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Pre-Budget Memorandum 2018

Suggested Amendments in respect of Direct Taxes for Finance Bill, 2018

Dated: 12th December, 2017

The Chamber's Journal

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Estd. 1928
91st Year
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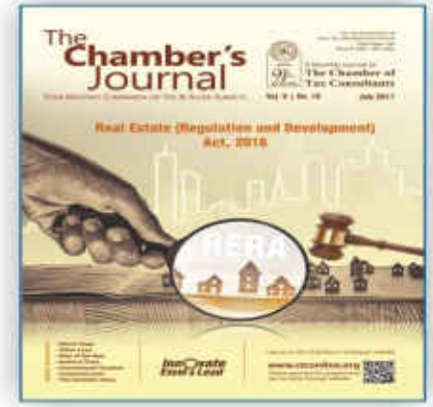

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9th December, 2017

Shri Rahil Gupta
Budget Officer (TRU)
Government of India,
Ministry of Finance,
Department ofRevenue,
Tax Research Unit,
New Delhi –1100

Respected Sir,

Subject: Pre-Budget Memorandum 2018-2019 – Suggestions on Direct Tax

We are pleased to submit our suggestions on Direct Taxes for the Budget of 2018. We have concentrated on only few suggestions which, we are sure, will meet with your approval. Each of the suggestions has been necessitated on account of the serious hardship or inconsistency in the law.

Thanking you,

Yours Sincerely,

For THE CHAMBER OF TAX CONSULTANTS

Sd/-	Sd/-	Sd/-
AJAY R.SINGH	MAHENDRA SANGHVI	PARAS K. SAVLA
PRESIDENT	CHAIRMAN	CO-CHAIRMAN
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INDEX

1. SALARY

THE CHAMBER OF TAX CONSULTANTS

REPRESENTATION ON DIRECT TAX BEFORE MINISTRY OF FINANCE

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles / Hurdles either Interpretative, Administrative or otherwise	Suggestion or new clause Suggested
1.1	Salaried employees are not allowed deduction of expenses incurred during the course of the employment other than profession tax on employment.	There are various expenses that the employees incur during the course of employment which they cannot claim as deduction.	The Provisions similar to that of erstwhile standard deduction may be introduced. **Justification:** Employees during the course of their employment incur various expenses, including for upgrading skill, for rendering their services as employees, deduction for such expenses should be allowed. For avoiding leakage of revenue, such deduction may be fixed amount or certain percentage of salary, say 25% of the salary, and maximum amount may be restricted to Rs 3,00,000/- or reasonable amount. And also similar types of deduction are available under House property (standard deduction) and capital gains (cost inflation index).

1.2	The current exemption limit for various allowances granted by an employer to the employee is extremely low.	As the limits are low it is irrelevant in the current inflation scenario. Alternatively, they should be deleted.	The exemption limit for these allowances may be substantially increased. **Justification:** The exemption limits for these allowances are considerably low as the same were set decades ago. The limits need to be enhanced, so as to bring them in line with the rising inflation and cost of living. Kindly refer Annexure for the existing & proposed limits.

2. HOUSE PROPERTY

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles/ Hurdles either Interpretative, Administrative or otherwise	Suggestion or new clause Suggested
2.1	**Section 23-Explanation to Second Proviso:** Interest on housing loan taken during construction period is allowed in five equal installments commencing from year of completion of construction.	Though the assessees have to pay Pre EMI interest to banks/ housing financial institution every year the deduction is postponed to future years putting more financial burden on borrower during construction period during which he may already be paying rent	The deduction for interest payable during construction period may be allowed in the year of payment itself. **Justification:** This will ease financial burden of the assessees who may been staying in rented accommodation during construction period and also promote ease of compliance as no need to keep track of interest paid during construction period to claim the same during further five years.
2.2	Notwithstanding anything contained in sub-section (1) or sub-section (2) of Sec 73, where in respect of any assessment year, the net result of the computation under the head "Income from house property" is a loss and the assessee has income assessable under any other head of income, the assessee	The Finance Act 2017 proposes to restrict such set off of house property loss to Rs.200,000 per annum only. Balance loss if any will be carried forward to be set off against house property income of subsequent 8 years. Hence individual tax payers having loss of more than Rs2,00,000 will now have a higher tax outgo,	(i) Assessee having taken housing loan before 01/04/2017 will be in a great disadvantage as the provision will apply to assesses who entered into loan agreement prior to 31/03/2017 also. (ii) Also, this amendment may have prolong and deep impact specifically on take home salary of salaried class person since income more than 50 lakhs would attract surcharge @ 10% and at the same time, loss of house property is restricted to INR 2,00,000. The provision therefore should be deleted. Alternatively, Should apply to assesses who have taken Loan

	shall not be entitled to set off such loss, to the extent the amount of the loss exceeds two lakh rupees, against income under the other head.		after 01/04/2017.
2.3	By Finance Act 2017, it is provided that if any house property is held as stock in trade and such property is not let during the whole or part of the year, deemed annual value would be NIL for the period up to one year from the end of financial year in which certificate of completion of construction of property obtained from the competent authority.	The concept of deemed annual value is made applicable on house property which is held as stock in trade. This provision being a deeming fiction will lead to undue burden on the builders and developers. The builders and developers will be liable to pay tax on deemed annual value of flats held in stock beyond one year after the completion of construction. At the same time, this provision will lead to increase in the real estate prices especially in the metro cities. The tax paid by the builders / developers on the deemed let out value of flats held in stock will add to the cost of flat. The builders / developers will load the said cost into the price either directly or indirectly for recovering from the proposed flat buyers. Thus the deemed provisions will act as a counterproductive measure to provide affordable housing in metro cities.	i) Provision of house property income should not be made applicable to house property held as stock in trade. Also due to sluggish trend in the real estate business the developers may be hit hard.

3. BUSINESS INCOME AND EXPENDITURE

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles / Hurdles either Interpretative, Administrative or otherwise	Suggestion or new clause Suggested
3.1	The Finance Act, 2014 has added new Explanation in sub-section (1) of section 37 providing that any expenditure incurred by an assessee on the activities relating to CSR referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession and deduction shall not be allowed		There is a strong need to revisit this provision and the companies should be allowed 100 per cent deduction of CSR under section 37. If at all required, necessary safe guards may be incorporated. **Justification:** As per the Companies Act, 2013, it is mandatory for specified companies (As per Section 135) to spend 2% of their average profits towards Corporate Social Responsibility. These expenses are all connected to social and charitable causes and not for any personal benefit or gain. It is therefore fair to allow the same as business expenditure. There is no bar on allowability of CSR expenditure falling under other sections like 35, 35AC etc.

3.2	Certain expenses being of revenue nature or of deferred revenue nature are considered as capital in nature and are disallowed. They are not allowed even by way of amortization /depreciation. (1) Fees for increase in authorised capital, (2) Amortisation of Lease premium for Land & Building (3) Factory shifting expenses (4) Expenditure for setting up separate & dependent unit		Expenditure which is incurred in the course of business may be allowed either as revenue or, if treated as capital, then, such expenditure is to be allowed in deferred manner or by way of depreciation. Hence, specific provision may be inserted. **Justification:** Presently, expenditure of the nature described in first column suffers permanent disallowance resulting into higher tax liability in the hands of an assessee. Though there are several decisions allowing depreciation on some of such expenses, but in the absence of a clear legislative framework, it leads to litigation. In order to simplify the computation of business income, such expenditure requires to be allowed either as revenue or in deferred manner or by way of depreciation.

3.3	**Section - 43A:** Notwithstanding anything contained in any other provision of this Act, where an assessee has acquired any asset from a country outside India for the purposes of his business or profession and, in consequence of a change in the rate of exchange at any time after the acquisition of such asset, there is an increase or reduction in the liability of the assessee as expressed in Indian currency for making payment towards the whole or a part of the cost of the asset or for repayment of the whole or a part of the moneys borrowed by him from any person, directly or indirectly, in any foreign currency specifically for the purpose of acquiring the asset (being in either case the liability		<u>If amount is borrowed in foreign currency for acquisition of assets in India and</u> there is an increase or reduction in the liability of the assessee as expressed in Indian currency for repayment of the whole or a part of the moneys borrowed by him from any person, directly or indirectly, in any foreign currency specifically for the purpose of acquiring the asset, the amount by which the liability aforesaid is so increased or reduced during the previous year shall be added to, or, as the case may be, deducted from, the actual cost of the asset. **Justification:** Presently currency fluctuation arising on repayment of amount borrowed in Foreign currency for acquiring **assets procured in India** is not be allowed to be added to the cost of asset and it is neither claimed as revenue expenses, being capital in nature. In this situation assessee is deprived to claim benefit of depreciation whenever there is upward increase in borrowed liability due to currency fluctuation. Conversely, the gain will reduce the depreciation claim. Also the same is acting as an hindrance to our prime minister's initiative of **Make in India**

	existing immediately before the date on which the change in the rate of exchange takes effect), the amount by which the liability aforesaid is so increased or reduced during the previous year shall be added to, or, as the case may be, deducted from, the actual cost of the asset as defined in clause (*1*) of section 43 or the amount of expenditure of a capital nature referred to in clause (*iv*) of sub-section (*1*) of section 35 or in section 35A or in clause (*ix*) of sub- section (*1*) of section 36 or, in the case of a capital asset (not being a capital asset referred to in section 50), the cost of acquisition thereof for the purposes of section 48, and the amount arrived at after such addition or deduction shall be taken to be the actual cost of the asset or the amount of expenditure of a capital nature or, as the case may be,		

<table>
<tr><td></td><td>the cost of acquisition of the capital
asset as aforesaid.</td><td></td><td></td></tr>
<tr><td>3.4</td><td>Section 44AD relating to presumptive taxation which also covers income of Speculation and derivatives (F & O) business.</td><td></td><td>Income or loses from speculation or futures & options business, as specified under section 43(5), should be excluded from the purview of section 44AD.
Justification:
Speculation and F & O income, by their nature, cannot have a net profit ratio of 8% of the total turnover or t h e gross receipts. In fact, the turnover in such business is taken as profit and loss figures added up
together. Applying a profit rate of 8% on such figure is absurd.</td></tr>
<tr><td>3.5</td><td>Sub section (1) of Section 44ADA and section 44AD provides that the eligible assessee shall be required to declare net profit at 50% of the gross receipts & 8% of the turnover/gross receipts respectively. And any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-</td><td></td><td>It is suggested to reduce the profit percentage to 25% for sec 44ADA.

And, interest and salary to the partners should be allowed to all partnership firms including firm of professionals out of the Presumptive NP of the firm. And amendment should be r.w.e.f. 01.04.2017

Justification:
Disallowance of salary and interest paid to partners, may create a havoc for partnership firms, where huge amount is drawn as salary by working partners in accordance with the partners' remuneration limits as suggested u/s 40(b) which is shown in the below examples.
<table>
<tr><th>Section 44AD</th><th>Existing Provision</th><th>New Provision</th></tr>
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	section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed including the salary and interest paid to partners in case of firms.		Turnover	80,00,000	80,00,000
			Demeed Income @ 8%	6,40,000	6,40,000
			Allowable Remuneration	4,74,000	-
			Total Income of Firm	1,66,000	6,40,000
			Tax Payable by firm @ 30%	49,800	1,92,000
			Tax payable by two partner	NIL	NIL
			Section 44ADA	**No 44ADA**	**Under 44ADA**
			Gross Receipt of firm	30,00,000	30,00,000
			Deemed income 50%	-	15,00,000
			Regular Income (Say 50%)	15,00,000	-
			Remuneration to partners	9,90,000	-
			Income of firm	5,10,000	15,00,000
			Tax of firm @30%	1,53,000	4,50,000
			Tax by partners	49,000	-
			Total Tax Incidence	2,02,000	4,50,000

3.6	Section 44AD(5) requires a person opting out of 44AD (presumptive taxation) to maintain books of accounts and get his accounts audited for subsequent five years. Section 44AD(5) is triggered if the total income of the assessee is more than the maximum amount not chargeable to tax. i.e. couple of lacs for an individual and zero for a partnership.	Opting out of a beneficial provision should not have such a stringent requirement i.e. to maintain books of accounts and get them audited for five years. The provision is deterrent to small assessee, who in changing times and regulatory overhaul might have lower income in one of the year. Such a provision is not promoting ease of doing business. Rather it is causing hardship to small assessee.	To provide relief to the small assessee and promote ease of doing business it is suggested that – The basic threshold limit provided in Section 44AA and Section 44AB for Maintenance of accounts and Audit of accounts respectively should not be applied to the assessee opting out of Section 44AD.

4. CAPITAL GAINS

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles/Hurdles either Interpretative, Administrative or otherwise	Suggestion or new clause Suggested
4.1	Section 45(5A) intends to provide special taxation regime for transfer of land or building or both by an Individual or HUF under a specified agreement and charges the capital gains in the year in which the completion certificate in respect of the project is received based on the stamp duty value on that day.		Provision should be extended to all assessee.

4.2	Section 45(5A) intends to provide special taxation regime for transfer of land or building or both by an Individual or HUF under a specified agreement and charges the capital gains in the year in which the completion certificate in respect of the project is received based on the stamp duty value on that day. However, the indexation of the asset transferred is restricted to the date of transfer of land and building.	The benefit of indexation of the asset transferred should be available until the year in which completion certificate of the project is obtained.	The date Section 45(5A) intends to tax the stamp value of the constructed land or building on the date of completion of the project. Therefore even the indexation benefit in relation to the asset transferred should be available to such date.
4.3	Section 45(5A) intends to provide special taxation regime for **transfer of land or building** or both by **an Individual or HUF** under a specified agreement and charges the capital gains in the year in which the completion certificate in respect of the project is received based on the stamp duty value on that day.	The amendment should also be made applicable to transfer of **tenancy right** under a redevelopment agreement.	The suggestions are in-line with the theme of the budget which intends to boost real-estate development in India.

4.4	**S. 54 / 54F** These sections provides for time limit of 3 years for investment of capital gain in new house, by way of construction. Further in case of purchase, even a property purchased within one year before the sale of the asset is allowed for the purpose of deduction. The same is not allowed for construction of a new house.		1. The time limit for construction of new house property should be increased from 3 years to 5 years. Further a house the construction of which is completed within one year before the sale of the asset should also be given the benefit. **Justification:** Considering the current scenario, there arise situations where it takes more than 3 years to construct a house property because of high storey buildings being constructed, which requires more time to complete the construction. Ideally a person would either purchase or construct a new house before selling the old one. Therefore such a benefit should be given on construction of a new house also. 2) Amendments should be made in line with 2nd provision to section 24 of Finance Act 2017.
4.5	**S. 54EC** The section restricts exemption for investment in capital gains bonds up to Rs. 50 Lacs.		The ceiling for making investment in specified assets be increased from Rs. 50,00,000 to Rs. 1,50,00,000. or link with cost of inflation **Justification:** This will also help the Government in generating funds at much lesser cost, especially when the government is burdened with high cost of borrowing. This step will also will provide impetus to the infrastructure sector. The limit of Rs. 50,00,000 seems to be too low in the current economic scenario.

4.6	**Sec. 112** provides scheme of concessional tax on long term capital gains. For an individual and HUF normal tax rate for income up to Rs 500,000 is ten percent. However, in case of such assessee who has long term capital gain and his total income is up to Rs 500,000, he is required to pay tax on long term capital gains at the rate of 20 per cent.		Rate of tax on long term capital gain should be ten per cent in case of total income including long term capital gains is between maximum amount not chargeable to tax and Rupees Five lacs. **Justification:** Scheme of taxation provides concessional rate of tax for long capital gains. However current provisions doubles the rate of tax in case of assessee who has long term capital gain and as such loses if total income is below Rs 5,00,000
4.7	**Clause (xiiib) to section 47** excludes the conversion of private limited companies to LLP from the definition of transfer. However there are certain conditions prescribed to be complied for being excluded from the definition of 'transfer'. One Of the conditions is that the total sales, turnover or gross receipts in the business of the company in any of the three preceding previous year should not exceed Rs. 60 Lakhs. Further a new condition is inserted wherein the total assets during the previous 3 years exceeds Rs. 5 crores.		The said limits should be removed or else increased substantially. Turnover limit may be increased to 10 crores and the total assets limit may be increased to 20 crores. **Justification:** Such a small limit is a big hindrance on the conversion of the company into a LLP. Provisions of the new Companies Act 2013 have created various anomalies as well as complication for doing business FDI restrictions in LLPs have also been relaxed by Central Government. Continuing restriction of turnover is against the concept of ease of doing business in India. They should be exempted u/s 47 or the shareholders/partner's should be exempted.

5. INCOME FROM OTHER SOURCES

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles/Hurdles either Interpretative, Administrative or otherwise	Suggestion or new clause Suggested
5.1	Under section 56 (2)(x)- Explanation the definition of the term "relative" inter alia, covers the following: "spouse of the person refer to in items(B) to (F) In case of relative of an HUF only the members of the HUF are considered as relative.		1. The word "spouse" should be substituted with the word "spouse or children" and clarify that relative includes maternal grandparents. **Justification:** Gift from uncle is exempt. However converse is not true, as gift from nephew is taxable. This does not seem to be intended. 2. In case of HUF, relatives of the Karta should also be considered as a relative of HUF. **Justification:** In case a relative wants to give gift to the HUF, the same is taxable as against the gift to an individual by the same person is not considered as income.

6. ASSESSMENT PROCEDURE

6.	**Under section 143(1)(a)** (iii) Disallowance of loss claimed, if return_ _ _ _ _ _ _beyond the due date u/s 139(1). (v) Disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, _ _ _ _ _ _ _ beyond the due date specified u/s 139(1). (iv) Disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return. (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. Second Proviso Provided further that the response received from the assesse, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation.		1. _ _ _ _ _ Unless the assessee was prevented by sufficient cause and an application for the same is made before the designated authority. **Justification:** Where an assessee makes the payments between the period from date of audit report to the due date of filing return of income, the same is not disallowed as per the respective provision. 2. Delete the clause. **Justification:** There are numerous mistakes by the deductor on which the assessee does not have control. Secondly not necessarily all receipts appearing in 26AS are income of the respective assessment year; it could be taxable in different assessment year or not taxable at all. E.g. rent, advance payment, cash system of accounting, receipts of capital nature, etc. Alternatively, it can be reason of selection of "Limited Scrutiny". Thirty days to be increase to Ninety days. **Justification:** If the notice is served electronically, it may not be seen immediately by the assessee and to co-ordinate with their tax consultant and submit the objection also requires time.

7. DOCUMENT IDENTIFICATION NUMBER (DIN)

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles/Hurdles either Interpretative, Administrative or otherwise	Suggestion or new clause Suggested
7.1	282B-Allotment of Document Identification Number:- Omitted by Finance Act, 2011 w.e.f. 1-4-2011.		To reintroduce this section **Justification:** As per the justification given during the introduction of this section in the Finance (no.2) Act, 2009 w.e.f. 1-10-2010.

8. INTEREST AND PENALTY

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles/Hurdles either Interpretative, Administrative or otherwise	Suggestion or new clause Suggested
8.1	Calculation of the Interest u/s 201(1A) of the Act for the delay in deposit of TDS	• The current provision u/s 201(1A) states that interest is payable for the period of delay from the date of deduction to the date of payment. Even a part of the month is to be considered as a month. • Even in a situation where the delay is of 1 day (i.e. TDS deposited on 8th of the succeeding month instead of 7th). Under this situation the delay period will be calculated as 2 months, since the date of deduction is of preceding month.	Sec 201(1A) of the Act be amended to clarify that interest is leviable from the due date of payment and not from the date of deduction. **Justification:** Interest being compensatory in nature ought to be charged only for the period of delay and for the compensation for the period of delay. Levy of Interest is not penal provision.
8.2	Calculation of the Interest u/s 201(1A) of the Act for the delay in deposit of TDS	Proviso to section 201(1A) provides that if a person is not to be treated as an assessee in default under first proviso to section 201(1), then interest is to be paid from the date on which tax was deductible till the date of furnishing return of income by the recipient. If the recipient of the sum is having Nil or negative income or if the recipients income is exempt, then there is no question of leviability of any tax on such person, in which case, no interest should be levied on the deductor. However, there is no such provision in this regard.	Sec 201(1A) of the Act be amended to clarify that interest cannot be levied if the recipient has nil tax liability for the concerned year. **Justification:** Interest being compensatory in nature ought to be charged only where tax was otherwise recoverable from the recipient of the sum. Levy of Interest is not penal provision.

8.3	Section 270A replaces Section 271(1)(c). A paradigm shift has been brought by replacing the concept of concealment of income and furnishing inaccurate particulars of income by under-reporting of income and mis-reporting.	Over the period of time various issues were fairly settled u/s 271(1)(c). But these will again have to be considered in the context of Section 270A: 1) Requirement of MensRea 2) Burden of Proof. 3) Whether Penalty is automatic. 4) Whether penalty can be levied on debatable issue /incorrect legal claim. 5) Issues relating to commencement of penalty proceedings, initiation of penalty proceedings, recording of satisfaction. 6) Penalty on agreed additions. 7) Issue of Show cause notice.	To scrap Section 270A. The suggestion is as under – Scope of Section 273B should be suitably enlarged to provide for circumstances where penalty for concealment of income or furnishing inaccurate particulars will not be imposed. **Justification:** Section 270A will once again open Pandora box of issues which were plaguing section 271(1)(c). Hence, the objective will not be achieved.
8.4	S.270A	No provision dealing with a situation where tax has been paid but only return is not filed.	To incorporate a provision dealing with this aspect.
8.5	S.270A	Penalty u/s 270A is on difference between assessed income and income determied u/s 143(1)(a). However Explanation (b) to S.270A(3) which deals with loss uses the term "claimed" implying penalty will be difference between income assessed and returned income.	Explanation (b) to Section 270A(3) may be clarified or suitablyamended.

8.6	Section 270AA- Immunity from Imposition of penalty.	Where penalty is levied on certain additions on ground of mis-reporting and certain additions on ground of only under-reporting than assessee will have to make a choice whether to file appeal or make application for immunity as he cannot file appeal on penalty levied on mis-reported income and immunity application for under-reported income.	270AA(1)(b): No appeal against the addition refer to in clause(a) qua the addition on account of misreporting is filed
8.7		Application for condonation of delay is accepted or rejected during the course of hearing of appeal and which may happen after a year or so. Hence after rejection, application for immunity be allowed to be admitted.	Suitable provision may be inserted.
8.8		There is no specific bar prohibiting revision u/s 263 of order accepting immunity application.	Section 270AA(6) may be suitably amended.

9. TDS

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles/Hurdles either Interpretative, Administrative or otherwise	Suggestion or new clause Suggested
9.1	Fresh scheme of tax collection instead of TDS		Large size Companies including PSU, may be allowed to pay the taxes quarterly/monthly in lieu of TDS from their customers, on granting of no tax to be deducted u/s 197. These Companies may be given an option. The taxes to be deposited quarterly/monthly will be based on TDS claimed in the return of Income in last two A.Y's. this will reduce avoidable and unnecessary hardship caused to the deductor and the deductee (for taking credit). **Justification:** Reducing compliance burden and reducing rectification applications
9.2	Exemption of TDS on certain payments There is no specific exemptions from tax deduction at source in case of payments of personal nature, the cases covered in Sec. 194A (interest), Sec. 194 H (brokerage), in respect of individuals & HUF's		The exemption from tax deduction at source on the payments made for personal purposes should be extended to the payments covered u/s 194A and 194H of the Act, in line with the provisions made in section194J. Similarly to provide for TCS provisions **Justification:** There does not seem to be any logic to deduct tax at source on payments made on personal account.

	who are subject to tax audit		Merely because an assessee happens to be a proprietor of a concern which is liable for tax audit u/s 44AB of the Act, he should not be made liable for tax deduction on the payments made for personal purposes. He should be treated at par with other individuals and HUF
9.3	**Credit for Tax Deducted at Source** a) As per the current scenario, the credit for tax deducted at source is allowed on the basis of TDS reflected in Form 26AS, whereas, the assessee claims the TDS on the basis of the income offered to tax by him. This results to mismatch of credit for TDS, requiring rectification and submissions of various details by the assessee. The reasons for mismatch are many, e.g, the deductor following mercantile system of accounting, therefore TDS is deducted at the time of credit and on the other hand deductee following cash system	In respect of mismatch in year or other reasons, Assessee is unable to get credit of tax deducted and larger infructuous demands areraised	a) It is suggested that rule 37BA(3) should be amended, to provide that the credit for tax deducted at source should be allowed in the assessment year immediately following the financial year in which the tax has been deducted at source. In other words, it also means that the credit to the deductee should not be denied on account of mistake in data uploaded by the deductor or non-payment of TDS with the Treasury of the Government by the deductor as the deductee has no control over the Deductor. b) Rule 37BA(3) of the Income Tax Rules should be amended to the extent that in case of default on the part of the deductor for non-deposit of tax deducted at source, the deductee should not be denied the credit of such tax deducted **and future refunds should not be adjusted against demands arising out of non-payment by deductor**.

	of accounting and claiming credit for TDS in the year in which the income is actually received by him and vice-versa. As per the Finance Act, 1987, effective from 01/06/1987, the requirement for giving credit for TDS in the assessment year in which the income is assessable was introduced and has been applicable since then. Sec. 199 r.w. rule 37BA(3) states that credit for tax deducted and paid to the Central Government shall be given for the assessment year in which the income is assessable. b) In case deductor does not upload the details of tax deducted of the payee correctly, credit of the tax deducted is not allowed to the deductee thereby causing undue hardship to the deductee.		**Justification:** a) The assessee should not be denied credit for tax deducted at source merely because of different methods of accounting followed by the deductor and the deductee. Or because of mistake of the deductor. This will reduce unproductive and unnecessary work of the department as well as the assessee b) In many cases, the demand remains outstanding in the department's records on account of non deposit of TDS by the deductor and the same are incorrectly adjusted against subsequent refunds due to the deductee, resulting in unnecessary hardship to the assessee from whom the tax is wrongly recovered. There are sufficient provisions in the law to recover the amount not deposited by the deductor who is an assessee indefault.

9.4	Section 194 J Subsection (1) clause (ba) newly inserted Any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company		Threshold limit of Rs. 30,000 should be made applicable which is applicable to all other payments covered in sec.194J. **Justification:** The other payments like professional fees etc. on which TDS is required to be deducted u/s. 194J has threshold limit of Rs.30,000/-. However, no such threshold limit is provided in case where TDS is required to be deducted from payments to directors under new proposed provision.

10. MAT AND AMT

10.1	Income declared under Income tax disclosure scheme should be excluded from provision u/s 115JB		i) Section 185 of Finance Act, 2016 states as follows –The amount of undisclosed income declared in accordance with section 180 shall not be included in the total income of the declarant for any assessment year under the Income-tax Act, if the declarant makes the payment of tax and surcharge referred to in section 181 and the penalty referred to in section 182, by the date specified under sub-section (1) of section 184. ii) Section 115JB of the Income Tax Act, 1962 states as follows – Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2012, is less than eighteen and one-half per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of eighteen and one-half per cent. To avoid disputes and unnecessary litigations it is suggested that a provision be made to exclude the Income declared under IDS and on which taxes are duly paid to exclude from the book profit.

11. APPEALS AND DRP

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles/Hurdles either Interpretative, Administrative or otherwise	Suggestion or new clause Suggested
11.1	**Section 250 (6A)** (6A) In every appeal, the Commissioner (Appeals), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him under sub-section (1) of section 246A."	There are many old appeals which are pending before the CIT(A) and are disposed off much later	In every appeal, the Commissioner (Appeals), where it is possible, shall hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him under sub-section (1) of section 246A. Provided that where it is not possible for CIT(A), to herein decide such appeal within the aforesaid period, for reasons beyond his control, the principal CCIT/CIT on receipt of such request in writing from the CIT(A), if satisfied, may allow additional period of 6 months to herein decide such appeal. **Justification:** The time limit for passing the order is not mandatory but only recommendatory in nature. The time limit should be made mandatory. This would lead to timely disposal of matters

	Section 253(2A) Section 253(2A) gave right to the Department to file an appeal to the Tribunal in case where the Department objects to any direction issued by the DRP, in pursuance of which the AO passes the assessment order. The said sub-section was deleted by Finance Act, 2016 w.e.f. 1.4.2016	The Department has not been given right to file an appeal against the order of the AO passed in pursuance of the DRP's direction. Many instances have come to the notice, wherein DRP is passing adverse order even in case where the issue is covered in favour of the assessee by earlier years Tribunal or High Court order which has not been accepted by the Department. The reason given by the DRP in this regard is to keep the issue alive. This leads to confirmation of demand and then assessee is required to go through the entire process of obtaining stay and filing of appeal inspite of the issue being ruled in their favour.	Section 253(2A) should be revived. **Justification:** The DRP would not pass adverse order in genuine cases if the Department has a right to file an appeal against the DRP's direction. The Assessee would not be then required to file for stay of demand and file an appeal.
11.2	**Section 254(2)** (2) The Appellate Tribunal may, at any time within [six months from the end of the month in which the order was passed], with a view to rectifying any mistake apparent from the record,	Time limit of 6 months is too less. After the order is passed, it posted to the Assessee. Usually the assessee receives original order after 30 to 45 days after order is passed.	Period of six month to reckoned from the end of month in the order was received by assessee. Further the Tribunal may be empowered to condone delay in case of genuine difficulties.

	amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer.	Apart from that the time for passing of the order giving effect is 3 months. The assessee realises mistakes when confronted with the Assessing officer wherein he interprets the order differently. He may want to seek clarification from the Tribunal but cannot do so because of 6 months' time limit and cannot also move the High Court thereafter.	

12. Charitable Trust

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles/Hurdles either Interpretative, Administrative or otherwise	Suggestion or new clause Suggested
12.1	Definition of charitable purposes in section 2(15) The income of a charitable institution is exempt under section 11 only if it satisfiess the definition of "charitable purpose" in section 2(15) of the Income-tax Act, 1961. This definition has been recently amended by the Finance Act, 2015, with effect from assessment year 2016-17. Proviso to section 2(15) cement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying out of any trade,	The use of the word "and" separating the two sub-clauses (i) and (ii) in the proviso has created a very big unintended ambiguity. On a literal reading, since the word "and" is a conjunction, the proviso will not apply (and the definition of	While the amendment appears to be well-intentioned, seemingly to give relief to genuine charitable organisations, a literal interpretation of the language of the proviso may lead to even greater hardship for such charitable institutions. In the circumstances, it is strongly recommended the language of the provision is changed such that the word "and" be replaced by the word "or" with retrospective effect or a clarification from the CBDT may be issued to reflect the intended relief.

	commerce or business or any activity of rendering of any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless- (a) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and (b) the aggregate receipts from such activity or activities do not exceed 20% of the total receipts of the institution in the previous year.	charitable purposes will be regarded as satisfied) only if both the following conditions are cumulatively fulfilled: the activity of business, etc. is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and the aggregate receipts from such activity or activities do not exceed 20% of the total receipts	

		of the institution in the previous year The aforesaid interpretation does not fulfill the intent as expressed in the Memorandum explaining the provisions of the Finance Bill 2015. Suppose a small charitable institution has business receipt of Rs.10 lakhs and donation of 30 lakhs. Thus, its total receipts are Rs.40 lakhs and the receipts from business constitutes	

		more than 20%. In the pre-amendment scenario the trust was exempt, since its receipts from business were less than Rs.25 lakhs. However, the same Trust will now not be exempt, although the intent in the Memorandum is to clearly eliminate hardship to such small Trust. What is meant under the literal view is that • the higher the receipts of an	

		institution in the actual course of carrying on the activity, four times higher is the requirement of other receipts! • thus, in the aforesaid case, if the institution is able to carry out its activity in a better manner and sell books of say, Rs.15 crores it will now need other receipts of Rs.60 crores to be eligible for exemption!! • even if an	

		institution is solely engaged in a business in the course of actual carrying out of the object, then inspite of the intent expressed in the Memorandum, it will not be satisfying the definition of charitable purpose!! • the exemption to a charitable institution carrying out genuine charitable activity	

		depends on quantum of unrelated donations and other receipts! Thus, if a trust is exclusively engaged in welfare of retired army men, it will still need four times unrelated donations and other receipts!! It is obvious that the purpose of the amendment is to relax the rigors of the existing provision and not to	

		restrict it further. In many institutions the work for the business activity is carried out by the beneficiaries, thus, an institution promoting arts and crafts of rural artisans would attempt to give the maximum possible amount out of its sale proceeds to such artisans retaining very little money for the institution. In such cases, the profit from the actual carrying out from the activity	

		would be very low, but because it does not satisfy the 20% limit its entire donations and interest income will become taxable!	
12.2	Section 11(1)(a) provides that income to the extent applied during the relevant previous year to charitable purposes in India is exempt. Explanation (2) to section 11(1) provides that for this purpose, the application of income in subsequent years will be regarded as application in year 1, subject to fulfilment of conditions.	On a plain reading, the percentage of income that could be applied in a subsequent year under the Explanation is without any limit. In other words, if the actual application of income in the year under consideration is say, 40% another 45% could be regarded as deemed to be applied.	It is therefore suggested that the law be appropriately amended to clarify that the option under Explanation 2 to section 11(1) can be exercised without any limit.

		However, the Supreme Court has observed in CIT v. G. R. Govindarajulu & Sons,(2015) 61 taxmann.com 400 (SC), that the assessee is entitled to exercise such an option only to the extent of 25% (now 15%). With respect, it is submitted that on a plain language of Explanation (2) to section 11(1), there is no limit to the amount in respect of which the option may be exercised. The limit of	

		25% (now 15%) is in respect of the basic accumulation under section 11(1)(a) for which no option is required to be exercised. Further, the question regarding the limit up to which the option could be exercised was not before the High Court or possibly before the Supreme Court also. Since, under Article 141 of the Constitution of India, the law declared by the Supreme Court becomes law of the land,	

		this could result in erroneous application by Assessing Officers, resulting in hardship for the assessees.	
12.3	A new Chapter XII-EB (consisting of sections 115TD to 115TF) was inserted in the Act, with effect from 1-6-2016, to provide for levy of additional income-tax @ maximum marginal rate on accreted income, upon a charitable institution, in case of three situations— conversion into any non-charitable form; or merger with any other non-charitable institution; or failure to transfer its assets on its dissolution to a specified charitable institution within a specified period.	The following issues have not been addressed: (a) The accreted tax is payable without any return of income. There is no provision for filing or including it in a return of income unlike other instances of payment of tax on market value [e.g. payment upon	It is therefore suggested that the law be appropriately amended to clarify and provide for the above issues.

		dissolution of a firm under section 45(4), payment by a shareholder upon liquidation of a company under section 46(2)]. (b) There is no provision for payment of advance tax. (c) There is no provision for hearing. (d) There is no provision for assessment. (e) There is no provision for rectification.	

		(f) There is no provision for issue of any order by the Assessing Authority. (g) There is no provision for issuing a notice on demand. (h) There is no provision as to who will finally determine the correctness of the amount. (i) There is no provision for appeal. (j) There is no provision for stay application and	

		grant of stay. (k) There is no provision for giving opportunity of being heard to the assessee. (l) There is no provision for refund. (m) <u>Dual tax likely</u> (i) <u>Additional capital gains tax likely</u> In order to meet the tax liability, an institution may have to dispose of certain	

		assets. This disposal will itself attract capital gains tax. Thus, the accreted tax could result in more than 30% of the funds of an institution be subject to payment of tax. (ii) Additional tax under section 11(2) or third proviso to section 10(23C): If income	

		accumulated under section 11(2) or third proviso to section 10(23C), then apart from exit tax, tax under section 11(3) or twelfth proviso to section 10(23C) is also possible.	

13. OTHERS

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles/Hurdles either Interpretative, Administrative or otherwise	Suggestion or new clause Suggested
13.1	Currently person having only exempt income is not required to file return of income	Persons earning huge tax exempt income and not filing return of income are not subject to verification whether income is exempt or not and it leads to abuse of Law.	Every person earning income which is not chargeable to tax e.g. agricultural income, exceeding Rs 5,00,000 is mandatorily required to return of income. Since a person having huge exempt income does not have any trail for verification of source of income. It leads to abuse of Law.

13.2	Only a person having total income of more than Rs 50 lacs is required to disclose assets held by him. There is no provision that requires government employees even if he earning less than Rs 50 lacs to disclose his total assets.	• It is difficult to implement benami transaction law with it's full rigor. • Reduce corruption, black money in the Indian System and also promote ease of doing business and transperancey in the system.	It is proposed that, a government employee having taxable income should be mandatorily be required to disclose assets by him and his immediate relative. The clerical staff generally does not have taxable income so the lowest income group would automatically be excluded from application of aforesaid disclosure requirement.

13.3	CBDT has issued **Citizen's Charter 2014**. Various time frame has been laid down for disposal of the tax payer's application	It is observed that time framed specified in citizen's charter, is not adhered in cases like • order giving effect to appeal, decision on rectification application, • issue of lower or nil TDS certificates etc. CBDT has also issued instruction from time to time viz. INSTRUCTION NO 1/2014, Dated: January 15, 2014 for adhering the prescribed time frame.	Time frame specified in the citizens charter should be specified in the Income-tax Act itself. Time frame for certain matters like disposing of application for compounding of offence and prosecution should also be introduced. Further alternate procedure for filing various such applications through the income-tax e-filing portal should be introduced.

14. ANNEXURE TO THRESSHOLD LIMITS & TIME LIMIT WITH DUE DATE

Sr. No.	PRESENT PROVISION/PRACTICE			SUGGESTED MODIFICATION	RATIONALE FOR CHANGE	Code for Rational
	Section / Rule	Provision	Present Limit			
I	**Monetary limits**					
	A. CHARITABLE TRUST					
14.1	13(3)(b)	It refers person who has made "substantial contribution" that is to say upto the end of the relevant previous year exceeding	50,000	500,000	Since 1994	I
	B. GENERAL					
14.2	10(32)	Exemption limit for clubbing of minor's income	1,500	10,000	Since 1993	
14.3	56(2)(x)	Gift etc. (other than from relatives etc.) in excess of Aggregate	50,000	100,000	Since 2006	
14.4	148/149	Increase in monetary limit for issue of notice of Re-opening 1) Up to 4 Years 2) Between 4 and 6 years	Nil 1,00,000	1,00,000 5,00,000	WILL REDUCE PETTY LITIGATION Since 2001.	IV & V

14.5	263	Principal Commissioner/ Commissioner if he consider that an order passed by the A.O. is erroneous, have powers to pass an order enhancing or modifying the Assessment including cancelling	Nil	Proviso should be added that no such revision would be made where the tax effect does not exceed 45,00,000/-	Ceiling would prevent revision in small cases. Ceiling suggested is the same which is for filing of appeal by the Department before the Tribunal	I & V
14.6	281	Certain charge or transfer shall be void unless it is made (i) for adequate consideration ; or (ii) With the previous permission of the Assessing officer Sub section (2) provides for the monetary receipts- Amount of Tax or Sum payable - Assets Charged or Transfer	5000 10000	1,00,000 50,00,000	w.e.f. 1-10- 1975	I & V
	D. SALARIED EMPLOYEES					

14.7	10(14)(ii) Rule 2BB	Children Education Allowance	100 p.m.	2000 p.m.	Since 1997. It is so miniscule that if relief is intended then it should be increased OR removed altogether.	I & VII
14.8	10 (14) (ii) r.w. Rule 2BB	Children Hostel Expenditure Allowance	300 p.m.	3000 p.m.	Since 1997	I & VII
14.9	17(2)(iii)	Monetary limit for employee(other than Director) for perquisitie	50,000	100,000	Since 2002	I & VII
14.10	17(2)(v)	Medical Reimbursement	15,000	25,000	Since 1999	I
14.11	17(2)(vi)	Medical Treatment outside India is subject to condition that gross total income does not exceed Rs 2,00,000	2,00,000	500,000	Since 1993	I
14.12	17 (2)(viii) r.w.Rule 3	Perquisite in respect of the following a) perquisite for interest free loan in excess of b) lunch / refreshment c) Value of any gift etc. on ceremonial occasions or otherwise	20,000 50 5,000	1,00,000 200 15,000	} Since 2001	I & VII
	E(1) REQUIREMENT OF MAINTENANCE OF BOOKS OF					

	ACCOUNT ETC.					
14.13	44AA (1) r.w Rule 6F	The books of account and other documents referred to in sub-rule (1) shall be following : (i) A cash book ; (ii) a journal (iii) a ledger ; (iv) carbon copies of bills, whether machine numbered or otherwise serially numbered, wherever such bills are issued by the person, and carbon copies or counterfoils of machine numbered or otherwise serially numbered receipts issued by him: provided that nothing in this clause shall apply in relation to sums not exceeding twenty-five rupees (v) Original bills wherever issued to the person and receipts in respect of expenditure incurred by the person or, where such bills and receipts are not issued and the expenditure incurred does not exceed fifty rupees	Point **(iv)** Rs. 25 Point **(v)** Rs. 50	Point **(iv)** Rs.1000 Point **(v)** Rs. 5000	}Since 1983 Further In view of computerisation such keeping carbon copies may not be feasible required	I
	F. CAPITAL GAINS					

14.14	47 (xiiib)	The said excludes conversion of private limited companies to LLP, from the definition of transfer. However, there are certain conditions prescribed to be complied for being excluded from the definition of 'transfer'. One of the conditions is that the total sales, turnover or gross receipts in the business of the company in any of the three preceding previous year should not exceed Rs. 60 Lakhs.	6,000,000	Turnover limit- 10 crore and Assets limit- 20 crore	Many people did not have option of LLP when they had formed a private limited company. In view of various difficulties under the Companies Act, 2013 many assessees would like to convert their private limited companies into LLP and they should be given such option for some period.	
14.15	54 EC	Exemption of capital gain on investment in certain bonds	5,000,000	1.5 crore limit Time limit may be within 12 months or due date of filing return of income whichever is earlier	The original position to be restored. The Govt. will have more funds for stated purpose at lower rate of interest.	
	G. TAX DEDUCTION AT SOURCE					

14.16	193	TDS on Interest on Securities	5,000	20,000	Since 1989. Will reduce hardship to many. However details of the persons whose TDS is not deducted may be called along with TDS statement for cross verification by department	I
14.17	194A	TDS on Interest other than interest on securities:- (a) Bank (b) Others	(a) 10,000 (b) 5,000	20,000 20,000	-do-	I

14.18	194-J	TDS on Professional Fees etc.	30,000 and there is no separate aggregate limit	35,000 per contract and aggregate limit of Rs. 1,00,000	To make it on line with limits u/s. 194C	I
II.	**Monetary Ceilings**					
1	10(13A) r.w Rule 2A	Exemption from production of rent receipt as Circular No. 17/ 2014	3,000	5,000		VII
2	208A	Applicability of payment of advance tax when tax payable exceeds	10,000	20,000	Since 2009	VII

15. ANNEXURE OF CITIZEN'S CHARTER

SI. No.	Key Services	Timelines (From the end of the month in which return/ application is received / cause of action arises)
1	Issue of refund alongwith interest under section 143(1) of the I.T. Act	
	a) In case of electronically filed returns	3 months
	b) Other returns	6 months
2.	Issue of refund including interest from proceedings other than section 143(1) of the I.T. Act	1 month
3.	Decision on application for rectification	2 months
4.	Giving effect to appellate/revision order	1 month
5.	Acknowledgement of communication received through electronic media or by hand	Immediate
6.	Decision on application seeking extension of time for tax payment or for grant of installment	Immediate
7.	a) Issue of Tax Clearance Certificate under section 230 of the I.T. Act	Within 3 working days from the date of receipt of application
	b) Issue of Tax dues Certificate under section 178 & 162 of the I.T. Act	Within 1 month from the date of receipt of application
8.	Decision on application for recognition/approval to provident fund/superannuation fund/gratuity fund	3 months
9.	Decision on application for grant of exemption to institutions (University, School, Hospital etc.) under section 10(23C) of the I.T. Act	12 months
10.	Decision on application for approval to a fund under section 10 (23AAA) of the I.T. Act	3 months

11.	Decision on application for registration of charitable or religious trust or institution	4 months
12.	Decision on application for approval of hospitals in respect of medical treatment of prescribed diseases	3 months
13.	Decision on application for grant of approval to institution or fund under section 80G(5)(vi) of the I.T. Act	4 months
14.	Decision on application for no deduction of tax or deduction of tax at lower rate	15 days
15.	Redressal of grievance	1 month
16.	a) Decision on application for transfer of case from one charge to another intra city	15 days
	a) Decision on application for transfer of case from one charge to another inter city	1 month
17	Application for PAN migration	7 days
18.	Cancellation of PAN/TAN	1 month
19.	Decision on condonation application u/s 119 of Income Tax Act 1961	3 months
20.	Decision on application for waiver or reduction of penalty or interest	3 months

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The Chamber of Tax Consultants

Vision Statement

The Chamber of Tax Consultants (The Chamber) shall be a powerhouse of knowledge in the field of fiscal laws in the global economy.

The Chamber shall contribute to the development of law and the profession through research, analysis and dissemination of knowledge.

The Chamber shall be a voice which is heard and recognised by all Government and Regulatory agencies through effective representations.

The Chamber shall be pre-eminent in laying down and upholding, among the professionals, the tradition of excellence in service, principled conduct and social responsibility

Unveiled by **Shri S. E. Dastur**, *Senior Advocate* on 30th January, 2008

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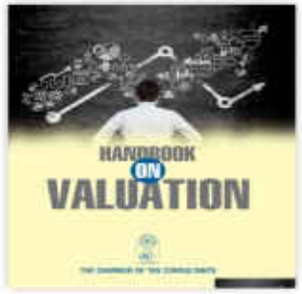

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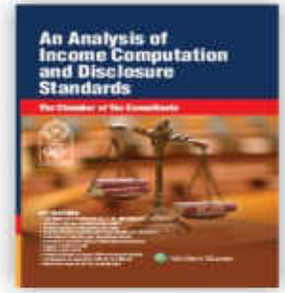

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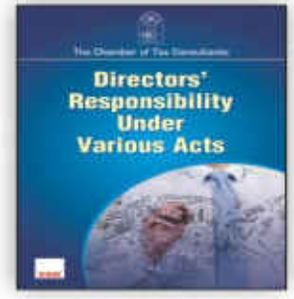

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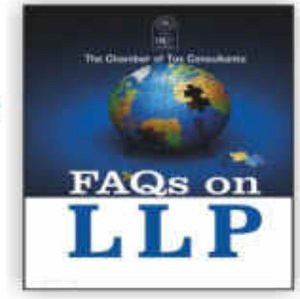

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THE CHAMBER OF TAX CONSULTANTS

ABOUT THE CHAMBER OF TAX CONSULTANTS:

The Chamber of Tax Consultants **(The Chamber)** was set up in 1926 and is one of the oldest voluntary non- profit making professional organisations. It is the voice of more than 4000 professionals on pan-India basis which comprises of Advocates, Chartered Accountants, Company Secretaries, Cost Accountant, Corporates, Tax Consultants and Students.

The Chamber in its 91st year is a young dynamic organisation which has a glorious past and undisputedly ambitious future. The Chamber is a **great institution** with a tradition of high **integrity, independence and professionalism.**

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The Chamber shall be preeminent in upholding among the professional, tradition of excellence in service, principle conduct, and social responsibility.