

# **ICAI's SUGGESTIONS ON COMPREHENSIVE REVIEW OF THE INCOME TAX ACT, 1961**



**The Institute of Chartered Accountants of India**  
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**SUGGESTIONS**  
**ON**  
**COMPREHENSIVE REVIEW**  
**OF**  
**THE INCOME TAX ACT, 1961**



**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**  
**NEW DELHI**



## Executive Summary

The Hon'ble Union Finance Minister, Smt. Nirmala Sitharaman ji, while presenting the Union Budget 2024-25, announced that a comprehensive review of the Income-tax Act, 1961 for simplification of the language of the Act to make it concise, lucid, easy to read and understand is underway, and this will reduce disputes and litigation and also bring down the demand embroiled in litigation.

A committee at the level of CBDT has been set up and a stakeholder's consultation was held under the chairmanship of the Revenue Secretary, Ministry of Finance, on 18th September, 2024, wherein ICAI has presented its Preliminary Suggestions for the Comprehensive Review of the Income-tax Act, 1961.

For submitting its detailed inputs, the Direct Taxes Committee (DTC) of ICAI webhosted an announcement inviting suggestions from members at large and other stakeholders. Suggestions in this regard were also invited from the various branches of ICAI. Inputs on comprehensive review of the Income-tax Act, 1961 were also invited from Central Council Members of ICAI, Co-opted members and Special Invitees of DTC. DTC received 350+ suggestions on Comprehensive Review of Income-tax Act and Pre-Budget Memorandum 2025 put together from the various stakeholders.

A study group of experts was formed to review the inputs/suggestions received from various stakeholders. The draft inputs of ICAI on Comprehensive Review of Income-tax Act were prepared considering the inputs received from stakeholders, members and branches. The meeting of Expert Group on Comprehensive Review of Income-tax Act was held on 25th November 2024, wherein the suggestions received and the draft inputs of ICAI on Comprehensive Review of Income-tax Act, 1961 were considered. The draft of the ICAI's inputs on Comprehensive Review of Income-tax Act, 1961 incorporating the recommendations of the group was considered by the DTC at its 83<sup>rd</sup> meeting held on 10<sup>th</sup> December, 2024.

The ICAI's inputs on Comprehensive Review of the Income-tax Act, 1961, finalised by the DTC of ICAI, have been divided into 4 categories, namely,

- Suggestions for simplification of the Income-tax law;
- Suggestions for removal of obsolete chapters, sections and schedules in the Income-tax Act, 1961;
- Suggestions for mitigating litigation; and
- Suggestions for reducing compliance burden.

In each category, the Preliminary Suggestions submitted by ICAI are presented first, followed by specific section-wise/rule-based suggestions.



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## **ICAI's Suggestions on Comprehensive Review of the Income-tax Act, 1961**

ICAI's suggestions on Comprehensive Review of the Income-tax Act, 1961 are given below under four Categories –

1	Suggestions for simplification of the income-tax law
2	Suggestions for removal of obsolete chapters, sections and schedules in the Income-tax Act, 1961
3	Suggestions for mitigating litigation
4	Suggestions for reducing compliance burden.

ICAI had been invited for the stakeholder consultation held on 18<sup>th</sup> September, 2024, wherein the Institute had submitted its Preliminary Suggestions for comprehensive review of the Income-tax Act, 1961. Accordingly, in each category below, the Preliminary Suggestions submitted by ICAI are presented first, followed by the Specific section-wise/rule-based suggestions.

### **Category 1 Suggestions for Simplification of the Income-tax Law**

#### **Preliminary Suggestions given by ICAI on 18.9.2024**

The comprehensive review process should result in a simple, fair and equitable income-tax law. Simplification is required not only in the language of law to reduce the scope for multiple interpretations, but also in the structure and framework of the Act, the computation mechanism and procedures. Hence, simplification should not only be in the form, but also in substance.

<b>(i)</b>	<b>Rates of taxes be provided in the relevant sections of the Act or entirely in the Schedule</b>
	The rates may be contained either in the relevant sections of the Income-tax Act itself, rather than partially in the sections and partially in the First Schedule to the Finance Act; alternatively, all rates may form part of the Schedule itself.

<b>(ii)</b>	<b>Minimum number of provisos</b>
	<p>The number of provisos, which spell out the exceptions to the sections/sub-sections/clauses, to be kept to the minimum. Further, in some sections, like section 43, there are provisos, explanations and provisos to explanations, which make the section complicated.</p>
<b>(iii)</b>	<b>Exclusion to an exclusion in the same provision to be avoided</b>
	<p>There are sections defining a particular term and spelling out certain exclusions therefrom. Further, there are exclusions from such exclusion, which in effect, make it an inclusion. This may pose difficulty in understanding and may be avoided.</p> <p>For example, meaning of capital asset in section 2(14) excludes, <i>inter alia</i>, agricultural land; agricultural land, in turn, excludes certain specified areas within a specified distance from a municipality or cantonment board having a certain range of population. In effect, it means that the excluded areas would form part of the definition of capital asset.</p> <p>Likewise, capital assets excludes personal effects; and personal effects exclude inter alia jewellery, paintings, work of art etc. thereby implying that these are capital assets.</p> <p><b>The above examples are detailed in point 1.1 below in the specific section-wise suggestions.</b></p>
<b>(iv)</b>	<b>Exhaustive definitions rather than inclusive definitions</b>
	<p>Definitions should ideally be exhaustive to ensure certainty. Inclusive definitions may be avoided as far as possible since they are open ended leaving scope for multiple interpretations, for example, definitions of "transfer", "person", "income".</p> <p><b>The above examples are detailed in points 1.2 and 1.3 below in the specific section-wise suggestions.</b></p>

(v)	<b>Simplification of provisions for determination of residential status of individuals</b>
	<p>Determination of Residential Status of individuals need to be simplified based on the number of days of stay alone (in the current year and current year + earlier years).</p> <p>The changes in the provisions of section 6(1) and 6(6) w.e.f. A.Y.2021-22 have made the determination of residential status of individuals complicated, especially in cases where exceptions have been given for Indian citizens and persons of Indian origin who being outside India, come on a visit to India.</p> <p>Their residential status is determined based on number of days of stay in current year (or) in the current year and 4 immediately preceding previous years plus total income (excluding income from foreign sources). Also, in case of such individuals, the criteria for determination of whether ordinarily resident or not would depend on the criteria which they satisfied for becoming a resident in the first place. If they satisfy the <math>\geq 182</math> days in the current previous year criterion for becoming a resident, then, they need to satisfy both the additional conditions, namely, stay in India for 730 days or more in the 7 immediately preceding previous years and being resident in India for 2 or more years out of the 10 immediately preceding previous years, for becoming a resident and ordinarily resident. If they do not satisfy either or both conditions, they would be RNOR. On the other hand, if they satisfied <math>\geq 120</math> days in current previous year + <math>\geq 365</math> days in the four immediately preceding previous years + total income (excluding income from foreign sources) &gt; Rs.15 lakh criteria for becoming a resident, then, by default, they would be deemed to be RNOR.</p> <p>Also, there is a deemed resident provision in section 6(1A), whereby an Indian citizen can become resident, even without a single day stay in</p>

	<p>India, if he is not liable to tax in any other country by reason of domicile or residence or any other criteria of similar nature, if his total income (excluding income from foreign sources) exceed Rs.15 lakhs. Therefore, the determination of residential status in case of such individuals under section 6(1) involves consideration of number of days of stay in the current year and earlier years and his total income. If he is a non-resident as per section 6(1), then, we have to examine whether section 6(1A) would be attracted, for which his liability to tax elsewhere and his total income (excluding income from foreign sources) would be relevant.</p> <p>Therefore, the determination of residential status of individuals need to be simplified.</p>
<b>(vi)</b>	<p><b>Default tax regime u/s 115BAC(1A) to be the only tax regime for individuals/HUFs/AOPs/BoIs and Artificial Juridical Persons</b></p>
	<p>The default tax regime under section 115BAC(1A) should be the only tax regime for individuals/HUFs/AOPs/BOIs and Artificial Juridical Persons (eligible assesseees).</p> <p>At present, for A.Y.2025-26, eligible assesseees can opt out of the default tax regime and pay tax under the normal provisions of the Act and avail the deductions and exemptions otherwise available under the said provisions. These assesseees can opt for section 115BAC(1A) in one year and opt out in another year, if they do not have income under the head "Profits and gains of business or profession".</p> <p>The Income-tax Act, 1961 has a number of such provisions containing exemptions and deductions which are available only under the normal provisions of the Act, for instance, deductions under Chapter VI-A like sections 80C, 80CCC, 80CCD, 80D, 80DD, 80DDB, 80E, 80EE, 80EEA, 80QQB, 80RRB, 80TTA, 80TTB, exemptions and deductions in respect of salaries like HRA exemption u/s 10(13A), children education allowance u/s 10(14), deduction in respect of entertainment allowance for</p>

	<p>government employees u/s 16(ii), professional tax u/s 16(iii) etc. These deductions are not available under the default tax regime u/s 115BAC(1A). However, under the default tax regime u/s 115BAC(1A), the benefit of concessional rates of tax would be available and also, AMT provisions would not be attracted.</p> <p>Eligible assesseees may pay tax under the default tax regime u/s 115BAC(1A) in one year and in the next year opt out of the regime and claim the benefit of all deductions and exemptions. In this manner, the assesseees may benefit by alternating between both regimes to reduce their tax liability. However, this may make the compliance and administration of law cumbersome.</p> <p>The default tax regime u/s 115BAC(1A) offering concessional rates of tax on total income computed without deductions and exemptions, would make both tax compliance and tax administration simple and at the same time, also ensure consistency and certainty.</p> <p>Considering these benefits, it is suggested that there be no option to choose the alternative tax regime under the normal provisions of the Act for these assesseees. In such a case, these sections providing for deductions can be removed from the Act.</p> <p><b>However, deduction for interest on loan u/s 24, set-off and carry forward and set off of loss from house property (on account of such interest) as per the provisions of the Act and deduction for medical insurance premium u/s 80D also be allowed while computing tax under the default tax regime u/s 115BAC(1A).</b></p>
<b>(vii)</b>	<b>Introduction of special tax regime for firms and LLPs</b>
	<p>Special tax regime has been introduced for individuals/HUFs/AOPs/BOIs, companies and co-operative societies. Under the special tax regime, the assesseees pay tax computed at a lower rate on total income computed without specified deductions. For</p>

	<p>individuals/HUFs/AOPs/BOIs, the special tax regime u/s 115BAC(1A) is the default tax regime. Companies and co-operative societies, however, have to opt for the special tax regime contained in section 115BAA and 115BAD/115BAE, respectively. At present, there is no special tax regime for firms and LLPs. It is suggested that special tax regime be introduced which firms and LLPs can opt for and pay tax at concessional rate on total income computed without specified deductions and exemptions.</p> <p>Simplified return forms can be prescribed for such firms/LLPs/companies/co-operative societies opting for special tax regime.</p>
<b>(viii)</b>	<p><b>Simplification of Charitable Trust Registration and Taxation Regime</b></p>
	<p>The Charitable Trust Regime (Act + Rules + Forms) needs to be simplified. Continuous changes in the regime year after year make the compliance and determination of tax liability complex. Computation of total income of a trust and compliance with the procedures should be simplified.</p> <p>Tax law should not be such that it discourages the activities of charitable trusts, which play an important role in the welfare of the society. Forms need to be updated timely in line with the amendments/clarifications given by way of Circular.</p> <p>Also, inconsistencies in the provisions relating to trusts need to be rectified. For example, section 12A(1)(ba) requires that trusts should file return of income u/s 139(4A) within the time allowed u/s 139(1) or 139(4). Section 13(9), however, provides that the benefit of exemption of income accumulated u/s 11(2) will not be available if the return of income is not furnished by such person on or before the due date under section 139(1).</p> <p>Also, whereas section 11(2) requires the statement in Form 10 to be submitted at least 2 months prior to the due date u/s 139(1) for claiming</p>

	<p>benefit of exemption in respect of income accumulated thereunder, section 13(9) provides an extended time limit of upto due date u/s 139(1) for claim of benefit of accumulation.</p> <p>These inconsistencies in the provisions need to be addressed.</p>
<b>(ix)</b>	<b>Simplification of income-tax returns and forms</b>
	<p>Simplification of returns and forms by way of –</p> <p>(1) Re-introduction of one page SARAL form.</p> <p>(2) Reduction in number of schedules in the return forms, for example, requirements such as details of assets and liabilities should not be required, to the extent they are already contained in the financial statements.</p> <p>(3) Certain clauses/items in clauses which are no longer relevant may be removed from Form 3CD, like, items (i) and (ii) in sub-clause (ca) of clause 18 which relate to A.Y.2020-21 and A.Y.2021-22, respectively, reference to sections 32AC and 32AD in clause 19, clause 39 relating to audit under section 72A of the Finance Act, 1994 relating to valuation service tax etc.</p>

In continuation of the above Preliminary Suggestions on Comprehensive Review of the Income-tax Act, 1961 which were submitted by ICAI on 18.9.2024, the following are the specific section-wise suggestions, including illustrative examples of certain preliminary suggestions covered above, for simplification of the income-tax law:

## 1.1 Section 2(14) - Definition of capital asset - Exclusion to an exclusion in the same provision needs to be avoided

### Provisions of Law

#### Definition of Capital Asset [Section 2(14)]

*As per section 2(14), "capital asset" means-*

- (a) property of any kind held by an assessee, whether or not connected with his business or profession;*
- (b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992;*
- (c) any unit linked insurance policy to which exemption under clause (10D) of section 10 does not apply on account of the applicability of the fourth and fifth provisos thereof,*

#### **but does not include—**

- (i) any stock-in-trade (other than securities referred to in clause (b)), consumable stores or raw materials held for the purposes of his business or profession.*
- (ii) personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him, **but excludes** —*

- (a) jewellery;*
- (b) archaeological collections;*
- (c) drawings;*
- (d) paintings;*
- (e) sculptures; or*
- (f) any work of art.*

- (iii) agricultural land in India, **not being land situate—***

- (a) in any area which is comprised within the jurisdiction of a municipality or a cantonment board and which has a population of not less than ten thousand; or*
- (b) in any area within the distance, measured aerially –*

*(I) ....*

*(II) .....*

*(III) .....*

*Agricultural land within specified areas is not excluded, effectively bringing it back within the ambit of a capital asset.*

**Definition of Agricultural Income [Section 2(1A)]**

*"Agricultural income" means—*

- (a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes;*
- (b) any income derived from such land by—*
  - (i) agriculture; or*
  - (ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or*
  - (iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause;*
- (c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on:*

**Provided that—**

- (i) the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building, and*
- (ii) the land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, **it is not situated—***
  - (A) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand; or*

- (B) *in any area within the distance, measured aially,—*
- (I) *not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten thousand but not exceeding one lakh; or*
  - (II) *not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than one lakh but not exceeding ten lakh; or*
  - (III) *not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten lakh.*

### **Issue**

The exclusions to exclusions, in effect, mean inclusions. Accordingly, jewellery, being excluded from personal effects, which is excluded from the definition of capital assets, in effect, becomes an included item in the definition of capital assets. Likewise, agricultural land within specified areas is excluded from agricultural land, which is excluded from the definition of capital assets. Consequently, agricultural land within the specified areas is included in the definition of capital assets.

Similar issue arises in the definition of agricultural income under section 2(1A), wherein income from building owned and occupied by the receiver of rent or revenue from the land is included subject to satisfaction of conditions stipulated in proviso below clause (c) thereof. However, the proviso spells out an exclusion that the land which is not assessed to land revenue in India or subject to tax at local rate should not be situated in the specified areas. In effect, it means that income derived from building owned and occupied by the receiver of rent or revenue from such land situated in the specified areas would not be agricultural income.

### **Suggestion**

*It is suggested that the term "capital assets" under section 2(14) be redefined to avoid exclusions to exclusions. Any item to be included or excluded from the definition of "capital asset" be clearly and separately mentioned. This will provide clarity to the meaning of the term "capital assets", the inclusions thereto and exclusions therefrom.*

*Similarly, amendment is required in the definition of "agricultural income" under section 2(1A).*

## **1.2 Section 2(24) – Definition of “income” – Inclusive definition and lack of consistency in the manner in which different types of income are described in the various sub-clauses – Need for consistency**

### **Provision of Law**

Section 2(24) contains an inclusive definition of “income”. Certain sub-clauses of section 2(24) include description of nature of specific income like profits and gains, dividend, capital gains, voluntary contributions by trusts and institutions, winnings from lotteries and crossword puzzles etc., any sum received under a key man insurance policy, assistance in the form of subsidy or grant or cash incentive or duty drawback or waiver by Government or authority or body or agency. The other sub-clauses of section 2(24), however, refer to different clauses in section 28 and section 56(2), being the charging sections under the head “Profits and gains of business and profession” and “Income from other sources”, respectively.

### **Issue**

In the definition of “income” under the various sub-clauses of section 2(24), some income of a particular head are specifically referred to, whereas in respect of other income under the same head, the clauses of the charging section under that head are being referred to. For example, description of certain income chargeable under the head “Income from other sources” like dividend, winnings from lotteries and crossword puzzles are included in the sub-clauses (ii) and (ix) of section 2(24), whereas in respect of other income under that head, the sub-clauses of section 2(24) make reference to the specific clauses (v)/(vi)/(vii)/(viii)/(ix)/(x)/(xi)/(xii)/(xiii) of section 56(2).

Dividend is chargeable under clause (i) of section 56(2). It is described as “dividend” both in the definition of income in section 2(24)(ii) and in section 56(2)(i). Sub-clause (ix) of section 2(24) includes winnings from lotteries, crossword puzzles etc. in the definition of income. Clause (ib) of section 56(2) refers to income referred to in sub-clause (ix) of section 2(24). Also, income referred to section 56(2)(viii), namely, income by way of interest received on compensation or enhanced compensation referred to in section 145B(1) is not specifically included in any sub-clause of section 2(24).

It can be seen that in the definition of income in section 2(24), some sub-clauses directly refer to the nature/description of the specific income, like dividend, profits and gains, etc. whereas other sub-clauses refer to the specific clauses of the charging section of the respective head. In respect of certain income which are described in the sub-clauses of section 2(24), like lotteries, winnings from crossword puzzles in sub-clause (ix), the charging section i.e., section 56(2) of the respective head, namely, “Income from other sources” makes reference to the respective sub-clause of section 2(24).

In effect, there is no consistency in the manner of description of different types of income in the various sub-clauses of the definition of income u/s 2(24).

### **Suggestion**

*There should be consistency in the manner of describing different income in the various sub-clauses of section 2(24).*

### **1.3 Section 2(13) and 2(36) – Inclusive definitions of “business” and “profession” - Definitions to be exhaustive and clarify whether “business” includes “profession”**

#### **Provisions of law**

As per section 2(13), "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.

As per section 2(36), "profession" includes vocation.

Section 44AD contains the provisions for determination of income on presumptive basis for eligible assessee engaged in eligible business.

Section 44AD(6) provides that the provisions of section 44AD would not apply to a person carrying on profession as referred to in section 44AA(1). Section 44ADA contains the provisions for determination of income of assessee, being an individual or a partnership firm other than an LLP, from carrying on of profession referred to in section 44AA(1) on presumptive basis.

#### **Issue**

The above definitions of "business" and "profession" in sections 2(13) and 2(36), respectively, do not expressly convey that business includes profession. Also, Chapter IV-D of the Income-tax Act, 1961 is on "Profits and gains of business or profession". Section 44AB providing for audit of books of account of persons carrying on business or profession provides a different threshold for business and profession. Therefore, in the title of Chapter IV-D and in section 44AB, business and profession have been referred to separately, which appears to imply that "business" does not always include "profession".

Section 44AD provides for determination of income of eligible assessee engaged in eligible business on presumptive basis. Section 44AD(6) provides that the provisions of section 44AD would not apply to a person carrying on profession as referred to in section 44AA(1). Section 44ADA provides for determination of income of an assessee, being an individual or a partnership firm other than an LLP, carrying on profession as referred to in section 44AA(1) on presumptive basis.

Considering that section 44AD provides for determination of income of eligible assessee engaged in eligible business, and there is no mention of profession therein, it implies that the same does not apply to profession. Clause (b) of the *Explanation* to the section defines eligible business to mean any business except the business of plying, hiring or leasing goods carriages

referred to in section 44AE and whose total turnover or gross receipts in the previous year does not exceed an amount of Rs.2 crore.

The language of section 44AD(6), however, excludes application of the section only to persons carrying on profession as referred to in section 44AA(1), which appears to imply that section 44AD also provides for determination of income of persons carrying on other professions on presumptive basis. Ideally, if business does not include profession, there is no need for such specific exclusion of notified profession in section 44AD(6).

**Suggestion**

*It may be clarified as to whether "business" includes "profession" unless specifically excluded in any section. The definitions of business and profession under sections 2(13) and 2(36) be exhaustive so as to clearly convey the meaning of the respective terms and define the scope.*

#### **1.4 Section 44AB – Audit of Accounts of persons carrying on business or profession – Clauses (b) and (d) to cover “profession referred to in section 44AA(1)”**

##### **Provision of Law**

Section 44AB reads as follows -

Every person,—

- (a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year :

Provided that ...

Provided further that....

- (b) carrying on **profession** shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year; or
- (c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or
- (d) carrying on **profession** shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or
- (e) carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

##### **Issue**

Section 44ADA contains presumptive income provisions for assessee engaged in a profession referred to in section 44AA(1), whose gross receipts do not exceed Rs.50 lakhs, namely, legal, medical, engineering or

architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other notified profession.

It appears that the intent of clause (b) of section 44AB is to cover a person carrying on profession referred to in section 44AA(1), as the threshold gross receipt limit mentioned therein is Rs.50 lakhs. However, clause (b) mentions person carrying on profession, without adding that the profession should be profession referred to in section 44AA(1). Other professions should be covered within the scope of clause (a).

Likewise, clause (d) should also specifically mention profession referred to in section 44AA(1), as it is in relation to assessee eligible for section 44ADA who claims lower profits.

Clauses (a) and (e) should refer to business or profession, other than a profession referred to in section 44AA(1).

### **Suggestion**

*It is suggested that section 44AB be amended as follows -*

*Every person,—*

*(a) carrying on **business or profession, other than a profession referred to in section 44AA(1)**, shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year :*

*Provided that ...*

*Provided further that.....; or*

*(b) carrying on **profession referred to in section 44AA(1)** shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year; or*

*(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or*

(d) carrying on **profession referred to in section 44AA(1)** shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or

(e) carrying on the **business or profession, other than a profession referred to in section 44AA(1)**, shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year;

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

**(This is also a suggestion to mitigate litigation)**

**1.5 Sections 30 and 31 – Deduction for rent, rates, taxes, repairs and insurance for buildings & Deduction for repairs and insurance of machinery, plant and furniture – Removal of sections 30 and 31 as these expenditure would be covered within the scope of section 37(1)**

**Section 32 – Deduction for Depreciation computed at the rates prescribed in New Appendix I of Income-tax Rules read with Rule 5 - Allowing deduction of depreciation computed on the basis of the Companies Act, 2013 for companies**

**Provision of law**

Section 30 provides for deduction of expenses incurred on rent, repairs, and insurance of buildings used for the purposes of business or profession, subject to fulfilment of certain conditions. Section 31 provides for deduction for expenses related to repairs and insurance of machinery, plant, and furniture, subject to fulfilment of certain conditions. Both sections 30 and 31 contain an *Explanation* to clarify that capital expenditure would not be allowable as deduction thereunder.

Section 37(1) provides for a general deduction of business expenditure not covered under Sections 30 to 36, provided such expenses are wholly and exclusively incurred for the purposes of the business or profession and are not of a capital or personal nature.

Section 32 read with Rule 5 provides for depreciation at the rates prescribed in New Appendix I of the Income-tax Rules, 1962.

**Issue**

There is no need for separate deduction under sections 30 and 31 as these expenditure will, in any case, fall within the scope of section 37, as it is incurred for business and is not of capital nature.

The separate rates of depreciation in the Income-tax Act, 1961 were intended as an incentive for investment in plant and machinery and to give a fillip to manufacturing and other essential sectors. However, now, with the general rate of depreciation for plant and machinery being 15% and the maximum rate being capped at 40%, there is no need for separate computation based on the rates prescribed under the Income-tax Act, 1961 for companies.

**Suggestion**

*It is suggested that sections 30 and 31 be removed as deduction will be allowed u/s 37(1), subject to fulfilment of the stipulated conditions.*

*The depreciation computed as per the Companies Act, 2013 can be allowed as deduction under the Income-tax Act, 1961 also.*

## **1.6 Sections 145(2) –Income Computation and Disclosure Standards (ICDS) to be followed by any class or classes of assessees - Removal of ICDSs – to reduce compliance burden and align with the profits derived on the basis of accounts drawn in compliance with the accounting standards issued by regulatory bodies**

### **Provision of Law**

Section 145(1) provides that income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of section 145(2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

Section 145(2) provides that the Central Government may notify in the Official Gazette from time to time income computation and disclosure standards to be followed by any class of assessees or in respect of any class of income.

Accordingly, the Central Government vide Notification No. S.O.3079(E) dated 29.9.2016 notified 10 ICDS with effect from Assessment Year 2017-18.

ICDS provides standards in various areas for computation of taxable income. In case of conflicts between the provisions of the Act and ICDS, the Act would prevail.

### **Issue**

The discrepancies between accounting profit and taxable profit arising from the application of ICDS have led to disputes and litigation. The introduction of ICDS created an additional compliance burden, as taxpayers are required to compute income separately under ICDS.

### **Suggestion**

*It is suggested that section 145(2) be amended to remove the requirement of notifying Income Computation and Disclosure Standards (ICDS).*

*Consideration of profits derived on the basis of accounts drawn in compliance with the accounting standards issued by regulatory bodies for tax purposes will also serve the objective of simplification of tax laws.*

***(This is also a suggestion for reduction of compliance burden)***

**1.7 Sections 54 to 54F – Exemption of capital gains – Need for simplifying the language used in these sections, reducing the minimum period of holding of the new asset to 2 years and a uniform consequence of transfer of new asset before the said period**

**Provision of Law**

Sections 54, 54B, 54D, 54EC and 54GB provide exemption in respect of amount of capital gains which are re-invested in specified assets and within the time period stipulated under the respective sections. Section 54F provides exemption in respect of the capital gains on transfer of a long-term capital asset, other than residential house, in the same proportion as the capital gains bears to the net consideration on transfer of the asset.

**Issue**

The language of these sections are quite complex and it is difficult to understand the eligibility criteria, timelines, and conditions by reading the section. For example, section 54 can simply mention that the lower of capital gains and the amount invested in new residential house is exempt; and in case the new residential house is sold within 3 years, then the capital gains exempt u/s 54 will be reduced from the cost of the new house. Instead, the language used is quite complicated. Furthermore, purchase of two residential houses are permitted if capital gains does not exceed Rs.2 crore. Also, the cost of new house cannot exceed Rs.10 crore. There is a different time period for purchase of new house and construction of new house. The multiple monetary thresholds and conditions within the same section makes comprehension difficult.

Also, if the new asset is sold or transferred within 3 years, the manner in which the earlier exempted capital gains is subject to tax varies in these sections. In sections 54, 54B and 54D, the earlier exempted capital gains is reduced from the cost, whereas sections 54EC and 54F deems the capital gains not charged to tax earlier as income chargeable to tax of the year in which the transfer of the new asset takes place.

Moreover, whereas the period of holding of an asset to be treated as long-term has reduced from “more than 36 months” to “more than 24 months”, there has been no corresponding amendment in the minimum period of holding of the new asset in sections 54 to 54F.

**Suggestion**

*It is suggested that the language of the sections 54 to 54F be simplified and multiple threshold limits restricting the deduction within the same section be avoided as in the case of section 54.*

*The minimum period of holding of new asset be reduced from 3 years to 2 years in line with the minimum period of holding of an asset to be treated as long-term capital asset under section 2(42A).*

*Also, in case of the new asset is not held for a minimum period of 2 years, the capital gains exempt earlier should be deemed as income chargeable to tax in the year of transfer of the new asset. This should be the consequence of transfer of new asset before the minimum period of 2 years in all sections (sections 54/54B/54D/54EC/54F).*

**1.8 Section 49(7) - Cost of Acquisition on subsequent sale of share of property in Joint Development Agreement – Stamp duty value of the share of property forming part of full value of consideration under section 45(5A)**

**Provision of Law**

Section 45(5A) reads as follows -

*"Notwithstanding anything contained in sub-section (1), where the capital gain arises to an assessee, being an individual or a Hindu undivided family, from the transfer of a capital asset, being land or building or both, under a specified agreement, the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority; and for the purposes of section 48, the stamp duty value, on the date of issue of the said certificate, of his share, being land or building or both in the project, as increased by any consideration received in cash or by a cheque or draft or by any other mode shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset:*

*Provided that the provisions of this sub-section shall not apply where the assessee transfers his share in the project on or before the date of issue of the said certificate of completion, and the capital gains shall be deemed to be the income of the previous year in which such transfer takes place and the provisions of this Act, other than the provisions of this sub-section, shall apply for the purpose of determination of full value of consideration received or accruing as a result of such transfer."*

**Section 49(7) reads as follows -**

*"Where the capital gain arises from the transfer of a capital asset, being share in the project, in the form of land or building or both, referred to in sub-section (5A) of section 45, not being the capital asset referred to in the proviso to the said sub-section, the cost of acquisition of such asset, shall be the amount which is deemed as full value of consideration in that sub-section."*

Therefore, as per section 49(7), on subsequent sale of share of land or building or both given to the assessee as full value of consideration, the cost of acquisition shall be the amount which is deemed as full value of consideration under section 45(5A).

### **Issue**

The full value of consideration under section 45(5A), however, includes both the Stamp Duty Value (SDV) of the share of land or building or both as well as consideration received in cash/cheque/draft etc.

### **Suggestion**

*Section 49(7) may be amended to mention that on subsequent sale of share of land or building or both, the cost of acquisition shall be deemed to be the stamp duty value of such share of land or building or both forming part of the full value of consideration u/s 45(5A).*

### **Accordingly, section 49(7) may be reworded as follows –**

*“Where the capital gain arises from the transfer of a capital asset, being share in the project, in the form of land or building or both, referred to in sub-section (5A) of section 45, not being the capital asset referred to in the proviso to the said sub-section, the cost of acquisition of such asset, shall be the amount which is deemed to be the stamp duty value of such share of land or building or both forming part of the full value of consideration in that sub-section.”*

## **1.9 Section 10(14)(ii) read with Rule 2BB(2) – Limits for exemption of various allowances – Exemptions may be removed and standard deduction be increased**

### **Provision of law**

Section 10(14)(ii) provides for exemption of any such allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides, or to compensate him for the increased cost of living, as may be prescribed and to the extent as may be prescribed.

Rule 2BB(2) prescribes the allowances and limits upto which they would be exempt for the purposes of section 10(14)(ii).

### **Issue**

Fifteen allowances have been prescribed in Rule 2BB(2) along with individual limits upto which they would be exempt.

Some allowances like children education allowance and hostel allowance are exempt upto Rs.100 per month and Rs.300 per month, respectively, per child upto a maximum of two children. Many of the other allowances are area-specific or region-specific to compensate for working in high altitude or snow bound areas or border areas or disturbed areas etc.

The permissible exemption for many allowances are very low and have not been increased for many years.

### **Suggestion**

*It is suggested that these exemptions under section 10(14)(ii) read with Rule 2BB(2) be removed and the standard deduction be increased significantly.*

### **1.10 Section 17(2)(iii) – Perquisite taxable in the case of specified employees – Salary threshold of Rs.50,000 no longer relevant and may be removed**

#### **Provision of law**

Section 17(2) contains the inclusive definition of “perquisite”. Sub-clause (iii) thereof provides that the value of any benefit or amenity granted or provided free of cost or at a concessional rate, inter alia, by any employer to an employee whose income under the head “Salaries”, exclusive of the value of all benefits or amenities not provided by way of monetary payment, exceeds Rs.50,000. The threshold of Rs.50,000 has been effective from 1.4.2002.

Sub-rules (2) to (6) of Rule 3 provide for valuation of perquisite specified in Section 17(2)(iii).

#### **Issue**

Section 17(2)(iii) providing for a salary threshold of Rs.50,000 for falling within the ambit of “specified employee” is not of any relevance in the current context, after more than 22 years.

#### **Suggestion**

*It is suggested that the concept of “specified employee” is no longer relevant and may be removed.*

**1.11 Section 80JJAA – Deduction in respect of employment of new employees – Requirement of payment of emoluments by account payee cheque/bank draft/ECS through bank account/prescribed electronic modes restricted to existing business – To be extended to new business also**

**Provision of Law**

Section 80JJAA(1) reads as follows -

Where the gross total income of an assessee to whom section 44AB applies, includes any profits and gains derived from business, there shall, subject to the conditions specified in sub-section (2), be allowed a deduction of an amount equal to thirty per cent of additional employee cost incurred in the course of such business in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

Clause (i) of *Explanation* to this section defines "additional employee cost" as under –

"additional employee cost" means the total emoluments paid or payable to additional employees employed during the previous year:

*Provided* that in the case of an existing business, the additional employee cost shall be *nil*, if—

(a) there is no increase in the number of employees from the total number of employees employed as on the last day of the preceding year;

(b) emoluments are paid otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic

mode as may be prescribed:

*Provided further* that in the first year of a new business, emoluments paid or payable to employees employed during that previous year shall be deemed to be the additional employee cost;

## Issue

The condition that emoluments to be paid by an account payee cheque/bank draft/use of ECS through a bank account/prescribed electronic modes is stipulated in clause (i)(b) in the first proviso to the *Explanation* only in the case of existing business. However, this condition should be made applicable to both existing and new business.

In the Annexure to Form No.10DA, which is the report under section 80JJAA to be certified by an accountant, the condition is stipulated by way of Note 3 both in case of an existing business and new business.

## Suggestion

*Clause (i) of Explanation to this section may define "additional employee cost" as under –*

*"additional employee cost" means the total emoluments paid or payable to additional employees employed during the previous year:*

***Provided*** that emoluments are paid otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed:

***Provided further*** that in the first year of a new business, emoluments paid or payable to employees employed during that previous year shall be deemed to be the additional employee cost;

***Provided also*** that in the case of an existing business, the additional employee cost shall be nil, if there is no increase in the number of employees from the total number of employees employed as on the last day of the preceding year.

### **1.12 Sections 12A(1)(ac) and 12AB(1) – Provisions containing application for registration to Principal Commissioner/ Commissioner and Registration of trust for a period of five years – Need to remove this time restriction**

#### **Provision of Law**

Section 12AB(1) provides that where an application is made under section 12A(1)(ac), the Principal Commissioner/Commissioner can register the trust for a period of 5 years, after satisfying himself about the objects of the trust or institution and the genuineness of its activities

#### **Issue**

The need to go through the procedure for registration every five years adds on to the compliance burden of the trusts. Since there is requirement for audit of trusts and institutions under the Income-tax law, the requirement of applying for, and getting registered every five years may be dispensed with.

#### **Suggestion**

*Sections 12A(1)(ac) and 12AB(1) may be appropriately amended to provide for permanent registration of trusts and institutions subject to satisfaction about the objects of the trust or institution and genuineness of its activities.*

**1.13 Sections 11 to 13 – Provisions related to charitable and religious trusts – Simplified exemption provision for trusts and institutions having as its object, any charitable purpose defined in section 2(15) and having annual aggregate receipts not exceeding Rs.5 crore.**

**Provisions of law**

Sections 11 to 13 contain the provisions for exemption available to charitable trusts and institutions, subject to fulfillment of conditions laid down thereunder.

**Issue**

Since the compliance provisions for availing exemption available to charitable trusts contained in sections 11 to 13 are cumbersome, trusts with gross receipts of upto Rs. 5 crore may be exempted from such provisions. This would be similar to exemptions under section 10(23C)(iiia) and (iiib) in respect of universities/educational institutions/ hospitals/medical institutions. The difference is that the scope of exemption under section 11 to 13 would extend to all trusts and institutions having as its object any charitable purpose as defined in section 2(15). This would help relieve small trusts from complying with the stringent procedural and documentation requirements, particularly in relation to the ongoing registration and compliance obligations, for availing the benefit of exemption under sections 11 to 13. These trusts may be exempt from registration and fulfilment of extensive compliance obligations.

**Suggestion**

*It is suggested a simplified exemption provision be introduced in sections 11 to 13 for trusts and institutions having as its object, any charitable purpose defined in section 2(15) and having annual aggregate receipts upto Rs. 5 crore.*

**1.14 Section 115UA(2) – Tax on total income of a business trust at MMR, subject to the provisions of section 111A and section 112 – Reference to section 112A also to be included along with section 111A and 112**

**Provision of law**

As per section 115UA(2), the total income of a business trust shall be charged to tax at the maximum marginal rate (MMR), subject to the provisions of Section 111A and Section 112.

This implies that capital gains on transfer of short-term capital assets which are chargeable to tax under section 111A and capital gains on transfer of long-term capital assets chargeable to tax under section 112, will be chargeable to tax at the rates of 20% and 12.5%, respectively.

**Issue**

On the same lines, capital gains on transfer of long-term capital assets referred to in section 112A also has to be charged to tax at the rate of 12.5% and not at MMR. However, there is no reference to section 112A in section 115UA(2).

It is essential to that the chargeability to tax at MMR under section 115UA(2) is subject to the provisions of section 112A along with sections 111A and 112, as the reason for non-inclusion for section 112A is apparently because the section was introduced after section 115UA(2).

**Suggestion**

*It is suggested that section 115UA(2) be reworded as follows –*

*"Subject to the provisions of section 111A, section 112 and section 112A, the total income of a business trust shall be charged to tax at the maximum marginal rate"*

### **1.15 Section 115A – Tax on dividend, interest etc. in case of non-residents – Rate of tax on dividend distributed by a business trust to be clarified**

#### **Provision of law**

Section 115A(1) reads as follows -

*“Where the total income of—*

*(a) a non-resident (not being a company) or of a foreign company, includes any income by way of—*

**(i) dividends; or**

*(ii) interest received from Government or an Indian concern on monies borrowed or debt incurred by Government or the Indian concern in foreign currency not being interest of the nature referred to in sub-clause (iia) or sub-clause (iiaa); or*

*(iia) interest received from an infrastructure debt fund referred to in clause (47) of section 10; or*

*(iiaa) interest of the nature and extent referred to in section 194LC; or*

*(iiab) interest of the nature and extent referred to in section 194LD; or*

**(iiac) distributed income being interest referred to in sub-section (2) of section 194LBA;**

*(iii) income received in respect of units, purchased in foreign currency, of a Mutual Fund specified under clause (23D) of section 10 or of the Unit Trust of India,*

***the income-tax payable shall be aggregate of—***

**(A) the amount of income-tax calculated on the amount of income by way of dividends, if any, included in the total income, at the rate of twenty per cent:**

*Provided that the amount of income-tax calculated on the amount of income by way of dividend received from a unit in an International Financial Services Centre, as referred to in sub-section (1A) of section 80LA, shall be ten per cent;*

*(B) the amount of income-tax calculated on the amount of income by way of interest referred to in sub-clause (ii), if any, included in the total income, at the rate of twenty per cent ;*

*(BA) the amount of income-tax calculated on the amount of income by way of interest referred to in,—*

*(i) sub-clause (iia), if any, included in the total income, at the rate of five per cent;*

***(ii) sub-clause (iiaa) or sub-clause (iiab) or sub-clause (iiac), if any, included in the total income, at the rate provided in the respective sections referred to in the said sub-clauses;***

*(C) the amount of income-tax calculated on the income in respect of units referred to in sub-clause (iii), if any, included in the total income, at the rate of twenty per cent ; and*

*(D) the amount of income-tax with which he or it would have been chargeable had his or its total income been reduced by the amount of income referred to in sub-clause (i), subclause (ii), sub-clause (iia), sub-clause (iiaa), sub-clause (iiab), sub-clause (iiac) and sub-clause (iii)"*

### **Issues**

- (i) Section 194LC/194LD/194LBA(2) are the sections in Chapter XVII-B providing for deduction of tax at source in case of different income payable to non-residents. The rates of TDS are provided in these sections. Section 115A, providing for the rates of tax on specified income of a non-resident, makes a reference to the corresponding rates in the TDS provisions, whereas ideally, it should be vice versa, since tax deduction at a particular rate in case of payment to a non-resident is provided on account of the income being chargeable to tax at that rate. The rates of tax should be mentioned in section 115A and sections 194LC/194LD and 194LBA should make reference to these rates.
- (ii) It may also be considered as to whether all TDS pertaining to non-residents be included in section 195 itself.
- (iii) In case of a business trust, if the special purpose vehicle, being an Indian company, opts for section 115BAA, then, dividend component of income distributed by the business trust is chargeable to tax in the hands of the unit holder; and the business trust has to deduct tax@10% under section 194LBA(2) in case of a non-resident.

Normally, in all specific provisions relating to TDS on amounts payable to non-residents, the rate of TDS is the same as the rate of tax. Accordingly, since the rate of TDS on dividend component of income distributed to non-residents is 10%, accordingly, the rate of tax should also be 10%.

Section 194LBA(2) provides for TDS@5% in case of interest and TDS@10% in case of dividend component of income distributed by a business trust to non-resident unit-holders. Tax is payable by the unit-holder only if the SPV has opted for section 115BAA. In such a case, the business trust has to deduct tax@10% on dividend as per section 194LBA(2), which should have also been the rate of tax on such income under section 115A.

However, on account of the restriction in sub-clause (iiac) of section 115A(1)(a) to "distributed income being interest referred to in sub-section (2) of section 194LBA", the TDS rate of 5% under section 194LBA(2) is the rate for interest component of distributed income. There is, however, no reference to dividend in sub-clause (iiac), which was inserted w.e.f. A.Y.2015-16. The omission appears to be on account of dividend becoming taxable in the hands of the recipient shareholders due to removal of dividend distribution tax u/s 115-O in respect of dividend declared/distributed/paid on or after 1.4.2020. Thus, dividend became taxable in the hands of shareholders at a later point of time after insertion of sub-clause (iiac) in section 115A(1)(a). Therefore, the omission appears to be inadvertent. Due to this omission, however, the rate of tax on dividend received from SPV and distributed by a business trust to its unit holders would become 20%, being the rate of tax applicable for dividend distributed directly by the company to shareholders.

### **Suggestions**

*It is suggested that –*

- (i) The rates of tax on income by way of interest and dividend from business trust, interest from Indian company in respect of money borrowed by it in foreign currency from a source outside India and income by way of interest on certain rupee denominated bonds of an Indian company and municipal debt securities be provided in section 115A itself; and the TDS provisions under section 194LBA/194LC/194LD can make a reference to the rates in section 115A.*
- (ii) It may be considered whether all TDS provisions pertaining to non-residents can be included in section 195 itself.*
- (iii) Sub-clause (iiac) of section 115A(1)(a) may be reworded as follows –  
"distributed income being interest and dividend referred to in sub-section (2) of section 194LBA"*

### **1.16 Section 115E in Chapter XII-A– Tax on investment income and long-term capital gains in case of a non-resident - Clarification relating to rate of tax on long-term capital gains of an asset other than a specified asset and changes required in return forms**

#### **Provisions of Law**

Chapter XII-A contains special provisions relating to certain incomes of non-residents.

**115C.** In this Chapter, unless the context otherwise requires,—

(b) "foreign exchange asset" means any specified asset which the assessee has acquired or purchased with, or subscribed to in, convertible foreign exchange;

(c) "investment income" means any income derived from a foreign exchange asset;

(d) "long-term capital gains" means income chargeable under the head "Capital gains" relating to a capital asset, being a foreign exchange asset which is not a short-term capital asset;

(e) "non-resident Indian" means an individual, being a citizen of India or a person of Indian origin who is not a "resident".

(f) "specified asset" means any of the following assets, namely :—

- (i) shares in an Indian company;
- (ii) debentures issued by an Indian company which is not a private company as defined in the Companies Act, 1956;
- (iii) deposits with an Indian company which is not a private company as defined in the Companies Act, 1956;
- (iv) any security of the Central Government as defined in clause (2) of section 2 of the Public Debt Act, 1944;
- (v) such other assets as the Central Government may specify in this behalf by notification in the Official Gazette.

#### **Section 115E reads as follows -**

##### **Tax on investment income and long-term capital gains.**

**115E.** Where the total income of an assessee, being a non-resident Indian, includes—

- (a) any income from investment or income from long-term capital gains of an asset other than a specified asset;
- (b) income by way of long-term capital gains,

the tax payable by him shall be the aggregate of—

(i) the amount of income-tax calculated on the income in respect of investment income referred to in clause (a), if any, included in the total income, at the rate of twenty per cent;

(ii) the amount of income-tax calculated on the income by way of long-term capital gains referred to in clause (b), if any, included in the total income,--

(A) at the rate of ten per cent for any transfer which takes place before the 23rd day of July, 2024; and

(B) at the rate of twelve and one-half per cent for any transfer which takes place on or after the 23rd day of July, 2024; and

(iii) the amount of income-tax with which he would have been chargeable had his total income been reduced by the amount of income referred to in clauses (a) and (b).

**Section 115F reads as follows –**

115F. (1) Where, in the case of an assessee being a non-resident Indian, any long-term capital gains arise from the transfer of a foreign exchange asset (the asset so transferred being hereafter in this section referred to as the original asset), and the assessee has, within a period of six months after the date of such transfer, invested the whole or any part of the net consideration in any specified asset, or in any savings certificates referred to in clause (4B) of section 10 (such specified asset, or such savings certificates being hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

(a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;

(b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the new asset bears to the net consideration shall not be charged under section 45.

**Issue**

- (1) Considering that the rates of under the normal provisions of the Act (including the special tax regimes) and the rates of tax under Chapter XII of the Act have been rationalised over the years, whether Chapter XII-A needs to continue is a moot point.
- (2) Without prejudice to the above, there are certain concerns in section 115E/115F and the return forms.

Clause (a) of section 115E contains reference to both investment income and income from long-term capital gains of an asset other than a specified asset.

Clause (b) contains reference to income by way of long-term capital gains. Read along with the definition of "long-term capital gains" in section 115C(d), this refers to long-term capital gains on transfer of a foreign exchange asset (specified asset purchased in convertible foreign exchange) not being a short-term capital asset.

Clause (i) provides for rate of 20% on investment income included in clause (a); and clause (ii) provides for rate of 10% and 12.5% respectively, depending on whether the transfer of specified asset referred to in clause (b) is transferred before or after 23<sup>rd</sup> July, 2024.

Clause (iii) provides that income other than referred to in clauses (a) and (b) would be chargeable as per the other provisions of the Income-tax Act, 1961.

However, no rate has been provided for long-term capital gains for capital assets other than specified assets referred to in clause (a). It is not covered under clause (iii) because the same provides that income other than referred to in clauses (a) and (b) would be chargeable as per the other provisions of the Income-tax Act, 1961.

If we remove reference to LTCG of an asset other than a specified asset from clause (a), the same will automatically be covered under clause (iii) and be subject to tax as per the other provisions of the Act.

It may be noted that as per the return forms, the other LTCG is subject to tax@20%, being the rate applicable for investment income. This would not be correct, since, even for A.Y.2024-25, LTCG on transfer of units of equity oriented fund and business trust, on which STT is paid, was subject to concessional rate of tax@10% on the amount exceeding Rs.1 lakh under section 112A. Now, post 23.7.2024, the rate of tax on long-term capital gains under section 112 is 12.5% and under section 112A is 12.5% on the gains exceeding Rs.1.25 lakh. Accordingly, these rates should be applicable for other LTCG.

- (3) Section 115F provides for exemption in where long-term capital gains arises from transfer of a foreign exchange asset (specified asset which the assessee has acquired or purchased with, or subscribed to in, convertible foreign exchange), where whole or part of the net consideration is invested in any specified asset or savings certificates referred to in section 10(4B). However, as per the return forms, the benefit is available for long-term capital gains, whether or not arising from transfer of a foreign exchange asset.

## Suggestions

*It is suggested that -*

**(1)** *Considering that the rates of tax under the normal provisions of the Act (including the special tax regimes) and the rates of tax under Chapter XII have been rationalised over the years, it may be considered as to whether Chapter XII-A may be removed.*

**(2)** *Without prejudice to the above suggestion, if it is decided to continue with Chapter XII-A, Section 115E can be reworded as below –*

### ***Tax on investment income and long-term capital gains.***

**115E.** *Where the total income of an assessee, being a non-resident Indian, includes—*

*(a) any income from investment ~~or income from long-term capital gains of an asset other than a specified asset;~~*

*(b) income by way of long-term capital gains,*

*the tax payable by him shall be the aggregate of—*

*(i) the amount of income-tax calculated on the income in respect of investment income referred to in clause (a), if any, included in the total income, at the rate of twenty per cent;*

*(ii) the amount of income-tax calculated on the income by way of long-term capital gains referred to in clause (b), if any, included in the total income,--*

*(A) at the rate of ten per cent for any transfer which takes place before the 23rd day of July, 2024; and*

*(B) at the rate of twelve and one-half per cent for any transfer which takes place on or after the 23rd day of July, 2024; and*

*(iii) the amount of income-tax with which he would have been chargeable had his total income been reduced by the amount of income referred to in clauses (a) and (b).*

**(3)** *The return forms be amended to –*

*(i) restrict exemption u/s 115F only in respect of long-term capital gains on transfer of foreign exchange assets;*

*(ii) apply the rate of tax u/s 112 and 112A, as the case may be, for long-term capital gains on capital assets other than foreign exchange assets defined in section 115C(b).*

### **1.17 Section 115BAC(1A) and 115E – Taxability in case of a non-resident having investment income and/or long-term capital gains from a capital asset, being a specified asset, and paying tax under the default tax regime under section 115BAC(1A)**

#### **Provision of Law**

Section 115BAC(1A) is the default tax regime of, *inter alia*, individuals including non-residents. Chapter XII-A contains the default tax regime in case of a non-resident individual, being a citizen of India or a person of Indian origin, having investment income and/or long-term capital gains from transfer of a specified asset purchased in foreign currency.

Chapter XII-A contains the special provisions relating to certain incomes of non-residents.

#### **Chapter not to apply if the assessee so chooses.**

**115-I.** A non-resident Indian may elect not to be governed by the provisions of this Chapter for any assessment year by furnishing his return of income for that assessment year under section 139 declaring therein that the provisions of this Chapter shall not apply to him for that assessment year and if he does so, the provisions of this Chapter shall not apply to him for that assessment year and his total income for that assessment year shall be computed and tax on such total income shall be charged in accordance with the other provisions of this Act.

#### **Issue**

Section 115BAC(1A) begins with a non-obstante clause “Notwithstanding anything contained in this Act but subject to the provisions of this Chapter”. “This chapter” means Chapter XII. In case of a non-resident Indian having investment income/long-term capital gains from transfer of a specified asset purchased in foreign currency and other income, can Chapter XII-A and section 115BAC(1A) operate simultaneously, since both are the default tax regimes of a non-resident individual.

Also, if the answer to the above is affirmative, in case the non-resident has in addition to investment income and long-term capital gains on sale of specified asset (say, shares of an Indian company) purchased in foreign currency, other long-term capital gains (say on sale of units of an equity oriented fund or business trust, on which STT has been paid), what would be the rate of tax applicable, since rates of tax are contained in both section 112A and 115E. However, section 115E does not contain a threshold of Rs.1,25,000 in case of long-term capital gains on sale of shares of an Indian

company (which is a specified asset), even if STT has been paid both at the time of purchase and transfer.

Also, whereas claiming benefit of foreign currency fluctuation as per the first proviso to section 48 is not permitted while computing tax on long-term capital gains under section 112A, the same is available while computing long-term capital gains on specified asset under Chapter XII-A.

### **Suggestion**

*It is suggested that it may be clarified as to whether both section 115BAC(1A) and Chapter XII-A can operate simultaneously in case of a non-resident individual.*

*If yes, then –*

*(i) the opening sentence of section 115BAC(1A) be modified as follows:  
"Notwithstanding anything contained in the Act but subject to the provisions of this Chapter and Chapter XII-A"*

*(ii) it may be clarified as to what would be the rates of tax on long-term capital gains on transfer of units of an equity oriented fund and business trust (on which STT is paid) and whether the threshold of Rs.1,25,000 would be applicable in this case.*

***(This is also a suggestion for mitigating litigation)***

### **1.18 Schedule FA and Schedule AL of ITR – Requirement to disclose details of foreign assets for periods ending on different dates in both schedules – Removal of the requirement to fill up details of the same asset(2) in two different schedules and inclusion of a column for "Financial Liabilities (FL)" in Schedule FA**

#### **Provision of law**

Details of foreign assets held at any time during the calendar year ending as on 31<sup>st</sup> December are required to be filled up in Schedule FA.

Taxpayers are also required to furnish details of Assets and Liabilities (Schedule AL) in the Income-tax return as at the end of the year (31<sup>st</sup> March) if their total income exceeds Rs. 50 lakh.

#### **Issue**

Schedule FA requires taxpayers to disclose their "Financial Assets (FA)." However, there is no corresponding column to fill up "Financial Liabilities (FL)" in the same schedule.

Also, in cases where the taxpayer has foreign assets, he has to fill up the details of the assets in Schedule FA and Schedule AL. In Schedule FA, the details of assets held at any time during the calendar year ending on 31<sup>st</sup> December has to be filled up, whereas in Schedule AL, the cost of assets as on 31<sup>st</sup> March of the previous year has to be filled up.

#### **Suggestion**

*It is suggested that a separate column for "Financial Liabilities (FL)" be inserted in Schedule FA.*

*Also, the reporting period/date for Schedule FA be aligned with the reporting date of Schedule AL i.e., 31<sup>st</sup> March to streamline compliance process.*

### **1.19 Section 245N – Definition of Advance Ruling – Definition to be amended to refer to Board instead of Authority, Composition of BAR and binding nature of advance ruling**

#### **Provision of Law**

Section 245N(a) defines "advance ruling" to mean—

- (i) a determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant; or
- (ii) a determination by the Authority in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with such non-resident; or
- (iia) a determination by the Authority in relation to the tax liability of a resident applicant, arising out of a transaction which has been undertaken or is proposed to be undertaken by such applicant; and such determination shall include the determination of any question of law or of fact specified in the application;
- (iii) a determination or decision by the Authority in respect of an issue relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal and such determination or decision shall include the determination or decision of any question of law or of fact relating to such computation of total income specified in the application;
- (iv) a determination or decision by the Authority whether an arrangement, which is proposed to be undertaken by any person being a resident or a non-resident, is an impermissible avoidance arrangement as referred to in Chapter X-A or not:

Provided that where an advance ruling has been pronounced, before the date on which the Finance Bill, 2003 receives the assent of the President, by the Authority in respect of an application by a resident applicant referred to in sub-clause (ii) of this clause as it stood immediately before such date, such ruling shall be binding on the persons specified in section 245S.

#### **Section 245-O(2) and (3) on Composition of Authority for Advance Rulings read as follows -**

(2) The Authority shall consist of a Chairman and such number of Vice-chairmen, revenue Members and law Members as the Central Government may, by notification, appoint.

(3) A person shall be qualified for appointment as—

- (a) Chairman, who has been a Judge of the Supreme Court or the Chief Justice of a High Court or for at least seven years a Judge of a High Court;
- (b) Vice-chairman, who has been Judge of a High Court;
- (c) a revenue Member—
  - (i) from the Indian Revenue Service, who is, or is qualified to be, a Member of the Board; or
  - (ii) from the Indian Customs and Central Excise Service, who is, or is qualified to be, a Member of the Central Board of Excise and Customs, on the date of occurrence of vacancy;
- (d) a law Member from the Indian Legal Service, who is, or is qualified to be, an Additional Secretary to the Government of India on the date of occurrence of vacancy.

### **Issues**

- (1) Boards for Advance Rulings were constituted for giving advance rulings on or after 1.9.2021. Prior to that advance rulings were given by the Authority for Advance Rulings. The definition of advance ruling under section 245N(a), however, continues to refer to Authority instead of Board.
- (2) Section 245S provided that the advance ruling pronounced by the Authority under section 245R shall be binding only (a) on the applicant who had sought it; (b) in respect of the transaction in relation to which the ruling had been sought; and (c) on the Principal Commissioner or Commissioner, and the income-tax authorities subordinate to him, in respect of the applicant and the said transaction. The said advance ruling shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.  
  
However, section 245S is not applicable on or after 1.9.2021 under the Board for Advance Rulings regime. Considering that advance ruling is an internationally accepted binding process, this provision needs to be re-instated.
- (3) As per section 245-OB(2), the Board for Advance Rulings shall consist of two members, each being an officer not below the rank of Chief Commissioner, as may be nominated by the Board. There is no specific requirement for a law member as was the requirement in the case of Authority for Advance Ruling under section 245-O(2) and (3).

## Suggestions

*It is suggested that -*

**(1) The definition of advance ruling under section 245N(a) may be amended as follows -**

*"Advance ruling" means—*

*(i) a determination by the **Board** in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant; or*

*(ii) a determination by the **Board** in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with such non-resident; or*

*(iia) a determination by the **Board** in relation to the tax liability of a resident applicant, arising out of a transaction which has been undertaken or is proposed to be undertaken by such applicant; and such determination shall include the determination of any question of law or of fact specified in the application;*

*(iii) a determination or decision by the **Board** in respect of an issue relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal and such determination or decision shall include the determination or decision of any question of law or of fact relating to such computation of total income specified in the application;*

*(iv) a determination or decision by the **Board** whether an arrangement, which is proposed to be undertaken by any person being a resident or a non-resident, is an impermissible avoidance arrangement as referred to in Chapter X-A or not;*

**(2)** *The binding nature of advance rulings enhances certainty of tax treatment of transactions, promotes clarity and consistency regarding the application of the tax law and strengthens the relationships between taxpayers and the tax authority, with enhanced cooperation leading to a more efficient tax system. This is consistent with the general principles of good administration and promotes ease of doing business in the country. Internationally, advance ruling is an accepted binding process. Hence, this provision may be re-instated in the current Board for Advance Ruling Regime.*

**(3)** *Section 245-OB(2) may be amended in line with section 245-O(2) and (3) to require one law member in the Board of Advance Rulings.*

## 1.20 Section 245Q(2) read with Rule 44E – Application for advance ruling – Alignment of Act with Rules removing requirement to file application in quadruplicate

### Relevant Provision of Law

Section 245Q and Rule 44E read as follows -

#### Application for advance ruling.

245Q. (1) An applicant desirous of obtaining an advance ruling under this Chapter or under Chapter V of the Customs Act, 1962 (52 of 1962) or under Chapter IIIA of the Central Excise Act, 1944 (1 of 1944) or under Chapter VA of the Finance Act, 1994 (32 of 1994) may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.

(2) The application shall be made **in quadruplicate** and be accompanied by a fee of ten thousand rupees or such fee as may be prescribed in this behalf, whichever is higher.

Rule 44E requiring the application for obtaining advance ruling under section 245Q(1) to be made in the respective forms, Form No.34C/34D/34DA/34E/34EA has deleted the words "in quadruplicate" w.e.f. 5.5.2022.

#### Issue

Section 245Q(2) requires the application for advance ruling to be made in quadruplicate. This requirement has been removed in Rule 44E, since the forms have to be sent vide e-mail.

#### Suggestions

*It is suggested that –*

(i) *the words "be made in quadruplicate and" be removed from section 245Q(2), to read as follows –*

*"(2) The application shall ~~be made in quadruplicate and~~ be accompanied by a fee of ten thousand rupees or such fee as may be prescribed in this behalf, whichever is higher."*

(ii) *E-filing should be enabled for these forms.*

## **1.21 Section 92CC read with Rule 10-O – Advance Pricing Agreement Scheme – Requirement to furnish Annual Compliance Report in quadruplicate to be removed**

### **Provisions of Law**

Sub-sections (1) and (9) of section 92CC read as follows -

#### **Advance pricing agreement.**

**92CC.** (1) The Board, with the approval of the Central Government, may enter into an advance pricing agreement with any person, determining the—

(a) arm's length price or specifying the manner in which the arm's length price is to be determined, in relation to an international transaction to be entered into by that person;

(b) income referred to in clause (i) of sub-section (1) of section 9, or specifying the manner in which said income is to be determined, as is reasonably attributable to the operations carried out in India by or on behalf of that person, being a non-resident.

(9) The Board may, for the purposes of this section, prescribe a scheme specifying therein the manner, form, procedure and any other matter generally in respect of the advance pricing agreement.

Rules 10-F to 10T contain the relevant rules in this regard. Rule 10-O requires furnishing of an annual compliance report in Form 3CEF in quadruplicate to the DGIT (International Taxation) for each year covered in the agreement.

### **Issue**

Form No. 3CEF is an e-form. Therefore, the requirement to file Form No. 3CEF in quadruplicate is not relevant.

### **Suggestion**

*It is suggested that Rule 10-O(3) be amended to omit the words "in quadruplicate" therefrom.*

## **1.22 Special tax regimes under section 115BA/115BAA/115BAB/115BAD/ 115BAE – Separate forms to be filed for exercise of option – Need to dispense with these forms and exercise the option in the return of income filed**

### **Provisions of Law**

At present, there are separate forms for exercise of option under section 115BA (Form No.10-IB), 115BAA (Form No.10-IC), 115BAB (Form No.10-ID), 115BAD (Form No.10-IF) and 115BAE (Form No.10-IFA). Likewise, option to exercise out of the default tax regime under section 115BAC(1A) has to be in Form No.10-IEA.

### **Issue**

There is no need for separate forms for exercise of options under various sections, since this increases the compliance burden of the assessee.

### **Suggestion**

*It is suggested that there should no separate forms for exercise of option under section 115BA (Form No.10-IB), 115BAA (Form No.10-IC), 115BAB (Form No.10-ID), 115BAD (Form No.10-IF) and 115BAE (Form No.10-IFA). The option should be exercised in the return of income itself.*

*Likewise, option to exercise out of the default tax regime under section 115BAC(1A) should also be through the return form itself and there should be no requirement to file Form No.10-IEA.*

### 1.23 Section 115BAC – Default tax regime of individuals – Introduction of option for Joint Taxation System of married couples with increased basic exemption limit and rationalized tax slabs and surcharge slabs and provision for filing of joint return of income

#### Provision of Law

Currently, under the Income-tax Act, 1961, different tax slabs are provided for, *inter alia*, individuals. The rates increase progressively as the income increases. Section 115BAC is the default tax regime for, *inter alia*, an individual.

The tax rates for an individual under the default tax regime under section 115BAC is as follows –

S. No.	Total Income	Rate of tax
1.	Upto Rs.3,00,000	Nil
2.	From Rs.3,00,001 to Rs.7,00,000	5%
3.	From Rs.7,00,001 to Rs.10,00,000	10%
4.	From Rs.10,00,001 to Rs.12,00,000	15%
5.	From Rs.12,00,001 to Rs.15,00,000	20%
6.	Above Rs.15,00,000	30%

An individual who exercises the option to opt out of the default regime under section 115BAC, has to pay tax as per normal provisions of the Act. To pay tax as per normal provisions of the Act, the rates of tax are prescribed by the Annual Finance Act of the year.

For an individual, the basic exemption limit is Rs.2,50,000. No tax is payable by an individual with total income of up to Rs.2,50,000. An individual whose total income is more than Rs.2,50,000 but less than Rs.5,00,000, has to pay tax on their total income in excess of Rs.2,50,000@5%. Total income between Rs.5,00,000 and Rs.10,00,000 attracts tax @20%. The highest rate is 30%, which is attracted in respect of income in excess of Rs.10,00,000.

Individuals are entitled to benefit from these tax slabs, with each member of a family eligible for the basic exemption limit separately. For instance, in a family of four comprising a husband, wife, and two children, each member can avail of the basic exemption limit of Rs.3 lakh separately under the default regime.

#### Issue

In the case of families where both the husband and the wife are earning, they can avail of a separate basic exemption limit of Rs.3 lakh (under default

scheme) and Rs.2.50 lakh under the optional scheme as per the normal provisions of the Act. However, in India, a significant number of families rely on a single earning member to support the household. The current basic threshold exemption of Rs.3 lakh/Rs.2.5 lakh, as the case may be, is inadequate considering the prevailing cost of living. Consequently, there may be a tendency for families to explore ways and means to generate income for each family member to take advantage of individual exemption limits.

For example, the husband, wife and their children all are entitled to basic exemption limit of Rs.3 lakh separately under default regime/Rs.2.50 lakh under the optional regime. In a country like India, even today 80% of the families are supported by a single individual. In many households, women and children may not have separate earnings and are supported by a single sole earning male member. In the circumstances, for an average size of a family of four members i.e. husband, wife and two children, the basic threshold exemption of Rs.3 lakh/Rs.2.50 lakh is very low considering the current cost of living. Therefore, it encourages adoption of ways and means to transfer income in hands of other family members.

### Suggestion

*It is suggested to introduce an **option for joint taxation of married couples by filing a joint return of income**. Individuals may be given an option to pay tax under the Joint Taxation Scheme. They can choose to pay tax individually under the present scheme of taxation or opt for joint taxation of self and spouse.*

*Under the joint taxation scheme, the threshold exemption available may be enhanced by doubling the exemption limit available to individual taxpayers. Also, the tax slabs may be broadened proportionately.*

*Doubling the exemption limit under the Joint Taxation Scheme would better align with the economic realities of such households. Such scheme is already in force in developing countries such as USA.*

*The rates under the default scheme under section 115BAC in case of joint taxation may be as follows -*

<b>S. No.</b>	<b>Total Income</b>	<b>Rate of tax</b>
1.	Upto Rs.6,00,000	Nil
2.	From Rs.6,00,001 to Rs.14,00,000	5%
3.	From Rs.14,00,001 to Rs.20,00,000	10%
4.	From Rs.20,00,001 to Rs.24,00,000	15%
5.	From Rs.24,00,001 to Rs.30,00,000	20%
6.	Above Rs.30,00,000	30%

*Correspondingly, the threshold limit for surcharge may be increased to Rs.1 crore. For total income between Rs.1 crore and Rs.2 crore, the rate of surcharge may be 10%; from Rs.2 crore to Rs.4 crore, the rate of surcharge may be 15%; and above Rs.4 crore, the rate of surcharge may be 25%.*

*In case both husband and wife are salaried employees, the standard deduction u/s 16(ia) should be separately available to them while computing their salary income.*

*Also, the threshold adjusted total income limit for non-applicability of alternate minimum tax under section 115JC, which is currently Rs.20 lakhs, may be proportionally increased, in cases where the individual opts out of the default tax regime.*



## Category 2

### Obsolete Chapters, Sections & Schedules in the Income-tax Act, 1961

There are many sections and Chapters which continue to remain in the Act even though they are no longer relevant due to incorporation of sunset clause therein. Weeding out irrelevant chapters and sections would make the Act more readable and user friendly.

**Chapters of the Act which are no longer relevant may be removed.** For example,

Chapter XII-D – Special provisions relating to tax on distributed profits of domestic companies (not relevant in respect of dividend distributed on or after 1.4.2020)

Chapter XII-E – Special provisions relating to tax on distributed income (not relevant in respect of income distributed by the specified company or mutual fund to its unit holders on or after 1.4.2020)

Chapter XII-H - Fringe Benefit Tax (not relevant from A.Y.2010-11)

Chapter XVIII – Relief in respect of tax on dividends in certain cases

Also, there are some Chapters, in which all the sections have been omitted, but the Chapters continue like Chapter VI-B, Chapter XI (Additional income-tax on undistributed profits), Chapter XII-C (Special provisions relating to Retail Trade)

### **Sections which are no longer relevant may be deleted**

For example, sections 10A, 10B, 10C, 32A, 32AB, 33, 33A, 33B, 34, 34A, 44AF, 54E, 54EA, 54EB, 54ED, 80H to 80HHF, 80-I, 80Q, 80QQA, 80R, 80RR, 80RRA, 115-O, 115-P, 115-Q, 115-R, 115-S, 115-T are no longer relevant and may be removed.

To elucidate,

- No deduction under section 10A and 10B is allowable from A.Y.2012-13;
- No deduction under section 10C is allowable from A.Y.2004-05
- Sections 80HHB to 80HHF have been phased out completely and no deduction is available from A.Y.2005-06.



- Sections 54E/54EA/ 54EB/54ED which are not applicable in respect of capital gains arising from transfer of long-term capital asset on or after 1.4.1992, 1.4.2000, 1.4.2000 and 1.4.2006, respectively.
- Sections 115-O and 115-R on tax on distributed profits of domestic companies and tax on distributed income to unit holders are not relevant in respect of dividend and income distributed on or after 1.4.2020

**These sections and Chapters should be removed from the Act, to make the Act concise and more relevant. The above Preliminary Suggestions were submitted by ICAI on 18.9.2024. The detailed list of obsolete Chapters and Sections are given below -**

## 2.1 Obsolete Chapters

S. No.	Chapter Number	Chapter Heading & Sections comprised therein	Reason for Suggestion
1	VI-B	Restriction on certain deductions in the case of companies (Section 80VVA)	Omitted by the Finance Act, 1987
2	XI	Additional income-tax on undistributed profits (Sections 95 to 109)	Sections 95 to 103 were omitted by the Finance Act, 1965 Sections 104 to 109 were omitted by the Finance Act, 1987
3	XII-C	Special provisions relating to retail trade, etc. (Sections 115K to 115N)	Omitted by the Finance Act, 1997
4	XII-D	Special provisions relating to tax on distributed profits of domestic company (Sections 115-O to 115Q)	Sunset clause - The provisions of this chapter are not applicable in respect of dividend declared, distributed or paid on or after 1.4.2020
5	XII-DA	Special provisions relating to tax on distributed income of domestic company for buy-back of shares (Sections 115QA to 115QC)	Sunset clause - The provisions of this chapter will not be applicable in respect of any buy-back of shares taking place on or after 1.10.2024
6	XII-E	Special provisions relating to tax on distributed income (Sections 115R to 115T)	Sunset clause - The provisions of this chapter are not applicable in respect of tax on income distributed to unitholders on or after 1.4.2020

S. No.	Chapter Number	Chapter Heading & Sections comprised therein	Reason for Suggestion
7	XII-H	Income-tax on fringe benefits (Sections 115W to 115WM)	Sunset clause - This Chapter does not apply from A.Y.2010-11
8	XVIII	Relief respecting tax on dividends in certain cases (Sections 235 to 236A)	<p>Section 235 omitted by the Finance (No.2) Act, 1971</p> <p>Section 236 on relief to company in respect of dividend paid out of profits charged to tax for A.Y. ending before 1.4.1960 is not relevant.</p> <p>Section 236A in respect of relief to certain charitable institutions or funds in respect of certain dividends declared distributed during the P.Y. relevant to A.Y.1966-67 or thereafter, is not relevant.</p>
9	XIX-A	Settlement of Cases (Sections 245A to 245M)	Sunset clause – No application for settlement of cases can be made on or after 01.02.2021.
10	XX-A	Acquisition of Immovable properties in certain cases of transfer to counteract evasion of tax (Sections 269A to 269S)	Sunset clause - The provisions of this Chapter shall not apply to or in relation to the transfer of any immovable property made after the 30.09.1986.
11	XX-C	Purchase by Central Government of immovable properties in certain cases of transfer (Sections 269U to 269UP)	Sunset clause – The provisions of this Chapter shall not apply to, or in relation to, the transfer of



S. No.	Chapter Number	Chapter Heading & Sections comprised therein	Reason for Suggestion
			any immovable property effected on or after 01.07.2002.
12	XXII-A	Annuity Deposits Sections 280A to 280X	Omitted by the Finance Act, 1988
13	XXII-B	Tax Credit Certificates (Sections 280Y to 280ZE)	Omitted by the Finance Act, 1990

## 2.2 Obsolete Sections

S. No.	Section	Section Heading	Reason for Suggestion
1	10A	Special provision in respect of newly established undertakings in free trade zone, etc.	Sunset clause – No deduction under this section is allowable from A.Y.2012-13.
2	10B	Special provisions in respect of newly established hundred per cent export-oriented undertakings	Sunset clause – No deduction under this section is allowable from A.Y.2012-13.
3	10BA	Special provisions in respect of export of certain articles or things	Sunset clause – No deduction under this section is allowable from A.Y.2010-11.
4	10BB	Meaning of computer programmes in certain cases	Sunset clause – Not relevant from A.Y.2012-13, since it is linked to section 10B
5	10C	Special provision in respect of certain industrial undertakings in North-Eastern Region	Sunset clause - No deduction under this section is allowable from A.Y.2004-05.
6	12AA	Procedure for registration of trusts and institutions	Sunset clause – The provisions of this section are not applicable on or after 1.4.2021.
7	32A	Investment allowance	Sunset clause - No Investment Allowance shall be allowed in respect of any new ship or aircraft acquired or any new plant or machinery installed after 31.3.1990
8	32AB	Investment deposit account	Sunset clause – No deduction allowable from A.Y.1991-92.

S. No.	Section	Section Heading	Reason for Suggestion
9	32AC	Investment in new plant and machinery	Sunset clause – No deduction allowable from A.Y.2018-19.
10	32AD	Investment in new plant and machinery in notified backward areas in certain States	Sunset clause – No deduction allowable in respect of plant and machinery installed on or after 1.4.2020.
11	33	Development rebate	Sunset clause - The provisions of this section are currently not applicable.
12	33A	Development allowance.	Sunset clause – No deduction allowable in respect of tea bushes planted on any land in India, where the planting is completed on or after 1.4.1990.
13	33AC	Reserves for shipping business	Sunset clause – No deduction shall be allowable from A.Y.2005-06.
14	33B	Rehabilitation allowance	Sunset clause - No deduction shall be allowable from A.Y.1985-86.
15	34	Conditions for depreciation allowance and development rebate	Not relevant due to sunset clauses for sections 33 and 33A
16	34A	Restriction on unabsorbed depreciation and unabsorbed investment allowance for limited period in case of certain domestic companies.	Relevant only for A.Y.1992-93



S. No.	Section	Section Heading	Reason for Suggestion
17	35AC	Expenditure on eligible projects or schemes	Sunset clause – No deduction shall be allowable from A.Y.2018-19.
18	39	Managing Agency Commission	Omitted by Direct Tax Laws (Amendment) Act, 1987
19	44AC	Special provision for computing profits and gains from the business of trading in certain goods	Omitted by the Finance Act, 1992
20	44AF	Special provisions for computing profits and gains of retail business	Sunset clause - The provisions of this section are not applicable from A.Y.2011-12.
21	52	Consideration for transfer in cases of understatement	Omitted by the Finance Act, 1987
22	53	Exemption of capital gains from a residential house	Omitted by the Finance Act, 1992
23	54C	Capital gain on transfer of jewellery held for personal use not to be charged in certain cases	Omitted by the Finance Act, 1976
24	54E	Capital gain on transfer of capital assets not to be charged in certain cases.	Sunset clause - Not applicable where capital gains arises from transfer of a capital asset on or after 1.4.1992.
25	54EA	Capital gain on transfer of long-term capital assets not to be charged in the case of investment in specified securities.	Sunset clause - The provisions of this section are not applicable where capital gains arises from transfer of a long-term capital asset on or after 1.4.2000.

S. No.	Section	Section Heading	Reason for Suggestion
26	54EB	Capital gain on transfer of long-term capital assets not to be charged in certain cases.	Sunset clause - The provisions of this section are not applicable where capital gains arises from transfer of a long-term capital asset on or after 1.4.2000.
27	54ED	Capital gain on transfer of certain listed securities or unit not to be charged in certain cases	Sunset clause - The provisions of this section are not applicable where capital gains arises from the transfer of a long-term capital asset on or after 1.4.2006.
28	54EE	Capital gains not to be charged on investment in units of a specified fund	Sunset clause – It does not apply in respect of units issued on or after 1.4.2019.
29	67	Method of computing a partner's share in the income of the firm	Omitted by the Finance Act, 1992
30	80F	Deduction in respect of educational expenses in certain cases	Omitted by the Finance Act, 1985
31	80FF	Deduction in respect of expenses on higher education in certain cases	Omitted by the Finance (No.2) Act, 1980
32	80H	Deduction in case of new industrial undertakings employing displaced persons, etc.	Omitted by the Taxation Laws (Amendment) Act, 1975.
33	80HH	Deduction in respect of profits and gains from newly established industrial	Sunset clause - The provisions of this section are not applicable to an industrial undertaking which begins

S. No.	Section	Section Heading	Reason for Suggestion
		undertakings or hotel business in backward areas.	manufacture on or after 1.4.1990 or a hotel which starts functioning on or after 1.4.1990 in any backward area.
34	80HHA	Deduction in respect of profits and gains from newly established small-scale industrial undertakings in certain areas	Sunset clause - The provisions of this section are not applicable to a small scale industrial undertaking which begins manufacture on or after 1.4.1990.
35	80HHB	Deduction in respect of profits and gains from projects outside India.	Sunset clause - The provisions of this section are not applicable from A.Y.2005-06.
36	80HHBA	Deduction in respect of profits and gains from housing projects in certain cases.	Sunset clause - The provisions of this section are not applicable from A.Y.2005-06.
37	80HHC	Deduction in respect of profits retained for export business.	Sunset clause - The provisions of this section are not applicable from A.Y.2005-06.
38	80HHD	Deduction in respect of earnings in convertible foreign exchange.	Sunset clause - The provisions of this section are not applicable from A.Y.2005-06.
39	80HHE	Deduction in respect of profits from export of computer software, etc	Sunset clause - The provisions of this section are not applicable from A.Y.2005-06.

S. No.	Section	Section Heading	Reason for Suggestion
40	80HHF	Deduction in respect of profits and gains from export or transfer of film software, etc	Sunset clause - The provisions of this section are not applicable from A.Y.2005-06.
41	80-I	Deduction in respect of profits and gains from industrial undertakings after a certain date, etc.	Sunset clause - The provisions of this section are not applicable to profits and gains of an industrial undertaking which begins manufacture on or after 1.4.1991, a ship which is first brought into use on or after 1.4.1991 and a hotel which starts functioning on or after 1.4.1991.
42	80-IC	Special provisions in respect of certain undertakings or enterprises in certain special category States	The section applies to any undertaking or enterprise which has commenced manufacture before 1.4.2007 (1.4.2012 in case of Himachal Pradesh and Uttaranchal). Since the deduction is available only for 10 years, this section is no longer relevant.
43	80-ID	Deduction in respect of profits and gains from business of hotels and convention centres in specified areas	This section applies to an undertaking engaged in hotel business which starts functioning or convention centre which is constructed on or before 31.7.2010. In case of a hotel constructed in the specified district having a World Heritage Site, if the hotel starts functions on or

S. No.	Section	Section Heading	Reason for Suggestion
			before 31.3.2013. Since the deduction is only for 5 years, the section is no longer relevant.
44	80J	Deduction in respect of profits and gains from newly established industrial undertakings or ships or hotel business in certain cases	Omitted by the Finance (No.2) Act, 1996
	80JJ	Deduction in respect of profits and gains from business of poultry farming	Omitted by the Finance Act, 1997
45	80K	Deduction in respect of dividends attributable to profits and gains from new industrial undertakings or ships or hotel business.	Omitted by the Finance Act, 1986
46	80L	Deductions in respect of interest on certain securities, dividends, etc	Omitted by the Finance Act, 2005
47	80MM	Deduction in the case of an Indian company in respect of royalties, etc., received from any concern in India	Omitted by the Finance Act, 1983
48	80N	Deduction in respect of dividends received from certain foreign companies	Omitted by the Finance Act, 1985
49	80-O	Deduction in respect of royalties etc., from certain foreign enterprises	Sunset clause – No deduction is allowable from A.Y.2005-06.

S. No.	Section	Section Heading	Reason for Suggestion
50	80Q	Deduction in respect of profits and gains from the business of publication of books.	Sunset clause – The provisions of this section are not applicable from A.Y. 1997-98.
51	80QQA	Deduction in respect of professional income of authors of textbooks in Indian languages.	Sunset clause – The provisions of this section are not applicable from A.Y. 1997-98.
52	80R	Deduction in respect of remuneration from certain foreign sources in the case of professors, teachers, etc.	Sunset clause – No deduction is allowable from A.Y.2005-06.
53	80RR	Deduction in respect of professional income from foreign sources in certain cases.	Sunset clause – No deduction is allowable from A.Y.2005-06.
54	80RRA	Deduction in respect of remuneration received for services rendered outside India.	Sunset clause – No deduction is allowable from A.Y.2005-06.
55	80S	Deduction in respect of compensation for termination of managing agency, etc., in the case of assesseees other than companies	Omitted by the Finance Act, 1986
56	80T	Deduction in respect of long-term capital gains in the case of assesseees other than companies	Omitted by the Finance Act, 1987
57	80TT	Deduction in respect of winnings from lottery	Omitted by the Finance Act, 1986



<b>S. No.</b>	<b>Section</b>	<b>Section Heading</b>	<b>Reason for Suggestion</b>
58	80V	Deduction from gross total income of the parent in certain cases	Omitted by the Finance Act, 1994
59	80VV	Deduction in respect of expenses incurred in connection with certain proceedings under the Act	Omitted by the Finance Act, 1985
60	81 to 85C	Incomes forming part of total income on which no income-tax is payable	Omitted by the Finance (No.2) Act, 1967
61	88A	Rebate in respect of investment in new shares or units	Omitted by the Finance (No.2) Act, 1996
62	88B	Rebate of income-tax in case of individuals of sixty-five years or above	Omitted by the Finance Act, 2005
63	88C	Rebate of income-tax in case of women below sixty-five years	Omitted by the Finance Act, 2005
64	88D	Rebate of income-tax in case of certain individuals	Omitted by the Finance Act, 2005
65	88E	Rebate in respect of securities transaction tax	Sunset clause - The provisions of this section are not applicable from A.Y.2009-10.
66	114	Tax on capital gains in cases of assesseees other than companies.	Omitted by the Finance (No. 2) Act, 1967
67	115	Tax on capital gains in case of companies.	Omitted by the Finance Act, 1987

S. No.	Section	Section Heading	Reason for Suggestion
68	115BBD	Tax on certain dividends received from foreign companies.	Sunset clause – The provisions of this section are not applicable from A.Y.2023-24.
69	115BBDA	Tax on certain dividends received from domestic companies	Sunset clause – The provisions of this section are not applicable in respect of dividends declared, distributed or paid on or after 1.4.2020.
70	115J	Special provisions relating to certain companies	Sunset clause – The provisions of this section are not applicable from A.Y.1991-92.
71	115JA	Deemed income relating to certain companies	Sunset clause – The provisions of this section are not applicable from A.Y.2001-02.
72	121	Jurisdiction of Commissioners	Omitted by the Direct Tax Laws (Amendment) Act, 1987
73	121A	Jurisdiction of Commissioners (Appeals).	Omitted by the Direct Tax Laws (Amendment) Act, 1987
74	122	Jurisdiction of Appellate Assistant Commissioners.	Omitted by the Direct Tax Laws (Amendment) Act, 1987
75	123	Jurisdiction of Inspecting Assistant Commissioners.	Omitted by the Direct Tax Laws (Amendment) Act, 1987
76	125	Powers of Commissioner respecting specified areas, cases, persons, etc.	Omitted by the Direct Tax Laws (Amendment) Act, 1987

S. No.	Section	Section Heading	Reason for Suggestion
77	125A	Concurrent jurisdiction of Inspecting Assistant Commissioner and Income-tax Officer	Omitted by the Direct Tax Laws (Amendment) Act, 1987
78	126	Powers of Board respecting specified area, classes of persons or incomes	Omitted by the Direct Tax Laws (Amendment) Act, 1987
79	128	Functions of Inspectors of Income-tax	Omitted by the Direct Tax Laws (Amendment) Act, 1987
80	130A	Income-tax Officer competent to perform any function or functions	Omitted by the Direct Tax Laws (Amendment) Act, 1987
81	137	Disclosure of information prohibited	Omitted by the Finance Act, 1964
82	141	Provisional assessment	Omitted by the Taxation Laws (Amendment) Act, 1970
83	141A	Provisional assessment for refund	Omitted by the Direct Tax Laws (Amendment) Act, 1987
84	146	Reopening of assessment at the instance of the assessee	Omitted by the Direct Tax Laws (Amendment) Act, 1987
85	153A	Assessment in case of search or requisition	Sunset clause – The provisions of this section are not applicable in respect of search initiated or books of account requisitioned on or after 1.4.2021.
86	153B	Time limit for completion of assessment under section 153A	Sunset clause – The provisions of this section are not applicable in respect of search initiated or books of



S. No.	Section	Section Heading	Reason for Suggestion
			account requisitioned on or after 1.4.2021.
87	153C	Assessment of income of any other person	Sunset clause – The provisions of this section are not applicable in respect of search initiated or books of account requisitioned on or after 1.4.2021.
88	153D	Prior approval necessary for assessment in case of search or requisition	Sunset clause – The provisions of this section are not applicable in respect of search initiated or books of account requisitioned on or after 1.4.2021.
89	158	Intimation of assessment of firm	Sunset clause – The provisions of this section are not applicable from A.Y.1993-94.
90	158AA	Procedure when in an appeal by revenue an identical question of law is pending before Supreme Court	Sunset clause – The provisions of this section are not applicable on or after 1.4.2022.
91	180	Royalties or copyright fees for literary or artistic work	Sunset clause – The provisions of this section are not applicable from A.Y.2000-01.
92	180A	Consideration for know-how	Sunset clause – The provisions of this section are not applicable from A.Y.2001-02.
93	182	Assessment of registered firms	Omitted by the Finance Act, 1992



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<b>S. No.</b>	<b>Section</b>	<b>Section Heading</b>	<b>Reason for Suggestion</b>
94	183	Assessment of unregistered firms	Omitted by the Finance Act, 1992
95	189A	Provisions applicable to past assessments of firms	Sunset clause – The provisions of this section are not applicable from A.Y.1993-94.
96	194F	Payments on account of repurchase of units by Mutual Fund or Unit Trust of India	Omitted by the Finance (No. 2) Act, 2024 w.e.f. 1.10.2024
97	194L	Payment of compensation on acquisition of capital asset	Omitted by the Finance Act, 2016
98	206B	Person paying dividend to certain residents without deduction of tax to furnish prescribed return.	Omitted by the Finance (No. 2) Act, 1996
99	209A	Computation and payment of advance tax by assessee	Omitted by the Direct Tax Laws (Amendment) Act, 1987
100	212	Estimate by assessee.	Omitted by the Direct Tax Laws (Amendment) Act, 1987
101	213	Commission receipts	Omitted by the Direct Tax Laws (Amendment) Act, 1987
102	214	Interest payable by Government	Sunset clause – The provisions of this section are not applicable from A.Y.1989-90.
103	215	Interest payable by assessee.	Sunset clause – The provisions of this section are not applicable from A.Y.1989-90.

S. No.	Section	Section Heading	Reason for Suggestion
104	216	Interest payable by assessee in case of under-estimate, etc.	Sunset clause – The provisions of this section are not applicable from A.Y.1989-90.
105	217	Interest payable by assessee when no estimate made	Sunset clause – The provisions of this section are not applicable from A.Y.1989-90.
106	228	Recovery of Indian tax in Pakistan and Pakistan tax in India.	Omitted by the Direct Tax Laws (Amendment) Act, 1987
107	230A	Restrictions on registration of transfers of immovable property in certain cases	Omitted by the Finance Act, 2001
108	233	Recovery of tax payable under provisional assessment	Omitted by the Taxation Laws (Amendment) Act, 1970
109	234	Tax paid by deduction or advance payment	Omitted by the Direct Tax Laws (Amendment) Act, 1987
110	235	Relief to shareholders in respect of agricultural income-tax attributable to dividends	Omitted by the Finance (No. 2) Act, 1971
111	236	Relief to company in respect of dividend paid out of past taxed profits	The provisions of this section are applicable for credit for dividends paid out of profits and gains charged to tax for any assessment year ending before 1.4.1960. Therefore, the section is no longer relevant.

S. No.	Section	Section Heading	Reason for Suggestion
112	236A	Relief to certain charitable institutions or funds in respect of certain dividends	Sunset clause – The provisions of this section are no longer relevant.
113	241	Power to withhold refund in certain cases	Omitted by the Finance Act, 2001
114	241A	Withholding of refund in certain cases	Sunset clause – The provisions of this section are not applicable on or after 1.4.2023.
115	243	Interest on delayed refunds	Sunset clause – The provisions of this section are not applicable from A.Y.1989-90.
116	245-O	Authority for Advance Rulings	Sunset clause - The provisions of this section are not applicable from 01.09.2021.
117	245-OA	Qualifications, terms and conditions of service of Chairman, Vice-Chairman and Member	Sunset clause - The provisions of this section are not applicable from 01.09.2021.
118	245-S	Applicability of advance ruling	Sunset clause - The provisions of this section are not applicable from 01.09.2021.
119	247	Appeal by partner.	Omitted by the Finance Act, 1992
120	248	Appeal by a person denying liability to deduct tax in certain cases	Sunset clause – The provisions of this section are not applicable to any appeal filed where tax is paid to the

S. No.	Section	Section Heading	Reason for Suggestion
			credit of the Central Government on or after 1.4.2022.
121	256 to 260	Statement of case to the High Court Statement of case to the Supreme Court	Sunset clause – The provisions of this section are not applicable in respect of notice of an order passed on or after 1.10.1998
122	270	Failure to furnish information regarding securities, etc	Omitted by the Direct Tax Laws (Amendment) Act, 1987
123	271	Failure to furnish returns, comply with notices, concealment of income, etc.	Sunset clause – The provisions of this section are not applicable from A.Y.2017-18.
124	271AAA	Penalty where search has been initiated	Sunset clause – The provisions of this section are not applicable where search is initiated on or after 1.7.2012
125	271F	Penalty for failure to furnish return of income	Sunset clause – The provisions of this section are not applicable from A.Y.2018-19.
126	271FB	Penalty for failure to furnish return of fringe benefits	Sunset clause – These provisions of this section does not apply from A.Y.2010-11
127	272	Failure to give notice of discontinuance.	Omitted by the Direct Tax Laws (Amendment) Act, 1987

S. No.	Section	Section Heading	Reason for Suggestion
128	272BBB	Penalty for failure to comply with the provisions of section 206CA.	Sunset clause – The provisions of this section are not applicable for non-compliance on or after 1.10.2004.
129	276A	Failure to comply with the provisions of sub-sections (1) and (3) of section 178.	Sunset clause – No proceeding can be initiated on or after 1.4.2023.
130	276AA	Failure to comply with the provisions of section 269AB or section 269-I	Omitted by the Finance Act, 1986
131	276AB	Failure to comply with the provisions of sections 269UC, 269UE and 269UL	Sunset clause –No proceeding can be initiated on or after 1.4.2022.
132	276DD	Failure to comply with the provisions of section 269SS.	Omitted by the Direct Tax Laws (Amendment) Act, 1987
133	276E	Failure to comply with the provisions of section 269T.	Omitted by the Direct Tax Laws (Amendment) Act, 1987
134	281A	Effect of failure to furnish information in respect of properties held benami	Repealed by the Benami Transactions (Prohibition) Act, 1988, w.e.f. 19-5-1988

**Note** – In certain provisions of the Act, cross-referencing is sometimes made to a sub-section or clause in some of these obsolete sections. In such a case, the relevant sub-section/clause in the above obsolete sections/chapters should be first shifted to the other provision wherein the reference is made to this sub-section/clause. Only thereafter, the obsolete chapter/section be removed.

[For example,

- (i) in section 2(47) containing the definition of transfer, Explanation 1 clarifies that “immovable property” has the same meaning as in clause (d) of section 269UA



- (ii) in section 27 on deemed ownership, reference is made to a transaction referred to in clause (f) of section 269UA, which contains the definition of “transfer” .
- (iii) in section 80C, being a deduction from gross total income, clause (viii) of sub-section (8) mentions that “transfer” shall be deemed to include also the transactions referred to in clause (f) of section 269UA.
- (iv) In section 279 stipulating that prosecution has to be at the instance of certain higher authorities, the Explanation clarifies that “appropriate authority” shall have the same meaning as in clause (c) of section 269UA.

If Chapter XX-C is being removed, then, the definitions of appropriate authority, immovable property and transfer contained in clauses (c), (d) and (f) of section 269UA have to be placed in the respective sections itself i.e., sections 279, 2(47), 27 and 80C]

## 2.3 Obsolete Sub-sections/Clauses (Illustrative List)

S. No.	Section No.	Sub-section/Clause		Sunset Clauses
1	10	Clause (8)	Exemption to an individual who is assigned to duties in India in connection with any co-operative technical assistance programs and projects in accordance with an agreement entered into by the Central Govt. and Govt. of the foreign State.	The provisions of this clause are not applicable in respect of remuneration and income of the previous year relevant to A.Y. 2023-24 and thereafter.
2	10	Clause (8A)	Exemption of remuneration of a consultant from funds made available to an international organisation (agency) under a technical assistance grant agreement between the agency and Govt. of a foreign State.	The provisions of this clause are not applicable in respect of remuneration, fee and income of the previous year relevant to A.Y.2023-24 and thereafter.
3	10	Clause (8B)	Exemption of remuneration received from a consultant by an individual who is assigned to duties in India in connection with any technical assistance program and project in accordance with an agreement entered into by the Central Govt. and the agency	The provisions of this clause are not applicable in respect of remuneration and income of the previous year relevant to A.Y.2023-24 and thereafter.
4	10	Clause (9)	Exemption of income of any member of the family of any such individual referred to in clauses (8)/(8A)/(8B) accompanying him to India, which accrues or arises outside India and is not deemed to accrue or arise in India	The provisions of this clause are not applicable in respect of income of the previous year relevant to A.Y.2023-24 and thereafter.

S. No.	Section No.	Sub-section/Clause		Sunset Clauses
5	10	Clause (34A)	Exemption of income arising to a shareholder on account of buyback of shares by the company as referred to in section 115QA	The provisions of this clause are not applicable in respect of any buy back of shares by a company on or after 1.10.2024.
6	10	Clause (35)	Exemption of income received in respect of the units of a mutual fund specified under clause (23D)	The provisions of this clause are not applicable in respect of any income in respect of units received on or after 1.4.2020.
7	10	Clause (35A)	Exemption of distributed income referred to in section 115TA received from a securitisation trust by an investor	The provisions of this clause are not applicable in respect of any income by way of distributed income referred to in the said section, received on or after 1.6.2016.
8	12A	Sub-section (1) Clause (a)	Conditions to be fulfilled for exemption u/s 11 & 12 in case of application for registration of trust u/s 12AA made before 1.6.2007	The provisions of this clause are not applicable in respect any application made on or after 1.6.2007.
9	12A	Sub-section (1) Clause (aa)	Conditions to be fulfilled for exemption under section 11 and 12 in case of application for registration of trust under section 12AA made on or after 1.6.2007	The provisions of this sub-section are applicable where the person in receipt of the income has made an application for registration of the trust or institution under section 12AA.

S. No.	Section No.	Sub-section/Clause		Sunset Clauses
				Section 12AA is not applicable on or after 1.4.2021.
10	12A	Sub-section (1) Clause (ab)	Conditions to be fulfilled for exemption under section 11 and 12 in case a trust registered under section 12AA/12A and has undertaken modifications of the objects not conforming to the conditions of registration	The provisions of this sub-section are not applicable on or after 1.4.2021, since they are in respect of trust or institution registered under section 12AA
11	36	Clause (xi)	Expenditure incurred by the assessee, on or after 1.4.99 but before 1.4.2000 wholly and exclusively in respect of a non-Y2K compliant computer system, owned by the assessee and used for the purposes of his business or profession so as to make such computer system Y2K compliant computer system.	The provisions of this sub-section are not applicable to any expenditure incurred on or after 1.4.2000.
12	80-IB	Sub-sections (3) to (11)/ (11B)/ (11C)	Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings	Sunset clause – No deduction is allowable under any sub-section [except sub-section (11A)]. The sunset dates are different for different sub-sections.
13	143	Sub-section (1D)	Processing of return is not necessary where notice has been issued to the assessee u/s 143(2).	The provisions of this sub-section are not applicable to any return furnished for A.Y.2017-18 or thereafter.

S. No.	Section No.	Sub-section/Clause		Sunset Clauses
14	143	Sub-section (3A)/ (3B)/ (3C)/ (3D)	Scheme to be made by the Central Government for assessment of income u/s 143(3)/144 to impart greater efficiency, transparency and accountability; the provisions of the Act to apply with such exceptions, modifications and adaptations in the notification.	The provisions are not applicable for an assessment made u/s 143(3) or 144 on or after 1.4.2021.
15	245MA	Sub-section (4)	Power of Central Govt. to direct that the provisions of the Dispute Resolution Scheme shall apply with exceptions, modifications and adaptations as may be specified in the notification.	No such direction can be issued after 31.3.2023.
16	293D	Sub-section (2)	Power of Central Govt. to direct that the provisions of the Faceless approval or registration scheme shall apply with exceptions, modifications and adaptations as may be specified in the notification.	No such direction can be issued after 31.3.2022.

## 2.4 Obsolete Schedules

S. No.	Schedule	Schedule heading	Reason for Suggestion
1	THE FIFTH SCHEDULE (Section 33(1)(b)(B)(i))	LIST OF ARTICLES AND THINGS	Sunset clause
2	THE SIXTH SCHEDULE	-	Omitted by the Finance Act, 1972
3	THE EIGHTH SCHEDULE (Section 80-IA(2)(iv)(b))	LIST OF INDUSTRIALLY BACKWARD STATES AND UNION TERRITORIES	Sunset clause – The provisions of this section are not applicable since they are not in relation to the current section 80-IA.
4	THE NINTH SCHEDULE	-	Omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986
5	THE TENTH SCHEDULE (Section 3(5))	-	Omitted by the Finance Act, 1999, w.e.f. 1-4-2000.
6	THE ELEVENTH SCHEDULE	LIST OF ARTICLES OR THINGS (Section 32A, 32AB, 80CC(3)(a)(i), 80-I(2), 80J(4) & 88A(3)(a)(i))	Sunset Clause of respective sections
7	THE TWELFTH SCHEDULE (Section 80HHC(2)(b)(ii))	PROCESSED MINERALS AND ORES	Sunset clause – The provisions of this section are not applicable from A.Y.2005-06.



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8	THE THIRTEENTH SCHEDULE (Section 80-IB(4) & 80- IC(2))	LIST OF ARTICLES OR THINGS	Sunset clause of section 80-IB(4) and 80-IC.
9	THE FOURTEENTH SCHEDULE (Section 80- IC(2))	LIST OF ARTICLES OR THINGS OR OPERATIONS	Sunset clause of section 80-IC

<b>Categories 3 &amp; 4</b> <b>Suggestions for mitigating litigation and ensuring tax certainty and</b> <b>Suggestions for reducing compliance burden</b>	
<b>Preliminary Suggestions given by ICAI on 18.9.2024</b>	
<p>The comprehensive review process should also incorporate changes which would mitigate litigation, provide tax certainty, bring down the pendency of appeals and improve taxpayer compliance. Some suggestions in this regard are given below.</p>	
<b>(i)</b>	<b>Settled provisions of law not to be changed</b>  <p>The position in law in respect of many of the provisions of the present Income-tax Act in existence for the past six decades, have been critically examined by the judiciary and settled. These provisions for which the law is settled should not be changed merely as part of the process of undertaking a comprehensive review, else, the same would result in extensive litigation.</p>
<b>(ii)</b>	<b>Binding judgements of Courts to be followed by the Department</b>  <p>The binding judgements of Courts, need to be followed by the department, even if they are challenged by the Revenue at higher forums. That the Revenue has not “accepted” the judgment would not mean that till the same is set aside in a manner known to law, the same has lost its binding force, so as to proceed as if there is no such binding decision.</p> <p>Also, tax effect of appellate orders should be granted within a reasonable time when the orders are favorable to assessees, without the assessees having to follow up and file reminders to get their refunds processed.</p> <p>Time limits for granting refunds pursuant to an appeal effect order may be prescribed so that refunds are processed within the prescribed time frame. Alternatively, it is suggested to allow a set-off against advance tax or other tax payable by the assessee.</p>
<b>(iii)</b>	<b>Alignment of forms of audit report and return forms with the provisions of the Act</b>  <p>The forms of audit report prescribed under the different provisions of the Act (Tax audit, charitable trusts, transfer pricing etc.) and the return</p>

	forms (e-filing utility) should be in line with the provisions of the Act. Variances in the forms of audit report/return forms <i>vis-à-vis</i> the Act would lead to avoidable litigation.
<b>(iv)</b>	<b>Rationalisation of rates of tax for individuals/HUFs/ AOPs/BoIs and subsuming surcharge and cess in the rate of tax itself</b>
	<p>Though the rates of tax are progressive for individuals/HUFs/AOPs/BoIs, and have been further rationalized in the default tax regime under section 115BAC(1A), the highest rate of 30% is currently attracted on total income exceeding Rs.15 lakh. Further, surcharge@10% is attracted on total income exceeding Rs.50 lakh, @15% where total income exceeds Rs.1 crore and @25% where total income exceeds Rs.2 crore. Marginal relief is available where income exceeds these thresholds marginally. Also, there are separate rates of tax for long-term capital gains, short-term capital gains, casual income etc. Cess@4% is added to tax on total income and surcharge.</p> <p><b>The differential rates of tax and surcharge, incorporating marginal relief, where applicable makes the computation cumbersome. Also, high rates of tax and surcharge lead to tax avoidance and evasion; Moderate tax rates of tax encourage higher tax compliance.</b></p> <p>Accordingly, it is suggested that the <b>tax rates may be further rationalized and rates of surcharge and cess may be subsumed in the tax rate itself.</b> There should be no special rates of tax for any income. This will simplify the tax computation and moderate rates would encourage tax compliance.</p> <p>Rationalisation of rates of tax and surcharge is an important step for reducing litigation and enhancing taxpayer compliance.</p>
<b>(v)</b>	<b>TDS/TCS rates to be aligned with the objective of serving as an audit trail</b>
	<p>The Finance (No.2) Act, 2024 has reduced the rates of TDS under section 194-DA, 194G, 194H, 194-IB and 194M to 2% w.e.f. 1<sup>st</sup> October, 2024 to improve ease of doing business and better compliance by tax payers. This is in line with the intent of TDS provisions serving as an audit trail rather than a revenue garnering measure.</p> <p>In line with this intent, TDS rates under all provisions may be pegged at maximum of 2%. This will increase the working capital available and</p>

	<p>minimize the possibility of disputes arising from the incorrect application of rates.</p> <p>The rates of TCS under section 206C(1G) on the remittance of funds outside India are 5% and 20%, depending on the amount and purpose of remittance. The concessional rate of 0.5% is only where an amount in excess of Rs.7 lakh being remitted out is a loan from a financial institution for educational purpose. If the source is own funds remitted out for educational purpose, the rate would be 5% for amount in excess of Rs.7 lakh. For other than medical and educational purposes, the rate is 20% for remittance in excess of Rs.7 lakh. For overseas tour package, the rate of TCS is 5% upto Rs.7 lakh and 20% thereafter. The rates are high, particularly considering that such transactions are purely for tracking purposes.</p> <p>The TCS rates of 5% and 20% under section 206C(1G) be rationalized and reduced to 2%.</p> <p>Rationalisation of TDS/TCS rates will improve compliance and minimize litigation.</p>
<b>(vi)</b>	<b>Removal of applicability of TDS u/s 194Q and TCS u/s 206C(1H)</b>
	<p>TDS@0.1% u/s 194Q of sum exceeding Rs.50 lakhs payable/paid to a resident for purchase of goods and TCS@0.1% u/s 206C(1H) of sum exceeding Rs.50 lakhs received from a resident for sale of goods, introduced to bring unaccounted purchase/sale transactions within the tax net may be removed, since GST returns would serve the purpose of audit trail. This would also reduce the compliance burden on such buyers/sellers and facilitate ease of doing business.</p>
<b>(vii)</b>	<b>Processing return of income involving verification of only arithmetical accuracy</b>
	<p>Section 143(1)(a) provides the adjustments which can be made while processing the return of income of an assessee.</p> <p>The adjustments listed out in sub-clauses (i) to (v) of section 143(1)(a) are prima facie adjustments which are to be made in the course of computerised processing without any human interface. In other words, the software is designed to detect arithmetical inaccuracies and incorrect claims apparent from any information in the return and make appropriate adjustments in the computation of the total income.</p>

	<p>However, in many cases, the adjustments made u/s 143(1)(a) go beyond the sub-clauses (i) to (v) listed therein.</p> <p>It is suggested that section 143(1)(a) should be amended to require processing of the return after verifying purely arithmetical accuracy, and the refund should be processed based on tax return filed. The time line for processing of refund to be maximum 15 days. The software should only check mathematical calculations. There should not be denial of claims or adjustments because of mismatch etc.</p>
<b>(viii)</b>	<b>Uniform rate for interest payable and on refunds</b>
	<p>Interest is levied u/s 220(2) @1% every month or part of month, if the amount specified in the notice of demand under section 156 is not paid within 30 days of the service of notice. Interest is levied at the same rate of 1% per month or part of month u/s 234C for deferment of advance tax on the amount of shortfall.</p> <p>It may be noted that, however, interest on refund is calculated @½% for every month or part of month u/s 244A.</p> <p>It is suggested that there be a uniform rate for interest payable and interest on refunds u/s 244.</p>
<b>(ix)</b>	<b>Some measures for addressing issue of pendency of appeals</b>
	<p>Last year, a new authority for appeals, namely, Joint Commissioner (Appeals) was created to handle certain class of cases involving small amount of disputed demand, since huge number of appeals were pending before the Commissioner (Appeals). High interest liability and the probable levy of penalty and initiation of prosecution are some of the main reasons for filing of appeals and continuation of litigation by the assessee.</p> <p>Section 220(2A) gives discretionary power to the Principal Chief Commissioner/ Chief Commissioner/Principal Commissioner/ Commissioner to reduce waive interest u/s 220(2) leviable for non-payment of amount specified in the notice of demand within the period of 30 days or the extended period, if payment of such sum would cause genuine hardship to the assessee, the default was due to circumstances beyond his control and the assessee has co-operated in the inquiry/proceedings. Accordingly, such powers are discretionary and can</p>

	<p>be exercised by the authorities only in the above specified circumstances.</p> <p>Section 270AA enables the assessee to make an application to the Assessing Officer to grant immunity from imposition of penalty u/s 270A and initiation of proceedings u/s 276C/276CC, if he pays tax and interest payable as per the assessment order within the period specified in the notice of demand and no appeal against the assessment order has been filed.</p> <p>For making an application for availing benefit of immunity, the assessee has to forego filing appeal against all additions made in assessment order, even though the assessee may desire to seek immunity from penalty/prosecution only in respect of certain additions and go for appeal in respect of other additions. This requirement in section 270AA discourages assessee from filing an application for immunity u/s 270AA and instead, file an appeal against all the additions to avoid the levy of interest and penalty.</p> <p>Therefore, in order to reduce appeals, section 270AA may be amended to permit the assessee to apply for immunity from penalty/prosecution in respect of select additions by paying the tax and interest in respect thereof and allow him to file an appeal in respect of the other additions.</p> <p>Also, no penalty may be levied on matters which are debatable involving substantial question of law. It is suggested that levy of penalty should be restricted to specific instances of non-compliance and should always be by higher authorities of the rank of Joint Commissioner and above (other than the authority who passed the order).</p> <p>These measures will help in addressing the issue of pendency of appeals.</p>
<b>(x)</b>	<b>Mandatory time limit for disposal of appeals</b>
	<p>Section 250(6A) provides that in every appeal, the Joint Commissioner (Appeals) or the Commissioner (Appeals), <b>where it is possible, may</b> hear and decide such appeal within <b>one year</b> from the end of the financial year in which such appeal is filed before him.</p> <p>Though time limit has been provided for disposal of appeals, the use of the words "where it is possible, may" indicates that the same are not mandatory. The absence of mandatory provision prescribing a definite</p>

	<p>timeline results in prolonged litigation, causing genuine hardship to taxpayers.</p> <p>There is a huge pendency of appeals before Commissioner (Appeals) for over years. A large number of the appeals in the recent years pertain to inaccurate processing of income-tax returns by the CPC. The introduction of the authority of Joint Commissioner (Appeals) by the Finance Act, 2023 and the E-appeals Scheme 2023 are steps to reduce the pendency of appeals before Commissioner (Appeals).</p> <p>In addition, it is suggested that the timeline of one year from the end of the financial year of filing of appeal be mandated under section 250(6A) to ensure speedy disposal of appeals.</p>
<b>(xi)</b>	<b>Definite limitation period for initiating reassessment proceedings</b>
	<p>The amendments to the limitation period for initiating reassessment proceedings under section 148 over the years have led to significant litigation, and filing of writ petitions before High Courts. While reducing the time period is a welcome move, it often results in immediate pressure on the officers to issue reassessment notices for past years, considering the possibility of potential escapement of income. This creates a pressing situation for taxpayers, tax officers, and the judiciary.</p> <p>To mitigate hardship to genuine taxpayers and reduce litigation, it is suggested that the a stable and decisive period of limitation for reassessment proceedings be prescribed and frequent changes to the same be avoided.</p>
<b>(xii)</b>	<b>Periodic Review of disposal of cases by Assessing Officers</b>
	<p>While the time granted for carrying out the assessment is one year from the end of the relevant assessment year and for transfer pricing cases, it is extended by another one year, however, majority of the cases are disposed of towards the end of the period. Assessing Officers often reach out to taxpayer often at the fag end of assessment, asking for voluminous nature of information and details, reconciliation etc. Also, due to the time constraint, the submissions filed by the tax-payers at this point of time are not considered leading to huge amounts of additions for tax payers.</p> <p>There should be periodic review of statistics relating to case disposal of each Assessing Officer to avoid such a situation.</p>

<b>(xiii)</b>	<b>Taxation of actual income and not deemed income</b>
	<p>The best and the most simple tax law is one which is based on real income rather than on notional or deemed income. Only when actual income cannot be determined, it can be substituted with deemed income.</p> <p>Likewise, deeming cash credits, unexplained investments/ money/ expenditure etc. as income under sections 68 to 69D by the Assessing Officer by exercising his discretionary powers would cause genuine hardship to assessees, since such income is taxable@78%.</p> <p>Accordingly, it is suggested that tax be levied on actual income and not deemed income.</p>
<b>(xiv)</b>	<b>Time limit for passing an order under section 201 be aligned with the time limit for completion of assessment</b>
	<p>An assessment is carried out by the Assessing Officer u/s 143(3) or 147, as the case may be, whereas order deeming a person as an assessee in default is passed by jurisdictional TDS officer under section 201.</p> <p>Non-deduction of TDS leads to initiation of TDS proceedings under section 201. It is often seen that while the TDS proceedings are still ongoing, the information is also shared with the Assessing Officer to carry out the assessment / reassessment to make the disallowance of expenses under section 40(a)(i) or 40(a)(ia) for non-deduction of tax at source. This is done inspite of the TDS proceedings being in progress and not concluded.</p> <p>While the assessment needs to be concluded within a year, TDS proceedings often continue thereafter. This leads to the situation where addition is made under section 40(a)(i) or 40(a)(ia) during assessment while TDS proceedings may be eventually dropped or may still continue, opening avenues for litigation by the assesseees.</p> <p>To address this concern, the timeline for completing the TDS proceedings be further curtailed and aligned with the timelines for assessment.</p>
<b>(xv)</b>	<b>Simplification of TDS return filing and claim of TDS credit</b>
	<p>TDS credit should be allowed solely on the basis of Form No. 26AS and procedural requirements for issuance of TDS certificates (Form No. 16 / 16A) should be dispensed with.</p>

	E-challan for remittance of TDS be designed to capture all necessary details at the time of payment. This would allow for direct reflection of these details in Form No. 26AS of the deductees, serving as an alternative return system and reducing administrative difficulties.
<b>(xvi)</b>	<b>Handling of assessee's responses/ feedback to AIS transactions</b>
	The responses/feedback submitted by the assessee concerning discrepancies in the AIS transactions be promptly reviewed. Any mismatch or inconsistency highlighted by the assessee be communicated promptly to the source of the information (e.g., banks, financial institutions). The department may ensure that such matters are resolved at the earliest, minimising delays and reducing undue burden on taxpayers. This would promote transparency and efficiency.
<b>(xvii)</b>	<b>Effective grievance redressal mechanism</b>
	<p>Track the status of grievances raised on the Income-tax Portal poses a challenge for many taxpayers. Many grievances are marked as "resolved" without any reasonable solution, and often, automated or generic replies are given, leaving taxpayers to repeatedly follow up without any meaningful resolution. This difficulty may be attributed to the lack of designated officers responsible for tracking and resolving these grievances.</p> <p>To address this concern, it is suggested to appoint designated officers, working directly under the supervision of the Principal Commissioner or Principal Chief Commissioner of Income-tax, who would be accountable for the grievances being followed up by the taxpayers. This will help ensure that grievances are addressed appropriately and will reduce instances where grievances are closed without satisfactory resolution, merely to show timely responses.</p>
<b>(xviii)</b>	<b>Permitting responses/documents to be submitted in vernacular languages</b>
	Currently, taxpayers are required to submit their responses, documents and records to the tax department in English or Hindi. This creates challenges for taxpayers who do not know these languages. To ease the compliance burden, it is suggested that taxpayers be permitted to submit their responses, grievances, documents in local/vernacular languages as well.

	The department could establish a system for translating these responses/documents into English or Hindi at their end using technology or in-house translation services. This would ease the compliance burden on taxpayers, particularly those from rural areas or those who are not proficient in English or Hindi.
<b>(xix)</b>	<b>Social Security Benefits to taxpayers</b>
	<p>In developed nations, there is a concept of social security to help citizens tide over monetary issues at an advanced age. A similar concept can be implemented in India as well for tax payers. For instance, a very small percentage, say 2% to 5%, of taxes paid by each tax payer can be invested in the form of annuities in his/her name till the tax payer attains the age of 60. Though the suggestion is only relevant for individuals, it would help encourage them to start paying taxes from an early age. Once the tax payer attains the age of sixty, he/she would receive the accumulated amount as a form of social security or pension.</p> <p>This scheme would provide financial support to taxpayers post retirement, create a sense of belonging, and demonstrate the government's recognition of their contribution to nation-building. It would also promote taxpayer compliance.</p>

**The above Preliminary suggestions have been submitted by ICAI on 18<sup>th</sup> September, 2024. The specific section-wise/rule-wise suggestions in Category III and IV are detailed below -**

### **Category 3**

#### **Suggestions for mitigating litigation and ensuring tax certainty**

### **3.1 Sections 44AD & 44ADA – Special provisions for computation of profits and gains of eligible assessee engaged in eligible business and profession referred to in section 44AA(1) – Provisions of section 44ADA to be aligned with the provisions of section 44AD**

#### **Provision of Law**

As per section 44AB, the following persons have to get their books of account audited by an accountant –

- (a) every person, carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year (ten crore in cases where the aggregate receipts and aggregate payments during the previous year in cash does not exceed 5% of such receipts/payments, respectively).
- (b) Every person carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year
- (c) Every person carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or
- (d) Every person carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or
- (e) Every person carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting

forth such particulars as may be prescribed.

Section 44AD provides that, in case of an eligible assessee carrying on eligible business, a sum equal to 8%, or as the case may be, 6% of total turnover/gross receipts of the assessee in the previous year on account of such business or a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee, shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

Section 44ADA applies in case of an assessee, being an individual or a partnership firm other than a limited liability partnership who is a resident in India, and is engaged in a profession referred to section 44AA(1) and whose total gross receipts do not exceed fifty lakh rupees in a previous year. As per section 44ADA(1), in case of such notified professionals, a sum equal to fifty per cent of the total gross receipts of the assessee in the previous year on account of such profession or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the assessee, shall be deemed to be the profits and gains of such profession chargeable to tax under the head Profits and gains of business or profession.

**Sub-sections (4) and (5) of section 44AD read as follows –**

(4) Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).

(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee to whom the provisions of sub-section (4) are applicable and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

**Sub-section (4) of section 44ADA reads as follows -**

(4) Notwithstanding anything contained in the foregoing provisions of this section, an assessee who claims that his profits and gains from the profession are lower than the profits and gains specified in sub-section (1)

and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (1) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

### **Issue**

Section 44ADA(4) requires notified professionals desiring to declare income lower than the presumptive income to maintain books of account and get them audited under section 44AB. This is not in alignment with the requirement of audit of accounts in clause (b) of section 44AB only for those professionals whose gross receipts in profession exceed Rs.50 lakhs.

In this context, it may be noted that section 44AD, which deals with presumptive taxation for eligible assessee engaged in eligible businesses, does not contain a provision akin to section 44ADA(4). Such assessee who do not opt for section 44AD at any point of time will have to get their books of account audited only if their turnover exceeds Rs.1 crore or Rs.10 crore, as the case may be.

### **Suggestion**

*It is suggested that the provisions of section 44ADA be aligned with that of section 44AD.*

### **3.2 Section 2(42A) - Period of holding of capital assets – Corresponding amendment required in proviso to section 50B(1) and clarification required in relation to period of holding of unlisted shares “offered for sale” to the public included in an IPO**

Section 2(42A) was amended by the Finance (No.2) Act, 2024, to provide a holding period of “not more than 12 months” for all listed securities and “not more than 24 months” for all other assets. In effect, listed securities held for more than 12 months, and other assets held for more than 24 months would be long-term capital assets.

#### **Issues**

##### **(i) Consequential amendment required in section 50B**

Section 50B contains the special provisions for computation of capital gain in case of slump sale. The proviso to section 50B(1) provides that transfer under a slump sale of an undertaking held for “not more than 36 months” would be deemed to be capital gains from transfer of a short-term capital asset. Consequential amendment is required in the proviso to section 50B(1) to reduce the period of holding of the undertaking to “not more than 24 months” in line with section 2(42A) for deeming the transfer under the slump sale to be capital gains from transfer of a short-term capital asset.

##### **(ii) Period of holding of unlisted shares offered for sale to the public included in an IPO**

Section 55(2) provides for the meaning of “cost of acquisition” for the purposes of section 48 and 49. Clause (ac) thereof provides, in relation to a long-term capital asset being an equity share in a company or unit of an equity-oriented fund or a unit of a business trust referred to in section 112A, acquired before 1.2.2018, the cost of acquisition shall be higher of –

- (i) the cost of acquisition of such asset; and
- (ii) lower of –
  - (A) the fair market value (FMV) of such asset; and
  - (B) the full value of consideration received or accruing as a result of the transfer of the capital asset.

Item (AA) has been inserted and deemed to have been inserted w.e.f. 1.4.2018 by the Finance (No.2) Act, 2024 in sub-clause (iii) of clause (a) of the Explanation to section 55(2)(ac) to provide for the FMV of

a capital asset, being an equity share in a company which is not listed on a recognised stock exchange as on 31.1.2018 but listed on such exchange subsequent to the date of transfer.

Since the shares are unlisted at the point of time of transfer, it is not clear whether the holding period for being treated as a long-term capital asset would be "more than 24 months" instead of "more than 12 months", being the holding period for assets referred to in section 112A.

### **Suggestions**

*It is suggested that –*

- (i) consequential amendment is required in the proviso to section 50B(1) relating to slump sale to reduce the period of holding of the undertaking to "not more than 24 months" in line with section 2(42A) for the same to be treated as capital gains on transfer of a short-term capital asset.*
- (ii) the minimum period of holding of unlisted equity shares which are "offered for sale" to the public included in an IPO, for being treated as a long-term capital asset, may be clarified.*

### **3.3 Section 56(2)(x) - Definition of "relative" – Definition of "relative" to be amended and this definition and other expressions to be incorporated in clause (x) of section 56(2) itself & Clause (vii) of section 56(2) to be removed**

#### **Provisions of law**

Under the existing provisions of section 56(2)(x), any sum or property received by any person without consideration or for inadequate consideration is deemed as income and is taxed under the head 'Income from other sources'. However, this clause would not apply to any sum of money or property received by an individual or HUF from a relative defined in clause (e) of Explanation to section 56(2)(vii).

As per clause (e) of Explanation to section 56(2)(vii), "relative" means –

- (i) in case of an individual –
  - (A) spouse of the individual;
  - (B) brother or sister of the individual;
  - (C) brother or sister of the spouse of the individual;
  - (D) brother or sister of either of the parents of the individual;
  - (E) any lineal ascendant or descendant of the individual;
  - (F) any lineal ascendant or descendant of the spouse of the individual;
  - (G) spouse of the person referred to in items (B) to (F).
- (ii) in case of a Hindu undivided family, any member thereof.

#### **Issues**

- (i) It may be noted that, in relation to an "individual", the term relative, as it stands at present includes brother or sister of either parents of the individual but does not include children of brother or sister of the individual himself or spouse of individual. Also, maternal grandparents are not included in the meaning of lineal ascendant or descendant of the individual. This may not be the legislative intent.

Further, in the case of HUF, relative means a member thereof. However, relatives of members are not included in the said definition.

- (ii) As per clause (a) of *Explanation* to section 56(2)(x), the expressions "assessable", "fair market value", "jewellery", "relative", "stamp duty value" have the meanings assigned to them in clause (vii) of section 56(2). Clause (vii) of section 56(2) is not relevant since A.Y.2017-18.

Therefore, these terms may be defined in section 56(2)(x) itself and clause (vii) be removed.

- (iii) Likewise, as per clause (b) of Explanation to section 56(2)(x), the expression property shall have the same meaning as assigned to it in clause (d) of Explanation to clause (vii) and shall include virtual digital asset. Clause (vii) of section 56(2) is not relevant since A.Y.2017-18. Therefore, the expression "property" may be defined in clause (x) itself, by including "virtual digital asset" as item (x) after bullion. This will ensure that virtual digital asset, which is a capital asset is included in the definition of property.

### **Suggestions**

*It is suggested that –*

- (i) *Lineal descendants of brothers and sisters of self and spouse may also be included in the definition of "relative" in line with Clause (vii) of Explanation 1 to section 13. Also, maternal grandparents may be included in the definition of "relative".*
- (ii) *The terms "assessable", "fair market value", "jewellery", "relative", "stamp duty value" and "virtual digital asset" be defined in clause (x) of section 56(2).*
- (iii) *Clause (vii) of section 56(2) may be removed.*

### **3.4 Section 2 of the Finance (No.2) Act, 2024 read with the First Schedule thereto – 30% rate of tax for Firms/LLPs – Need for reduction to 25% in alignment with the rate applicable for domestic companies**

#### **Provision of Law**

As per paragraph C of Part III of the First Schedule to the Finance (No.2) Act, 2024, the rate of income-tax applicable to a firm/LLP is 30%.

#### **Issue**

Firms/LLPs are taxed at a higher rate of 30% (if the taxable income of the partnership firm exceeds one crore rupees, a surcharge of 12% is applicable in addition to the income tax) compared to corporate entities that avail the benefit of a concessional tax rate of 25% (in P.Y.2024-25, if their turnover in the P.Y. 2022-23 does not exceed Rs.400 crore) plus surcharge@7%, if the total income exceeds Rs.1 crore but does not exceed Rs.10 crore; and @12%, if the total income exceeds Rs.10 crore.

Many businesses choose the Firm/LLP model for their flexibility in structure and ease of formation. However, the higher tax rate disincentivizes this choice.

#### **Suggestion**

*It is suggested that the tax rate for Firms/LLPs be reduced to 25%, aligning with the corporate tax structure.*

### **3.5 Concept of mutuality – Statutory provision incorporating the concept of Mutuality to be inserted in the Income-tax Act, 1961, to reduce litigation**

#### **Provisions of Law**

Under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund for financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. To be exempt on this basis, there must be complete identity between the contributors and the participants. This exemption is based on the general principle of mutuality and there are no specific statutory provisions conferring such exemption.

The Income-tax Act, 1961 provides for assessment of income of a mutual concern in the following circumstances alone –

- (1) Where the mutual concern is a mutual insurance society and the income is derived from carrying on any business of insurance (Section 44 provides that profits and gains of any such business of insurance shall be computed according to the method prescribed in the First Schedule to the Income-tax Act, 1961)
- (2) Where the mutual concern is a trade, professional or similar association and the income in question is derived from specific service performed for its members [Surplus arising from specific services rendered to members by mutual trade, professional or similar association is business income chargeable to tax by virtue of section 2(24)(v) read with section 28(iii)]

In case of a mutual concern being a trade, professional or similar association, section 28(iii) brings to tax surplus from specific services rendered to members. It follows that any other income by way of entrance fees, members' periodic subscriptions would be outside the scope of section 28(iii) and would be exempt based on the general principles of mutuality.

#### **Issue**

Since the exemption on account of mutuality is not expressly provided through any provision of the Income-tax Act, 1961, the same is a subject matter of extensive litigation, as co-operative societies and other mutual concerns face challenges in proving their eligibility for tax exemption. In the absence of a statutory provision, Assessing Officers compute the income of

these societies/mutual concerns ignoring the principle of mutuality, resulting in undue tax demands and prolonged litigation.

**Suggestion**

*It is suggested that the Income-tax Act, 1961 should explicitly incorporate provisions containing the concept of mutuality. A statutory provision would remove ambiguity and provide clarity on the method of determining the exemption and taxability of income of mutual concerns/societies.*

### 3.6 Section(s) 139(8A) & 140B - Provisions for filing of updated return – Certain concerns to be addressed

#### (a) **Enabling provision for reporting reduction in losses in their Updated return**

##### **Provision of Law**

The first proviso to section 139(8A) provides that the provisions of section 139(8A) enabling filing of updated return will not apply if the updated return is a return of a loss or has the effect of decreasing the total tax liability determined on the basis of return furnished under section 139(1)/(4)/(5) or results in refund or increases the refund due on the basis of return furnished under section 139(1)/(4)/(5), of such person under the Act for the relevant assessment year.

##### **Issue**

The first proviso to section 139(8A) inadvertently misses a situation wherein a person would like to report reduction in losses. Reduction in losses is akin to increase in income and accordingly, should come under the purview of the said provisions. Accordingly, the relevant provisions need to be amended to provide for such a situation wherein an assessee voluntarily wishes to file the updated return and report reduction in losses.

##### **Suggestion**

*It is suggested that provisions of section 139(8A) be suitably amended so as to provide for a situation wherein assessee desiring to file updated returns to report reduction in losses be permitted to do so.*

#### (b) **Need to relax certain eligible conditions/exclusions for filing updated returns like assessment proceedings**

##### **Provision of Law**

Clause (b) of the third proviso to section 139(8A) provides that no updated return shall be furnished by any person for the relevant assessment year, where any proceeding for assessment or reassessment or re-computation or revision of income under the Act is pending or has been completed for the relevant assessment year in his case.

##### **Issue**

Here, there is a case of relaxing this condition i.e. updated return may be

permitted in cases where assessment proceedings have been completed and where assessment proceedings are pending, updated return may continue to be non-permitted. In cases where assessment proceedings are completed, it is clear that concerned taxpayer is coming forward on a voluntary basis as such incomes have not been caught in the assessment proceedings completed. This is also one of the objectives behind introduction of provisions of updated returns.

**Suggestion**

*It is suggested that the condition in section 139(8A) pertaining to making assessee ineligible to file updated return in cases where any proceeding for assessment or reassessment or re-computation or revision of income under the Act is pending or has been completed for the relevant assessment year in his case may be suitably relaxed and accordingly allow filing of updated returns wherein assessment proceedings have been completed.*

### **3.7 Section 143(1)(a) – Prima facie adjustments to the total income – To be restricted to adjustments to verify arithmetical accuracy**

#### **Provisions of law**

Section 143(1)(a) reads as follows -

Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

(a) the total income or loss shall be computed after making the following adjustments, namely:—

- (i) any arithmetical error in the return;
- (ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;
- (iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;
- (iv) disallowance of expenditure or increase in income indicated in the audit report but not taken into account in computing the total income in the return;
- (v) disallowance of deduction claimed under section 10AA or under any of the provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes", if the return is furnished beyond the due date specified under sub-section (1) of section 139; or
- (vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

However, no adjustment shall be made under sub-clause (vi) in relation to a return furnished from A.Y.2018-19.

#### **Issue**

The automatic disallowance of genuine claims during the initial processing stage, often without proper verification, leads to unintended consequences, including increased litigation and taxpayer grievances.

#### **Suggestion**

*Section 143(1)(a) be specifically limited to addressing only arithmetical errors and prima facie incorrect claims. By restricting the scope of adjustments to clear mathematical inconsistencies and manifest errors, the possibility of disallowing legitimate exemptions and deductions can be significantly reduced.*

### **3.8 Section 143(1)(a) – Prima facie adjustments to the total income – Consideration of payments made after the due date of filing Audit Report under section 44AB up to the due date of filing return of income (ITR) while processing return of income u/s 143(1)(a)**

#### **Provisions of law**

The specified date for filing the tax audit report under section 44AB is one month prior to the due date for filing the income tax return u/s 139(1).

As per section 40(a)(ia), in case of payments made to resident, the deductor is allowed to claim deduction for payments as expenditure, if tax is deducted during the previous year and the same is paid on or before the due date specified for filing of return of income under section 139(1).

#### **Issue**

Since the audit report under section 44AB is required to be filed one month prior of filing income tax return, there are instances where payments are made after the filing of the audit report but before the due date of filing income tax return.

This creates a situation, where, at the time of filing the audit report, such payments are reflected as unpaid, they are subsequently paid before the due date for filing the income tax return.

When the return is processed under section 143(1), disallowances are automatically made on the basis of information in audit report, even though they are subsequently paid on or before the due date under section 139(1).

#### **Suggestion**

*It is suggested that section 143(1)(a) should be amended to process the return of income based on verifying purely arithmetical accuracy and prima facie incorrect claims.*

*Alternatively, it is suggested that the income-tax utility be suitably modified to automatically consider the payments made between the date of filing of the audit report under section 44AB and the income tax return when processing the intimation under Section 143(1).*

*Also, automatic population of relevant fields in the ITR using information from previous returns, audit report, TDS data, or other validated sources would ensure accuracy and simplify form completion, reducing the potential for manual errors and duplication.*

### **3.9 Section 148A - Procedure before issuance of notice under section 148 – Threshold limit for issuance of notice under section 148 and requirement for the Assessing Officer to satisfy himself of the credibility of the information suggesting that income chargeable to tax has escaped assessment**

#### **Provision of law**

Section 148A requires the Assessing Officer to follow a preliminary procedure before issuing a notice under section 148. The Assessing Officer must serve a notice to the assessee, providing an opportunity to explain why a notice under section 148 should not be issued. This notice to show cause should be accompanied by the information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year. After reviewing the assessee's response and available information, the Assessing Officer, with prior approval from the specified authority, will decide whether it is appropriate to issue a notice under section 148.

#### **Issue**

The provisions for re-opening assessments under section 148A were introduced to ensure transparency and fairness in income reassessment. However, re-opening assessments for smaller amounts has placed a significant compliance burden on both taxpayers and the administration. The process can lead to unnecessary litigation and increased operational workload on the tax department, especially in cases where the reassessment amount is minimal.

#### **Suggestion**

*It is suggested that a threshold limit be fixed for re-opening assessments. Cases involving amounts below Rs. 10 lakhs may not be subject to re-opening u/s 149(1)(a). Setting such a threshold would reduce the administrative burden on the Department and the compliance burden on taxpayers, allowing resources to focus on higher-value cases and minimizing unwarranted re-openings in cases with minimal tax impact.*

*Additionally, the Assessing Officer should satisfy himself about the credibility and relevance of the information which suggests that income chargeable to tax has escaped assessment.*

**3.10 Section 158B(b) – Definition of Undisclosed Income – To exclude “any expense, deduction or allowance claimed under the Act which is found to be incorrect” therefrom, since the same is not consequent to search or requisition**

**Provisions of Law**

The Finance (No.2) Act, 2024 has reintroduced the block assessment in case of search initiated or requisition made on or after 1st September 2024, by substitution of new Chapter for Chapter XIV-B with effect from 1<sup>st</sup> September, 2024.

As per clause (b) of section 158B, “Undisclosed income” includes any money, bullion, jewellery or other valuable article or thing or any expenditure or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act, or any expense, deduction or allowance claimed under this Act which is found to be incorrect, in respect of the block period.

Tax would be levied@60% on such undisclosed income.

**Issue**

The definition of “undisclosed income” should include such components which can be backed by incriminating material found in the course of search. However, the scope of definition in section 158B(b) is too wide and includes expenses, deduction or allowance claimed under the Act which is now found to be incorrect. These expenses, deduction etc. would have been allowed in the assessment u/s 143(3). They are not unearthed as a result of search or requisition. Bringing such expenses now within the scope of “undisclosed income” under block assessment would give rise to a spate of litigation.

**Suggestion**

*It is suggested that the last portion of clause (b) of section 158B, namely, “or any expense, deduction or allowance claimed under this Act which is found to be incorrect” be removed from the definition of “undisclosed income”, since the same is not consequent to search or requisition and can give rise to avoidable litigation.*

### **3.11 Section 194LC - Income by way of interest from Indian Company – Modification in language of law in section 194LC(2)(ii) to convey the true intent**

#### **Provision of Law**

Section 194LC provides that the interest income payable by a specified company or a business trust to a non-resident shall be subjected to tax deduction at source at the rate of 5%. Section 115A provides that such income will be taxed at the rate of 5%.

Section 194LC(2)(ii) provides that for the purpose of deduction of tax at source at the rate of 5%, the interest payable by a specified company or a business trust to a non-resident, not being a company or a foreign company, shall be the income payable by the specified company or a business trust **to the extent to which 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.

#### **Issue**

It is imperative to note that the phrase “To the extent to which such interest does not exceed” may be interpreted to mean that in case the borrowings are made at a rate higher than the rate approved by the Central Government, the excess interest income (over and above the interest calculated at the approved rate) will be subject to tax at the rate of 20%. As per the Explanatory Memorandum to the Finance Bill, 2012, this amendment was made in order to augment long-term low-cost funds from abroad. It is felt that such wording may be inadvertent and hence, needs to be reworded.

#### **Suggestion**

*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 or business trust "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".*

### **3.12 Section 194R - Guidelines for deduction of tax on benefit or perquisite in respect of business or profession - Relief from penal consequences arising due to scope for different interpretation - Need for clarity in guidelines**

#### **Provisions of law**

As per section 194R, any person responsible for providing to a resident, any benefit or perquisite, arising from business or the profession, shall, before providing such benefit or perquisite, ensure that tax has been deducted in respect of such benefit or perquisite at the rate of ten per cent of the value or aggregate of value of such benefit or perquisite.

Further, no tax is required to be deducted, if the value or aggregate of value of the benefit or perquisite provided or likely to be provided to such resident during the financial year does not exceed twenty thousand rupees.

Despite the two clarificatory circulars issued immediately after the introduction of section 194R, i.e., Circular No. 12/2022 and Circular No. 18/2022 for providing guidelines for removal of difficulties under sub-section (2) of section 194R, this provision remains challenging for taxpayers to comply with, leading to potential inadvertent non-compliance. The ambiguity in its interpretation, combined with the inherent complexity, poses difficulty for taxpayers and results in unintended penal consequences. This provision, if not simplified, may lead to increased litigation and hardship for businesses.

#### **Suggestion**

*It is suggested to simplify the guidelines so that they are clear, unambiguous and leave no scope for different interpretation; so as to facilitate ease of compliance. Additionally, we suggest introducing a mechanism for taxpayers to rectify genuine mistakes caused on account of different possible interpretations without attracting penal consequences including prosecution.*

### **3.13 Section 200 read with Rule 31A/ Section 285BA(2) read with Rule 114E(5) – Due date for furnishing statement of TDS for quarter ended 31<sup>st</sup> March and due date for furnishing statement of financial transaction for the financial year – Need for advancing the due date from 31<sup>st</sup> May to 15<sup>th</sup> May**

The due date for filing the income-tax return for non-corporates and non-audit assessee is 31<sup>st</sup> July of the assessment year. Taxpayers rely on the updated information in Form 26AS for filing the return. This is available only after mid-June, since the due date for filing the statement of TDS for the quarter ended 31<sup>st</sup> March is 31<sup>st</sup> May as per Rule 31A. Therefore, taxpayers are left with a short window to verify and reconcile their TDS details before filing their income tax return.

Also, the statement of financial transaction required to be furnished under sub-section section 285BA(1) of the Act shall be furnished in respect of a financial year in Form No. 61A on or before the 31<sup>st</sup> May, immediately following the financial year in which the transaction is registered or recorded as per Rule 114E(5).

The information available in this statement is also relied upon by taxpayers for filing return

#### **Suggestion**

*It is suggested that the due date for filing the Q4 TDS return be advanced from 31<sup>st</sup> May to 15<sup>th</sup> May. This adjustment will ensure that Form 26AS is updated earlier, allowing non-corporate, non-audit taxpayers sufficient time to reconcile their TDS details and file their returns within the statutory due date of 31<sup>st</sup> July.*

*Also, the due date for furnishing the Statement of Financial Transactions (SFT) also be advanced to 15<sup>th</sup> May to ensure that information on financial transactions is reflected in Form 26AS in a timely manner, thus, aiding taxpayers in accurately reporting such details in their returns.*

**(This is also a suggestion for reducing compliance burden)**

### **3.14 Section 245 – Set-off and withholding of refunds in certain cases – Opportunity of being heard to be given to the person of the action proposed to be undertaken**

#### **Provision of Law**

As per section 245(1), where under any of the provisions of this Act, a refund becomes due or is found to be due to any person, the Assessing Officer or Commissioner or Principal Commissioner or Chief Commissioner or Principal Chief Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against the sum, if any, remaining payable under this Act by the person to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this sub-section.

Section 245(2) provides that where a part of the refund is set off under the provisions of section 245(1), or where no such amount is set off, and refund becomes due to a person, and the Assessing Officer, having regard to the fact that proceedings for assessment or reassessment are pending in the case of such person, is of the opinion that the grant of refund is likely to adversely affect the revenue, he may, for reasons to be recorded in writing and with the previous approval of the Principal Commissioner or the Commissioner, as the case may be, withhold the refund up to the date on which such assessment or reassessment is made.

#### **Issue**

There are cases where the demand for an earlier year was not accepted by the person who filed for a rectification application under section 154. In a subsequent year, he has a refund. However, instead of getting a refund, he gets an intimation u/s 245 that the same has been adjusted against the demand for the earlier previous year. The person has to submit a response to the intimation under section 245 within 30 days of receiving it. When he does not respond to the intimation within 30 days, outstanding demand will be considered for adjustment against his refund after considering interest on demand. Though the assessee has the option to disagree with the demand, it causes genuine hardship to him. If he misses submitting the response within 30 days, the refund will be adjusted against the outstanding demand. There are cases where the refunds for subsequent years are being adjusted against such non existing demand even after submitting response to intimation under section 245 within 30 days not to adjust against such non-existing demand.

Also, in some cases, where the assessee had preferred Vivad se Viswas

Scheme and had paid the entire amount as demanded under the said scheme and Form 5 being Order for full and final settlement has already been issued by the Principal CIT, yet the non-existing demand has not been removed/deleted/ rectified from the Portal. In such cases also, the refunds for subsequent years are being adjusted against such non existing demand even after submitting response to intimation under section 245 within 30 days not to adjust against such non-existing demand.

**Suggestion**

*In order to address the concerns, it is suggested that suitable mechanism be in place to address the concern of refunds being set-off against non-existing demands. Further, the order under section 245 may be made appealable to Appellate Tribunal.*

### **3.15 Section 269ST & 271DA – Mode of undertaking transactions & levy of penalty on receipt of any sum in contravention of the provisions of section 269ST- Uniform expression be used in sections 269ST and 271DA**

#### **Provision of Law**

Section 269ST is on the mode of undertaking transactions. The section requires that no person shall receive an **amount** of Rs. 2 lakh or more in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, otherwise than by way of account payee cheque/bank draft/prescribed electronic modes.

Under section 271DA, if a person receives any **sum** in contravention of the provisions of section 269ST, he shall be liable to pay, by way of penalty, a sum equal to the amount of receipt.

#### **Issue**

The expression, 'amount' has been used u/s 269ST whereas the expression 'sum' has been used u/s 271DA, which may create confusion and result in avoidable litigation.

#### **Suggestion**

*It is suggested that a uniform expression, 'amount' or 'sum of money' may be used at both the places i.e. under section 269ST as well as under section 271DA.*

### **3.16 Section 271FA – Penalty for failure to furnish statement of financial transaction or reportable account - Clarity regarding the authority to whom an appeal shall lie in case of penalty order passed by DIT**

#### **Provision of Law**

Section 271FA provides that if a person who is required to furnish the statement of financial transaction (SFT) or reportable account (RA) under section 285BA(1), fails to furnish such statement within the prescribed time, then the income-tax authority prescribed under section 285BA(1) may direct such person to pay penalty of five hundred rupees for every day of default. Prescribed Income-tax authority as per section 285BA(1) is Director of Income-tax (Intelligence and Criminal Investigation) {DIT} or the Joint Director of Income-tax (Intelligence and Criminal Investigation) as per Rule 114E(4)(a).

Further, section 246A(1)(q) provides that any assessee or any deductor or any collector aggrieved by an order imposing a penalty under Chapter XXI may appeal to the Commissioner (Appeals).

#### **Issue**

Due to certain conflicting judicial decisions, an issue has arisen regarding the authority to whom an appeal shall lie in case of penalty order passed under section 271FA by DIT.

Section 246A(1)(q) provides that any assessee or any deductor or any collector aggrieved by an order imposing a penalty under Chapter XXI may appeal to the Commissioner (Appeals).

However, there are some Tribunal rulings that appeal against an order of Director of Income-tax passed under section 271FA is to be filed before Tribunal who is higher in rank and not before Commissioner (Appeals) who is equivalent in rank with Director of Income-tax.

In order to reduce litigation with regard to this provision, clarification is sought on the aforesaid issue.

#### **Suggestion**

*It is suggested that an amendment be made in relevant sections (section 246A or section 253) to clearly specify the authority to whom an appeal may lie against an order passed by DIT under section 271FA.*

### **3.17 Section 276B – Prosecution provisions not to be attracted if tax deducted is deposited at any time before the time prescribed for filing the quarterly statement of TDS – Relief to be extended where tax is deposited before the service of notice**

#### **Provisions of Law**

Under clause (a) of section 276B, rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine are attracted for failure to pay tax after deduction to the credit of the Central Government as required by or under the provisions of Chapter XVII-B.

A proviso has been inserted to section 276B to provide that the prosecution provisions thereunder would not apply if such payment has been made to the credit of the Central Government at any time on or before the time prescribed for filing the statement for such payment under section 200(3).

#### **Issue**

The provisions of section 276B are intended to discourage tax deductors from retaining the legitimate government dues unjustly. However, at ground level implementation, notices are being issued for initiation of prosecution proceedings under section 276B even in cases where tax deductors have deposited the tax deducted by them voluntarily after the stipulated time but before any notice has been served upon them. The initiation of prosecution proceedings in cases of voluntary deposit of TDS after the stipulated time but before service of notice is causing undue hardship to genuine tax deductors. Voluntary remittance of TDS before issue of notice clearly indicates the absence of any *mala fide* intention on the part of the tax deductors to retain the taxes due to the government. The tax deductors are, in any case, being subject to higher interest@1.5% per month or part of a month under section 201(1A) for the period of delay in remittance. The TDS statements submitted by them also clearly reflect the taxes deducted, the date of deduction and the date of remittance along with interest, which indicates the *bona fide* intent on the part of the deductors to report the correct details to the Department. However, it appears that the notices for prosecution are issued on the basis of these information provided by the tax deductors in their TDS statements. It is a settled law that prosecution proceedings are appropriate only in cases where deductors deliberately do

not deposit the TDS, since *mens rea* or a guilty mind is a sine qua non for attracting prosecution provisions.

The proviso to section 276B gives relief from prosecution provisions if tax has been paid to the credit of the Central Government at any time on or before the time prescribed for filing quarterly statement u/s 200(3).

It is suggested that the relief from prosecution provisions under section 276B be extended to deductors who have paid tax to the credit of the Central Government after the prescribed time limit but voluntarily at time before service of any notice.

**Suggestion**

*The proviso to section 276B may be modified to read as under –*

*"Provided that the provisions of this section shall not apply if the payment referred to in clause (a) has been made to the credit of the Central Government at any time on or before the service of notice".*

### **3.18 Section 92CE - Secondary Adjustment – Increase in threshold of primary adjustment and provision for reversal of advance**

#### **Provisions of Law**

Section 92CE(1) provides the different circumstances when primary adjustment to transfer price is made, where the assessee has to make a secondary adjustment. However, if the primary adjustment does not exceed Rs.1 crore, the assessee need not make secondary adjustment. This is contained in the proviso to section 92CE(1).

Section 92CE(2) provides that if the excess money available with the associated enterprise is not repatriated to India within the prescribed time, the same shall be deemed to be an advance made by the assessee to the associated enterprise, and the interest on such advance shall be computed in the prescribed manner.

#### **Issues**

- (a) As per section 92CE, as a consequence of a primary adjustment made to align the transfer price with the arm length price, certain secondary adjustments are required to be made for the purpose of correct allocation of cost and profit to the associated enterprises. Such adjustments are made when the value of primary adjustment exceeds Rs.1 crore. However, as per the FEMA Act, 1999 which provides for a liberalized remittance scheme (LRS) the amount of remittance that could be made by a resident individual abroad is upto \$250000.
- (b) Section 92CE deems the difference between the transaction price and arm's length price as an advance (which is to be recorded in the books) and provides for imputation of interest on such advances. However, there is no specific provision to reverse the advances appearing in the books even in case where the Associated Enterprise relationship ceases to exist or in case where the excess money is repatriated.

#### **Suggestion**

*It is suggested that -*

- (a) *in order to align the income-tax law with FEMA, the threshold limit for subjecting a transaction to secondary adjustment may be increased from Rs.1 crore to Rs.2 crore*
- (b) *it may be specifically provided that the advances appearing in the books of the parties be reversed in cases where AE relationship ceases to exist, or excess money is repatriated.*

### **3.19 Section 94A – Withholding tax@30% in case of payments to persons located in notified jurisdictional area (NJA)– Section 94A to prevail over section 206AA**

#### **Provisions of Law**

One of the tax consequences of a country or area being notified as NJA is that payments to persons located in that NJA would be subject to a higher withholding @ 30%. The relevant provision which provides for this implication i.e., section 94A(5), would be applicable notwithstanding anything to the contrary contained in the Act.

Section 206AA which provides for higher withholding @ 20% in absence of PAN of payee is also applicable notwithstanding anything to the contrary contained in the Act.

#### **Issue**

Though the intent appears to be that section 94A would override section 206AA, there may be some difficulties in interpretation.

#### **Suggestion**

*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.*

**Category 4****Suggestions for reducing compliance burden****4.1 Section 194T – Tax@10% to be deducted by the firm responsible for paying any sum in the nature of salary, remuneration, commission, bonus or interest to a partner of the firm – Reconsideration of the provision or reduction of rate to 2%.**

The Finance (No.) Act, 2024 has inserted section 194T to require deduction of tax at source@10% by a firm, responsible for paying any sum in the nature of salary, remuneration, commission, bonus or interest to a partner of the firm, at the time of credit of such amount to the account of the partner (including the capital account) or at the time of payment thereof, whichever is earlier.

Where such sum or, the aggregate of such sums credited or paid or likely to be credited or paid to the partner of the firm does not exceed Rs.20,000 during the financial year, no tax will be deducted at source. This amendment will take effect from 1st April, 2025, i.e., A.Y.2025-26 (P.Y.2024-25).

The Explanatory Memorandum does not contain the rationale for introduction of such provision except stating that presently there is no provision for deduction of tax at source on payment of salary, remuneration, interest, bonus or commission to partners by the partnership firm.

**Issue**

Pursuant to the amendment, tax is required to be deducted by the firm at the time of credit of sum as referred above to any category of account (including the capital account) or at the time of payment, whichever is earlier.

The intention of the partners and partnership firm doing business together is to derive profits to be distributed between them. If the business requires the funds back, the partners may not even withdraw the funds or they would reinvest the funds back to business of the firm. Partners final sharing is possible to be determined only on final net results derived on the year end; till that time, it is generally an internal understanding of the funds withdrawal. In effect, to what extent the funds withdrawal during the year includes salary or remuneration can be determined only at the end of the year, when the net result is derived.

Consequent to insertion of section 194T, it becomes necessary to carefully estimate the income of the partners as well as income of the firm at the beginning of the financial year based on which remuneration / bonus is to be forecasted and may need to be incorporated in the partnership deed. There may be instances where income of the partner (other than income of

from the firm) may be increased/ decreased by substantial amount resulting in increase/ decrease in the effective tax rate of partner than effective tax rate of the firm. In such a case, if the amount withdrawn is tagged as remuneration and subjected to TDS, it may become burdensome. Further, there may be instances where if tax under section 194-T has already been deducted, and thereafter, the firm decides not to pay the remuneration since the profitability as expected could not be achieved or the firm's profits have substantially decreased due to unforeseeable circumstances, then, the firm has no option but to revise the remuneration and as also the TDS returns of the earlier months.

In any case, since advance tax is payable by the firm and partners, and short payment of advance tax would attract interest u/s 234C, there is no need for a separate TDS provision.

Further, where as per the agreement of partnership, a fixed sum is payable as remuneration every month, only the remuneration upto the limits permitted u/s 40(b) would be deductible in the hands of the firm and chargeable to tax in the hands of the partner. The allowable remuneration is based on "book profit" which can be determined only after the end of the year. The balance remuneration would be disallowed in the hands of the firm. Hence, it would not be chargeable in the hands of the partners. However, TDS@10% is deductible on the entire remuneration and not only the amount which is actually subject to tax in the hands of the partners.

Alternatively, in order to ease the burden of tax, it may be considered to reduce the proposed rate from 10% to 2%. TDS@10% is very high and would significantly impact the cash flow of partners, particularly in small and medium-sized firms. Reducing the rate to 2% would alleviate this burden, enabling partners to reinvest funds into the business and facilitate growth. It may be mentioned that the rates of TDS under sections 194DA, 194G, 194H, 194-IB and 194-M have been reduced to 2% with effect from 1<sup>st</sup> October, 2024, to improve ease of doing business and better compliance by taxpayers. Bringing Section 194T also in line with these sections by reducing the rate of TDS to 2% will help address the issue of cash flow concerns.

**Suggestion**

*It is suggested that the amendment as proposed in section 194T be reconsidered and withdrawn. Instead, the amount paid to partners can be captured in the Annual Information Statement, which would help track payments by the firm to partners.*

*Alternatively, the rate of TDS under section 194T may be reduced from 10% to 2%, in line with the reduction in the rates of TDS by the Finance (No.2) Act, 2024 in other sections.*

**4.2 Rule 37BB – Information in Part A of Form 15CA to be filled if amount of payment or aggregate of payments made during the financial year does not exceed Rs.5 lakh – Threshold limit to be increased to Rs.10 lakh**

**Provision of law**

As per Rule 37BB of the Act, remitters are required to file Form 15CA to provide information about remittances made to non-residents, In Part A of Form No. 15CA, if the amount of payment or the aggregate of such payments, as the case may be, made during the financial year does not exceed five lakh rupees. If the payments exceed this amount, then, certificate from Assessing Officer u/s 197 or an order from Assessing Officer under section 195(2)/(3) in respect of information in Part B of Form 15CA. Also, certificate from an Accountant would be required for information in Part C of Form 15CA.

**Issue**

The threshold limit has been Rs.5 lakh since 1.4.2016. Considering that almost 9 years have elapsed since then and given the increase in international transactions as well as the general increase in remittance volumes over recent years, it is suggested that the threshold limit upto which information in Part A of Form No.15CA will suffice be increased from Rs.5 lakh to atleast Rs.10 lakh.

**Suggestion**

*It is suggested that the limit prescribed in Rule 37BB(1)(i) of the Income-tax Rules, 1962 be increased from Rs.5 lakh to at least Rs.10 lakh.*

#### **4.3 Section 230(1A) - Obtaining Income Tax Clearance Certificate by persons domiciled in India who have outstanding direct tax arrears exceeding Rs.10 lakhs – Threshold to be increased to Rs.50 lakhs**

##### **Provision of law**

Section 230(1A) relates to obtaining of a tax clearance certificate, in certain circumstances, by persons domiciled in India. The said provision, as it stands, came on the statute through the Finance Act, 2003 w.e.f. 1.6.2003.

CBDT clarification in respect of Income-tax clearance certificate (ITCC) via press release dated 20<sup>th</sup> August 2024 contains reference to Instruction No. 1/2004, dated 05.02.2004, as per which the tax clearance certificate under Section 230(1A) may be required to be obtained by persons domiciled in India only in the following circumstances -

- (i) where the person is involved in serious financial irregularities and his presence is necessary in investigation of cases under the Income-tax Act or the Wealth-tax Act and it is likely that a tax demand will be raised against him, or
- (ii) where the person has direct tax arrears exceeding Rs.10 lakh outstanding against him which have not been stayed by any authority.

##### **Issue**

Considering the inflation rates and the volume of business transactions over the past two decades, the threshold of Rs.10 lakh is low and needs to be increased substantially.

##### **Suggestion**

*It is suggested for obtaining the Tax Clearance Certificate the threshold of outstanding direct tax arrears which have not been stayed by any authority be increased from Rs. 10 lakh to Rs. 50 lakh, taking into account factors such as inflation, the ease of doing business, the growth of the economy, and the increased volume of high-value transactions.*

#### **4.4 Section 139(4) & (5) - Time Limit for Filing a Belated Return and Revised Return - Extension of time limit upto 31st March of the relevant assessment year**

##### **Provisions of law**

As per Section 139(4), if any person who has not furnished a return within the time allowed to him under sub-section (1), may furnish the return for any previous year at any time before three months prior to the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

As per section 139(5), if any person, having furnished a return under sub-section (1) or sub-section (4), discovers any omission or incorrect statement therein, they may file a revised return at any time before three months prior to the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

##### **Issue**

As a result, the current deadline to file a belated return and revised return is 31st December of the relevant assessment year.

The additional time to file belated return and revised return is too short. Earlier, it was upto 31 March of the assessment year relevant to previous year. Many taxpayers may only become aware of errors or omissions in their return during the course of assessment proceedings. By this time, the window for filing a revised return has already closed.

##### **Suggestion**

*It is suggested that the due date for filing a belated and revised return under section 139(4) and section 139(5), respectively, be extended to **31st March of the relevant assessment year** instead of 31st December. This will provide taxpayers with more time to reconcile information and correct any omissions or errors.*

#### **4.5 Section 144B - Faceless Assessment Scheme – Certain concerns to be addressed**

##### **Provision of law**

Section 144B contains the provisions for faceless assessment scheme, introduced with effect from 1.4.2021.

##### **Issue**

The Faceless Assessment Scheme is a landmark reform in the field of tax administration, aimed at enhancing transparency, reducing taxpayer interface, and ensuring accountability. However, based on feedback from taxpayers and professionals, server capacity needs to be enhanced and seamless functionality to be ensured, particularly during peak filing periods, to avoid system crashes and delays.

Some of the specific concerns to be addressed are:

- **File Size Restriction:** The file upload size of each attachment is limited to 5MB and all attachments together cannot exceed 50MB.
- **Limited Document Categories:** The restricted categories for document attachments, which can be selected only once (e.g., "Sale Deed copies"), compel users to choose the "Others" category repeatedly, leading to confusion. Expanding and refining these categories would be beneficial.
- **Frequent Internal Errors:** Document upload processes are often disrupted by internal errors, causing delays and non-submission of details. Addressing these technical glitches promptly is critical.
- **Video Conferencing Hurdles:** The process for seeking video conferencing lacks an option for uploading a Power of Attorney by the authorized representative, which was previously available. This functionality should be reinstated to streamline the process.
- **Attachment Limits:** The system permits only ten attachments at a time, forcing users to restart the process to upload additional files. Removing the limit would significantly enhance user experience.

### **Suggestion**

*It is suggested that communications under the faceless assessment system be accompanied by clear, concise instructions and a reasonable timeframe for compliance, considering the complexities involved in submitting responses. Also, a dedicated technical support team be established to resolve any issues that arise during the submission process real-time. A dispute resolution mechanism should be introduced to handle grievances related to procedural failures under faceless assessments.*

*User experience and efficiency under the Faceless Assessment may be enhanced by working on following-*

- *Increasing the size of all attachments to at least 1 GB.*
- *Expanding and refining document category options to reduce reliance on the "Others" category.*
- *Implementing robust technical support for real-time resolution of system errors.*
- *Reinstating the option to upload Power of Attorney for video conferencing requests.*
- *Removing the attachment limit of 10 files per submission. There should be no limit on the number of files which can be attached per submission.*

## 4.6 Income-tax Return Forms – ITR 1 to 7 – Need for simplification of forms

### Issue

Many a times, taxpayers are facing difficulty in filing return due to complexities involved. It is suggested that simplified and user-friendly tax forms should be introduced to reduce compliance burden, reduce errors, and ease the filing process for taxpayers.

### Suggestions

- i. **Consistent Layout Across Forms-** Establish a uniform simplified format across all tax forms. The number of forms may be limited to 3.
- ii. **Avoid Repetitive Data Entry-** Design the forms to avoid asking taxpayers to re-enter data that has already been provided, such as personal identification details or financial data across different sections.
- iii. **Limit the Number of Mandatory Fields-** Reassess and minimize the number of mandatory fields required in the forms, retaining only those essential for tax calculations and compliance.
- iv. **Auto-populate Fields Using Available Data-** Enable automatic population of relevant fields using information from previous returns, TDS data, or other validated sources. Pre-filled data enhances accuracy and simplifies form completion, reducing the potential for manual errors and duplication.
- v. **Integrate Tax Calculation Tools within Forms-** Embed simple tax calculation tools and automatic computation functions directly within the forms to assist taxpayers in real-time calculations.

#### **4.7 Section 139A – Permanent Account Number – Provision for Amendment / surrender of PAN**

##### **Issue**

There is no provision as of now for amendment /surrender of PAN. Jurisdictional issues arise due to non-intimation of change in address etc.

Further, the process for changing address in PAN is as follows -

1. An application has to be made for updation of the PAN database maintained by the PAN issuing authority (Protean)
2. A separate application has to be made for updating the address in the Income-tax data base (ITBA).

Even if the address is updated in the PAN database maintained by the PAN issuing authority and in the Income-tax data base, the change in jurisdiction will not take place automatically.

##### **Suggestions**

*It is suggested that provision may be made for:*

*(i) application within 30 days of amendment in PAN data and*

*(ii) surrender on*

- *death (by legal representative),*
- *merger,*
- *conversion,*
- *liquidation,*
- *strike-off.*

*Additionally, it is also suggested that there should be a single window application for updation of PAN for all purposes, which would automatically change in jurisdiction.*

**4.8 Section 12A(1)(b) read with Rule 17AA – Requirement to maintain books of account and other documents by trusts and institutions for 10 years from the end of the relevant assessment year – Period may be reduced to 6 years from the end of the relevant assessment year**

**Provision of law**

Section 12A(1)(b) provides that where the total income of a trust or institution computed without giving effect to the provisions of sections 11 and 12 exceed the basic exemption limit, the exemption provisions under sections 11 and 12 would apply only if the books of account and other documents have been kept and maintained in the form and manner prescribed in Rule 17AA.

Rule 17AA(1) prescribes the books of account to be maintained by trusts and institutions. Rule 17AA(4) requires trusts and institutions to keep and maintain their books of account and other documents for a period of 10 years from the end of the relevant assessment year.

**Issue**

The requirement of maintenance of books of account and other documents by trusts and institutions for 10 years is much longer and needs to be aligned with the requirements in the other provisions of the Act.

In this context, it may be noted that section 44AA(1) requires persons carrying on specified profession to maintain the books of account and documents prescribed in Rule 6F(2). Rule 6F(5) requires that such books of account be maintained for a period of 6 years from the end of the relevant assessment year.

**Suggestion**

*It is suggested that Rule 17AA(4) be amended to require trusts and institutions to keep and maintain their books of account and other documents for a period of 6 years from the end of the relevant assessment year.*

#### **4.9 Section 139(4A) read with Rule 12A – Trusts and institutions required to file Form No. ITR-7 – Form to be simplified by auto-populating information already filled in Form No. 10B/10BB**

##### **Provision of law**

Section 139(4A) requires every person in receipt of income from property held under trust or other legal obligation wholly for charitable or religious purposes to file return of income in the prescribed form and manner and setting forth the prescribed particulars as if it were a return required to be furnished under section 139(1), if the total income computed without giving effect to the provisions of sections 11 and 12 exceed the basic exemption limit.

Form No. ITR-7 is the prescribed return form for a person including a company whether or not registered under section 8 of the Companies Act, 2013, who is required to file return under section 139(4A) or section 139(4B) or section 139(4C) or section 139(4D).

##### **Issue**

Form No. ITR-7 requires several details that are already covered in audit report filed in Form 10B or Form 10BB. The requirement to fill up the details once again in the return form may be removed in order to reduce the compliance burden on the trusts.

##### **Suggestion**

*It is suggested to streamline the compliance process, by simplifying Form No. ITR-7. The information already submitted in Form 10B/10BB may be auto populated in Form No. ITR-7. This can ease the filing process for trusts and institutions.*

#### **4.10 Section 197 – Certificate of deduction at a lower rate – Charitable trusts to be allowed to submit self-declaration in prescribed form**

##### **Provisions of law**

As per section 197, the assessee may make an application for lower deduction of tax in case of tax deductible under certain sections. If the Assessing Officer is satisfied that the total income of the recipient justifies deduction of income-tax at any lower rate or no deduction of income-tax, he may give the assessee such certificate as may be appropriate.

##### **Issue**

Many trusts filing their return of income have total income below taxable amount leading to claim for refunds. The process of filing applications under section 197 of the Act is time consuming. The assessee is required to submit a long list of details involving considerable time and effort. Invariably, by the time a nil rated certificate is received, banks and institutions have deducted tax for Quarter 1 and the funds of the trusts, which can otherwise be utilised by them for charitable purposes, are blocked for a period of atleast one and half years.

The form requires the trusts to mention the amount of deposits for which income is estimated for the respective Financial Year. Accordingly, the banks/Institutions release interest/income without deducting tax. In cases where fresh deposits are created due to any reason beyond the estimated deposit amount, the trusts are required to file fresh applications under section 197 of the Act and go through the entire process once again.

##### **Suggestion**

*It is suggested that charitable trusts be excluded the requirement to apply for certificate for deduction of tax at lower rate under section 197. Instead, they be allowed to submit a self-declaration under section 197A in a form to be notified.*

#### **4.11 Section 206AA– Higher rate of TDS where PAN is not linked with Aadhar – Notice for demand to be quashed if PAN is linked with Aadhar on or before the due date of filing of return**

##### **Provisions of Law**

As per section 206AA, any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVIIB (hereafter referred to as deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax (hereafter referred to as deductor), failing which tax shall be deducted at the higher of the following rates, namely:—

- (i) at the rate specified in the relevant provision of this Act or
- (ii) at the rate or rates in force or
- (iii) at the rate of twenty per cent

##### **Issue**

PAN becomes inoperative if the same is not linked with Aadhaar on or before 31<sup>st</sup> December, 2024, except in the case of exempted category of persons. One of the consequences is that where tax is deductible under Chapter XVII-B in case of such person, such tax shall be deducted at a higher rate in accordance with the provisions of section 206AA; and in case where tax is collectible at source under Chapter XVII-BB in case of such person, such tax shall be collected at higher rate, in accordance with the provisions of section 206CC.

Several deductors and collectors of tax, who have deducted and collected tax at the normal rate instead of the higher rate under section 206AA applicable to assesseees whose PAN had become inoperative due to non-linkage with Aadhar, have received income tax demand notices intimating that they have committed default of “short deduction/collection” of tax and asking them to deposit the short deduction in TDS/TCS. These deductors and collectors were not aware that the deductee’s/collectee’s PAN had become inoperative.

##### **Suggestion**

*It is suggested that if PAN is linked with Aadhaar on or before the due date of filing of return of income, then, the demand notices sent to deductors/collectors for “short deduction/collection of tax” be quashed.*

#### 4.12 Introduction of **year-wise E-Ledger system** for crediting TDS/TCS and advance tax payments which can be adjusted against the income-tax due

##### Issue

There are several instances of mismatches in case of TDS claimed and TDS allowed while processing return u/s 143(1)(a). In some cases, such mismatches also lead to issuance of intimation u/s 139. For example, some deductee-taxpayers are facing an issue where higher income from an earlier previous year is reflected in their Form 26AS in the current financial year. This is on account of tax of an earlier previous year being deducted in the current financial year by the deductor at the time of payment, whereas, the income was reflected in the return of an earlier year by the deductee taxpayer on an accrual basis. The prior year's income on which tax is deducted at source (TDS) in the current year is being matched with the income of the current year. In cases where the prior year's income (as shown in Form No. 26AS of the current year) is higher and the current year's income reflected in the return of income is lower, the consequent mismatch results in the return of income of the current year of the deductee-taxpayer being wrongly treated as defective and issuance of intimation under section 139(9) to him to rectify the defect. This is one such example. There are several other instances of mismatch.

##### Suggestion

*It is suggested that an **year-wise E-ledger mechanism**, similar to the one implemented in respect of the Goods and Services Tax (GST), be introduced for income-tax payments also. The key benefits of the e-Ledger system in GST include providing a transparent, real-time overview of tax credits, cash balances, and set off of liabilities. A similar system can be effectively implemented for income tax to improve ease of doing business, enhance compliance, and increase operational efficiency.*

*The **year-wise Income-tax e-Ledger** would capture all advance tax payments made, the TDS/TCS credits which can be adjusted against the tax due for the current previous year. The balance credit, after adjusting the tax due, may be refunded to the assessee or allowed to be carried forward to the next year for adjustment against tax due in that year. On the other hand, if the tax due is more than the credit, the assessee can pay the same by way of self-assessment tax.*

## **ABOUT DIRECT TAXES COMMITTEE**

The Institute of Chartered Accountants of India (ICAI) is a statutory body established under the Chartered Accountants Act, 1949 to regulate the profession of Chartered Accountants in India. During its more than seven decades of existence, ICAI has achieved recognition as a premier accounting body not only in the country but also globally, for its contribution in the fields of education, professional development, maintenance of high accounting, auditing and ethical standards.

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**Direct Taxes Committee**

**The Institute of Chartered Accountants of India**

***(Set up by an Act of Parliament)***

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