Bangalore Chamber of Industry and Commerce

REPRESENTATION TO FINANCE MINISTER ON -

- Measures of prevention of disputes, suggestions for improving faceless assessment and other matters
- Suggestions for improvement of capital gains tax regime in India

Foreword

India needs direct tax reforms

Taxes are vital resources whose maximisation and mobilisation is of importance to society and governments. Taxes are needed to meet the costs of governing a country, to ensure equity in society, to defend the country, deliver justice, ensure law and order, and all functions of a society built on the Rule of Law. It is also needed to finance, among others, the development needs of the poor and under-privileged sections of society, deliver basic services such as education and public health, and build important sectors of the economy.

This is possible through the expansion of the tax base and taxpayer base. For this the tax system should be easy to understand and administer, keep litigation low and ensure higher compliance through equitable tax rates. Citizens should emotionally feel that their taxes are contributing to the advancement of society and that there is equity and fairness in taxation. Citizens who earn higher incomes are subject to higher rates on income, on the principle that they can contribute more but the rates have to be at a level where they do not fell that they are subject to an unfair burden. All historical writings on taxation have elucidated this principle. The tax administration too should be done in a manner which treats the taxpayers with dignity and respect, built on the principles of citizen services, reduces litigation, enhances voluntary compliance while being firm in dealing with tax evaders. It is true that most people do not like to pay more taxes as their incomes rise but then taxes are the price we pay for a civilised society based on the Rule of Law. So the tension in tax collection will remain in every society.

It is upto to the peoples representatives in Parliament to ensure a fair system as they need to balance multiple interests. It is easy for them to be swayed by sentiments and popularism and raise tax rates but higher rates lead to diversion of income, flight of high tax payers, tax structuring to take advantage of tax loopholes etc. but whatever be the case there is no excuse for the people's representatives and the government not to design and ensure a good tax administration system based on citizen service and respect for tax payers.

India's tax system has become very cumbersome, more litigation prone, badly designed and needs to improve tax service. The biggest change needed is in ensuring that tax payers are respected for paying taxes. A former Finance Minister in Parliament sadly made a statement that we are a society prone to tax evasion, an attitude which has no basis in reality. The great majority of Indians are honest tax payers and of course as in every society, India too has its share of tax evaders. But to broad brush society as being prone to tax evasion shows a serious lapse of judgement which needs to be changed. Our Legislators should ensure that honest tax payers are not subject to the tyranny of tax collectors and a tax system of rates and administration is built on Trust and not on suspicion. The basis principle should be Trust all but verify! Today with the greater use of information technology and data bases it is easy to verify data and reduce the pain caused to tax payers. Indeed, India has moved much in this direction but the mind set of our Legislators and the tax officials needs to change too,

In India the number of tax payers has not increased proportionate to the increase in direct tax collections over the years. While tax administrations have adopted various ways to expand their tax base, the reform relating to tax administration to professionalise the administration and make it taxpayer friendly also needs to be pursued with vigour to improve the administrative efficiency and compliance.

Some of the key direct tax reforms covered in this booklet are prevention of disputes, improving faceless assessment and appeal process, search and seizure process, repeal of redundant provisions from income-tax law and improvement of capital gains tax regime. All suggestions to better tax administration, increase voluntary compliance and collections too. We need to understand that citizens, legislators and tax officials have to work together to create a better system as we are all citizens of the same country. Very often we have seen tax officials lament the system after they retire and feel its burden on them.

Speedy resolution of disputes and prevention of disputes is another key measure necessary to improve tax administration. The funds locked in litigation serve no purpose; these can be released and put to use only if pending cases are disposed of without delay and upcoming disputes are prevented through measures such as delinking of assessment function from revenue targets. Increased litigation reduces the ease of doing business, increases the costs of doing business and imposes a big burden on society.

Faceless assessment and appeals are a major step forward towards bringing transparency in the taxation system and empowering honest taxpayers. However, taxpayers are facing several issues under faceless assessment and appeal scheme as elucidated in this booklet, which needs to be addressed by the Government on priority to make this key direct tax reform measure a success story. The biggest lacunae is the knowledge asymmetry between tax

Foreword

payers, tax professionals and officials. A forum is needed where they can constantly interact and resolve grievances, all to improve the system. This gap has increased distrust in the system.

Search and seizure is a major power in the hands of tax administrators to detect tax evasion and augment tax revenues. However, exercise of such power without following rule of law would be an assault on fundamental rights of taxpayers. Therefore, search and seizure process needs to be reformed to address the concerns of taxpayers. We have witnessed many harrowing tales of harassment during search. Giving too much power to tax officials in this area, without the oversight of the Justice system, has led to increased harassment, rent seeking of a high order and charges of political interference and vengeance seeking. This needs to change. Our legislators should intervene to protect citizens and not subject them to greater tyranny of tax collectors.

Laws need to be consonant with the times. Several redundant and obsolete laws have been repealed by the Central Government in the past years. Similarly, income-tax legislation needs to be overhauled to repeal/omit provisions which are redundant.

India has seen seminal reforms in capital markets over the last decade. Our secondary markets are in the top 3 on trading volume, regulations, liquidity and risk management. The big challenge is to improve access to capital for our innovators and start-ups. Only 10% of capital invested in start-ups between 2014 and 2020 is from India.

A complex unfriendly capital gains tax system is a big reason why many Indian start-ups have relocated their headquarters outside India. We have a perverse tax system that penalizes investing in unlisted companies with a higher long term capital gains tax for taking greater risks and creating more jobs. There is an urgent need to reform the entire gamut of capital gains tax on securities and real assets in order to simplify the tax regime, ensure uniformity across asset classes, improve compliance, reduce litigation. Reforms of taxation of capital gains would enable investors to invest in various assets after considering the risk and return rather than tax consequences.

India today stands at a juncture when quick recovery of the economy after the COVID-19 pandemic is the need of the hour and foreign investment has an important role to play in promoting faster economic growth and employment. The government and our Prime Minister have focused hugely in improving ease of doing business, reducing costs of doing business to increase growth and jobs. The recent withdrawal of litigation on retrospective taxation, the reduction of corporate tax rates, reforms in dividend taxation, greater use of technology are excellent initiatives. This has improved India's ranking globally and increased trust in the system. But more is needed and this booklet identifies areas which need urgent attention of our Finance Minister and Prime Minister. India needs a modern, efficient, easy to understand and less complex tax system, based on use of technology, data bases, lesser interaction with tax officials, which increases compliance and collections to reach our targeted 10Tr$ GDP early. Nobody will object to paying a fair tax built on good tax payers service with least litigation.

In the past few years, major reforms have been initiated in the financial and infrastructure sector which has created a positive environment for investment in the country. Continuing this reform drive, I hope that Indian Government implements much needed direct tax reforms as elucidated in this booklet.

T V Mohandas Pai

Chairman, Aarin Capital Partners

PART I

Measures of prevention of disputes, suggestions for improving faceless assessment and other matters

By

K R Sekar | Priya Narayanan | Chandrashekara Acharya

Mr. K R Sekar
Partner,
Deloitte Touche
Tohmatsu India LLP

K R Sekar leads the Deloitte Private practice for Deloitte India. Given his extensive experience advising clients/organisations throughout their business life cycle, Sekar has been consulting for clients in the high growth sectors and emerging markets on their business strategy and tax advisory.

Sekar is the President of the Bangalore Chamber of Industry & Commerce; member of the India Board of International Fiscal Association; and works closely with other chambers, including NASSCOM. He is the founder director of International Tax Research and Analysis Foundation (ITRAF), a dedicated research body in the field of international tax.

One of the leading tax advisers from India in the 'Guide to the World's Leading Tax Advisers', published by Legal Media Group, Euromoney; Sekar is also recognised as one of the leading tax controversy leaders by International Tax Review.

Priya Narayanan
Partner,
Deloitte

Priya Narayanan is a seasoned Corporate Tax professional with experience of advising strategic, key and priority firm accounts on complex issues. She specializes in tax issues associated with cross border transactions in addition to handling compliance and regulatory matters. Her expertise lies in structuring Indian inbound and outbound investments, developing cash repatriation strategies and conducting international tax optimization studies. In her 18+ years tenure with Deloitte, Priya has worked across the Chennai and Bangalore markets, giving her rich experience in different market environments and stakeholders.

She has deep knowledge about the e-commerce industry and emerging issues in this growing, vibrant sector.

Priya also believes in giving back to the CA community and professionals and invests time in speaking at various institute gatherings and interactions.

Priya is a commerce graduate and is a member of the Institute of Chartered Accountants of India

Industry experience:

Consumer; Technology, Media & Telecommunications; Financial Services; Life Sciences

Chandrashekara Acharya
Senior Manager – Tax,
Deloitte

Chandrashekara Acharya is a Senior Manager in Tax practice and is based out of Bangalore office with over 10 years of experience in corporate tax matters comprising advisory, representation, and compliance services.

He has advised large multinationals on inbound structuring, business reorganisation, cash repatriation strategies, withholding tax, capital gains implications and tax planning.

He has also represented clients in assessment proceedings before various tax authorities and has argued appeals before appellate authorities.

Chandrashekara is a commerce graduate and is a member of the Institute of Chartered Accountants of India

Industry experience:

Consumer; Technology, Media & Telecommunications; Energy Resources and Industrials

PART II

Suggestions for improvement of capital gains tax regime in India

By

T V Mohandas Pai | S Krishnan

T V Mohandas Pai
Chairman, Aarin Capital Partners

Mohan is Chairperson of Manipal Global Education Services P Ltd. He co-founded AARIN Capital to fund companies in Technology, E-commerce, Health Care and Life Science. He is based out of Bangalore, India.

Mohan actively interfaces with key leadership in Indian governments and regulators to improve the business ecosystem. He was awarded the Padma Shri award by the President of India in 2015, and the Karnataka Rojyotsava Award in 2004.

He served on the Board of the Securities and Exchange Board of India ("SEBI"). He is currently the Chairman of SEBI Primary Markets Advisory Committee (PMAC). Mohan was a Trustee of the International Financial Reporting Standards ("IFRS") Foundation, the body that oversees the International Accounting Standards Board ("IASB"), for six years. He is currently on the Boards of IIT's – Bhubaneswar and Hyderabad.

Until mid-2011, Mohan was a Member of the Board at Infosys Limited, Bangalore. Mohan joined Infosys in 1994 and was CFO from 1994 to 2006. He was voted 'CFO of the Year' multiple times.

Mohan has a keen interest in education. In 2000, along with others, he co-founded the Akshaya Patra Foundation, Bangalore – a mid-day meal program for school children. Today, this program feeds over 1.5 million children each day in 8,500+ government schools across nine Indian states aiming to feed 5 million children by 2020. This initiative is the largest mid-day meal program in the world.

Mohan holds a bachelor's degree in commerce from St. Joseph's College of Commerce, Bangalore, a bachelor's degree in law (LLB) from Bangalore University and is a Fellow Member of the Institute of Chartered Accountants of India.

S Krishnan
Tax Consultant

Krishnan is an international tax professional with significant on-ground practical experience of globalizing a company's operations. He has managed the entire gamut of planning, compliance, tax audits and litigation in international income-tax and transaction tax; due diligence and contract structuring as well as risk mitigation. He is assisting companies on international tax structuring and performing the role of a virtual international tax manager providing 'tax health check-up' and compliance oversight of international tax, employee mobility and transaction taxes. He is based out of Bangalore, India. He was earlier Vice President and Group Head – International Taxation at Infosys Limited (formerly called Infosys Technologies Limited). Over a period of 15 years at Infosys, he set up a centralized international tax department in Bangalore to manage tax compliance in over 30 countries across North America, Europe, Asia Pacific, Africa and Russia. He was responsible for filing corporate income tax returns in these countries and paying income taxes within the due dates. He has established appropriate tax filing methods supported by Transfer Pricing studies. He has personally managed income tax audits across USA, UK, Belgium, Canada, Germany, France, Netherlands, Japan, Singapore, Australia, etc. very efficiently. He settled a corporate tax audit in Japan through a Mutual Agreement Procedure involving the Competent Tax Authorities of India and Japan. During this process, he worked closely with the Government of India in reducing the withholding tax rate on Royalties and Fees for Technical Services as per the Double Tax Avoidance Agreement between India and Japan from 20% to 10%.

Krishnan has significant knowledge and experience in global transaction tax compliance regime such as Sales Tax, VAT, Goods and Services Tax (GST), Consumption Tax and such else. He has set up processes for charging appropriate transaction taxes on invoices.

Krishnan has experience in the complete chain of employee mobility activities such as obtaining work and residence permits for employees deputed to work in foreign countries, drafting deputation letters, implementing tax efficient compensation policies for such employees, obtaining social security exemptions and managing payroll compliance. Krishnan has leveraged employee tax benefits such as the Dispensation Scheme in the UK, LAFHA in Australia, 30% ruling in the Netherlands, Special Expat benefits, etc., while designing the compensation structure for employees deputed to foreign countries. He has also addressed the corporate tax consequences of employee mobility. He has significant experience in managing employee deputation and secondment arrangements.

Krishnan has published an elaborate Discussion Paper on drafting Foreign Tax Credit Rules in India and articles on the onerous reporting requirements in the U.S. on its citizens and green card holders residing outside the U.S.

Krishnan holds a bachelor's degree in commerce from Bangalore University. He is an Associate Member of the Institute of Chartered Accountants of India and the Institute of Cost Accountants of India.

BANGALORE CHAMBER OF INDUSTRY AND COMMERCE

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Representation to Finance Minister on income-tax matters

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PART I

TAX ADMINISTRATION

Executive summary

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A.	**Measures for prevention of disputes**	
1	Delinking of assessment function from revenue targets	• All functions relating to assessment should be categorically delinked from revenue targets. • It should be driven by separate performance measures and targets that give due importance to the quality of the processes as well as recovery, and not by the extent of demand raised.
2	Quality of assessment/appellate orders and accountability	• Assessing officer and Commissioner of Income-tax (Appeals) should be held accountable for deletion of adjustments made/upheld by them in the assessment order at higher appellate forums. • Interest payable to the taxpayer due to deletion of adjustments by appellate authorities should be recovered from the concerned tax authorities. • It should be mandatory for assessing officer and CIT(A) to follow the orders of jurisdictional Tribunal and High Court even if revenue has preferred appeal against such orders.
3	Speedy disposal of applications for order giving effect to the orders of appellate authorities and rectification applications	• Option to enable filing of OGE and rectification applications online. • If the orders are not passed within the time limits prescribed in the Act: ✓ Such OGE and rectification orders are deemed to have been passed. ✓ Demand, if any that would be nullified pursuant to such OGE and rectification shall not be enforced and ✓ Refunds, if any arising from such OGE and rectification orders shall be processed by Centralised Processing Center. • Where, there is delay in processing of refund arising from OGE and rectification beyond the time limit prescribed under the Act, taxpayer should be entitled to higher rate of interest of 1.5% per month. • Refunds arising on the OGEs/rectification orders should be allowed to be set-off against the advance tax liability or self-assessment tax liability in subsequent years. • Recommended to limit the frequent transfer of officers or to have a minimum time duration to serve in a particular jurisdiction before transfer.
4	Mandatory timeline for passing of orders by CIT(A) and publication of the same on the website of income-tax department	• Where the order is not passed by CIT(A) within the prescribed timeline: ✓ Order shall be deemed to be passed where there is jurisdictional Tribunal or High Court order in taxpayer's own case or any other case in same jurisdiction. ✓ Tax demand, if any which is under appeal shall not be enforced. ✓ Taxpayer shall be entitled to interest at the rate of 1.5% per month on refund, if any arising from appellate order for the period of delay in passing the order beyond the prescribed timeline. • It should be mandatory for CIT(A) to follow the orders of jurisdictional Tribunal and High Court even if revenue has preferred appeal against such orders.

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Sl. No.	Executive summary of recommendations	
A.	Measures for prevention of disputes	
		• A provision may be introduced for publishing the orders passed by the CIT(A) on the website of income-tax department for further reference by officers and taxpayers.
5	Timeline of remand proceedings	• Time limit for the remand proceedings to be reduced to 6 months from the end of the month in which the order is received rather than end of financial year. • The DRP/CIT(A) route can be skipped in the second round for a faster and effective resolution and thus, orders passed under remand proceedings to be directly appealable to the Tribunal.
6	Issues related to lower deduction/collection certificate	• A strict timeline to issue the certificates may be imposed for timely disposal of the applications. • It is recommended to create mandate in the system to provide an opportunity of being heard and reasons before rejecting an application. • Rule 28AA may be amended to provide that tax return for 4 previous years shall not be required for determination of existing and estimated tax liability in case of taxpayers in existence for less than 4 financial years. • It is recommended that sections 194Q, 206C(1G) and 206C(1H) be covered within the ambit of sections 197 and 206C(9) to enable the taxpayers to seek the benefit of lower rate. • Where a new certificate under section 197/206C(9) is issued to taxpayer pursuant to revision request made, an option should be given to taxpayer to enter the consumption amount for the original certificate.
7	Non-consideration of response provided to intimation issued under section 143(1)(a) of the Act	• It is recommended to have an expert team at the backend to analyse the responses provided by the taxpayer and if found correct, the proposed adjustments shall be dropped.
8	Amendment of certain provisions, which are source of harassment to taxpayers.	• Certain provisions of the Act provide immense powers to assessing officers which results in harassment of taxpayers. • It is recommended that guidelines be issued to the tax authorities to consider the complete facts on records and not disallow a percentage of income or expense on an adhoc basis in case of best judgement assessment under section 144 of the Act. • It is recommended that re-assessment proceedings may be initiated only when there is reason to believe that income has escaped assessment based on documentary evidence and not merely based on objections form Comptroller and Auditor General. • It is recommended to waive off or relax the mandatory requirement of 20% of tax deposit for grant of stay or issue internal instructions to tax authorities for not initiating recovery proceedings, owning to the liquidity crunch being faced by the businesses in light of the Covid situation. • Internal guidelines may be issued to tax authorities to specify that all adjustments made in assessment order

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Sl. No.	Executive summary of recommendations	
A.	**Measures for prevention of disputes**	
		shall not be considered for initiation of penalty proceedings; rather adjustments above a monetary threshold of say INR 50 lakh where there is misreporting or non-reporting of income shall only be considered for penalty proceedings.
B.	**Suggestions for improving faceless assessment and appeal process**	
1	Failure to file response to notice on the income-tax e-filing portal due to technical glitches	• Where the technical issues on the e-filing portal prevent the taxpayer from furnishing timely response on the e-filing portal, another opportunity should be provided to the taxpayer in such cases for furnishing a response. • Further, where the e-filing portal is not functioning, there must be an alternate mode of communication such as an email id to which the taxpayer can intimate the tax office of the issues it is facing and inability to file online response so that additional time maybe given for furnishing response.
2	Repeated notices issued to taxpayer ignoring the submission already filed by the taxpayer	A better tracking mechanism maybe put in place to ensure that the response is taken on record and issue of repeated notices are avoided.
3	Arbitrary orders being passed without regard to nature of business/industry of the taxpayer	It is recommended that the Assessing Officer assigned to a case be adequately trained and have some basic knowledge of the industry or business of the taxpayer.
4	Assessment orders passed without considering the submissions filed by taxpayer or without providing basis for not accepting taxpayer's submission	• It is recommended that speaking orders be passed by the assessing officers providing adequate rebuttal to the submissions made by the taxpayer. • Where proposed assessed income is more than twice the returned income or proposed adjustments exceed INR 10 crore, such assessment order should be reviewed by a panel of 3 officers not below the rank of Commissioner of income-tax before passing the assessment order.
5	High pitched assessment orders are passed without providing opportunity of personal hearing through video conferencing	Where proposed assessed income is more than twice the returned income or proposed adjustments exceed INR 10 crore, providing opportunity of personal hearing through video conferencing with an officer not below the rank of Additional Commissioner of income-tax should be made mandatory and any assessment order passed without video conferencing should be held void.
6	Inadequate time is given to taxpayer for providing response to the notice	It is recommended that the time given to provide the information should be commensurate with the amount of information sought. Further, in cases where large amount of information has been called for and the taxpayer has submitted part information requesting for additional time to provide the balance, the taxpayer must not be treated as an assessee in default.
7	Taxpayers are forced to split the submission into multiple parts due to restriction on file size.	It is recommended to increase the limit for each attachment size so that large files maybe uploaded with ease. Further, taxpayer should be given an option to upload documents on cloud or on a shared drive.

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Sl. No.	Executive summary of recommendations	
B.	**Suggestions for improving faceless assessment and appeal process**	
8	Real time alert to be given on uploading of notice/assessment order/appellate order, to the registered mail ID and mobile number of taxpayer	It is recommended that in cases where real-time alert is not given, the notices issued or orders passed should be considered as void as it is against the principles of natural justice.
9	Time limit to be prescribed for disposal of appeals under faceless appeals scheme and facilitating communication from taxpayer	• Where the order is not passed by CIT(A) within the timeline mentioned above: ✓ Order shall be deemed to be passed where there is jurisdictional Tribunal or High Court order in taxpayer's own case or any other case in same jurisdiction. ✓ Tax demand, if any which is under appeal shall not be enforced. ✓ Taxpayer shall be entitled to interest at the rate of 1.5% per month on refund, if any arising from appellate order for the period of delay in passing the order beyond the prescribed timeline. • It should be mandatory for CIT(A) to follow the orders of jurisdictional Tribunal and High Court even if revenue has preferred appeal against such orders. • Taxpayer should be enabled to send any communication to CIT(A) (such as early hearing request) through e-filing portal.
10	Issues related to personal hearing through video conferencing	It is recommended that switching on of the video should be made mandatory for the assessing officer as well to ensure that he responds appropriately to the clarifications provided by the taxpayer and the hearing is more productive.
C.	**Suggestions for improvement in Search and Seizure process**	
1	Release of details of search operations to media	Details of search and seizure operation shall not be released to press until closure of proceedings, unless consent of the taxpayer is obtained for such disclosure.
2	Use of police force in search and seizure operations	It is recommended that services of police officer may be requisitioned by tax authorities in search and seizure operations only in exceptional circumstances (such as non-cooperation from taxpayer).
3	Search and seizure to be undertaken only based on order form a designated court	• Prior to conducting search, an approval from a member equal to the rank of Member, CBDT shall be obtained. • Authorization for search shall be granted by a designated court, after recording satisfaction of the necessity to carry out such operation based on the information in possession of the tax authorities. • Search should be conducted only for tax evasion in the nature of unaccounted money and not on regular interpretation issues. • This shall ensure protection of fundamental rights of taxpayers as guaranteed by the constitution of India.
4	Restoration of Settlement commission	It is recommended that ITSC be restored and taxpayers be allowed to file applications for settlement.
5	Tax liability should be computed under normal rate if there is no tax evasion	Where tax authorities determine that there is no tax evasion, income assessed pursuant to search and seizure process should be taxed at normal rates and penalty applicable on search cases shall not be levied.

Executive summary

Sl. No.	Executive summary of recommendations	
D.	**Suggestions on provisions that could be repealed from Income-tax Act, 1961**	
E.	**Other Recommendations**	
1	Discretionary powers exercised by tax authorities	Appropriate administrative guidelines should be issued to limit the scope of discretionary powers exercised by tax authorities in order to reduce ambiguity and litigation with taxpayers.
2	Monetary threshold and manner of issue of certificate under section 281	• It is recommended that provisions of section 281 shall not apply where the amount of tax or other sum payable or likely to be payable does not exceed INR 5 crore or the assets charged or transferred does not exceed INR 100 crore. • Further, the process to apply for the certificate and issuance of the same can be made online similar to other facilities in place.
3	Timely processing of refund claims	Any refund that is due to the taxpayer should be granted and collection of outstanding demand should be pursued separately.
4	Enabling receipt of tax refunds by non-residents not having bank account in India	It is recommended to build a mechanism to issue refunds to non-resident taxpayers to their foreign bank accounts directly. Alternatively, issuance of refunds to authorized representatives or any group entities of the taxpayer could be enabled.
5	Lateral entry of experts in key roles:	Provision should be made for lateral entry of experts in key roles and specialized areas.
6	Improving TDS compliance	It is recommended that a small portion of tax deducted and deposited in the government account be allowed as business expenses to encourage the taxpayers to fulfill the obligation.
7	Auto filling of details from the tax audit report	Auto filing of details from the tax audit report in the return of income to be enabled.
8	Verification of the return of income	CFO or Company Secretary of a company may be enabled to verify and file the return of income under the Act.
9	Special drive for liquidation of cases	• A special drive may be initiated to clear all pending litigation till AY 2020-21 including reconciliation of long pending demands. • Further, write off of all demands below INR 100,000 is recommended. • In respect of appeals pending before CIT(A), cases with tax demand of less than INR 100,000 shall be disposed of in favour of taxpayer. • In respect of other appeals ruling of jurisdictional Tribunal, jurisdictional High Court, Supreme Court and CBDT Circulars shall be followed.
10	Selection of cases for scrutiny assessment	• It is recommended that if a case has been picked up for scrutiny assessments for two continuous assessment years and if the adjustments made to the returned income result in a demand which is less than INR 500,000, such cases shall not be picked up for complete scrutiny assessments again for next five years unless jurisdictional Principal Commissioner has reason to believe that income exceeding INR 10,00,000 would escape assessment. • Further it is not advisable to pick up cases for scrutiny of

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Sl. No.	Executive summary of recommendations	
E.	**Other Recommendations**	
		issues which are settled in favour of the taxpayer at a higher appellate forum.
11	Deduction under section 80G of the Act	• In order to encourage taxpayers to contribute more to the benefit of the society, it is recommended to remove the threshold of 10% of gross total income or increase the threshold to 50% or more to claim deduction under section 80G of the Act. • Further, it is recommended to allow deduction under section 80G for those opting for simplified tax regime.
12	Simplified Tax Regime ('STR') for senior citizens	• Under section 115BAC, no separate slabs for senior citizens above 80 years of age has been provided. Therefore, it is recommended to revise the income-tax rates under STR for senior citizens. • It is recommended to accept the return of income filed by the senior citizens (taxpayers above the age of 60 years) in good faith and complete the processing of such returns within 30 days and grant refunds. • It is also recommended that notices for scrutiny assessments to senior citizens may be issued only if there is a strong reason to believe that taxes are being evaded.
13	Simplified tax regime for Companies	• Considering that the tax rates for domestic companies has been reduced, deductions available under the Act may be removed to implement a simplified tax regime. • Further, it is recommended to introduce simplified assessment scheme for taxpayers opting for simplified tax regime whereby no disallowance is made in respect of business expenditure which are already debited to profit and loss account in the audited financial statements.
14	Fast track assessment process in certain cases	• For ease of doing business in India and to attract foreign investments, it is recommended to introduce a fast track assessment proceeding for timely conclusion of assessments (say within 3 months of filing the return) in case of overseas investors such as Foreign portfolio investors, Foreign institutional investors, Pass through investment funds such as Alternative investment funds, Venture capital funds, whose income from other sources and capital gains are taxable in the hands of the investors. • Further returns of above class of taxpayers shall not be selected for reassessment merely due to omission to pick such returns for regular assessment under section 143.
15	Quick assessments for taxpayers who are given certificate of appreciation	• It is recommended to conduct quick assessments say, completion of assessments within 30 days for those taxpayers who have been given certificate of appreciation by CBDT. • Further refunds due to such taxpayers should be processed within 30 days of becoming due. • Such taxpayers should also receive preferential treatment for disposal of appeals, processing of application filed under section 195(2), lower withholding certificate under section 197, application under section 281 etc. Such applications shall be disposed within 2 weeks.
16	Simplified withholding tax regime for non-residents receiving interest and dividend income	Withholding tax as per provisions of the treaty may be allowed based on self-certification from non-residents instead of tax residence certificate.

Detailed recommendations

A .Measures for prevention of disputes

1. Delinking of assessment function from revenue targets

Background and issues:

- Revenue authorities have been making arbitrary/irrational demands because of the revenue target-linked performance evaluation and incentive policy for tax officers.
- While such an evaluation policy encourages revenue collection, the policy cuts both ways – from the tax administration's standpoint, it creates undue pressure on tax officials to augment revenues leading to arbitrary/frivolous demands in certain cases; from taxpayers' standpoint, it casts doubt on the sanctity of the entire tax administration, reducing the taxpayer's willingness for compliance, thus indirectly creating incentives for non-compliance.
- Overarching revenue collection targets set out for tax officials and jurisdictional commissioners inherently conflict with taxpayers' expectations of fair interpretation of prevailing legislation and due regard being accorded to judicial wisdom enshrined in tax jurisprudence.

Recommendation:

- It is recommended that all functions relating to assessment should be categorically delinked from revenue targets. It should be driven by separate performance measures and targets that give due importance to the quality of the processes as well as recovery, and not by the extent of demand raised.

2. Quality of assessment/appellate orders and accountability

Background and issues:

- The quality of decisions delivered by tax officers is not a specific parameter in their performance assessment. Performance targets also do not provide for this.
- For example, the targets given for Commissioner of Income-tax (Appeals) are only in terms of the number of cases to be disposed of in a month/year. Adherence to principles of judicial discipline, sustainability of order before higher appellate forums is not given due weightage.
- Similarly, the rate of recovery of demand made by an assessing officer is not tracked in any manner while the amount of demand raised is recognized. This is contrary to any rational manner of achieving recovery.
- Not enough accountability currently exists in the present structure to ensure that adjustments made in the assessment order/upheld in the appellate order are based on fair interpretation of legal provisions and not guided by achievement of revenue targets.
- Consequences of high pitched/unreasonable assessment orders are passed on to the taxpayer, who has to go through lengthy appeal process to obtain necessary relief.
- In several cases, tax authorities do not follow jurisdictional Tribunal or High Court orders in favour of taxpayer on the ground that revenue has preferred appeal against such order. This is against the doctrine of judicial discipline.

Recommendation:

- It is recommended that rate of recovery of demand and quality of decisions delivered by tax authorities should be one of parameters for performance evaluation.
- It is recommended that assessing officer and Commissioner of Income-tax (Appeals) should be held accountable for deletion of adjustments made/upheld by them in the assessment order at higher appellate forums.
- Interest payable to the taxpayer due to deletion of adjustments by appellate authorities should be recovered from the concerned tax authorities.
- It should be mandatory for assessing officer and CIT(A) to follow the orders of jurisdictional Tribunal and High Court even if revenue has preferred appeal against such orders.

3. Speedy disposal of applications for order giving effect to the orders of appellate authorities and rectification applications

Background:

- As per the provisions of section 153 of the Income-tax Act, 1961 ('the Act'), an Order Giving Effect ('OGE') to the order of appellate authorities, which does not require fresh verification of any issue, shall be passed within a period of three months (additional period of six months may be granted by the principal commissioner or commissioner) from the end of the month in which the order of such appellate authorities is received by the Assessing Officer ('AO').
- As per the provisions of section 244A of the Act, an additional interest at the rate of three percent per annum is to be granted in cases of refunds arising as a result of delay in issuing of OGEs, which does not require fresh verification of any issue by the assessing officer, beyond the time limit specified under section 153 of the Act mentioned above.
- As per section 154(8) of the Act where an application for amendment under this section is made by the taxpayer, the tax authority shall pass an order, within a period of six months from the end of the month in which the application is received by it,—
- making the amendment; or
- refusing to allow the claim.

Issue:

- In spite of the above provisions contained in the Act, in several cases, taxpayers have experienced delays way beyond the time limit specified under the Act in passing of OGEs and issue of refunds. Further, the compensation provided under the Act for delay in passing of OGEs in the form of additional interest on refund at the rate of three percent is not a fair compensation considering the current time value of money.
- Apart from the OGEs, the taxpayers are facing immense difficulties in getting an order rectified within a time limit of six months prescribed in the Act.
- At times, the ordeals of obtaining OGEs, refund & rectification orders substantially increase when the tax officer gets transferred more frequently to other jurisdictions. The process of issue of aforesaid orders get substantially delayed as the new officers in charge have to go through the files once again and issue orders.

Recommendation:

- It is recommended to enable online filing of OGE and rectification applications by taxpayers along with computation of taxable income and tax liability, if such OGE and rectification applications are processed.
- Further, it may be provided that if the orders are not passed within the time limits prescribed in the Act:
  - ✓ Such OGE and rectification orders are deemed to have been passed.
  - ✓ Demand, if any that would be nullified pursuant to such OGE and rectification shall not be enforced and
  - ✓ Refunds, if any arising from such OGE and rectification orders shall be processed by Centralised Processing Center.
- It would be equitable if the rate of interest on refunds is the same as that charged to taxpayers in the case of tax dues.
- Further, where, there is delay in processing of refund arising from OGE and rectification beyond the time limit prescribed under the Act, taxpayer should be entitled to higher rate of interest of 1.5% per month, similar to higher interest rate for tax demand prescribed under other provisions of the Act.
- It is also recommended that the refunds arising on the OGEs/rectification orders should be allowed to be set-off against the advance tax liability or self-assessment tax liability in subsequent years.
- Additionally, the Income-tax department could also initiate a special drive (say one specific month) for disposing all OGE/rectification application with tax effect above a particular threshold.
- It is also recommended to limit the frequent transfer of the incumbent officers of a jurisdiction or to have a minimum time duration to serve in a particular jurisdiction before the transfer takes place.

Section 201(1A) and section 220(2) of the Act

4. Mandatory timeline for passing of orders by CIT(A) and publication of the same on the website of Income-tax department

Background:

- Section 250(6A) of the Act provides as under:

  "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".

  Thus, there is only a suggested timeline for disposing of appeal filed before CIT(A). There is no mandatory time limit for passing of orders by CIT(A).

- In several cases, CIT(A) do not follow orders of jurisdictional Tribunal or High Court in favour of taxpayer on the ground that revenue has preferred appeal against such order.
- Further, unlike orders of other appellate authorities, orders passed by CIT(A) is not available to general public.

Issue:

- Though there are timelines for AO to pass order, there is no similar time limit for appellate orders of CIT(A). It is seen that many appeals are pending for 4 to 5 years before the CIT(A), thus delaying the litigation process.

Recommendation:

- The above snag can be cleared by introducing the concept of time barring appeals.
- As CIT(A) is an administrative appellate mechanism, prescribing a timeline can be part of bringing certainty of delivery which is an important taxpayer service.
- In light of the above, it is recommended to introduce a time limit (say, 12 months, extendable to further 3 months depending upon the complexity of the case) for disposal of appeals filed with CIT(A).
- Where the order is not passed by CIT(A) within the timeline mentioned above:

  Order shall be deemed to be passed where there is jurisdictional Tribunal or High Court order in taxpayer's own case or any other case in same jurisdiction.

  Tax demand, if any which is under appeal shall not be enforced.

  Taxpayer shall be entitled to interest at the rate of 1.5% per month on refund, if any arising from appellate order for the period of delay in passing the order beyond the prescribed timeline.
- It should be mandatory for CIT(A) to follow the orders of jurisdictional Tribunal and High Court even if revenue has preferred appeal against such orders.
- Further, a provision for publishing sanitized versions (without the names of the taxpayer) of the orders passed by the CIT(A)on website of Income-tax department may be made so that they are available to taxpayers and revenue authorities for future reference.

5. Timeline of remand proceedings

Background:

- As per the provisions of section 153 of the Income-tax, Act 1961, in case of an appeal, where the matter has been remanded back to the file of AO or Transfer Pricing Officer ('TPO') for fresh verification, the order has to be passed within a period of 12 months (24 months in Transfer pricing cases) from the end of the FY in which the order is received.

Issue:

- Such a timeline adds another two to three years of litigation to initiate the second round of proceedings before the lower authorities thus, delaying the closure of appeal obtaining certainty.
- Further, the taxpayer has to again travel through the CIT(A)/DRP route in the second round of proceedings, which could further extend timeline involved in disposal of appeal and increase the cost for taxpayers.

Recommendation:

- Time limit for the remand proceedings should be reduced to 6 months from the end of the month in which the order is received, rather than end of the financial year.
- Considering the matter has already travelled through one round of litigation, the DRP/CIT(A) route can be skipped in the second round for a faster and effective resolution, thus making the second round of orders directly appealable to the Income-tax Appellate Tribunal.

6. Issues related to lower deduction/collection certificate

Background& issue:

- Provisions of section 197 and 206C(9) of the Act enable a taxpayer to seek benefits of lower rate of deduction or collection, respectively, by way of issuance of a Certificate.
- Office Memorandum from CBDT dated 26 July 2018 prescribes 30 days' time limit for processing of application under section 197. However, taxpayers are facing difficulties in obtaining the aforesaid certificates on a timely basis and as per the requested rates.
- In certain cases, the applications for lower deduction or collection certificates are being rejected without providing any opportunity of being heard or without providing any reasons for rejection.
- Rule 28AA of Income-tax Rules, 1962 provides that Certificate under section 197 shall be issued where the Assessing Officer is satisfied that existing and estimated tax liability of a person justifies the deduction of tax at lower rate or no deduction of tax, as the case may be.

Existing and estimated tax liability shall be determined by the assessing officer after taking into consideration various factors including tax payable on the assessed or returned or estimated income, as the case may be, of last four previous years.

In case of newly incorporated entities or entities in existence for less than 4 years, tax authorities are rejecting application under section 197 on the ground that taxpayer does not have tax return or financial statements for 4 previous years.

- Further, benefit of lower deduction certificates are not enabled for tax to be deducted under section 194Q and tax to be collected under section 206C(1G) and 206C(1H).
- It is also noticed that when a revision request is made to the already issued certificate, say request for revision in rate or revision of consumption value, the original certificate is cancelled in the system or the consumption value in the original certificate is nullified and a fresh certificate is generated with effect from the date of generation.

  Cancellation of original certificate or change of consumption value to zero in the original certificate, causes unnecessary hardships to the tax deductors who have withheld TDS at the rate prescribed in the original certificate and have used such certificate in the TDS returns filed in prior quarters, leading to short deduction of taxes to that effect. Due to this, the taxpayers again run from pillar to post to get the same rectified in the system of the department and to get the originally valid certificate.
- Lastly, in the TRACES portal, a tax deductor has an option to search and view the certificates issued by its vendor using their PAN. However, the option to view the certificates, either using the certificate number or by way of an overall list is not enabled.

Recommendation:

- A strict timeline to issue the certificates may be imposed under section 197/206C(9) for timely disposal of the applications for lower deduction or collection certificate. It may be provided that certificates would be deemed to be issued if they are not disposed within prescribed time limits.
- It is recommended to create mandate in the system to provide an opportunity of being heard and reasons before rejecting an application for lower deduction or collection certificate.
- It is recommended that Rule 28AA may be amended to provide that tax return for 4 previous years shall not be required for determination of existing and estimated tax liability in case of taxpayers in existence for less than 4 financial years.
- It is recommended that sections 194Q, 206C(1G) and 206C(1H) are covered within the ambit of sections 197 and 206C(9) to enable the taxpayers to seek the benefit of lower rate, thereby reducing their hardship in terms of cash flow position and litigation effort in obtaining refunds for the taxes deducted/collected.
- Where a new certificate under section 197/206C(9) is issued to taxpayer pursuant to revision request made, an option should be given to taxpayer to enter the consumption amount for the original certificate. Based on the consumption amount entered by the taxpayer for original certificate, consumption amount for the new certificate could be captured in the system. This will avoid the manual process of taxpayer requesting for change in consumption value in original certificate which would take substantial time and efforts.

7. Non-consideration of response provided to intimation issued under section 143(1)(a) of the Act

Background:

- As per section 143(1) of the Act, the return of income shall be processed and the total income or loss shall be computed after making adjustments for any arithmetical error in the return, incorrect claim apparent from any information in the return, etc.,

  It is also provided that no adjustments shall be made unless an intimation is given to the taxpayer of such adjustments. Further, the response received from the taxpayer shall be considered before making any adjustment.

Issue:

- In many cases it is observed that the responses provided to the proposed adjustments to the total income declared in the return of income are not considered by the centralized processing center and the order under section 143(1) of the Act is passed by making the proposed adjustments.

Recommendation:

- It is recommended to have an expert team at the backend to analyse the responses provided by the taxpayer and if found correct, the proposed adjustments shall be dropped.

8. Amendment of certain provisions which are source of harassment to taxpayers

Background, issue & recommendations:

- Certain provisions of the Act provide immense powers to assessing officers which results in harassment of taxpayers. Recommended amendments to such provisions are discussed below:

✓ **Best judgement assessment under section 144 of the Act:**

As per section 144 of the Act, if any person fails to file/revise the return of income as required under the Act or fails to comply with the notices or directions issued under the Act, the assessing officer has the power to make assessment of total income of the taxpayer to the best of his judgement, based on the available materials.

In many cases, the orders under section 144 of the Act is passed without giving the taxpayer an opportunity of being heard or without considering the complete facts of the case and records already available with the income-tax authorities. Further, in certain cases, the orders are being passed without considering whether the taxpayer is actually in receipt of the notices issued under the section.

It is therefore recommended that guidelines be issued to the tax authorities to consider the complete facts on records and not disallow a percentage of income or expense on an adhoc basis. Further, the order may be passed under this provision with the prior approval of higher authorities not below the rank of commissioner of income-tax to ensure necessary checks and balances.

✓ **Selection of cases for reassessment:**

The provisions of section 148, as amended by Finance Act, 2021 provides that the below information with the assessing officer can be a basis for initiating re-assessment proceedings due to income escaping assessment –

– Any information flagged in case of taxpayer for the relevant AY in accordance with risk management strategy formulated by CBDT;

– Final objection raised by Comptroller and Auditor General of India to the effect that the assessment in case of the taxpayer for the relevant AY has not been made in accordance with the provisions of the Act.

Initiation for re-assessment proceedings based on objection raised by Comptroller and Auditor General of India unnecessarily increases the burden of the taxpayer for no fault on their part. The taxpayer would have to undergo the burden of providing responses to the notices issued during original assessment as well as when re-assessed.

Therefore, it is recommended that re-assessment proceedings may be initiated only when there is reason to believe that income has escaped assessment based on documentary evidence and not merely based on objections form Comptroller and auditor general.

✓ **Recovery of demand**

Taxpayers are required to pay minimum of 20% of demand in order to obtain stay of demand where appeal is pending before CIT(A) or Income-tax Appellate Tribunal.

Owing to the liquidity crunch being faced by the taxpayers due to impact of COVID 19, it is recommended to waive off or relax the mandatory requirement of 20% of tax deposit for grant of stay or issue internal instructions to tax authorities for not initiating recovery proceedings.

✓ **Levy of penalty**

In many instances, penalties are being levied without providing an opportunity of being heard to the taxpayer. Further, in case of any adjustments being made in the assessment order, penalty proceedings are initiated by the tax authorities.

It is recommended that internal guidelines may be issued to tax authorities to specify that all adjustments made in assessment order shall not be considered for initiation of penalty proceedings; rather adjustments above a monetary threshold of say INR 50 lakh where there is misreporting or non-reporting of income shall only be considered for penalty proceedings This would save time and resources of the tax authorities and taxpayer.

B. Suggestions for improving faceless assessment and appeal process

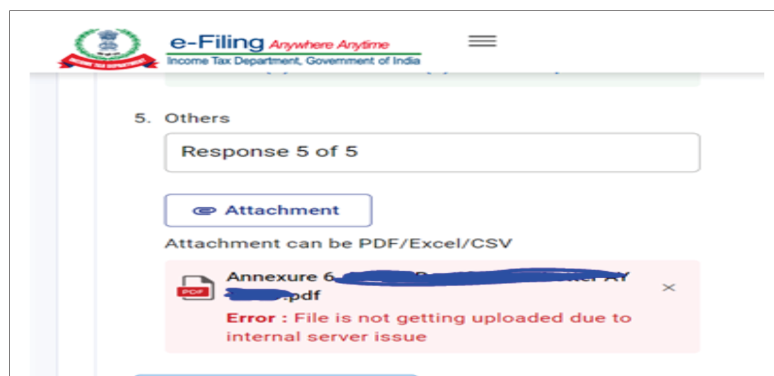
1. Failure to file response to notice on the income-tax e-filing portal due to technical glitches

Background and issues:

With the introduction of faceless assessment, all submissions and responses to the notices are required to be filed online. While this was introduced with an intention to provide greater transparency, efficiency and accountability, taxpayers have been facing several technical issues while accessing the e-filing portal. The issues taxpayers have come across have been laid out below:

- Notices are issued to taxpayer with a specific due date but due to technical glitches in the portal the taxpayer is unable to upload the response within the due date.
- In some cases, the taxpayer was unable to file adjournment requests on the portal due to technical glitches and hence making it appear as if the taxpayer has not complied with the notice.
- While uploading the attachments to the submission on the e-filing portal, the taxpayer received error message

stating “Error: File is not getting uploaded due to internal server issue”. There have been cases where the said issue has lasted for days there by preventing the taxpayer from filing the response within the due date.



While grievances have been filed by taxpayers requesting the technical team to address the above issues, the issues do not get resolved in time. As a result of the issues faced above, the taxpayer has been unable to furnish timely responses to the notices and the assessing officer has gone ahead and passed assessment orders considering the taxpayer to be non-compliant.

Recommendation:

- As the technical issues on the e-filing portal prevent the taxpayer from furnishing timely response on the e-filing portal, another opportunity should be provided to the taxpayer in such cases for furnishing a response.
- Further, where the e-filing portal is not functioning, there must be an alternate mode of communication such as an email id to which the taxpayer can intimate the tax office of the issues it is facing and inability to file online response so that additional time maybe given for furnishing response.
- In order to continue to maintain transparency the communication on the email id maybe restricted to technical issues that are being faced. This would help in ensuring that the assessment order is not passed without providing the taxpayer a reasonable opportunity of being heard thereby following the principles of natural justice.

2. Repeated notices issued to taxpayer ignoring the submission already filed by the taxpayer

Background and issues:

- After responding online to the notice issued to the taxpayer, there have been instances where follow up notices are being issued stating that the first notice has not been responded to.
- For each of the follow up notices that have been received, a copy of the initial submission filed would have been enclosed evidencing compliance. However, even after filing such responses repeated notices are issued directing the taxpayer to comply with the notice.

Recommendation:

- A better tracking mechanism maybe put in place to ensure that the response is taken on record and issue of repeated notices are avoided.

3. Arbitrary orders being passed without regard to nature of business/industry of the taxpayer

Background and issues:

- Prior to faceless assessment, the assessment was done by the jurisdictional tax officer who had basic knowledge of the industry or business of the taxpayer. However, now with dynamic jurisdiction, the case is randomly assigned to an assessing officer who does not have prior knowledge of the business of the taxpayer. Hence, they fail to adequately understand the business of the taxpayer and carry out a proper assessment leading to information requests or additions which are not backed by any sound reasoning or logic.
- In order to obtain relief at the appellate level, the taxpayer has to incur additional cost. Further, in cases where the cost of filing appeal is higher than the demand, the demand is paid off by the taxpayer. This is causing grave hardship to the taxpayer.
- In addition to the above, in some of the notices received by taxpayers voluminous details have been called for which are not justified by the facts of the case. For instance, companies whose accounts are audited have been asked to provide copies of all bank statements, copies of all sales invoices, purchase invoices, freight bills etc.

- In some of the notices, the following vague allegations were made:
  - "As per the information available with the tax office the purchases are bogus." However, the assessing officer failed to provide source or basis of this information due to which the taxpayer was unable to file an appropriate response to counter the allegations made.
  - "Custom duty paid as shown in the ITR is less than the duty paid as per Export Import data." When the taxpayer requested the assessing officer to provide source of the export import data he is referring to so that a reconciliation maybe provided, the taxpayer did not receive any response to the request.

Recommendation:

- It is recommended that the Assessing Officer assigned to a case be adequately trained and have some basic knowledge of the industry or business of the taxpayer.

4. Assessment orders passed without considering the submissions filed by taxpayer, or without providing basis for not accepting taxpayer's submission

Background and issues:

- In some cases, assessment orders are passed making adjustments stating that no response was filed by the taxpayer even though detailed submissions are filed by the taxpayer.
- Further, in certain cases, assessment orders do not mention the reasons why the taxpayer's submission was not accepted.

Recommendation:

- It is recommended that speaking orders be passed by the assessing officers providing adequate rebuttal to the submissions made by the taxpayer.
- Further, where proposed assessed income is more than twice the returned income or proposed adjustments exceed INR 10 crore, such assessment order should be reviewed by a panel of 3 officers not below the rank of Commissioner of income-tax before passing the assessment order.

5. High pitched assessment orders are passed without providing opportunity of personal hearing through video conferencing

Background and issues:

- In several cases where high pitched assessment orders were passed, the taxpayers were not provided opportunity for personal hearing. Few taxpayers received messages asking them to request video-conferencing by a particular date, but before that date, they received their final assessment orders.

Recommendation:

- It is recommended that where proposed assessed income is more than twice the returned income or proposed adjustments exceed INR 10 crore, providing opportunity of personal hearing through video conferencing with an officer not below the rank of Additional Commissioner of income-tax should be made mandatory and any assessment order passed without video conferencing should be held void.

6. Inadequate time is given to taxpayer for providing a response to the notice

Background and issues:

- In the notices issued to taxpayers, large amount of information and documents were called for and the time given to respond to the notice was insufficient. Many taxpayers were not able to respond in time due to constraints caused by lockdowns or unavailability of staff. A large number of documents were sought, necessitating plenty of time spent in scanning documents and uploading of information in multiple batches, given the capacity constraints for upload of information on the portal at a time.
- Tax authorities need to be sensitized to the fact that taxpayers should not be put to an undue burden of supplying too much information, which may not really be needed. Further, some of the notices also stated that part compliance with the notice will be treated as non-compliance.

Recommendation:

- It is recommended that the time given to provide the information should also be commensurate with the amount of information sought.
- Further, in cases where large amount of information has been called for and the taxpayer has submitted part information requesting for additional time to provide the balance, the taxpayer must not be treated as an assessee in default.

7. Taxpayers forced to split the submission into multiple parts due to restriction on file size.

Background and issues:

- As laid out in point 6 above, in some cases assessing officers direct the taxpayer to furnish large amount of information.
- The attachment size on the e-filing portal is only 10MB per file. Hence, for purpose of uploading large files the taxpayer is forced to split the submission into multiple parts. This results in the taxpayer spending a large amount of time in uploading documents on the e-filing portal.
- Further, in some cases while uploading documents the session times out and hence, the taxpayer is forced to repeat the process all over again.

Recommendation:

- It is recommended to increase the limit for each attachment size so that large files maybe uploaded with ease. Further, taxpayer should be given an option to upload documents on cloud or on a shared drive.

8. Real time alert to be given on uploading of notice/assessment order/appellate order, to the registered mail ID and mobile number of taxpayer

Background and issues:

- In certain instances, notices were uploaded by the tax office on the income-tax portal without any real time alert.
- As per the Notification No. 61/2019 dated 12 September 2019, issued by the Central Board of Direct Taxes issued under the E-assessment Scheme, 2019, every notice or order or any other electronic communication under this Scheme shall be delivered to the addressee by sending an authenticated copy there of to the registered email address of such person, followed by a realtime alert.
- The scheme defines “real time alert” to mean any communication sent to the taxpayer, by way of Short Messaging Service on his registered mobile number, or by way of update on his Mobile App, or by way of an email at his registered email address, so as to alert him regarding delivery of an electronic communication.
- In certain cases it was observed that no intimation vide SMS or by way of email was received by the taxpayer. Accordingly, the taxpayer was unaware of the notices issued/orders passed and hence was not given adequate opportunity to respond to the same.

Recommendation:

- It is recommended that in cases where real-time alert is not given, the notices issued or orders passed should be considered as void as it is against the principles of natural justice.

9. Time limit for disposal of appeals under faceless appeals scheme and facilitating communication from taxpayer

Background and issues:

- Faceless Appeal Scheme (FAS) 2020 has been introduced vide new section 250(6B) of the Income-tax Act, 1961 to eliminate human interface with the first appellate authority. While the introduction of faceless appeals is a welcome move, the scheme does not prescribe any time limit within which the appeals are to be disposed. This could lead to prolonged appeal process with no quick relief to the taxpayers.
- Under the current e-appeal scheme, taxpayer has the option to only file responses to notices issued by CIT(A). However, taxpayer does not have option to send any other communication (say early hearing request, order of other years which is relevant for current appeal etc) to CIT(A).

Recommendation:

- In order to ensure timely disposal of appeals, it is recommended to introduce a time limit (say, 12 months, extendable to further 3 months depending upon the complexity of the case) for disposal of appeals filed with CIT(A).
- Where the order is not passed by CIT(A) within the timeline mentioned above:
  - ✓ Order shall be deemed to be passed where there is jurisdictional Tribunal or High Court order in taxpayer’s own case or any other case in same jurisdiction.
  - ✓ Tax demand, if any which is under appeal shall not be enforced.
  - ✓ Taxpayer shall be entitled to interest at the rate of 1.5% per month on refund, if any arising from appellate order for the period of delay in passing the order beyond the prescribed timeline.
- It should be mandatory for CIT(A) to follow the orders of jurisdictional Tribunal and High Court even if revenue has preferred appeal against such orders.
- Taxpayer should be enabled to send any communication to CIT(A) (such as early hearing request) through e-filing portal.

10. Issues related to personal hearing through video conferencing

Background and issues:

In the experiences of the taxpayers, the following issues were faced during video conferencing:

- While the taxpayer was explaining the case and clarifying the issues raised by the assessing officer in the course of assessment there was no response from the assessing officer as to whether he was satisfied with the taxpayer's explanation and if he required any further details or information. It was more of a one-way communication.
- Further while the taxpayer is required to keep the camera on during the entire video conferencing, the camera of the assessing officer was switched off hence the taxpayer was unable to gauge whether the assessing officer was present and hearing the explanation of the taxpayer as there was no response from the assessing officer.
- The above gave a view that giving the opportunity for a personal hearing through video conferencing was more of a formality and only a one-way communication and did not serve the purpose it was formed for.

Recommendation:

- It is recommended that switching on of the video should be made mandatory for the assessing officer as well to ensure that he responds appropriately to the clarifications provided by the taxpayer and the hearing is more productive.

C. Suggestions for improvement in Search and Seizure process

1. Release of details of search operations to media

Background and issues:

- In several search cases, it is noticed that tax authorities release details pertaining to search operations to media whilst the search proceedings are still in operation and steps of appraisal are yet to be commenced. In this regard, Search and seizure manual provides as under:

"Steps should be taken to ensure that no information is given to the Press on search cases. This is based on the fact that search operation is only a tool of investigation and all the details gathered at the time of search are to be examined before coming to any conclusion. It would be premature to give any information at that stage."

- Such release of details to press would violate right to privacy of taxpayers which is upheld as a fundamental right by Supreme Court .

Recommendation:

- It is recommended that details of search and seizure operation are not released to press until closure of proceedings, unless consent of the taxpayer is obtained for such disclosure.

Search and Seizure Manual, Volume II, Annex 75 dated 7.3.2001
Justice K.S. Puttaswamy (Retd) vs Union of India and Others 2017 (10) SCC 1

2. Use of police force in search and seizure operations

Background and issues:

- Section 132(2) of the Act provides that tax authorities can requisition the services of any police officer in connection with search and seizure operations and it shall be the duty of every such police officer to comply with such requisition.
- In several search cases, use of services of police officers has caused undue hardship to taxpayers.

Recommendation:

- It is recommended that services of police officer may be requisitioned by tax authorities in search and seizure operations only in exceptional circumstances (such as non-cooperation from taxpayer).

3. Search and seizure to be undertaken only based on an order form a designated court

Background and issues:

- As per section 132 of the Act, power to conduct search any building, place, vessel, vehicle, aircraft and seize any books of accounts, other documents, jewellery or any other valuable asset found as a result of search has been given to Additional/Joint/Assistant/Deputy Director or Commissioner or Income-tax officer, who are authorized by Principal Director General/Director General or Principal Director/Director or the Principal Chief Commissioner/Chief Commissioner or Principal Commissioner/Commissioner.
- Explanation to Section 132(1) further provides that reason to suspect as recorded by the income-tax authority, which forms the basis for conducting search shall not be disclosed to any person or any authority or the appellate tribunal.
- Search and seizure process without following rule of law is an assault on the fundamental rights, especially, the right to privacy guaranteed by the constitution of India as upheld by the Supreme Court .

Recommendation:

- It is recommended that prior to conducting search, an approval from a member equal to the rank of Member, CBDT shall be obtained.
- It is further recommended that authorization for search shall be granted by a designated court, after recording satisfaction of the necessity to carry out such operation based on the information in possession of the tax authorities.
- Search should be conducted only for tax evasion in the nature of unaccounted money and not on regular interpretation issues.
- This shall ensure protection of fundamental rights as guaranteed by the constitution of India.

Justice K.S. Puttaswamy (Retd) vs Union of India and Others 2017 (10) SCC 1

4. Restoration of Settlement commission

Background and issues:

- The Finance Act, 2021, inter alia, provides that the Income-tax Settlement Commission ("ITSC") shall cease to operate with effect from 1 February 2021, and that no application for settlement can be filed on or after 1 February 2021.
- ITSC being an alternate dispute resolution mechanism allowed taxpayers to obtain waiver of penalty and immunity from prosecution proceedings. Abolition of ITSC would cause undue hardship to taxpayers and increase litigation relating to search and seizure cases.

Recommendation:

- It is recommended that ITSC be restored and taxpayers be allowed to file applications for settlement.

5. Tax liability should be computed under normal rate if there is no tax evasion

Background and issues:

- In several search and seizure cases, tax authorities determine that taxpayer is liable to pay tax on income higher than returned income, due to difference of opinion in interpretation of tax provisions rather than for tax evasion.
- However, taxpayers are required to pay taxes at higher rate/penalty on such additional income as same is determined under search and seizure process.

Recommendation:

- Where tax authorities determine that there is no tax evasion, income assessed pursuant to search and seizure process should be taxed at normal rates and penalty applicable on search cases shall not be levied.

Section 271AAB of the Act

D. Suggestions on provisions that could be repealed from Income-tax Act, 1961

List of sections that could be repealed from Income-tax Act, 1961 is captured as below:

SI No.	Section	Description	Rationale
1	2(23B)	Definition of Fringe Benefits	Fringe benefit tax is not applicable from AY 2010-11 onwards
2	10(23BBF)	Exemption of income earned by North-Eastern Development Finance Corporation	Exemption not available from AY 2010-11 onwards
3	10(23EB)	Exemption of income earned by Credit Guarantee Fund Trust for Small Industries and the Small Industries Development Bank of India	Exemption not available from AY 2007-08 onwards
4	10(26A)	Exemption of income earned by a person resident in the district of Ladakh	Exemption not available from AY 1989-90 onwards
5	10(33)	Transitional provision in respect of US 1964 scheme of UTI	Not relevant after AY 2004-05
6	10(41)	Exemption of income from transfer of assets of an undertaking engaged in the business of generation or transmission or distribution of power	Exemption not available from AY 2007-08 onwards
7	10(49)	Exemption of income of National Financial Holdings Company Limited	Exemption not available from AY 2014-15 onwards
8	10A	Special provision in respect of newly established undertakings in free trade zone, etc.	No deduction is available from AY 2012-13 onwards
9	10B	Special provisions in respect of newly established hundred per cent export-oriented undertakings	No deduction is available from AY 2012-13 onwards
10	10BA	Special provisions in respect of export of certain articles or things.	No deduction is available from AY 2010-11 onwards
11	10BB	Meaning of computer program	Meaning of computer program provided in the context of section 10B which has to be omitted
12	10C	Special provision in respect of certain industrial undertakings in North-Eastern Region	No deduction is available from AY 2004-05 onwards
13	12AA(1A)	Procedure for registration	Transitional provision for transfer of cases from Chief Commissioner to Commissioner on 1 June 1999
14	32A	Investment allowance	Investment allowance is not allowed from AY 1991-92 onwards
15	32AB	Investment deposit account	No deduction is available from AY 1991-92 onwards
16	33	Development rebate	No development rebate is allowed from AY 1976-77 onwards
17	33A	Development allowance	No deduction is available from AY 1991-92 onwards
18	33AC	Reserves for shipping business	No deduction is available from AY 2005-06 onwards
19	33B	Rehabilitation allowance	No allowance is available from AY 1985-86 onwards

Sl No.	Section	Description	Rationale
20	34	Conditions for depreciation allowance and development rebate	Conditions are laid out with reference to development rebate under section 33 which is proposed to be omitted
21	34A	Restriction on unabsorbed depreciation and unabsorbed investment allowance for limited period in case of certain domestic companies	Relevant for AY 1992-93 only
22	35(2A)	Expenditure on scientific research	No deduction is available from AY 1985-86 onwards
23	35A	Expenditure on acquisition of patent rights or copyright	No deduction is available from AY 2012-13 onwards
24	35AB	Expenditure on know-how.	No deduction is available from AY 2012-13 onwards
25	35CCB	Expenditure by way of payment to associations and institutions for carrying out programmes of conservation of natural resources	No deduction is available for payment on or after 1 April 2002
26	36(1)(xi)	Other deductions	Deduction is for expenditure incurred during previous year 1999-2000 specifically for non-Y2K compliant computer systems
27	36(1)(xiii)	Other deductions	Banking cash transaction tax has been withdrawn with effect from 1 April 2009
28	40(a)(ic)	Amount not deductible	Fringe benefit tax is not applicable from AY 2010-11 onwards
29	44AF	Special provisions for computing profits and gains of retail business	Not applicable form AY 2011-12 onwards
30	47(viii)	Transactions not regarded as transfer	Not applicable after 1 March 1970
31	47(xi)	Transactions not regarded as transfer	Not applicable after 1 January 1999
32	54E	Capital gain on transfer of capital assets not to be charged in certain cases.	Not applicable in respect of a transfer after 1 April 1992
33	54EA	Capital gain on transfer of long-term capital assets not to be charged in the case of investment in specified securities.	Not applicable in respect of a transfer after 1 April 2000
34	54EB	Capital gain on transfer of long-term capital assets not to be charged in certain cases	Not applicable in respect of a transfer after 1 April 2000
35	54ED	Capital gain on transfer of certain listed securities or unit not to be charged in certain cases	Not applicable in respect of a transfer after 1 April 2006
36	56(2)(v)	Income from other sources	Not applicable form 1 April 2006
37	56(2)(vi)	Income from other sources	Not applicable form 1 October 2009
38	71(4)	Set off of loss from one head against income from another	Relevant to AY 1995-96 and 1996-97 only
39	71A	Transitional provisions for set off of loss under the head "Income from house property"	Relevant for AY 1993-94 and 1994-95 only

Sl No.	Section	Description	Rationale
40	75	Losses of firms	Transition provision relevant to AY 1993-94 till AY 2000-2001
41	80CCF	Deduction in respect of subscription to long-term infrastructure bonds	No deduction on or after 1 April 2013
42	80HH	Deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas	No deduction from AY 2000-2001 onwards
43	80HHA	Deduction in respect of profits and gains from newly established small-scale industrial undertakings in certain areas	No deduction from AY 2000-2001 onwards
44	80HHB	Deduction in respect of profits and gains from projects outside India.	No deduction from AY 2005-06 onwards
45	80HHBA	Deduction in respect of profits and gains from housing projects in certain cases	No deduction from AY 2005-06 onwards
46	80HHC	Deduction in respect of profits retained for export business.	No deduction from AY 2005-06 onwards
47	80HHD	Deduction in respect of earnings in convertible foreign exchange.	No deduction from AY 2005-06 onwards
48	80HHE	Deduction in respect of profits from export of computer software, etc.	No deduction from AY 2005-06 onwards
49	80HHF	Deduction in respect of profits and gains from export or transfer of film software, etc.	No deduction from AY 2005-06 onwards
50	80-I	Deduction in respect of profits and gains from industrial undertakings after a certain date, etc.	No deduction is allowed after AY 2001-02
51	80-O	Deduction in respect of royalties, etc., from certain foreign enterprises	No deduction is allowed from AY 2005-06 onwards
52	80Q	Deduction in respect of profits and gains from the business of publication of books.	No deduction is allowed from AY 1997-98 onwards
53	80QQA	Deduction in respect of professional income of authors of text books in Indian languages.	No deduction is allowed from AY 1997-98 onwards
54	80R	Deduction in respect of remuneration from certain foreign sources in the case of professors, teachers, etc.	No deduction is allowed from AY 2005-06 onwards
55	80RR	Deduction in respect of professional income from foreign sources in certain cases.	No deduction is allowed from AY 2005-06 onwards
56	80RRA	Deduction in respect of remuneration received for services rendered outside India.	No deduction is allowed from AY 2005-06 onwards
57	88	Rebate on life insurance premia, contribution to provident fund, etc.	No rebate is allowed from AY 2006-07 onwards
58	88E	Rebate in respect of securities transaction tax	No rebate is allowed from AY 2009-10 onwards
59	111A(3)	Tax on short-term capital gains in certain cases	Omit this sub section as it refers to rebate under section 88 which is proposed to be omitted

Sl No.	Section	Description	Rationale
60	112(3)	Tax on long-term capital gains	Omit this sub section as it refers to rebate under section 88 which is proposed to be omitted
61	115B(2)	Tax on profits and gains of life insurance business	It is relevant to AY 1989-90 and AY 1990-91 only
62	115BBB	Tax on income from units of an open-ended equity oriented fund of the Unit Trust of India or of Mutual Funds.	Not applicable from AY 2004-05 onwards
63	115J	Special provisions relating to certain companies.	Not applicable from AY 1992-93 onwards
64	115JA	Deemed income relating to certain companies	Not applicable from AY 2001-02 onwards
65	115-O	Tax on distributed profits of domestic companies.	Not applicable on dividend declared, distributed or paid on or after 1 April 2020
66	115R	Tax on distributed income to unit holders	Not applicable on income distributed on or after 1 April 2020
67	Chapter XII-H	Income tax on fringe benefits	Not applicable from AY 2010-11 onwards
68	144(2)	Best judgement assessment	Transitional provision which is not applicable from AY 1989-90 onwards
69	158	Initiation of assessment of firm	Not applicable from AY 1992-93 onwards
70	Chapter XIV-B	Special procedure for assessment of search cases	Not applicable for search etc., made after 31 May 2003
71	172(4A)	Shipping business of non-residents	Proviso to sub section (4A) is a transitional provision not relevant after 31 December 2008
72	189A	Provisions applicable to past assessments of firms.	Transitional provision. Not applicable from AY 1992-93 onwards
73	194D	Insurance commission	First proviso deals with insurance commission credited or paid before 1 June 1973 and is not relevant now
74	206	Persons deducting tax to furnish prescribed returns.	Not applicable after 1 April 2005
75	206C(5A)	Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc	Annual return prescribed under section 206C(5A) is not applicable after 1 April 2005
76	206CA	Tax collection account number	Not applicable after 1 October 2004
77	236	Relief to company in respect of dividend paid out of past taxed profits	Provides relief to companies in respect of dividends paid out of profits charged to tax for AY 1959-60 or earlier years. This is a transitional provision not relevant now
78	243	Interest on delayed refunds	Not applicable from AY 1989-90 onwards
79	244	Interest on refund where no claim is needed	Not applicable from AY 1989-90 onwards
80	246	Appealable orders	Not applicable after 1 June 2000
81	249(2A)	Form of appeal and limitation	Transitional provision not applicable after 1 July 2000
82	256	Statement of case to the High Court.	Not applicable in respect of orders passed by Income-tax Appellate Tribunal on or after 1 October 1998. Also omitted by National Tax Tribunal Act, 2005 with effect from a date yet to be notified

Sl No.	Section	Description	Rationale
83	257	Statement of case to Supreme Court in certain cases	
84	258	Power of High Court or Supreme Court to require statement to be amended.	
85	259	Case before High Court to be heard by not less than two judges.	
86	260	Decision of High Court or Supreme Court on the case stated.	
87	Chapter XX-A	Acquisition of immovable properties in certain cases of transfer to counteract evasion of tax	Inoperative after 30 September 1986
88	Chapter XX-C	Purchase by Central Government of immovable properties in certain cases of transfer	Not applicable after 1 July 2002
89	271BB	Failure to subscribe to the eligible issue of capital.	Section 88A being the principal section referred here stands omitted with effect from 1 April 1994
90	272BBB	Penalty for failure to comply with the provisions of section 206CA	Not applicable after 1 October 2004
91	276AB	Failure to comply with the provisions of sections 269UC, 269UE and 269UL.	Relevant to Chapter XX-C since inoperative after 1 July 2002
92	276CCC	Failure to furnish return of income in search cases	Relevant to Chapter XIV-B. Not applicable for search etc, made after 31 May 2003
93	294A	Power to make exemption, etc., in relation to certain Union territories.	Not exercisable after 1 April 1967
94	298	Power to remove difficulties.	Not applicable after 1 April 1962 in respect of Income-tax Act, 1961 and after 1 April 1988 in respect of the Direct Tax Laws (Amendment) Act, 1987
95	Fifth Schedule	List of articles and things	Section 33, the principal section is proposed to be omitted

E. Other recommendations

1. Discretionary powers exercised by tax authorities

Background and issues:

- Discretionary powers have been given to officials under the Income-tax Act/Rules for the regulation, functioning and smooth running of the law. While on the one hand, vesting of such discretion casts a burden on them to ensure that such powers are exercised when necessary, on the other, vesting of unbridled discretionary powers may result in the growth of corrupt practices, resulting in revenue loss for the government.
- Few instances of discretionary powers exercised by tax authorities under the Act are listed below:
  - ✓ Power to levy, reduce or waive of penalty under various provisions
  - ✓ Grant of stay of demand under section 220(6) of the Act
  - ✓ Grant of additional time for payment of tax by tax recovery officer
  - ✓ Allowing additional time for rectification of defects in return/statements under section 139, 206C and 285BA
  - ✓ Initiation of reassessment and revisionary proceedings
- In the absence of clear administrative guidelines in the context of various interpretative issues, the tax officers inherently have to exercise their individual discretion in addressing matters. Exercise of such discretion could lead to litigation with taxpayers.

Recommendation:

- It is recommended that appropriate administrative guidelines should be issued to limit the scope of discretionary powers exercised by tax authorities in order to reduce ambiguity and litigation with taxpayers.

2. Monetary threshold and manner of issue of certificate under section 281

Background:

- As per section 281 of the Act, during pendency of any proceedings under the Act, permission of the AO shall be sought for creating charge or transferring of any assets. Upon violation of the provision, such charge or transfer shall be void as against the amount of tax or any other sum payable by such taxpayer as a result of completion of the said proceedings.
- The aforesaid provisions shall not apply where the amount of tax or other sum payable or likely to be payable does not exceed INR 5,000 or the assets charged or transferred does not exceed INR 10,000 in value.

Issue:

- Thresholds specified under section 281 of the Act for applicability of the provisions is considerably low.

Recommendation:

- It is recommended that provisions of section 281 shall not apply where the amount of tax or other sum payable or likely to be payable does not exceed INR 5 crore or the assets charged or transferred does not exceed INR 100 crore.
- Further, the process to apply for the certificate and issuance of the same can be made online similar to other facilities in place.

3. Timely processing of refund claims

- Where a refund application is filed, a transparent mechanism to be enabled in the department's system to enable taxpayer to track the stage at which the application is pending for processing.
- In case where refunds are claimed in the return of income, provisions of the Act may be suitably amended to issue such refunds within three months of filing the return of income.
- In certain cases refunds are withheld under section 241A on the ground that return has been selected for scrutiny. It is recommended that grant of refund should not be linked to outstanding demand or demand likely to be raised on conclusion of assessment. Any refund that is due to the taxpayer should be granted and collection of outstanding demand should be pursued separately.

4. Enabling receipt of tax refunds by non-residents not having bank account in India:

- Non-residents are facing difficulties in obtaining refunds directly in their foreign bank accounts. Even though return of

Section 115AA and section 115BAB of the Act
Section 115BAC of the Act
Section 115BAA, 115BAB and 115BAC of the Act

income has enabled disclosure of foreign bank account details, the income tax department is not issuing refunds to a foreign bank account directly. Therefore, taxpayers who are non-residents are opening bank accounts in India for the sole purpose of receiving refunds.

- It is recommended to build a mechanism to issue refunds to non-resident taxpayers to their foreign bank accounts directly. Alternatively, issuance of refunds to authorized representatives or any group entities of the taxpayer could be enabled.

5. Lateral entry of experts in key roles:

- Provision should be made for lateral entry of experts in key roles and specialized areas. While they may be on contract for say 5 years, subject to their suitability and willingness they should be able to integrate with the organization at the end of the contract period.

6. Improving TDS compliance:

- The provisions of the Act provide that all sums deducted under the Act are to be paid to the credit of the central government within a specified period. While there are penal provisions for non-remittance of taxes deducted, there have been instances of delayed credit of the TDS deducted. This calls for more effective enforcement of TDS.
- Therefore, it is recommended that a small percentage of commission, say 5 per cent (for large and medium tax deductors) to 1 per cent (for small tax deductors) of the tax deducted and deposited in the government account, to be allowed as business expenses by them to fulfil their obligations.

7. Auto filling of details from the tax audit report:

- It is recommended to enable auto filing of details from the tax audit report in the return of income, given that the due date for filing the tax audit report falls one month prior to the due date for filing of the return of income.

8. Verification of the return of income

- As per section 140 of the Act, the return of income in case of a company shall be verified by the managing director or a director in case where managing director is unable to verify the return of income for any unavoidable reason.
- CFO or Company Secretary of a company be also enabled to verify and file the return of income under the Act, considering the delegation of powers on other matters of the Company under Companies Act, 2013.

9. Special drive for liquidation of cases

- A special drive may be initiated to clear all pending litigation till AY 2020-21(including reconciliation of long pending demands), similar to Direct Tax Vivad Se Vishwas Act, 2020.
- It is also recommended to write off of all demands below INR 100,000 to avoid wastage of time and resources of the taxpayer and tax authorities in recovering such demands.
- Further, in respect of appeals pending before CIT(A), cases with tax demand of less than INR 100,000 shall be disposed of in favour of taxpayer. In respect of other appeals (that is, with tax demand of more than INR 100,000), ruling of jurisdictional Tribunal, jurisdictional High Court, Supreme Court and CBDT Circulars shall be followed.

10. Selection of cases for scrutiny assessment

- It is recommended that if a case has been picked up for scrutiny assessments for two continuous assessment years and if the adjustments made to the returned income result in a demand which is less than INR 500,000, such cases shall not be picked up for complete scrutiny assessments again for next five years unless jurisdictional Principal Commissioner has reason to believe that income exceeding INR 10,00,000 would escape assessment.
- This would save time and resources of those tax payers who do not have history of addition to returned income in previous assessment years.
- Further it is not advisable to pick up cases for scrutiny of issues which are settled in favour of the taxpayer at a higher appellate forum.

11. Deduction under section 80G of the Act

- Section 80G of the Act restricts the deductions to the extent of 10% of the gross total income of the taxpayer. In order to encourage the taxpayers to contribute more to the benefit of the society, it is recommended to remove the above said threshold or increase the threshold to 50% or more.

- Further, deduction under section 80G is not allowed for taxpayers opting for simplified tax regime for companies and individuals .
- it is recommended to allow deduction under section 80G for those opting for simplified tax regime to encourage taxpayers to contribute more towards the benefit of the society.

12. Simplified Tax Regime ('STR') for senior citizens

- STR has been introduced vide section 115BAC by Finance Act, 2020, wherein tax slab for individuals and HUFs, have an option to pay tax under revised tax slabs and forego specified exemptions and deductions under Chapter VI-A (other than deduction under section 80CCD and 80JJAA).
- However, no separate slabs for senior citizens above 80 years of age has been provided. Accordingly, the below recommended rates may be considered for senior citizens above the age of 80 years:

Income-tax slabs	Existing rates for senior citizen(not opted for STR)	Existing rates for senior citizen (opted for STR)	Recommended rates for senior citizen (opted for STR)
Up to INR 2,50,000	Nil	Nil	Nil
From INR 2,50,001 to INR 5,00,000	Nil	5%	Nil
From INR 5,00,001 to INR 7,50,000	20%	10%	Nil
Income from INR 7,50,001 to INR 10,00,000	20%	15%	Nil
Income from INR 10,00,001 to INR 12,50,000	30%	20%	10%
Income from INR 12,50,001 to INR 15,00,000	30%	25%	10%
Income from INR 15,00,000 to INR 20,00,000	30%	30%	10%
Income above INR 20,00,000	30%	30%	20%

- Further, it is recommended to accept the return of income filed by the senior citizens (above the age of 60 years)in good faith and complete the processing of such returns within 30 days and grant refunds, if any, claimed in such return of income.
- In order to ease the difficulties faced by senior citizens, it is also recommended that notices for scrutiny assessments to senior citizens may be issued only if there is a strong reason to believe that taxes are being evaded.

13. Simplified tax regime for Companies

- Considering that the tax rates for domestic companies has been reduced to 22% (excluding surcharge and cess), deductions available under the Act may be removed to implement a simplified tax regime.
- Further, it is recommended to introduce simplified assessment scheme for taxpayers opting for simplified tax regime whereby no disallowance is made in respect of business expenditure which are already debited to profit and loss account in the audited financial statements.

14. Fast track assessment process in certain cases

- For ease of doing business in India and to attract foreign investments in India, it is recommended to introduce a fast track assessment process for timely conclusion of assessments (say, within 3 months of filing the return) in case of overseas investors such as Foreign portfolio investors, Foreign institutional investors, Pass through investment funds such as Alternative investment funds, Venture capital funds, whose income from other sources and capital gains are taxable in the hands of the investors.

- Further returns of above class of taxpayers shall not be selected for reassessment merely due to omission to pick such returns for regular assessment under section 143.

15. Fast track assessments for taxpayers who are given certificate of appreciation

- It is recommended to conduct quick assessments (say, completion of assessments within 30 days) for those taxpayers who are given certificate of appreciation by CBDT. Further refunds due to such taxpayers should be processed within 30 days of becoming due.
- Such taxpayers should also receive preferential treatment for disposal of appeals, processing of application filed under section 195(2), lower withholding certificate under section 197, application under section 281 etc. Such applications shall be disposed within 2 weeks.

16. Simplified withholding tax regime for non-residents receiving interest and dividend income

- Non-residents receiving interest and dividend income need to furnish tax residence certificate in order to avail beneficial tax rate provided under double taxation avoidance agreement. For ease of doing business and attract foreign investment, withholding tax as per provisions of the treaty may be allowed based on self-certification from such non-residents.

PART II

CAPITAL GAINS

Executive summary

Sl. No.	Executive summary of recommendations	
1	Indexation benefit should not apply to financial securities, whether listed or unlisted	• As the price of the security is not directly impacted by inflation, indexation benefit should not apply to financial securities, whether listed or unlisted. • Shareholders of unlisted companies should be allowed to avail indexation benefits for FY 2017-18 for grandfathering tax exemption. • However, Indexation benefits should continue to apply to real assets such as land or building and to holdings in physical gold.
2	Investment in digital gold should be treated as investment in listed security	Investments in digital gold should be treated as investments in a listed security in order to incentivize the shift to digital gold. Consequently, the holding period of investments in digital gold will be 12 months.
3	Long-term capital asset exemption of Rs. 1 lakh to be extended to all listed securities	In order to incentivize small savers it is recommended that the exemption be extended to all listed securities.
4	Revision of tax rate on long-term capital gains on transfer of unlisted securities	In order to bring the taxation of both unlisted securities and listed securities at par, it is recommended that the LTCG tax rate for all unlisted securities should be 11%, the additional 1% is to make up for the loss in non-collection of STT.
5	Revision of tax rate on short-term capital gains on transfer of unlisted securities	• In order to bring the taxation of both listed and unlisted securities at par, it is recommended that the tax on STCG for all securities (listed or unlisted) including units of equity mutual funds, debt mutual funds and business trust, zero coupon bonds and digital gold should be 15%. • STCG from real capital assets such as land or building and physical gold remain to be taxed at income-tax rates applicable to the taxpayer's taxable income.
6	Surcharge payable on all capital gains to be capped at 15%	In order to extend benefit to all capital gain investments and incentivize investment based on risk and reward rather than on exemptions, it is recommended that the surcharge payable on all capital gains (both LTCG and STCG) from transfer of securities (listed and unlisted), digital and physical gold, and real assets should be limited to 15%.
7	Withdrawal of LTCG exemptions	It is recommended that all LTCG exemptions presently provided on reinvestment of LTCG/sale consideration should be withdrawn so that taxpayers determine their reinvestment based on risk and return and not on tax exemption.
8	Revision of tax rates for long-term capital gains on sale of immovable property and physical gold	It is recommended that the LTCG tax rate should be 20% after considering indexation benefits or 15% with no indexation benefits for immovable property being land or building, and physical gold. Investments in digital gold will qualify as a listed security and hence the tax regime applicable to listed securities would apply.

Executive summary

Sl. No.	Executive summary of recommendations	
9	Revision of holding period for determining the type of capital asset	• The holding period to qualify as a long-term capital asset for investments in physical gold should be reduced to 24 months from 36 months. • Investments in digital gold should be treated as investments in a listed security in order to incentivize the shift to digital gold. Consequently, the holding period of investments in digital gold will be 12 months.
10	Abolition of buy-back tax	• It is recommended that buy-back tax should be withdrawn, similar to the withdrawal of DDT. Shareholders tendering shares under the tender route should be made liable to pay capital gains tax. • Consequently, shareholders will be liable to pay either income-tax on dividend income or capital gains tax on buy-back of shares.

Suggestions for improvement of capital gains tax regime in India

Taxation of capital gains is the most complex and confusing regime in India. The law has been amended multiple times creating a cacophony of rates and conditions. For instance, some specified categories of long-term capital assets get the benefit of cost inflation indexation whereby the base cost of the asset is increased by the ratio of inflation in the year of sale and purchase. Similarly, Securities Transaction Tax (STT) is payable only for some assets. If STT is not paid, the income tax rate increases.

An enormous amount of litigation has come by. This has also hurt capital raising leading to high cost of capital in India. Multiple amendments over the years without proper analysis has eroded the faith of investors, though in recent years grandfathering provisions have ensured some degree of stability. The existing capital gains tax structure is enclosed as Annexure 2.

There is a dire need to reform the entire gamut of capital gains tax on securities and real assets in order to simplify the tax regime, ensure uniformity across asset classes, increase tax collection, improve compliance, reduce litigation and create an overall tax regime which fosters greater investment and therefore creates more jobs for the country. Reforms of taxation of capital gains would enable investors to invest in various assets after considering the risk and return rather than tax consequences.

Our recommendations for capital gains tax reform are provided below:

1. Indexation benefit should not apply to financial securities, whether listed or unlisted

Background and issues:

Currently, indexation benefits are applicable to all financial securities while computing long-term capital gain arising to a resident, subject to the following exceptions:

- Listed equity share in a company if STT has been paid on acquisition and transfer of such listed equity share (Sec 48 / Sec 112A);
- a unit of equity mutual fund or a business trust if STT has been paid on transfer of such capital asset (Sec 48 / Sec 112A);
- bond or debenture other than capital indexed bond (Sec 48)

The intent of providing indexation benefit is to neutralize the impact of inflation, to the extent possible. However, financial securities such as shares, bonds and debentures are not impacted by inflation and the price of the security is dependent on the performance of the underlying asset. Hence, providing indexation benefit to such securities would not be logical.

Recommendation:

As the price of the security is not directly impacted by inflation, indexation benefit should not apply to financial securities, whether listed or unlisted.

Shareholders of unlisted companies should be allowed to avail indexation benefits for FY 2017-18 for grandfathering tax exemption.

However, Indexation benefits should continue to apply to real assets such as land or building and to holdings in physical gold.

2. Investment in digital gold should be treated as investment in listed security

Background and issues:

Gold is an asset class which can be held in physical form or in digital form. Physical gold includes gold bars, coins, jewellery including ornaments made of gold, silver, platinum, etc., whereas Digital gold comprises of investments through gold mutual funds, gold ETF and Sovereign Gold Bonds.

In order to incentivize the shift to digital gold investments in digital gold should be treated as investments in a listed security.

Recommendation:

Investments in digital gold should be treated as investments in a listed security in order to incentivize the shift to digital gold. Consequently, the holding period of investments in digital gold will be 12 months.

3. Long-term capital asset exemption of Rs. 1 lakh to be extended to all listed securities

Background and issues:

As per the provisions of Section 112A of the Act, long-term capital gains exemption of upto Rs. 1 lakh applies only to the transfer of the following assets, provided securities transaction tax has been paid:-

- an equity share in a company or
- a unit of an equity oriented fund or
- a unit of a business trust.

Recommendation:

In order to incentivize small savers it is recommended that the exemption be extended to all listed securities.

4. Tax rate on long-term capital gains on transfer of unlisted securities

Background and issues:

Currently, transfer of long-term unlisted securities are taxable at the rate of 20% for residents and 10% in case of non-residents (without neutralising the impact of foreign exchange fluctuations and without giving effect to indexation benefits) while capital gains on transfer of listed securities is taxable at the rate of 10%.

In order to bring taxation at par, it is recommended that the tax rate for unlisted securities be brought in line with the tax rate for listed securities.

Recommendation:

The LTCG tax rate for all unlisted securities should be 11%, to make up for the loss in non-collection of STT and to bring parity with listed securities.

5. Tax rate on short-term capital gains on transfer of unlisted securities

Background:

Currently, Short Term Capital Gains (STCG) is charged to tax at normal rate of tax, which is determined on the basis of the total taxable income of the taxpayer. However, in case the STCG is arising on transfer of an equity share in a company or a unit of an equity-oriented fund or a unit of a business trust, on which STT is payable then the tax rate will be 15%.

Recommendation:

In order to bring the taxation of both listed and unlisted securities at par, it is recommended that the tax on STCG for all securities (listed or unlisted) including units of equity mutual funds, debt mutual funds and business trust, zero coupon bonds and digital gold should be 15%.

STCG from real capital assets such as land or building and physical gold remain to be taxed at income-tax rates applicable to the taxpayer's taxable income.

6. Surcharge payable on all capital gains to be capped at 15%

Background:

Surcharge is levied on the income-tax payable by the taxpayer as follows:

- 10% where total income exceeds Rs. 50 lakhs but does not exceed Rs. 1 crore.
- 15% where total income exceeds Rs. 1 crore but does not exceed Rs. 2 crores;
- 25% where specified income exceeds Rs. 2 crores but does not exceed Rs. 5 crores;
- 37% where specified income exceeds Rs. 5 crores.

Specified income – Total income excluding capital gains (both STCG and LTCG) arising from the transfer of an equity share in a company or a unit of an equity-oriented fund or a unit of a business trust, on which STT is chargeable. Accordingly, the maximum surcharge chargeable on the capital gains from these securities is 15%.

As maybe seen from above, the limit on surcharge is applicable only to certain securities.

Recommendation:

In order to extend benefit of lower surcharge to all capital gains and incentivize investment based on risk and reward rather than on exemptions, it is recommended that the surcharge payable on all capital gains (both LTCG and STCG) from transfer of securities (listed and unlisted), digital and physical gold, and real assets should be limited to 15%.

7. Discontinue LTCG exemptions

Background:

There are a host of exemptions that are available to taxpayers under Section 54, 54EC, 54F and 54GB to avoid long-term capital gains. It is seen that taxpayers are mainly choosing their reinvestment based on exemptions available rather than on risk and return.

Recommendation:

It is recommended that all LTCG exemptions presently provided on reinvestment of LTCG/sale consideration should be withdrawn so that taxpayers determine their reinvestment based on risk and return and not on tax exemption of capital gains.

8. Revised tax rates for long-term capital gains on sale of immovable property and physical gold

Background:

Currently, long-term capital gain on sale of immovable property and physical gold is taxable at 20% with indexation benefit. There is no option for the tax payer to opt for a rate without claiming indexation benefit.

Recommendation:

In this regard, it is recommended that the LTCG tax rate should be 20% after considering indexation benefits or 15% with no indexation benefits for immovable property being land or building, and physical gold. Investments in digital gold will qualify as a listed security and hence the tax regime applicable to listed securities would apply.

9. Revision of holding period for determining the type of capital asset

It is recommended that holding period for determining whether gold qualifies as a long-term capital asset be as follows:

- Gold is an asset class which can be held in physical form or in digital form. Physical gold includes gold bars, coins, jewellery including ornaments made of gold, silver, platinum, etc., whereas Digital gold comprises of investments through gold mutual funds, gold ETF and Sovereign Gold Bonds.

The holding period to qualify as a long-term capital asset for investments in physical gold should be reduced to 24 months from 36 months.

Investments in digital gold should be treated as investments in a listed security in order to incentivize the shift to digital gold. Consequently, the holding period of investments in digital gold will be 12 months.

We have enclosed as Annexure 3a table indicating the tax impact for various types of assets under the recommended capital gain tax regime enumerated above.

10. Abolition of Buy-back tax

Background:

Companies that have a distributable surplus have an option to distribute the surplus through dividends or buy-back of shares.

When a company purchases its shares from its shareholders, it is buy back of shares. Buy-backs are implemented either through the tender route or open-market purchases. Under the tender route, the company buys back the shares directly from its shareholders on a proportionate basis. Under the open market purchases, the company generally purchases the shares through a stock exchange during a defined time period.

The Finance Act 1997 introduced Dividend Distribution Tax (DDT) at the rate of 10% to be paid by companies on payment of dividends and removed the taxation of dividends in the hands of shareholders. The computation process and the DDT rate were subsequently revised. When many unlisted companies resorted to buy-back of shares to avoid payment of DDT, the Finance Act, 2013 plugged the loophole by introducing buy-back tax as an anti-tax avoidance measure. Unlisted companies were required to pay buy-back tax at 20% (plus surcharge and health and education cess) on the 'distributed income', which is net consideration paid by the company on buy-back of its shares after reducing the amount received by it for issue of such shares. Consequently, unlisted companies had to either pay DDT on payment of dividends or buy-back tax on buy-back of shares. Shareholders were exempt from taxation on any income arising on account of dividends or buy-back of shares.

The buy-back tax was extended to listed companies from 5th July 2019. Listed and unlisted companies are now required to pay buy-back tax at 20% plus surcharge at 12% plus health and education cess at 4%, aggregating to 23.30% of the 'distributed income'. Any income arising to a shareholder on account of buy-back of shares is exempt from tax.

DDT was abolished from 1st April 2020 and a withholding tax was introduced on the payment of dividends by companies. Consequently, shareholders are now required to pay income-tax on dividend income according to the income-tax rates applicable to them. This creates an anomaly. When companies pay dividends, there is no tax impact on them since DDT is withdrawn whereas when the same reserves are used to buy-back shares, companies are required to pay buy-back tax.

There is anonymity of selling shareholders in case of open market purchases. Shareholders sell shares in the open market and the company buys its shares in the open market. There is no linking between the two. Consequently, shareholders pay capital gains tax on sale of shares and companies pay buy-back tax on the same transaction, leading to double taxation.

We recommend that buy-back tax should be withdrawn, similar to the withdrawal of DDT. Shareholders tendering shares under the tender route should be made liable to pay capital gains tax. Consequently, shareholders will be liable to pay either income-tax on dividend income or capital gains tax on buy-back of shares.

Listed and unlisted companies now are not required to pay DDT on payment of dividends. Buy-back tax should not be imposed on them on buy-back of shares under any route. When companies buy-back shares through the stock exchanges under an open-market route, selling shareholders are anyway required to pay capital gains tax. So, there is no need for listed and unlisted companies to pay buy-back tax. This will simplify taxation.

Recommendation:

It is recommended that buy-back tax should be withdrawn, similar to the withdrawal of DDT. Shareholders tendering shares under the tender route should be made liable to pay capital gains tax. Consequently, shareholders will be liable to pay either income-tax on dividend income or capital gains tax on buy-back of shares.

Listed and unlisted companies now are not required to pay DDT on payment of dividends. Buy-back tax should not be imposed on them on buy-back of shares under any route. When companies buy-back shares through the stock exchanges under an open-market route, selling shareholders are anyway required to pay capital gains tax. So, there is no need for listed and unlisted companies to pay buy-back tax. This will simplify taxation.

Capital gains tax regime in India

A. Existing Capital Gains Tax Structure for individual tax residents in India

The table below highlights the differences in the holding period, base income-tax rates and highest marginal tax rate for various types of capital assets, and the associated complexity for individual tax residents in India:

Listed securities	STCG tax rate	LTCG tax rate	Holding period for LTCG
Equity shares listed on a recognised stock exchange in India; Units of equity oriented mutual funds; Applicable STT is paid.	Base income-tax rate – 15% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 17.94% (18%)**	Income-tax rate is 1**0% on LTCG exceeding Rs. 1 lakh,** if sold on or after 1st Apr 2018; Capital gains up to 31st Jan 2018 is tax exempt. Grandfathering of such tax exemption is available for transfers after 1st Apr 2018; No indexation benefits Base income-tax rate – 10% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 11.96% (12%) on LTCG exceeding Rs. 1 lakh, with grandfathering of LTCG up to 31st Jan 2018**	12 months
Equity shares listed on a recognised stock exchange in India after 31st Jan 2018; Applicable STT is paid.	Base income-tax rate – 15% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 18%**	Income-tax rate is 10% on LTCG exceeding Rs. 1 lakh, if sold on or after 1st Apr 2018; Indexation benefit applies to unlisted shares. Since these shares are unlisted as on 31st Jan 2018, cost of purchase will be indexed for FY 2017-18. Base income-tax rate – 10% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 12% on LTCG exceeding Rs. 1 lakh, with indexation benefit for FY 2017-18**	12 months
Listed equity shares on which STT is not paid (off-market transactions)	STCG is added to the taxpayer's taxable income which will be taxed at income-tax rates applicable to the taxpayer's taxable income. Highest income-tax rate – 30% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 42.74%**	20% with indexation benefit or 10% without indexation benefit, whichever is lower. Base income-tax rate – 20% Highest surcharge rate – 37% Health and Education Cess – 4% Highest Marginal Tax Rate – 28.50% with indexation benefit, or Base income-tax rate – 10% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 14.25% without indexation benefit**	12 months

Listed securities	STCG tax rate	LTCG tax rate	Holding period for LTCG
Listed Preference shares	STCG is added to the taxpayer's taxable income which will be taxed at income-tax rates applicable to the taxpayer's taxable income. Highest income-tax rate – 30% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 42.74%**	20% with indexation benefit or 10% without indexation benefit, whichever is lower Base income-tax rate – 20% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 28.50% with indexation benefit**, or Base income-tax rate – 10% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 14.25% without indexation benefit**	12 months
Listed bonds and debentures	STCG is added to the taxpayer's taxable income which will be taxed at income-tax rates applicable to the taxpayer's taxable income. Highest income-tax rate – 30% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 42.74%**	10% without indexation benefit Base income-tax rate – 10% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 14.25% without indexation benefit**	12 months
Zero Coupon Bonds	STCG is added to the taxpayer's taxable income which will be taxed at income-tax rates applicable to the taxpayer's taxable income. Highest income-tax rate – 30% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 42.74%**	20% with indexation benefit or 10% without indexation benefit, whichever is lower Base income-tax rate – 20% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 28.50% with indexation benefit**, or Base income-tax rate – 10% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 14.25% without indexation benefit**	12 months
Unlisted equity shares of a company Unlisted Preference shares of a company	STCG is added to the taxpayer's taxable income which will be taxed at income-tax rates applicable to the taxpayer's taxable income. Highest income-tax rate – 30% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 42.74%**	20% with indexation benefit Base income-tax rate – 20% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 28.50% with indexation benefit**	24 months

Listed securities	STCG tax rate	LTCG tax rate	Holding period for LTCG
Units of debt mutual funds, Fund of Funds, Gold ETFs and Gold mutual funds	STCG is added to the taxpayer's taxable income which will be taxed at income-tax rates applicable to the taxpayer's taxable income. Highest income-tax rate – 30% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 42.74%**	20% with indexation benefit Base income-tax rate – 20% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 28.50% with indexation benefit**	36 months
Unlisted bonds and debentures	STCG is added to the taxpayer's taxable income which will be taxed at income-tax rates applicable to the taxpayer's taxable income. Highest income-tax rate – 30% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 42.74%**	20% without indexation benefit Base income-tax rate – 20% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 28.50% without indexation benefit**	36 months
Sovereign Gold Bonds (SGB)	STCG is added to the taxpayer's taxable income which will be taxed at income-tax rates applicable to the taxpayer's taxable income. Highest income-tax rate – 30% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 42.74%**	20% without indexation benefit Base income-tax rate – 20% Highest surcharge rate – 37% Health and Education Cess – 4% Highest Marginal Tax Rate – 28.50% without indexation benefit Capital gains on redemption of SGBs after the maturity period of 8 years are exempt from LTCG tax. LTCG tax on sale of SGBs before redemption is 20% with indexation benefit Base income-tax rate – 20% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 28.50% with indexation benefit**	36 months

Real assets	STCG tax rate	LTCG tax rate	Holding period for LTCG
Physical gold such as gold bars, coins, jewellery including ornaments made of gold, silver, platinum, etc.;	STCG is added to the taxpayer's taxable income which will be taxed at income-tax rates applicable to the taxpayer's taxable income. Highest income-tax rate – 30% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 42.74%**	20% with indexation benefit Base income-tax rate – 20% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 28.50% with indexation benefit**	36 months

Real assets	STCG tax rate	LTCG tax rate	Holding period for LTCG
Immovable property being land or building or both	STCG is added to the taxpayer's taxable income which will be taxed at income-tax rates applicable to the taxpayer's taxable income. Highest income-tax rate – 30% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 42.74%**	20% with indexation benefit Base income-tax rate – 20% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 28.50% with indexation benefit**	24 months

B. Existing Capital Gains Tax Structure for NRIs

The table below indicates the current capital gains tax impact in India on transfer of all capital assets of an NRI:

Listed securities	STCG tax rate	LTCG tax rate	Holding period for LTCG
Equity shares listed on a recognised stock exchange in India; Units of equity oriented mutual funds; Applicable STT is paid.	Base income-tax rate – 15% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 17.94% (18%)**	Income-tax rate is 10% on LTCG exceeding Rs. 1 lakh, if sold on or after 1st Apr 2018; Capital gains up to 31st Jan 2018 is tax exempt. Grandfathering of such tax exemption is available for transfers after 1st Apr 2018; No indexation benefits Base income-tax rate – 10% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 11.96% (12%) with grandfathering of LTCG up to 31st Jan 2018**	12 months
Listed equity shares on which STT is not paid (off-market transactions)	STCG is added to the taxpayer's taxable income which will be taxed at income-tax rates applicable to the taxpayer's taxable income. Highest income-tax rate – 30% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 42.74%**	10% without indexation benefit Base income-tax rate – 10% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 14.25% without indexation benefit**	12 months

Listed securities	STCG tax rate	LTCG tax rate	Holding period for LTCG
Listed Preference shares	STCG is added to the taxpayer's taxable income which will be taxed at income-tax rates applicable to the taxpayer's taxable income. Highest income-tax rate – 30% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 42.74%**	10% without indexation benefit Base income-tax rate – 10% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 14.25% without indexation benefit**	12 months
Listed bonds and debentures	STCG is added to the taxpayer's taxable income which will be taxed at income-tax rates applicable to the taxpayer's taxable income. Highest income-tax rate – 30% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 42.74%**	10% without indexation benefit Base income-tax rate – 10% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 14.25% without indexation benefit**	12 months
Units of listed debt mutual funds (such as Fixed Maturity Plans	STCG is added to the taxpayer's taxable income which will be taxed at income-tax rates applicable to the taxpayer's taxable income. Highest income-tax rate – 30% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate –**	20% with indexation benefit Base income-tax rate – 20% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 28.50% with indexation benefit**	36 months
Zero Coupon Bonds	STCG is added to the taxpayer's taxable income which will be taxed at income-tax rates applicable to the taxpayer's taxable income. Highest income-tax rate – 30% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 42.74%**	20% with indexation benefit or 10% without indexation benefit, whichever is lower Base income-tax rate – 20% Highest surcharge rate – 37% Health and Education Cess – 4% Highest Marginal Tax Rate – 28.50% with indexation benefit, or Base income-tax rate – 10% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 14.25% without indexation**	12 months

Listed securities	STCG tax rate	LTCG tax rate	Holding period for LTCG
Unlisted Preference shares of a company	STCG is added to the taxpayer's taxable income which will be taxed at income-tax rates applicable to the taxpayer's taxable income. Highest income-tax rate – 30% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 42.74%**	10% without indexation benefit Base income-tax rate – 10% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 14.25% without indexation benefit**	24 months
Gold ETFs and Gold mutual funds	STCG is added to the taxpayer's taxable income which will be taxed at income-tax rates applicable to the taxpayer's taxable income. Highest income-tax rate – 30% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 42.74%**	20% with indexation benefit Base income-tax rate – 20% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 28.50% with indexation benefit**	36 months
Units of unlisted debt mutual funds, Fund of Funds, Unlisted bonds and debentures	STCG is added to the taxpayer's taxable income which will be taxed at income-tax rates applicable to the taxpayer's taxable income. Highest income-tax rate – 30% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 42.74%**	10% without indexation benefit Base income-tax rate – 10% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 14.25% without indexation benefit**	36 months

Real assets	STCG tax rate	LTCG tax rate	Holding period for LTCG
Physical gold such as gold bars, coins, jewellery including ornaments made of gold, silver, platinum, etc.;	STCG is added to the taxpayer's taxable income which will be taxed at income-tax rates applicable to the taxpayer's taxable income. Highest income-tax rate – 30% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 42.74%**	20% with indexation benefit Base income-tax rate – 20% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 28.50% with indexation benefit**	36 months

Real assets	STCG tax rate	LTCG tax rate	Holding period for LTCG
Immovable property being land or building or both	STCG is added to the taxpayer's taxable income which will be taxed at income-tax rates applicable to the taxpayer's taxable income. Highest income-tax rate – 30% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 42.74%**	20% with indexation benefit Base income-tax rate – 20% Highest surcharge rate – 37% Health and Education Cess – 4% **Highest Marginal Tax Rate – 28.50% with indexation benefit**	24 months

Recommended reforms in capital gains taxation

The table below highlights the tax impact for various types of assets under the recommended capital gains tax regime:

Listed securities	STCG tax rate	LTCG tax rate	Holding period for LTCG
Equity shares listed on a recognised stock exchange in India; Units of equity oriented mutual funds; Applicable STT is paid.	Base income-tax rate – 15% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 17.94% (18%)**	Income-tax rate is **10% on LTCG exceeding Rs. 1 lakh,** If sold on or after 1st Apr 2018; Capital gains up to 31st Jan 2018 is tax exempt. Grandfathering of such tax exemption is available for transfers after 1st Apr 2018; No indexation benefits Base income-tax rate – 10% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 11.96% (12%)on LTCG exceeding Rs. 1 lakh, with grandfathering of LTCG up to 31st Jan 2018.**	12 months
Equity shares listed on a recognised stock exchange in India; Units of equity oriented mutual funds; Applicable STT is paid.	Base income-tax rate – 15% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 17.94% (18%)**	Income-tax rate is **10% on LTCG exceeding Rs. 1 lakh,** If sold on or after 1st Apr 2018; Capital gains up to 31st Jan 2018 is tax exempt. Grandfathering of such tax exemption is available for transfers after 1st Apr 2018; No indexation benefits Base income-tax rate – 10% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 11.96% (12%)on LTCG exceeding Rs. 1 lakh, with grandfathering of LTCG up to 31st Jan 2018.**	12 months

Listed securities	STCG tax rate	LTCG tax rate	Holding period for LTCG
Equity shares listed on a recognised stock exchange in India; Units of equity oriented mutual funds; Applicable STT is paid.	Base income-tax rate – 15% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 18%**	Income-tax rate is 10% on LTCG exceeding Rs. 1 lakh, If sold on or after 1st Apr 2018; Indexation benefit applies to unlisted shares. Since these shares are unlisted as on 31st Jan 2018, cost of purchase will be indexed for FY 2017-18. Base income-tax rate – 10% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 12%on LTCG exceeding Rs. 1 lakh, with indexation benefit for FY 2017-18**	12 months
Listed equity shares on which STT is not paid (off-market transactions)	Base income-tax rate – 15% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 18%**	Income-tax rate is 10% on LTCG exceeding Rs. 1 lakh, without indexation benefit Base income-tax rate – 10% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 12% on LTCG exceeding Rs. 1 lakh, without indexation benefit**	12 months
Listed bonds, debentures, Zero Coupon Bonds and listed preference shares Units of gold mutual funds and gold ETFs	Base income-tax rate – 15% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 18%**	Income-tax rate is 10% on LTCG exceeding Rs. 1 lakh, without indexation benefit Base income-tax rate – 10% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 12% on LTCG exceeding Rs. 1 lakh, without indexation benefit**	12 months
Sovereign Gold Bonds (SGB)	Base income-tax rate – 15% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 18%**	Capital gains on redemption of SGBs after the maturity period of 8 years are exempt from LTCG tax. LTCG tax on sale of SGBs before redemption is 10% on LTCG exceeding Rs. 1 lakh, without indexation benefit Base income-tax rate – 10% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 12% on LTCG exceeding Rs. 1 lakh, without indexation benefit**	12 months

Listed securities	STCG tax rate	LTCG tax rate	Holding period for LTCG
Unlisted equity and unlisted preference shares of a company	Base income-tax rate – 15% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 18%**	Income-tax rate is 11% without indexation benefit Base income-tax rate – 11% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 13.16%without indexation benefit**	24 months
Units of debt mutual funds, and Fund of Funds Unlisted bonds and debentures	Base income-tax rate – 15% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 18%**	Income-tax rate is 11% without indexation benefit Base income-tax rate – 11% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 13.16%without indexation benefit**	24 months
Physical gold such as gold bars, coins, jewellery including ornaments made of gold, silver, platinum, etc.	STCG is added to the taxpayer's taxable income which will be taxed at income-tax rates applicable to the taxpayer's taxable income. Highest income-tax rate – 30% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 35.88%**	20% with indexation benefit or 15% without indexation benefit, whichever is lower Base income-tax rate – 20% Highest surcharge rate – 15% Health and Education Cess – 4% Highest Marginal Tax Rate – 23.92% with indexation benefit, or Base income-tax rate – 15% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 18% without indexation benefit**	12 months
Immovable property being land or building or both	STCG is added to the taxpayer's taxable income which will be taxed at income-tax rates applicable to the taxpayer's taxable income. Highest income-tax rate – 30% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 35.88%**	20% with indexation benefit or 15% without indexation benefit, whichever is lower Base income-tax rate – 20% Highest surcharge rate – 15% Health and Education Cess – 4% Highest Marginal Tax Rate – 23.92% with indexation benefit, or Base income-tax rate – 15% Highest surcharge rate – 15% Health and Education Cess – 4% **Highest Marginal Tax Rate – 18% without indexation benefit**	12 months

Bangalore Chamber of Industry and Commerce

101, Midford House, 1, Midford Garden, MG Road, Bengaluru – 560 001
Tel: +91 80 25583325 / 26 /27 / +91 80 25582232 Fax: +91 80 25580062
Email: info@bcic.in

www.bcic.in