solar modules with effect from 1 April 2022, which has spiralled overall project cost of solar power generation. Given the existing tax framework, it is difficult for green hydrogen developers to source / generate solar power at viable costs – which is critical for achieving cost efficiencies in production of green hydrogen.
3.	**Lower rate for taxation of interest on foreign borrowings for notified infrastructure sectors** • Green bonds are financial instruments that generate proceeds for investment in environmentally sustainable and climate-suitable projects. • In keeping with the ambition of reducing carbon intensity in the economy, mobilizing resources for green infrastructure is key. • Tax incentives for such instruments will aid attractiveness in term of added bps of yield to the investors and at the same time, rationalizing cost of finance for the borrowers in India. Several jurisdictions (such as Brazil, the USA and Malaysia) already offer tax incentives to scale up their local green bond markets.	• Interest income and capital gains on transfer / redemption of green bonds may be tax exempted or taxed at a concessional rate. • To ensure certainty, definition of 'green bonds' for income tax benefits may be aligned with the regulatory definition issued by the Securities and Exchange Board of India ('SEBI'). • Tax exemption to be non-discriminatory; be allowed to all investors in such bonds, irrespective of whether (i) the bonds are issued under the Foreign Direct Investment ('FDI') window, Foreign Portfolio Investment ('FPI') route or the External Commercial Borrowing ('ECB') option etc., or (ii) the bonds are issued by an Indian issuer or a financier such as a Bank / Non-Banking Financial Company ('NBFC') / Housing Finance Companies ('HFC') etc., or (iii) the bonds are listed or unlisted • Dispensation from tax reporting compliances may be offered provided non-resident investor's income comprises only tax-exempt income. • Issuers may be exempted from applicability of thin-capitalisation rules such that interest cost on green bonds can be tax deductible.	• As per SEBI's data on green debt securities, during the period of 2017 to September 2022, 15 Indian corporates have issued green bonds of value INR 4,539 crores (~USD 570) mostly in renewable energy generation. • As per research agencies, sustainable finance in India by private equity and venture capital firms is anticipated to grow to a market size of USD 125 billion by 2026, a 5-year CAGR of 46%[4]. Tax incentives can serve as a cost-efficient tool to boost investment in the sector with relatively low impact on public finances. It helps reduce the interest cost of financing for the borrower. This will be in line with some of the world's best tax practices to scale up local green bond markets.

4.	**Accelerated depreciation benefit**	Inclusion of '**advanced biofuel units'** for accelerated depreciation benefit u/s 32 of Income tax Act, 1961	Currently 40% depreciation rate is prescribed for renewable energy devices under section 32 of Income Tax Act, 1961. In addition to that, tax provisions do provide for additional deprecation of 20% in the year of purchase itself for new plant & machinery purchased and put to use by power generation/ generation and distribution/ transmission units in India. Similar benefit should also be extended to the commercial projects set up for 2G/3G/Advanced biofuel production so that industry can depreciate their investment at a much higher rate.
5.	**Tax holiday**	Tax holiday for a period of 10 years on profits earned by **Advanced Biofuel Units** (similar to the one available under Section 80 IA-IE of the Income Tax Act, 1961) with 100% deduction for first 5 years and 50%-30% deduction in next 5 years.	In the past, in order to incentivize specific industries or promote specific regions in India, GOI had extended a tax holiday for a period of 10-15 years on 25%-100% profits generated by such units. Technologies for advanced biofuel also require an ecosystem for their accelerated deployment and create an economic impact. Therefore, it is imperative that similar tax-based incentives be extended to such units to create an advanced biofuels ecosystem.
SUGGESTIONS UNDER INTERNATIONAL TAX			
1.	**Complete exemption from indirect transfer provisions on repatriation of income by foreign shareholders / investors of foreign company where such income has already been subject to tax in India or incomes which are not chargeable to tax in India**	To ease multiple-level taxation where private equity funds are set up as multi-tier investment structures, amendment should be brought in to clarify that the **Explanation 5 of Section 9(1)(i) should not be applicable in respect of income arising to a non-resident on account of redemption / buyback of share / interest of the foreign company / entity deriving value substantially from India assets where such income has already been subject to tax in India or where such income is not chargeable to tax in India under the Act in the hands of the first level foreign company.**	Concerns have been expressed by private equity industry that on account of the extant indirect transfer provisions in the Act, **investment funds which are set up as multi-tier investment structures and making investments in India, may suffer multiple level taxation of the same income at the time of transfer / and then on repatriation of funds to foreign investors.** **Such taxability arises firstly at the level of the foreign company which holds investment in India and then at the level above at every upper-level investment fund entity on subsequent repatriation / upstreaming of funds which is undertaken by way**

			of redemption or buyback of shares / interest of such foreign company / upper investment fund entity. This leads to double taxation of income arising practically from the same source.
2.	**Pillar Two (Global Minimum Tax) proposals** **[Agreed by the G20/OECD Inclusive Framework to counter Base Erosion and Profit Shifting (BEPS)]**	As per the current global consensus, Pillar Two tax rules i.e. IIR and QDMTT need to be implemented in domestic tax legislations from 2024 and many countries are in the process of incorporating them in their tax legislations. In India, IIR/QDMTT rules are yet to be introduced in the domestic tax legislation - they were not incorporated in the FA 2023 which was legislated in March 2023. It is **suggested that IIR and QDMTT be introduced through a separate Finance Bill in the winter session of the current Parliament, to be effective from 1 April 2024.** This would help Indian MNE groups to plan for the forthcoming implementation of these rules and also leaves scope for public consultation and any further amendments (through the Finance (No.2) Bill in July 2024) before IIR / QDMTT are implemented in final form to be effective from 1 April 2024.	• Pillar Two proposes a 15% jurisdiction by jurisdiction global minimum tax which will apply to MNE groups with consolidated revenues of at least EUR 750 million. The main component of Pillar Two are two interlocking domestic tax rules (together, called the Global Anti-Base Erosion (GloBE) Rules):- **(i) an Income Inclusion Rule (IIR), which imposes top-up tax on a parent entity in respect of the low taxed income of a constituent entity**; and (ii) **an Undertaxed Payment Rule (UTPR), which denies deductions or requires an equivalent adjustment to the extent the low tax income of a constituent entity is not subject to tax under an IIR.** • A **separate Qualified Domestic Minimum Top-up Tax (QDMTT) has also been proposed under Pillar 2. This is a minimum tax that is included in the domestic law of a jurisdiction.** QDMTT will allow a jurisdiction to compute and levy a 'top-up tax' equal to the difference between the 15% Global Minimum Tax rate and the lower tax rate currently being levied in that jurisdiction. • Detailed administrative guidance and safe harbour rules have been released by the OECD and the current timelines are that IIR rules will be introduced in domestic tax legislations to be effective from the tax year beginning in 2024. • South Korea and Japan have already incorporated the IIR in their domestic tax laws. Countries in EU, UK, Australia are in the process of implementing the IIR in their domestic tax laws w.e.f January 2024.

			India is a member of the G20 and the Inclusive Framework and is a signatory to the agreement to introduce a global minimum tax under Pillar 2.
3.	**Significant economic presence (SEP)** Clarity around the method in determining / attribution of profits / income in respect of significant economic presence in India.	**It is suggested that new rules should be determined for attribution of profits / income in respect of SEP.** Increase SEP thresholds to mirror those agreed to as a part of the Pillar 1 framework. Provide exemption from return filing requirements for NRs having SEP in India as long as they are entitled to the benefits of a tax treaty. **It is suggested to exempt procedural requirements (like obtaining PAN, filing return, etc.) where SEP is triggered but treaty protection is available.**	CBDT vide notification dated 3rd May 2021 had prescribed thresholds for provisions of SEP through insertion of Rule 11UD under the Income tax Rules, 1962 which is effective from financial year 2021-22. The notifications provide that the transactions in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India shall fall under the ambit of SEP if the aggregate of payments arising from such transaction or transactions during the previous year exceeds INR 2 crores. However, **no clarity has been provided with respect to the methodology to be followed for computing of profit attributable for a non-resident in India.** Attribution of profits has been a complex issue wherein diverse methodologies are followed by tax officers leading to uncertainty for taxpayers. As a result, CBDT had formed a committee to examine existing scheme of profit attribution to Permanent Establishment (PE) and recommend changes in current domestic tax laws. The Report of the Committee was released by CBDT in April 2019 for public consultation. However, there has not been any further development on this front yet. The revenue thresholds for triggering SEP are currently set at INR 2 crores. Considering that the threshold under the Pillar 1 consensus is set at EUR 1 million, the government could consider increasing the threshold under domestic law to mirror the EUR 1 million threshold under Pillar 1 Once the income is not taxable in India by virtue of a tax treaty, the same may not fall within the charging sections of the Act. Thus, Section 139 which requires filing of return of income may not have application, once charging provisions itself are not

			applicable. Given the wide applicability of SEP, a specific exemption from tax return filing should be granted. Separately, while SEP provisions may not extend to non-residents from tax treaty jurisdictions, but tax authorities may insist that such taxpayer should comply with various procedural requirements of the Act. Hence, to avoid unwarranted compliance burden for non-resident entities and promote ease of doing business in India, it may be explicitly provided that the taxpayers on whom SEP provisions apply but they are eligible for applicable tax treaty protection, will not be required to undertake procedural compliances under domestic law.
4.	**Withdrawal of Significant Economic Presence (SEP) Condition prescribed in Section 9 for normal material imports and service imports**	**A plain reading of the SEP provisions could cover within its ambit even normal import of goods or services, causing undue hardships.** Moreover, this may defeat the basic intent behind introducing these provisions, i.e. to tap digital transactions. Thus, express exclusion of normal import from the definition of SEP could be provided.	As per the memorandum explaining Finance Bill 2018 which brought the concept of SEP in business connection definition, the intention for SEP is to cover emerging business models such as digitized businesses, which do not require physical presence to operate in India. Therefore, this may defeat the basic intent behind introducing these provisions. It is causing undue hardship to NRs payee and sometimes payers as well for **normal imports** in below cases: - (i) In cases wherein NRs are covered by treaty PE provisions, the NRs are required to obtain a PAN in India and file returns in India to obtain the treaty benefits. It overall **defeats the whole purpose of representing India as ease of doing business jurisdiction.** (ii) In cases wherein NRs are not covered through a treaty, it may put in additional tax burden on NRs and in case of specific raw materials / services required, which is not otherwise available through any other jurisdiction, residents as a payer may even be required to gross up and pay the withholding. This may make the whole thing unviable to procure and hampers the objective for make-in-India or ease of doing business in India.

5.	**Enabling receipt of tax refunds by non-residents not having bank account in India.**	It is suggested to build a mechanism to **issue refunds to NR taxpayers to their foreign bank accounts directly. Alternatively, issuance of refunds to authorized representatives or any group entities of the taxpayer** could be enabled.	Non-residents are facing difficulties in obtaining refunds directly in their foreign bank accounts. Even though return of income has enabled disclosure of foreign bank account details, the income tax department is not issuing refunds to a foreign bank account directly. Therefore, NRs taxpayers are opening bank accounts in India for the sole purpose of receiving refunds.
6.	**Exempting NR from filing of income-tax return in certain conditions – Section 270A** Exposure of penalty u/s 270A of the Act	It is suggested that an amendment be made to section 270A to provide that in case return of income is not required to be filed u/s 115A(5), then penalty u/s 270A of the Act, should not be levied on income which has already been subject to withholding tax under the Act and the tax return has not been filed in view of the exception provided u/s 115A(5) of the Act.	Section 115A of the Act provides that in case the income of a NR taxpayer consists only of interest, dividend, royalty or FTS and taxes have been withheld at the rate specified in section 115A of the Act, the non-resident taxpayer is not required to filed its return of income of India. As per section 270A of the Act a person shall be considered to have under reported his income if the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished or where the return has been furnished for the first time under section 148. In this connection, in case the taxpayer has not furnished his return of income and in reassessment, income determined is more than the income on which taxes have been withheld, then as per the provisions of section 270A of the Act, no credit of taxes paid by the taxpayer may be granted.
		Suggestions Under M&A Tax	
1.	**Depreciation on acquisition of goodwill**	A **distinction should be made between depreciation acquired through tax neutral amalgamations or demergers, and goodwill acquired through taxable transactions such as slump sale. Goodwill acquired through taxable transactions at fair value consideration should continue to be depreciable.**	The Memorandum to the Finance Bill, 2021 itself recognizes this distinction and notes that a valid claim for depreciation could be made based on the Supreme Court’s decision in Smifs Securities in cases where goodwill is acquired through purchase or through slump sales etc.

			Considering that multiple transactions have taken place by relying on the law laid down by the Supreme Court, a disallowance of depreciation in all cases, operates harshly on taxpayers, and affects the assumptions on the basis which they have undertaken transactions in the past. Hence, there is a need to revisit the amendments made in 2021 and allowing depreciation on goodwill acquired through taxable transactions at fair value consideration.
2.	**Section 72A coverage**	Consolidation of entities within an industry will help in rapid growth and generation of substantial employment opportunities and faster digitisation, which will in turn aid with making India a competitive country for foreign investment. To promote such consolidations, it is suggested that the benefit under section 72A of the Act to carry forward of loss and depreciation on amalgamation should be extended to companies across all industries In any event, it is suggested that **the scope of section 72A of the Act should be widened to include other capital-intensive sectors such as Media/ Broadcasting and Entertainment, real estate / infrastructure / capital intensive service sectors such as Telecom Infrastructure Service Provider and Direct to Home operators.**	As per section 72A of the Act, carry forward of losses and unabsorbed depreciation is allowed in cases of amalgamation of a company owning an 'industrial undertaking' or a 'ship' or a 'hotel' with another company, or a 'banking company' with a specified bank, or 'one or more public sector company or companies engaged in the business of operation of aircraft' with one or more public sector company or companies engaged in similar business. The term 'industrial undertaking' is defined to mean any undertaking which is engaged in the manufacture or processing of goods, manufacturing of computer software, the business of generation or distribution of electricity or any other form of power, the business of providing telecommunication services, whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broadband network and internet services, mining or the construction of ships, aircrafts and railway systems. Generally, companies that fall within the meaning of an 'industrial undertaking' are capital intensive. However, various other capital-intensive industries such as Media/Broadcasting and Entertainment industry, Real estate / Infrastructure industry, Telecom Infrastructure Service Provider, Direct to Home operators are not covered under this provision. There is an unprecedented increase in adoption of digital services such as payments, e-governance, e-commerce and entertainment

			along with increase in start-ups/ smaller players in the market, which will necessitate consolidation for growth. Benefit of carry forward of losses and unabsorbed depreciation is not available in the case of amalgamation of companies not owning an 'industrial undertaking'
3.	**Section 72A – Carry forward of loss and unabsorbed depreciation**	• It is suggested that the definition of 'Industrial Undertaking' should be done away with, so that **all mergers including of service sector are eligible for carry forward of losses.** • Bring parity on period available for carry forward of losses with unabsorbed depreciation for amalgamation and demerger of companies. This would facilitate better reorganization of businesses.	Carry forward of business losses on merger is limited to companies owning 'Industrial undertakings". The definition of Industrial Undertaking is extremely narrow and restricted. Thus, a number of sectors are impacted as their ability to carry forward losses is significantly compromised.
4.	**Section 72A – Relaxation in conditions for carry forward of business losses in hand of amalgamated company**	• It is suggested to do completely away with the condition to hold 75% of the book value of fixed assets for sectors / industries other than capital intensive industries. • Further, it is also suggested to bring down threshold to 25% of book value of fixed assets and to be held for a maximum of 2 to 3 years, for capital intensive industry	Section 72A of the Act deals with carry forward and setoff of accumulated loss and unabsorbed depreciation in amalgamation, demerger, succession of firm etc. subject to certain conditions prescribed therein. In the case of amalgamation of companies to carry forward business losses and accumulated depreciation of amalgamating company by amalgamated company, one of the conditions to be fulfilled by resulting company is to hold 75% of the book value of fixed assets of the amalgamating company for 5 years. In case of non- compliance, the setoff claimed shall be taxable in hand of amalgamated company. This condition puts an undue restriction to high technology driven businesses including Telecom companies which are required to regularly upgrade their network infrastructure by investing into newer technology. The condition to hold 3/4th of old fixed assets for a period of 5 years restricts the amalgamated company to

			dispose off the old equipment resulting in carrying outdated and inefficient equipment.
5.	**Section 47 – Amalgamation of foreign companies, resulting in transfer of shares of Indian company**	It is suggested that specific provisions be incorporated in the Act to provide relief to the shareholders of the amalgamating foreign company, similar to section 47(vii) which exempts shareholders in a domestic amalgamation.	• Section 47(via) provides that transfer of shares of an Indian company transferred in a foreign amalgamation would not be regarded as a transfer provided certain conditions are satisfied. Similarly, Section 47(viab) provides that transfer of shares of a foreign company that derive value substantially from assets located in India, in an amalgamation, would not be regarded as a transfer provided certain conditions are satisfied. These sections seem to indicate that the exemption is provided only to the amalgamating foreign company and not to its shareholders.
6.	**Section 47 – Conversion of LLP into Company**	It is suggested that section 47(xiii) be brought in line with provisions of section 47(xiiib) by providing specific exemption to partners pursuant to conversion.	• Section 47(xiii) provides for exemption in the hands of the LLP transferring its capital asset to a company on conversion. Similarly, Section 47(xiiib) provides for exemption in the hands of company and its shareholders upon transfer of capital assets and shares (respectively) to LLP on conversion. • Exemption is provided to the shareholders when a company is converted into LLP, however no specific exemption is provided to partners of the LLP when LLP is converted into company. As a result, it appears that partners of the LLP are liable to capital gains tax upon receiving shares from the company pursuant to conversion for the interest held by them in the LLP.
7.	**Section 47 – Outbound Merger**	There should be a specific exemption for a merger of an Indian company into a foreign company.	Companies Act, 2013 permits merger of Indian company into a foreign company, subject to certain conditions. Merger of an Indian company into another Indian company is tax neutral if the prescribed conditions are satisfied. However, there is no specific exemption provided for merger of an Indian company into a foreign company.
8.	**Section 56(2)(x) – Peculiar Issues**	It is suggested to provide for tax exemption on merger of an Indian company into a foreign company by way of a specific clause in section 47	Section 56(2)(x) provides that where any person receives any property at a value which is less than the FMV prescribed under

			Rule 11UA, the difference (exceeding INR 50,000) is taxable in the hands of the recipient as 'Income from other sources'. • Although conversion of debentures or preference shares into equity shares have been specifically exempt from capital gains tax, there is lack of clarity regarding exemption on receipt of shares pursuant to conversion under section 56(2)(x) Technically, section 56(2)(x) would apply on the issue of shares by a company, other than a company in which public are substantially interested.
9.	**Clarification w.r.t non-applicability of section 56(2)(x) on conversion of compulsorily convertible instruments, if:** Issuance of original instrument was done at FMV (in compliance with section 56(2)(x)); and Conversion is done as per the terms specified at the time of issuance basis valuations that time	• Suggested that a carve out/clarification may be provided under section 56(2)(viib) for issuance of shares in tax neutral transactions such as amalgamation and demerger. • Suggested to expressly carve-out applicability of section 56(2)(x) on issue of shares by all companies. • Suggested to exempt rights issue from applicability of section 56(2)(viib).	Section 56(2)(viib) seeks to tax a company (other than a company in which the public are substantially interested) on issue of shares for a consideration higher than prescribed FMV. • While there is a specific exemption from applicability of section 56(2)(x) to the shareholders on receipt of shares on tax neutral transactions such as mergers/demergers, there is no specific exemption available u/s 56(2)(viib) for the resultant company issuing the shares. No specific exemption available u/s 56(2)(viib) for the company issuing right shares to existing shareholders.
10.	**Section 45 and 48 – Contingent consideration**	It may be clarified, that in case of contingent consideration, the contingent portion should be chargeable to tax as capital gains only in the year in which the same is crystalised. This would be in line with the real income theory as the income only crystallises only on receipt.	There is lot of ambiguity around the contingent consideration whether it is to be taxed in the year of transfer or in the year of receipt once the consideration crystallises

		This clarification would make it easy for the deal makers to see how much is going to be taxed and at what point.	India is considered to be an attractive market by international investors With a focus on balancing profitable exits and correct valuations, most private equity players are increasingly introducing a combination of clauses in the shareholders agreement, including consideration payable in a contingent manner based on certain performance milestones being achieved by the promoters.
11.	**Section 115QA – Buy-back tax in case of redemption of preference shares and capital reduction**	Transfer of shares to the company, which are not effectively buy-back of shares via a scheme of capital reduction or redemption of preference shares, should be carved out from applicability of section 115QA, and subject to tax under regular provisions	Cancellation of shares pursuant to redemption of preference shares/ capital reduction, though not treated sas purchase of its own shares under the Companies Act, unintendedly get covered under section 115QA. Vide Finance Act 2016, the scope of buyback tax has been enlarged to include buyback of shares in accordance with the provisions of any law for the time being in force relating to the companies instead of specific reference to section 77A of Companies Act 1956 (Section 68 of Companies Act 2013). Memorandum to Finance Bill 2016 mentions that it is the effect of buy back being in the nature of distribution of income which is relevant rather than particular provision of law relating to companies under which it has been undertaken. The above amendment was brought in with a specific intent to cover situations where companies were undertaking buybacks via NCLT route and were not falling within purview of section 68 of Companies Act 2013. However, because of amendment deleting reference to section 68, there is an ambiguity on redemption of preference shares also to be considered within scope of buy back tax. Buy back and redemption of preference cannot be considered at par because of following reasons: • In case of Buy back, an offer is given by Company proposing buy back to its shareholders wherein shareholders are free to

			accept the offer or not. Whereas in case of redemption of preference shares, Company has to mandatorily redeem preference shares as per pre agreed terms and there is no option to shareholder to not to accept redemption. • In case of redemption of preference share capital in tranches, there is no purchase of shares whereas buy back involves repurchase of shares. Company law covers buy back with respect to equity shares only and different provisions guide redemption of preference share capital.
12.	**Section 79 – Exemptions for internal group structuring**	Exemptions for domestic group restructuring to be introduced along with conditions to enable carry forward of business losses where the beneficial ownership continues to be the same with respect to group entities.	According to Section 79, no loss incurred in any prior year is permitted to be carried forward and set off in the event of a change in shareholding of a closely held company, unless shares carrying not less than 51% of the voting power are beneficially held by persons who held such shares in the year in which the loss was incurred. In its current form, section 79 not only functions as a Special Anti-Abuse Rule (SAAR), but it also creates a barrier for legitimate business restructurings. Differing judgements have merely increased the intricacy as litigation over how to interpret "change in beneficial ownership" in the absence of a definition. Although, certain exceptions are provided, genuine cases need further considerations. Worldwide, many tax authorities permit the carryover of losses in the event of group reorganizations, subject to specific restrictions.
13.	**Section 112 – Computation of Capital Gains without giving effect to first and second proviso**	Introduce a provision that offers non-resident taxpayers the flexibility to choose between two distinct tax rate options. The first option entails availing the higher tax rate of 20%, while availing the benefits of first and second provisos of Section 48.	Under the prevailing regulations outlined in section 112(c)(iii), the existing tax rate for long-term capital gains arising from the sale of unlisted securities stands at 10% (without foreign exchange and indexation benefit). Over the course of time, the Indian Rupee (INR) has exhibited a tendency to devalue relative to other currencies. Consequently, this devaluation can lead to a situation

		On the other hand, the second option involves opting for the lower tax rate stipulated under section 112(1)(c)(iii), without being eligible for the advantages conferred by the first and second provisos of Section 48.	wherein non-resident become liable for a tax burden attributed to income resulting from the devaluation of the INR. This holds true even in cases where these non-residents might not have realized an equivalent amount of gain when viewed in terms of foreign currency.
14.	**Sale of shares in case of Non Resident - Taxation of long term capital gains/ 112(1)(c) (iii) v. First Proviso to Section 48**	Given the issue at hand, a clarification laying down the correct position on taxability of long-term capital gains in case of unlisted shares in the hands of non-resident would help in avoiding unnecessary litigation on this account.	The first proviso to Section 48 provides that in case of a non-resident, capital gains arising from the transfer of shares of an Indian company shall be computed by converting the cost of acquisition, expenditure and the full value of the consideration into the foreign currency initially utilised at the time of purchase of such shares and later such capital gains to be reconverted into Indian currency. Recently, the decision of the hon'ble bench of the Mumbai ITAT in the case of Legatum Ventures Ltd. V. ACIT (ITA No. 1627/MUM/2022) wherein it was held that that long-term capital gains of a non-resident or a foreign company, arising from the transfer of unlisted shares or securities of a company would be computed only by reference to the provisions of section 112(1)(c)(iii) of the Act [which specifically exclude foreign exchange fluctuation adjustment]. Section 112(1)(c)(iii) provides that long-term capital gains from transfer of unlisted shares or shares of a private company shall be calculated at the rate of 10% on the capital gains computed without giving effect to the first and second proviso to Section 48; This recent decision has stirred a controversy that if the long-term capital gain had always to be computed by without giving effect to 1st proviso to section 48, then the words *"as computed without giving effect to the first and second proviso to section 48"* in the last portion of section 112(1)(c)(iii) would be rendered otiose/ redundant, and there was no need for the legislature to provide for modification of long-term capital gain for the purpose of levy of tax.
15.	**Section 50B - Rationalization of Slump sale provisions**	It is suggested to provide tax neutrality to intragroup slump sale of undertaking under section 47 of the Act, provided such	Slump sale is a unique concept wherein assets and liabilities of an undertaking are transferred in exchange for lump-sum consideration. Intra-group tax neutrality has been provided to

		undertaking is not subsequently disposed-off within a period of 3 years from the year of transfer.	demerger, however, the same has not been provided to slump sale.
16.	**Definition of demerger u/s 2(19AA) of ITA to be expanded to cover investment/shares of operating subsidiary**	It is suggested that S. 2(19AA) be amended to expressly clarify that shares of operating subsidiaries qualify as eligible undertaking capable of being demerged in a tax-neutral manner under a court-approved scheme. Also, a consequential amendment be also made to Sec. 79 to protect the carry forward of business loss in the hands of the operating subsidiary, being a closely held company, in view of change in shareholding beyond 49% by such court approved demerger	Many a times, businesses are housed in an operating subsidiary company for regulatory or commercial reasons. For instance, extant RBI or IRDA or SEBI guidelines do not permit banking, NBFC, insurance or AMC business to be undertaken along with any other business activity under the same legal entity. Any business group desiring to enter any such regulated business is required to set up a separate SPV/subsidiary to undertake such business.
Suggestions under the Transfer Pricing			
1.	**No 3CEB filing for taxpayers exempt from filing income-tax return – Section 92E**	Considering the anomalous situation, it is suggested that section 92E be amended to provide exemption to non-resident assessee from filing Form 3CEB, where they are exempted under section 115A(5) from filing tax return in India.	• Pursuant to amendment through the Finance Act, 2020, a non-resident assessee is not required to file income tax return in India if it is assessable to tax in India for dividend, interest, royalty or fee for technical services, and the taxes have been appropriately withheld from such taxable income under the provisions of Chapter XVIIA of the Act. • With the exemption from filing obligation of the income tax return in India by the non-residents under section 115A, a question arises about the assessee' s obligation for filing Accountant's Report in Form 3CEB under section 92E of the Act. • Section 92E has not been amended consequent to the exemption under section 115A(5) of the Act. Non-reporting of international transaction in Form 3CEB attracts multiple

			• penalties under sections 271BA, 271AA, 271G and 270A of the Act. • So, a situation arises where a non-resident need not file a tax return in India but would still need to file Form 3CEB to avoid any penalty for non-reporting of the international transaction.
2.	**Block Transfer Pricing assessment to be considered for some issues**	Block Transfer Pricing assessment for 3-5 years may be considered, if not in general, for transactions such as royalty, intra-group services, etc. A detailed assessment in the first year of the prescribed block should be made applicable for the remaining years of the block. The government can prescribe appropriate rules to lay down certain conditions to be fulfilled, similar to what has been adopted as a part of the APA process. (where there is no change in facts and circumstances on year-on-year basis).	As of now, TP assessment is carried out separately for each assessment year irrespective of the nature of the issue. Certain transactions such as royalty, intra-group services, etc., are cyclical in nature and mostly have an impact over a period of time and therefore, they need not be assessed on an annual basis. The practice of a detailed assessment in the first year to the remaining years of the block is followed internationally as well and aligns with the global best practices.
3.	**Keeping regular assessment in abeyance till APA conclusions – Section 143 of ITA**	• Assessment process can be suspended till the APA process for a reasonable period (say for 2 years or so) or till the APA has either been concluded or withdrawn, whichever is earlier. This will relive the taxpayers of large compliance work and will make the APA process more attractive. • Mature tax jurisdictions like Japan, the US, the UK keep the assessment proceeding on hold, till the conclusion or withdrawal of the APA. Indian tax law could be aligned with these global best practices.	• After APA is concluded and arm's length price specified, all appeals on the matter are required to be withdrawn. These create infructuous work process for the tax department, and many times without any revenue gain; large compliance work also ensue for the APA applicant, creating time and resources wastage for both the sides. • As per the CBDT APA Annual Report 2019, the inventory of APA cases is building year after year, given that only 15% of the APA applications get disposed off during the year; and the balance gets added to the inventory. For the rest, assessment and litigation proceedings continue till APA conclusions. For the taxpayer, two procedure tracks—APA process and the normal audit & litigation—run side-by-side.
4.	**Removal of restriction under section 92(3) for unilateral APAs**	APA is a dispute prevention mechanism. It should be taken on a separate footing, so that the outcome of APA is more robust. It will be useful to have a carve out for APAs and MAPs and remove the restrictive effect of section 92(3) of the Act.	• Section 92(3) of the Act is a restrictive tax provision. Under this provision, the taxable income of the taxpayer already reported in the tax return cannot be reduced or the losses cannot be

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

			the excess taxes withheld by the Indian entity from the CBDT under section 119 of the Act. • Getting the refund of the excess withholding tax deducted and paid prior to the conclusion of the APA is very cumbersome. Normal course of filing for refund through revision of tax return often gets hit by the limitation period for revising the tax return. Thus, excess withholding tax becomes an additional tax burden for the group due to lapse of the limitation period.
6.	**Rationalising the APA (Advance Pricing Agreement) solution timeframe**	The process of obtaining fast-track APAs is to be brought in place, **there should be a fixed timeframe to it**. APA renewal process should be simplified atleast in cases having similar nature of transactions. There should be a simplified process for expeditiously completing the renewal applications on a fast-track basis, particularly where the applicant does not have additional international transactions nor are there any change in facts relating to existing international transactions. If original APA conclusion for old APAs is likely to take place in the 4th or 5th year of the APA period, the possibility of rolling over the APA results to a renewal may also be considered.	APAs by its nature offer a proactive and cooperative framework that fosters transparency, reduces the likelihood of disputes, and provides taxpayers with greater predictability in their tax obligations. Therefore, APAs a tool was introduced to boost investor confidence and brings in a high level of certainty for investment decision – CBDT to strengthen the core APA team by allocating dedicated resources to handle backlog of APA cases and the numerous APA Applications being filed by Applicants. This will ensure speedy closure of the pending APA Applications, thereby ensuring tax certainty for the taxpayer and at the same time reduces administration cost with more APAs being filed. There should be a specific timeline for signing / disposal of APA applications, and it should not be more than 2-3 years. In addition, a fast-track mechanism should be put in place, say around 12 month time frame for conclusion of APA for a prospective new investor which would really help in furthering the 'Make in India' agenda. •

7.	**TP adjustment for tax holiday unit on cash repatriation under section 92CE – Section 92C(4)**	• The government may make suitable changes in section 92C(4) to allow tax deduction/exemption holiday benefit to the taxpayers in line with the legislative intent of 2001 while introducing TP provisions.	• Section 92C(4) prohibits tax exemption on the value of TP adjustments under sections 10A and 10B or 10AA or Chapter VIA. Intent of the legislature, as per the CBDT Circular 14 of 2001, in inserting section 92C(4) was to restrict tax holiday benefit on TP adjustments as that would only result in tax adjustment without any consequent foreign currency inflow. • Secondary adjustment provisions were introduced from FY 2016-17 in the Act under section 92CE. These provisions provide for mandatory cash repatriation from the AE for any TP adjustment in the Indian entity, resulting in forex inflow. • Since the very reason for denying tax holiday benefits gets addressed through introduction of section 92CE, there is a requirement to revisit Circular 14/2001 of the CBDT and remove the tax holiday benefit stipulation through an amendment in the Act.
8.	**Streamlining Safe Harbour to reduce APA filings**	• In view of the issues the Government may re-evaluate the safe harbour provisions on three aspects (1) to reduce the class of transactions from the safe harbour and restrict it only for IT, ITeS and business support etc. (2) to provide the safe harbour rates closer to comparable benchmarks with a little premium for certainty and (3) to increase the threshold to cover almost 75% of the companies under this spectrum. This can serve dual purpose of providing tax certainty to taxpayers and easing the burden of the APA.	• Due to present Safe harbour regime, many taxpayers have to continue with the risk of litigation or apply for APA to attain tax certainty. Increase in APA filings every year that increases the burden of APA applications. The APA should involve cases with complex transactions and business models that require in-depth business and economic analysis for setting the transfer prices. • The Notification extending the applicability of Safe harbour rules is released after the start of the relevant previous year which does not provide the assessee any opportunity to plan its taxes and action in advance. • The Indian Government tried to streamline the safe harbour rates in June 2017 to make it reasonable and closer to comparable benchmarks. However, even after 2017, not many taxpayers have adopted the benefit of safe harbour to avoid litigation. The safe harbour benefit has been restricted to very small companies which is making it inaccessible to medium

		(4) Timely issue of notification for extension of applicability of safe harbour rules would allow the taxpayer to assess its tax position in advance.	scale companies. Further, safe harbour rates are still higher than the comparable benchmark which make it commercially unviable for taxpayers to adopt. Moreover, handful of safe harbour applications filed by the taxpayers are only for IT and ITeS. There is hardly any taxpayer for most of the other transactions covered in Safe harbour.
9.	**Guidance on Profit attribution for Permanent Establishments (PEs)**	• Government should provide guidelines for profit attribution to PEs in India and set out its approach for global profit allocations. Transfer pricing analysis is a globally accepted way for profit attribution. Even the APA negotiations are being impacted due to the absence of India's approach.	• Indian tax law only provides Rule 10 under the Income-tax Rules, 1962 (Rules) for the attribution of profits to PEs. Rule 10 requires profit attribution to PE as a reasonable share of global turnover or profits or any other basis as may be reasonable. This mechanism is an ad hoc mechanism without any scientific basis. Indian Government issued a consultation paper in 2019 for providing guidance on profit attribution. However, there were multiple representations made by the taxpayers against the approach provided therein. Hence, that profit attribution approach was not finalised and issued by the Government. India also does not adopt separate entity approach for profit attribution as formulated by the OECD. The separate entity approach is more akin to transfer pricing approach of determining profit allocation to PE based on function asset and risk (FAR) analysis of the PE. Accordingly, as of today, there is no guidance on profit attribution in India which ultimately results into ad hoc global profit allocation to PEs in India and protracted litigation. The PE litigation is one of the major concern for MNEs investing in India. • Infrastructure development is one of the important growth themes of the Indian Government. The Government invites large infrastructure companies including MNEs to bid for these infrastructure projects. Generally, these large infrastructure projects are undertaken by consortium of infrastructure companies. The MNEs set up their branch offices or project offices in India for execution of these projects. These project offices/ branch offices form PEs in India for the purpose of taxation. There has always been litigation in these branch offices or project offices regarding the taxation of offshore and

			onshore element of project work and the attribution of profits to these PEs.
10.	**Clarification on timelines for completions of TP assessments especially in remand-back cases.**	In view of the multiple interpretations and judicial rulings, it is important that a clarification on the timelines and procedure u/s 153(3) be provided.	Section 153 of the I-T Act specifies the timelines within which the TP assessment/reassessment proceedings are to be completed. Section 153(3) provides for the timelines for passing AO order in remand back proceedings from ITAT/HC/SC. The section provides time for 12 months from the end of the year in which the remand back order is issued. However, for an eligible assessee u/s 144C there is no time limit prescribed within which the draft order is to be passed by the AO. Therefore, it is unclear as to whether, in case of remand-back proceedings, the timelines u/s 153(3) subsumes the time for DRP proceedings. Also, both section 153 and 144C are non-obstante provisions and thus it gives rise to multiple interpretations of the law. Hon'ble Bombay HC in a recent ruling in case of Shelf Drilling clarified the position and gave the following rationale: "*Provisions of section 144C inter-alia requires various actions that culminate into the DRP for passing its directions.* • *At none of these stages are there any exclusion provided to the overall assessment timelines prescribed under section 153.* • *Exclusions of section 153 are provided by Section 144C only at the time of passing the final assessment order.* • *The purpose of section 144C is to fast-track a particular type of assessment, and it cannot be considered to mean that the overall timelines prescribed have been given an extension.* • *Section 153 provides various instances when time limits are to be extended and no such extension has been given on account of the provisions under section 144C.* • *Law provides set timelines for every step of the proceedings. Therefore, there is no reason to assume that the proceedings*

			remanded back to the AO, may be done at leisure sans the imposition of any time limit at all." However, in the case of Sanmina SCI India Pvt Ltd, Hon'ble Madras HC held that *"…Sec. 144C was inserted vide Finance (2) Act 2009 with retrospective effect from April 1, 2009 to provide for a scheme of assessment in respect of matters that included Transfer Pricing adjustments and* ***noted that it was a self contained code."*** and once 144C of the Act is held to be a complete code then for all things dealt by it, it would prevail over other provisions including Section 153 of the Act. Therefore, the above two judgements are contradictory in nature and the interaction of section 144C with 153 leaves scope for more than one interpretation.
11.	**Non-resident companies - Removing TP compliance burden [Sections 92D and 92E]**	It is suggested that non-resident taxpayer i.e. foreign entities be excluded from the ambit of TP compliance in India, provided its Indian associated enterprise has undertaken the required compliances, including maintenance of TP documentation, with respect to same set of international transactions under consideration.	The TP compliance requirement for non-resident taxpayers leads to an unnecessary burden on the non-resident taxpayers to undertake compliances and undergo audit, with no incremental value-add to the tax governing machinery, considering that the Indian associated enterprise already has the onus of complying with the relevant regulations for the same set of international transactions from an Indian TP perspective.
12.	**Transfer Pricing Mark up**	It is suggested to streamline Transfer Pricing (TP) regulations to minimize the number of unresolved litigations that have accumulated over the years. By simplifying the TP framework, we can effectively reduce the burden of litigation and promote smoother resolution processes.	Numerous issues and litigations arise because of comparability concerns. It is important to acknowledge that no business can be deemed exactly comparable to another.
13.	**Withdraw certification Form-CEB requirements & include such**	Withdraw filing of Form-CEB & include disclosure of RPT (including ITs, DITs & SDTs) in CIT Return itself.	Separate certification of & filing of Form 3CEB becomes an additional burden and compliance for the Taxpayer. Moreover, the Taxpayer is anyways required to maintain records such

	disclosure as part of CIT Return Form itself	Alternatively, include the reporting of RPTs and whether the same is at ALP or not, as part of Tax Audit Report itself.	transactions as a part of its Audited Financial Statements *(Refer AS18/ Ind AS 24 – Related Party disclosures in FS)*. Contemporaneous TP Documentation under the Indian TP regulations is already in place. Save overall time and effort for both Taxpayer and Taxman. And reduce the overall compliance burden.
		Other Suggestions	
1.	**Timeline for disposal of applications filed under Section 119of the Act**	It is suggested that: • An online mechanism may be introduced on the income tax e-filing platform of the taxpayer to make such applications as a measure of ease of doing business/ tax compliance. • Secondly, timeline for an expeditious disposal of such applications may be specified so that the purpose for which they were enacted is truly met.	• The Income-tax Act provides various reliefs to the taxpayers in case of genuine hardship • For instance, provisions have been carved out wherein taxpayer can prefer an application or claim with the tax authorities for any exemption, deduction, refund or any other relief under this Act after the expiry of specified period. • Practically, it has been observed that the taxpayers filing the applications or claims have been experiencing severe delay in processing of the applications filed before various authorities including Board. • Such delays have been experienced even in cases where Board vide its order has directed to its subordinate officers to dispose off the applications within the certain time limits. • Also, it is observed that the subordinate authorities are not aware of the applications filed before the concerned authorities and do not initiate the proceedings unless a specific report is sought from them. • While the initiative is worthy, absence of any timeline for disposal of such claims and applications has resulted in not subserving the purpose/intent.
2.	**Amendment under the provisions of section 80JJAA of the Act.**	Increase threshold of total emoluments for additional employees from INR 25,000 to INR 50,000 per month to qualify for deduction u/s 80JJAA.	Section 80JJAA of the Act provides deduction to incentivise businesses to employ additional employees. As per the provisions, employees whose total emoluments are more than INR 25,000

	Increase in emoluments threshold for claiming deduction u/s 80JJAA of the ITA.	Increasing emolument threshold shall help in reducing the cost incurred by the company in hiring new employees and support boost employment in India.	per month, inter alia, are not covered in the definition of "additional employees" which leaves out majority of the employees who are gradually entering in the workforce and hence, this provision is losing practical significance.
3.	**Integration between income-tax portals (i.e. Income-tax e-filing portal, reporting portal, TRACES portal, etc.)** Taxpayers need to login to several tax portals to fetch data for compliance and / or for downloading notices / orders; possibility of defaults / delays / inaccuracies in compliance	It is suggested to grant Application Programming Interfaces ('APIs') for integration with income-tax portals (i.e. Income-tax e-filing portal, reporting portal, TRACES portal, etc.)	With the use of APIs, taxpayers will not face problems like inability to get information regarding new data / documents uploaded on the income-tax portal. Moreover, APIs will be very useful for organisations who are responsible to report statement of financial transactions and who are served with a very large number of notices under section 133 of the Income-tax Act, 1961. With the use of APIs compliance will be accurate and timely, which will benefit both tax administrators and taxpayers. From a TDS / TCS compliance perspective as well, taxpayers are required to check reporting portal for validity of PAN, whether the vendor is a 'specified person' as per section 206AB of the Income-tax Act, 1961, check the Lower Deduction Certificate, etc. These processes / checks are done manually by authorised individuals of taxpayers with significant time and efforts on a monthly and quarterly basis. The use of APIs will significantly benefit taxpayers in TDS / TCS compliances.
4.	**ICDS schedule of ITR needs to be synchronized**	It is suggested that ICDS schedule of ITR needs to be synchronized with Clause 13(e) of Tax Audit. Hence, in ICDS schedule of ITR three columns can be mentioned – "Increase in profit", "Decrease in profit" and "Net effect" (similar to Tax Audit). This will reduce mistake apparent from record in 143(1) order processed by the CPC due to technical issues.	The CPC while processing ITR u/s 143(1) make ICDS adjustment of differential amount of first column of Tax Audit (i.e., "Increase in profit") and first column of ITR (i.e. "Net effect").
5.	**Corporate Social Responsibility (CSR) Costs**	It is suggested that the Explanation 2 to section 37 of the Act should be omitted, and a deduction of CSR expenses incurred by the taxpayers pursuant to provisions of the Companies Act should be allowed under section 37 in computing business income.	The Finance (No. 2) Act, 2014 had added a new Explanation 2 in sub-section (1) of Section 37 providing that any expenditure incurred by an assessee on the activities relating to CSR referred to in Section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession and deduction shall not be allowed.

			There is statutory obligation of companies to spend specified sum on CSR activities, such expenditure represents an integral part of conducting business operations of the company. These expenses are neither connected for any personal benefit or gain nor prohibited in law.
6.	**Clause 44 of Tax Audit Report: The taxpayer is expected to provide break up of expenses**	The collation of data expense wise in the required format is a voluminous task and the data may not be available in the required format. Details of sale and purchase is easily available from the **GST returns** and hence this requirement should be done away with.	The clause requires break of expenses under various GST headings viz exempt goods or services, composition scheme, non-registered dealers and registered dealers.
7.	**Rationalizing MSME provisions to avoid deduction of delayed payments on actual payment basis**	It may be clarified that the provisions of non-allowability of expenditure is applicable only where the expenditure is incurred in relation to enterprises which are registered under MSME Act on Udyam portal in line with Hon'ble Apex Court judgement in the case of Silpi Industries Ltd. v. Kerala State Road Transport Corporation & Anr. (Civil Appeal No. 1570-1571 of 2021) wherein it held that only MSEs registered on Udyam portal can claim benefit of MSMED Act.	Finance Act 2023 introduces a new clause (h) in section 43B which provides that any sum payable by the taxpayer to a micro or small enterprise (MSE) beyond the time limit specified in section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 (MSME Act) shall be allowed as a deductible expenditure only on actual payment. The terms "micro enterprise" and "small enterprise" have been defined at clause (e) & (g) to Explanation 4 to section 43B whereby reference is drawn to section 2(h) and section 2(m) of the MSME Act, respectively. In terms of section 2(h) and section 2(m) of MSME Act, an enterprise is classified as a "micro enterprise" or a "small enterprise" depending upon the quantum of investment in the plant & machinery and annual turnover as follows: - Micro enterprise: Investment in Plant & Machinery less than 1 Cr and Annual Turnover less than 5 Cr; - Small Enterprise: Investment in Plant & Machinery less than 10 Cr and Annual Turnover less than 50 Cr. It is not clear that whether the enterprise should also file a memorandum under section 8 that it fulfils the criteria for qualification as a "micro or small enterprise" (in terms of section 7 of MSME Act) i.e. registration on Udyam portal.

			Hence, there is an ambiguity as to whether an enterprise (not registered under the MSME Act) fulfilling the criteria for being recognised as a "micro or small enterprise" under section 2(h)/(m) of MSME Act, shall qualify as a "micro or small enterprise" as referred to in amendment to Explanation 4 of section 43B. It is practically challenging for any taxpayer to identify whether its vendor satisfies the MSE criteria in absence of a simple procedure. Self-declaration may have validation issues.
8.	**There is a need for conducive tax regime to make in India, a data Centre hotspot. Currently, in the APAC region, Data Centres have been set up in Taiwan, Singapore etc. and India is losing out on this opportunity despite the need for Data Centres that will also solve latency challenges.**	Just like manufacturing companies, **the reduced tax rate of 15% may be extended to the Indian companies providing Data Centre services**. Similarly, there could provision of reduced custom duties on import of Servers/ hardware for Data Centre and energy taxes etc. Given that the Data Centre (owned and operated by an Indian affiliate of foreign digital company) would enable provision of products/ services of the digital players to Indian residents, the technology/ process to run the Data Centre is provided by Foreign digital companies, the companies expect that there should be tax certainty such that there is a single entity taxation (in the hands of the Indian affiliate) based on the functions performed and assets/ risk based on arm's length principle. Once that is achieved, based on established principles, there should not be any further taxation on the foreign company	The demand for Data Centres will grow manifold in the years to come as the country further develops, mobile infrastructure transitions to 5G, and fibre to enable high bandwidth connections. **The global players are apprehensive of setting up Data Centres in India due to uncertainty of taxation on operation of data centres.** Further, given the huge capex in setting up Data Centres, employment opportunities in setting up the operation centres etc, as an incentive, the reduced corporate tax rate of 15% may be considered.
9.	**Section 68 – Provide relief from onerous compliance burden to explain 'source of source' of bonafide borrowings**	A carve out should be made in s.68 to exclude genuine borrowings. Alternatively, power may be given to CBDT to notify 'white-list' of bonafide cases such as (illustrative): • Borrowings from banks, NBFCs and financial institutions. • Borrowing made by banks, NBFCs and financial institutions themselves. • Deposits, advances from customers, EMD, Security Deposit etc. accepted in ordinary course of business from customers or vendors.	It is practically difficult for a borrower to ask a bank or financial institution to explain the source where loan is given to borrower and equally difficult for bank or financial institution to determine the exact source when it is raising funds from multiple sources. It is also difficult to ask non-resident debt investors to explain source of their funds. This provision will increase the cost of borrowing for the entire industry and lead to significant litigation.

		This measure of notifying ‘white list’ has been adopted in context of other provisions like gift taxation u/s.56(2)(x), transfer of unlisted shares u/s. 50CA	
10.	**Rectification order**	Due to faceless assessment, the assessee is unable to get rectification order from Ld. Assessing Officer (‘AO) against 143(1) orders till completion of the assessment. Hence, it is suggested that rectification rights for mistake apparent from record in 143(1) order due to technical issues should be provided to the CPC.	As per section 153(1), assessment order u/s 143 / 144 shall be made in 12 months from the end of the assessment year in which the income was first assessable. In case of Transfer Pricing assessment, assessment time shall be extended by further 12 months. Hence, presently the assessee can get relief / rectification order from tax officer only after 24 months for mistake apparent from record in 143(1) order due to technical issues.
		Suggestions under Digital Tax	
1.	**Equalization levy (EQL)** Need for early withdrawal of EQL	With consensus achieved at the Inclusive Framework, the issuance of beneficial clarifications will provide much needed relief to non-residents doing business with India without affecting India’s negotiating position. Such clarifications should therefore be urgently considered. Also, considering that a global consensus on Pillar 1 may be achieved soon, and in light of the fact that India has already agreed to withdraw domestic EL provisions, an early withdrawal could help avoid prolonged litigation on several open issues in the EL provisions and boost investor sentiment	The EL provisions are broad in scope, and there is considerable ambiguity as to its scope and operation. This has led to concerns over its applicability to several transactions that are not ordinarily regarded as online sales or services. .
2	Clarification around the scope of EQL with the scope of EQL being extended by Finance Act 2021.	It is suggested that the provision be amended to provide that only in case activity mentioned at Sr. No. 'e', is carried out online, the same should be considered as online sale of goods and services and the conditions mentioned at Sr. Nos. 'a' to 'd' be deleted.	As per the expanded scope of EQL introduced by Finance Act 2021 the scope of online sale of goods and services include. a) Acceptance of offer for sale; or b) Placing of purchase order; or c) Acceptance of the purchase order; or d) Payment of consideration; or e) Supply of goods or provision of services party or wholly Issue Each of the aforesaid activity mentioned at Sr. Nos. 'a' to 'd' by itself will not lead to the completion of transaction. Only on

			completion of all the aforesaid steps can the supply of goods or services be said to have been delivered.
	Clarification on the applicability of exchange rate for the purpose of EQL	It is suggested the exchange rate mechanism to be adopted for the purpose of computing EQL should be specified.	In the absence of any clarification, the liability to pay EQL is currently being converted at different rates by different taxpayers, thereby not having a uniform approach for the computation mechanism.
	Rationalizing the provisions of EQL	- It is suggested that only the commission earned by the e-commerce operator be subject to EQL. - It is suggested to clarify that EQL is payable when the income from the e-commerce supply or service is recognised by the e-commerce operator as per the method of accounting followed. - It is suggested to clarify that EQL shall not be applicable on consideration **refunded back to the customer**. Therefore, adjustments in same/subsequent quarters should be permissible. - It is suggested that in case of taxpayers who have paid both EQL and tax on royalty/FTS, EQL paid be allowed to be **adjusted against the income tax liability of the taxpayer**. An exemption should also be provided from the applicability of EQL, in relation to the transactions covered under the scope of SEP.	- The e-commerce operators earn only commission income for facilitating the sale of goods or provision of services. As a result, the EQL should be applicable on the commission income earned by the e-commerce operator. - There is no clarity on when EQL is payable when income is recognized as per method of accounting followed by e-commerce operator. Commercial arrangement between the parties may at times requires payment of advance and payment of refundable security deposit. However, the provision currently does not clearly specify the time/point of charging the EQL unlike various provisions of the Act (illustratively withholding tax provisions). - In the absence of any specific exemption earlier, taxpayers to which EQL is applicable would have paid tax on the royalty/FTS as well as EQL on the said royalty/FTS.
		It is suggested that an opportunity to carry the matter in appeal to appellate forums, starting from CIT(A) or JCIT even on the merits of the issue should be introduced.	There is no recourse available to the taxpayer to appeal against the imposition of the EQL if it is believed that it has been wrongfully imposed.
		It is suggested that a mechanism should be introduced for claiming **refund of excess EQL deposited** by the e-commerce	Currently there is no mechanism for refund/ credit of excess EQL deposited by e-commerce operators.

		operator(s) or adjustment of the refund due against future liability.	
		To minimize compliance burden and to promote ease of doing business especially for MSME sellers, government should clarify that TDS provisions will not apply on fees and charges paid by e-commerce participants to e-commerce operator.	E-commerce participants generally pay a fee to ecommerce operators for listing on the platform and other services provided by e-commerce operators. TDS is applicable on such commission. Since such fees is upfront reduced from the net consideration paid to e-commerce participants, TDS is first paid by the seller on such commission and then claimed as a reimbursement from e-commerce operator post filing of quarterly TDS returns. Since the consideration paid to e-commerce participant is also subject to 1% TDS, both put together impacts the cashflow of the e-commerce participant.
	Applicability of EQL provisions on online education - Clarification in relation to universities offering online education	Finance Act 2021 introduced the definition of 'online sale of goods' and 'online provision of services', which is wide enough to cover within its ambit imparting education online. The above definitions may be amended to specifically exclude imparting of education online by foreign universities.	• With the disruptions caused by COVID-19, most educational institutions have built and utilised their online capacities and capabilities to impart education/conduct courses - the activities continue to remain in the nature of teaching by an educational institution. • There is an ambiguity on whether universities providing education on an online platform are liable to pay EQL in India. The applicability of the said provision seems even more challenging in case these universities operate courses on third-party platforms or have logistics partners in India or outside with students based in India. • The Memorandum to the Finance Act, 2020, at the time of introducing equalisation levy, laid down the intent for the introduction thereof. It stated that the levy is introduced to tax those non-resident companies that carry out business activities through digital means without any physical presence in the other country. • The intent appeared to target 'business activities' carried on through digital means. Imparting of education online ought not to tantamount to business and subjecting the same to equalisation levy does not appear to be the intent of the law.

			The matter also involves interpretation on whether such income is considered outside the purview of 'fees for technical services' under various tax treaties.

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