

Executive Summary of the Pre-Budget Memorandum-2012 (Direct Taxes) submitted to Ministry of Finance

I. SUGGESTIONS TO IMPROVE TAX COLLECTION

1. Information to be furnished in the Annual Information Return

In respect of the transactions, where the PAN is not provided by the payer, the provisions like Tax Collection at Source (TCS) may be made applicable to the payee. Accordingly, the payee should be allowed to collect tax at an appropriate rate. Later, in case the deductee provides PAN within a specified period to the deductor, the deductee should be provided with a certificate like TCS certificate for claiming the same in the return of income. In case the deductee does not provide PAN with the specified period, the tax so collected would be added to the revenue of the Government.

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

A provision relating to Tax Deduction at Source (TDS) should be inserted in Chapter XVIIIB to cover those payments where the exemption under Section 10(10D) is denied to the recipient of income from insurance companies.

And in respect of the cases 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.

3. TDS under Section 194A-Interest payments to NBFC

In order to provide relief to the genuine taxpayers paying interest to NBFC's, Section 194A(3)(iii)(a) be amended to treat NBFC's at par with other banking companies. Further, to ensure compliance of the provisions of the Act for timely collection of taxes and also, provisions of Tax collection at source be made applicable to NBFC's in respect of such interest.

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

In order to reduce the wide variations in the rates of stamp duty the Central Government should 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.

5. Verification of all income-tax returns

In order to thoroughly check the filed returns and cross-verified with the information collected through Annual Information Report (AIR) and other sources by the

Department, the same may 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 review 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 those persons who are filing income tax returns but are not declaring their income properly cannot afford to take the liberty of making adjustments which are legally permissible.

6. Verification of the fact that tax audit has been done by a Chartered Accountant

- Tax audit report digitally signed by the tax auditor may be allowed to be uploaded along with the return of income at the earliest.
- On the basis of data regarding practicing members provided by ICAI, a validation link may be created on the Directorate of Income Tax website, which would enable the Department to verify the details of member who is conducting the audit. In case the membership details so entered do not match with the ICAI Data, the system should not allow the uploading of the return after two attempts.
- To further strengthen the system, a user id and a password may be made available to every practicing member by the Income tax Department, so that the member can view all the tax audit reports uploaded in his name. This in turn would further curb the malpractice of misusing the details of member by the assessee as a tax audit not done by the member may be then reported by him to the Income-tax Department for action at its end.

II. SUGGESTIONS TO REDUCE/MINIMISE LITIGATIONS

1. "Annual receipts" under Section 10(23C)

The term "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 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, movable assets are excluded from computation of "Annual Receipts" as prescribed under Rule 2BC of Income-tax Rules.

2. Exemption under Section 54 & 54F

- In order to avoid avoidable litigation, a Circular be issued clarifying that in a case where an assessee has entered into a Registered Agreement for Purchase of

a residential flat in an "Ownership Apartment Scheme" and the assessee has paid more than 50% of the cost of the residential flat within the period prescribed in Sections 54 and 54F and has, within a further period of three years obtained actual possession of the residential flat on payment of its full price, the assessee shall be deemed to have "constructed" a 'residential house' within the meaning of Sections 54 and 54F on the date on which the Agreement for Purchase has been registered and the exemption under the said sections will be available to the assessee to the extent of the aggregate cost of the residential flat agreed to be purchased.

- b) The proviso to Section 54F(1) provides that exemption will be withdrawn if the assessee purchases any residential house, other than the new asset within a period of one year after the date of transfer of the original asset. And Section 54F(2) provides the period of two years for the said withdrawal of exemption. Thus in order to avoid unnecessary litigations, the said inconsistency in sub-section(2) and proviso to the sub-section(1) may be removed.

3. Section 50C

The provisions of Section 50C should be reviewed with reference to the following:

- In case where 50% or more has been paid as registration money, the date of agreement may be considered for the purpose of valuation and not the date of actual registration of the property.
- If the transactions for sale of property are entered below the circle rate, the provisions of Tax Collection at Source (TCS) may be introduced and tax be collected at a reasonable rate (say @1%). However, after checking the genuineness of the transaction, due refund should allowed as per procedures.
- In order to avoid litigation, it may be clarified that in respect of the assets which are invested into the common pool of the partnership whether Section 56 or Section 50C, would be applicable.
- Section 50C(2) provides that subject to fulfillment of certain conditions, the Assessing officer may refer the valuation of capital asset to the Valuation officer. The word "may" be substituted with "shall".

4. Section 94A - Special measures in respect of transactions with persons located in notified jurisdictional area

Section 94A and/or Section 206AA may be suitably amended to clarify that Section 94A would prevail in case tax is to be deducted with respect to any payment to a person located in a NJA.

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.

6. Section 35AD - Deduction in respect of expenditure on specified business

The term 'New Plant' and 'newly installed capacity in

an existing plant' may be defined objectively to ensure clarity and avoid litigation.

Further, threshold for expansion of existing plant may be provided on the lines of 'substantial expansion' as defined for the purposes of Sections 80-IC and 80-IE.

7. Section 115JB-Minimum Alternate tax

Clause (i) of Explanation 1 to Section 115JB may be amended as follows-

"(c) the amount or amounts set aside as provision for diminution in the value of any asset (other than provision for bad and doubtful debts allowed as a deduction under Section 36(1)(viiia))"

- (i) Necessary amendment may be made in Section 115JB. It may be provided that where format of financial statements presented before the general body/AGM is prescribed under any other law (such as Banking Regulation Act, Electricity Act etc.) or by any regulator such as IRDA then book profit as per profit and loss account drawn up in accordance with such Act or regulation shall constitute the book profit for the purpose of Section 115JB and not profit and loss account drawn up as per Schedule VI.

- (ii) Considering the above, Section 115JB(2) may be amended to provide that every assessee, being a company, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of relevant statute.

8. Section 206AA – Requirement of furnishing of PAN for deduction of tax at source

A proviso should be inserted in Section 206AA to the effect that the provisions of this section shall not be applicable in respect of the assessee who is not required to obtain Permanent Account Number under Section 139A.

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

- (i) 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.
- (ii) Provisions of Section 80A(5) should be modified to permit filing of new claim by the assessee in the course of assessment, even without filing of revised return of income. This will remove unintended hardship.

10. Introduction of Advance ruling for residents

Advance Ruling scheme should be introduced for resident's tax purposes also. In case of residents also, it has been observed that assessee takes one interpretation of law and executes the transactions which is denied by the department causing hardship of paying taxes which he thought is not actually payable.

Further, in order to avoid unnecessary application, the scheme can be so framed that only transactions involving certain threshold of investment can be applied or fee for advance ruling can be fixed in a way that small and unnecessary applications are avoided.

11. Clarification regarding TDS on Commission to a partner under Section 194H read with Section 40(b)

A clarification should be provided to the effect that Commission under Section 194H would not include commission paid by the partnership firm to its partners.

12. Signing of notices under Section 282A

The computerised notice/document should have a separate control like provision for a digital signature because these are legal/statutory documents and this aspect should specifically be incorporated in Section 282A. In respect of manual notices/documents the section should also record that signatures will be mandatory applicable.

13. Applicability of Education Cess and Secondary and Higher Education Cess - Double taxation Avoidance Agreement

Appropriate amendment may be made to clarify that EC & SHEC should not be applicable on the rates specified under DTAA.

14. Section 147/Section 148

Proper stipulations be laid down for any reopening and the period of reopening be also reduced to 3 years from the end of the assessment year.

The new proviso to Section 147 should also state that all matters which have been examined in the original assessment should not be reassessed.

15. Section 195 read with Section 194LB

Section 195(1) should be amended to read as follows:
"Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest [OTHER THAN INTEREST MENTIONED IN Section 194LB] or any other sum chargeable under the provisions of this Act....."

16. Delay by Assessing Officer in giving Order giving effects to Orders of higher Appellate authorities, and also delay in issuing refunds arising out of such Order giving effects

The time limits for issuing the Order giving effects and Refund Orders should be stipulated in the Act and also the Interest on Refunds should be calculated up to the date of actual issuing of Refund warrants and not only up to the date of granting the refund/date of Order (as per the existing provisions of the Act).

17. Initiation of penalty proceeding in every assessment orders

(1) Suitable remedial measures should be incorporated in the Act providing relief to the genuine hardship faced by the assessee on account of imposition of penalty even where there is no concealment of income.

(2) Further, in respect of pending cases, to reduce litigations, a scheme on the lines of Kar Vivad Samadhan Scheme (KVSS) may also be introduced. It is suggested that in cases where addition made is NOT more than 50% of income or ₹10,00,000 whichever is less:

a) Penalty under Section 271(1)(c) may be dropped.

b) 50% of the interest levied may be waived off.

c) No further appeals should be allowed to be filed either by the Department or by the assessee similar to existing provisions of Central Excise.

18. Section 132 - Search and seizure

(a) Amendment should be made in Section 132B to clarify the amount of cash seized to be permitted for adjusting against the advance tax liability of the assessee where specific request is made for such adjustment. This would help in early realisation of tax, avoid litigation and save the assessee from mandatory interest charged under Sections 234B and 234C.

(b) Since cash is seized at the time of search and lying in PD account of CIT, such cash after adjusting existing tax liabilities, may be permitted to be adjusted against the tax due as per settlement petition. Suitable amendment/instruction is required to be given to the authorities in the matter since they are not permitting such adjustment for want of clarity.

(c) A provision like 132(5) [omitted by Finance Act, 2002] which provided for provisional assessment be introduced and the asset be released after releasing the amount due as per provisional assessment.

19. Desirability to bring back block assessment system

The continuance of earlier block assessment procedure is desirable. The above approach would assist in:

(a) reducing controversy over the year of taxability of income;

(b) providing suitable incentive for a person to make the necessary disclosure without indulging in litigation; and

(c) removing administrative difficulties such as multiplicity of appeals, bunching together of assessments etc.

20. Section 80IA - Unit-wise deduction should be allowed

A specific clarification/provision should be made in Section 80 IA itself to provide that deduction under Section 80IA is 'UNIT SPECIFIC'. For each unit deduction under Section 80IA should be separately calculated.

21. Section 245A-Settlement Commission

(a) The (i) Proviso of Section 245(b) along with the Explanation (i) should be omitted.

(b) In order to further reduce litigations, the limit of ₹10,00,000 may be reduced to ₹5,00,000.

III. SUGGESTIONS FOR RATIONALISATION OF THE PROVISIONS OF DIRECT TAX LAWS

1. Books of accounts in electronic mode - Section 2(12A)

Section 2(12A) defining books or books of accounts should clearly state that the books maintained in digital form would also be considered as books of accounts for the purposes of the Act. The assessee may scan the original documents and subsequently be permitted to destroy the same as they would be available only in digitised form.

The permission to maintain the books in electronic form should be given to companies beyond a certain prescribed size and scale of operations. Consequential

amendments may be made and rules prescribed, as deemed necessary to provide guidance and check points to prevent misuse.

2. Section 2(15) - Definition of charitable purpose

- (a) ₹25 lakh may be the basic exemption limit, and receipts in excess of ₹25 lakh may be subject to tax at maximum marginal rate after deducting the related expenditure.
- (b) Suitable amendment may be made in Section 11 to provide relaxation to genuine cases by considering such application of income outside India as application towards charitable purpose. This provision however, may be made subject to some approval mechanism.

3. 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.

4. Section 10(13) - Payment from approved superannuation fund

Section 10(13) may be amended to exempt commuted value received by an employee from the superannuation corpus standing to his credit at the time of resignation, to the extent the same is already taxed at the initial contribution stage under Section 17(2)(vii).

5. Charitable Trusts

- (i) A clarification by way of Explanation may be inserted to clarify that receipts of such nature should be not be considered for determining the limit of ₹25 lakh.
- (ii) 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.
- (iii) Registration - Condonation of Delay- Amnesty
A one-time scheme may be framed or a time slot may be allowed so that such unregistered charitable organisations may obtain registration under Section 12AA/12A with condonation of delay.

6. Income of minors - to increase exemption limits under Section 10(32)

The limit should be raised to at least ₹10,000/- for each minor child.

7. Section 10(47) and Section 115A(BA) - Income of infrastructure debt fund

- (i) A condition may be prescribed that the infrastructure debt fund notified under Section 10(47) should be denominated in Indian Rupees.
- (ii) Any distribution from the debt fund to the non-resident investors, whether characterised as interest or not, may be subjected to the concessional tax treatment.
- (iii) The benefit of concessional rate of tax of 5% on income received from such fund may be extended to residents also.

8. Medical reimbursements for retired employees

The provisions of Section 17 may be amended to include retired employees for the tax benefit on medical reimbursements/hospitalisation expenditure in approved hospitals.

9. Perquisite of rent free accommodation provided as a campus accommodation where factory is located in remote areas

In case where accommodation is provided by the employer in factory campus and staying there is a precondition of employment, such accommodation should be valued at NIL.

10. Interest on borrowed Capital

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

11. Depreciation

- a) The depreciation on books purchased by professionals be restored to its original rate of 100%.
- b) 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 ₹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.

12. Incentives for R&D

- a) The benefit of Section 35(2AB) should be extended for further period of five years i.e. upto 31st March, 2017.
- b) Suitable provision should be made in the said section to provide that once the approval is granted under Section 35(2AB) the same should be made effective from the date of initiation of the said R&D facility and so, entire expenditure incurred on establishment of such facility should be allowed as deductible under Section 35(2AB).
- c) The expenditure incurred on clinical trial carried out outside the in-house R&D facility should be allowed under Section 35(2AB) of the Income-tax Act, 1956.

13. Deduction for payments under Voluntary Retirement Scheme - Section 35DDA

Section 35DDA(1) may be re-worded as follows:

"Where an assessee incurs any expenditure in any previous year by way of payment of any sum to an employee in connection with his voluntary retirement or purchase of an annuity from an insurance company to cover such payments, in accordance with any scheme or schemes of voluntary retirement, 1/5th of the amount so paid shall be deducted....."

14. Capital raising expenses

Section 35D should be amended to allow deduction for all expenses incurred by an assessee for raising capital in five equal installments over a period of five years.

15. Due date for crediting the contribution of employees to the respective fund—Section 36(1)(va) read with Section 2 (24)(x)

The due date defined under Explanation to Section 36(1)(va) shall be amended and accordingly the due date shall mean the due date for filing return of income under Section 139(1), thereby bringing it at par with the due date specified for the Employer's contribution under Section 43B of the Act.

16. Section 36(1)(viii)

Asset Reconstruction Companies (ARC) should be included in the definition of specified entity to be eligible for deduction under Section 36(1)(viii).

17. Provision for leave salary – Section 43B(f)

Clause (f) of Section 43B may be deleted. Further, deduction for provision made towards leave salary liability based on actuarial valuation may be allowed. Alternatively, on the lines of gratuity and pension funding, necessary provisions may be included in the Income-tax Act for funding of the leave salary liability and deduction should be allowed on such funding.

18. Section 44AD - Presumptive Income – Some Issues

a) Maintenance of Books of Account

The section may be amended or suitable provision be inserted so as to clarify the intentions of the section. The erstwhile sub-section 4 read as under:

“The provisions of Section 44AA and 44AB shall not apply in so far as they relate to the business referred to in the sub-section (1) and in computing the monetary limits under those sections, gross receipts or as the case may be, the income from the said business shall be excluded.”

b) Eligible Business

- (i) Section 44AD may be amended to clarify whether the receipts of ₹60 lakh under Section 44AD intend to cover the receipts of a single business or aggregate receipts of all businesses
- (ii) The provisions of Section 44AD should not be made applicable for all businesses. The scope of Section 44AD may be clearly defined to cover particular businesses only.
- (iii) Further, it may also be clarified whether the provisions of Section 44AD would be applicable for loss making business and businesses having income below taxable limit.

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

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 cost price or market price of stock in trade which has been considered for the purpose of valuation of closing stock 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.

20. Limited Liability Partnership (LLP)

- (a) There is need to increase the figure of ₹60 lakh substantively so that private limited companies doing business can also choose the option of conversion to Limited Liability Partnership.

It may be noted that enough safeguards have been provided in the amendment to not to allow distribution of profit and change of partners etc. to avoid misuse of this provision.

- (b) Merger and Amalgamation of Limited Liability Partnership to be Revenue Neutral.

Similar provision need to be inserted for LLP allowing merger and demerger and amalgamation to be revenue neutral.

- (c) Transfer of capital asset by a Limited Liability partnership (LLP) to Private Company or unlisted public company on account of conversion

Any transfer of capital asset or intangible asset by LLP to a private company or unlisted public company due to conversion subject to fulfillment of certain conditions, may also not be considered as transfer for the purpose of capital gains.

- (d) A specific provision be incorporated in the Income-tax Act, 1961 itself clearly specifying that the conversion from a general partnership firm to an LLP will have no tax implications.

21. Section 49 – Cost of acquisition with reference to certain modes of acquisition

Section 49(1)(iii)(e) to be amended to include reference to demerger which is exempt under Section 47(vib) and (vic).

22. Forfeiture of Advance Money under Section 51

In order to provide relief to the assessee, any forfeited money in respect of any long term capital asset should be allowed to be deducted after Indexation, if any, from date of forfeiture to the date of sale.

23. Section 54EC - Capital gain not to be charged on investment in certain bonds

- a) As the financial year may differ from assessee to assessee, the term “financial year” be substituted with the term “previous year”.
- b) Considering the inflationary conditions in the economy, the limit of ₹50 lakh may be raised to ₹1 crore.

24. Exemption under Section 54 & 54F

Section 54F(1) may be re-worded as follows:

“In the case of an assessee being an individual or a HUF the capital gain arises from the transfer of any long term capital asset, not being a residential house and the assessee has within a period of one year before or two years after the date on which the transfer took place PURCHASED/ CONSTRUCTED, or has within a period one year before or three years after that date constructed, a residential

house, the capital gain shall be dealt with in accordance with the provisions of this Section.”

25. Exclusion of rights shares and fresh issue of shares from the ambit of Section 56 (2)(viia)

Rights shares and fresh issue of shares be excluded specifically from the ambit of these provisions.

26. Tax incentives under Section 72A in respect of Amalgamation or Demerger (to be extended to all businesses):

a) The benefit of Section 72A may be extended to all businesses including financial services, entertainment/sports, information technology (IT) and IT enabled services.

b) Further, the provisions of Section 72A may be simplified specially in respect of the conditions applicable for the amalgamating company like losses/depreciation being unabsorbed for at least three years and holding assets on the amalgamation date upto $\frac{3}{4}$ of the book value of fixed assets held two years prior to the said date.

27. Section 72 - Carry forward and set off

The brought forward business loss may be allowed to be set off against such short-term capital gain in subsequent assessment years.

28. Deduction for Education expenses

Deduction should be available for purchase of all kinds of books, CD's, computers, internet connection etc. the deduction should also be available in respect of part time course for vocational training etc by all universities and approved institutions.

29. Benefit under Section 80IA shall be allowable to the resulting/amalgamated company in case of demerger/amalgamation

The original position, under which the transferee company enjoys the benefit in case of a demerger or amalgamation, may be reinstated.

30. 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, 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

31. Anonymous donations under Section 115BBC

To clarify the intention of the statute, Section 115BBC(1) (ii) may be re-worded as follows:

“the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the ~~aggregate amount~~ of anonymous donations WHICH ARE SUBJECT TO TAX IN CLAUSE (i) ABOVE.”

32. Explanation 2 to Section 139(1) - Due date of furnish report under Section 92E

(i) Clause (aa) may be appropriately amended as

follows:

“in the case of an assessee required to furnish a report referred to in Section 92E, the 30th day of November of the assessment year”.

(ii) The definition of “specified date” in clause (ii) of Explanation to Section 44AB may be amended to provide 30th November of the assessment year as the specified date for assesseees who have entered into international transactions. For this purpose, the definition of “specified date” in the Explanation to Section 44AB may be amended to align the same with the definition of “due date” under Explanation 2 to Section 139(1).

33. Section 139(5)

Section 139(5) may be amended to provide that the revised return can be filed even in the case of belated return.

34. Guidelines for the empanelment of auditors under Section 142(2A)

Specific guidelines for the appointment of auditor under Section 142(2A) by Chief Commissioner or Commissioner may be issued. The said guidelines may provide for conditions like experience of the auditor in the relevant field, number of years of experience, number of partners etc. Further, in order to maintain quality of work and to provide equitable distribution of work, a restriction on the number of such audits by a particular auditor in a particular year may be imposed.

35. 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.

36. Rectification of mistake under Section 154 & Appeals under Section 246A

In view of the above Section 154(1) may be amended as follows:

“With a view to rectify any mistake apparent from the record an income tax authority referred to in Section 116 may:

(a)....., (b).....

(c) amend any intimation or deemed intimation under Section 200A w.e.f. 01/04/2010.”

Further, a clause (s) may be inserted in Section 246A(1) as follows:

“(s) Any intimation or deemed intimation under Section 200A w.e.f. 01/04/2010.”

37. Credit of Tax Collected at Source relating to earlier years (for which Assessments are already over & time period mentioned in Section 155(14) has elapsed) demanded by the Government authorities at a later date

Considering the hardship being faced by assesseees in respect of cases mentioned above, the department should give credit for such TDS/TCS even if the assessments have been completed and also the period mentioned under Section 155(14) has expired.

38. Suggestions relating to Tax Deducted at Source**(a) Non-deduction of TDS on Service Tax**

No tax at source should 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.

(b) 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 be 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.

(c) TDS on Purchase of Software Licences

A specific provision for deduction of tax at source say @1% on purchase of branded software licences from software dealers be incorporated in the Income-tax Act, 1961.

39. Section 193 - Interest on Securities

- The interest on Debentures issued by companies either listed or non-listed may be given threshold limit under clause (v) of Proviso to Section 193.
- The threshold limit under clause (v) of Proviso to Section 193 regarding non-deduction of TDS may be increased to minimum ₹10,000.

40. Section 195 - Time limit for Issuance of "general or special order"

An appropriate time limit say thirty (30) days may be imposed for passing such general or special order by the Assessing officer. Further, where an application is rejected the Assessing Officer may be required to pass a speaking order after providing a reasonable opportunity of being heard to the applicant.

41. Validity of Certificate issued under Section 197

- the application may be allowed to be made atleast 60 days before the commencement of the financial year.
- Such application should be disposed off within 30 days.
- The certificate under Section 197 may be issued to be effective from the 1st day of previous year.

42. Clarification sought for generation of TDS certificates in case TDS is deducted @20% under Section 206AA

A clarification regarding the procedure for providing TDS Certificate especially in above mention issue to make the process easy and smooth and better compliance of the Act may be provided.

43. Inclusion of payments and receipts made through the modes like RTGS, NEFT, EFT and ECS as valid modes of fund transfers under Sections 269SS and 269T of the Income-tax Act, 1961

Different modes of transfers like RTGS, NEFT, EFT, ECS etc. be included as valid modes of fund transfers

under Section 269SS and 269T of the Income-tax Act, 1961. Alternatively, Section may provide for any mode of payment other than cash on the lines of Section 80D.

44. Omission of Section 282B - Document Identification Number

Section 282B may be reinstated and the date of implementation of DIN may be postponed till the availability of requisite infrastructure on all-India basis.

45. Increase in Ceiling Limits

The following limits may be increased:

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

46. Introduction of Sunset Clauses in Income-tax Act, 1961

Sunset clauses at suitable places be inserted in the Income-tax Act, 1961.

47. CER Sale to be treated as Capital Receipt

This credit should be treated as capital receipt free from any taxes. Alternatively, the amount spent should be eligible for deduction under Section 10AA, 80IA, 80IB, 80IC etc.

48. Corporate Social Responsibility Costs

- a deduction of the expenditure on community/social development (both capital and revenue) be introduced, specifically covering critical areas like education, health, animal husbandry, water management, women empowerment, poverty alleviation and rural development.
- Even in cases where a company has its own trust or foundation, the deduction in respect of expenditure incurred for CSR activities should be allowed.
- Such expenses, however, should be subject to a limit say 5% of total income.

49. Carry forward of excess foreign tax credit

Assessees be permitted to carry forward (say for five years) such unutilised credit (in USA such relief is granted vide Section 904(c) of Federal Tax Act) for adjustment in future years.

50. Incentivising investments in respect of agricultural infrastructure

The tax incentives may take the following forms:

- deduction of proportionate profits for the total value of turnover arising from such computerised infrastructural facilities (in line with the provisions of Section 80IA read in conjunction with Section 80HHC) for purposes of simplification and avoidance of disputes.
- deduction of the total expenditure incurred, both capital and revenue, for creating such infrastructure (similar to the provisions of Section 35).

51. Age of Senior Citizen for Tax Benefit

To bring more clarity and equality in every section which deals with the senior citizens, 60 year age shall

apply uniformly in the Act and accordingly appropriate amendments may be made in the Act.

52. Gaps in electricity generations

Concessions or additional tax benefits may also be provided where a new building (resident/commercial/hotel etc) installs a solar energy devices & rain harvesting instruments.

53. Procedure for surrender of PAN

Procedure for surrender of PAN & exemption from filing of return of income in respect of Firms whose business discontinued, may be prescribed. With this, firms may be saved from penalty under Section 271F.

54. Differential Stamp duty charges being paid by CA's and Advocates on letter of authority for representing the client

In order to bring uniformity in Court fees for both Chartered Accountants & Advocates for their representing the client before Income-tax Authorities, Section 288 which provides "appearance by authorised representative" should be amended to provide for the fees to be charged for authorisation.

55. Book Profit tax (MAT) on Scientific Research Expenditure

In order to promote in-house R&D in India, the amount of weighted deduction under Section 35(2AB) may be allowed to be deducted while computing tax under 115JB.

56. Deduction for Employee Stock Option Cost

Necessary amendment may be made in Income-tax Act or circular should be issued by the CBDT to allow deduction for ESOP cost being employee remuneration cost.

IV. SUGGESTIONS RELATING TO RULES AND FORMS

1. Valuation of Sweat Equity under Rule 3(9)

Rule 3(9) should also be amended to enable an accountant to do valuation of sweat equity. Thus, Rule 3(9) may be re-worded as follows:

"for the purposes of Section 17(2)(vi) the fair market value of a specified security, not being equity shares in a company, on the date on which option is exercised by the employee, shall be such value as determined by a merchant banker OR AN ACCOUNTANT on the specified date."

2. Section 14A/ Rule 8D Disallowance

Rule 8D should either suitably modified or should be scrapped. In case the same has to be retained, it should be amended to provide that the amount of notional disallowance shall not exceed the income earned which is exempt from tax.

3. Depreciation on Computer

In order to clarify the intent and also to avoid further litigations, Note 7 of Appendix IA of the Income-tax Rules, 1956, may be further amended to provide that "computer" includes printers, scanners and other peripherals.

4. 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) Payments made to public sector companies
- (e) Payments for acquisition of asset for the use in the specified business under Section 35AD which is allowable as a deduction.
- (f) Expenditure not exceeding ₹ 1,00,000 incurred by a resident while on tour outside India.
- (g) Payments made to hotel.
- (h) other payments where the nature of the transaction is such that it is to be ordinarily paid only in legal tender.

5. Form No.3CD

Clause 17(h) of the Form No.3CD may be re-worded as follows:

"amount debited to profit and loss account being amount inadmissible under Section 40A(3) and 40A(3A) read with rule 6DD and computation thereof"

6. Difficulty being faced in claiming deduction under Section - 35AD

A point C- Computation of Income from specified business be inserted in the Schedule BP, below point B- computation of Income from speculative business (as depicted in the detailed suggestion) which may be further linked to CFL schedule which takes data for carry forward of loss from specified business instead of point 2b.

7. Payment of Interest on External Commercial Borrowing (ECB) TDS Under Section 195

It is suggested to deal with the situation (as mentioned in the detailed suggestion) a separate clarification should either incorporate in the rules or in the section itself which will help the entities to overcome these types of difficulties.

8. Revision of Circular No. 715 dated 8-8-1995 and 716 dated 9-8-1995

In view of existing business conditions, Circular Nos. 715 dated 8-8-1995 and 716 dated 9-8-1995 be revised appropriately.

9. PAN Number for payments in Hotels/Restaurants

Clause(h) of Rule 114B may be continued but its applicability may be restricted to hotels and restaurants for only cash payments above ₹ 1,00,000/-.

10. ITR-6 - Difficulty being faced due to wrong calculation of tax payable

Necessary amendment may be made in the utility of ITR-6 so the assesses do not have to face undue hardship while filing their returns.

11. Rule 26 - Telegraphic transfer buying rate

The explanation presently appearing may be substituted by making a reference to the trading rate for that day as declared and available on the website of Reserve Bank of India. ■