Manufacturers' Association for Information Technology ('MAIT')

Pre-budget memorandum – Direct Tax

Sl. No	Particulars	Issue	Recommendations
1.	**TDS on benefits / perquisites from business or profession [Section 194R of the Income-tax Act, 1961 ('the Act')]**	**1. Widening the scope of Section 194R beyond the scope as laid down in Budget 2022** - Section 194R should apply to non-monetary benefit or perquisite arising from the business or exercise of profession by the recipient as required under Section 28(iv) of the Act. - However, CBDT *vide* circular no. 12 of 2022 has expanded this position and requires taxpayers to apply deduction whether or not the benefit or perquisite is taxable in the hands of the recipient under section 28(iv) of the Act, or other sections like 41(1), or be not taxable all together. The Circular also expands the scope to cover benefits in the form of cash, contrary to the requirement under Section 194R to cover non-monetary benefit or perquisites. **2. Low threshold limit of INR 20,000**	**1) Withdrawal on circular no. 12 of 2022 and clarification on implementation of Sec 194R :** - We humbly request the Government to withdraw the circular and retain the scope of Section 194R as understood in its original form. - Appropriate clarifications should be issued on the conditions to test the benefit/perquisite arising in the course of business or exercise of profession. There should be clarity for the provider of benefits as to how to test the condition of benefits arising from the business or exercise of profession.

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		- The new TDS provision u/s 194R requires the payer to deduct tax @ 10% on provision of 'benefit' or 'perquisite', whether convertible into money or not, arising from business or exercise of profession to a resident. The section provides a de-minimus threshold of Rs. 20,000 for applicability of TDS such that no TDS is required if the aggregate value of benefits or perquisites provided to a single person during a financial year does not exceed Rs. 20,000. **3. <u>No clarification on whether Promotional free goods/services amount to benefits/perquisites.</u>** - Instances where an assessee gives free goods/services as a promotional offer with the intent to monetize such offerings after the offer period. For e.g., a company provides certain software/ services to a customer free of cost for first 3 months (promotional period) and start charging for software/ service after the end of promotional period (i.e., after end of 3 months). The CBDT circular (Question 4) clarifies that no tax is required to be deducted under section 194R on sales discount, cash discount and rebates. The free promotional goods/services offered for the initial period are not per se in the nature of discounts but merely marketing and promotional offerings of the assessee. The intention to offer the free goods/services is not to provide any benefit or perquisite	**2) <u>Increasing threshold limit to INR 1,00,000:</u>** Considering the present economic scenario, the threshold limit should be increased to INR 1,00,000 to focus only 'big ticket' items/ recipients and thus easing compliance burden for tax deductor. **3) <u>Appropriate clarification on promotional free goods/services</u>** An appropriate clarification should be issued to exempting such promotional offers from the ambit of section 194R of the Act as such offers are made with the intent to advertise and promote the goods/services and not with the intent to provide any benefit or perquisite to the recipient.

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		to the recipient, but to promote the goods/ service offering and later on monetize such goods/ services. - It is common practice in trade to provide free product samples to prospective / existing customers for the purpose of evaluation / testing / soliciting feedback on the efficacy of the product. These product samples have restrictions on right of further sale / disposal and are not given with the intent of providing a benefit / perquisite for rewarding performance / meeting sales targets but are incurred as a matter of business survival / necessity due to market requirement of creating demand. - Subjecting the value of such product samples to tax would prohibit critical testing and evaluation activities and adversely affects the ability to determine the quality and utility of the products being tested. It also pushes up the cost of doing business, affects cash flows, impacts revenue growth and dent the already thin profit margins, resulting in lesser tax outflow	A proviso should be inserted into section 194R to exclude free new product samples which come with restrictions on further sale / disposal and which are given for the purpose of evaluation/ testing/ soliciting feedback/ inducing prospective customers, from the scope of ' benefit / perquisite' in hands of such customers.
		4. <u>Events and Conferences</u> - The Circular, through Question 8, clarifies that expenses attributable to leisure component or expenditure on participants for days which are on account of prior stay or overstay beyond dates of conference would also be construed as benefit under section 194R. In this regard, it is important to note that companies organise event/ conferences for their dealers/ partners/ customers for their own benefit/ promotion of business. The intent is not to provide benefit to the attendees. Further,	4) **<u>Hence, we request you to clarify that all events and conferences should be out of scope from the ambit of section 194R.</u>** Alternatively,

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		what constitutes leisure component is very subjective and leaves the arranger of conferences in a dilemma as regards identifying and computing the leisure component -	government should provide clarity what constitute a leisure component.
2.	**Overlapping of TCS provision under section 206C(1H) and TDS under section 194Q of the Act**	1. Currently, the provisions of section 206C(1H) require the seller to collect TCS at 0.1% from a buyer on sale of goods, subject to certain conditions. Further, the provisions of section 194Q require the buyer to deduct TDS on purchase of goods at 0.1% before making payment to the seller, subject to certain conditions. Both these sections are leading to duplication on compliance efforts running contrary to the motive of ease of doing business in India. - In cases where the buyer does not deduct TDS under section 194Q, the seller is required to do a post facto TCS, which is operationally very difficult and commercially tedious, leading to accounting challenges. - The obligation on assessees for cross validation is extremely cumbersome to comply and could in several instances lead to disputes between buyers and sellers. 2. Requirement for seller to collect details of TDS done by the buyer and report in its TCS return on a transaction-by-transaction basis is highly	**1. Amendment in Section 206C(1H)** • In the second proviso to section 206C(1H), consider deleting the phrase "***and has deducted such amount***". • As an immediate relaxation measure, consider clarifying that where section 194Q is applicable to a transaction, but the buyer has defaulted in deducting taxes, the seller should be absolved from undertaking TCS compliances on such transaction. **2. Withdrawal of reporting in TCS Return** • Consider withdrawing the requirement of reporting details of the challan number and

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		cumbersome. Undertaking these activities run contrary to the motive of ease of doing business in India. - The input of the information is to be undertaken manually with no validation option on the income tax portal. - No statutory obligation on the buyer to provide the challan related information to the seller makes it very difficult to obtain the challan details from buyer. - Limited time frame between the TCS due date and TCS return brings difficulty for the seller to collate the quarterly details. - No linking verification facility has been provided to enable the sellers to verify taxes deducted by the buyer or which automatically maps details of TDS deducted. This increases the manual efforts and time in collating, verifying and mapping the data post which TCS obligations may be affected. - The reconciliation between the information provided by the buyer and collated by the seller and compilation of information requires lot of time	the date of remittance of TDS under section 194Q by collector in TCS return. • Consider providing reasonable period of time between the due dates for payment of TDS and TCS, and filing of returns for TDS and TCS • Alternatively, in case the TCS provisions are intended to be retained, then collection of declarations by the seller from the buyer (as against proving actual TDS deduction by buyer), should be treated as sufficient compliance of the provisions of TCS.

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		and effort and ultimately the onus lies on the seller to collect the TCS if the buyer fails to deduct TDS.	
3.	**Appeals before Commission-er of Income-tax (Appeals) ('CIT(A)')/ National Faceless Appeal Centre ('NFAC')**	**<u>Disposal of appeals by Commissioner of Income-tax (Appeals) ["CIT(A)"]/ National Faceless Appeal Centre ('NFAC')</u>** - It has been around a couple of years now that the NFAC has been set up, however, there appears to be a sizeable pendency of appeal(s) at the level of the CIT(A)/NFAC. - Also, the assessee is called upon to pay 20% of the demand when the appeal is pending before the 1st appellate authority and hence delay in disposal of the appeal(s) is aggravating the situation. - While steps have been taken to enable the appellant to argue the appeal(s) virtually, however, the system does not seem to work at times leading to the delay in disposals. - Currently most of the appeals filed and pending before the CIT(A) are pending active hearing & disposal. This has put the assessee/appellant in an undue hardship not being able to either close the litigation or proceed before higher authorities wherever necessary. Due to this long-	**<u>Various measures to improve the process</u>** • Steps may be taken to ensure a more timely disposal of appeals by the NFAC. A suitable cut-off date can be worked out. • The rationale for this is also that generally in such cases, the submissions / paper books would have been filed and hence digitizing these same documents again and uploading it and also for the concerned CIT(A)s to accessing them in soft version will have its own set of challenges which can be avoided by permitting these appeals to be heard physically and setting up internal deadlines for disposal of the same. • Cases where directions are being given by various Courts to ensure early disposals of the appeals should be monitored more rigorously

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		standing litigation, the assessee' s tax paid under protest or refunds are stuck even in cases where assessee has jurisdictional Tribunal or High Court ruling in own cases for the prior or subsequent years.	so that there is no violation of Court Order(s). Enabling provisions may be provided in the Act to make rules to ensure the same. • Cases where requests have been made by the assessees seeking early hearing/disposal of cases too, should be monitored to ensure the timely disposals. Enabling provisions may be provided in the Act to make rules to ensure the same. • Generally, a deadline should be provided for in the Act statutorily mandating disposal of appeals within the prescribed time limit.
4.	**Time Limit for filing response and seeking adjournment**	**<u>Short time provided by tax officer for filing response</u>** - Time provided for responding to notices in some cases is short and adjournment requests are not being acknowledged by Tax Department. - Further, there is no option to seek adjournment for more than 15 days on the e-filing portal.	**<u>Increase the time limit for seeking adjournment</u>** In the event of critical details sought, assessees may need to deliberate, regarding their submission before responding to the notice and which might take more than 15 days' time. Accordingly, the provisions can provide for an extended period (say up to 30-60 days) to be

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			allowed to the assessee to collate the details and respond through the e-filing portal- at least in cases where assessments are not getting time barred immediately.
5.	**Online filing of rectification application, timelines for disposal**	1. Section 154(7) of the Act requires an application for rectification to be filed within 4 years from the end of the FY in which the order sought to be amended was passed. Section 154(8) of the Act requires the tax officer to pass an order within a period of 6 months from the end of the month in which the rectification application is received. 2. Rectification matters are pending for more than 10 years and require successive and relentless follow ups with authorities to ensure that the rectification applications are processed.	**Guidelines to tax officer** In order to ensure the timely resolution of rectification application, CBDT should issue appropriate guidelines & instructions to tax officers to manually process such rectifications & issue refunds as an interim measure unless the IT systems are fully updated in the long run.
6.	**Lower or Nil Tax deduction certificate [Section 197 of the Act]**	While introducing Section 194R in Finance Act 2022, corresponding amendment was not made in Section 197 of the Act so as to enable the recipient to apply for lower or Nil TDS certificate. Further, considering the Circular issued by CBDT in the context of Section 194R, the scope of Section 194R has been expanded resulting in blockage of funds of payee in the form of TDS which can be claimed as refund only by way of filing income tax return.	The provisions of Section 197 of the Act should be amended to include Section 194R also so that the recipient of benefits / perquisites can apply for lower or Nil tax deduction certificate before the Tax Officer.

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7.	**Tax Residency Certificate (TRC)**	Presently, in order to avail beneficial provisions of Tax Treaty, the income recipient (i.e. India entity) has to apply TRC to the jurisdictional tax officer certifying his residential status in India. However, there is no specific timeline prescribed for the tax officer to issue such TRC to such Indian entity resulting in higher withholding tax rates till the time such TRC is not issued.	The provisions of Rule 21AB should be amended to include either the specific timelines for the tax authorities to issue TRC to the applicant, or it can be made available online on real time basis upon submission of requisite information / documents
8.	**Lower cap of salary of INR 25,000 to compute deduction on account of new employment generation [Section 80JJAA of the Act]**	As per section 80JJAA of the Act, any corporate assessee can claim additional deduction of 30% in three consecutive years of salary paid to new hired employees with salary cap up to INR 25,000 p.m.	**<u>Increase in threshold limit</u>** • This threshold of INR 25,000 p.m. was introduced in the year 2016 and should be revised considering Inflation Index. • Salary threshold of INR 25,000 p.m. should be increased to INR 50,000 p.m.
9.	**Double taxation in case of conversion of**	Finance Act 2018 inserted Explanation 1A to Section 43, wherein in case of conversion of 'inventory' into 'capital asset', then for the purpose of section 43, the cost of asset shall be considered as FMV on the day of such conversion.	Amendment should be made in section 28(via) to tax only difference between FMV and cost; and not the entire FMV

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	'Inventory' to 'Fixed Assets' [Section 28(vi a) of the Act]	- However, there is a drafting error in case of corresponding amendment in Section 28(via), wherein the entire FMV is taxed as 'business income' instead of difference between FMV and the cost of goods. - Such anomaly is resulting into double taxation and should be corrected (please refer example below) Example: - Actual Cost of Inventory converted into capital assets = INR 100 - FMV of such Inventory converted into capital assets = INR 120 - As per Explanation 1A to Section 43, the actual cost of that asset to be considered as FMV - As per section 32, additional depreciation is available on difference between FMV and actual cost = INR 20 (INR 120 - INR 100) - However, as per corresponding amendment in Section 28(via), entire FMV is taxed as business income, i.e., INR 120, instead of INR 20 So, there is double taxation to the extent of INR 100 (INR 120 - INR 20) which is taxed as 'business income'	
10.	**Interest on late**	Currently, delay in deduction of TDS by even a day in the same month attracts interest at 1 percent under section 201 of the Act, even when the TDS liability is remitted on time as per the due date.	It is recommended that no interest should be levied in cases where while TDS may have been

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	deduction of TDS		deducted late but otherwise deposited as per the due date.
11.	**Adjustment of refunds against demand stayed by the tax officer**	1. There are several instances where assessees are subjected to scrutiny assessments on a year-on-year basis, the litigation for which spans over years and the demands for such years though stayed are adjusted against refund of subsequent years leading to adverse impacts on the working capital requirements of the assessee. 2. Assessees while under litigation, deposit the specified demand under protest say 20% and rest of demand is stayed until disposal of appeal. However, any refunds for a different year are automatically adjusted against pending demand even though the demand has been stayed. 3. In situations where TDS proceedings are initiated on an Indian payer (deductor) and scrutiny assessment proceedings are initiated against a foreign company i.e., payee, the tax officer requires both the entities to deposit 20% demand under protest. This leads to undue hardship on the assessee and impacts the cash flow.	1. Amend the provisions suitably to not adjust demands against pending refund when a formal stay has been granted. 2. In cases where TDS proceedings and scrutiny assessment proceedings are initiated, the payment of demand should be restricted to a single payment of 20% either by payer or payee.
12.	**Special incentives for**	There are currently no incentives under the ITA which incentivize companies for undertaking capex investments like setting-up a data center, IT park, etc.	The government should consider providing tax holiday/exemption for these kinds of activities.

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	companies undertaking huge capex investments (such as setting up data centers, IT Parks, etc. in India)	These projects involve huge amount of capex and generate large number of employment opportunities.	
13.	**Disallowance of CSR expenditure [Explanation 2 to Section 37 of the Act]**	- As per Section 135 of the Companies Act, 2013 mandatory CSR obligation is to be undertaken by all corporates. Simultaneously, as per Explanation 2 to Section 37 of the Act, CSR expenditure is considered to be a non-deductible expenditure for computing taxable income. - Any disallowance of mandatory expenditure is a discouraging proposition.	CSR expenditure should be allowed as deductible expenditure under section 37 of the Act as this is mandatory expenditure required to be incurred for the purpose of business or profession.
14.	**Clarification on the applicability of section 56(2)(vii a) / (56(2)(x)**	- The CBDT had issued 3 circulars on the applicability of section 56(2)(viia) {now 56(2)(x)} for deeming income in the hands of shareholders on the fresh issuance of shares. - The first circular no. 10 of 2018 dated 31.12.2018 clarified that the intent of section 56(2)(viia) is to apply only on the transfer of shares	- It becomes important that an appropriate clarification is issued in the forthcoming budget that erstwhile sections 56(2)(viia) and present 56(2)(x) is not applicable to the fresh issuance of shares and applies only on the transfer of shares.

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	on the fresh issuance of shares	and based the clarification/ view on the legislative intent as specified in the Memorandum to Finance Act 2010 by which section 56(2)(viia) was introduced in the Act. The clarification from CBDT was necessitated as the tax authorities were applying section 56(2)(viia) on the fresh issuance of shares, including rights issue. However, the said circular was withdrawn vide Circular no. 2 of 2019 dated 04th January, 2019 on the ground that the matter is 'sub judice' and fresh comprehensive circular will be issued in due course of time. But the subsequent circular no. 3 of 2019 had only reversed the first circular no. 10 of 2018 by stating that exempting fresh issuance of shares from the applicability of section 56(2)(viia) would not be a correct approach, as it could lead to tax abuse. - Issuing a circular and withdrawing it in quick succession has created significant uncertainty for the industry at large and there is an apprehension that the tax authorities will start reopening past years assessments under section 148/ 263 by interpreting that the subsequent withdrawal of the circular by CBDT implies that section 56(2)(viia) (now section 56(2)(x)) can be applied even to fresh issue of shares. - Also, by taxing rights shares and bonus shares under section 56(2)(viia)/ 56(2)(x) as an income in the hands of recipient would	- Hence, it is recommended that the contents of Circular No. 10 of 2018 should be incorporated in the Act by way of necessary amendment/ clarification.

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		throw incongruous results as there are specific provisions in law which provide that rights shares and bonus shares will be taxed in the hands of shareholders as 'capital gains' at the time of transfer of such shares and that the cost of acquisition would be considered as subscription price of rights shares and Nil for bonus shares. - The intent of section is anti-abuse whereas the income tax authorities are applying the same mechanically in all the genuine and commercial transactions like in cases of rights issue where in the shares are issued to all the shareholders at a discount and also in cases where the issue remains unsubscribed and promoters take up the unsubscribed portion for ensuring the adequate capital infusion in the issuing company. These are genuine commercial transactions which ensure that the issuing company receives the adequate capital infusion for carrying out its business or other general corporate purposes such as capex for facility expansion etc., and hence the same should not be considered as case of disproportionate allotment and thus kept out of the purview of anti-abuse provision of section 56(2)(x) of the Act.	
15.	**Section 36(1)(va)**	- An amendment was brought into section 36(1)(va) vide Finance Act, 2021, wherein meaning of 'due date' was clarified as- "due date" means the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund	Considering, there are various assessment matters which are under litigation on this issue, to bring in clarification that the amendment is applicable prospectively.

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		under any Act, rule, order or notification issued thereunder or under any standing order, award, contract of service or otherwise. - Though the memorandum to Finance Act 2021 had indicated that the amendment is prospectively applicable from 1 April 2021 but during tax assessments, the tax officers have adopted a position that the amendment is retrospectively applicable, thereby ignoring the favourable rulings of the Supreme Court and various High Court during the pre-amendment era. - Due to technical glitch of website, ESI/EPF contribution received from employees as per provisions of section 36(1)(va) after the due dates specified in the respective Acts but before the due date of for filing of return of income under section 139(1) but disallowable by income tax department.	It is recommended to make necessary changes/amendment in law to allow grace time for payment of ESI/PF of employee contribution same will allowable in income Tax Law.
16.	**Removal of Clause 44C in Form 3CD**	- The clause 44 in Form No 3CD was introduced via Notification No. 33/2018 for the first time on 20th July 2018. The same was deferred for reporting & first year reporting will be in the Tax audit reported prepared for the FY 2021-22. - Clause 44 of the Form 3CD seeks details of total expenditure between entities Registered under GST & not registered under GST. The clause	Considering the difficulty in maintaining the data and inherent limitations in capturing desired information for the purpose of audit & reporting - these reporting requirements under Clause 44C be removed.

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		further seeks break-up between expenditure exempt from GST, relating to entities falling under composition scheme & expenditure paid to other registered entities. - The said clause would lead to huge compliance burden on the assessee serving no purpose in determining the taxable income of the assessee due to reasons outlined below: - It is unclear as to why the assessee is required to maintain such break-up sought in the Form 3CD when such information is not required to be reported under the GST returns to be filed by the assessee. - The break-up of the information sought under this clause need to be maintained at a transaction level & the details like whether they are composite dealers & whether the goods/services provided by them is exempt from GST needs to be captured at source transaction level to enable reporting under this clause. This demands both Information systems upgradation & manual efforts to ensure accurate information collation/maintenance of records for audit. - If the details of registered dealer and un-registered dealer needs to be collated based on the GST returns/Form 2A/2B/3B, then there may be	

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		challenges around the accuracy of the details reported in such returns and timing of availability of such details.	
17.	**Easing TDS provisions**	- The TDS provisions were introduced primarily to tax the income at very source and to ensure that transactions trail (audit trail) is available, so that there is no tax leakage & early collection of revenue for the Govt. - Over the years the TDS regime has become quite complicated. There are multiple sections, rates and different thresholds for different payments and for different set of assessees. To add to this complexity, there are several interpretational challenges as well. At times, some of the TDS provisions may be overlapping resulting in conflicting views leading to litigation. - Thus, the result is that assessees must spend considerable time and resources in meeting their compliance obligations, assessments, and litigations as stringent penal consequences, and disallowances of expenses.	It is recommended to rationalise the TDS provisions to promote ease of doing business and ease the compliance obligation for tax deductor.
18.	**Condition of pre-deposit of 20% of tax demand**	Insertion of Proviso to Section 254 (2A) of the Act, creates an undue hardship for the assessee, especially wherein respective issues are repetitive and already settled by higher courts (either in assessee's own case or in case of other assessees).	The power of the Tribunal to decide the pre-deposit amount considering merits of the case should not be curtailed. The condition of

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	for grant of stay by the Tribunal [Proviso to Section 254(2A) of the Act]		depositing 20% amount of tax demand should be omitted.
19.	**Lower cap of monetary threshold of gift [Rule 3(7)(iv) of the Rules]**	Gift received by the employee from his employer is taxable as perquisite if the value of such gift to employer is INR 5,000 or more in aggregate in a year.	Threshold of INR 5,000 for a gift by an employer should be increased to INR 25,000 considering the inflation index.
20.	**Taxation of ESOPs**	From the FY 2020-21, an employee receiving ESOPs from an eligible start-up need not pay tax in the year of exercising the option. The TDS on the 'perquisite' stands deferred to earlier of the following events: - Expiry of five years from the year of allotment of ESOPs - Date of sale of the ESOPs by the employee - Date of termination of employment	It is recommended that this provision should be made applicable to all companies including start up.

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21	**Improvements Required Under Faceless Scheme**	- The Govt. of India has introduced the digital mode of compliance for all the CIT filings & assessments/appeal proceedings. While this is a great initiative, still there are few challenges which needs resolution from the Govt. Key one are as under: - 5(a) Short time given for filing response - Time given for responding to notices in some cases is short and adjournment requests are not being processed/acknowledged by Tax Department. This results in lack of clarity on the future due date of submission to be made by the assessee. Moreover, no option to seek adjournment more than 15 days. Currently the Income Tax portal restricts the adjournment to a period of only 15 days even when the Tax assessments are due for closure only after 15 to 20 months. - 5(b) No prescribed guidelines around the service of notice & orders under e-assessment proceedings. At times, assessees are unable to track/identify the right date & time of service of notices/orders. For instances, notice/order would be pre-dated and the same would get reflected on the PAN log-in of the assessee only on a subsequent date without any prompt notification to the assessee. As a result, Tax payer has to always keep on checking the portal on daily basis. This makes the process more burdensome & may lead delay in compliance.	- 5(a) In the event of critical details sought, taxpayers may need to deliberate, regarding their submission before responding to the notice and which might take more than 15 days' time. Accordingly, the provisions can provide for an extended period (say up to 30-60 days) to be allowed to the taxpayer to collate the details and respond through the e-filing portal- at least in cases where Assessments are not getting time barred immediately. - 5(b) Specific guidelines under the faceless assessment/appeal scheme to be notified duly addressing the concerns as highlighted above as regards services of notices/orders by Tax authorities. The guidelines should provide for the Tax payer/authorized representatives to receive a real time update either through Short Messaging Service (SMS) on his registered mobile number or any other mode for real time update.

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		- Apart from the concerns stated above, if the issue is resolved, it will ease out the burden or risk of non-compliance or delay in compliance with the requirements of the Tax office	- In the Multi- National Organization, multiple people/teams are responsible for tracking/carrying various types of Tax compliances. The current platform does not allow multiple user log-in a single time and does not have any option to include multiple peoples' credentials as person responsible for the compliance. Hence, guidelines should address these concerns to provide necessary resolution.
22	**Weighted Deduction U/S 35(2AB)**	Weighted deduction U/s 35(2AB) of R & D expenditure is discontinued in new tax regime benefit	Weighted deduction U/s 35(2AB) of R & D expenditure is discontinued in new tax regime benefit under section while it should be continued to benefit for all company for encourage to industry to expenditure in develop of new product under make in India
23	**API based solution to be implemented to manage the**	As per section 206AB/ 206CCA of the IT Act, higher rate of TCS/ TDS is prescribed when the customer/ vendor is a "specified person". Specified person is a person who has not filed the tax returns for preceding 1 year for which the time limit prescribed for filing the tax return under Section 139(1) has expired and time and the aggregate of TCS/TDS in	Current solution provided by CBDT not fully automated and require a manual touch. Hence, we request CBDT to develop an API mechanism which helps the taxpayer to determine whether the customer/ vendor is

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	compliance prescribed under Section 206AB / 206CCA of IT Act	proceeding year exceeds Rs. 50,000. The time limit for filing the tax returns varies across different category of tax payers e.g. individuals the same would fall due on 31 July, for certain other tax payers it falls due on 31 October; and also within the same category of tax payers, separate timelines are prescribed for tax payers subject to tax audit and tax payers required to file Form 3CEB. Section 206AB/ 206CCA creates significant administrative burden of tracking defaulter status, since different years need to be tracked before and after the due-date of tax return. For instance, for a customer who is subject to tax audit, the due-date for filing the tax return for FY 2020-21 is 31 October 2021. In this scenario, for transactions with the customer pre- 30 October 2021, tax return filing status would need to be tracked for FY 2019-20 for determining the applicable TCS rate, whereas post 31 October, the relevant years under consideration are FY 2020-21. Practically not possible for the company to track return filing status and other conditions to determine the TCS rate when the invoicing is done on instantly by the ERP system.	a "specified person" and apply the correct rate at the time of invoicing itself

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24	**Provide exemption from maintenance of Transfer Pricing documentation and compliance under section 92E of Income-tax Act ('the IT Act') to a foreign company who has only earned royalty income / fees for technical**	- Vide Finance Act 2020, section 139 the IT Act was amended to provide relief to non-residents from filing of income tax return, where their total income consisted only of income by way of royalty and/or fees for technical services, and appropriate taxes had been withheld by the Indian Payer. However, a parallel amendment has not been made to section 92D or 92E of the IT Act, so as to exempt the foreign companies from carrying out with the compliance mandated under aforesaid sections. - As the details mandated under section 92D/ 92E are already available through documents furnished by the Indian Group entity of the foreign company, no additional information/ benefit is obtained by mandating the foreign company to carry out with the compliance requirements	- It is requested that necessary amendments, as made to section 139, be made to section 92D/ 92E of the IT Act

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	services from India from group entity		
25	**Provide clarifications on Equalisation levy (EL)**	It is requested to clarify below items with respect to charge of equalisation levy under section 165A of Finance Act 2016. Scope of online sale of goods/ online provision of services Vide Finance Act 2021, explanation to section 164(cb) of Finance Act, 2016 has been inserted. As per the explanation, "e-commerce supply or service", "online sale of goods" and "online provision of services" shall include one or more of the following activities taking place online: (a) Acceptance of offer for sale; (b) Placing the purchase order; (c) Acceptance of the purchase order; (d) Payment of consideration; or (e) Supply of goods or provision of services, partly or wholly Amended explanation unduly cover other transactions which are traditionally not in the nature of e-commerce or digital transactions, such as	

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		• Intra-group trading of goods: Transaction where Indian entities purchase physical goods from their group entities outside India by placing a request on the ERP system of the group and goods are thereafter physically shipped into India; • Intra-group provision of services: Transactions where IT/ITES services, other support services, etc. are provided by overseas entities to their Indian group entities, where the actual services in many cases are predominantly rendered offline; a) Offline services: Transactions where the principal activity is carried out physically (i.e. offline) and merely placement/acceptance, or in some cases transmission of the final deliverable, is made online; As per the amendment, the aforesaid scenarios, wherein only a part of the transaction takes place online, may be unduly subject to EL. EL provisions should specifically exclude the following transactions which are traditionally not in the nature of e-commerce/ digital transactions: • Intra-group trading of goods • Intra-group provision of services • Offline services	

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		Such transactions were also never intended to be covered in BEPS Action Plan 1 as well as CBDT's report on digital transactions. In this regard, an appropriate amendment should be made, or clarification issued to exempt intra-group transactions from applicability of EL. Considering that the objective of the EL provisions is to cover foreign digital companies and foreign e-commerce operators; it should be specifically clarified that the sale of goods or services facilitated through emails or non-public ERP platforms should not be subject to EL. 2 Challenges to ascertaining nexus based on IP address - Attempt by a non-resident e-commerce operator to ascertain whether the underlying sale was done using IP address in India, is conflicting with the Privacy Laws of many countries, thereby leading to 'impossibility of performance' in the hands of the foreign e-commerce operator. Given above, it is requested that the condition of IP address be removed from the factors for determining nexus for the purpose of EL Self -adjustment option for excess payment of EL - As per the return format prescribed for the non-resident e-commerce operators (Form No 1), excess payment of EL is required to	

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		be claimed as a refund. However, there is no clarification/ guideline is issued regarding the process of calming refund. Further, there is no option given for furnishing the bank account details while filing the return with refund claim. We request you to note that the time gap provided for making the EL payment is just 7 days for the first three quarters, and in the case of last quarter, non-resident e-commerce operators are required to deposit EL by the last day of the quarter itself. Because of such a tight timeline, most of the time, payments are based on the estimate, resulting in excess/ short payment of EL. - In the case of excess payment, the only option given to non-resident e-commerce operators is to claim a refund. Claiming a refund is an administratively cumbersome and also time-consuming process. - Given the same, we request you to issue the necessary amendment to enable the self-adjustment option in the case of excess payment of EL. Under the self-adjustment option, non-resident e-commerce operators should be allowed to adjust the extra amount with subsequent period liability.	
26	**Over Burden to Corporate for Tax**	Over Burden to Corporate for Tax Deducted at Source (TDS) And Tax Collected At Source (TCS) Compliance Obligation On Purchase / Sale Of Goods	There is a strong need to revisit this provision and the same set of transaction should be abolished

Sl. No	Particulars	Issue	Recommendations
	Deducted at Source (TDS) And Tax Collected At Source (TCS) Compliance Obligation On Purchase / Sale Of Goods		
27	**Applicability of Section 194 R in case of Non-resident**	As per the provision of Section 194R of the Income Tax act, "Any person responsible for providing to a resident, any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession, by such resident, shall, before providing such benefit or perquisite, as the case may be, to such resident, ensure that tax has been deducted in respect of such benefit or perquisite at the rate of ten per cent of the value or aggregate of value of such benefit or perquisite". As per the above-mentioned provision, there is no clarity/ exclusion of not resident over the applicability of this provision. Accordingly, it appears that benefit/perquisite provided by foreign companies or Non-Resident Assessee to	It is recommended to make necessary changes/amendment in the law to allow relief to the foreign company/non-resident assessee to exclude from the applicability of deduction of TDS on benefit/perquisite provide to resident.

Sl. No	Particulars	Issue	Recommendations
		resident under the normal course of business, may come under the ambit of this section and foreign companies or Non-Resident Assessee would need to deduct TDS and deposit thereof to account of Central Government of India, on such transactions. In this contest, non-resident assessee / foreign company would find it very difficult to comply with the requirement of tax deduction at source under section 194R of the Income-tax Act and its payment to Central Government in the prescribed manner and within the prescribed time in the absence of any agent or business connection or permanent establishment in India. Therefore, it is hereby requested that the clarification shall be issued for exclusion/ non applicability of provisions of section 194R of the Act to the foreign companies or Non-Resident Assessee. Further, this is to bring to your kind notice that similar clarification is issued for other section of TDS i.e. section 194J where non-resident assessee / foreign company are excluded from compliance of provision of that section. (Ref: Notification no. 726 of 18th Oct 1995)	
28	**Relief for Adjustment of Additional Tax liability with refund**	Finance Act, 2022 had retrospectively disallowed the claim for deduction for Cess for the computation of taxable income. With such retrospective amendment a corresponding adjustment was also made in sub-sec 18 of Sec 155 of the Income-tax Act, 1961 (‘Act’) pursuant to which the tax officials were	It is recommended to make necessary changes/amendment in the law to allow option to the assessee for adjustment of additional Tax liability with the refund of previous years, if any.

Sl. No	Particulars	Issue	Recommendations
	of the assessee for disallowing the education cess/surcharge (as per Rule 132 of Income Tax Rule 1962)	allowed to pass any rectification order disallowing claim of Cess by 31 March 2026. However, the provision allowed taxpayers to voluntarily offer the deduction claimed for Cess by filing a form no. 69 and thereafter making the appropriate payment of taxes. Exercise of such option also allowed immunity from penalty. Opting the above-mentioned scheme as mentioned in Rule 132 of the income tax rule 1962, result in outflow of cash for payment of addition tax liability. 1. It is hereby requested to allow option to the assessee for adjustment of additional tax liability with refund of previous years, if any, to avoid undue hardship to the assessee to manage the cash outflow.	