PRE-BUDGET MEMORANDUM - 2009

DIRECT TAXES

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
NEW DELHI

PRE-BUDGET MEMORANDUM - 2009

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A. INTRODUCTION

1.1 The Council of the Institute of Chartered Accountants of India considers it a privilege to submit this Pre-Budget Memorandum to the Government. The memorandum contains suggestions for the consideration of the Government while formulating the tax proposals for the year 2009-2010.

1.2 The Indian economy suffered a slow down during the first quarter of 2008-09. The real GDP growth in the first quarter of 2008-09 decelerated to 7.9% from 9.2% in the corresponding period of the preceding year. Industrial activity in the first and second quarters of 2008-09 has shown mixed developments with indication of a moderation in pace diffusing across the sector. During April-08, index of industrial production rose by 4.9% as against 10% in the same period of 2007-08. Manufacturing output growth, electricity generation and mining activity slowed to 5.2%, 2.3% and 4.1% respectively from 10.6%, 8.3% and 4.9% in the corresponding period of last year. The six infrastructure industries, which together comprise 27% of the IIP, posted a growth of 3.4% during April-August, 2008 as against 7.1% a year ago.

1.3 The service sector with double digit growth (10.2% in April-June 2008 on top of 10.6% in April –June 2008) remained the leading sector of the Indian economy. Services now account for nearly 60% of GDP.

1.4 BOP data for the first quarter of 2008-09 indicate a widening of merchandise trade deficit, a sustained increase in invisibles, some ebbing of net inflows and a lower accretion of reserves. India's merchandise exports during April-June 2008 increased by 22.2% in US dollar terms as compared with 20.7% in the corresponding period of the previous year. Merchandise imports payments rose by 33.3% as against an increase of 21.1% in the corresponding period of last year. Net capital inflows amounted to US $ 13.2 billion during the first quarter of 2008-09 as compared with US $17.3 billion a year ago. Reflecting the movements in current and capital accounts of the BOP, the accretion of foreign reserves amounted to US $ 2.2 billon during April-June 2008 as against US $ 11.2 billions a year ago.

1.5 Inflation, measured by variations in the wholesale price index (WPI) on a year-on-year basis, increased to 11.4 per cent as on October 4, 2008 from 7.8 per cent as at end-March 2008 and 3.2 per cent a year ago. Inflation, based on the consumer price index (CPI) for industrial workers, showed a sharp increase to 9.0 %on a year-on-year basis in August 2008 from 7.3 %a year ago. Year-on-year inflation based on the CPI for agricultural labourers and rural labourers increased to 11.0 %each in September 2008 from 7.9 %and 7.6 per cent, respectively, a year ago. Inflation based on the CPI for urban non-manual employees rose to 8.5 %in August 2008 as compared with 6.4 %in the corresponding period of the previous year. The divergence between the inflation rates based on the WPI and CPIs is explained largely by the steep rise in prices of fuel items and metals which have a much higher weight in the WPI than in the CPIs.

1.6 Revenue receipts of the Central Government amounted to 26.8% of the budget estimates during April-August 2008 as compared with 33.7%in the corresponding period a year ago. As a proportion to the BE, tax and non-tax revenue receipts were 24.7% and 37.7 per cent, respectively, as compared with 24.6 % and 78.4 % a year ago. Total expenditure at 37.2 %of the BE was lower than 39.9 % a year ago. The gross fiscal deficit (GFD) and revenue deficit increased to 87.7 % and 177.4 % of the BE, respectively, during April-August 2008 compared with 68.5 %and 74.9 % in the corresponding period last year. A notable feature of deficit financing this year so far has been the turnaround in mobilisation from small savings deposits and certificates after a decline in the previous year.

1.7 During the first nine months of 2008, the slowdown in global growth spread across developed economies in an environment of heightened uncertainty. Global economic prospects have been dampened by the weakening of the US economy, the wider repercussions of the ongoing financial market crisis and volatility in the energy, food and commodity prices. Concerns about the emergence of protectionist pressures and the possibility of disorderly adjustments to the financial turmoil also carry downside risks to the outlook. According to the World Economic Outlook (WEO) of the IMF released in October 2008, global real GDP growth on a purchasing power parity basis is expected to decelerate from 5.0 per cent in 2007 to 3.9 per cent in 2008 and further to 3.0 per cent in 2009.

1.8 Globally, inflation has softened in several countries (US, Japan and emerging economies in Asia, Latin America and Africa.) in recent months. There has been an overall decrease in prices of food, crude oil and metals since July 2008 which has contributed to the easing in consumer price inflation in India. There has also been a downturn in energy prices in the recent months since the record levels reached in July 2008 with the prospect of a general slowdown in global economic growth. Strains in global financial markets have increased significantly in the third quarter of 2008. Equity markets have weakened significantly as valuations reflected disappointing earnings data in the financial and other cyclical sectors. Pressures in inter-bank money markets, which had persisted since May 2008, began to intensify further during the third quarter of 2008. In response to the rapidly unfolding international financial turmoil, there are continuing measures from monetary policy authorities for active liquidity management.

1.9 In the overall assessment, global economic conditions have worsened and the future path of their evolution has turned highly uncertain. The broadening slowdown of economic activity in the advanced economies is beginning to impact the macroeconomic prospects of emerging economies, with those reliant on exports and on international financial markets for external financing needs likely to be the most vulnerable. Inflation remains elevated and a key risk to global economic prospects. While commodity prices have been coming off their recent heights and are expected to soften further by the futures markets, the pass-through of the recent prolonged escalation is still seeping into headline inflation and may keep it firm at current levels in the near-term. At the current juncture, the deepening of the financial crisis could impact the weakening macroeconomic outlook in advanced economies with second round effects across the rest of the world. Domestically, lowering inflation as soon as feasible to tolerable levels and anchoring inflation expectations remains a key concern. The momentum in industrial and service sector activity is somewhat moderated in relation to the recent high growth phase of 2005-08. The expected improvement in agricultural output should augment aggregate supply and assuage the inflationary pressures. While the financial system in India has so far been reasonably insulated from the carnage in international financial markets, cataclysmic events including the sheer spread of the turmoil and the type of financial institutions that have plunged under, regardless of reputation or size, warrants an intensified watchfulness with a readiness to act swiftly to cushion the economy and the domestic financial system from external shocks.

1.10 In this macro-economic scenario, the Institute submits its Pre-Budget Memorandum for the kind consideration of the Government before finalizing the Budget Proposals for the year 2009-10. Separate memoranda are being submitted in respect of Direct Taxes and Indirect Taxes.

1.11 Suggestions in the Pre-Budget Memorandum – 2009 on direct taxes have been given under the following heads:

I. Suggestions for widening the tax base and increasing the tax revenue.

II. Suggestions relating to Limited Liability Partnership.

III. Suggestions to check tax avoidance.

IV. Suggestions for rationalization of the provisions of direct tax laws.

PRE-BUDGET MEMORANDUM - 2009

DIRECT TAXES

Executive Summary

I. SUGGESTIONS FOR WIDENING THE TAX BASE AND INCREASING THE TAX REVENUE

1. Taxation of agricultural income

The power to tax income from agriculture should be put in the Union List and the Central Government should levy and collect the tax which can ultimately be distributed among the State Governments.

2. Agricultural activities by corporate enterprises

Income from agricultural activities carried on by corporates may be brought into the scope of the tax net.

3. Corporatising education

In case the education boards or universities amend their regulations withdrawing the conditions of recognizing only those institutions which are societies or trusts, then some of these educational/medical institutions may opt for corporatisation and will contribute substantial amount to the revenue every year.

4. Widening the scope of section 44AF

The scope of the section 44AF should be widened to cover all businesses including small scale manufacturing, job workers, dabas, tailors, small restaurants, home delivery out-lets, auto spare servicing, software ancillary units and other small business whose sales, turnover or gross receipts are less than Rs.40 lakhs.

5. Encouraging voluntary compliance – Filing of income-tax return

A provision may be introduced to allow such persons to file return of income and pay tax along with interest and such further penal interest as

may be thought fit. This will encourage voluntary compliance and at the same time there will be no immunity to these persons from the provisions of law.

6. Increase in the rate of TDS for sub-contractors

The rate of tax of deduction at source in respect of a sub-contractor should be increased from 1% to 2% to treat the sub-contractor at par with the contractor.

7. Interest under section 201(1A) to be paid suo-motu.

Interest payable under section 201(1A) should be on self-assessment basis and may be paid voluntarily by the deductor before filing TDS return and the relevant challan needs to be enclosed with TDS return. This will increase the collection and ensure voluntary compliance.

8. Utilisation of PAN and Bank Account Data

There is an urgent need to utilise the existing data with the Income-tax Department scientifically and to identify persons who are not within the tax net. This needs a very focussed strategy and can be initially started as a pilot project in metropolitan cities like Mumbai, Delhi, Chennai, Kolkata etc. For this purpose, a comprehensive analysis is required of PAN data, voter list and the list of bank accounts. For effective utilisation of this data it will be necessary that the bank account gets linked with the PAN.

9. Suggestion for improving the assessees' welfare and the image of the Department

In order to provide a better human face and improve the image of Income-tax Department, a mechanism should be provided in the Act whereby the Assessing Officer is made accountable. This can be done by appointing an ombudsman and such cases can be referred to such ombudsman who shall have the power to award costs to the taxpayer in appropriate cases.

II. SUGGESTIONS RELATING TO LIMITED LIABILITY PARTNERSHIPS (LLPs)

As the taxation aspect of the LLPs is proposed to be incorporated in the Income-tax Act, the following suggestions may be considered:

(a) The definition of "person" given in section 2(31) should be amended to include a limited liability partnership also. Further, section 2(23) may be appropriately modified to define "limited liability partnership" to have the same meaning as assigned to it under the Limited Liability Partnership Act, 2008, "limited liability partnership" and "partner" to have the same meaning respectively assigned to them in the Limited Liability Partnership Act, 2008.

(b) As the limited liability partnership is a body corporate formed and incorporated under the Limited Liability Partnership Act, 2008 and is a legal entity separate from that of its partners, salary being paid to the working partners in accordance with the LLP Agreement should be allowed as a deduction in the hands of Limited Liability Partnership. There should be no disallowance in respect of salary to partners of a Limited Liability Partnership in case of a firm carrying on a profession referred to in section 44AA or which is notified for the purpose of that section. In case of any other Limited Liability Partnership the disallowance may be limited to 60% of the profits.

(c) Salary paid to partners and allowed in the hands of the Limited Liability Partnership should be made taxable in the hands of partners as per the limited liability partnership agreement as profits and gains from business or profession.

(d) The interest paid to partners, if so permitted by the LLP Agreement on the capital contributed by the partners should be allowed to the LLP only to the extent of 12% similar to that of partnership firms. Such interest paid to the partners of the limited liability partnership should

be subject to tax in the hands of the partners as profits and gains of business or profession.

(e) The amount of profits credited to the accounts of partners would be subject to tax in the hands of the partners. The amount of profits, if any, accumulated by the "limited liability partnership" without being distributed to the partners and carried to its reserve etc. should be subject to tax in the hand of the "limited liability partnership" itself. The LLP will be essentially a pass through entity.

(f) The provisions of section 45(3) covering the cases where a capital asset is transferred by a person to the firm by way of capital contribution or otherwise should be made applicable for LLPs also.

(g) Where there is transfer of a capital asset by way of distribution of a capital asset by the "limited liability partnership" to its partners during the period when limited liability partnership continue to exist, it would be treated as a transfer in the hands of the "limited liability partnership". This will be similar to the provisions of section 45(4) of the Act.

(h) In case of winding up of LLP, the provisions can be similar to section 46 of the Act. Thus, if such distribution is on the winding up of the "limited liability partnership", it would not be deemed as a transfer in the hands of "limited liability partnership" but the partners would be liable to capital gains tax. For this purpose, the fair market value of the capital asset distributed as reduced by –

(i) the moneys standing to the credit of the partner's account and

(ii) the amount distributed out of the accumulated profits

would be deemed to be the full value of the consideration in the hands of the partners. The capital contribution of the partners may be taken as the cost of acquisition in the hands of the partners.

(i) The conversion of :

(i) a partnership firm into a LLP

(ii) a private company into a LLP

(iii) an unlisted public company into a LLP

should not be treated as transfer if such conversions conform to the modes specified in the Second, Third and the Fourth Schedule respectively, of the LLP Act. Section 47 may be appropriately amended to give effect to the same.

(k) Provisions of the Income-tax Act may be amended so to as to allow the unabsorbed loss, unabsorbed depreciation, unclaimed scientific research expenditure etc. of a partnership firm/ a private Co./ unlisted company (being converted into LLP) to be carried forward and set off by the LLP for the balance unexpired period.

(l) Assignment and transfer of partnership rights under section 42 of the Limited Liability Partnership Act, 2008 may be treated as a transfer for the purpose of capital gains. Capital contribution of the partner may be a relevant factor to determine the cost of acquisition. Also, appropriate clubbing provisions may be incorporated in the Income-tax Act where such transfer is made in favour of spouse or a minor child.

III. SUGGESTIONS TO CHECK TAX AVOIDANCE

1. TDS in respect of maturity of insurance policies which are taxable under section 10(10D)

(a) A provision relating to TDS should be inserted in Chapter XVIIB to cover such payments where the exemption u/s 10(10D) is denied to the recipient of income from insurance companies.

(b) Where the premium paid is above 20% of capital sum assured, the premium paid certificate (receipt) issued by insurance companies for the purpose of 80C should clearly mention that the qualifying amount for 80C deduction in respect of such premium paid is only up to 20% of capital sum assured and that where there is no sum-assured, the premium paid shall not be eligible for any deduction u/s 80C.

2. Information to be furnished in the Annual Information Return

Section 285BA may appropriately be amended to require information regarding the following financial transactions:

(a) Payment received by tour operators exceeding Rs.1 lakh.

(b) Information regarding Government tenders where the value exceeds Rs.10 lakhs. This information may be provided by the concerned Government Department.

(c) Sales and purchases of shares exceeding Rs.5 crores respectively in the case of day traders. This information can be filed by the concerned brokers who are dealing with the day traders.

(d) Receipt of donations by trusts or Institutions exceeding Rs.1 lakh. Such information may be filed by the concerned trusts or institutions.

(e) Educational fees paid in excess of Rs.1 lakh per annum. The concerned educational institution should furnish the relevant information to the Department.

(f) Compulsory PAN on air-ticket bookings to Information to form part of annual information return under section 285BA

3. Real estate transactions – Uniformity and reduction in stamp duty rates

Real estate business is an area where streamlining the tax laws would yield a large amount of revenue to the Government. It is common knowledge that much unaccounted money is involved in real estate transactions. One of the reasons for understatement of sale consideration is the high stamp duty rates levied by the various State Governments. There are wide variations in the rates of stamp duty levied by various States. The Central Government can take the initiative and bring about a consensus among the State Governments for prescribing uniform stamp duty rates in accordance with a general agreement between the State Governments and the Central Government. This will go a long way in simplifying capital gains taxation and would also encourage disclosure of the correct consideration received from the transfer of capital assets.

4. **Need for strengthening administrative and investigative mechanism**

Any issue on the compliance of tax provisions need to be addressed by strengthening the administrative and the investigative mechanism. The strengthening of the administrative and investigative mechanism may not only help in enforcing the compliance of particular issue but may also help in addressing other issues which go unnoticed otherwise.

5. **Verification of all income-tax returns**

In addition to the above, there are classes of persons who are filing income tax returns but are not declaring their income properly. Either the income is suppressed or various deductions are being claimed which are not legally permissible. With the increase in the work of the Department it is not practicable to scrutinise each and every return. Taking into consideration this aspect the person filing the return takes a calculated risk. To address this, it is important that all the returns filed are thoroughly checked and cross-verified with the information collected through AIR and other sources by the Department.

6. **Evasion of tax - Administrative improvements**

The Assessing Officer while making assessment order verifies all the facts and makes additions and disallowances based on the material and evidences. He should be responsible both for the income which he should have but has not included and at the same time he should also be accountable for the disallowances made and the income which he should not have included but has included. It is important to ensure that the

Assessing Officer takes up the assessment proceedings seriously. When the assessment proceedings are taken up in a casual manner by the Assessing Officer in order to avoid any inconvenience to himself, he resorts to arbitrary additions which otherwise should not have been there had he taken up the assessment proceedings seriously. This may appear to be an exercise to favour the taxpayer but ultimately it will be an exercise to avoid evasion of tax as the Assessing Officer will be perforce required to make out a case where he wants to go ahead with an addition which will help in sustaining those additions during appeal proceedings. Alternatively, he may find out something more during this process which he otherwise is not able to find out.

IV. SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS

1. Definition of "Books of Account"

The definition of the "books of account" under section 2(12A) may be suitably amended to include the electronic data within its ambit. The definition may read as:

"books or books of account" to include ledgers, day-books, cash books, account books and other books whether kept in the written form or as print out or in electronic record like data stored in a floppy, disc, tape or any other form of electro-magnetic data storage devices or if such information or matter is—

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference."

2. Section 2(22)(e)

(a) A concessional rate of tax can be imposed in case of deemed dividend under section 2(22)(e).

(b) Section 2(22)(e) must be appropriately amended so as to exempt those cases where there advance/loan is repaid during the same year.

3. **Need for renaming the term "previous year" and "assessment year"**

   In order to bring clarity, the term "previous year" may be changed to "income year" and all references in the Act may be made to income year only.

4. **Section 10(4)(ii) and 10(4B)**

   The words "Foreign Exchange Management Act,2000"should be substituted in place of "Foreign Exchange Regulation Act, 1973" in the above-mentioned sections.

5. **Section 10(10C) – Rule 2BA**

   The CBDT may kindly clarify as up to what period the condition regarding non filling of the vacancy as prescribed in Rule 2BA(iv) has to be complied with.

6. **Receipt of amount under Life Insurance Policy - Section 10(10D)(c)**

   Instead of any sum received being made chargeable to income tax, only the sum, which is in excess of the premium payments made by the insured to the insurer should be considered as income exigible to tax. Suitable clarifications should be made accordingly.

7. **Family Pension**

   It is suggested that the provisions of the Act should be amended to clarify as to whether family pension received out of the approved superannuation fund on monthly basis (annuity) by a person belonging to the family of an employee is exempt under section 10(13) or whether in terms of Section 10(13) clause (i) payment on the death of a beneficiary is to be construed as one time payment.

   In effect whether any payment from an approved superannuation fund on the death of a beneficiary be it lump sum or recurring in nature (i.e. pension) should be treated as tax free.

8. **"Annual receipts" under section 10(23C)**

   It is suggested that "Annual Receipts" be clearly defined as income of the

hospitals/ educational institutions arising regularly/every year but excluding value of donation received in kind by way of shares, other movable assets, land, hospitals/educational equipment, sale consideration received on disposal of land, shares or other movable property, hospital/educational equipment etc.

Further, it may be specifically provided that donations received towards corpus by way of land, shares or other movable assets are excluded from computation of "Annual Receipts" as prescribed under Rule 2BC of Income-tax Rules.

9. Mandatory application of income by charitable trusts/ institutions under section 10(23C)

Section 10(23C) should be amended to specifically exclude 'corpus donations' from the requirement of mandatory application of income by such trusts/institutions.

10. Restoration of rebate under section 88E

The deduction under section 36(1)(xv) may be withdrawn and rebate under section 88E may be restored. Section 40(a)(ib) may be reinstated providing for disallowance of STT paid from business income.

11. Standard deduction in respect of income from salaries – Need for restoration

The standard deduction under section 16 should be restored.

12. Proviso to section 17(2)(iii) and FBT on ESOPs

It appears that one may take inference of legislative intent of subjecting ESOPs to FBT and not tax the same as perquisite, but the issue remains regarding ESOPs which are not covered by section 115WB(1)(d).

It is suggested that it may be clarified that ESOPs would not be taxable as perquisite in all cases.

13. Clause (v) of proviso 17(2)(vi) of the Income-tax Act, 1961

In view of increased cost of medical facilities the limit needs to be increased suitably.

14. Amendment in Rule 3 regarding valuation of perquisite

There is no justification for considering 10% of the actual cost of movable assets as a perquisite in case the movable assets were already in use for over 10 years. Suitable amendment is, therefore, required in the Rules.

15. Re-fixing of monetary limits in case of HRA/ Transport Allowance/ Children education allowance/ Rent free accommodation etc.

The exemption limits in respect of HRA/ Transport Allowance/ Children education allowance/ Rent free accommodation etc. may be increased appropriately

16. Self-occupied property

For the sake of equity and simplicity, the deduction for interest in case of self-occupied properties may be allowed up to Rs.1,50,000/-, irrespective of date the of loan or date of acquisition/construction of house.

17. Condition regarding acquisition or construction

The condition of completion of acquisition or construction within 3 years of borrowing may be dispensed with.

18. Certificate from the payee

The deduction of interest is subject to a condition that the asssesse furnishes a certificate from the person to whom the interest is payable. This condition regarding furnishing of certificate from the payee is impractical, since the recipient of interest may not always be aware of the purpose of the loan. Such certificate will not serve any useful purpose. The certificate, from the payee if at all considered necessary, may be restricted to the amount of interest payable.

19. Interest on borrowed Capital

The deduction in respect of interest on housing loan in case of self occupied property should be increased from Rs. 1.5 Lakhs to Rs. 3 Lakhs.

20. Section 25AA

Section 25AA does not specifically provide that rent subsequently realised would be taxed only if it was excluded from annual value in the year in which it was due. This may be clarified by amending the section.

21. Disallowed portion of unrealized rent

Where part of the unrealized rent was not allowed as a deduction while computing the annual value, whether the disallowed portion could be deducted from any subsequent realization thereof (to be taxed under section 25AA) is not free from doubt. This may kindly be clarified by an amendment.

22. Deduction from rent realized subsequently

A provision similar to that contained in section 25B (dealing with taxation of arrears of rent) should be made in section 25AA to provide deduction of 30% from subsequently realized rent, since such deduction would have been allowed had such rent been taxed in the year to which it pertained.

23. Tax exemptions to Carbon Emission Rights (CER) credits under Clean Development Mechanism.

Income derived from sale of CER should also be exempted with retrospective effect.

24. Depreciation

(1) Depreciation on books used by professionals

Depreciation on books purchased by professionals be restored to its original rate of 100 per cent.

(2) Restoration of 100% allowance for small items of assets

The proviso should be reintroduced, with a condition that the same would not apply where the total value of such additions during the year exceeds 2% of the written down value of the block of depreciable

assets or Rs.1,00,000/-, whichever is higher. Such a provision will act as a check on the temptation to abuse, but at the same time, will serve the purpose of simplicity. A similar provision exists under the Companies Act, 1956.

(3) Restoration of rates of depreciation across the board for all assets and for all taxpayers

The earlier rates of depreciation on plant and machinery and other assets may be restored.

(4) Section 32 – Computer peripherals

Computer peripherals being an integral part of the computer devices should specifically be included in the definition of computer.

(5) Section 32 - Depreciation in case of slump sale

An issue arises whether depreciation can be claimed on the basis of proportionate number of days by the transferor and the transferee company in case of slump sale considering the proviso to section 32 read with section 170 of the Act.

Section 32 may be amended to clarify the legal position.

25. Deduction of expenditure for mine closure

A deduction under the Income-tax Act, on the lines of section 33ABA may be allowed in respect of mining industry with necessary modification.

26. Section 36- Deductions allowable

(1) Employee's contribution to provident fund, etc. – Section 36(1)(va)

Therefore, it is suggested that a corresponding amendment be also made in section 36(1)(va) in respect of employees' contribution to Provident Fund, etc. to bring it in line with the employer's contribution.

(2) Deduction in respect of non-performing assets for banks - Section 36(1)(viia)

Foreign banks, financial institutions and non-banking financial companies should also be allowed the benefit of a similar deduction in respect of provisions made by them under RBI Prudential Norms.

(3) Section 36(1) (viia)

There is differentiation in the tax treatment for Indian and foreign banks resulting in lack of level playing field. The law should be amended to provide for deduction to foreign banks upto 7.5 % of the total income.

(4) Section 36(1) (viii)

Asset reconstruction companies (ARC) should be eligible for deduction under section 36 (1)(viii).

(5) Voluntary Retirement Scheme (VRS) deductions in case of amalgamation

Instalments which remained to be allowed in the hands of the amalgamating company be allowed in the hands of amalgamated company.

27. Allowability of expenses to meet Social Obligations

Expenses incurred as deduction under section 37(1) to fulfill the responsibility of social obligations of the society who support for growth of the industry for the purpose of business, to satisfy the "Environment & Social Governance" (ESG) should be allowed..

28. Expenses not deductible owing to non-deduction/ non-remittance of tax at source.

(1) Section 40(a)

Section 28 to section 44D are meant to compute the profits of the business or profession and should not be used to enforce compliance in respect of tax liability of other persons. The applicability of section 40(a) in respect of payment to a non-resident may be justified because such non-residents are not easily traceable and as such the tax liability of such persons gets compensated by denial of the benefit to the deductor. In the case of residents the traceability of the deductee is not a problem. Moreover there can be a practical problem where the deductor has failed to deduct tax and the deductee has paid tax on such income either by way of advance tax or by way of self-assessment tax and in such a situation the deductor cannot deduct tax again from the deductee and the benefit of deduction of such expenditure shall be lost forever as the condition of the proviso for claiming the deduction in the subsequent year when tax is deducted and paid shall never be fulfilled. In case the revenue is of the view that there is not enough deterrence under the Act to enforce the compliance of TDS provision, the remedy should be sought under the TDS provisions by increasing the penalty or by way of better administration rather than computing the business income in a manner which does not bring to tax the real income earned from the business or profession but which actually results in taxing expenditure which is against the fundamental principles of income-tax. Further in clause (iii) of section 40(a) a proviso similar to section 40(i)(a) be added.

(2) Section 40a(ia)

The assessee should be given a choice to claim the expenses as per pre-amended provisions or as per current provisions, since there might be genuine difficulty in certain cases.

(3) Section 40a(ia)

The proviso below section 40(a)(ia) may be deleted and a new sub-section may be introduced in section 155 allowing rectification in that very year to which the expenditure pertains to, on the assessee producing evidence of payment of the tax deducted or evidence that the deductee has included the income received by him from the deductor in his return of income and has paid tax on the income declared by him.

Alternatively, the expenditure on interest, commission, brokerage, fee for professional services, fee for technical services payable to a resident or amount payable to a contractor or sub-contractor may be allowed as a deduction provided the relevant tax deductible at source has been deducted and paid before the date of filing of the return of income.

(4) Section 40(a)(iii)

A proviso similar to one appearing in sections 40(a)(i) / (ia) of the Act should be inserted in clause (iii) so that a deduction for salary payment is allowed at a later date, when the tax on such salary has been paid or deducted therefrom.

29. Removal of limit to the salary of partners-Section 40(b)

The partners of professional firms should be allowed to get salary on the similar basis as are allowable to directors in the case of the companies.

30. Expenses/ Payments not deductible in certain circumstances

(1) Payments to persons referred in section 40A(2)(b)

Considering the concept of materiality, the applicability of this provision should be restricted only to payments in excess of Rs.5 lakhs to a single payee in a year in respect of purchase of goods and payments in excess of Rs.50,000/-to a single payee in a year for other purposes.

(2) Section 40A(3)/Rule 6DD

Insertion of a clause on the lines of erstwhile clause (j) is suggested in section 40A(3) itself.

The following payments may be also prescribed as exempt under Rule 6DD:

a) payment of octroi at octroi posts;

b) payments to small transport operators, or drivers, towards freight;

c) payments at public auctions;

d) other payments where the nature of the transaction is such that it is to be ordinarily paid only in legal tender.

(3) Section 40A(3) - Direct cash deposits in banks due to contractual obligations

There is an urgent need to exempt such direct payments into bank account of the payee arising out of genuine contractual obligations from the scope of section 40A(3). The categories of the payees in respect of whose transactions such exemption shall apply may also be stated to avoid any abuse of this relaxation.

(4) Payments otherwise than by crossed cheques or bank drafts - Sections 40A(3), 269SS and 269T

Section 40A(3), section 269SS and section 269T should be amended so as to discourage only payments made in cash or by bearer instruments like bearer cheques, while payments which leave a trace in the banking channel should be expressly permitted, to avoid litigation. This will facilitate trade, without sacrificing the objective of these sections.

(5) Increase in ceiling limits

The existing monetary ceiling limits in various sections have been fixed long ago and need revision upwards. The following suggestions are made in this regard.

Section	Existing ceiling	Suggested ceiling
40A(3)	Rs.20,000	Rs.50,000
269SS	Rs.20,000	Rs.50,000
269T	Rs.20,000	Rs.50,000

31. Deductions to be allowed only on actual payment

(1) Deduction under section 43B – to cover only statutory deductions

The scope of section 43B should not be extended to contractual payments, such as leave encashment, but should be restricted to statutory payments only.

(2) Section 43B – Slump sale

The section specifically does not provide for the time of claiming deduction in case of slump sale. The following issues usually arise at the time of slump sale for claiming deduction under section 43B of the

Act:

- ? **Whether the transferor company should claim deduction at the time of slump sale considering it as actual payment?**

  or

- ? **Whether the transferee company should claim deduction under section 43B when it actually discharges the obligation in respect of liabilities taken over?**

The section may be amended to clarify the legal position.

32. Presumptive taxation of professional income

Presumptive tax provision may be introduced in respect of professional income also. Accordingly, 20% of the gross receipts may be deemed to be income of the year. The maximum limit of gross receipts for this purpose should be Rs.40 lakhs.

33. Section 45(1A) - Charging profits and gains arising from the receipt of any money etc. under an insurance

The reference to damage in the section may be omitted.

So far as destruction of a capital asset is concerned, a distinction may be made between a depreciable asset and non-depreciable asset.

Suitable amendments should be made in section 50.Section 45(1A) should apply only when a non-depreciable capital asset is destroyed by flood, fire etc. and insurance claim is received.

In order to encourage investment of the insurance moneys in the modernisation of the assessee's business it is suggested that exemption may be granted in respect of so much of the capital gains as is invested in new plant and machinery.

Insurance moneys to the extent taxed under the provisions of section 45(1A) should not again be required to be deducted from the written down value of the block of assets.

34. Section 44BB – Project-wise computation

Suitable amendments may be made in the section to specifically provide for such contract / project wise computation.

35. Capital gains on slump sale & on receipt of insurance claim - Sections 50B and 45(1A)

In order to ensure that there is no litigation as to the applicability of both the provisions of section 47 and section 54 to section 54G to capital gains computed under section 50B, it is suggested that section 50B be made a part of section 45, and that the provisions of sections 48 and 49 be modified by the provisions of section 50B. It is further suggested that the capital gains under sections 45(1A) to 45(6) be expressly made subject to the exemptions under section 54 to 54G.

36. Conversion of stock-in-trade into capital asset

The said transaction should be regarded as a transfer and consequently section 2(47) may be amended. A section may be drafted on the lines similar to section 45(2) to provide that the difference between the fair market value on the date of conversion and the purchase price of stock in trade is to be deemed as business profits to be taxed in the year in which capital asset is sold. The fair market value on the date of conversion should be deemed as cost of acquisition of the capital asset.

37. Distribution of capital assets to partners - Section 45(4) - Removal of serious hardships

Section 55 should provide that the cost to the partner will be the value on the basis of which the firm has been assessed to capital gains.

38. Transactions not to be regarded as 'transfer' - Section 47

(1) Extension of scope

Section 47 therefore needs to be expanded to cover transfer of shares in a foreign company by a resident or domestic company pursuant to a merger or demerger abroad, provided that such merger or demerger is exempt from tax

under the domestic tax laws of the foreign country in which such merger or demerger takes place.

(2) Further transactions for exemption under section 47

Further, taking into account the increased globalisation of the Indian economy, and consequent holding of Indian assets by many foreign companies, the following transactions in respect of Indian assets should also not be regarded as transfer under section 47 :

(a) amalgamation of a foreign subsidiary with foreign parent company;

(b) transfer by a foreign parent company to a wholly owned foreign subsidiary;

(c) transfer by a wholly owned foreign subsidiary to its foreign parent company; provided that such transfer does not attract tax on capital gains in the country in which the transferer company is incorporated.

39. Withdrawal of exemption – Section 47A

Even in such cases, the capital gain exempted earlier should be taxed in the year of violation of the condition, and not in the year in which the exemption was granted. This would also result in uniform treatment of withdrawal of exemption under all sections dealing with exemption of capital gains.

40. Indexed cost of acquisition - Section 48

Where the asset became the property of the assessee by any of the modes specified in section 49(1). The benefit of indexation of cost should be given w.e.f. the year in which the previous owner acquired the asset. Suitable clarificatory amendment may be made.

41. Section 50C

Section 50C which provides for adopting value for stamp duty in the place of actual consideration is similar to section 52(2) withdrawn earlier due to Supreme Court decision in KP Varghese case, 131 ITR 597. We have earlier expressed our reservations in regard to this provision. We reiterate the same for the following reasons:

(a) Guideline value is not fixed in a scientific manner by the State Government authorities.

(b) Guideline value is fixed for a particular survey number or division number encompassing several properties whose market value can never be the same.

(c) The concept of real income gets affected and capital gains will be computed on basis of notional figure.

(d) Guideline value is periodically increased in some States even though there is no corresponding increase in the market value.

(e) Guideline values were influenced by the peak rates prevailing during 1996-97 after which the real estate market crashed down but guideline value has not been correspondingly reduced.

(f) Even under Chapter XXC, guideline value never influenced the decision to purchase any property as the Appropriate Authority always appreciated that market value is different from guideline value. Guideline value is one of the indicative factors but not conclusive as to the fair market value of a property.

(g) Any understatement of consideration should be tackled by investigation mechanism and not by such an amendment.

(h) Invariably the buyer has to bear the stamp duty. If he goes on appeal against value for levy of stamp duty, it is unjust to deprive the seller assessee in getting the benefit of reference to valuation officer.

(i) Reference to valuation officer and the value so estimated can be subject matter of prolonged litigation without ultimate increase in revenue.

(j) Computation of capital gain on the basis of unrealised notional value will lead to difficulty in availing exemption by making eligible reinvestment.

(k) Even in cases where transactions are approved by public charity commissioner, Reserve Bank of India, Appropriate Authority (up to 1.7.2002) invoking guideline value will lead to anomalous situations.

(l) This provision is prone for subjective assessment and prolonged litigation on complex issues/disputes.

42. Capital Gains not to be charged on Investments in certain bonds - Section 54EC

Placing limit of Rs.50 lakhs per investor per year is a restrictive step, more so when the funds collected shall be available for infrastructure needs of our country. It is, therefore, suggested that the proposed amendment may be withdrawn.

43. Investments in residential house property for the purpose of availing exemption under sections 54 and 54F

Section 54 provides for exemptions from long-term capital gains on sale of house property where the capital gains are invested in purchase or construction of a residential house property within the prescribed period. Similarly, section 54F provides for exemption from long-term capital gains on sale of a long-term capital asset where the net consideration is invested in the purchase or construction of a residential house property within the prescribed period.

From a plain reading of these sections it appears that the exemption would be available even if the investment is made in a house property located abroad. It does not appear to be the intention of the legislature. This may be clarified.

44. Cost of Acquisition- Section 55

(1) Advancing the date of option of fair market value as cost of acquisition

Initially, the option date was 1st day of January, 1954. It was amended to 1.1.1964 w.e.f. 1978-79 assessment year. Subsequently it was amended to

1.4.1974 w.e.f. assessment year 1987-88 and 1.4.1981 was substituted w.e.f. 1993-94 assessment year.

It is suggested that the option date should be advanced to 1st April, 1991.

(2) Deeming of nil cost for all intangible business assets – Section 55(2)(a)

The provisions of section 55(2)(a) have been extended by the Finance Act, 2001 to cover trademarks and brand names of a business. To avoid confusion as to the applicability or otherwise of these provisions to a particular type of intangible asset, it is suggested that section 55(2)(a) should apply to all intangible assets of a business unless the cost was paid for acquisition.

45. (1) Condition regarding holding fixed assets

This condition should not be applied, if fixed assets of the amalgamated company are destroyed due to flood, fire or action by an enemy or any other natural calamity.

(2) Carry forward of business loss on amalgamation - Section 72A

The benefit of set-off under section 72A should be available to the amalgamated company in all amalgamations, and not merely to those specified companies.

(3) Additional conditions under section 72A

Both the conditions for the amalgamating companies are unworkable, and in fact, they are also capable of manifold interpretations. In fact, these conditions may not serve the purpose for which section 72A is introduced. Therefore, that these conditions under section 72A(2)(a) should be deleted w.e.f. 1-4-2004.

46. Section 79 vis-à-vis Section 80IA

Appropriate amendment be made so that the set off of losses as per section 79 should be taken into consideration first and deduction under section 80IA(5) should be on the net income after such set-off

47. Section 80AC, 10A and 10B-Consequences of delay in filing return of income

A suitable authority should be empowered to allow such carry forward of losses or allowance of such expenses on application by the assessee in genuine cases.

48. Increase in limit -Deduction u/s 80C

Section 80C may be amended to increase the limit of deduction available from Rs.1 lakh to Rs.2 lakhs with a condition that an amount of Rs.1 lakh should be invested in shares of companies belonging to infrastructure sector.

49. Section 80IA

(1) Exemption to be extended to the re-constituted power utilities.

The deduction under section 80IA should also be provided to the re-constituted power utilities.

(2) Completion time limit to be increased for power projects

A good amount of investment on power projects (generation and distribution) is under planning /execution stage. The completion time limit needs to be increased from 31.3.2010 to 31.3.2015 so as to facilitate sizable investment in this sector.

(3) Section 80-IA(4)(iii)/ 80-IAB (second proviso)

(i) Even if the operation and maintenance is transferred, it may be clarified that the benefit shall be available to the developer for income arising from development activity.

(ii) The developer should get benefit in respect of its rental income from the lease, irrespective of whether the income is assessed as income from house property or as Profits of business of the developer.

(4) 80-IA benefit to cross country natural gas distribution network

Similar benefit may be extended to cover distribution networks in case of all energy fuels.

(5) Section 80-IA – Oil and gas exploration and production

It is suggested that the oil and gas exploration and production industry be given 'Infrastructure' status and the benefits of section 80-IA may be extended accordingly.

(6) **Section 80-IA(13)**

The correct reference is "clause (iii) of sub-section (4)". The provision may be accordingly amended.

(7) **Deduction for profits of new industrial undertakings - Section 80(IA) & 80(IB)**

The deduction should be available to both the companies in such year, because profit earned by each one of them is only a part of the total profits of the unit. Since the deduction is allowed as a percentage of the profits, there is no double deduction in such a case.

Further, the benefit for all types of enterprises should be available under similar conditions.

(8) **Deductions in respect of profits and gains from certain industrial undertakings engaged in exploration, excavation/manufacture, transportation, regassification etc. of NG/LNG**

NG/LNG is the main source of feedstock for manufacturing of fertiliser and generation of power. Accordingly, an undertaking, which is engaged in exploration, excavation/ manufacture, transportation, regassification etc of NG/LNG should also be allowed the deductions u/s.80-IB of I.T. Act.

50. Section 80IB

(1) **Incentive for affordable housing**

Incentive, say under section 80-IB, should be given to the assessees engaged in construction of such affordable houses or components of affordable housing. It is further suggested that the exemption limits should be fixed on the basis of the cost of the house and not the area.

(2) Section 80-IB (10)

The absolute limit of 2000 sq. ft. may be deleted and this amendment may be made effective from 1.4.2005.

(3) Section 80-IB (11A)

For the words "processing, preservation and packaging" the words "'processing and packaging' or 'preservation and packaging'" may be substituted.

These amendments may be made effective from 1.4.2005.

51. Section 80IC- Special provisions in respect of industrial undertakings in certain special category States

The law may suitably be amended to bring out clearly that for the purposes of the grant of the benefit the initial year will be the year in which the production is commenced as a result of such substantial expansion.

52. Re-introduction of deduction under section 80L

T***he provisions of section 80L be re-introduced to cover interest on saving bank accounts upto Rs.5000/-.***

53. Deduction in respect of royalty on books – Section 80QQB

Clause (b) of the Explanation to the section should be amended by deleting the word 'commentaries' from the list of exclusions.

In order to ensure that the deduction really benefits those for whom it is intended, it is suggested that the benefit should not be restricted to income derived from the exercise of a profession, but should be available to any author of such books.

54. Deduction in respect of royalty on patents - Sections 80RRB and 155(17)

Patents registered anywhere in the world should be eligible for the benefit of this deduction.

When the revocation of a patent takes place the disallowed deduction should be treated as income of the previous year in which such order of revocation or exclusion is received.

55. MAT-115JB

(1) Amendments to the definition of 'Book Profit'

(i) Deduction available under sections 80-IA and 80-IB should be excluded from the ambit of MAT provisions and in this respect, earlier provisions as contained under section 1l5JA should be reverted back to.

Infrastructure projects covered by section 80lA and industrial units in backward area covered by section 80IB should not be indirectly subjected to tax by MAT provisions.

Alternatively, the deduction should be allowed to units existing as on 1st April 2000 and may not be allowed in case of units set up on or after that date.

(2) Carry Forward of losses

The section needs to be amended to include loss carried forward under section 72A on an amalgamation.

(3) Deduction of depreciation and loss

Clause (a) to the Explanation to the section should be amended to provide that book profits should be computed after deducting the full amount of unabsorbed book losses including book depreciation.

(4) Scope of exemption from MAT

It may be clarified that the exemption from MAT to a "developer" is available in respect of income arising from an undertaking or enterprise engaged in

(a) developing a SEZ,

(b) developing & operating a SEZ and

(c) developing, operating and maintaining a SEZ.

(6) Section 115JB(6)

It may be clarified that the relevant income of such entrepreneur or developer shall be excluded while computing book profits under

explanation to section 115JB(2).

(7) Long term capital gains

As it would be unfair to single out one category of assessees and deny them the benefit of STT regime, it is suggested that the amendment made by Finance Act 2006, be withdrawn with retrospective effect.

Without prejudice to the above, in case the said amendment has to be retained it should be provided that such corporate aseessees who are hit by the amendment would be entitled to the credit of STT as tax paid.

(8) Oil exploration and production

Oil exploration and production companies should be exempted from MAT to promote mineral oil exploration and production sector.

56. Section 115-O(6) - Dividend Distribution Tax

Section 115-O(6) may be amended to provide the mechanism for computation of dividend which will be exempt from dividend distribution tax.

57. Fringe Benefit Tax

Option to prove lesser fringe benefits

It is suggested that the provisions of FBT may be suitably modified and an option may be provided on the lines given under section 44AD, 44AE, 44AF to the effect that in the case of those employers who claim that the fringe benefits extended by them to the employees are less than what is computed under the deeming provision the employer should maintain the accounts for such expenditure and get the same audited.

Threshold limit

Presently, this provision applies to all persons other than individual and HUF falling within the definition of the term "employer" and there is no threshold limit. This tax is payable by small firms and companies. Though such firms and companies may have employees where none of the employee's income may be more than the amount not chargeable to tax.

Further, there may be many employers whose liability will be very minimal and it may not be cost effective to collect FBT from such persons. It is suggested that a threshold limit should be prescribed.

Average rate of tax

Further, the rate of tax of 30% may not be justified as income of all the employees may not fall in the tax bracket of 30%. As clarified in the circular dated 29th August, 2005, FBT is a surrogate tax being the tax of the employees to be borne by the employers and, if that be so, the tax rate applicable to the employee is an important consideration. Under the deeming fiction created under the existing provision, no distinction has been drawn in respect of the employees who are neither liable to pay tax or liable to pay tax at a lower rate or at the maximum rate of 30%. Further, with every employer it may be a normal presumption that out of the total number of employees a very few employee may be falling in the highest tax bracket and as such to tax the value of the fringe benefits at the highest tax rate may not be appropriate. To avoid this hardship and at the same time for the sake of simplicity, it is suggested that the FBT should be levied at the average tax rate of 20 per cent.

Concessional rate for professionals

As per the provisions of section 115WC(2), the value of fringe benefit in respect of expenditure incurred on conveyance, tours and travels, use of hotel, boarding and lodging is to be taken at 5% for employers like pharmaceuticals, computer software etc. The reason for giving this concession was that a large amount of expenditure is being incurred under these heads a substantial portion of which is not for employees. No concessional rate has been provided in the case of professionals. It is an admitted fact that in the case of professionals a large amount of expenditure is incurred on conveyance, tour and travel and hotel, boarding and lodging etc in discharge of their professional duties which has nothing

to do with the fringe benefits provided to the employees. Accordingly, the concessional rate of 5% in respect of the specified expenditure should be extended to the professionals on the line on which the concession has been given to the pharmaceuticals and computer software industry.

Exemption to those covered by presumptive taxation

There are certain classes of employers who are covered by presumptive method of taxation and such employers are not required to maintain books of accounts particularly those engaged in retail trade having a turnover of Rs.40 lakhs, contractors and transporters. The existing provision is applicable to all employers covered by the definition of Section 115W(a). In the absence of books of account it may not be possible to compute the value of fringe benefits liable for FBT. As such, there is a need either to exempt this class of employers or to prescribe a mechanism for the value of fringe benefits in such cases.

Payment of advance tax on estimate basis

As per the existing provisions of FBT, an employer is required to pay tax every quarter on the basis of the value of fringe benefits provided or deemed to have been provided in each quarter. The payment is to be made within 15 days from the end of the relevant quarter. Not only that, the payment for the last quarter is to be made 15 days before the end of the relevant quarter. Further, there is no threshold limit prescribed for making the payment in quarterly instalments. As such, every employer howsoever small the amount may be of the FBT, is required to deposit the same in 4 instalments which goes to increase the paper work considerably. Further, computation of the actual value of the fringe benefits for each quarter may not be possible for every employer except a few listed companies which are required to declare their quarterly results and for them also the period given for declaring quarterly results is not 15 days. Taking into consideration the above

difficulties it is suggested that that provisions regarding payment of FBT in advance may be modified as under :

(i) The FBT be paid in advance on the basis of yearly estimate made by each employer exactly on the line which is presently done for the payment of income tax.

(ii) The payment should be allowed to be made along with due dates for payment of advance income tax as it will go to reduce the paper work.

<u>Adjustment of income-tax against FBT and vice-versa</u>

As per the provisions of section 115WA, FBT is a tax in addition to income tax and as such this amount should be paid along with the income tax and accordingly adjustment for any excess tax paid should be allowed against FBT and vice versa. This will not only reduce the administrative work but also avoid the hardship which otherwise will be caused, as an employer may be required to pay interest in respect of liability on account of FBT and, on the other hand, there may be refund of tax under the regular income tax. Further, the due dates for the payment of advance FBT should be the same as that of the advance income-tax. A threshold limit on the lines prescribed under section 209 for payment of advance income tax should be provided. Further, liability to pay interest in case of short-fall of payment of FBT should be there only when the amount of the tax paid is less than 90% of the total tax assessed.

<u>Penalty for delay in filing the return</u>

As per provisions of section 271FB, a penalty of Rs.5,000 has been prescribed in case the return is filed beyond the due date of filing the return. This provision is inconsistent with section 271F of the Act, whereby a penalty for delay in filing the return is leviable only when the return is filed after the end of the relevant assessment year. It may be recalled that by the Income-tax (Amendment) Act, 1987 the provision for the levy of penalty for delay in filing the return was rationalised. Section 271(1)(a) under which a penalty was computed on the basis of each month of delay was in operation and the same was substituted by section 234A of the Act. This section continues to be there as on date as well as section 115WK which is exactly on the lines of section 234A. As such, there is already a penal provision for delay in filing the return. Thus, firstly there is no need to have a separate provision for the levy of penalty in case of delay in filing the return. Secondly, even if it is required, a penalty should be leviable only if there is a delay beyond the end of the assessment year and not before. Further, it is suggested that the penalty even in such cases should not exceed the amount of the tax involved.

Need for audit provision

The fringe benefits tax is an independent tax governed by the provisions of Chapter XII-H. There are separate provisions providing for the administrative procedures in connection therewith. Form No.3CD was amended by Notification No.8/2006 dated 10th August, 2006 whereby Annexure II was inserted to Form No.3CD containing the details to be furnished for the purpose of valuing the fringe benefits. However, it is felt that a separate provision providing for audit of fringe benefits is necessary in the Income-tax Act. Appropriate changes may also be effected in the form of audit report in Form No.3CA/3CB. The ICAI can provide relevant inputs in this regard.

(2). Free Offers

The term 'sales promotion including publicity' may be defined.

(3) Section 115WKA – Recovery of fringe benefit tax by the employer from the employee

An amendment may be made in section 115WKA or a separate section may be introduced to specifically provide for non taxability of the recovery of such FBT by adjusting such recovery against the employer's FBT liability.

(4) FBT provisions vis-à-vis provisions of section 17(2)(iii)

The provisions of clause (iii) of section 17(2) of the Act should be amended to the effect that the benefits which are chargeable to FBT will be excluded from

the scope of personal taxation.

This would avoid the unintended taxation of the benefits provided by the employer to the employee and, thus, would avoid otherwise avoidable litigation when the assessing officer attempts to tax perquisite (benefits) in the hands of the employee when the employer has already paid FBT by on

(5) Scholarships

Scholarships are given to the children who excel in their education for further pursuing higher education. This is also in line with national policy of encouraging education. Misuse of exemption of scholarship could be easily avoided by providing a ceiling under section 10(16) say Rs.500 to Rs.1000 PM. Alternatively any sum paid beyond a ceiling per student may be brought under FBT. This is essential to ensure that genuine students do not suffer and only abnormal scholarships given with the objective of tax avoidance gets covered under FBT.

(6) Admissibility of FBT as deduction

Since FBT is also (indirectly) a tax on the income of the employee (benefits enjoyed by the employee) but borne by the employer, deduction of such FBT should be allowed in the hands of the employer. This would require removal of sub-clause (ic) to section 40(a) and a corresponding clarificatory amendment to sub-clause (ii) to section 40(a).

(7) Levy of FBT on overnight stay for flight crew and in-flight services to passengers and crew

Overnight stay for Flight Crew and in-flight services to passengers and crew should not be liable for FBT.

(8) Amendments by Finance Act, 2006

The term "person of repute" is an ambiguous term and would be open to multiple interpretations. Hence the term may be defined.

(9) Tax adjustment

(a) The criteria of 12% and 36% should be given for first and second quarter respectively under section 115WJ on the similar lines as under section 234C which governs calculation of interest on shortfall or non payment of advance tax on Income tax.

(b) Applicability of Surcharge in case of Fringe Benefit Tax

The exemption limit for surcharge applicable in case of income-tax should be made applicable in the case of Fringe Benefit Tax also.

58. Search and seizure

(1). Assessee's explanation of seized and requisitioned assets

Where the assessee files a statement explaining the source of seized and requisitioned assets the Assessing Officer should issue an order accepting or denying assessee's statement. Such an order should be appealable under section 246A

(2). Seizure of stock-in-trade

There is a need to amend section 132(3) to prevent an authorized officer to issue a prohibitory under section 132(3). Unless, an amendment is carried out, an authorized officer will continue to have the permission to put the stock-in-trade under prohibitory order and prevent the disposal of the same for a period of sixty days. This suggestion has to be carried out in order to ensure that the amendments made by the Finance Act, 2003 are truly effective.

59. Filing of Revised Return under the provisions of section 139(5)

Since intimation u/s. 143(1) cannot be considered as an assessment order, the assessee should be allowed to file the revised return even after serving of the intimation u/s 143(1) on him. However, such revised return should be filed before the expiry of one year from the end of the relevant assessment year or before completion of the regular assessment u/s 143(3). Hence, suitable amendment should be made in section 139(5).

60. Defective Return

(1). E-filing v. Explanation to section 139(9)

The provisions of the Act and the rules need amendment in view of the objectives of e-filing, particularly the ones referring to the defective return in Explanation to section 139(9).

(2). Annexure-less return

(a) Explanation to section 139(9) may be amended appropriately.

(b) Section 184(2) and section 184 (4) which require filing of partnership deed along with the return of income may also be amended appropriately.

61. Hardship arising out of the Apex Court's decision in *Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC)*

Appropriate amendments may be made to enable the assessee to get relief during the assessment proceedings by methods otherwise than by way of filing a revised return.

62. Undue delay in giving the effect of Commissioner of Income Tax (Appeals) [CIT(A)]/Income Tax Appellate Tribunal (ITAT)/Courts' order

Suitable provision should be made in tax laws so as to make the AO accountable to give the effect of CIT(A)/ITAT/Courts' order within reasonable period, say one month, failing which the assessee should be entitled to adjust the amount of refund as per his own calculation while making payment of advance tax Moreover, instead of interest @ 6% p.a. interest @ 12% p.a. should be paid to the assessee for any delay in grant of refund.

Specific provision should be made in the tax laws to allow interest on delayed refund of interest also.

63. Issue of notice under section 143(2)

Notice has to be issued before the end of the financial year and the assessment is to be completed before the expiry of one year from the end of the financial year in which the return was filed so as to recover the tax at an

early date and thereby the matter could be settled expeditiously.

64. Method of accounting and accounting standards

The Ministry of Finance and the ICAI may form a group to discuss the same in detail. Alternatively, the Institute can go in detail and give its recommendations to the Ministry.

65. The need for withdrawing section 145A in view of Accounting Standard 2 (Revised) Valuation of Inventories becoming mandatory

The complicated computation required for complying with the provisions of section 145A will not generate any extra revenue as the impact of section 145A is revenue neutral. Hence section 145A needs to be deleted.

66. Sections 147 and 148

Definite procedural steps may be legislated in section 147/148 to make the procedure mandatory. This would also enable review by appellate authorities [CIT(A)/ ITAT] of the speaking order to be passed by the Assessing Officer in examining the validity of proceedings under section 148/ 147. This will have concomitant benefits on the entire assessment process.

67. Section 153C - Assessment of income of any other person

Section 153C could be amended as follows:

153C(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents or assets seized or requisitioned belongs or belongs to a person other than the person referred in section 153A <u>represents either wholly or partly income or property which has not been, or would not be disclosed</u> for the purposes of the Income Tax Act, 1922(11 of 1922) or this Act , then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person

and issue such other person notice and assess or reassess income of such other person in accordance with the provision of section 153A.

(2). The provisions of section 153C may be amended in such a manner that the Assessing Officer must record the reasons for his belief on the basis of the material found before initiating proceedings under section 153C.

68. Rectification of mistakes

(1). Passing of an order under section 154

Reasonable time limit (say 3 months) should be provided for disposal of application filed by the assessee u/s.154. In case the application filed by the assessee is not disposed of by the Assessing Officer/Appellate Authority, the mistake should be deemed to have been rectified.

(2). Suitable mechanism be put in place in the law to facilitate filing of appeal against this and adjudication by CIT(A).

(3). Section 154

An option may be provided to the assessee to appeal against the failure of the Assessing Officer.

69. Non-speaking orders

The Act should contain the procedure requiring the Assessing Officer:

(i) to state all the facts as brought on record by the assessee;

(ii) to give notice to the assessee of specific additions intended to be made and to allow reasonable time to meet his case.

(iii) to list all the case laws cited by the assessee in support of his case and giving reason(s) for not following it;

(iv) to state reason(s) for allowing lesser time to gather facts where such an application by the assessee is rejected.

This will save avoidable burden on appellate authorities.

70. Desirability to bring back block assessment system

The continuance of the earlier block assessment procedure is desirable. However, if this is not possible, certain improvements which would

(i) reduce controversy over the year of taxability of income,

(ii) provide suitable incentive for a person to make the necessary disclosure without indulging in litigation and

(iii) remove administrative difficulties such as multiplicity of appeals, bunching together of assessments, etc.

may be introduced.

71. Tax deducted at source on salaries

(1). Section 192

Section 192 may be also amended to specifically provide that credit for foreign taxes on the salary is allowable to be set-off for computing the TDS obligation there under. As a safe guard, certificate of accountant may be required in all such cases.

(2). Section 192 read with section 80G

Section 192 was amended to allow the employer to net off, loss from house property to avoid the paper work relating to refund claims on account of interest on housing loans. Considering the above, similar amendment should be made to specifically allow the employer to consider all donations eligible for deductions u/s. 80G.

72. TDS on rent

(1). Section 194-I v. section 194J on payment for equipment hire

The scope of tax withholding under respective sections may be clarified so far as they relate to payment for use of equipment.

(2). Withholding on long term lease

It may be clarified that such lump sum payments for long term lease would not be covered within the ambit of section 194-I.

(3). Section 194-I

It is suggested that the rate of tax deduction at source in respect of payment of rent for use of plant, equipment etc. may be reduced to 5%.

(4). Sections 10(13A), 80GG read with section 194-I

It may be noted that the deduction under section 80GG has been specifically provided for furnished accommodation also. Also, tax under section 194-I is to be deducted (by specified persons) from any amount paid for use of any furniture and fittings.

Benefit under section 10(13A) should be specifically extended to include any payment made for the use of any furniture or fittings by the assessee.

73. Deduction of tax by certain individuals or HUFs - Sections 194A, 194C, 194H, 194J and 194I

The position prior to the Finance Act be restored and individuals or HUFs be not required to deduct tax at source.

Alternatively, a provision for non-deduction of tax be extended under sections 194A, 194C, 194H and 194I to any payment made by an individual or HUF for non-business purposes (as against 'exclusively for personal purposes').

74. Section 194C(3)

An individual sub-contractor with not more than three goods carriage at any time in the previous year be exempted from TDS requirements.

75. TDS on professional services

(1). Professional Services u/s 194J and 44AA

The meaning of professional services as mentioned under section 194J should be made applicable for section 44AA(1) also.

(2). Provision for outstanding claims including fees for professional services.

Tax deduction in such cases as mentioned above should be made at the time of payment only.

76. Non-deduction of TDS on service tax

TDS provisions should be amended to exclude service tax charged on all services. As per CBDT Circular No. 4 /2008 this benefit is given only in

respect of rent income even though the reasoning contained therein would apply to all services.

No tax at source be deducted on service tax component of professional fees and other services. The benefit for the exclusion of service tax for calculating TDS should be given for other income also.

77. Section 234A -Interest for delay in filing of return

Credit for the tax paid under section 140A

Section 234A of the Act may be amended to give credit for the tax paid under section 140A while calculating the interest payable by the assessee. This will encourage assessees to pay self-assessment tax by due date of furnishing return of income, even if filing of return of income is not possible by that date for bona fide reasons

78. Section 234D

It is necessary to provide that interest paid under section 234D is deductible while computing total income in the year of payment, as income earned by the assessee on excess refund is taxable.

79. Section 249(4)

Equitable treatment may be given to assessees coming within the scope of section 249(4) both when the return is filed and also where the returns is not filed.

80. Power to stay demand to be given to CIT (Appeals)

Specific provision may be enacted in the Income-tax Act to give power to stay demand of tax to the Commissioner (Appeals).

81. Mode of payment for the purposes of section 269SS and 269T

(a) Transfer of money by RTGS / Electronic mode, payment by Credit Card, payment by Debit Card, transfer of money from one account to another account in the same branch by virtue of written instruction, etc be recognised at par with account payee cheque and account payee bank draft in section 269SS & Sec.269T or,

(b) Section 269SS and section 269T be amended to allow any person to accept or take loan and deposit in any mode other than cash beyond the limit specified therein.

82. Age of Senior citizens

The provision relating to age of Senior Citizens may be amended so as to reduce it from 65 years to 60 years in the Income-tax Act on par with Railways and other Organisations for the benefit of the senior citizens.

83. Audit of TDS returns

An independent audit provision may be inserted to provide for a comprehensive audit of all the TDS returns filed with the Department. Appropriate forms of audit report can be prescribed to certify about the correctness of the quarterly TDS returns. This will enable the Department to rest assured about the correctness of the TDS returns filed as well as the remittance of the tax deducted at source to the credit of the Central Government.

84. Suggestions relating to International Taxation.

I. SUGGESTIONS FOR WIDENING THE TAX BASE AND INCREASING THE TAX REVENUE

Over the years the Government has made serious and sincere efforts to widen the tax base. Such efforts have indeed given results. There has been considerable increase in the direct and indirect tax revenues of the Government. There has also been increase in the proportion of the tax revenues as a percentage of GDP. However, we have to go a long way. The globalisation and the growth of the economy has resulted in a wider distribution of wealth over a large segment of the population. Therefore, efforts are necessary to bring in as many additional tax payers as possible. The following suggestions are intended to widen the tax base and increase the tax revenue.

1. Taxation of agricultural income

The agricultural segment of the economy consisting of a large number of wealthy agriculturists should contribute to the national exchequer. It is to be noted that agricultural income is taxed but not by the Centre but by the States. The founding fathers of the Constitution assigned the power to tax agricultural income to the States in the pious hope that they, being close to the areas of operation of agriculturists, would effectively collect large revenue for development purposes. However, this expectation appears to have been belied. Besides, many persons offer huge agricultural income in the income-tax returns and there is no mechanism to verify whether such income has suffered tax under the relevant State law. Hence, the time has come that the power to tax income from agriculture should be put in the Union List and the Central Government should levy and collect the tax. Of course, the revenue can ultimately be distributed among the State Governments. A beginning can be made by granting exemption limit of Rs.3 lakhs separately for agricultural income. This will enable to bring high income earners into tax net and spare small farmers.

2. Agricultural activities by corporate enterprises

With the expansion of the agri-business many corporates are undertaking composite activities of agriculture. There is no necessity to exempt corporates in respect of their agricultural income.

> ***It is suggested that income from agricultural activities carried on by corporates may be brought into the scope of the tax net.***

3. Corporatising education

Presently, no tax is being contributed by educational and medical institutions. The reason for the same is that no recognition is given to an educational institution by the Education Board or University unless such institution is a society or trust. Accordingly, all educational institutions per force operate as charitable trusts/society and as such to become eligible for exemption either under section 10(23C) or section 11 of the Income-tax Act.

It is an admitted fact that most of these educational institutions are being run on commercial basis and despite huge surplus no tax is being offered on such income.

The above issue applies equally to the medical institutions, hospitals which are also required perforce to operate as a society or a trust to get the benefit of allotment of land at a concessional rate and to meet the requirements of State Laws.

> ***In case the education boards or universities amend their regulations withdrawing the conditions of recognizing only those institutions which are societies or trusts, then some of these educational/medical institutions may opt for corporatisation and will contribute substantial amount to the revenue every year.***

4. Widening the scope of section 44AF

Section 44AF prescribes a method of presumptive taxation for retail trade. However, the term “retail trade” has not been defined in the section. The term "retail trader" is being understood in the common parlance as a person who is doing business other than whole trading or manufacturing or job work.

The scope of the section 44AF should be widened to cover all businesses including small scale manufacturing, job workers, dabas, tailors, small restaurants, home delivery out-lets, auto spare servicing, software ancillary units and other small business whose sales, turnover or gross receipts are less than Rs.40 lakhs.

5. Encouraging voluntary compliance – Filing of income-tax return

Presently under the Income-tax Act there are many restrictive provisions which do not encourage voluntary compliance even at a later date. A person is required to file return of income within a period of one year from the relevant assessment year. As per the existing provisions he cannot file the return after the above-said period. The only course available in this case is to file a return where the revenue issues a notice and that too within a period of six years from the end of the relevant assessment year. It has been an accepted fact that the Revenue is not in a position to identify these persons and to identify income which has escaped assessment in this manner. There will always be cases where a person for one reason or the other has failed to file the return.

It is suggested that a provision may be introduced to allow such persons to file return of income and pay tax along with interest and such further penal interest as may be thought fit. This will encourage voluntary compliance and at the same time there will be no immunity to these persons from the provisions of law.

6. Increase in the rate of TDS for sub-contractors

Section 194C(2) requires a contractor to deduct tax at rate of one percent fro any payment made to a sub-contractor in pursuance of a contract for carrying out, or for supply of labour for carrying out, the whole or any part of the work undertaken by the sub-contractor or for supplying whether wholly or partly any labour which the contractor has undertaken to supply. The status of sub-contractor should be treated at par with that of the contractor.

It is suggested that the rate of tax of deduction at source in respect of a sub-contractor should be increased from 1% to 2% to treat the sub-contractor at par with the contractor.

7. Interest under section 201(1A) to be paid suo-motu

Presently under section 201(1A) interest is leviable on late payment of TDS. This interest is not payable on self assessment basis but a demand has to be created by the ITO (TDS) after processing the TDS returns. With the increase in workload of TDS returns, it is not possible for ITO (TDS) to verify each and every TDS return and compute interest under section 201(1A) of the Act.

It is suggested that interest payable under section 201(1A) should be on self-assessment basis and may be paid voluntarily by the deductor before filing TDS return and the relevant challan needs to be enclosed with TDS return. This will increase the collection and ensure voluntary compliance.

8. Utilisation of PAN and Bank Account Data

There is an urgent need to utilise the existing data with the Income-tax Department scientifically and to identify persons who are not within the tax net. This needs a very focussed strategy and can be initially started as a pilot project in metropolitan cities like Mumbai, Delhi, Chennai, Kolkata etc. For this purpose, a comprehensive analysis is required of PAN data, voter list and the list of bank accounts. Banking in these metropolitan cities by and large is computerised and as such it will not be very difficult to obtain a list of bank accounts with names and addresses of customers from these banks. For effective utilisation of this data it will be necessary that the bank account gets linked with the PAN. Presently there is no linkage of the PAN with the bank account. Earlier, efforts were made when directions were given that no bank account will be opened unless the account holder gives his PAN or gives a declaration to the effect that he does not have a PAN. However, the same could not be implemented because of the objection raised by banks as it hampers their business. To make a scheme successful this objective can be achieved in a different manner. The banks can be asked to submit a list of all bank accounts where PAN are not available. A time frame may be given to the banks to collect PAN from each of their account holders within a time bound period, say, one month or two months. Thereafter every year the bank may be asked to submit two lists of bank accounts, one with the PAN and another without PAN giving the aggregate of the deposits and withdrawals during the year. This information should not be difficult for the banks to dig out because of the computerisation. The information obtained in respect of those accounts where PAN is available can easily be consolidated and ready information will be available about all bank accounts being maintained in the city by one PAN holder. This information can later be collated with the income tax return filed by such person. Accordingly it will not be possible for these persons to have unaccounted bank accounts. To ensure self-compliance, a column can be inserted in the return from where a person is required to declare all his bank accounts with name and account number.

In the case of those persons maintaining bank accounts and who are not having PAN, the data so obtained from the bank needs to be sorted out so that the various bank accounts maintained by a person get identified on the basis of this information. Follow up action against each of the persons is taken to the logical end. Since the work involved will be voluminous, the same will be required to be out-sourced on the lines of what has been done for PAN and TDS.

9. Suggestion for improving the assessees' welfare and the image of the Department

The Income-tax Department has taken various measures in the past to improve the relationship with the taxpayers and to inspire more confidence in the taxpayers. However, a major irritant in improving the relationship with the taxpayers is the high pitched and arbitrary additions made by the Assessing Officer sometime ignoring the express provisions of the Act and the settled position of law as well as facts and evidence.

Though the Act provides for a mechanism to get relief by way of appeal there must be a mechanism to check such arbitrariness being exercised by the Assessing Officer.

> ***It is suggested that in order to provide a better human face and improve the image of Income-tax Department, a mechanism should be provided in the Act whereby the Assessing Officer is made accountable. This can be done by appointing an ombudsman and such cases can be referred to such ombudsman who shall have the power to award costs to the taxpayer in appropriate cases.***

II. SUGGESTIONS RELATING TO TAXATION OF LIMITED LIABILITY PARTNERSHIPS (LLPs)

The Limited liability Partnership Bill, 2008 received the assent of the President on 9th January, 2009. The Act recognizes LLP as a body corporate which is incorporated under the said Act and has a legal entity separate from its partners unlike partnership firms where the partners and the firm are treated as one.

In most of the countries for the purpose of taxation, a business carried on by LLP is being treated as carried out in partnership by its partners and not by the LLP. This position is prevailing in U.K. & Singapore. The Concept Paper of LLP also provided taxation in the same line. While referring the recommendations of Naresh Chandra Committee Report – II, we may appreciate that LLP is to be treated a pass through vehicle and as a capacity building measure for the professionals. We may recollect the following observations & recommendations of the Committee:-

"This Committee would like to recommend the same pass through status for LLPs in India. However, the Committee recognizes that it has neither consulted, nor got the views of the Ministry of Finance (Department of Revenue) in this regard. While recommending a taxation regime similar to that obtaining in the USA and UK, the Committee urges the Department of Company Affairs to incorporate such a regime in consultation with the tax authorities concerned."

As the taxation aspect of the LLPs is proposed to be incorporated in the Income-tax Act, the following suggestions may be considered:

(a) The definition of "person" given in section 2(31) should be amended to include a limited liability partnership also. Further, section 2(23) may be appropriately modified to define "limited liability partnership" to have the same meaning as assigned to it under the Limited Liability Partnership Act, 2008, "limited liability partnership" and "partner" to have the same meaning respectively assigned to them in the Limited

Liability Partnership Act, 2008.

(b) As the limited liability partnership is a body corporate formed and incorporated under the Limited Liability Partnership Act, 2008 and is a legal entity separate from that of its partners, salary being paid to the working partners in accordance with the LLP Agreement should be allowed as a deduction in the hands of Limited Liability Partnership. There should be no disallowance in respect of salary to partners of a Limited Liability Partnership in case of a firm carrying on a profession referred to in section 44AA or which is notified for the purpose of that section. In case of any other Limited Liability Partnership the disallowance may be limited to 60% of the profits.

(c) Salary paid to partners and allowed in the hands of the Limited Liability Partnership should be made taxable in the hands of partners as per the limited liability partnership agreement as profits and gains from business or profession.

(d) The interest paid to partners, if so permitted by the LLP Agreement on the capital contributed by the partners should be allowed to the LLP only to the extent of 12% similar to that of partnership firms. Such interest paid to the partners of the limited liability partnership should be subject to tax in the hands of the partners as profits and gains of business or profession.

(e) The amount of profits credited to the accounts of partners would be subject to tax in the hands of the partners. The amount of profits, if any, accumulated by the "limited liability partnership" without being distributed to the partners and carried to its reserve etc. should be subject to tax in the hand of the "limited liability partnership" itself. The LLP will be essentially a pass through entity.

(f) The provisions of section 45(3) covering the cases where a capital asset is transferred by a person to the firm by way of capital

contribution or otherwise should be made applicable for LLPs also.

(g) Where there is transfer of a capital asset by way of distribution of a capital asset by the "limited liability partnership" to its partners during the period when limited liability partnership continue to exist, it would be treated as a transfer in the hands of the "limited liability partnership". This will be similar to the provisions of section 45(4) of the Act.

(h) In case of winding up of LLP, the provisions can be similar to section 46 of the Act. Thus, if such distribution is on the winding up of the "limited liability partnership", it would not be deemed as a transfer in the hands of "limited liability partnership" but the partners would be liable to capital gains tax. For this purpose, the fair market value of the capital asset distributed as reduced by –

(i) the moneys standing to the credit of the partner's account and

(ii) the amount distributed out of the accumulated profits

would be deemed to be the full value of the consideration in the hands of the partners. The capital contribution of the partners may be taken as the cost of acquisition in the hands of the partners.

(i) The conversion of :

(i) a partnership firm into a LLP

(ii) a private company into a LLP

(iii) an unlisted public company into a LLP

should not be treated as transfer if such conversions conform to the modes specified in the Second, Third and the Fourth Schedule respectively, of the LLP Act. Section 47 may be appropriately amended to give effect to the same.

(k) Provisions of the Income-tax Act may be amended so to as to allow the unabsorbed loss, unabsorbed depreciation, unclaimed scientific research expenditure etc. of a partnership firm/ a private Co./ unlisted

company (being converted into LLP) to be carried forward and set off by the LLP for the balance unexpired period.

(l) **Assignment and transfer of partnership rights under section 42 of the Limited Liability Partnership Act, 2008 may be treated as a transfer for the purpose of capital gains. Capital contribution of the partner may be a relevant factor to determine the cost of acquisition. Also, appropriate clubbing provisions may be incorporated in the Income-tax Act where such transfer is made in favour of spouse or a minor child.**

III. SUGGESTIONS TO CHECK TAX AVOIDANCE

1. TDS in respect of maturity of insurance policies which are taxable under section 10(10D)

Section 10(10D) provides for non-taxability of sum received from maturity of insurance policies. However, following are some exceptions to this:

(a) any sum received under section 80DD(3) or 80DDA(3)(Substituted by section 80DD by Finance Act, 2003 or

(b) any sum received under Keyman Insurance Policy.

(c) any sum received under an insurance policy issued after 01.04.2003, in respect of which premium payable for any of the years during the term of policy exceed 20% of actual capital sum assured.

Any sum received by the beneficiary on maturity of insurance policies in above-mentioned cases is taxable. However, there are no provision under chapter XVIIB to deduct tax at source from the sum being paid to the beneficiaries in such cases due to which many policy holders getting maturity from insurance companies evade payment of taxes.

It is suggested:

(a) that a provision relating to TDS should be inserted in Chapter XVIIB to cover such payments where the exemption under section 10(10D) is denied to the recipient of income from insurance companies.

(b) that where the premium paid is above 20% of capital sum assured, the premium paid certificate (receipt) issued by insurance companies for the purpose of 80C should clearly mention that the qualifying amount for 80C deduction in respect of such premium paid is only up to 20% of capital sum assured and that where there is no sum-assured, the premium paid shall not be eligible for any deduction under section 80C.

2. Information to be furnished in the Annual Information Return

Section 285BA may appropriately be amended to require information regarding the following financial transactions:

(a) Payment received by tour operators exceeding Rs.1 lakh.

(b) Information regarding Government tenders where the value exceeds Rs.10 lakhs. This information may be provided by the concerned Government Department.

(c) Sales and purchases of shares exceeding Rs.5 crores respectively in the case of day traders. This information can be filed by the concerned brokers who are dealing with the day traders.

(d) Receipt of donations by trusts or Institutions exceeding Rs.1 lakh. Such information may be filed by the concerned trusts or institutions.

(e) Educational fees paid in excess of Rs.1 lakh per annum. The concerned educational institution should furnish the relevant information to the Department.

(f) Compulsory PAN on air-ticket bookings to Information to form part of annual information return under section 285BA

Persons booking international air-tickets should be required to give their PAN while booking such tckets. This is especially so when such foreign travel is organised as package tours. This step will bring many high value transactions into the data system, which can be scrutinised for expanding the tax base. Alternatively, the person who is funding the package tour may be required to give his PAN. Those persons who are not having PAN can be asked to give a suitable declaration. To commence with, this requirement may be in respect of those persons who incur expenditure on air travel above a prescribed ceiling limit. Further, the airline companies should be required to forward such declarations to their respective Assessing Officers. This information can be included as part of the return under section 285BA.

3. **Real estate transactions – Uniformity and reduction in stamp duty rates**

Real estate business is an area where streamlining the tax laws would yield a large amount of revenue to the Government. It is common knowledge that much unaccounted money is involved in real estate transactions. One of the reasons for understatement of sale consideration is the high stamp duty rates levied by the various State Governments. There are wide variations in the rates of stamp duty levied by various States.

In this context, it worthy of note that the Central Government took a major initiatives in the matter of implementation of State-Level VAT in India. An Empowered Committee of State Finance Ministers was formed and consensus was obtained from the State Governments for the introduction of a uniform State VAT legislation. Accordingly, a While Paper was brought by the Central Government and the various State Governments introduced VAT legislations in their respective States which conformed with the principles of State VAT enunciated in the White Paper.

In the matter of Stamp Duty rates also the Central Government can take the initiative and bring about a consensus among the State Governments for prescribing uniform stamp duty rates in accordance with a general agreement between the State Governments and the Central Government. This will go a long way in simplifying capital gains taxation and would also encourage disclosure of the correct consideration received from the transfer of capital assets.

4. **Need for strengthening administrative and investigative mechanism**

At times various attempts have been made to tackle the problem of deliberate tax avoidance and the persons who either are not reporting their income or under-stating their income. For this purpose amendments are being made from time to time in the Act. However, it is felt that instead of amending the law for tackling these problems there is a need to further strengthen the administrative and investigative mechanism. Such amendments create genuine hardships to the honest taxpayers whereas the unscrupulous taxpayer still devise their ways and means to get out of such newly inserted provisions. As such, there is a need to address this issue and not to amend the law from time to time which creates hardships for a person who dutifully complies with the provisions of the law. Any issue on the compliance of tax provisions need to be addressed by strengthening the administrative and the investigative mechanism. The strengthening of the administrative and investigative mechanism may not only help in enforcing the compliance of particular issue but may also help in addressing other issues which go unnoticed otherwise.

5. Verification of all income-tax returns

In addition to the above, there are classes of persons who are filing income tax returns but are not declaring their income properly. Either the income is suppressed or various deductions are being claimed which are not legally permissible. With the increase in the work of the Department it is not practicable to scrutinise each and every return. Taking into consideration this aspect the person filing the return takes a calculated risk. To address this, it is important that all the returns filed are thoroughly checked and cross-verified with the information collected through AIR and other sources by the Department. This process is entirely different from the scrutiny process. In this verification, not only the arithmetical accuracy but the admissibility of the claim regarding the expenditure incurred, income earned or investment made on the basis of the evidence collected from various sources will also be verified. Since this work is voluminous, the same will also be required to be out-sourced preferably to the professionals understanding the law better and who are in a position to identify the grey areas. This will be just on the line of desk view presently being carried out by the Excise Department. This process once started will ensure better voluntary compliance as every taxpayer filing the return would be aware that the return being filed would be subject to a verification process and he can afford to take the liberty of making adjustments which are legally permissible.

6. Evasion of tax - Administrative improvements

One of the reasons for evasion of tax is the inadequacies in the present administrative set up. Presently, after filing the return of income, a return can be taken up for scrutiny. The Assessing Officer in this process verifies the various facts and thereafter passes an order called assessment order making various additions and disallowances. The assessee is entitled to file an appeal against the said order. This appeal lies before the CIT(A). After the decision of the CIT(A), the Revenue as well as the assessee can file an appeal before the ITAT. Before the ITAT both the Revenue and the assessee have to make out their case and thereafter a decision is given by the ITAT. Taking into consideration past experience, there is a need to revamp the whole system and make everyone more responsible to the task which one is required to perform.

> ***The Assessing Officer while making assessment order verifies all the facts and makes additions and disallowances based on the material and evidences. He should be responsible both for the income which he should have but has not included and at the same time he should also be accountable for the disallowances made and the income which he should not have included but has included. It is important to ensure that the Assessing Officer takes up the assessment proceedings seriously. When the assessment proceedings are taken up in a casual manner by the Assessing Officer in order to avoid any inconvenience to himself, he resorts to arbitrary additions which otherwise should not have been there had he taken up the assessment proceedings seriously. This may appear to be an exercise to favour the taxpayer but ultimately it will be an exercise to avoid evasion of tax as the Assessing Officer will be perforce required to make out a case where he wants to go ahead with an addition which will help in sustaining those additions during appeal proceedings. Alternatively, he may find out something more during this process which he otherwise is not able to find out.***

Similarly in the appellate proceedings before the CIT(A) there is no practice for the Assessing Officer who has passed the assessment order to appear and present his side of the case. To ensure that the additions made by the Assessing Officer are not deleted because of ignorance or arbitrariness in the appellate proceedings the Assessing Officer should invariably be present along with the assessment records to present his case. This will help in bringing more transparency and accountability both from the Assessing Officer as well as the CIT(A).

IV. SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS

1. Definition of "Books of Account"

Section 2(12A) defines "books or books of account" to include ledgers, day-books, cash books, account books and other books whether kept in the written form or as print out of the data stored in a floppy, disc, tape or any other form of electro-magnetic data storage devices.

It may be noted that as per section 4 of the Information Technology Act, 2000 "Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is—

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference."

This deeming provision should be incorporated in the Income-tax Act,1961 also to enable assessees to maintain books of accounts in electronic form. This is necessary particularly in view of enormous of increase in transactions due to globalization.

> ***It is suggested that the definition of the "books of account" under section 2(12A) may be suitably amended to include the electronic data within its ambit. The definition may read as:***
>
> ***"books or books of account" to include ledgers, day-books, cash books, account books and other books whether kept in the written form or as print out or in electronic record like data stored in a floppy, disc, tape or any other form of electro-magnetic data storage devices or if such information or matter is—***
>
> ***(a) rendered or made available in an electronic form; and***

(b) accessible so as to be usable for a subsequent reference.”

2. Section 2(22)(e)

Where a Company makes payment by way of loan and advance to a shareholder who is the beneficial owner of the shares carrying not less than 10% of the voting power or to a concern in which he is a partner or a member or in which he has substantial interest, it would be deemed to be dividend in his hands to the extent the company possesses accumulated profits. Such dividend is taxable at normal rate of tax. Therefore, if an assessee falls in the 30 percent bracket, his dividend would be subject to tax at the rate of 30 percent whereas the company itself is paying dividend distribution tax at the rate of 15 percent. Further, genuine hardship is caused to the assessees who repay the advance/ loan taken within a short span of time or within the same financial year.

It is suggested that :

(a) a concessional rate of tax can be imposed in case of deemed dividend under section 2(22)(e).

(b) Section 2(22)(e) must be appropriately amended so as to exempt those cases where there advance/loan is repaid during the same year.

3. Need for renaming the term “previous year” and “assessment year”

Section 3 of the Income-tax Act, 1961 defines “previous year” to be the financial year immediately preceding the assessment year. Section 2(9) defines “assessment year” to be the period of 12 months commencing on the first day of April every year. A large section of the taxpayers experience considerable difficulty in understanding the difference between the “previous year” and “assessment year”. The expression “previous year” is commonly understood as a year before the assessment year and assessment year is understood as the year in which income is assessed. The reference to two different terms i.e. previous year and assessment year was relevant when there was an option to have different previous years. Now that the “previous year” having been made identical with the financial year, there is no necessity to continue with the two terms "previous year" and "assessment year" side-by-side and they may be substituted by the term "income year". As such, to make the law simpler for a common person all references may be with reference to income year only.

It is suggested that in order to bring clarity, the term "previous year" may be changed to "income year" and all references in the Act may be made to income year only.

4. Section 10(4)(ii) and 10(4B)

The above sections contain reference to the "Foreign Exchange Regulation Act, 1973". The Foreign Exchange Management Act, 2000 has replaced FERA.

It is suggested that the words "Foreign Exchange Management Act,2000"should be substituted in place of "Foreign Exchange Regulation Act, 1973" in the above-mentioned sections.

5. Section 10(10C) – Rule 2BA

In clause (iv) of the guidelines for the scheme for voluntary retirement prescribed under Rule 2B it is mentioned that "the vacancy caused by the voluntary retirement or voluntary separation is not to be filled up". A question now arises up to what period the vacancy should not be filled in. If a public sector company has introduced VRS Scheme in 2001 and complied with all the conditions of the guidelines the question will arise as to whether for how many years the vacancy caused by voluntary retirement of employees cannot be filled up. The company is claiming deduction for VRS payment as provided in section 35DDA for a period of 5 years in equal proportion. The company has, after introducing VRS Scheme, worked with efficiency for last 3 years and has increased its business. The company has expanded its business activities over the period of years and is now undertaking new business activities. Therefore, a question arises as to whether the company can now recruit new staff in order to meet the requirements of its increased activities. Since there is no clarity about guideline No.(iv) in Rule 2BA on this issue, the CBDT may kindly clarify so that the company may not be held to have violated this guideline and the Assessing Officer may not take the view that the company is not entitled to deduction under section 35DDA for the balance of the period. There is a danger that the Assessing Officer may take the view that even for earlier years the deduction allowed under section 35DDA will be withdrawn as the company has violated this condition and has recruited new staff for the purpose of its business.

The CBDT may kindly clarify as up to what period the condition regarding non filling of the vacancy as prescribed in Rule 2BA(iv) has to be complied with.

6. Receipt of amount under Life Insurance Policy - Section 10(10D)(c)

Section 10(10D) was amended vide Finance Act, 2003, according to which in case any sum is received under an insurance policy issued on or after 01.04.2004 in respect of which the premium payable for any of the years during the terms of the policy exceeds 20% of actual capital sum assured, the same would be exigible to income tax.

Instead of any sum received being made chargeable to income tax, only the sum, which is in excess of the premium payments made by the insured to the insurer should be considered as income exigible to tax. Suitable clarifications should be made accordingly.

7. Family Pension

As per section 17 of Income-tax Act, salary, interalia, includes pension and pension includes family pension. Accordingly, pension is taxable barring certain exemptions like pension to official of UNO etc. Likewise Family Pension is also taxable, however, under the head “Income from Other Sources”. Further, section 57(iia) states that in case of income in the nature of family pension, a deduction of a sum equal to 33 1/3% of such income or Rs. 15,000/- whichever is less is allowed as deduction. As per the explanation to this clause, family pension means a regular amount payable by the employer to a person belonging to the family of an employee in the even of his/her death. Thus it is clear that family pension received by a person belonging to the family of an employee in the even of employee's death is taxable income.

However, section 10(13) of the Income-tax Act exempts any payment from an approved superannuation fund made

(i) on the death of a beneficiary; or

(ii) to an employee in lieu of or in commutation of an annuity on his retirement at or after a specified age or on his becoming incapacitated prior to such retirement; or

(iii) by way of refund of contribution on the death of a beneficiary, or

(iv) by way of refund of contributions to an employee on his leaving the service in connection with which the fund is established otherwise that by retirement at or after a specified age or on his becoming incapacitated prior to such retirement, to the extent to which to which such payment does not exceed the contributions made prior to the commencement of this Act and any interest thereon.

The term beneficiary as defined in Rule 82 of Part XIII pertaining to Approved Superannuation Funds means a person referred to in clause (b) of rule 3 of Part B of the Fourth Schedule for whom provision of annuity is made which is for employees or members of employee's family on the death of employee.

Normally Superannuation trust which is set up by employers is an approved one and hence as per clause (i) of Section 10(13) any payment from an Approved Superannuation fund on the death of a beneficiary is exempt from income tax.

It is suggested that the provisions of the Act should be amended to clarify as to whether family pension received out of the approved superannuation fund on monthly basis (annuity) by a person belonging to the family of an employee is exempt under section 10(13) or whether in terms of Section 10(13) clause (i) payment on the death of a beneficiary is to be construed as one time payment.

In effect whether any payment from an approved superannuation fund on the death of a beneficiary be it lump sum or recurring in nature (i.e. pension) should be treated as tax free.

8. "Annual receipts" under section 10(23C)

Under section 10(23C)(iiiad) and (iiiae) of Income-tax Act, it is provided that the income of University/Educational institutions/hospitals/ other institutions specified therein will be exempt provided they comply with the conditions stipulated therein. Also it is provided that "aggregate annual receipts" of such institutions shall not exceed the amount of annual receipts as may be prescribed. Though annual receipts have been prescribed as Rs.1 crore vide Rule 2BC of Income-tax Rules, the word "annual receipts" have not been defined in the Income-tax Act.

It is not clear as to whether:

(a) for computing "annual receipts" only the receipts of such institutions from educational/hospital activities alone are to be considered each year.

(b) Certain receipts of such institutions that are not received on annual basis e.g. receipts from sale of property, equity shares and other proceeds on divestment are to be excluded from the computation of "annual receipts"

(c) In certain cases where such charitable institutions receive donations in the form of land, equity shares, bonds, donations in kind etc. whether "annual receipts" would exclude such receipts since they are not received annually.

It is suggested that "Annual Receipts" be clearly defined as income of the hospitals/ educational institutions arising regularly/every year but excluding value of donation received in kind by way of shares, other movable assets, land, hospitals/educational equipment, sale consideration received on disposal of land, shares or other movable property, hospital/educational equipment etc.

Further, it may be specifically provided that donations received towards corpus by way of land, shares or other movable assets

are excluded from computation of "Annual Receipts" as prescribed under Rule 2BC of Income-tax Rules.

9. Mandatory application of income by charitable trusts/ institutions under section 10(23C)

The amendment by the Finance Act, 2002 requires mandatory application of income by charitable trusts/institutions including those enjoying benefits under section 10(23C) to its objects, subject to accumulation of not more than 15% of its income including income from voluntary contributions. Similar provisions under section 11(1) read with section 12(1) exclude 'corpus donations' (voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution) from the mandatory requirement of application of the income. No such provision has been made in section 10(23C). This will compel the Institutions coming within the scope of section 10(23C) to apply even their corpus donations to the day to-day activities for getting the exemption. This will be prejudicial to them because they cannot build up the corpus fund.

Section *10(23C) should be amended to specifically exclude 'corpus donations' from the requirement of mandatory application of income by such trusts/institutions.*

10. Restoration of rebate under section 88E

Prior to amendment by the Finance Act, 2008, in a case where income from taxable securities transaction was included under the head "Profits and gains of business or profession", rebate of STT paid was allowed under section 88E. This rebate has been removed w.e.f. A.Y.2009-10. Instead, deduction of STT paid has been allowed under section 36(1)(xv) from business income. Consequently, section 40(a)(ib) providing for disallowance of STT paid from business income has been omitted.

The effect of such an amendment is that whereas earlier, 100% of STT paid was deductible from the tax payable, now, the same is deductible from taxable income. This is causing undue hardship to the assessees.

Therefore, it is suggested that the deduction under section 36(1)(xv) may be withdrawn and rebate under section 88E may be restored. Section 40(a)(ib) may be reinstated providing for disallowance of STT paid from business income.

11. Standard deduction in respect of income from salaries – Need for restoration

The Finance Act, 2005 has withdrawn standard deduction allowed to the salaried taxpayer. The withdrawal has been made as part of the restructuring of the tax rates apparently on the assumption that the standard deduction is an allowance rather than a deduction on account of the expenditure incurred by the employee in the performance of his duties for which he gets paid by way of salary.

Up to A.Y. 1974-75 the Income-tax Act had a provision for allowing to the salaried persons deductions for purchase of books, car maintenance, etc incurred wholly, exclusively and necessarily for the purpose of employment. From A.Y. 1975-76 a composite deduction at certain percentage of salary (changed from time to time) was introduced. Thus, the standard deduction permissible under section 16 is intended to cover the expenditure incurred for the purpose of employment and it does not constitute a personal allowance.

Under section 4, the charging section, the taxable base is the " total Income". "Total Income" as defined in 2(45) is income computed in accordance with the provisions of the Act. The total income is to be computed under Chapter IV of the Act under various heads of income. The main objective of the requirement that income should be computed under each specific head is to ensure that the specified deductions permissible under each head of income can be availed by the assessee. Thus, the basic philosophy underlying the computation of income is that only the "net income" and not the "gross income" should be charged to tax.

Unlike an assessee carrying on business, a salaried person does not get any deduction for expenses incurred for the purpose of employment, though he necessarily incurs expenses for the purpose of employment. It is felt that withdrawal of standard deduction from the statute may amount to taxing gross income as against the concept of taxing net income.

The standard deduction under section 16 should be restored.

12. Proviso to section 17(2)(iii) and FBT on ESOPs

Section 17(2) (iii) stipulates that "perquisite" includes the value of any benefit or amenity granted or provided free of cost or at concessional rate by an employer.

However, proviso to sub-clause (iii), excludes therefrom the value of any benefit provided by a company free of cost or at a concessional rate to its employees by way of allotment of shares, debentures or warrants directly or indirectly under any Employees' Stock Option plan or Scheme of the company, offered to such employees in accordance with the guidelines issued in this behalf by the Central Government. This proviso has been omitted w.e.f. April 1, 2008.

Simultaneous with the above, clause (d) has been inserted in sub-section (1) of section 115WB to subject ESOPs to FBT. ESOPs granted under Schemes which are not compliant with the Central Government Guidelines are taxed as perquisites. There is no clear policy statement to the effect that ESOPs henceforth shall not be subjected to tax as perquisite in the hands of the employees.

It appears that one may take inference of legislative intent of subjecting ESOPs to FBT and not tax the same as perquisite, but the issue remains regarding ESOPs which are not covered by section 115WB(1)(d).

It is suggested that it may be clarified that ESOPs would not be taxable as perquisite in all cases.

13. Clause (v) of proviso 17(2)(vi) of the Income-tax Act, 1961

The sum paid for the benefit of employees or any member of his family in respect of expenditure actually incurred by the employee on medical treatment (other than that mentioned in clause (i) and (ii) of the proviso in which cases no perquisites arises) is not a perquisite up to a limit of Rs.15,000/-. This limit was increased from Rs.10,000 from the AY 1998-99. Almost nineteen years have passed since the limit was last increased.

In view of increased cost of medical facilities the limit needs to be increased suitably.

14. Amendment in Rule 3 regarding valuation of perquisite

As per Rule 3(7) (viii) *of* Income Tax Rules 1962, the value of benefit to the employee arising from the transfer of any movable assets belonging to the employer shall be determined at an amount representing actual cost *of* such asset to the employer as reduced by the normal wear and tear calculated @ 10% p.a. for each completed year during which such asset was put to use by the employer and as further reduced by the amount, if any, recovered from the employee being the consideration for such transfer.

Accordingly, in case the asset is in use by the employer for more than 10 years and the same is transferred to the employee even at nil sale consideration, the same is not considered as a taxable perquisite.

However, under the provisions of Rule 3(1) (valuation *of* perquisite in case of furniture provided by the employer in the accommodation owned by the employer) and Rule 3(7)(vii) (benefits from use of the movable assets by the employee), value of benefit is considered @ 10% p.a. of the actual cost *of* such asset.

Accordingly, even in case the asset is very old (say 15-20 years old), taxable perquisite equivalent to 10% *of* the original cost *of* movable asset is considered in case the furniture is provided by the employer in the accommodation owned by the employer/benefit from use of the movable asset provided to the employee for accommodation not owned by the employer.

There is no justification for considering 10% of the actual cost of movable assets as a perquisite in case the movable assets were

already in use for over 10 years. Suitable amendment is, therefore, required in the Rules.

15. Re-fixing of monetary limits in case of HRA/ Transport Allowance/ Children education allowance/ Rent free accommodation etc.

The expenses actually incurred in respect of above have increased manifold in past few years. In light of the high rate of inflation, the exemptions actually being provided to salaried class assessee is very less and need to be appropriately enhanced.

It is suggested that the exemption limits in respect of HRA/ Transport Allowance/ Children education allowance/ Rent free accommodation etc. may be increased appropriately

16. Self-occupied property

The Finance Act, 2001 has increased the deduction for interest in respect of a self-occupied property to Rs.1,50,00O/-, if the property is acquired/constructed with capital borrowed on or after 1st April 1999.

For the sake of equity and simplicity, the deduction for interest in case of self-occupied properties may be allowed up to Rs.l,50,000/-, irrespective of date the of loan or date of acquisition/construction of house.

17. Condition regarding acquisition or construction

It is provided that the deduction of interest upto Rs.1,50,OOO/- will be permitted only if the acquisition or construction of the house is completed within 3 years from the end of the financial year in which the amount was .borrowed. In any case, the assessee is not entitled to deduction of interest till the acquisition/ construction of the property is complete.

Hence, the condition of completion of acquisition or construction within 3 years of borrowing may be dispensed with.

18. Certificate from the payee

The deduction of interest is subject to a condition that the asssesse furnishes a certificate from the person to whom the interest is payable. This condition regarding furnishing of certificate from the payee is impractical, since the recipient of interest may not always be aware of the purpose of the loan. Such certificate will not serve any useful purpose. The certificate, from the payee if at all considered necessary, may be restricted to the amount of interest payable.

19. Interest on borrowed Capital

Keeping in mind the prices of the house properties and also the rate of interest on housing loan, it is felt that the deduction under section 24(b) in respect of Interest on borrowed capital for self-occupied property is very less.

> ***Therefore, it is suggested that the deduction in respect of interest on housing loan in case of self occupied property should be increased from Rs. 1.5 Lakhs to Rs. 3 Lakhs.***

20. Section 25AA

Section 25AA does not specifically provide that rent subsequently realised would be taxed only if it was excluded from annual value in the year in which it was due. This may be clarified by amending the section.

21. Disallowed portion of unrealized rent

Where part of the unrealized rent was not allowed as a deduction while computing the annual value, whether the disallowed portion could be deducted from any subsequent realization thereof (to be taxed under section 25AA) is not free from doubt. This may kindly be clarified by an amendment.

22. Deduction from rent realized subsequently

A provision similar to that contained in section 25B (dealing with taxation of arrears of rent) should be made in section 25AA to provide deduction of 30% from subsequently realized rent, since such deduction would have been allowed had such rent been taxed in the year to which it pertained.

23. Tax exemptions to Carbon Emission Rights (CER) credits under Clean Development Mechanism.

The Clean Development Mechanism (CDM) allows industrialised countries to meet their emission reduction commitments under the Kyoto Protocol by purchasing carbon credits from developing countries.

Section 28 deals with taxability of the income under the head "Profit & Gains of Business or Profession". As per proviso (ii) to Sec-28(va) any sum received as compensation, from the multilateral fund of Montreal Protocol on Substances that Deplete the Ozone Layer under the United Nations Environment Programme, in accordance with the terms of agreement entered into with the Government of India is not taxable.

It is suggested that income derived from sale of CER should also be exempted with retrospective effect.

24. Depreciation

(1) Depreciation on books used by professionals

Books are very important tools used by professionals to carry on their profession. Though expenditure on purchase of books is no doubt capital in nature, the books purchased by professionals' have a very short shelf life of around a year or some times even less, due to the fast pace of developments in their respective fields, be it medicine or engineering or law or accountancy. Depreciation was always allowed on books at 100 per cent till 1st April, 2003, from which date, by the amendment to Appendix I to the Income-tax Rules, 1962, the rate of depreciation has been reduced to 60 per cent for books not being annual publications. This has created numerous difficulties and hardship for professionals who need to capitalize each and every book purchased by them though its value may not be very significant. It has resulted in additional book-keeping for these professionals. Also, the revenue does not gain from such an amendment as the expenditure on books by professionals would not be material.

In view of the above, it is suggested that the depreciation on books purchased by professionals be restored to its original rate of 100 per cent.

(2). Restoration of 100% allowance for small items of assets

Earlier, assets costing upto Rs.5,000/- were not required to be included in the block of assets for the purpose of claiming depreciation. Instead, the cost of such asset was treated as the amount of depreciation allowance.

The above provision had been introduced with a view to avoid litigation on the point of nature of expenditure (i.e. capital or revenue) in respect of purchase of small items of assets. Earlier, the limit on cost of such assets was Rs.750/. This was then increased by the Finance Act, 1983 to Rs.5,000/-, again for the same reasons.

The omission of this *proviso* has created unnecessary hardship. This was a useful provision to avoid possible litigation on such small items of assets, based on principle of materiality. It is also practically not possible to maintain records for such small purchases.

> ***Therefore, it is suggested that the proviso should be reintroduced, with a condition that the same would not apply where the total value of such additions during the year exceeds 2% of the written down value of the block of depreciable assets or Rs.1,00,000/-, whichever is higher. Such a provision will act as a check on the temptation to abuse, but at the same time, will serve the purpose of simplicity. A similar provision exists under the Companies Act, 1956.***

(3). Restoration of rates of depreciation across the board for all assets and for all taxpayers

Rates of depreciation were reduced last year. As per the amendment carried out in the said Appendix, the general rate of depreciation applicable to plant and machinery has been reduced from 25% to 15%. Further the rate of depreciation in respect of motor car has been reduced from 20% to 15% and in the case of furniture and fittings, it has been reduced from 15% to 10%. The reason given for the same is that the international practice is to provide depreciation at rates that enables the investor to replace the asset before its economic life ends. It is logical that the cost of an asset should be written off over its economic life. However, the new depreciation rates appear to be neither in line with the international practice nor sufficient to allow writing off the total cost of the asset over its economic life.

The depreciation rates and the economic life of plant and machinery in some selected countries is given in Table below.

Depreciation allowance provision in selected countries

Countries	Initial allowance or deduction	Annual allowance	Method of depreciation	Economic life of asset
U.K.	40%	25%	D.B.M.	N.A.
U.S.	$105,000	28.5%	D.D.B.M.	5 to 7 years
Australia		30%	D.B.M. or	6 to 10 years
		40%	S.L.M.	5 to 6 years
Malaysia	20%	14%	S.L.M.	6 years
Pakistan	50%	10%	D.B.M.	N.A.
India	15%	25%	D.B.M.	N.A.

Notes : N.A. means not applicable.

D.B.M. – Declining Balance Method

D.D.B.M. – Double Declining Balance Method

S.L.M. - Straight Line Method

As shown in Table above, the depreciation rates are quite high in all these countries. In the U.S., besides providing depreciation according to double declining balance method, an annual deduction is allowed in the first year. In Australia, 100% depreciation is allowed where the effective life of the asset is less than 3 years. In the U.S., the taxpayer can switch over to S.L.M. when it starts providing more depreciation. Thus, annual depreciation rates are 25% in the U.K., 28.5% in the U.S., and 30% to 40% in Australia. In Malaysia, although the depreciation rate is 14%, it is allowed according to S.L.M. In Pakistan, 55% depreciation is allowed in the first year itself.

India is still a high inflation economy and in many cases the assessees are unable to find the necessary resources for replacement of the obsolete machinery. One of the important aspects relating to machinery is that they are not only subject to wearing out but also to technological obsolescence and impairment due to a variety of causes.

Though the rate of initial depreciation has been increased from 15% to 20%, the benefit of the same would be available only in respect of the addition to the plant and machinery during the year and not on the existing plant and machinery. As such, for existing units the claim of depreciation will get substantially reduced. Further, the benefit of initial depreciation is available only to an assessee engaged in the business of manufacture or production of any article or thing. As such, the benefit of initial depreciation would not be available to those who are not engaged in manufacture or production, i.e., who are engaged in trading or providing services.

The earlier rates of depreciation on plant and machinery and other assets may be restored.

(4). Section 32 – Computer peripherals

The term computer for the purpose of claiming tax depreciation has not been defined. Accordingly there is a dispute on claim of tax depreciation on computer peripherals which cannot work without being attached to the computer.

Computer peripherals being an integral part of the computer devices should specifically be included in the definition of computer.

(5). Section 32 - Depreciation in case of slump sale

The proviso to section 32 provides that the aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, being intangible assets allowable to the predecessor and the successor in the case of succession referred to in clause (xiii) and clause (xiv) of section 47 or section 170 or to the amalgamating company and the amalgamated company in the case of amalgamation, or to the de-merged company and the resulting company in the case of de-merger, as the case may be, shall not exceed in any previous year the deduction calculated at the prescribed rates as if the succession or the amalgamation or the de-merger, as the case may be, had not taken place, and such deduction shall be apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the de-merged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them.

An issue arises whether depreciation can be claimed on the basis of proportionate number of days by the transferor and the transferee company in case of slump sale considering the proviso to section 32 read with section 170 of the Act.

Section 32 may be amended to clarify the legal position.

25. Deduction of expenditure for mine closure

As per Rule 23(5) of Mineral (Conservation and Development) Rules, 1988 [MCDR], a leaseholder cannot abandon a mine or part thereof unless final mine closure plan is implemented to the satisfaction of the Indian Bureau of Mines. As per the regulations, the leased area can be surrendered only after restoring the same by carrying out reclamation, surface back filling, removing dumps, plantation over waste rock dumps, etc. These activities involve substantial expenditure which is called 'Final mine closure expenditure'.

As the final mine closure is a result of extraction of ore during operating period of lease of a mine, it is necessary to provide for estimated liability on account of the same as per Accounting Standard 29 on provisions, contingent liabilities and contingent assets issued by the Institute of Chartered Accountants of India. Although such a provision in accounts is a charge on profits of the company, the same is not deductible as per provisions of Income-tax Act till the time the final mine closure activities are not started.

The final mine closure activities are akin to site restoration activities, which are carried out by petroleum industry in connection with prospecting/ extraction/ production of petroleum or natural gas. For site restoration activities, there is a specific provision under section 33ABA of the Income-tax Act which allows deduction equal to the amount deposited in Site Restoration Account maintained with State Bank of India or 20% of profits of the business, whichever is less. This provision is an incentive to the petroleum industry for building up cash reserves to meet the substantial expenditure on site restoration after abandoning the site.

The mining industry, which has to incur substantial expenditure at the time of abandonment of mines, also needs to build up cash reserves to meet the expenditure on final mine closure in order to protect the environment and comply with the provisions of MCDR.

Such a provision under the Income-tax Act, with necessary modifications for mining industry, will result in increased compliance with the MCDR by the mining industry and, consequently the environment protection efforts of the Government will yield better results.

It is suggested that a deduction under the Income-tax Act, on the lines of section 33ABA may be allowed in respect of mining industry with necessary modification.

26. Section 36- Deductions allowable

(1). Employee's contribution to provident fund, etc. – Section 36(1)(va)

The Finance Act, 2003 amended section 43B to provide that employer's contribution to provident fund, etc. shall also now be allowed as deduction if such contribution is paid on or before the due date of filing return of income. However, section 43B only covers employer's contribution and employee's contribution is governed by section 36(1)(va).

Therefore, it is suggested that a corresponding amendment be also made in section 36(1)(va) in respect of employees' contribution to Provident Fund, etc. to bring it in line with the employer's contribution.

(2). Deduction in respect of non-performing assets for banks - Section

36(1)(viia)

The Finance Act, 2001 has increased deduction in respect of the provision made by Indian banks for assets classified by RBI as doubtful assets or loss assets in accordance with RBI Guidelines to the extent of 7.5% of such assets.

Foreign Banks, financial institutions and non-banking financial companies are also mandatorily required to make similar provisions under the Prudential Norms issued by RBI. These assessees should not be denied similar deduction. Currently, no provision exists to allow them a deduction in respect of provision for doubtful debts.

It is, therefore, suggested that foreign banks, financial institutions and non-banking financial companies should also be allowed the benefit of a similar deduction in respect of provisions made by them under RBI Prudential Norms.

(3). Section 36(1) (viia)

Provision for NPA is allowed to foreign banks as a deduction subject to a ceiling of 5% of total income. On the other hand Indian banks are eligible for deduction in respect of provision not exceeding 7.5% of income and an amount not exceeding 10% of the aggregate average advance made by its rural branches.

There is differentiation in the tax treatment for Indian and foreign banks resulting in lack of level playing field. The law should be amended to provide for deduction to foreign banks upto 7.5 % of the total income.

(4). Section 36(1) (viii)

Section 36(1)(viii) provides for deduction (upto certain prescribed limits) in respect of any special reserve created and maintained by:

? financial corporation which is engaged in providing long-term finance for industrial or agricultural development or development of infrastructure facility in India, or

- ? public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes.

It is suggested that asset reconstruction companies (ARC) should be eligible for deduction under section 36 (1)(viii).

(5). Voluntary Retirement Scheme (VRS) deductions in case of amalgamation

At present deduction towards payment of VRS is allowed in instalments by way of amortisation. There is no enabling provision to continue the deduction after amalgamation.

It is suggested that the instalments which remained to be allowed in the hands of the amalgamating company be allowed in the hands of amalgamated company.

27. Allowability of expenses to meet Social Obligations

If the expenditure is incurred wholly & exclusively for the purpose of business then the same is allowable as deduction u/s 37(1) of Income-tax Act. Apart from above, an industry has to fulfill the responsibility of social obligations of the society who support for growth of the industry.

It is suggested to allow such expenses incurred as deduction under section 37(1) to fulfill the responsibility of social obligations of the society who support for growth of the industry for the purpose of business, to satisfy the "Environment & Social Governance" (ESG).

28. Expenses not deductible owing to non-deduction/ non-remittance of tax at source.

(1). Section 40(a)

The Finance (No.2) Act, 2004 has amended the provisions of section 40(a) whereby any interest, commission, brokerage, fee for professional services or fee for technical services or amount paid to a contractor or sub-contractor which is payable to a resident on which tax has not been deducted or after deduction, has not been paid within the time prescribed under section 200(1) or in accordance with the provisions of Schedule XVIIB, shall not be allowed as deduction while computing income under the head 'profits and gains of business or profession. This provision was already there in respect of payment to non-residents. It has been further provided that in any subsequent year if tax is deducted and paid on such sum the same shall be allowed as deduction in computing the income of the year in which such tax has been paid. The objective stated for introducing this provision is to enforce compliance with the provisions relating to tax deducted at source. However, this provision is too harsh. Firstly, there are enough powers given under the Act to enforce compliance with the provisions of TDS. Under section 201(1), on failure to deduct or failure to pay after deduction the person is treated as an assessee in default and the amount is recoverable from him. Under section 201(1A) such person is liable to pay interest for the period of the default. Not only that, under section 271C such person is liable for penalty which can be equal to the amount of tax involved. Under section 221, on failure to pay tax, penalty is further leviable. As such, there is no need to have further deterrent provision to compute income which is in a manner not the actual income.

The implication of this provision would be very harsh. An idea of the same can be had by making out a small example. A company which is engaged in the business of garments, having sales in a year of say rupees one crore. It incurs expenditure of Rs.60 lakhs on purchase of cloth etc. and Rs.20 lakhs on account of payment to fabricators which is liable for the deduction of tax at source @2 per cent. Its income, after meeting all overhead expenditure is say Rs.2lakhs and the tax payable thereon comes to Rs.70,000. However, per chance it fails or omits to deduct at source on the payment of Rs.20 lakhs @ 2 per cent made to fabricators. As per the amendment by the Finance (No.2) Act, 2004, this expenditure will not be allowed as deduction while computing business income meaning thereby that the income of the company will be computed at Rs.20 lakhs as against actual income of

Rs.2 lakhs. The additional tax liability on account of this addition in the income will be Rs.7 lakhs being 35 per cent of Rs.20 lakhs, whereas the default in tax deduction is Rs.40,000 only.

A further idea of implication of proposed amendment under section 40(a) can be had from the following table:

Payment made		Tax rate for deduction	Tax which will be levied by the proposed amendment	Effective liability for omission to deduct
(a)	To contractor	2%	35%	17.5 times
(b)	To sub-contractor	1%	35%	35 times
(c)	To professional/ technical consultants	5%	35%	7 times
(d)	Commission	5%	35%	7 times

The above liability shall be in addition to the existing liability of recovery of tax in default, interest and penalty equivalent to tax in default.

Section 28 to section 44D are meant to compute the profits of the business or profession and should not be used to enforce compliance in respect of tax liability of other persons. The applicability of section 40(a) in respect of payment to a non-resident may be justified because such non-residents are not easily traceable and as such the tax liability of such persons gets compensated by denial of the benefit to the deductor. In the case of residents the traceability of the deductee is not a problem. Moreover there can be a practical problem where the deductor has failed to deduct tax and the deductee has paid tax on such income either by way of advance tax or by way of self-assessment tax and in such a situation the deductor cannot deduct tax again from the deductee and the benefit of deduction of such

expenditure shall be lost forever as the condition of the proviso for claiming the deduction in the subsequent year when tax is deducted and paid shall never be fulfilled. In case the revenue is of the view that there is not enough deterrence under the Act to enforce the compliance of TDS provision, the remedy should be sought under the TDS provisions by increasing the penalty or by way of better administration rather than computing the business income in a manner which does not bring to tax the real income earned from the business or profession but which actually results in taxing expenditure which is against the fundamental principles of income-tax. Further in clause (iii) of section 40(a) a proviso similar to section 40(i)(a) be added.

(2). Section 40(a)(ia)

The scheme of disallowance under section 40(a)(ia) has now been modified with retrospective effect from A.Y.2005-06.

This section now provides that interest, commission, brokerage, rent, royalty, fees for technical/professional services payable to a resident or amounts payable (for carrying out any work contract) to a resident contractor/sub-contractor, on which tax is deductible at source shall be disallowed if –

(1) such tax has not been deducted; or

(2) such tax, after deduction, has not been paid –

   (a) on or before the due date specified in section 139(1), in a case where the tax was deductible and was so deducted during the last month (i.e., March) of the previous year;

   (b) on or before the last day of the previous year, in any other case.

In case the tax is deducted in any subsequent year or has been deducted

(a) during the last month (i.e., March) of the previous year but paid after the due date specified in section 139(1); or

(b) during any other month (i.e., April to February) of the previous year but paid after the end of the previous year,

Such sum shall be allowed as deduction in computing the income of the previous year in which such tax has been paid.

Prior to the said amendment any expenditure for the Assessment year 2005-06, 2006-2007 and 2007-2008 in respect of designated expenses on which TDS was not deducted were added back by the assessee themselves. These expenses were subsequently claimed when TDS was paid in subsequent year. Now with the retrospective amendments these expenses on which TDS was deductible in the month of March and such tax is paid before respective due date of filling the return of income, are allowable in that very assessment year and not in subsequent assessment year. The effect is that the assessee may be denied allowance of that expenditure in subsequent year and the period of revising the return of the earlier year in which deduction can be claimed consequent to the amendment, might have also expired. This might cause genuine difficulty to the assessees since they may not be able to claim the deduction in both the years.

It is suggested that in the assessee should be given a choice to claim the expenses as per pre-amended provisions or as per current provisions, since there might be genuine difficulty in certain cases.

(3). Section 40a(ia)

Section 40a(ia) was inserted by the Finance (No. 2) Act, 2004 to provide that the expenditure on interest, commission, brokerage, fee for professional services, fee for technical services payable to a resident or amount payable to a contractor or sub-contractor shall not be eligible for deduction while computing profits and gains of business or profession in case tax was deductible at source and the same has not been deducted or after deduction has not been paid during the previous year or in the subsequent year before the expiry of time prescribed under sub-section (1) of section 200. The above amendment was introduced to ensure compliance with tax deduction at source provisions. The above amendment has caused a lot of hardship to the taxpayer. The objective of enforcing compliance with TDS provisions can still be achieved if the proviso below section 40(a)(ia) allowing deduction in the year in which payment is made is modified by providing rectification in that very assessment year to which the expenditure pertains instead of the year in which TDS is paid. It may be pointed out that the present proviso allowing deduction in the subsequent year in which TDS is paid has not taken into consideration the situation where the deductee has filed return of income and has paid tax thereon. No deduction of tax at source can be made by the deductor and the deductor is not liable in such an eventuality to deposit the amount of the TDS. In such a situation there will be a permanent disallowance which is not the intention of the section 40(a)(ia). The above fact gets further supported by section 191 which provides that

"Where income tax has not been deducted in accordance with the provisions of this Chapter, income tax shall be payable by the assessee direct".

Further explanation below section 191 also makes it clear that recovery of tax under section 201(1) in case of failure to deduct tax at source can be made only when such tax has not been paid by the assessee direct.

> ***In view of the above provisions of the Act, it is suggested that the proviso below section 40(a)(ia) may be deleted and a new sub-section may be introduced in section 155 allowing rectification in that very year to which the expenditure pertains to, on the assessee producing evidence of payment of the tax deducted or evidence that the deductee has included the income received by him from the deductor in his return of income and has paid tax on the income declared by him***.

The above rectification will ensure compliance and at the same time will remove the hardship of income getting assessed at a very high figure in one year and getting reduced at a very low figure in the subsequent year. Further, the income assessed will always be close to the actual income and will also avoid complications of cross references to the records of earlier assessment years. This will also meet inherent contradictions as explained above in the present proviso and Section 191 of the Act.

Alternatively, the expenditure on interest, commission, brokerage, fee for professional services, fee for technical services payable to a resident or amount payable to a contractor or sub-contractor may be allowed as a deduction provided the relevant tax deductible at source has been deducted and paid before the date of filing of the the return of income.

(4) Section 40(a)(iii)

Any payment, which is chargeable under the head 'Salaries', if payable (a) outside India or (b) to a non-resident, is not an admissible deduction if the tax has not been paid thereon or deducted therefrom under Chapter XVII-B. Accordingly, if tax has neither been deducted nor paid thereon, the employer is subject to disallowance of such expenditure (salary). Due to the absence of the proviso on the lines as appearing in clauses (i) and (ia), the assessee may not be entitled to a deduction of such salary payment, even if tax has been deducted and paid at a later date. Deduction for such salary payment should be allowed at a later date, when the tax on such salary has been paid or deducted therefrom.

A proviso similar to one appearing in sections 40(a)(i) / (ia) of the Act should be inserted in clause (iii) so that a deduction for salary payment is allowed at a later date, when the tax on such salary has been paid or deducted therefrom.

29. Removal of limit to the salary of partners - Section 40(b)

Section 40(b) lays down a limit up to which salary can be allowed to the partners of a firm. Thereafter, tax is payable at a flat rate of 30%. The tax rates are the same, which are applicable in the case of companies but there is no ceiling on the salary paid to the directors. This causes genuine hardship particularly in the case of professional firms, where the firm does not get deduction even in respect of salary paid to the working partners beyond the specified limit.

It is suggested that the partners of professional firms should be allowed to get salary on the similar basis as are allowable to directors in the case of the companies.

30. Expenses/ Payments not deductible in certain circumstances

(1). ayments to persons referred in section 40A(2)(b)

Section 40A(2) gives power to the Assessing Officer to disallow payments made to persons referred in the sub-section, if such payments, in the opinion of the Assessing Officer, are excessive or unreasonable, having regard to the fair market value of goods, services or facilities or legitimate needs of the business.

Considering the concept of materiality, the applicability of this provision should be restricted only to payments in excess of Rs.5 lakhs to a single payee in a year in respect of purchase of goods and payments in excess of Rs.50,000/-to a single payee in a year for other purposes.

(2). Section 40A(3)/Rule 6DD

With the deletion of the erstwhile rule 6DD(j) [which provided for non-disallowance if the assessee satisfied the Assessing Officer regarding commercial exigency attending the payment in cash], even genuine and bonafide transactions are subject to disallowance. It would be useful to recall that the constitutionality of the provision was upheld by the SC in the case of Attar Singh Gurmukh Singh v. ITO (1991) 191 ITR 667 (SC) only because of the saving provision incorporated per the said rule, which now stands deleted.

Alternatively, insertion of a clause on the lines of erstwhile clause (j) is suggested in section 40A(3) itself.

The following payments may be also prescribed as exempt under Rule 6DD:

(a) payment of octroi at octroi posts;

(b) payments to small transport operators, or drivers, towards

freight;

(c) ***payments at public auctions;***

(d) ***other payments where the nature of the transaction is such that it is to be ordinarily paid only in legal tender.***

(3). Section 40A(3) - Direct cash deposits in banks due to contractual obligations

Under section 40A(3), 20% of any expenditure in excess of Rs.20,000, if paid otherwise than by way of an account payee cheque/draft would be disallowed. In certain cases however, payments have to be made directly into bank account of the payee - for example purchase of liquor from the State agencies by the licence holders. The authorities are taking a view that such direct payments exceeding Rs.20,000 would be hit by the provisions of section 40A(3). This is causing great practical difficulties and hardship. Such situations were earlier redressed by the Assessing Officer under Rule 6DD(j). However, the same has been omitted.

There is an urgent need to exempt such direct payments into bank account of the payee arising out of genuine contractual obligations from the scope of section 40A(3). The categories of the payees in respect of whose transactions such exemption shall apply may also be stated to avoid any abuse of this relaxation.

(4). Payments otherwise than by crossed cheques or bank drafts - Sections 40A(3), 269SS and 269T

Section 40A(3) requires payment to be made by crossed cheque drawn on a bank or by a crossed bank draft. Section 269SS requires a loan or deposit to be accepted only by an account payee cheque or account payee demand draft. Section 269T requires repayments of deposit by an account payee cheque or account payee draft.

The ceiling limit of Rs.20,000 in section 40A(3) was incorporated w.e.f. A.Y. 1997-98. The ceiling limit of Rs.20,000 in sections 269SS and 269T was incorporated w.e.f. A.Y. 1989-90.

However, with the development of various modes of payments, such as debit card, credit card, internet banking, electronic transfer, telegraphic transfer, insistence on payment by account payee cheque or account payee demand draft creates artificial blockages, results in delays and makes transactions expensive on account of bank charges.

The objective of being able to trace the transactions is fulfilled in the modern modes of payments.

Considering this, section 40A(3), section 269SS and section 269T should be amended so as to discourage only payments made in cash or by bearer instruments like bearer cheques, while payments which leave a trace in the banking channel should be expressly permitted, to avoid litigation. This will facilitate trade, without sacrificing the objective of these sections.

(5). Increase in ceiling limits

The existing monetary ceiling limits in various sections have been fixed long ago and need revision upwards. The following suggestions are made in this regard.

Section	***Existing ceiling***	***Suggested ceiling***
40A(3)	***Rs.20,000***	***Rs.50,000***
269SS	***Rs.20,000***	***Rs.50,000***
269T	***Rs.20,000***	***Rs.50,000***

31. Deductions to be allowed only on actual payment

(1). Deduction under section 43B – to cover only statutory deductions

The Income-tax Act provides for computation of income according to the method of accounting followed by the assessee: A large number of assessees follow mercantile (or accrual) system of accounting. Under the Companies Act, 1956, all companies are statutorily required to follow mercantile system of accounting., However, section 43B makes a departure from the principle. The provisions of section 43B have been extended by the Finance Act, 2001 to cover expenditure on leave encashment by employees. Hitherto, provisions of section 43B were primarily restricted to statutory payments. It is noticed that its scope has now been extended even to contractual payments.

This unnecessarily complicates computation of taxable income each year, and further increases the areas of difference between book profits and taxable income. Instead of simplifying the law to provide that book profits would be the taxable income, the law is made more complex by making such provisions. With the Accounting Standard on Deferred Taxation becoming mandatory to corporates over a period of time, increased disparity between book profits and taxable profits would make accounting more complex.

> ***It is suggested that the scope of section 43B should not be extended to contractual payments, such as leave encashment, but should be restricted to statutory payments only.***

(2). Section 43B – Slump sale

Section 43B provides that notwithstanding anything contained in any other provision of the Act, a deduction otherwise allowable under the Act in respect of items specified in clause (a) to (f) shall be allowed in the year in which the sum is actually paid irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him.

The section specifically does not provide for the time of claiming deduction in case of slump sale. The following issues usually arise at the time of slump sale for claiming deduction under section 43B of the Act:

? ***Whether the transferor company should claim deduction at the time of slump sale considering it as actual payment?***

or

? ***Whether the transferee company should claim deduction under***

section 43B when it actually discharges the obligation in respect of liabilities taken over?

The section may be amended to clarify the legal position.

32. Presumptive taxation of professional income

At present presumptive provisions of taxation of exists in respect of construction contracts, income from vehicles and income from retail trade.

It is suggested that presumptive tax provision may be introduced in respect of professional income also. Accordingly, 20% of the gross receipts may be deemed to be income of the year. The maximum limit of gross receipts for this purpose should be Rs.40 lakhs.

33. Section 45(1A) - Charging profits and gains arising from the receipt of any money etc. under an insurance

Any insurance claim received on damage to a capital asset can only be treated as a revenue receipt. The assessee normally spends money for repairing the capital asset when there is damage by flood, fire etc. It is logical that such expenditure should be allowed as a deduction against the money received and the surplus, if any, should be taxed as income in the normal course of business.

Hence the reference to damage in the section may be omitted.

So far as destruction of a capital asset is concerned, a distinction may be made between a depreciable asset and non-depreciable asset.

As regards depreciable asset the insurance money received on destruction etc. of the asset is to be deducted from the written down value of block of assets and the surplus, if any, in that block of assets should be taxed under section 50 as short-term capital gains.

Hence, suitable amendments should be made in section 50.

Thus, section 45(1A) should apply only when a non-depreciable capital asset is destroyed by flood, fire etc. and insurance claim is received.

In order to encourage investment of the insurance moneys in the modernisation of the assessee's business it is suggested that exemption may be granted in respect of so much of the capital gains as is invested in new plant and machinery.

The insurance money received, now taxable as per the provisions of section 45(1A), will also reduce the written down value of the relevant block of assets which cannot be the intention of the legislature.

Hence, insurance moneys to the extent taxed under the provisions of section 45(1A) should not again be required to be deducted from the written down value of the block of assets.

34. Section 44BB – Project-wise computation

Section 44BB provides an option to the assessee to be taxed

? either on presumptive basis i.e. on a sum equal to 10% of amount specified in sub-section (2); or

? where the assessee claims his business profits to be less than such sum, on net basis subject to certain conditions [sub-section (3)].

The computation of presumptive income as a sum equal to 10% of the amount specified in sub-section (2) rules out the categorization of income based on individual projects. Article 7(2) of the OECD Model treaty gives an indication that profits are to be computed on per project basis. It is not clear from the provisions of the section whether computation as per the Article referred above is permissible. In view of the independent nature of contracts in Oil and Gas Industry and with a view to encourage the industry, the taxation on the OECD model is desirable.

Suitable amendments may be made in the section to specifically provide for such contract / project wise computation.

35. Capital gains on slump sale & on receipt of insurance claim - Sections 50B and 45(1A)

Section 50B provides for the manner of taxation of capital gains on a slump sale.

Section 45(1A) provides for taxation of capital gains on receipt of insurance claim on destruction or damage to an asset under certain conditions. It appears that both section 50B and section 45(1A) are charging sections. Section 47, which grants exemption to certain types of transfers, excludes only the operation of section 45, and has not been amended to cover section 50B. Similarly, the exemptions contained in section 54 to section 54G are excluded from capital gains, by virtue of operation of section 45(1), the main charging section. Section 50B and section 45(1A) do not refer to such exemptions.

In order to ensure that there is no litigation as to the applicability of both the provisions of section 47 and section 54 to section 54G to capital gains computed under section 50B, it is suggested that section 50B be made a part of section 45, and that the provisions of sections 48 and 49 be modified by the provisions of section 50B. It is further suggested that the capital gains under sections 45(1A) to 45(6) be expressly made subject to the exemptions under section 54 to 54G.

36. Conversion of stock-in-trade into capital asset

Section 45(2) covers the situation where capital asset is converted into stock in trade. There is no provision in law which deals with a situation where stock in trade is converted into capital asset of a business. Nowadays there are a large number of instances where stock in trade gets converted into capital asset.

It is suggested that the said transaction should be regarded as a transfer and consequently section 2(47) may be amended. A section may be drafted on the lines similar to section 45(2) to provide that the difference between the fair market value on the date of conversion and the purchase price of stock in trade is to be deemed as business profits to be taxed in the year in which capital asset is sold. The fair market value on the date of conversion should be deemed as cost of acquisition of the capital asset.

37. Distribution of capital assets to partners - Section 45(4) - Removal of serious

hardships

Neither section 49 nor section 55 of the Income-tax Act provides that if the firm has paid capital gains tax, the cost in the hands of the partner will be the value at which the firm is deemed to have transferred the asset to the partner.

> ***Therefore, section 55 should provide that the cost to the partner will be the value on the basis of which the firm has been assessed to capital gains.***

38. Transactions not to be regarded as 'transfer' - Section 47

(1). Extension of scope

Since Indian companies are now encouraged to set up overseas subsidiaries and joint ventures, many Indian companies are now investing in shares of foreign companies. Similarly, Indian residents are now permitted to hold shares in foreign companies, and many resident Indian employees of multinational subsidiaries already hold shares in foreign companies. Often, these foreign companies either merge with other foreign companies or demerge a division into a separate company. Though such transactions are generally not taxable in the foreign country, in the absence of a specific provision in section 47, exchange of shares arising from such merger or demerger by the Indian parent may be regarded as a transfer liable to tax under the Indian tax laws which govern the Indian shareholder.

> ***Section 47 therefore needs to be expanded to cover transfer of shares in a foreign company by a resident or domestic company pursuant to a merger or demerger abroad, provided that such merger or demerger is exempt from tax under the domestic tax laws of the foreign country in which such merger or demerger takes place.***

(2). Further transactions for exemption under section 47

Further, taking into account the increased globalisation of the Indian economy, and consequent holding of Indian assets by many foreign companies, the following transactions in respect of Indian assets should also not be regarded as transfer under section 47 :

(a) ***amalgamation of a foreign subsidiary with foreign parent company;***

(c) ***transfer by a foreign parent company to a wholly owned foreign subsidiary;***

(c) ***transfer by a wholly owned foreign subsidiary to its foreign parent company; provided that such transfer does not attract tax on capital gains in the country in which the transferer company is incorporated.***

39. Withdrawal of exemption – Section 47A

Sections 47(iv) and 47(v) provide for exemption of transfer of capital assets by a holding company to its *wholly* owned subsidiary and by a wholly owned subsidiary to its holding company. Section 47A(I) provides for withdrawal of such exemption under certain circumstances.

Various other sections, such as sections 47A(2) & (3), 54(1)(ii), 54EC(2), and 54F(2), etc., also provide for withdrawal of exemption if certain conditions are not adhered to for a prescribed period. However, these sections tax the capital gains earlier granted exemption, only in the previous year in which the condition is violated, and not in the year in which the exemption was granted. Section 47A(l) is the only section under which such withdrawal of exemption is in the year in which exemption was earlier granted.

This results in a genuine difficulty, as in most such cases, the forfeiture of exemption is on account of changed circumstances necessitating such an action.

It is, therefore, suggested that even in such cases, the capital gain exempted earlier should be taxed in the year of violation of the condition, and not in the year in which the exemption was granted. This would also result in uniform treatment of withdrawal of exemption under all sections dealing with exemption of capital gains.

40. Indexed cost of acquisition - Section 48

Explanations (iii) and (iv) define the terms “Indexed cost of acquisitions” and “Indexed cost of Improvement” of a capital asset. As per the explanation; where the asset became the property of the assessee by any of the modes specified in section 49(1), the cost of acquisition of the asset shall be indexed from the date when the assessee became the owner of the asset and not from the date when the previous owner acquired the asset. However, the cost of improvement in such a case would be from the date when the improvement took place and not from the date when the current owner became the owner of the asset. The benefit of indexation of cost of acquisition should be given from the date when the previous owner became the owner.

The following example would give better understanding of the above:

Mr. X acquired a house on 1.4.1995 for Rs.200000/. There were certain improvements made on the above house during the financial year 1997-98 and cost of such improvements was Rs.100000/. Mr. X expired on 31.03.2000 and the house passed as inheritance to Mr. Y on 31.3.2000. Mr. Y sold the said house on 1.4.2003.

In the above example the cost of acquisition of the house would be indexed from 1.4.2000 whereas the cost of improvement be indexed from the financial year 1997-98. This would result in a very peculiar situation which cannot be the intention of the legislature.

Where the asset became the property of the assessee by any of the modes specified in section 49(1). The benefit of indexation of cost should be given w.e.f. the year in which the previous owner acquired the asset. Suitable clarificatory amendment may be made.

41. Section 50C

Section 50C being a special provision for considering full value of consideration in certain cases was inserted by Finance Act, 2002 w.e.f. assessment year 2003-2004. Accordingly, where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or buildings or both, is less than the value adopted or assessed by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall be deemed to be the full value of the consideration received or accruing as a result of such transfer.

Section 50C which provides for adopting value for stamp duty in the place of actual consideration is similar to section 52(2) withdrawn earlier due to Supreme Court decision in KP Varghese case, 131 ITR 597. We have earlier expressed our reservations in regard to this provision. We reiterate the same for the following reasons:

(a) ***Guideline value is not fixed in a scientific manner by the State Government authorities.***

(b) ***Guideline value is fixed for a particular survey number or division number encompassing several properties whose market value can never be the same.***

(c) ***The concept of real income gets affected and capital gains will be computed on basis of notional figure.***

(d) ***Guideline value is periodically increased in some States even though there is no corresponding increase in the market value.***

(e) ***Guideline values were influenced by the peak rates prevailing during 1996-97 after which the real estate market crashed down but guideline value has not been correspondingly reduced.***

(f) ***Even under Chapter XXC, guideline value never influenced the decision to purchase any property as the Appropriate Authority always appreciated that market value is different from guideline value. Guideline value is one of the indicative factors but not conclusive as to the fair market value of a property.***

(g) ***Any understatement of consideration should be tackled by investigation mechanism and not by such an amendment.***

(h) ***Invariably the buyer has to bear the stamp duty. If he goes on appeal against value for levy of stamp duty, it is unjust to deprive the seller assessee in getting the benefit of reference to valuation officer.***

(i) ***Reference to valuation officer and the value so estimated can be subject matter of prolonged litigation without ultimate increase in revenue.***

(j) ***Computation of capital gain on the basis of unrealised notional value will lead to difficulty in availing exemption by making eligible reinvestment.***

(k) ***Even in cases where transactions are approved by public charity commissioner, Reserve Bank of India, Appropriate Authority (up to 1.7.2002) invoking guideline value will lead to anomalous situations.***

(l) ***This provision is prone for subjective assessment and prolonged litigation on complex issues/disputes.***

The above mentioned hardship does not arise in States like Delhi and Kerala where no standard guideline value for stamp duty is determined but stamp duty is collected on the value indicated in the document. In certain States like Maharashtra, Andhra Pradesh, Tamil Nadu, Karnataka and other States the guideline value for stamp duty is more by 50% to 100% of the actual sale consideration. Hence it causes undue hardship resulting in taxing notional income often the notional income chargeable exceeds the net consideration in respect of the transaction. Central legislation placing reliance on State Guidelines, which are not uniform affects harmonious implementation and leads to discrimination.

42. Capital Gains not to be charged on Investments in certain bonds - Section 54EC

Capital Gains arising from transfer of long-term capital assets are presently exempt if such gains are invested (within a period of six months from the date of transfer) in specified bonds namely notified bonds issued by National Highway Authority of India and by Rural Electrification Corporation. The Finance Act 2007 has restricted reinvestment of gains arising from transfer of long term capital assets in specified bonds available under section 54EC to Rs.50 lakhs per investor per year.

Placing limit of Rs.50 lakhs per investor per year is a restrictive step, more so when the funds collected shall be available for infrastructure needs of our country. It is, therefore, suggested that the proposed amendment may be withdrawn.

43. Investments in residential house property for the purpose of availing exemption under sections 54 and 54F

Section 54 provides for exemptions from long-term capital gains on sale of house property where the capital gains are invested in purchase or construction of a residential house property within the prescribed period. Similarly, section 54F provides for exemption from long-term capital gains on sale of a long-term capital asset where the net consideration is invested in the purchase or construction of a residential house property within the prescribed period.

From a plain reading of these sections it appears that the exemption would be available even if the investment is made in a house property located abroad. It does not appear to be the intention of the legislature. This may be clarified.

44. Cost of Acquisition- Section 55

(1). Advancing the date of option of fair market value as cost of acquisition

Initially, the option date was 1st day of January, 1954. It was amended to 1.1.1964 w.e.f. 1978-79 assessment year. Subsequently it was amended to 1.4.1974 w.e.f. assessment year 1987-88 and 1.4.1981 was substituted w.e.f. 1993-94 assessment year.

It is suggested that the option date should be advanced to 1st April, 1991.

(2). Deeming of nil cost for all intangible business assets – Section 55(2)(a)

The provisions of section 55(2)(a) have been extended by the Finance Act, 2001 to cover trademarks and brand names of a business. To avoid confusion as to the applicability or otherwise of these provisions to a particular type of intangible asset, it is suggested that section 55(2)(a) should apply to all intangible assets of a business unless the cost was paid for acquisition.

45.(1) Condition regarding holding fixed assets

A further requirement is of having to hold ¾th in the book value of fixed assets of the amalgamating company by the amalgamated company for a period of five years. It may happen that fixed assets may cease to be held by the amalgamated company for no fault of the company, on account of destruction by fire, theft, etc., which would result in loss of benefit under section 72A.

It is, therefore, suggested that this condition should not be applied, if fixed assets of the amalgamated company are destroyed due to flood, fire or action by an enemy or any other natural calamity.

(2) Carry forward of business loss on amalgamation - Section 72A

Section 72A has been restricted only to a case where the amalgamating company is a company owning an industrial undertaking. The Finance Act, 2003 has extended the benefit also to an amalgamating company which owns a ship or a hotel or is a banking company. There is no reason to deny the benefit of set-off of losses to an amalgamated company, merely because the amalgamating company does not own an industrial undertaking or is not a hotel or a banking company.

It is, therefore, suggested that the benefit of set-off under section 72A should be available to the amalgamated company in all amalgamations, and not merely to those specified companies.

(3) Additional conditions under section 72A

Two additional conditions have been inserted by the Finance Act, 2003 in section

72A(2)(a) which need to be fulfilled by the amalgamating company to enable the amalgamated company to set off or carry forward the loss of amalgamating company.

Both the conditions for the amalgamating companies are unworkable, and in fact, they are also capable of manifold interpretations. In fact, these conditions may not serve the purpose for which section 72A is introduced. Therefore, that these conditions under section 72A(2)(a) should be deleted w.e.f. 1-4-2004.

46. Section 79 vis-à-vis Section 80IA

Section 80IA(5) provides that nothwithstanding anything contained in the Act, the eligible business would be treated as the only source of income for the previous year for the purpose of deduction under this section. Section 79 provides for carry forward of losses in cases of closely held companies subject to fulfillment of certain conditions specified therein. The set off of losses as per section 79 should be taken into consideration and deduction under section 80IA(5) should be on the net income after such set-off. However, since section 80IA(5) provides that the eligible business should be taken as the only source of income and this section is notwithstanding anything contained in any other provision of the Act, deduction is provided on the income of eligible business before set off under section 79.

It is suggested that appropriate amendment be made so that the set off of losses as per section 79 should be taken into consideration first and deduction under section 80IA(5) should be on the net income after such set-off

47. Sections 80AC, 10A and 10B-Consequences of delay in filing return of income

Delay in filing return of income attracts interest under section 234A. However, the delay in filing return even by a single day, additionally attracts disallowance of deductions and exemptions otherwise allowable under sections 80IA/80IB/ 80IAB/ 80IC/ 80ID/80IE /10A and 10B, which may be of large amounts. Delay in filing of return may also be a result of the inadvertent omission or sickness of concerned person, non availability of certain data, etc. and such delay is in most cases not of such a nature as to attract such disallowance.

Further, in case of losses, the benefit of the carry forward is also denied on account of delay in filing return of income, even if the delay is due to unavoidable circumstances.

It is suggested that a suitable authority should be empowered to allow such carry forward of losses or allowance of such expenses on application by the assessee in genuine cases.

48. Increase in limit -Deduction u/s 80C

Section 80C providing for deduction in respect of life insurance premium, deferred annuity, contributions to provident fund, subscription to certain equity shares was inserted by the Finance Act, 2005 w.e.f. 1.4.2006. Since then the economy has registered considerable growth. However, infrastructure is a critical constraint for the future growth. It is necessary to chanalise funds to the infrastructure sector.

It is suggested that section 80C may be amended to increase the limit of deduction available from Rs.1 lakh to Rs.2 lakhs with a condition that an amount of Rs.1 lakh should be invested in shares of companies belonging to infrastructure sector.

49. Section 80IA

(1). ***Exemption to be extended to the re-constituted power utilities.***

Section 80IA provides for deduction of an amount equal to hundred percent of profits and gains derived from specified business for consecutive assessment years.

As per section 80IA(3) the applicability of the section has been restricted for business formed by splitting up or reconstruction of a business already in existence.

Under section 80IA, the provision for tax holiday has been made with a view to provide an incentive to build up financial strengths within the organization. As on date there is no such exemption to the newly re-constituted power utilities through the un-bundling of State Electricity Boards i.e. de-merger.

It is suggested that the deduction under section 80IA should also be provided to the re-constituted power utilities.

(2). *Completion time limit to be increased for power projects*

Under section 80-IA(4)(iv) the benefit is available only when an undertaking , which is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 2010;

A good amount of investment on power projects (generation and distribution) is under planning /execution stage. The completion time limit needs to be increased from 31.3.2010 to 31.3.2015 so as to facilitate sizable investment in this sector.

(3). Section 80-IA(4)(iii)/ 80-IAB (second proviso)

Initially section 80-IA was intended to grant benefit to enterprises engaged in development of infrastructure facility. Thereafter the benefits were extended to various other sectors like developers of industrial park, SEZ, etc. Under section 80-IA(4)(iii) the benefit is made available to any undertaking which develops, develops and operates or maintains and operates an industrial park or SEZ.

However, where the developer of an industrial park / SEZ transfers the operations and maintenance of the industrial park/ SEZ to another, then it appears that the benefit u/s. 80-IA is made available to the transferee undertaking and it is not clear as to whether the benefits would be available to the developer also, from income arising from development, who makes substantial investment for development of SEZ.

Generally, any development of real estate results in sale or lease transactions. However, in case of such park/SEZ, the only revenue source is lease as the sale per se is not allowed. Hence, the lease rentals should be considered as income from business in respect of such properties.

(i) ***Even if the operation and maintenance is transferred, it may be clarified that the benefit shall be available to the developer for income arising from development activity.***

(ii) ***The developer should get benefit in respect of its rental income from the lease, irrespective of whether the income is assessed as income from house property or as Profits of business of the developer.***

(4). 80-IA benefit to cross country natural gas distribution network

The Finance Act 2007 has extended the 10 year tax holiday to any undertaking carrying on the business of laying and operating a cross–country natural gas distribution network, including pipelines and storage facilities being an integral part of such network, subject to certain conditions.

Similar benefits are desirable for distribution networks of other energy fuels as well.

It is suggested that similar benefit may be extended to cover distribution networks in case of all energy fuels.

(5). Section 80-IA – Oil and gas exploration and production

Even though partial benefits on taxes are allowed under section 80-IB(9) to the industrial undertakings engaged in the business of commercial production or refining of mineral oils, infrastructure benefits need to be extended to oil exploration and production ("E&P") activities which are of importance in terms of national economy and involve very high costs.

It is suggested that the oil and gas exploration and production industry be given 'Infrastructure' status and the benefits of section 80-IA may be extended accordingly.

(6). Section 80-IA(13)

Sub-section (13) of section 80-IA refers to denial of exemption under section 80-IA in respect of SEZ notified on or after 1.4.2005 "in accordance with the scheme referred to in sub-clause (iii) of clause (c) of sub-section (4)".

The correct reference is "clause (iii) of sub-section (4)"

The provision may be accordingly amended.

(7). Deduction for profits of new industrial undertakings - Section 80(IA) & 80(IB)

Sub-section (12) of both sections 80(IA) and 80(IB) allow the benefit of unutilised deduction under those sections in respect of a transferred undertaking under an amalgamation or demerger to the amalgamated or the resulting company. It is already established law that the deduction under these sections goes with the eligible undertaking, and therefore, such a provision is unnecessary.

In the year of amalgamation or demerger, it has been provided that the benefit of the deduction would be available only to the amalgamated or resulting company, and not to the amalgamating or demerged company.

> ***It is suggested that the deduction should be available to both the companies in such year, because profit earned by each one of them is only a part of the total profits of the unit. Since the deduction is allowed as a percentage of the profits, there is no double deduction in such a case.***

In the case of an infrastructure project, section 80lA(4)(i) provides that the benefit is available to an enterprise carrying on

(a) developing, (b) operating and maintaining, or

(c) developing, operating and maintaining

any infrastructure facility. However, in the case of an industrial park or special economic zone, S. 80lA(4)(iii) provides that the benefit is available only to an enterprise which:

(a) develops, (b) develops and operates, or

(c) maintains and operates

any industrial park or special economic zone.

> ***It is suggested that the benefit for all types of enterprises should be available under similar conditions.***

(8). Deductions in respect of profits and gains from certain industrial undertakings engaged in exploration, excavation/manufacture, transportation,

regassification etc. of NG/LNG

Section 80-IA provides for deduction in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development. The deduction is equal to 100% of the profits and gains derived from such undertakings/ enterprises for 10 consecutive assessment years. Infrastructure facility for the above purpose includes road, bridge, airport, inland waterways, rail system, highway project, housing, water supply, irrigation, sanitation/sewage system, generation, transmission and distribution of power etc.

Similarly, section 80-IB provides for deduction in respect of profits and gains from certain industrial undertakings including the undertakings engaged in shipping business, hotel, multiplex theatre, convention centre, scientific research, refining of mineral oil, developing of housing project, setting up/operation of cold chain' facility for agricultural produce, integrated business of handling, storage and transportation of foodgrains etc.

NG/LNG is the main source of feedstock for manufacturing of fertiliser and generation of power. Accordingly, an undertaking, which is engaged in exploration, excavation/ manufacture, transportation, regassification etc of NG/LNG should also be allowed the deductions u/s.80-IB of I.T. Act.

50. Section 80IB

(1). Incentive for affordable housing

In recent times the property prices have risen like anything. This has made difficult for the poor to get a house for himself. Therefore, affordable housing (i.e. houses made of non-conventional building material) should be promoted.

It is suggested that incentive, say under section 80-IB, should be given to the assessees engaged in construction of such affordable houses or components of affordable housing. It is further suggested that the exemption limits should be fixed on the basis of the cost of the house and not the area.

(2). Section 80-IB (10)

The section provides incentive for development of housing projects. One of the prescribed condition, is that the built up area of the shop and other commercial establishments included in the housing projects shall not exceed 5% of the aggregate built up area of the housing project or 2000 sq ft, whichever is less.

In large housing projects, 2000 sq. ft. may not be adequate, particularly in view of high density as may arise from restriction of maximum built up area of 1000/ 1500 sq. ft. per residential unit.

The absolute limit of 2000 sq. ft. may be deleted and this amendment may be made effective from 1.4.2005.

(3). Section 80-IB (11A)

The Finance (No.2) Act, 2004 has extended the benefit of tax holiday to an undertaking deriving profits from the business of processing, preservation and packaging of fruits or vegetables.

Notwithstanding the fact that the words ‘integrated’ is not used a doubt arises as to whether the conditions of “processing, preservation and packaging” are cumulative. Given the intent of promoting agro based industry, the benefit should be extended to undertakings deriving profits from the business of either ‘processing and packaging’ or ‘preservation and packaging’.

> ***For the words “processing, preservation and packaging” the words “‘processing and packaging’ or ‘preservation and packaging’” may be substituted.***

These amendments may be made effective from 1.4.2005.

51. Section 80IC- Special provisions in respect of industrial undertakings in certain special category States

Section 80IC of the Act provides for the grant of specified deduction from the profits and gains of business of an industry set up in specified areas of the country. Clauses (a) and (b) of sub-section (2) of the said section provides that the section applies to any undertaking or enterprise which has begun or begins to manufacture or produce any article or thing not being an article or thing specified in Thirteenth Schedule or Fourteenth Schedule, as the case may be, and undertakes substantial expansion beginning on the dates specified in the aforesaid clauses. The clauses as aforesaid also provide for the date upto which such activity can be taken up so as to avail the benefit.

The words "undertakes substantial expansion" is being interpreted by the department to mean that the substantial expansion should be completed within the year in which such expansion is undertaken. It would be appreciated that a substantial expansion cannot normally be completed within the same year. Such an interpretation would thus make the section inoperative for substantial expansions which take more than one year. This can not be the intention of law.

> ***It is therefore suggested that the law may suitably be amended to bring out clearly that for the purposes of the grant of the benefit the initial year will be the year in which the production is commenced as a result of such substantial expansion.***

52. Re-introduction of deduction under section 80L

In majority of returns being filed, the bank interest is a very meagre amount on which tax has to be paid. In case of salaried employees having no other income, the whole amount of tax payable is generally deducted at source. In such cases, payment of tax on a meagre amount of saving bank interest causes unnecessary hardship to the assessees.

> ***It is suggested that the provisions of section 80L be re-introduced to cover interest on saving bank accounts upto Rs.5000/-.***

53. Deduction in respect of royalty on books – Section 80QQB

Section 80QQB provides for a deduction of income up to Rs.3,00,000/- in respect of royalty or copyright fees or lump sum consideration in respect of a book. The term book is defined as, *inter alia,* not including commentaries. The intention appears to be to grant deduction in respect of all books of literary, artistic or scientific nature. It is possible that many books of scientific nature may be regarded as commentaries, and may not qualify for the deduction.

> ***Since this does not appear to be the intention, it is suggested that clause (b) of the Explanation to the section should be amended by deleting the word 'commentaries' from the list of exclusions.***

The benefit appears to be restricted to persons carrying on the profession of an author. This would deny the benefit of the deduction to most authors of literary, artistic, or scientific books, since it is not always possible for a person to sustain himself merely by writing books. Even some of the leading authors and poets may not get the benefit due to this restriction.

> ***In order to ensure that the deduction really benefits those for whom it is intended, it is suggested that the benefit should not be restricted to income derived from the exercise of a profession, but should be available to any author of such books.***

54. Deduction in respect of royalty on patents - Sections 80RRB and 155(17)

Section 80RRB allows a deduction of income up to *Rs.3,00,000I-* in respect of royalty on patents. It is seen that only patents registered under the Patents Act, 1970 are eligible for the deduction, and not patents which are registered under the law of any other country. The intention of the section appears to be to encourage inventions, and therefore, the restriction of the deduction only to patents registered in India is not appropriate.

> ***It is, therefore, suggested that patents registered anywhere in the world should be eligible for the benefit of this deduction.***

Section 155(17) provides that the Assessing Officer shall amend the order of assessment to revise the computation of total income, so as to disallow the deduction allowed *u/s* 80RRB in that assessment year, if the patent is subsequently revoked.

> ***It is suggested that when the revocation of a patent takes place the disallowed deduction should be treated as income of the previous year***

in which such order of revocation or exclusion is received.

55. MAT-115JB

(1). Amendments to the definition of 'Book Profit'

Under the provisions of section 115JB, in computing the book profits under the Explanation, the following issues arise, which need to be addressed:

(i) ***Deduction available under sections 80-IA and 80-IB should be excluded from the ambit of MAT provisions*** and in this respect, earlier provisions as contained under section 1l5JA should be reverted back to. Infrastructure projects covered by section 80lA and industrial units in backward area covered by section 80IB should not be indirectly subjected to tax by MAT provisions. This will avoid penalising those units, which have been set up earlier, which may have been viable only on account of such benefits, and which have relied on such benefits being available. Alternatively, the deduction should be allowed to units existing as on 1st April 2000 and may not be allowed in case of units set up on or after that date.

(2). Carry Forward of losses

Sub-section (3) of section 115JB provides that the computation under this section would not affect carry forward of various losses and allowances. The section needs to be amended to include loss carried forward under section 72A on an amalgamation.

(3). Deduction of depreciation and loss

Explanation to section 115JB(2) allows deduction in respect of amount of loss brought forward or unabsorbed depreciation, whichever is less, as per books of account.

Clause (a) to the Explanation to the section should be amended to provide that book profits should be computed after deducting the full amount of unabsorbed book losses including book depreciation.

(4). Scope of exemption from MAT

Sub-section (6) of section 115JB provides for exemption from MAT to an "entrepreneur" or "developer" in respect of income accruing or arising from any business carried on, or services rendered, in a "Unit" or "SEZ", as the case may be.

The plain reading of the provision indicates that exemption from MAT is available to a developer in respect of income accruing or arising from any business carried on, or services rendered, in a SEZ. This may be construed as not referring to income accruing or arising from any business of developing a SEZ since there can be no business carried on, or services rendered, in a SEZ prior to its development. This does not appear to be so intended.

It may be clarified that the exemption from MAT to a "developer" is available in respect of income arising from an undertaking or enterprise engaged in

(a) developing a SEZ,

(b) developing & operating a SEZ and

(c) developing, operating and maintaining a SEZ.

(5) Section 115JB(6)

Sub-section (6) of section 115JB provides that provisions of section 115JB shall not apply to income accrued or accruing on or after 01-04-2005 from any business carried on or services rendered by an entrepreneur or a developer, in a unit or a SEZ, as the case may be.

It is not clear as to whether the provisions of section 115JB shall apply in the case of an assessee who also carries on any business not covered by section 10AA/80-IAB.

It may be clarified that the relevant income of such entrepreneur or developer shall be excluded while computing book profits under explanation to section 115JB(2).

(6) Long term capital gains

While on one hand, by virtue of amendments made by the Finance Act 2006, tax payable on book profits has been increased from 7.5% to 10%, on the other hand profits on sale of equity shares or units of equity oriented funds (held for a period exceeding 12 months) which are exempt under section 10(38) of the Act would no longer be excluded while computing book profits under section 115JB.

The net effect of these amendments is that certain category of corporate assessees (i.e. those paying MAT on their books profits) are back to pre STT regime of 10% tax on long term capital gains arising for listed securities, STT being an additional hit.

When STT was introduced it was considered as a major shift in the regime of taxation of capital gains. The effect of the amendment is that there is virtually a roll back of benefits in case of one category of assessees, namely MAT paying corporate assessees, whereas the other assessees (corporate assessees paying tax under the regular provisions of the Act and non corporate assessees) continue to enjoy the benefits of the STT regime.

As it would be unfair to single out one category of assessees and deny them the benefit of STT regime, it is suggested that the amendment made by Finance Act 2006, be withdrawn with retrospective effect.

Without prejudice to the above, in case the said amendment has to be retained it should be provided that such corporate aseessees who are hit by the amendment would be entitled to the credit of STT as tax paid.

(7) Oil exploration and production

Every company is required to pay minimum tax on book profits, even if it does not have any taxable profit.

For oil exploration and production companies being in high risk high capital business, the profile of profits could be erratic. Due to MAT, it ends up paying taxes in the year of profit but gets no advantage in the year of loss.

It is suggested that oil exploration and production companies should be exempted from MAT to promote mineral oil exploration and production sector.

56. Section 115-O(6) - Dividend Distribution Tax

Sub-section (6) of in section 115-O provides that no dividend distribution tax shall be levied on the total income of an undertaking or enterprise engaged in developing or developing and operating or developing, operating and maintaining a SEZ on any amount declared, distributed or paid by way of dividend out of its current income, either in the hands of the enterprise or the person receiving such dividend.

There is no clarity as to how the exemption would be available in respect of an enterprise engaged in the SEZ activity and any other business activity.

It is suggested that section 115-O(6) may be amended to provide the mechanism for computation of dividend which will be exempt from dividend distribution tax.

57. Fringe Benefit Tax

(1). Chapter XIIH was introduced by the Finance Act, 2005 levying tax on the fringe benefits provided or deemed to have been provided by the employer to his employees. As per the scheme, this tax is payable on deemed fringe benefits by applying the presumptive method of computing the value of the benefits. This tax is payable by all entities other than an individual and HUF, entities registered under section 12AA, and those eligible for exemption under section 10(23C) of the Act. The objective of this tax is to capture those fringe benefits which are enjoyed in common by the employees and cannot easily be identified or computed to be taxed in the hands of the employees. However, the implications of these provisions have resulted in taxing even those expenditure which may not have any direct and indirect nexus with the employees. The main reason for the same is treating all expenditure in the course of business under specified heads as fringe benefits and giving no option to the assessee to compute the fringe benefits on an actual basis. As has been stated in the objective, this tax is a tax on the fringe benefits to the employees. To avoid resentment and in some cases undue hardship to the employers who are incurring genuine expenditure in the course of business and where the expenditure has nothing to do with any fringe benefits being extended to the employees, an option should be given to the employer to compute the value of fringe benefits actually provided to the employees only. The disallowance of the expenditure if any incurred for personal purposes other than the employees can still be resorted to under section 37(1) of the Act. As regards any expenditure incurred by the employer in the course of business which results into any benefit or perquisite to a person other than an employee, the same can still be taxed under the existing clause (iv) of section 28 in the hands of the recipient rather than requiring the person who has incurred such expenditure in the course of business to pay tax thereon.

Option to prove lesser fringe benefits

It is suggested that the provisions of FBT may be suitably modified and an option may be provided on the lines given under section 44AD, 44AE, 44AF to the effect that in the case of those employers who claim that the fringe benefits extended by them to the employees are less than what is computed under the deeming provision the employer should maintain the accounts for such expenditure and get the same audited.

Threshold limit

Presently, this provision applies to all persons other than individual and HUF falling within the definition of the term "employer" and there is no threshold limit. This tax is payable by small firms and companies. Though such firms and companies may have employees where none of the employee's income may be more than the amount not chargeable to tax. Further, there may be many employers whose liability will be very minimal and it may not be cost effective to collect FBT from such persons. It is suggested that a threshold limit should be prescribed.

Average rate of tax

Further, the rate of tax of 30% may not be justified as income of all the employees may not fall in the tax bracket of 30%. As clarified in the circular dated 29th August, 2005, FBT is a surrogate tax being the tax of the employees to be borne by the employers and, if that be so, the tax rate applicable to the employee is an important consideration. Under the deeming fiction created under the existing provision, no distinction has been drawn in respect of the employees who are neither liable to pay tax or liable to pay tax at a lower rate or at the maximum rate of 30%. Further, with every employer it may be a normal presumption that out of the total number of employees a very few employee may be falling in the highest tax bracket and as such to tax the value of the fringe benefits at the highest tax rate may not be appropriate. To avoid this hardship and at the same time for the sake of simplicity, it is suggested that the FBT should be levied at the average tax rate of 20 per cent.

Concessional rate for professionals

As per the provisions of section 115WC(2), the value of fringe benefit in respect of expenditure incurred on conveyance, tours and travels, use of hotel, boarding and lodging is to be taken at 5% for employers like pharmaceuticals, computer software etc. The reason for giving this concession was that a large amount of expenditure is being incurred under these heads a substantial portion of which is not for employees. No concessional rate has been provided in the case of professionals. It is an admitted fact that in the case of professionals a large amount of expenditure is incurred on conveyance, tour and travel and hotel, boarding and lodging etc in discharge of their professional duties which has nothing to do with the fringe benefits provided to the employees. Accordingly, the concessional rate of 5% in respect of the specified expenditure should be extended to the professionals on the line on which the concession has been given to the pharmaceuticals and computer software industry.

Exemption to those covered by presumptive taxation

There are certain classes of employers who are covered by presumptive method of taxation and such employers are not required to maintain books of accounts particularly those engaged in retail trade having a turnover of Rs.40 lakhs, contractors and transporters. The existing provision is applicable to all employers covered by the definition of Section 115W(a). In the absence of books of account it may not be possible to compute the value of fringe benefits liable for FBT. As such, there is a need either to exempt this class of employers or to prescribe a mechanism for the value of fringe benefits in such cases.

Payment of advance tax on estimate basis

As per the existing provisions of FBT, an employer is required to pay tax every quarter on the basis of the value of fringe benefits provided or deemed to have been provided in each quarter. The payment is to be made within 15 days from the end of the relevant quarter. Not only that, the payment for the last quarter is to be made 15 days before the end of the relevant quarter. Further, there is no threshold limit prescribed for making the payment in quarterly instalments. As such, every employer howsoever small the amount may be of the FBT, is required to deposit the same in 4 instalments which goes to increase the paper work considerably. Further, computation of the actual value of the fringe benefits for each quarter may not be possible for every employer except a few listed companies which are required to declare their quarterly results and for them also the period given for declaring quarterly results is not 15 days. Taking into consideration the above difficulties it is suggested that that provisions regarding payment of FBT in advance may be modified as under :

(i) The FBT be paid in advance on the basis of yearly estimate made by each employer exactly on the line which is presently done for the payment of income tax.

(ii) The payment should be allowed to be made along with due dates for payment of advance income tax as it will go to reduce the paper work.

<u>Adjustment of income-tax against FBT and vice-versa</u>

As per the provisions of section 115WA, FBT is a tax in addition to income tax and as such this amount should be paid along with the income tax and accordingly adjustment for any excess tax paid should be allowed against FBT and vice versa. This will not only reduce the administrative work but also avoid the hardship which otherwise will be caused, as an employer may be required to pay interest in respect of liability on account of FBT and, on the other hand, there may be refund of tax under the regular income tax. Further, the due dates for the payment of advance FBT should be the same as that of the advance income-tax. A threshold limit on the lines prescribed under section 209 for payment of advance income tax should be provided. Further, liability to pay interest in case of short-fall of payment of FBT should be there only when the amount of the tax paid is less than 90% of the total tax assessed.

<u>Penalty for delay in filing the return</u>

As per provisions of section 271FB, a penalty of Rs.5,000 has been prescribed in case the return is filed beyond the due date of filing the return. This provision is inconsistent with section 271F of the Act, whereby a penalty for delay in filing the return is leviable only when the return is filed after the end of the relevant assessment year. It may be recalled that by the Income-tax (Amendment) Act, 1987 the provision for the levy of penalty for delay in filing the return was rationalised. Section 271(1)(a) under which a penalty was computed on the basis of each month of delay was in operation and the same was substituted by section 234A of the Act. This section continues to be there as on date as well as section 115WK which is exactly on the lines of section 234A. As such, there is already a penal provision for delay in filing the return. Thus, firstly there is no need to have a separate provision for the

levy of penalty in case of delay in filing the return. Secondly, even if it is required, a penalty should be leviable only if there is a delay beyond the end of the assessment year and not before. Further, it is suggested that the penalty even in such cases should not exceed the amount of the tax involved.

<u>Need for audit provision</u>

The fringe benefits tax is an independent tax governed by the provisions of Chapter XII-H. There are separate provisions providing for the administrative procedures in connection therewith. Form No.3CD was amended by Notification No.8/2006 dated 10th August, 2006 whereby Annexure II was inserted to Form No.3CD containing the details to be furnished for the purpose of valuing the fringe benefits. However, it is felt that a separate provision providing for audit of fringe benefits is necessary in the Income-tax Act. Appropriate changes may also be effected in the form of audit report in Form No.3CA/3CB. The ICAI can provide relevant inputs in this regard.

(2). Free Offers

Clause (D) of section 115WB(2) provides that expenditure on sales promotion including publicity is liable to FBT. The terms 'sales promotion including publicity' is not defined anywhere in the Act.

The term 'sales promotion including publicity' may be defined.

(3). Section 115WKA – Recovery of fringe benefit tax by the employer from the employee

As per newly introduced section 115WKA, w.e.f. 1.4.2007, the employer is authorized to vary the agreement or scheme under which specified security or sweat equity shares have been allotted or transferred directly or indirectly, so as to recover from employees the FBT in relation to value of fringe benefits provided to the employees and determined under clause (ba) of sub – section (1) of section 115WC. Such recovery merely represents the recovery of tax amount paid by the employer and not a business receipt liable to tax, however, there is no specific provision for treating such recovery as non-taxable.

An amendment may be made in section 115WKA or a separate section may be introduced to specifically provide for non taxability of the recovery of such FBT by adjusting such recovery against the employer's FBT liability.

(4). FBT provisions vis-à-vis provisions of section 17(2)(iii)

Rule 3 of the Rules (providing for valuation of perquisites) was amended by the Income-tax (7th Amendment) Rules, 2005 w.e.f. April 1, 2005, presumably, with the intent of excluding from the scope of personal taxation all such benefits which are chargeable to FBT. Clause (vi) of section 17(2) was also amended by the Finance Act, 2005 w.e.f. April 1, 2005 to the effect that the Board may prescribe the value of any fringe benefit or amenity but only for such fringe benefits as are not chargeable to FBT.

The provisions of clause (iii) of section 17(2) of the Act are so worded to bring within its scope many of the fringe benefits that are chargeable to FBT (e.g. car). There is no amendment to this clause [corresponding to the amendment made to clause (vi) of section 17(2)] to exclude from the scope of personal taxation the benefits which are chargeable to FBT. No doubt, section 115WB(3) provides that the perquisites which are taxable in the hands of the employees shall not be liable to FBT. However, there is no express provision in section 17(2)(iii) of the Act which prohibits taxing perquisites in the hands of the employees notwithstanding that it is liable to FBT. Notwithstanding the legislative intent to exclude from the scope of personal taxation all such benefits which are chargeable to FBT, the bare reading of section 17(2)(iii) leaves the issue open to doubt.

The provisions of clause (iii) of section 17(2) of the Act should be amended to the effect that the benefits which are chargeable to FBT will be excluded from the scope of personal taxation.

This would avoid the unintended taxation of the benefits provided by the employer to the employee and, thus, would avoid otherwise avoidable litigation when the assessing officer attempts to tax perquisite (benefits) in the hands of the employee when the employer has already paid FBT by on

(5). Scholarships

Scholarships have been brought under the ambit of FBT under 50% category. Scholarships granted to meet the cost of education is exempted under section 10(16). Since it was found that huge sums are given as scholarship, they have been brought under FBT.

> ***Scholarships are given to the children who excel in their education for further pursuing higher education. This is also in line with national policy of encouraging education. Misuse of exemption of scholarship could be easily avoided by providing a ceiling under section 10(16) say Rs.500 to Rs.1000 PM. Alternatively any sum paid beyond a ceiling per student may be brought under FBT. This is essential to ensure that genuine students do not suffer and only abnormal scholarships given with the objective of tax avoidance gets covered under FBT.***

(6) Admissibility of FBT as deduction

Where the employer bears the tax liability of any employee and the salary is grossed up, the entire salary (including the tax amount) is allowable as deduction in the hands of the employer.

> ***Since FBT is also (indirectly) a tax on the income of the employee (benefits enjoyed by the employee) but borne by the employer, deduction of such FBT should be allowed in the hands of the employer. This would require removal of sub-clause (ic) to section 40(a) and a corresponding clarificatory amendment to sub-clause (ii) to section 40(a).***

(7) Levy of FBT on overnight stay for flight crew and in-flight services to passengers and crew

In the airline industry, it is general practice to provide overnight stay facilities to its crew. Further, in-flight services to passengers are part of the services being provided by the companies. Accordingly no FBT should be levied on it. The issue is whether such expenditure, which is integral part of the services provided, should be subjected to levy of FBT.

Overnight stay for Flight Crew and in-flight services to passengers and crew should not be liable for FBT.

(8). Amendments by Finance Act, 2006

The Finance Act, 2006 has amended the scope of FBT in the following areas :

(A) expenditure in the nature of payment to 'a person of repute' for promoting sale of goods or services of the employer has been excluded from the purview of FBT.

(B) expenditure on free/ subsidized transport or conveyance allowance for commuting between residence and office has been clarified as being not subject to FBT.

The term "person of repute" is an ambiguous term and would be open to multiple interpretations. Hence the term may be defined.

(9). Tax adjustment

(a) Section 115WJ gives the method of calculation of interest on shortfall or non payment of advance tax of FBT.

It is suggested that the criteria of 12% and 36% should be given for first and second quarter respectively under section 115WJ on the similar lines as under section 234C which governs calculation of interest on shortfall or non payment of advance tax on Income tax.

(b) Applicability of Surcharge in case of Fringe Benefit Tax

The surcharge on income-tax in the case of firms/companies is applicable only if total taxable income exceeds Rs.1 crore. At present, surcharge is applicable on the entire Fringe Benefit irrespective of the income.

The exemption limit for surcharge applicable in case of income-tax should be made applicable in the case of Fringe Benefit Tax also.

58. Search and seizure

(1). Assessee's explanation of seized and requisitioned assets

At present there are no specific provisions enabling an assessee to explain the source of seized and requisitioned assets nor is it incumbent on the Assessing Officer to issue an order or the explanation filed by the assessee.

It is suggested that where the assessee files a statement explaining the source of seized and requisitioned assets the Assessing Officer should issue an order accepting or denying assessee's statement. Such an order should be appealable under section 246A

(2). Seizure of stock-in-trade

Insertion, by the Finance Act, 2003, of a proviso in clause (iii) of section 132(1), provides that any bullion, jewellery valuable article or thing, being stock-in-trade will not be the subject matter of seizure. It is also provided that such assets being stock-in-trade cannot be the subject matter of a deemed seizure. The amendments are effective from 1-6-2003. However, simultaneous amendment is not made in section 132(3). Thus while the stock-in-trade cannot be subjected to seizure or a deemed seizure, such stock-in-trade continues to be subjected under the prohibitory order u/s 132(3), and requires to be amended.

> ***There is a need to amend section* 132(3) *to prevent an authorized officer to issue a prohibitory under section* 132(3). *Unless, an amendment is carried out, an authorized officer will continue to have the permission to put the stock-in-trade under prohibitory order and prevent the disposal of the same for a period of sixty days. This suggestion has* to *be carried out in order to ensure that the amendments made by the Finance Act,* 2003 *are truly effective.***

59. Filing of Revised Return under the provisions of section 139(5)

Under the provisions of Section 139(5), if any person, having furnished a return u/s 139(1) discovers any omission or any wrong statement, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. At times, the Assessing Officer considers that intimation u/s 143(1) is an assessment order. Accordingly, after passing of the intimation u/s 143(1), assessee is not allowed to file the revised return.

Since intimation u/s. 143(1) cannot be considered as an assessment order, the assessee should be allowed to file the revised return even after serving of the intimation u/s 143(1) on him. However, such revised return should be filed before the expiry of one year from the end of the relevant assessment year or before completion of the regular assessment u/s 143(3). Hence, suitable amendment should be made in section 139(5).

60. Defective Return

(1). E-filing v. Explanation to section 139(9)

At the time of e-filing of return no attachment or document is accepted.

The provisions of the Act and the rules need amendment in view of the objectives of e-filing, particularly the ones referring to the defective return in Explanation to section 139(9).

(2). Annexure-less return

As per the Explanation to section 139(9) of the Income-tax Act, the return has to be accompanied by certain specified documents otherwise it would be considered as defective. However, with the introduction of annexure less return these documents are not required to be attached with the return.

Therefore, it is suggested that :

a) Explanation to section 139(9) may be amended appropriately.

b) Section 184(2) and section 184 (4) which require filing of partnership deed along with the return of income may also be amended appropriately.

61. Hardship arising out of the Apex Court's decision in *Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC)*

In the above-mentioned case the assessee filed its return of income for the relevant assessment year without claiming a particular deduction. Later on, it sought to claim the deduction by way of a letter addressed to the Assessing Officer. The deduction was disallowed by the Assessing Officer on the ground that there was no provision under the Act to make amendment in the return of income by making an application at the assessment stage without revising the return.

The assessee had relied upon the decision of the Apex Court in National *Thermal Power Company Ltd. v. CIT (1998) 229 ITR 383*, to contend that it was open to the assessee to raise the points of law even before the Appellate Tribunal. In that case, it was held that the Tribunal had jurisdiction to examine a question of law (raised for the first time), which arose from the facts as found by the income-tax authorities and which have a bearing on the tax liability of the assessee.

The Supreme Court held that this decision does not in any way relate to the power of the Assessing Officer to entertain a claim for deduction otherwise than by filing a revised return. Therefore, the assessee can claim deduction only by filing a revised return.

The above-mentioned decision of the Apex Court has unsettled many a case law and has caused unintended hardship to the assessees.

> ***It is suggested that appropriate amendments may be made to enable the assessee to get relief during the assessment proceedings by methods otherwise than by way of filing a revised return.***

62. Undue delay in giving the effect of Commissioner of Income Tax (Appeals) [CIT(A)]/Income Tax Appellate Tribunal (ITAT)/Courts' order

(a) Considerable delay is made in giving effect to the order of

CIT(A)/ITAT/Court by Assessing Officer, particularly in case relief/refund is allowed by CIT(A)/ITAT/Court. This puts the assessee into considerable difficulty. Though section 244A provides for payment of interest @ 6% p.a. for delay in grant of refund, no time limit has been prescribed within which the appeal effect is to be given/refund is to be granted by the AO.

Therefore, suitable provision should be made in tax laws so as to make the AO accountable to give the effect of CIT(A)/ITAT/Courts' order within reasonable period, say one month, failing which the assessee should be entitled to adjust the amount of refund as per his own calculation while making payment of advance tax Moreover, instead of interest @ 6% p.a. interest @ 12% p.a. should be paid to the assessee for any delay in grant of refund.

(b) At times, AO grants the interest, but no refund order is given to the assessee. Such refund order is given only after substantial period of time, say 4-5 years. Since there is no specific provision for payment of interest on such delayed refund of interest, AO is not allowing further interest to the assessee.

Specific provision should be made in the tax laws to allow interest on delayed refund of interest also.

63. Issue of notice under section 143(2)

Notice has to be issued before the end of the financial year and the assessment is to be completed before the expiry of one year from the end of the financial year in which the return was filed so as to recover the tax at an early date and thereby the matter could be settled expeditiously.

64. Method of accounting and accounting standards

The objective of the Income-tax Act is to compute correct income chargeable under the Act. For computing correct income from business, application of correct accounting principles is essential. The ICAI, as the apex body in accounting, has issued several accounting standards enunciating correct principles of accounting. These accounting standards have been recognized under the Companies Act and it is the duty of the management to comply with the accounting standards of the ICAI.

In case there is no specific provision in the law, the accounting Standard should prevail and in case there is specific provision in law, law should prevail.

It is further suggested that the Ministry of Finance and the ICAI may form a group to discuss the same in detail. Alternatively, the Institute can go in detail and give its recommendations to the Ministry.

65. The need for withdrawing section 145A in view of Accounting Standard 2 (Revised) Valuation of Inventories becoming mandatory

(i) The Institute has issued 29 definitive Accounting Standards on various subjects. These Accounting Standards have been made mandatory. AS 2 (Revised) Valuation of Inventories has been made mandatory from accounting year starting from 1.4.1999 onwards. The mandatory AS also apply in respect of financial statements audited under section 44AB of the Income-tax Act, 1961.

(ii) After the Notification of Revised AS-2 the costs of purchase consists of the purchase price including duties and taxes other than those subsequently recoverable by the enterprise from the taxing authorities. In other words, the entities have to necessarily follow the exclusive method of accounting and in case they are adopting any other method, the chartered accountant certifying the financial statements has to necessarily qualify the financial statements. The qualification has to be made in the main auditor's report stating that the auditee has not complied with the Accounting Standards notified by ICAI and even the impact of the profit has to be quantified and stated in the qualification.

(iii) The Guidance Note on Tax Audit under section 44AB of the Income-tax Act, which was prepared under the close coordination and advice of the CBDT has come to the considered conclusion that section 145A is revenue neutral. In other words, even after the adjustments specified in that section have been made, there would be no impact on profit or loss of the assessee. The said conclusion was arrived at after a long and detailed deliberation at various levels and after examining basic accounting principles. As such, all entities have to follow the Accounting Standard 2 (Revised) of the Institute. However, separate computation is necessary for the purpose of complying with the provisions of section 145A. Such separate computation has to be made outside the books of account. This computation will form part of annexures to the tax audit report and statement of computation of income. However, it should be noted that any adjustment made to any figure in the profit and loss account must be in accordance with correct accounting principles.

(iv) It may be pointed out that any adjustment made in the computation of income is fraught with the danger of an assessee manipulating and in fact reducing the total income. This is so because, there are innumerable adjustments which are required to be made in the computation of income and the impact of these adjustments if not noticed separately, would lead to revenue leakage.

(v) There are possibilities of different viewpoints being taken on the interpretation of the provisions of section 145A by the Assessing Officers, which is bound to result in protracted litigation and may affect the interests of revenue.

(vi) Now that under the excise law statutory records have been abolished, it is very essential that proper records should be maintained showing the taxes collected and remitted to the Government. Moreover, maintenance of separate records in respect of CENVAT as required by AS 2 will facilitate systematic audit under the provisions of section 14AA of the Excise Act, 1944. Accounting Standard 2 (Revised) Valuation of Inventories and the Guidance Note on CENVAT would contribute immensely in this regard. The "exclusive method" also has a merit in as much as the Modvat receivable account, which is reflected as an asset would truly represent the quantum of Modvat credit as per the Excise Law. In fact the excise authorities do check the books under the Excise Law. If the accounts are maintained on "inclusive method", this check would be impossible.

(vii) The primary reason for introduction of section 145A was to negate the judgement of the Gujarat High Court in the case of *Lakhanpal National Limited v ITO 162 ITR 240 (Guj)* and the order of the Special Bench of the Income-tax Appellate Tribunal in the case of *ITO v Food Specialities Limited 206 ITR 119 (AT).* With the notification of AS 2, the aforesaid judgement and order would not hold good.

(viii) Accounting Standard 2 (Revised) Valuation of Inventories would result in more transparency in respect of accounting for taxes and duties due to the Government.

The complicated computation required for complying with the provisions of section 145A will not generate any extra revenue as the impact of section 145A is revenue neutral. Hence section 145A needs to be deleted.

66. Sections 147 and 148

The Hon'ble Supreme Court, in GKN Drive Shafts (India) Ltd. v. ITO (2003) 259 ITR 19 (SC), spelled out a definite procedure to be followed by the authorities before initiating re-assessment proceedings under section 147. The Supreme Court held that before initiating the assessment proceedings under section 147, the Assessing Officer was duty bound to furnish reasons within a reasonable time and, upon objections to the same being raised by the assessee, to dispose of the same by passing a speaking order. However, such procedure is not being followed by the tax authorities in all cases.

The assessees, in such a case, have no recourse but to go to the High Court which is a very expensive proposition, making it unfeasible for many, and thus, effectively, defeating the rule laid down by the Supreme Court.

It is suggested that definite procedural steps may be legislated in section 147/148 to make the procedure mandatory. This would also enable review by appellate authorities [CIT(A)/ ITAT] of the speaking order to be passed by the Assessing Officer in examining the validity of proceedings under section 148/ 147. This will have concomitant benefits on the entire assessment process.

67. Section 153C - Assessment of income of any other person

(1). The above-mentioned section deals with assessment of income of a person other than the person referred to in section 153A. Accordingly, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than a person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or re-assess income of such other person in accordance with the provisions of section 153A.

By virtue of the above provisions the second-mentioned Assessing Officer has no other option but to issue notice in accordance with the provisions of the Act. There is every possibility that certain books of account and documents, which have been maintained in the normal course of business, are found and there is no incrimination in the books of account in the ordinary course of business, and there may not be any requirement to reassess income of such other person under Section 153C of the Act. Thus, the assessment of the other person is to be made irrespective of the fact whether any money, bullion, jewellery or other valuable article or thing or books of account or documents or assets seized or requisitioned are properly reflected in the regular books of account and records by the other person.

Therefore, it is necessary to bring the said section in line with the earlier section 158BD wherein the condition was that the Assessing Officer must be satisfied that any **undisclosed income** belongs to any person other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132A.

It is suggested that section 153C could be amended as follows:

153C(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents or assets seized or requisitioned belongs or belongs to a person other than the person referred in section 153A <u>represents either wholly or partly income or property which has not been, or would not be disclosed</u> for the purposes of the Income Tax Act, 1922(11 of 1922) or this Act , then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provision of section 153A.

(2). Section 153C does not require the Assessing Officer to record the reasons for taking action against the persons in whose case search has not taken place but certain material was found during the course of search.

In effect it prescribes for the compulsory reopening of the cases of an assessee say "C" if some books or assets etc. of "C" are seized in search and seizure operations under section 132 carried out in respect of another assessee – say "A". It is obvious that even if only regular books of account of "C" are found and seized, the Assessing Officer of "C" would be required to proceed to reopen the cases of "C". It means that even if no asset or incriminating material were found in respect of "C" the assessment of "C" would be compulsorily reopened. It is prima facie unequitable and goes to generate avoidable work. Even if a slip is found which in the opinion of Assessing Officer belongs to the other person, the Assessing Officer can open the assessment of third party without bringing any reason to believe on record.

It is suggested that the provisions of section 153C may be amended in such a manner that the Assessing Officer must record the reasons for his belief on the basis of the material found before initiating proceedings under section 153C.

68. Rectification of mistakes

(1) Passing of an order under section 154

Under the provisions of Section 154, an assessee can file an application to the Assessing Officer/Appellate Authority for rectifying the mistake(s) apparent from the record. However, no time limit has been prescribed for disposal of such application filed by the assessee.

Reasonable time limit (say 3 months) should be provided for disposal of application filed by the assessee u/s.154. In case the application filed by the assessee is not disposed of by the Assessing Officer/Appellate Authority, the mistake should be deemed to have been rectified.

(2). Sub-section (8) of section 154 provides that wherein an application under this section is made, the income-tax authority shall within a period of 6 months from the end of the month in which the application is received by it, make the amendment or refuse to allow the claim.

There is, however, no provision as to what would be the consequence if the income-tax authority in question does not do either.

It is suggested that suitable mechanism be put in place in the law to facilitate filing of appeal against this and adjudication by CIT(A).

(3). Section 154

Sub-section (7) of section 154 provides that except as provided in section 155 or sub-section (4) of section 186, no amendment under this section shall be made after the expiry of 4 years.

In situations where the assessee has submitted an application for amendment within the 4 year period but the AO has not made amendments within the period of 4 years, AO's plead inability to pass the order under section 154

It should be clarified in section 154 itself (not withstanding Board Circular to the effect) that as long as the assessee had made the application within the time of 4 years, this restriction will not apply and amendments under the section can be made even after the period of 4 years.

Also, an option may be provided to the assessee to appeal against the failure of the Assessing Officer.

69. Non-speaking orders

Non-speaking orders of assessment, etc. are passed either without giving an opportunity to the assessee to raise an objection, or without meeting the objection, to the additions.

Such non-speaking orders, apart from having a delirious effect on the morale of both the tax payer and the tax practitioners, lead to increasing litigation. This also gives rise to tax demands, which are bound to be quashed in appeals. Forcing tax recovery of demands raised on such orders results in practical difficulties to the assessees.

The Act should contain the procedure requiring the Assessing Officer:

(i) to state all the facts as brought on record by the assessee;

(ii) to give notice to the assessee of specific additions intended to be made and to allow reasonable time to meet his case.

(iii) ***to list all the case laws cited by the assessee in support of his case and giving reason(s) for not following it;***

(iv) ***to state reason(s) for allowing lesser time to gather facts where such an application by the assessee is rejected.***

This will save avoidable burden on appellate authorities.

70. Desirability to bring back block assessment system

Sections 153A to 153C provide for new procedure of assessment for search and seizure cases. These new sections replaced chapter XIV-B (block assessment) with effect from 1.6.2003.

The new scheme involves the following deficiencies:

(i) Section 153A does not mention any time limit for issue of notice by the AO. In case notice is issued at the end of the limitation period, it can place tremendous pressure on the taxpayers to furnish six years' returns.

(ii) Clause (a) to Section 153A does not spell out any time limit which should be given in the notice requiring submission of return in response to notice issued under section 153A for six years preceding the previous year in which the search takes place. This may be used in an arbitrary manner by the Assessing Officer concerned who may choose to give the time of his liking, may be one week, or one month or two months etc. The minimum time that was to be given under section 158BC was 15 days and maximum time was 45 days within which the return for the block period was required to be filed.

(iii) It is nowhere stated that Section 153A would override the provisions of section 143(3), therefore it is a moot point as to whether the findings of regular assessment would remain intact in the said assessment or not. In an hypothetical case if an Assessing Officer chooses to assess a particular component of income in a manner different from the one earlier done in assessment under section 143(3) it is not clear as to whether this would lead to further litigation or not.

(iv) As per the ratio of decisions of various courts and now settled law, a mere change of opinion does not empower the Assessing Officer to proceed with the re-assessment under section 147. Therefore, it is unclear as to how the Assessing Officer while drafting an assessment under section 153A could change an opinion with respect to allowability of expenditures and losses.

(v) It is again judicially well settled that in reassessment, assessee cannot be permitted to raise new claim for deduction not earlier raised during the course of regular assessment. Therefore, it is unclear as to whether the assessee would be able to raise the claim for deduction for the first time in a search assessment.

(vi) It is inexplicable that in a case where no incriminating document or material is found in respect of any of the years contained in the six years preceding the previous year in which the search took place, the assessee has to suffer the harassment of having to get his case again assessed under section 153A consequent to a search. It is also contrary to the judgment of Hon'ble Supreme Court contained in 106 ITR 1 in the case of *Parasuram Pottery Works Co .Ltd. vs .ITO*., wherein the Hon'ble Supreme Court has held that there must be a point of finality in all legal proceedings whereas provisions of section 153A seem to completely bypass this fundamental policy of law.

(vii) The search may show that the concealment or inaccurate furnishing of particulars, relate only to one or two years. Why then should the return be filed for six years - even for the years for which assessments have already been completed and no concealment is relatable to those years? Prior to the insertion of the block assessment scheme, the concealed incomes were assessed or reassessed in the years to which these belonged by reopening of only those assessments under section 148 of the Act.

(viii) Section 148 contains inbuilt safeguards in the matter of reopening of the completed assessments, on the existence of 'reason to believe' and 'recording of reasons' before issue of notice under section 148. There is no such requirement under the new scheme. Once a search is there, there will be reassessment for six years irrespective of the fact whether adverse material belong to all the six years or to any one or more years of assessment.

(ix) The block assessment scheme was introduced to solve the issue of allocation of concealed income to different years. No solution has been found to this problem under the new scheme. There will be protracted litigation on the issue whether the income pertains to a particular year or not. Ultimately the assessee may have the benefit of getting the addition knocked off technically on the ground that income does not pertain to a particular year.

(x) Section 153C penalizes persons other than those searched merely because their valuables are found at the place of the person searched, without there being any indication of these being undisclosed. This is contrary to section 158BD, which provided power for making block assessment to the A.O. only when the A.O. having jurisdiction over the assessee searched “is satisfied that any undisclosed income belongs to that person".

Now if a person keeps his valuables (whether explained or unexplained) with another person even for safe custody, he would be subjected to the reassessment of six years.

The new scheme in place of the old scheme has been introduced on the ground that the block assessment scheme has failed in its' objective of early resolution of such assessment and has spawned a fresh scheme of litigation. However, the fact remains that the provisions of the block assessment procedure had settled by and large by the judgements of various courts and the new scheme of reassessment will create its own new issues for litigation and will take its own time before being settled by the courts. Further the flat rate of 60 per cent had inbuilt element of about 100 per cent penalty for concealment on the income disclosed voluntarily by the assessee in the block return. Under the new proposed scheme, the tax rate applicable being normal rate, the assessee will have a better option to get the dispute settled through the Settlement Commission and pay tax at the normal rate as against the flat rate of 60 per cent presently payable even while settling the dispute of block assessment through Settlement Commission. No doubt the provisions of tax compliance should be stringent. However, taking into consideration the ground realities, voluntary compliance at every stage should be encouraged. The procedure of block assessment was introduced only with this objective. By closing the option of voluntary compliance in search cases at higher cost, the defaulting taxpayers will be compelled to opt for litigation for the income, which he had otherwise readily agreed to offer for taxation. In this process he may or may not succeed but can definitely prolong the litigation. The block assessment scheme introduced and accepted by the government and being in operation for quite a number of years should not have been discarded simply because there is a change in the perception of the present day policy makers. A well thought out scheme introduced in the past even if it had to be discarded, the same should have been done after thorough debate by including economists, tax experts, representatives from trade and industry. The time and energy put in by the tax officers, tax experts and the judges in understanding and implementing the block assessment scheme has gone down the drain in one go.

The continuance of the earlier block assessment procedure is desirable. However, if this is not possible, certain improvements which would

- ***a. reduce controversy over the year of taxability of income,***
- ***b. provide suitable incentive for a person to make the necessary disclosure without indulging in litigation and***
- ***c. remove administrative difficulties such as multiplicity of appeals, bunching together of assessments, etc.***

may be introduced.

71. Tax deducted at source on salaries

(1). Section 192

In computing the TDS obligation under section 192 on salary payments, the employer is entitled to take into account other India taxes and income of the employee. However, the section does not empower the employer to take into account the credit under section 90/91 that the employee is entitled on account of taxes paid by him in overseas jurisdictions.

Non-considering of such credit creates a cash flow issue for the employee since he is first required to pay taxes in both the jurisdictions and apply for a refund in India on account of relief under section 90/91.

The Finance Act 2006 has amended section 140A, 234A, 234B and 234C to clarify that any tax paid outside India on income earned overseas shall be taken into account while computing the amount of self assessment tax and interest payable.

> ***It is suggested that section 192 may be also amended to specifically provide that credit for foreign taxes on the salary is allowable to be set-off for computing the TDS obligation there under. As a safe guard, certificate of accountant may be required in all such cases.***

(2). Section 192 read with section 80G

Section 192 makes it obligatory upon the employer to deduct tax at source from the sums paid to the employees on the amount of income “chargeable under the head salaries” after considering certain deductions prescribed under section 192 itself.

The CBDT issues a circular every year for guidance of the employers, as to what matters are to be considered for deduction of tax source by the employers under section 192.

The annual Circular issued by CBDT for guidance on deduction of tax matters for the employers, permits the employers to consider 80G deduction for donations made only to prescribed organizations. This creates problems for the employees who have to make claim of refunds for small amounts due to donations made to entities u/s 80G which are not prescribed. This results in avoidable paper work and costs, both for the employees and the Government.

Section 192 was amended to allow the employer to net off, loss from house property to avoid the paper work relating to refund claims on account of interest on housing loans. Considering the above, similar amendment should be made to specifically allow the employer to consider all donations eligible for deductions u/s. 80G.

72. TDS on rent

(1). Section 194-I v. section 194J on payment for equipment hire

The Taxation Laws (Amendment) Act, 2006 has widened the scope of tax withholding under section 194-I and 194J. Under section 194-I, the definition of 'rent' has been widened to include tax withholding on plant, machinery or equipment, whether such assets are rented separately or together. Simultaneously, tax withholding under section 194J has been widened to cover 'royalty' as defined in Explanation 2 to section 9(1)(vi) of the Act, which includes payment for use or right to use of equipment.

There is an overlap in respect of payments for 'equipments', which is covered in the new definition of 'rent' u/s 194-I and also in the definition of 'royalty' u/s 194J. The Board has clarified vide its Circular no. 720 dated August 30, 1995 that payment can be liable for tax withholding under one section only. The issue becomes more pertinent due to different tax withholding rates prescribed under sections 194-I and 194J.

The scope of tax withholding under respective sections may be clarified so far as they relate to payment for use of equipment.

(2). Withholding on long term lease

Section 194-I provides for tax withholding on lease payments, even if they are for long term such as 99 years.

Even a lump sum payment for a long term lease such as for 99 years will get covered under section 194-I. Such an interpretation does not seem to be the intention of the withholding provisions under section 194-I.

It may be clarified that such lump sum payments for long term lease

would not be covered within the ambit of section 194-I.

(3). Section 194-I

Clause 12 of the Taxation Laws (Amendment) Bill, 2005 seeks to widen the scope of section 194-I by inclusion of items relating to payment of rent on machinery, plant, equipment, etc. at the appropriate tax rate for deduction of tax.

Presently, the rate of tax is 15% when the payment is made by an individual, and 20% when the payment is made by a company in the case of land and building. These rates are justified in the case of land and building because rental income is assessed in such cases and claim for depreciation is not allowed.

However, in the case of payment of rent for use of plant, equipment, etc., the claim of depreciation besides normal miscellaneous expenditure will be there.

It is suggested that the rate of tax deduction at source in respect of payment of rent for use of plant, equipment etc. may be reduced to 5%.

(4). Sections 10(13A), 80GG read with section 194-I

Section 194-I makes it mandatory for a (specified) person to deduct tax at source from payments made to a resident any income by way of rent. Rent here includes payments made for the use of any land, building, land appurtenant thereto, any furniture, fittings, plant, machinery etc.

Section 10(13A) exempts from tax any special allowance specifically granted to the assessee by his employer to meet expenditure actually incurred on payment of rent in respect of residential accommodation occupied by the assessee, as per prescribed limits.

Section 80GG provides deduction to assesses [other than those having income falling u/s 10(13A)] for any expenditure incurred by them for payment of rent in respect of any furnished or unfurnished accommodation occupied by him, upto prescribed limits.

There is no clarification on whether the exemption u/s 10(13A) is also available for the amount paid by the assessee towards furniture and fittings forming part of lease arrangement for the accommodation.

It may be noted that the deduction under section 80GG has been specifically provided for furnished accommodation also. Also, tax under section 194-I is to be deducted (by specified persons) from any amount paid for use of any furniture and fittings.

Benefit under section 10(13A) should be specifically extended to include any payment made for the use of any furniture or fittings by the assessee.

73. Deduction of tax by certain individuals or HUFs - Sections 194A, 194C, 194H, 194J and 194I

The Finance Act, 2002 has amended sections 194A, 194C, 194H, 194J and 194I and made it obligatory for Individuals and HUFs covered by section 44AB to deduct tax at source under these sections. The only exception is under section 194J if the payment is made exclusively for personal purposes, tax is not required to be deducted.

Individuals and HUFs do not have adequate infrastructure, machinery or manpower to execute the onerous responsibility of TDS and more often than not, technical lapses occur which would result in undue hardship to assessees.

We, therefore, suggest that the position prior to the Finance Act be restored and individuals or HUFs be not required to deduct tax at source.

Alternatively, we suggest that provision for non-deduction of tax be extended under sections 194A, 194C, 194H and 194I to any payment made by an individual or HUF for non-business purposes (as against 'exclusively for personal purposes').

74. Section 194C(3)

Second proviso of sub-section (3) of section 194C provides as under:

Provided further that no deduction shall be made under sub-section (2), from the amount of any sum credited or paid or likely to be credited or paid during the previous year to the account of the sub-contractor during the course of business of plying, hiring or leasing goods carriages, on production of a declaration to the person concerned paying or crediting such sum, in the prescribed form and verified in the prescribed manner and within such time as may be prescribed, if such sub-contractor is an individual who has not owned more than two goods carriages at any time during the previous year.

The presumptive income provisions should be suitably amended in line with the increase in basic exemption limit.

It is suggested that an individual sub-contractor with not more than three goods carriage at any time in the previous year be exempted from TDS requirements.

75. TDS on professional services

(1). Professional Services u/s 194J and 44AA

The Central Board of Direct Taxes has through its Notification No. 88/2008/F.NO. 275/43/2008-IT(B), dated 21-8-08 provided that the services rendered by following persons in relation to the sports activities be regarded as professional services for the purpose of the section 194J, namely:

(i) Sports Persons,

(ii) Umpires and Referees,

(iii) Coaches and Trainers,

(iv) Team Physicians and Physiotherapists,

(v) Event Managers,

(vi) Commentators,

(vii) Anchors and

(viii) Sports Columnists In exercise of the powers conferred by clause (a) of the

Thus the aforesaid notification has widened the scope of professional services for section 194J.

Section 44AA(1) requires for maintenance of accounts by certain persons carrying on specified profession.

It is suggested that the meaning of professional services as mentioned under section 194J should be made applicable for section 44AA(1) also.

(2). **Provision for outstanding claims including fees for professional services.**

In respect of Insurance companies while making provision for outstanding claims for all departments, a provision is made for the professional fees like survey fee, advocate fee, investigator's fee etc. along with the outstanding claim. The fees are payable after the reports are submitted by the professionals. The provision is thus made without receiving the report or the bill on estimated basis.

As per provision of Section 194J of the Income-tax Act, a person is responsible to deduct tax at the time of credit of the account of the payee or at the time of payment thereof, whichever is earlier.

In similar cases in Motor Third Party claims, where provision is made for estimated liability of interest payable on outstanding claims, where awards for compensation are yet to be pronounced by the court, the CBDT clarified that it would not attract the liability to deduct TDS as per provisions of Section 194A.

As the tax is to be deducted at the time of making provision for outstanding claims, this causes unnecessary hardship.

It is suggested that tax deduction in such cases as mentioned above should be made at the time of payment only.

76. Non-deduction of TDS on service tax

TDS provisions should be amended to exclude service tax charged on all services. As per CBDT Circular No. 4 /2008 this benefit is given only in respect of rent income even though the reasoning contained therein would apply to all services.

It is suggested that no tax at source be deducted on service tax component of professional fees and other services. The benefit for the

exclusion of service tax for calculating TDS should be given for other income also.

77. Section 234A -Interest for delay in filing of return

Credit for the tax paid under section 140A

Under section 140A of the Act, an assessee is liable to pay tax on self-assessment, and proof of payment of such tax is required to accompany the return of income. If there is any delay in furnishing the return of income, interest is payable on the amount of tax.

In cases where the tax on self-assessment is paid u/s.140A before the due date for filing return of income but return has been filed after the due date, such tax on self-assessment is not considered as item of deduction for the levy of interest under section 234A. Advance tax and TDS are not subject to this levy of interest under section 234A. As tax on self-assessment is also similar to advance tax and TDS as far as revenue is concerned, interest under section 234A should not be levied on tax on self-assessment paid within the due date.

It is therefore suggested that section 234A of the Act may be amended to give credit for the tax paid under section 140A while calculating the interest payable by the assessee. This will encourage assessees to pay self-assessment tax by due date of furnishing return of income, even if filing of return of income is not possible by that date for bona fide reasons

78. Section 234D

It is necessary to provide that interest paid under section 234D is deductible while computing total income in the year of payment, as income earned by the assessee on excess refund is taxable.

79. Section 249(4)

Section 249(4) bars the CIT(A) from admitting an appeal unless at the time of filing of appeal undisputed taxes are paid. Therein clause (a) prescribes for payment of tax on the basis of return, if the return is filed. Clause (b) prescribes for payment of tax thereon when the return is not filed. The proviso gives power to the CIT(A) by recording reasons to exempt a case falling in clause (b) i.e. when return is not filed. The effect is that a case where the return is not filed gets better treatment than the one return is filed.

It is suggested that equitable treatment may be given to assessees coming within the scope of section 249(4) both when the return is filed and also where the returns is not filed.

80. Power to stay demand to be given to CIT (Appeals)

At present power to stay demand of tax is being exercised by the Income-tax Appellate Tribunal. However, to meet the ends of justice and as a principle of natural justice this power may be specifically conferred on the Commissioner (Appeals).

It is suggested that specific provision may be enacted in the Income-tax Act to give power to stay demand of tax to the Commissioner (Appeals).

81. Mode of payment for the purposes of section 269SS and 269T

Today, the trail of transaction cannot only be made through account payee cheques or account payee bank drafts. In the recent times many other modes of transactions like Transfer of money by RTGS / Electronic mode, payment by Credit Card, payment by Debit Card, transfer of money from one account to another account in the same branch by virtue of written instruction, etc have also emerged which are preferred for their inherent advantages. These modes cannot be misused for evasion of tax. unlike cash transactions trail of money from one to another account is also clear in these modes.

It is suggested that :

(a) Transfer of money by RTGS / Electronic mode, payment by Credit Card, payment by Debit Card, transfer of money from one account to another account in the same branch by virtue of written instruction, etc be recognised at par with account payee cheque and account payee bank draft in section 269SS & Sec.269T or,

(b) **Section 269SS and section 269T be amended to allow any person to accept or take loan and deposit in any mode other than cash beyond the limit specified therein**.

82. Age of Senior citizens

The Railways provide concessions to citizens who have attained the age of 60years. Further, in majority of the organizations the retirement age is 60, after which the person gets only a fraction of their regular income.

It is suggested to amend the provision relating to age of Senior Citizens so as to reduce it from 65 years to 60 years in the Income-tax Act on par with Railways and other Organisations for the benefit of the senior citizens.

83. Audit of TDS returns

A major portion of the revenue by way of income-tax is recovered through deduction of tax at source. The infrastructure available with the Department is not sufficient for an in-depth verification of all the TDS returns. Further, for furnishing the information required under revised clause 27 of Form No.3CD, an in-depth verification of the TDS returns is necessary.

It is suggested that an independent audit provision may be inserted to provide for a comprehensive audit of all the TDS returns filed with the Department. Appropriate forms of audit report can be prescribed to certify about the correctness of the quarterly TDS returns. This will enable the Department to rest assured about the correctness of the TDS returns filed as well as the remittance of the tax deducted at source to the credit of the Central Government.

84. Suggestions relating to International Taxation

1. Transfer Pricing- Provisions relating to transfer pricing – Sections 92 to 92F

The Finance Act, 2001 has introduced provisions relating to Transfer Pricing. These provisions have given rise to quite a few issues which need to be resolved. They require amendments. These issues are:

(a) The definition of the term Associated Enterprise in section 92A is very wide. The deeming provisions laid down in section 92A are neither in tune with OECD nor with UN Convention. Provisions of sub-section 2(c), (d), (g), (h) (i) & (m) need to be dropped.

(b) A minimum threshold limit (say Rs.10 crores) should be provided and applicability of the provisions of Transfer Pricing should only be restricted to international transactions exceeding this value. This would avoid a lot of administrative burden on the department, the assessees and the professionals.

(c) It is submitted that the average method of pricing, laid down in the proviso to section 92C(2) needs to be amended to provide that the assessee would have the right to choose the arms length price, where more than one price may be determined by the most appropriate method.

Section 92A(2) - Some conditions -Clauses (c) and (d)

Banks/FIs should be exempted from condition (c) which provides that advancement of loan exceeding 51 per cent of the book value of the total assets of the borrower, results in AE. This condition is practically unviable as the banks/FIs would not be in a position to monitor assets of each and every borrower on a day-to-day basis. Similar situation would arise for the condition laid down in clause (d). Even otherwise, there is no need for application of these clauses to banks/FIs as they are otherwise governed by the RBI/NBFC regulations, which ensures that they transact at an arms length.

Clause (h)

Clause (h) provides that where enterprise sources 90 per cent of its raw materials and consumables from another enterprise, and the prices and other conditions relating to supply are influenced by such other enterprise, they both become AE of each other. This condition results in practical difficulties, especially where the supplier enjoys a monopolistic situation or is a foreign government enterprise.

Consider the following example:

A diamond manufacturer in India sources his entire raw material requirement from the Diamond Trading Corporation (DTC) London. Now, for the diamond manufacturer, its 100 per cent requirement is sourced from the DTC (which is like any public sector enterprise in India) but for DTC, the share of business with the Indian manufacturer is negligible. In such a situation, getting details from the DTC would be impossible for the diamond manufacturer.

Applicability of transfer pricing regulations to presumptive taxation

Transfer Pricing provisions contained in Chapter X (sections 92 to 92F) are intended to prevent avoidance of tax. Even the title of the Chapter makes this position clear. In those cases where profits are computed on presumptive basis under the provisions of the Act (e.g. section 44BB, section 44BBB, etc.) question of avoidance of tax does not arise. Transfer Pricing provisions should not, thus, be made applicable to such assessees.

In view of this, we suggest that an exclusion from transfer pricing provisions be provided for cases covered by presumptive taxation provisions.

Advance Pricing Agreement

With a view to avoid litigations under Transfer Pricing Regulations, it is suggested that the concept of Advance Pricing Agreement (APA) be introduced and such agreement be approved in a time-bound manner.

2. Taxability of software payments made to Non-residents

The Revenue authorities interpret the definition of 'royalty' in the domestic law/ tax treaties to include within its ambit license payments for use of software even when the licence is for the use in the payer's own operations and not for further duplication and sale/ licence. The Revenue authorities insist on levying a tax on such payments. This interpretation is inconsistent with the OECD-Model Tax Convention on Income and on Capital and the generally prevalent international view.

It may be provided that licence payments made for use of software for the payer's own operations (as against duplication for onward sale/licence) being

payment for use of a copy-righted article are outside the ambit of the definition of "royalty" as provided in section 9(1)(vi).

3. Concessional tax treatment to foreign sourced dividend income

Whereas dividends earned by Indian residents from Indian companies is tax-exempt under section 10(34), the same income when earned from foreign companies is subject to the full tax rate of 30% (plus applicable surcharge and education cess) in the hands of Indian corporations. This acts as a big barrier to India becoming a favorable holding company tax regime.

A concessional tax treatment may be accorded to foreign sourced dividend income by subjecting it to tax in India at the same rate as the dividend distribution tax levied on Indian companies paying dividends to their shareholders.

4. Section 92C(1) - Absence of a residuary transfer pricing method

Section 92C(1) requires selection of the most appropriate method out of the prescribed five methods or any other method as may be notified by the Board.

The five methods may not be suitable in certain cases like transfer of intangibles (where it may be necessary to apply other internationally recognized methods like the discounted cash flow method, economic return method, capital asset pricing method, etc).

Further, section 92B(1) defines international transactions to include cost contribution agreements and section 92(3) requires cost apportionment/ allocation under such arrangements to be undertaken on an arm's length basis. However, none of the methods prescribed by section 92C(1) may be applicable for such arrangements.

The law should permit the application of any other pricing method [including those specified by the OECD Guidelines], the results of which are in accordance with the arm's length principle. Transfer pricing rules of most countries (like US, UK, etc) contain a similar residuary clause under which

non-specified transfer pricing methods are permitted to be used by the taxpayer.

5. Section 92CA - Time limit for issuing notice under section 92CA(2)

Presently, for issuing notice for scrutiny assessment under section 143(2), there is a time limit. Also, for passing an order under section 143(3), there is a time limit under section 153. However, no time limit is prescribed for referring a case for transfer pricing assessment by the Assessing officer to the Transfer Pricing Officer.

A time limit for issuing a notice under section 92CA(2) may be introduced, so that there is sufficient time for completion of transfer pricing assessments.

6. Penalty

Many taxpayers faced with transfer pricing adjustments have been served notices under section 271(1) (c) initiating penalty proceedings.

Given the developing nature of transfer pricing law in India, it is necessary that taxpayers following due diligence and undertaking detailed documentation/ TP studies in accordance with the relevant provisions should be considered as acting in good faith. No penalty proceedings should thus be initiated for such taxpayers.

Further, it is worthwhile to note that the quantum of penalty as per the current provisions of 100% to 300% of the tax on the adjustment amount is exorbitant.

The transfer pricing law also provides stringent and two distinct penalties of 2% of the value of international transactions, each for failure to keep and maintain information and document in respect of international transactions (Section 271AA) and for failure to furnish information or document (section 271G).

Appropriate clarifications may be issued providing circumstances in which the assessing officer should invoke penalty proceedings under Section 271(1) (c) on the basis of a transfer pricing adjustment.

As the transfer pricing law and its application is subjective and open to various judgmental issues, it is suggested that the penalties for transfer pricing adjustments should be lower.

Further, it is suggested that there should be only one penalty for failure to keep and maintain information and documents in respect of international transactions. Further, some guidance should be issued relating to the circumstances in which such penalty may be levied.

7. Use of confidential competitor information

In certain assessments, TPOs have sought to use information provided to them by competitors of the assessee, for the purpose of computing arm's length price for the asessee's transactions. This information was provided by competitors of the assessee by way of notice issued to those competitors under section 133(6) of the Act. The information sought to be used by TPOs do not form part of the public domain and therefore, but for their enquiries made under section 133(6) would not have been known to them or to the assessee. Since such information is not publicly available information, the assessee does not have this information at the time of determining the arm's length price of the international transactions with its associated enterprises.

Sub-rule (3) of Rule 10D states that the information and documents required to be maintained under sub-rule (1) shall be supported by authentic documents and provides a list of such documents. From the very nature of the type of documents listed, it can be concluded that the comparable data (if external) should be published data and available in public domain.

The OECD Guidelines provide guidance on documentation rules and state that every taxpayer should endeavour to determine transfer pricing for tax purposes in accordance with the arm's length principle, based upon information reasonably available at the time of determination.

There should be appropriate amendments in law requiring that the confidential competitor information not available in the public domain should not be used for the purpose of computing arm's length price of the international transactions of the taxpayer with associated enterprises.

Further and without prejudice to the above suggestion, if any information sought under section 133(6) is sought to be used by the TPOs, the TPOs must be instructed to conduct a complete functional, asset and risk analysis in respect of the transactions in order to ensure appropriate comparability and proper analysis

8. Taxation of Income of Non-residents – Sections 115A, 115AB, 115AC, 115ACA and 115AD

Sections 115A, 115AB, 115AC, 115ACA and 115AD provide for taxation at varying rates depending upon the nature of income sought to be taxed. Examples of such income include income from royalties, fees for technical services, income from GDRs, dividends, interests, etc.

The provisions have become more complex and need to be simplified (in line with the legislature's move towards simplification of tax laws over the past few years).

The above said provisions may be consolidated and a uniform tax rate may be provided in respect of all types of income earned by all the non-residents.