

Pre-Budget Memorandum 2013—Direct Taxes: Executive Summary

I. Suggestions to Improve Tax Collection

1. Information to be furnished in the Annual Information Return

In respect of the transactions (mentioned in detailed memorandum), where the PAN is not provided by the payer, the provisions like 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)

In respect of maturity of insurance policies which are taxable under Section 10(10D) it is suggested:

- That a provision relating to TDS should be inserted in Chapter XVIIIB to cover such payments where the exemption under Section 10(10D) is denied to the recipient of income from insurance companies.
- That where the premium paid is above 10% or 20%, as the case may be, 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 10%/20% as the case may be, of capital sum assured.
- 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 may be made accordingly.

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

- To provide relief to the genuine taxpayers paying interest to NBFC's, it is suggested that the Section 194A(3)(iii)(a) be amended to treat NBFC's at par with other banking companies.
- Further, in order 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. Re-introduction of TDS under Section 194C on Transporters:

It is suggested that provisions relating to TDS on transporters under Section 194C may be reinserted by appropriately amending Section 194C.

5. 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.

6. Verification of all income-tax returns

In order to thoroughly check the filed returns and cross-verified with the information collected through AIR and other sources by the Department, the same may be outsourced 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.

II. Suggestions to Reduce/Minimise Litigations

1. Leave Travel Concession/Assistance -Replacement of "Calendar year" by "Financial year":

To be in line with the concept of "financial year" adopted by other provisions of the Income tax Act, it is suggested that the concept of calendar year should be replaced with financial year (April – March)

2. "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 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.

3. 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.

4. Additional Depreciation under Section 32(1)(iia)

It is suggested that an express provision may be incorporated in the Act for the allowance of the remaining 10% additional depreciation in the next year so that a number of litigations may be avoided.

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

- a) (i) 'New Plant' and 'newly installed capacity in an existing plant' may be defined objectively to ensure clarity and avoid litigation.
- (ii) The 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.
- b) In order to prevent unnecessary litigations, the term "agricultural produce" may be clearly defined.

6. Amendment in Section 40A(3)

It is suggested that a clarification may be issued to clarify whether direct deposit into the account of the recipient in excess of ₹20,000/- by the debtor be subject to disallowance under Section 40A(3) of the Income-tax Act, 1961.

7. Section 50C

It is suggested that 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.
- 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. It is suggested that the word "may" be substituted with "shall".

8. Exemption under Section 54 & 54F

- a) In order to avoid avoidable litigation, a Circular on the said subject be issued clarifying that in a case where an assessee has entered into a Registered Agreement for Purchase of a residential flat in an "OAS" 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) It is suggested that the inconsistency in the sub-section(2) and proviso to the sub-section(1) and may be removed to avoid unnecessary litigations.

9. Section 94A-Special measures in respect to 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.

10. Section 115JB-Minimum Alternate tax

- (a) 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))”
- (b) Clauses (b) and (e) of Explanation 1 may be deleted with effect from 1st April, 2012.

11. Special provisions for payment of tax by certain persons other than companies- Section 115JC

It is suggested that the provisions should be amended appropriately to clarify that the specified persons are entitled to set-off AMT credit even when their adjusted total income falls below 20 lakh in the year of set off.

Further, even if the tax payer has discontinued the business, he should be allowed to set-off AMT credit, in line with the set-off of business losses allowed even after discontinuance of business.

The benefit of carry forward and set-off of AMT credit should be permitted also in case of conversion of private limited, sole proprietorship to LLPs and vice versa. Corresponding amendment should also be made in Section 47(xiiib).

12. Section 147 read with Section 149

- (i) It is suggested that the Explanation proposed to be inserted after Section 149(3) be deleted so that effect of this provision is made applicable with effect from a prospective date.
Alternatively, it may be provided that assessments for A.Y.2007-08 or thereafter may be reopened on the basis of the amended provisions of Section 149(3).
- (ii) Reassessment proceedings initiated for a period prior to six years should be restricted to only income arising out of assets located outside India.
- (iii) Further, appropriate amendments may be made to address the genuine hardship which assesseees who are subject to presumptive tax provisions may face on account of such provision.
- (iv) The term "financial interest" may be defined to ensure clarity.
- (v) Giving way forward for the accountability of the revenue, the provisions of Section 147 deeming income to have escaped assessment in the hands of a resident having an asset located outside India may be replaced by provisions vesting the onus on the Assessing Officer to provide that the income from such foreign asset has actually escaped assessment.

13. TDS on Fixed Deposit interest:

The taxability of interest income on FDR in case of FDR's in Joint names may be specifically provided for. The old CBDT Circular No. 256, dated 29-05-1979 be revised appropriately.

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

A provision 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.

15. 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.

16. Introduction of Advance ruling for residents

It is suggested that the same 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.

17. 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.

18. Signing of notices under Section 282A

It is suggested that 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.

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

Appropriate amendment in the Act as well as ITR forms may be made to clarify that EC & SHEC should not be applicable on the rates specified under DTAA.

20. Section 194LC- Income by way of interest from Indian Company

In order to bring out the real intent of the law, it is suggested that the Section 194LC(2)(ii) may be reworded to provide that the interest referred to in sub-section (1) shall be the income by way of interest payable by the specified company "IF such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this regard, having regard to the terms of the loan or the bond and its repayment"

21. 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:

It is suggested that 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)

22. 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 for pending cases, to reduce litigations, it is suggested that 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.

23. Section 132 - Search and seizure

- a) An amendment is required under Section 132B clarifying 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) In view of the practical difficulty being faced, it is suggested that 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.

24. 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.

25. 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.

26. Section 245A-Settlement Commission

- (a) It is suggested that (i) Proviso of Section 245(b) along with the Explanation (i) be omitted.
- (b) In order to further reduce litigations, it is suggested that the said 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 & 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) 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.
- (c) 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.
- (d) Section 10(23C) should be amended to specifically exclude 'corpus donations' from the requirement of mandatory application of income by such trusts/institutions.
- (e) It is suggested that 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.

3. Amendment by the Finance Act, 2012 in Sections 2(19AA)(iv), 47(vii) and 49

- (a) Since these amendments are clarificatory in nature and are proposed to remove the conditions which were impossible to fulfill, it is suggested to make them applicable with retrospective effect i.e. from the date when the above conditions were inserted in the said Sections i.e. for Section 47 (vii) with effect from 1st April 1967 and for Section 2(19AA) with effect from 1st April 2000.
- (b) Section 2(1B)(i) may be amended appropriately to provide that all the property of the amalgamating company or companies (other than assets like shares, debentures etc. held by any amalgamating company or companies in another amalgamating company or companies) before amalgamation becomes the property of the amalgamated company by virtue of amalgamation. Corresponding amendment may also be made in Clause (ii) of Section 2(1B).

4. Amendment by the Finance Act, 2012 in Section 9(1)

- (a) It is suggested that Explanations 4 and 5 to Section 9(1) (i) and other consequential amendments in Sections 2(14) and 2(47) may be given effect to prospectively, i.e. with effect from A.Y. 2013-14, to avoid undue hardship to tax payers consequent to which penalty proceedings may be attracted for –
 - a. non-payment of tax by the person whose income is deemed to accrue or arise in India and
 - b. non-deduction of tax at source and disallowance of expenditure on account of non-deduction of tax at source in the hands of the person on whom the obligation to deduct tax at source is vested on account of the retrospective amendment.
 - (i) Further, it is suggested that the words “derives directly or indirectly, its value substantially from the assets located in India” may be subject to different interpretations. The scope of “indirectly” may be defined to clarify the true intent of law. Further, the term “substantially” also need to be defined by specifying exact parameters like a specific percentage, as in Section 2(32) of the Income-tax Act, 1961 or clause 314(185) of the Direct Taxes Code Bill, 2010 to avoid scope for any disagreements/litigation.
 - (ii) Furthermore, the liability to tax in India should be restricted to the extent of value derived from the assets located in India and not the value of the entire transaction.
 - (iii) The definition of royalty under Section 194J may be delinked from the definition of royalty in Section 9(1)(vi). There should be an independent definition of royalty under Section 194J, since otherwise purchase and sale of software may fall within the definition of royalty, whereas the intent of proposed royalty definition is cover exploitation of intangible assets.
- (b) It is suggested that these Explanations should be inserted with effect from 1.4.2013 and made applicable from A.Y.2013-14 onwards to avoid undue hardship to tax payers consequent to which penalty proceedings may be attracted for-
 - (i) non- payment of tax by the person whose income is deemed to accrue or arise in India and
 - (ii) non-deduction of tax at source and disallowance of expenditure on account of non-deduction of tax at source in the hands of the person on whom the obligation to deduct tax at source is vested on account of the retrospective amendment.
- (c) It is suggested that the proposed Explanation 6 to Section 9(1)(vi) may be suitably re-worded.

5. 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).

6. Section 10(23FB)

It is suggested that Section 10(23FB) be reworded as follows:

“Any income of a venture capital company or venture capital fund from investment set up to raise funds for investment in a venture capital undertaking.”

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

It is suggested that this should be raised to at least ₹ 10,000/- for each minor child.

8. 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.

9. Re-introduction of standard deduction for salaried employees:

The standard deduction under Section 16 should be restored.

Alternatively,

Since the cost of living has increased manifold, ever since the limit of ₹ 800/- p.m. and ₹ 15,000/- p.a. w.r.t. transport allowance and medical reimbursement, the said limits may be increased to ₹ 5,000/- p.m. and ₹ 50,000/- p.a. respectively.

10. Deduction to salaried assessee- Payment for notice period

It is suggested that said anomaly may be resolved and appropriate provisions be inserted so that income from notice period pay is chargeable in the hands of ex-employer and deduction of the amount of notice period pay paid be made available to the employee as he has not effectively received that income.

11. Medical reimbursements for retired employees:

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

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

It is suggested that 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.

13. Taxing of ESOPs:

It is suggested that the taxation of ESOPs as perquisite at the time of allotment/exercise should be avoided for the reasons explained above. If at all it is taxed, it should be based on the fair market value i.e. the market price prevailing on the date

of grant. Any subsequent appreciation should only be taxed at the time of realisation/sale as capital gains.

14. Valuation of Company owned Accommodation provided to employee:

It is suggested that in case of company owned accommodation the concept of fair value be introduced to ensure that the right amount of perquisite is determined for income tax purposes.

15. Deduction under Section 24(a) of the Income-tax Act, 1961

- a) Section 25AA be suitably amended to provide that unrealised rent subsequently realised shall after deducting a sum equal to thirty percent of such amount shall be deemed to be income chargeable under the head “Income from House property”.
- b) Considering the cost involved in payment of lease rents, it is suggested that ground rent shall be allowed as separate deduction while computing income under the head “Income from House property”.

16. Interest on borrowed Capital

It is suggested that 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.

17. Depreciation

- (1) Depreciation on books used by professionals
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
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 ₹ 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.

18. Incentive for installation of Solar Power generating devices

It is suggested that an incentive may be given in the Income-tax Act, 1961 for installation of solar power generating device. In other words, 100% depreciation may be allowed to Companies in respect of installation of such devices. A deduction of the amount so invested may also be given to Individuals and HUFs who install such devices including salaried class.

19. 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.

20. Amortisation of Capital expenditure

It is suggested that provisions may be incorporated in the Act to allow amortisation of such capital expenditures which are essential to run the business.

21. 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.....”

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

It is suggested that 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.

23. NPA calculation for NBFCs

NBFCs may also be include in Section 36(1)(viia) so that the benefits are also extended to infrastructure financing NBFCs

24. Section 36(1) (viii)

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

25. Amendment by the Finance Act, 2012 in Section 40 and Section 201

The provisions of Section 40(a)(ia) and Section 201(1) may be amended retrospectively with effect from 01-04-2005 in order to clarify the real intent of law and to remove hardship, thereby reducing further litigations.

The later part of the second proviso may be suitably amended to provide that it shall be deemed that the assessee has deducted tax in the relevant previous year and paid the tax on such sum on or before the due date of furnishing the return of income.

26. 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.

27. Amendment in Section 43D and Rule 6EA with reference to Non-Scheduled Co-op Banks:

- (i) The words “or Non-Scheduled Banks” be inserted in the Section 43D of the Income-tax Act, 1961 and Rule 6EA of the Income-tax Rules, 1962 be amended suitably w.e.f. 01-04-2006 and relevant to A.Y. 2007-08.
- (ii) In Rule 6EA (a)(i) the words ‘six months’ be replaced by “three months”.

28. 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

- a) Section 44AD may be amended to clarify whether the receipts of ₹1 crore under Section 44AD intend to cover the receipts of a single business or aggregate receipts of all businesses. As singular includes plural, a clarification is required in this regard. The difficulty being faced can be illustrated by way of following example: Suppose an assessee “A” is engaged in four different businesses. The individual turnover of each his businesses are as under:
 - a) Business I (Retail trade of cloth) ₹30 lakh
 - b) Business II (Manufacturing of tyres) ₹25 lakh
 - c) Business III (Running a sweet shop) ₹35 lakh
 - d) Business IV (Advertising agency) ₹15 lakh

The aggregate turnover of all four businesses amount to ₹105 lakh. In such a situation, if the assessee opts for Section 44AD for all four businesses, a clarification is required whether or not he will be liable to get his accounts audited under Section 44AB of the Income-tax Act, 1961.

- b) 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. Further, in such a case, the treatment regarding set off of unabsorbed depreciation of the non-eligible business against the profits of eligible business, also be clearly laid down.
- c) 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.

c) Applicability of Section 44AD

- a) The provisions of sub-section (6) of Section 44AD should be made effective from A.Y.2013-14, since the persons earning income in the nature of commission or brokerage and persons carrying on agency business who had opted for presumptive taxation for A.Y.2011-12 and A.Y.2012-13 in the absence of specific exclusion in the definition of “eligible assessee” or “eligible business” would face genuine hardship on account of such retrospective amendment.
- b) Further, instead of inserting sub-section (6), the definition of “eligible business” be amended to exclude professions, agency business and business

in respect of which the earnings are in the form of commission or brokerage.

29. Conversion of stock-in-trade 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 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.

30. Limited Liability Partnership (LLP)

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

It is suggested that similar provision need to be inserted for LLP allowing merger and demerger and amalgamation to be revenue neutral.

(b) 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.

(c) Taxability on conversion of firm into LLP- Clarification required

It is suggested that 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.

(d) Consequential amendment required in Section 47(xiiib)

The limit of total sales, turnover or gross receipts in the business of a company for availing the benefit under Section 47(xiiib) on conversion to an LLP may be suitably increased to ₹ 1 crore, in line with the limits in Section 44AB and Section 44AD. In fact, with a view to popularise the concept of LLP and also in view of the fact that such provision should apply to all cases of revenue neutral conversions from one form of entity to another form of entity, there should be no threshold on turnover, to avail the benefit under Section 47 (xiiib).

31. 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).

32. Section 50C - Fair Market Value

It is suggested that for the purpose of Section 50C, Fair Market Value should be the circle rate as on the date of Banakhat (date of agreement to sell) if the Banakhat is a registered document (and not the circle rate as on the date of registration of final sale deed) and the actual value as per the sale document, whichever is higher.

33. 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.

34. (i) Section 54- Investment in residential house

It is suggested that a provision be introduced whereby acquisition of more than one house be eligible for exemption under Section 54.

(ii) Certification of deductions claimed under Section 54, 54F, 54EC etc

It is suggested that the assessee claiming deduction exceeding a specified amount under the provisions of Section 54, 54F, 54EC etc may be required to obtain a certificate from a chartered accountant certifying the accuracy if the claim.

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

- As the financial year may differ from assessee to assessee, it is suggested that the term "financial year" be substituted with the term "previous year".
- Considering the inflationary conditions in the economy, it is further suggested that the said limit of ₹50 lakh may be raised to ₹1 crore.

36. Exemption under Section 54 & 54F

It is suggested that the 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, 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."

37. Capital gain on transfer of residential property to be taxed in certain cases -Section 54GB

- The benefit under Section 54GB may be extended to long-term capital gains on sale of any capital asset which is invested in the equity of a new start-up SME company for purchase of new plant and machinery within the prescribed time.
- Investment in existing SME company may also be considered for the purpose of such exemption.
- Further, investment in LLP which satisfies the condition of SME enterprises may also be permitted, subject to conditions as may be necessary. Restrictive clauses may be inserted in line with the appropriate clauses of the proviso to Section 47(xiiib).
- The restricted time limit for acquiring new plant and machinery will create difficulties and, therefore, it is suggested that the SME company may be allowed to make such investment in new plant and machinery within a period of two years from the date on which the assessee makes the investment in its equity shares.
- The period of five years for retaining the equity shares may be reduced to three years, in line with the

requirement under Section 54EC. Suitable exceptions for takeover/merger/amalgamations etc. may also be provided.

- f) Similarly, lock-in-period for plant and machinery acquired by the SME company may be reduced from five years to three years.
- g) It may be clarified that the net consideration after deduction of tax at source@1% may be required to be invested, so that there is no cash flow mismatch.
- h) In case of a Sale of joint property, the condition regarding holding of more than 50% of the share capital of the SME company by the assessee should be deemed to have been fulfilled if the co-owners of the said property hold more than 50% of the Share Capital of the SME company.

38. Definition of the term relative- Section 56(2)(vii)

- (i) The provisions of clubbing of income as contained in Chapter V of the Income-tax Act, 1961 should not be attracted once the sum of money or value of assets are subject to tax under Section 56(2) in the hands of the recipient.
- (ii) Lineal descendants of brothers and sisters of self and spouse may also be included in the definition of "relative".
- (iii) The application of the provision should also be extended to the relatives of the members of HUF.

39. Exclusion of rights shares/fresh issue of shares from the ambit of Section 56 (2)(viiia)

It is suggested that rights shares and fresh issue of shares be excluded specifically from the ambit of these provisions.

40. Valuation of shares- Section 56(2)(viib)

- (i) A proviso similar to the proviso to Section 56(2)(viiia) should be incorporated in Section 56(2)(viib) as well. Further, the proviso should also cover transactions not regarded as transfer under Sections 47(vi) and 47(vib).
- (ii) Valuation Report from an 'Accountant' may be admissible so as to determine the fair market value of unquoted equity shares.

41. Onus of proof in respect of cash credits consisting of share application money, share capital, share premium etc-Section 68

First provision to Section 68 should be re-worded to provide that the source of funds in the hands of the resident shareholder is to be explained by the ASSESSEE Company or the investor to the satisfaction of the Assessing Officer.

42. 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 ¾ of the book value of fixed assets held two years prior to the said date.

43. Section 72-Carry forward and set off

It is suggested that the brought forward business loss may be allowed to be set off against such short-term capital gain in subsequent assessment years.

44. Deduction for Education expenses

It is suggested that the 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.

45. Introduction of new Section for deduction in respect of PPF:

It is suggested that a separate Section may be introduced for allowing deduction in respect of amount invested in Public Provident Fund upto ₹1 lakh.

46. Preventive health check up-Section 80D

It is suggested that Section 80D be appropriately amended to provide for a deduction of ₹5,000 for preventive health check-up of any member of the family, which is in addition to the existing limits under that Section for medical insurance premium paid.

47. Increase in limit of deduction under Section 80DD & 80U

It is suggested that the limit specified in Section 80DD & 80U be enhanced suitably.

48. Deduction under Section 80G - to liberalise the exemptions by enhancing ceilings specified

It is suggested that the ceiling of 10% on gross total income be enhanced appropriately.

49. Section 35(1)(ii) and 35(1)(iii)- Removal of discrimination under Section 80GGA

Deduction at an enhanced percentage be provided in Section 80GGA to all assesseees in line with deduction provided in Section 35(1)(ii) and 35(1)(iii) which is available to an assessee having income from business or profession.

50. 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.

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

- a) 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.
- b) 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.

52. Donations made of any sum exceeding ten thousand rupees in cash- Sections 80G and 80GGA

It may be clarified as to whether the limit of ₹10,000 is applicable in respect of each individual contribution or aggregate contributions to an institution or to all institutions covered under Section 80G(2) and Section 80GGA(2), respectively.

Further, since deductions under Section 80GGB and 80GGC are also in respect of donations, the above limit should be made applicable in respect of such contributions to political parties and electoral trusts as well, to dissuade cash payments.

53. Deduction in respect of interest on deposits in savings account- Section 80TTA.

Interest on time deposits may also be included within the scope of Section 80TTA.

54. Revival of Section 80VV – Deduction for professional fee

It is suggested that deduction for such fees upto a sum of ₹25,000 may be allowed by re-introducing a Section under Chapter VI-A on the lines of earlier Section 80VV.

55. Double taxation avoidance agreements- Section 90 and 90A

It is therefore suggested the aforesaid amendment should be deleted.

56. Meaning of International Transaction - Section 92B.

- (i) It is suggested to substitute the definition of “international transaction” prospectively w.e.f. 01-04-2013 so that persons who have entered into such transactions in the past, which are now affected due to the proposed changes, do not face undue hardship on account of penal consequences which are attracted due to non-maintenance of prescribed books of account and non-furnishing of report of an accountant and any other associated requirement.
- (ii) Transfer Pricing provisions should not be made applicable to marketing intangibles, inter corporate guarantees etc unless a payment is made.
- (iii) Due to lack of comparables in case of intangibles, appropriate safe harbor provisions may be introduced. Though the enabling provisions for making rules for safe harbour have been conferred on the Central Board of Direct taxes three years back vide Finance (No.2) Act, 2009, the rules in this regard are yet to be notified. It is suggested that the rules may be notified at an early date so that the tax payers are able to avail the benefit intended by the legislature.
- (iv) Further, the requirement of obtaining a Valuation Report from an accountant may also be provided for.

57. Meaning of specified domestic transactions- Section 92BA

- (1) Transfer pricing provisions should not be made applicable in respect of domestic transactions,

particularly in respect of transactions in the nature of expenditure under Section 40A(2). In any case, payment of director’s remuneration in compliance with Schedule XIII of the Companies Act, 1956 and partners remuneration within the limits prescribed under Section 40(b)(v) should not be included in the scope of “specified domestic transaction”. In case, such provisions are to be made applicable to domestic transactions, the threshold limit may be increased to at least ₹50 crore in respect of transactions covered under Section 40A(2)(b).

Alternatively, the amount of expenditure allowed as deduction in the hands of one enterprise as per the arm’s length price determined should be treated as income of the other enterprise, and vice versa. Also, Advance Pricing Agreements should apply for domestic transactions as well.

- (2) The Finance Act, 2012 has made transfer pricing provisions applicable to specified domestic transactions. As per the amendment, the existing Transfer pricing provisions would be applicable to domestic transactions covered by Sections 40A(2), 80-IA(8)/(10) and 10AA and that domestic concerns would have to comply with the rigours of Rule 10D. This would mean that the provisions of Section 92CA(1) w.r.t. reference to the TPO would also apply. The existing administrative machinery of Transfer Pricing (i.e. TPO and DRP) are already over burdened and any further workload without a corresponding increase in the infrastructure will jeopardise the quality of the work.
- (3) The penalty for non-disclosure in the certificate by Accountant should be much lower and not 2% of the value of international transaction.

58. Computation of Arm’s length price - Section 92C

It is suggested that as it is possible that there may be more than one arm’s length margin possible and to bring the Indian TP provisions more in line with international practices, the concept of arm’s length range like the inter quartile range instead of specifying the tolerance band for each industry may be introduced.

Alternately, the existing provision on 5% tolerance band should be extended till such time the government announces the specific industry percentages as was provided by the Finance Act, 2011.

59. Advance Pricing Agreements (APAs)-Section 92CC and 92CD

In line with the recommendations of the Parliamentary Standing Committee on the Direct Taxes Code Bill, 2010, it is suggested that an independent agency appointed by the CBDT consisting of technical and judicial Members, should be entrusted with task of framing APAs, specifying the manner in which ALP is to be determined in respect of an international transaction. The independent agency will advise the Board on APAs in order to ensure that the APAs reflect current commercial practices.

- (1) An appropriate guidance to the assesseees as well as to the TPOs is required, laying the appropriate steps and filtration process under all the recommended methods

for transfer pricing by way of case studies which is internationally prevalent.

- (2) A mechanism for a review of an APA on account of change in law or facts should be formulated.
- (3) Appropriate procedure for withdrawal of application made by a tax-payer for APAs should be provided for in the scheme.
- (4) The APAs should also provide for renewal of APAs after the expiry of initial period of applicability, where the business model as well as the law remains the same.
- (5) Further, APAs should include a clause to provide that if any DTAA is entered into in future, and the provisions of the DTAA are more beneficial, the same would be applicable to the tax-payer.
- (6) For bilateral APA, the APA and MAP negotiation between the two Competent Authorities should commence simultaneously.

60. General Anti Avoidance Rule (GAAR)

It is suggested that in tandem with applicability of Chapter X-A relating to GAAR the provisions of Sections 90, 90A, 144C, 153, 153B, 246A etc. be made effective from 01-04-2014 rather than 01-04-2013.

61. Anonymous donations under Section 115BBC

To clarify the intention of the statute, it is suggested that 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 anonymous donations WHICH ARE SUBJECT TO TAX IN CLAUSE (i) ABOVE.”

62. Section 115BBE ought to be amended:

It is suggested Section 115BBE be amended so as to provide that it shall be applicable only to the cases where sums are added during the course of assessment proceedings. In other words, the income offered in the regular return of income of an assessee and voluntarily subjected to tax shall not be brought within its ambit.

63. Tax Credit under Section 115JAA & 115JD read with Section 115JB & 115JC

It is suggested that for setting off of MAT credit, a fresh period of 10 years be allowed after the completion of period of exemption in Section 10A to 10C and deduction in Section 80IA to 80ID under normal provisions of the Act.

64. Increase of threshold of maximum amount not chargeable to tax in the case of NRI & POIO

It is suggested that the benefit of increased basic exemption limit allowed to senior citizens/super senior citizens be extended to the Non-Resident Indians and Persons of Indian Origin who are senior citizens/super senior citizens provided they opt for being taxed under the normal provisions of Income tax Act, 1961 by virtue of the provisions of Section 115I.

65. Amendment in Section 139(1)

In order to resolve the difficulty being faced by partners other than working partners, it is suggested that wherever the firm is liable to get its accounts audited, the due date for

filing return of income under Section 139(1) of the Income-tax Act, 1961, may be extended to 30th September of the AY for all partners of the firm including non-working partners of the firm.

66. Section 139(5)

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

67. 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.

68. 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:

It is suggested that 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.

69. Suggestions relating to Tax Deducted at Source

(a) Non-deduction of TDS on Service Tax

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.

(b) Audit of TDS returns

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 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.

70. Section 193-Interest on Securities

- i) 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.
- ii) The threshold limit under clause (v) of Proviso to Section 193 regarding non-deduction of TDS may be increased to minimum ₹ 10,000.

71. Section 194H-Deduction of tax at source from income in the nature of commission or brokerage:

The exemption limit of ₹ 5,000 under Section 194H be appropriately revised upwards.

72. Section 194I- TDS on rental income

Considering the increase in the basic exemption limit for general assessee and senior citizens, it is suggested that the exemption limit of ₹ 1,80,000 in respect of TDS on rent under Section 194I be enhanced appropriately.

73. Fees for professional or technical services- Section 194J

- a. Section 194J be amended to provide an independent limit of ₹ 30,000, above which remuneration or fees or commission to director may be subject to tax deduction at source.
- b. Section 40(a)(ia) be amended to include within its scope payment to a director on which tax deductible at source has not been deducted.

74. Section 194J- Claim of TDS on income declared on cash basis:

In order to overcome the above situation and the inconsistency, it is suggested that the system on the lines of bank pass book be introduced in the Form No. 26AS, wherein the credit not taken in a particular year is carried forward to next year for claiming against the tax payable of next year.

75. Section 195-Time limit for - Issuance of “general or special order”

It is suggested that 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.

76. Validity of Certificate issued under Section 197

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

77. Provision for rectification and appeal of intimation under Section 200A

The provisions amending Section 154, 156 and 246A to provide for rectification and appeal of intimation under Section 200A and deeming such intimation as notice of demand may be given effect to RETROSPECTIVELY.

78. Amendment in Section 201(1A)- Consequences of failure to deduct or pay TDS:

It is suggested that interest under Section 201(1A) should be charged on daily basis and not on monthly basis or if the interest is to be charged on monthly basis delay should be rounded off to the near month and the present system of considering fraction of month as full month should be dispensed with.

It is further suggested that interest under clause (ii) of Section 201(1A) should be charged for the delay FROM

THE DUE DATE OF PAYMENT TO THE ACTUAL DATE OF PAYMENT.

79. 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.

80. Section 208-Revision of Limit of advance tax

The limit to pay advance tax under Section 208 be raised appropriately.

81. Computation of advance tax - Section 209

Interest under Section 234C may be waived off in such cases. In the alternative, the liability to pay interest should arise only in respect of instalments which fall due after such non-deduction or non-collection.

82. Dispute Resolution Panel (DRP)

The enhancement powers given to the Dispute Resolution Panel (DRP) will create more legal disputes than resolve. The primary task of finding a dispute is that of the AO and the DRP is supposed to resolve the dispute. The proposed powers will lead to creation of disputes at the DRP level.

83. Interest under Section 234C on Firms and Companies

- (i) It is suggested that the Departmental Software needs to be suitable amended so that firm and companies are not required to pay interest on the short payment of instalment of advance tax under Section 234C for the period when they were not in existence.
- (ii) It is suggested that interest under Section 234C should not be charged in respect of abnormal income (not being business income) in case tax on such income is paid on or before 31st March of the previous year.

84. Section 239 - Limitation for filing return for claiming refund

It is suggested that the time limit under Section 239 for claiming of refund be restored to 'Two years' from the end of the relevant assessment year.

85. 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

It is suggested that mode 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.

86. Case for Exemption to NBFCs registered with RBI from the purview of Section 269T of the Act

Since loan portfolio of NBFCs is similar to that of banks and considering the same regulatory environment under

which NBFCs are operating, NBFCs registered with RBI be exempt from the applicability of Section 269T of the Income-tax Act.

87. Penalty where search has been initiated- Section 271AAB

Sub-section(3) may be amended to provide that the prosecution provisions under Sections 274 and 275 would apply in relation to penalty levied only under clause (c) of this sub-section, and not in respect of cases covered under clauses (a) and (b).

88. Penalty for failure to furnish TDS/TCA statements- Section 271H

- i. Sub-section (3) may be amended to provide that penalty provisions under Section 271H would not be attracted if the person proves that after paying tax deducted or collected along with the fee and interest, if any, to the credit of the Central Government, he has delivered or caused to be delivered the statement referred to in Section 200(3) or the proviso to Section 206C(3) before the expiry of due date of filing of return of income of the previous year in which the tax was so deducted or collected, irrespective of the quarter to which the tax relates.
- ii. Penalty may be prescribed having regard to quantum of default and the period of delay, and no discretion may be given to the Assessing Officer in this regard. In any case, it should not exceed the tax deductible or collectible at source, in respect of which the quarterly statement has not been filed.

89. 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.

90. Increase in Ceiling Limits

The following suggestions are made in this regard.

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

91. 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.

92. Corporate Social Responsibility Costs

It is suggested that:

- a) 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.

- b) 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.
- c) Such expenses, however, should be subject to a limit say 5% of total income.

93. Carry forward of excess foreign tax credit

It is suggested that assessee 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.

94. Incentivising investments in respect of agricultural infrastructure

The tax incentives may take the following forms:

- i. 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.
- ii. deduction of the total expenditure incurred, both capital and revenue, for creating such infrastructure (similar to the provisions of Section 35).

95. Gaps in electricity generations

It is suggested that 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.

96. Procedure for surrender of PAN

It is suggested that 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.

97. 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.

98. 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.

99. 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.

100. Annuity for Professionals

The professionals may be allowed to deposit certain sum

not exceeding 15% of the Professional income subject to a specified limit in a separate Superannuation Fund and get the deduction for the same from the total income liable to tax. The Annuity received after the age of 65 or 70, at the option of the assessee should be taxed as an income.

IV. Suggestions for Removing Administrative and Procedural Difficulties Relating to Direct Taxes

1. TDS demand under Section 200A

- a) Some mechanism may be developed to check the quoting of wrong PAN in TDS quarterly statement at the time of validation of the TDS return, i.e. the moment the return is being filed.
- b) In respect of TDS demands pertaining to earlier years, the process of obtaining the FUV files for verification should be made user friendly. The FUV file should be mandatorily provided to the deductor at his registered email id so that the deductor does not have to visit the Income tax office for the same.

2. Applicability of TDS on genuine provisions on estimate basis without bills:

It is suggested that the provision of TDS should not be made applicable on entries made by assessees, which are merely provision for expenses for work completed/services rendered but for which bills have not been received. TDS may be imposed only on such credit entries to the party accounts which are supported by bills/invoices.

Alternatively,

It is suggested that the deductor should be allowed to issue separate Form No. 16A for Provision made for expenses.

Alternatively,

As suggested earlier, a system on the lines of bank pass book be introduced in the Form No. 26AS, wherein the credit not taken in a particular year is carried forward to next year for claiming against the tax payable of next year.

3. Issues relating to Refunds

- a) **Difficulties in obtaining old paper refunds**
It is suggested that old paper refunds not exceeding ₹1 lakh, issued by the department and not received by the assessees, may not require approval from higher authorities and must be left to the Assessing Officers for disposal. This will help in reducing the pending grievances of non-receipt of old paper refunds.
- b) **Refunds not delivered due to change in address**
To handle such cases, it is suggested that once the return has been processed by CPC, the file should be transferred to respective Assessing Officer, with whom the assessee can interact to resolve the issues in the processing of return, non receipt of refund cheque and so on.
- c) **Issue of Refunds in case of legal heirs**
It is suggested that in case of refunds of an amount not exceeding ₹50,000 which are payable to legal heirs of deceased assessee, the condition of obtaining Court Order be relaxed and refund be given as per the discretion of the Assessing Officer.

d) **Refund amount to be directly paid into the bank accounts**

It is suggested that the refunds in respect of all returns (e-filed returns as well as manual returns) be mandatorily deposited directly into assessee's bank account within maximum time limit of six months from filing of returns

4. Challan correction mechanism

It is suggested that challan Correction Mechanism be made applicable to all types of challans including challans for online payments, payments of wealth tax etc.

5. Extension of last date of Payment of tax due to Public holiday - Circular No. 676 dated 14.01.1994 read with Section 10 of the General Clauses Act, 1897

It is suggested that the Circular No. 676 dated 14-01-1994 be revised in the light of existing scenario. The circular should clearly provide as to whether or not the due date shall be deemed to be extended by one day if the last date is a public holiday.

6. Extension of time limit for filing of TDS Return

It is suggested that due date for furnishing of the TDS returns may be extended to 30 days the end of the quarter instead of 15 days.

7. Carry forward of excess foreign tax credit

It is suggested that assessee 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.

8. Number of Returns and payment schedule should be curtailed

For the convenience of the tax payers it is suggested that the number of returns and payment schedule to be filed by the assessee should be curtailed appropriately.

9. Once in life time Settlement Commission

Assessee should be given the freedom to settle disputes through this settlement commission without the restriction of this 'once in a lifetime' conditionality. Also the assessee should be given the freedom to settle at any point of time (i.e. at any level - AO and above) of the dispute.

10. Mistake apparent from record

The Assessing Officers may be given appropriate instructions to accept rectification applications under Section 154 in cases where Form No. 26AS reflects the entries relating to TDS but the same has not been claimed in the return of income.

V. Suggestions Relating To Wealth Tax

1. Taxable Wealth - to exempt motor cars

It is suggested that the motor cars should be excluded from the definition of "assets".

2. Valuation of residential house

This limit should be increased appropriately. ■