THE UNION BUDGET
2017-18
- AN ANALYSIS

BOMBAY CHARTERED
ACCOUNTANTS' SOCIETY

About the Cover

VADODARA KA DIMAAG AUR VARANASI KA DHAIRYA*

(THE SMARTS OF VADODARA AND PATIENCE OF VARANASI)

The international scenario is uncertain, what with 'Trump Pet' promises being played out, BREXIT a reality and China in recalibration mode. Confusion and chaos confounded.

The domestic mood is campaign mode. Focus is on elections. A major salvo of reform fired in the form of Demonetisation. Economic outcome debatable but one huge and heartening takeaway – 1.25 billion united to back a right nationalist cause.

Major Budget making reforms in merging rail and union budget, advancing the date of budget by a month and combining Plan and Non-plan allocations. A bigger reform would have been scrapping this annual exercise and replacing with a once-in-five-years Budget making exercise. Till then, the FM presents, Experts analyse and Taxpayers endure this annual ritual.

So, the Great Indian Ship sails in choppy waters and stormy weather, steered with confidence and single-minded determination by the Captain, firmly at the helm. No false bravados, no major risks taken, no damage done and keeping the ship on course. No diversions no drama. Clear headed focus and a calm demeanour. An iron fist, a tight fist. Focus on asset building, mindful of wasteful expenses. Plugging leakages along the way.

Aberrations, anomalies and inconsistencies are bound to creep in. Scope for Representations provided.

4th largest economy, 6th largest manufacturing country, amongst the fastest growing nation.

The ship is sailing on a historic voyage. All hands on board!

**PM Narendra Modi was elected from Vadodara and Varanasi in 2014.*

Cover Concept : Naushad Panjwani

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UNION BUDGET 2017-18

— Stamped with a Digital Footprint

For the past few months, we have been witness to historical developments in our country. Led by a highly tech savvy Prime Minister, the Government has been goading every Indian to imbibe technology and shun the use of cash in daily transactions. One of the most significant fallouts of the demonetisation of the high denomination notes has been the emphasis on digital payments as a substitute for cash payments.

While there can be divided opinion on the merits and demerits of the manner in which the Government is virtually forcing the citizens to move from cash to digital, we professionals would surely understand and appreciate the benefits of a situation where a predominant portion of the payments in the country happen by cheque or electronic modes. We are all aware that electronic modes of transacting leave an audit trail that can be pursued if necessary by the Government. Considering the abysmally low level of tax compliance in the country which is evidenced by the small number of taxpayers filing returns, it is natural that the Government would want to expand the taxpayer base. And for this, the easiest way would be to pursue the electronic trail left by the digital transactions.

In this context, the Union Budget 2017-18 expectedly contains several proposals that provide a massive push to the "go digital" initiative. Several upper limits for cash transactions have been substantially lowered. Stiff penalties have been prescribed for defaults. Tax evasion and avoidance are now extremely cumbersome and costly. This would go a long way in widening the taxpayer base in the country. Also, the manner in which the income-tax department is harnessing technology to collect and analyse the massive amount of data that exists electronically is very reassuring. Ultimately, the success of the demonetisation drive will depend on the success of the data analytics.

All said and done, the Union Budget 2017-18 clearly bears a large digital footprint.

The Pradhan Mantri Garib Kalyan Yojana is the last option available to the perennial tax dodgers. The message on the wall has been clearly spelt out for them – *"if you don't come to us now, we will come after you"*. We owe it to our country to act as a strong bridge between the tax department and the taxpayers and ensure that honest tax compliance becomes the order of the day rather than an exception.

The country also eagerly awaits the roll out of the much talked about GST. It is hoped that there will be no further delays. It is in anticipation of the GST law that there are hardly any changes in the Finance Bill on the indirect tax front.

We hope you find this Budget publication interesting and useful. We have made every effort to make it comprehensive and yet, simple to understand.

BCAS Budget Team

The Union Budget
2017-18
– Analysis of Important Amendments

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DIRECT TAXES

- All amendments proposed in the Finance Bill, 2017 would be effective from Assessment Year 2018-19 unless specifically mentioned otherwise.
- In this booklet, all proposals of the Finance Bill, 2017 are referred to as if the amendments have been actually made, except in a few cases.
- Unless otherwise specified, the reference to the words "the Act" used is to the Income-tax Act, 1961.
- This publication also contains amendments made by the Taxation Laws (Second Amendment) Act, 2016.

A. TAX RATES

1. Tax rates for Individuals, HUFs, AOP etc., and Firms and Companies etc.

There is a reduction in tax rate for individuals in the income-tax slab of ₹ 2.5 lakh to ₹ 5 lakh from 10% to 5%, giving some relief to the middle class.

There are no changes in the tax slabs or rate of Education Cess and Secondary and Higher Education Cess.

Surcharge @ 10% will be applicable where total taxable income exceeds ₹ 50 lakh but does not exceed ₹ 1 crore. Surcharge of 15% continues where total taxable income exceeds ₹ 1 crore.

The tax rates for small and medium-sized domestic companies having annual turnover or gross receipts up to ₹ 50 crore in FY 2015-16 is reduced to 25% from 30%.

The tax rates remain unchanged for other companies, firms and co-operative societies.

2. Rebate of Income-tax in case of certain Individuals – Section 87A

Currently, section 87A provides for a rebate up to ₹ 5,000 to a resident individual from the income-tax payable, if his total income does not exceed ₹ 5,00,000.

In view of rationalisation of tax rates for individuals in the income slab of ₹ 2,50,000 to ₹ 5,00,000, section 87A is amended

to reduce the maximum amount of rebate available from existing ₹ 5,000 to ₹ 2,500. This rebate shall be available to only resident individuals whose total income does not exceed ₹ 3,50,000.

Thus, the effective maximum marginal tax rates (including surcharge and cess) will be as under:

Person	Total Income (₹)			
	Upto ₹ 50 lakh	**Above ₹ 50 lakh up to ₹ 1crore**	**Above 1 crore & up to ₹ 10 crore**	**Above ₹ 10 crore**
Individuals, HUF etc.	30.9%	33.99%	35.535%	35.535%
Firms	30.9%	30.9%	34.608%	34.608%
Domestic Companies with total turnover/gross receipts in FY 2015-16 not exceeding ₹ 50 crore	25.75%	25.75%	27.5525%	28.84%
New Domestic Manufacturing Companies (Compliant with prescribed conditions under section 115BA)	25.75%	25.75%	27.5525%	28.84%
Other Domestic Companies	30.9%	30.9%	33.063%	34.608%
Foreign Company	41.2%	41.2%	42.024%	43.26%

Notes:

i. Surcharge will continue to apply @ 2% of tax while deducting tax at source from payments made to a foreign company in case if payment exceeds ₹ 1 crore but is less than ₹ 10 crore and @ 5% if payment exceeds ₹ 10 crore.

ii. The "Education Cess" and "Secondary and Higher Education Cess" will continue to be considered in determining tax deducted at source only from the payments made to foreign companies, non-residents and salaried employees. In all other cases, cess will not be considered.

iii. There is no change in rate of Minimum Alternate Tax (MAT) as compared to last year in case of a domestic company.

B. INCOME FROM HOUSE PROPERTY

1. Determination of Annual Value for house property held as stock-in-trade – Section 23

Section 23 deals with determination of annual value of a property being building or land appurtenant thereto. The Delhi High Court, in the case of *CIT vs. Ansal Housing & Construction Ltd. (241 Taxman 418)(Delhi)* and the Bombay High Court in the case of *CIT vs. Sane & Doshi Enterprises (377 ITR 165)(Bom.)* have held that the notional annual value of property held by an assessee as his stock-in-trade is also chargeable to tax.

Section 23 has now been amended to provide that –

(i) where such property is held as stock-in-trade; and

(ii) such property or any part thereof is not let out during the whole or any part of the previous year,

then its annual value will be nil for a period upto one year from the end of the financial year in which the completion certificate has been obtained from the Competent Authority. The term `Competent Authority' is not defined for the purpose of this section.

2. Restriction on set-off of loss from House Property – Section 71

Section 71 deals with set-off of loss from one head against income from other head. Sub-section (3A) has been inserted to provide that set-off of loss under the head 'Income from house property' against any other head of income shall be restricted to ₹ 2 lakh. This will adversely impact those cases where, on account of high interest on borrowings, the net result of computation under the head "income from house property" is a loss in excess of ₹ 2 lakh.

By virtue of the current provisions of section 71B, and as mentioned in the Explanatory Memorandum, the unabsorbed loss shall be allowed to be carried forward for set-off in subsequent 8 assessment years immediately succeeding the assessment year for which the loss was first computed against the income from house property in accordance with the existing provisions of the Act.

C. PROFITS AND GAINS OF BUSINESS OR PROFESSION

1. Deduction with respect to provision for doubtful debts – Section 36(1)(viia)

Under the existing provisions, specified banks can claim deduction up to 7.5 per cent of the total income (computed before making any deduction under this clause and Chapter VIA) with respect to provision for doubtful debts. It is now provided to enhance the present limit of deduction in respect of provision for bad and doubtful debts from 7.5 per cent to 8.5 per cent of the total income (computed before making any deduction under this clause and Chapter VIA).

2. Actual cost of asset in case of withdrawal of deduction – Section 43(1) r.w.s. 35AD(7B)

Section 35AD(7B) provides that where any asset on which benefit of section 35AD is claimed and allowed, is used for a purpose other than specified business, the benefit of deduction already granted under section 35AD shall be deemed to be the income of the assessee.

However, there is no clarity in section 43(1) on determination of actual cost for the purposes of allowance of depreciation of such assets, in respect of which the deduction which was already allowed in a previous year under section 35AD of the Act, is withdrawn in terms of sub-section (7B) of the said section.

Now, a proviso has been inserted in Explanation 13 of section 43(1). It provides that, in such cases, the actual cost to the assessee shall be the actual cost to the assessee, as reduced by an amount equal to the amount of depreciation calculated at the rate in force that would have been allowable had the asset been used for the purposes of business since the date of its acquisition.

3. Determination of actual cost of asset – Section 43(1) r.w.s. 32 etc.

With a view to curb the cash transactions, it is now provided that the Capital expenditure exceeding ₹ 10,000 paid to a person in a day otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account for acquisition of any asset or part thereof shall be ignored for calculating actual cost. Consequently, no depreciation, amortisation or other deduction shall be allowed on such amount.

4. Interest on borrowing from co-operative banks – Section 43B

Clause (e) of section 43B provides for disallowance of interest on any loan or advances from a scheduled bank remaining unpaid till the due date for filing return of income under section 139(1). The said clause, which did not cover non-scheduled co-operative banks, has now been amended to cover interest on loan or advance from a co-operative bank, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

5. Income recognition in case of doubtful advances – Section 43D

In case of Scheduled banks, public financial institutions, State financial corporations, State industrial investment corporations and certain public companies like Housing Finance companies, interest income in relation to certain categories of bad or doubtful debts (NPAs) received by them is chargeable to tax in the previous year in which it is credited to its profit and loss account for that year or actually received, whichever is earlier. In case of other assessees, interest income is to be recognised as per the method of accounting regularly employed by the assessee. Further ICDS IV relating to revenue Recognition, notified under section 145(2), provides that interest income shall be recognised on time basis.

Section 43D has now been amended to extend its applicability to co-operative banks other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. Therefore, now such co-operative banks are on a level playing field with Scheduled banks in respect of revenue recognition for interest income on NPAs.

6. Increase in monetary limits for maintenance of books of account in some cases – Section 44AA

Section 44AA(2) requires every person carrying on business or profession (subject to certain exclusions specified in that section) to maintain such books of accounts and documents in the previous year as may enable the Assessing Officer to compute his total income in accordance with the provisions of Act, if his income from business or profession exceeds ₹ 1.20 lakh or total sales or turnover or gross receipts, as the case may be, in the business or profession exceeds ₹ 10 lakh in any one of the three years immediately preceding the previous year.

In order to reduce the compliance burden in the case of Individuals and Hindu Undivided Families carrying on business or profession, these monetary limits of income and total sales or turnover or gross receipts for maintenance of books of accounts has now been increased from ₹ 1.20 lakh to ₹ 2.50 lakh and from ₹ 10 lakh to ₹ 25 lakh, respectively.

7. Exemption from audit under section 44AB in presumptive tax cases – Sections 44AB and 44AD

Finance Act, 2016 raised the threshold limit for applicability of presumptive taxation in case of eligible business carried on by eligible person under section 44AD to ₹ 2 crore from ₹ 1 crore with effect from assessment year 2017-18. However, section 44AB required every person carrying on business to get his accounts audited if his total sales, turnover or gross receipts in the previous year exceeded ₹ 1 crore. The CBDT clarified, *vide* press release dated 20th June, 2016, that if an eligible person opts for presumptive taxation scheme as per section 44AD(1), he shall not be required to get his accounts audited if the total turnover or gross receipts of the relevant previous year does not exceed ₹ 2 crore.

To give effect to the above clarification consequent to the higher threshold of total sales, total turnover or gross receipts in section 44AD, section 44AB is now amended to provide that an eligible person who declares profits for the previous year in accordance with the provisions of section 44AD(1) and his total sales, total turnover or gross receipts, as the case may be, in business do not exceed ₹ 2 crore in such previous year, is not required to get his books of account audited under section 44AB.

This amendment is applicable with immediate effect from AY 2017-18.

D. CAPITAL GAINS

1. Holding period of an immovable property – Section 2(42A)

Currently, section 2(42A) defines short term capital asset to mean a capital asset held by an assessee for not more than thirty six months immediately preceding the date of transfer. This is subject to specified exceptions. As per this provision, land or building or both is regarded as short term capital asset, if it is held for a period of not more than 36 months before the date of transfer.

The proviso to section 2(42A) has been amended to provide that, where the capital asset is land or building or both, it shall be short

term capital asset if it is held for a period of not more than 24 months immediately preceding the date of transfer. Therefore, land or building or both will be regarded as long term capital asset if it is held by an assessee for a period of more than 24 months immediately preceding the date of transfer.

2. Exemption of long term capital gains – Section 10(38)

Under the existing provisions, long term capital gains on transfer of equity shares of a company are exempt, where the transaction for sale of such shares is chargeable to Securities Transaction Tax (STT).

It is now provided that in respect of shares acquired on or after 1st October 2004, the capital gains on transfer thereof would be exempt only if STT had been paid at the time of acquisition, other than in cases to be notified by the Central Government.

This amendment has been introduced to prevent the misuse of exemption available under section 10(38). As per the explanatory memorandum, it has been indicated that purchases through IPO, FPO, bonus or rights issue by a listed company, acquisition by non-resident as per FDI policy etc. may be notified to exempt from this requirement.

Consequently, such gains, if not covered by the exemption under section 10(38) would be liable to tax as long term capital gains.

3. Year of taxability in case of Joint Development Agreement and TDS thereon – Sections 45 and 194-IC

Section 45(1) provides that capital gains shall be deemed to be income of the previous year in which transfer takes place. Sub-section (5A) has been inserted to provide that capital gain arising on transfer of land or building or both, under a specified agreement, by an Individual or Hindu Undivided Family shall be chargeable to tax in the year in which the completion certificate has been issued for the whole or part of the project by the competent authority. It is also provided that, in such a case, stamp duty value of the assessee's share in the land or building or both, on the date of issue of completion certificate, as increased by consideration, if any, received in cash, shall be deemed to be full value of consideration.

However, in case the assessee transfers his share in the project on or before the date of issue of completion certificate, the provisions of this sub-section shall not apply and the capital gain shall be deemed to be income of the previous year in which

such transfer takes place and the provisions of the Act (other than provisions of this sub-section) dealing with determination of full value of consideration shall apply.

Consequently, section 49 has also been amended to provide that for the purposes of computing capital gain arising to the assessee on transfer of his share, the amount deemed to be full value of consideration shall be regarded as cost of acquisition.

`Specified Agreement' has been defined in Explanation (ii) to mean a registered agreement in which the owner of land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both, in such project, such share being with or without payment of part of the consideration in cash.

Section 194-IC has been introduced to provide that monetary consideration payable, to a resident, under such a specified agreement shall be liable to deduction of tax at the rate of 10 per cent of such monetary consideration as provided in that section.

4. Cost of acquisition in case of demerger of certain foreign companies – Section 47

Currently, in case of demerger of foreign companies satisfying certain conditions, clause (vic) of section 47 exempts the transfer of shares of an Indian company from the demerged company to the resulting company. However, no corresponding provision exists in section 49(1) to consider the cost of acquisition of such shares as cost in the hands of the previous owner.

Section 49(1) is amended to provide that in the hands of the resulting company, the cost of shares of an Indian company, transferred during the course of demerger of foreign companies which is tax neutral as per section 47(vic), shall be the cost to the previous owner, i.e., the demerged company. Consequently, the period of holding of such shares shall include the period of holding of the previous owner.

5. Conversion of preference shares into equity shares – Sections 2(42A), 47 and 49

Under the existing provisions, there is no specific exemption from levy of capital gains tax on conversion of preference shares of a company into equity shares of that company. Section 47 has now been amended to provide that such conversion shall not be treated as a transfer.

Section 2(42A) and section 49 relating to period of holding and cost of acquisition, respectively, have been consequently amended to provide that the period of holding of the said equity shares shall include the period for which the preference shares were held by the assessee and cost of acquisition of equity shares shall be the cost of preference shares.

6. Extension of capital gain exemption to Rupee Denominated Bonds – Fourth Proviso to section 48

Presently, the fourth* proviso to section 48 effectively provides for a capital gain exemption to a non-resident investor in respect of capital gains arising on account of foreign currency fluctuation gains on rupee denominated bonds issued by an Indian company and 'subscribed' by such investor.

The fourth proviso is amended to extend the benefit of such capital gain exemption to non-resident investors that 'held' rupee denominated bonds. Accordingly, the capital gain exemption available to subscribers of rupee denominated bonds is now also available to subsequent acquirer of such bonds.

[* Inadvertently referred to as the fifth proviso in the Finance Bill, 2017.]

7. Period of holding and cost of acquisition on transfer of units in consolidation of plans of a Mutual Fund Scheme – Sections 2(42A) and 49

Section 47 was amended *vide* Finance Act, 2016 to provide that transfer of units in a consolidating plan of mutual fund scheme by a unit holder against allotment of unit or units in the consolidated plan of that Mutual Fund scheme shall not be regarded as taxable transfer.

However, the provisions of computing the period of holding and cost of acquisition of the said allotted units were not consequently amended and therefore, now it is provided that period of holding shall include the period for which the units in consolidating plan of Mutual Fund Scheme were held by the assessee and cost of acquisition of the said allotted units to unit holder shall be cost of units in consolidating plan held by the assessee.

This amendment is applicable with immediate effect from AY 2017-18.

8. Sale consideration for transfer of share of a company – Section 50CA

This section is introduced to provide that where consideration for transfer of shares of a company other than quoted shares is less than the fair market value, determined in such manner as may be prescribed, such fair market value will be deemed to be the full value of the consideration for the purpose of computing capital gains.

This will also have implications under newly inserted clause (x) under section 56(2).

9. Investment in Bonds to be notified by Central Government – Section 54EC

Subject to satisfaction of conditions mentioned in section 54EC, long term capital gain up to ₹ 50 lakh is exempt under section 54EC if the assessee invests the capital gain in bonds issued by National Highways Authority of India or Rural Electrification Corporation Limited. Explanation to section 54EC has been amended to provide that investment in bonds notified by Central Government will also qualify for deduction under section 54EC. Therefore, now bonds issued by other bodies may also be notified to qualify for investment and to claim exemption.

There is no change in the current limit of ₹ 50 lakh.

10. Cost of acquisition and cost of improvement in respect of capital assets which became property of the assessee before 1-4-2001 and shifting of base year from 1981 to 2001 – Section 55 and 48

In a case where a capital asset (other than goodwill, trademark, certain shares or securities, etc.) became the property of the assessee before 1-4-1981, the assessee has an option to substitute the fair market value of the capital asset as on 1-4-1981 for its cost of acquisition.

It is now provided that in respect of such capital assets acquired prior to 1-4-2001, the assessee shall have an option to substitute fair market value as on 1-4-2001 for its cost of acquisition.

The definition of "cost of improvement" is also amended, to provide that in respect of a capital asset which became the property of the assessee or the previous owner prior to 1-4-2001, cost of improvement shall mean all expenditure of a capital nature incurred on or after 1-4-2001 by the assessee or by the previous owner in making additions or alterations to the capital asset.

Consequently, section 48 has also been amended to provide that the base year for the purpose of computing indexed cost of acquisition has been shifted from 1-4-1981 to 1-4-2001.

11. Tax on Long Term Capital Gains – Section 112(1)(c)(iii)

The Finance Act, 2012 w.e.f. 1-4-2013 amended sub-clause (ii) of section 112(1)(c) relating to tax on long-term capital gains and inserted sub-clause (iii) to provide that the tax on any income to a non-resident in the nature of long-term capital gains arising from transfer of unlisted securities would be calculated @ 10% on the capital gains without the benefit of first and second proviso to section 48. The expression 'securities" has the meaning assigned to it in the Securities Contracts (Regulation) Act, 1956.

However, there was a doubt whether shares of an unlisted company could be considered as 'securities' for the purpose of applying this beneficial provision. Accordingly, a clarificatory amendment was made in section 112(1)(c)(iii) by Finance Act 2016 (section 50 of the Finance Act, 2016) to provide that such transfer of shares, shall also be chargeable to tax @ 10%.

To further clarify the doubt regarding applicability of the aforesaid clarificatory amendment, an amendment is now being made in section 50 of the Finance Act, 2016 *vide* clause 150 of the Finance Bill 2017, retrospectively w.e.f. 1-4-2013, to clarify that the concessional rate of 10% on such transfer of securities will also be applicable for the period 1-4-2013 to 31-3-2017.

E. INCOME FROM OTHER SOURCES

1. Income from Other Sources – Section 56(2)(x)

Under the existing provisions of section 56(2)(vii), any sum of money, immovable property or any specified movable property in excess of ₹ 50,000 which is received without consideration, or is received for inadequate consideration, exceeding ₹ 50,000, by an individual or HUF, such consideration or inadequate consideration, is chargeable to tax, subject to certain exceptions.

Similarly, under the existing provisions of section 56(2)(viia), where a firm or a company (not being a company in which the public are substantially interested) receives shares of a company not being a company in which the public are substantially interested, without consideration or for inadequate consideration, exceeding ₹ 50,000, the fair market value or the difference in fair market value is chargeable to tax.

The existing clauses (vii) and (viia) are replaced by new clause (x) in section 56(2) to provide that any receipt of sum of money or property without consideration or for inadequate consideration, in excess of ₹ 50,000 shall be chargeable to tax in the hands of the recipient under the head "Income from Other Sources" subject to certain exceptions. The new clause thus extends the scope of taxability to gifts to companies, firms etc.

This amendment would not apply to any sum of money or any property received:

(i) from any relative; or

(ii) on the occasion of the marriage of the individual; or

(iii) under a will or by way of inheritance; or

(iv) in contemplation of death of the payer or donor, as the case may be; or

(v) from any local authority as defined in the Explanation to clause (20) of section 10; or

(vi) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23G) of section 10; or

(vii) from or by any trust or institution registered under section 12AA; or

(viii) by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10; or

(ix) by way of transaction not regarded as transfer under clause (i) or clause (vi) or clause (via) or clause (viaa) or clause (vib) or clause (vic) or clause (vica) or clause (vicb) or clause (vid) or clause (vii) of section 47.

Existing clauses (vii) and (viia) to section 56(2) will be applicable up to 31st March 2017, and thereafter the provision of section 56(2)(x) shall be applicable.

Consequential amendment is made in section 49(4) to step up the cost of acquisition by including the amount which has been considered

as income of the transferee pursuant to the provisions of section 56(2)(x).

2. Disallowance for non-deduction of tax from payments to residents – Sections 58 and 40(a)(ia)

Section 58 lists certain amounts which are not deductible in computing the income under the head "Income from Other Sources". These disallowances are similar to those made while computing income under the head "Profits and Gains of Business or Profession" and include disallowance of cash expenditure, disallowance for non-deduction of tax from payment to non-resident, etc.

Section 58 now provides that provisions of section 40(a)(ia) providing for 30% disallowance for non-deduction of tax from payments made to residents shall, so far as may be, also apply in computing income chargeable under the head "income from other sources" as it applies in computing income chargeable under the head "Profit and Gains of Business or Profession".

F. TAX DEDUCTED AT SOURCE AND TAX COLLECTED AT SOURCE

1. Empowering Board to issue directions in respect of penalty for failure to deduct or collect tax at source – Section 119(2)(a)

Currently, section 119(2)(a) empowers the Board to issue general or specific orders setting forth directions or instructions (not being prejudicial to assessees) to be followed by subordinate authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of certain penalties.

Section 119(2) is now amended to include levy of penalty under section 271C or 271CA, in respect of a person responsible for deduction and collection of tax at source, so as to empower the Board to issue directions or instructions in respect of the said sections also.

This amendment is effective from 1st April, 2017.

2. Deduction of tax at source on payment of rent to a resident – Section 194-IB

Presently, under section 194-I an Individual or an HUF is required to deduct tax at source on payment of rent exceeding ₹ 1,80,000 during the financial year provided they are liable to tax audit under clauses (a) and (b) of section 44AB during the preceding financial year.

Now, all individuals and HUFs who are not covered under section 194-I, will have to deduct tax at source on payment of rent for the use of land or building or both exceeding ₹ 50,000 for a month or part of the month at the rate of 5% under newly inserted section 194-IB. Tax shall be deducted at the time of credit of rent for the last month of the previous year or rent for the month of vacating the tenancy or payment thereof, whichever is earlier. The Explanatory Memorandum states that the deductor will be liable to deduct tax only once in a previous year.

The deductor of TDS on such rent is not required to obtain tax deduction account number (TAN). If the resident payee does not furnish PAN, then tax is required to be deducted at the rate of 20% as per section 206AA. However, the amount of TDS shall not exceed the rent payable for the last month of the previous year or the month of vacating the tenancy, as the case may be.

This provision is effective from 1st June, 2017.

3. Tax Deducted at Source (TDS) provisions – Sections 194J and 194LA

Amendments have been made in section 194J to provide for concessional rate of TDS at 2% instead of 10%, in case of payees engaged only in the business of operation of call centre. The said concessional rate of TDS shall be effective from 1st June 2017.

Section 194LA has been amended to provide that no TDS is required to be deducted in case compensation is paid pursuant to award or agreement made under section 96 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

This amendment is effective from 1st April, 2017.

4. Concessional tax rate on interest in case of specified Borrowings – Section 194LC

Currently, section 194LC provides for a concessional rate of TDS of 5 per cent on interest payable to a non-resident by a specified company on specified borrowings made in foreign currency from a source outside India under a loan agreement or by way of issuance of long term bonds on or before 1st July, 2017. It is now provided that the concessional rate of TDS shall extend to such specified borrowings made before 1st July, 2020.

The scope of specified borrowings in section 194LC has been expanded to include monies borrowed from a source outside India

by way of issue of rupee denominated bonds before 1-7-2020. This provision is inserted with retrospective effect from 1st April, 2016.

5. Concessional tax rate on interest to FIIs and QFIs – Section 194LD

Currently, section 194LD provides for a concessional TDS at the rate of 5 per cent from the interest income payable before 1st July, 2017 to Foreign Institutional Investors and Qualified Foreign Investors (now known as Foreign Portfolio Investors) in respect of their investments in Government securities and rupee denominated corporate bonds provided that the rate of interest does not exceed the rate specified by the Central Government in this behalf. It is now provided to extend the concessional rate of TDS on interest payable before 1st July, 2020.

6. Definition of 'person responsible for paying' – Section 195(6) r.w.s. 204

Currently, section 195(6) provides that a person responsible for paying to a non-resident, not being a company or to a foreign company, any sum, whether or not chargeable under the provision of the Act, shall furnish the information relating to payment of such sum, in prescribed form and manner. However, presently, section 204 defining the term 'person responsible for paying' does not refer to cases covered by section 195(6).

Section 204 has been amended by inserting clause (iib) to provide that in the case of furnishing of such information 'person responsible for paying' shall be the payer himself, or, if the payer is a company, the company itself including the principal officer thereof.

This amendment is effective from 1st April, 2017.

7. Non-deduction of tax at source for insurance commission – Section 197A

Payments in the nature of insurance commission beyond the threshold limit of ₹ 15,000 per financial year are subject to tax deduction at source at the rate of 5% under section 194D. Further, under section 197A, tax shall not be deducted in certain cases where the recipient of certain payments on which tax is deductible furnishes to the payer a self-declaration in Form No. 15G/15H declaring that the tax on his estimated total income of the relevant previous year would be nil. Currently, the payment of insurance commission is not covered by provisions of section 197A.

Section 197A now provides that individuals and HUFs can file self-declaration in Form No. 15G/15H for non-deduction of tax at source in respect of insurance commission referred to in section 194D.

This amendment is effective from 1st June, 2017.

8. Tax Collected at Source ('TCS') provisions – Section 206C

Section 206C(1F) provides for collection of TCS by the seller from all the buyers (without any exception) at 1% of the sale consideration on sale of motor vehicle exceeding ₹ 10,00,000/-. An amendment is made in Explanation to section 206C to exempt collection of TCS in case the buyer is Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; local authority as defined in explanation to clause (20) of section 10; or a public sector company which is engaged in the business of carrying passengers.

Section 206C also presently provides for collection of TCS on cash sale of jewellery exceeding ₹ 5,00,000/-. Section 206C is amended to omit the collection of TCS in case of cash sale of jewellery exceeding ₹ 5,00,000/- on account of introduction of section 269ST which provides that no person shall receive an amount of ₹ 3,00,000/- or more in cash and consequent levy of penalty under section 271D in case of contravention of section 269ST.

These amendments are effective from 1st April, 2017.

9. Requirement to furnish Permanent Account Number (PAN) in the TCS regime – Section 206CC

Newly inserted section 206CC provides as under:

a. Any person paying an amount, on which tax is collectible at source (hereafter referred to as collectee) shall furnish his Permanent Account Number to the person responsible for collecting such tax (hereafter referred to as collector).

b. If collectee does not furnish PAN or PAN does not belong to the collectee, tax shall be collected at twice the prescribed rate or at the rate of five per cent, whichever is higher.

c. Currently, no tax is collected under section 206C if the collectee submits a declaration to the collector that the prescribed goods are purchased for manufacturing, processing, or producing article or things and not for trading purpose. Now it is provided that the

declaration for non-collection of tax shall not be valid unless the collectee gives the PAN to the collector and on non-furnishing of PAN, the collector shall collect the tax at source.

d. No certificate for lower collection of tax shall be granted by the assessing officer unless the PAN of the applicant is given.

e. The collector and collectee shall mandatorily quote their PAN in all correspondence, bills and vouchers exchanged between them.

f. This section will not apply to a non-resident who does not have permanent establishment in India.

The above provisions are on the lines of section 206AA.

G. DETERMINATION OF TAX IN SPECIAL CASES

1. Tax on dividend from domestic company – Section 115BBDA

Presently, income by way of dividend from a domestic company or companies in excess of ₹ 10 lakh is taxed at the rate of 10% in case of a resident individual, Hindu undivided family and firm.

Now such taxation is extended to all resident assessees, except domestic companies and certain funds, trusts, institutions referred to in sub-clauses (iv) to (via) of section 10(23C) and trusts registered under section 12AA, receiving dividend income exceeding ₹ 10 lakh.

2. Taxability of transfer of Carbon Credits – Section 115BBG

As per the Kyoto Protocol, carbon credits in the form of Certified Emission Reduction (CER) Certificate are given to entities which reduce the emission of Greenhouse gases. These credits can be freely traded in the market. Currently, there are no specific provisions in the Act to deal with the taxability of the income from carbon credits. However, the same is being treated as business income and taxed at the rate of 30% by the Income-tax Department. Further, there are divergent judicial views on the matter with the Ahmedabad bench of the Tribunal considering the income as taxable in the case of *DCIT vs. Kalpataru Power Transmission Ltd. [TS-141-ITAT-2016 (Ahd)]* while the High Courts have held such amounts to be capital receipts not chargeable to tax, in the cases of *CIT vs. My Home Power Ltd., (2014) 365 ITR 82 (AP)* and *CIT vs. Subhash Kabini Power Corp. Ltd. (2016) 385 ITR 592 (Kar.)*.

Section 115BBG is now introduced to tax the gross income from transfer of Carbon Credits at a special rate of 10%, increased by applicable surcharge and cess, without deduction for any expenditure or allowance from such income. Consequently, what was held to be non-taxable capital receipt by the High Courts as well as certain benches of Tribunal, is now brought into the ambit of taxation, without specifically including the same in the definition of income under section 2(24).

H. EXEMPTIONS U/Ss 10, 13A AND CHAPTER VI-A DEDUCTIONS

1. Correct reference to the definition of non-resident person under FEMA – Section 10(4)(ii)

Section 10(4)(ii) provides an exemption in respect of interest from a Non-Resident (External) Account in any bank in India which is in accordance with the Foreign Exchange Management Act, 1999 (FEMA) and the rules made thereunder. It is applicable to an individual who is a resident outside India or who has been permitted by the RBI to maintain such account.

Currently, for the purpose of defining a person resident outside India, a reference has been made to section 2(q) of FEMA. However, the definition of person resident outside India is contained in section 2(w) and not in section 2(q) of FEMA. Therefore, the amendment has been made to make reference to the correct provisions of FEMA.

This amendment is applicable retrospectively with effect from AY 2013-14.

2. Exemption for partial withdrawal from NPS – Section 10(12B)

Currently the receipt from National Pension System (NPS) Trust is chargeable under section 80CCD(3) on closure or opting out of the Pension Scheme subject to certain conditions. There is an exemption under section 10(12A) for 40% of the amount payable only at the time of closure or opting out of the Scheme.

Now, exemption is granted for payment from NPS Trust to an employee on account of partial withdrawal to the extent of 25% of his contribution in accordance with the terms and conditions specified under Pension Fund Regulatory and Development Authority Act, 2013 and regulations made thereunder.

3. Deduction in respect of New Units in Special Economic Zones – Section 10AA

Section 10AA allows deduction from the total income of an assessee, in respect of profits and gains from his Unit operating in SEZ, subject to fulfilment of certain conditions.

The Supreme Court in case of *CIT vs. Yokogawa India Ltd. [2017] 77 taxmann.com 41 (SC)* in the context of section 10A containing similar provision, held that said section has become a provision for deduction but stage of deduction would be while computing gross total income of eligible undertaking under Chapter IV of Act and not at stage of computation of total income under Chapter VI of Act.

Now, by insertion of Explanation to section 10AA(1), it has been clarified that the amount of deduction referred to in section 10AA shall be allowed from the total income of the assessee computed in accordance with the provisions of the Act, before giving effect to the provisions of section 10AA, and the deduction under section 10AA in no case shall exceed the said total income.

4. Income of political party – Section 13A

Political parties registered with the Election Commission of India are exempt from paying income-tax on satisfying certain conditions. Now following additional conditions are prescribed for availing exemption from payment of tax:

a. No donations of ₹ 2,000/- or more shall be received otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bonds.

b. Political party shall furnish a return of income in accordance with section 139(4B) on or before the prescribed due date.

Thus, even if one donation exceeding ₹ 2,000 is received by a political party otherwise than by account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bonds, then the party would lose the exemption under section 13A.

A new scheme of issuing electoral bonds is conceived under which any person can buy such bonds and donate to a political party. Such bonds may have to be encashed by such political party through

a designated bank account under the scheme. It will not be necessary for the political party to maintain records of the name and address of the donors irrespective of the value of bonds donated.

5. Deduction for self-employed individuals under NPS – Section 80CCD

Finance Act, 2016 provided for deduction in respect of amounts deposited under a notified pension scheme, to any individual, who is an employee to the extent of 10% of his salary and for other individuals to the extent of 10% of gross total income. In addition, a deduction of another 10% was allowed to an individual, who is an employee, in respect of contribution made under such scheme by the employer.

In order to provide parity between an individual who is an employee and other individuals, the limit of 10% of gross total income contained in section 80CCD is increased to 20% in case of other individuals.

6. Deduction in respect of investment under equity saving scheme – Section 80CCG

Currently, section 80CCG grants deduction up to ₹ 25,000 for three consecutive assessment years to a resident individual for investment made in listed equity shares or listed units of an equity oriented fund subject to fulfilment of certain conditions.

Now it is provided that no deduction under this section shall be allowed from the assessment year 2018-19. However, an assessee who has claimed deduction for the assessment year 2017-18 and earlier assessment years shall continue to get deduction till the assessment year 2019-20.

7. Profit linked deduction for start-up companies – Section 80-IAC

The existing provisions of the Act provide eligible start-ups incorporated on or after 1st April, 2016 but before 1st April, 2019, to claim 100 per cent deduction of the profit earned, for three consecutive years out of the first five years beginning from the year in which the eligible start-up is incorporated. It is now provided to extend the limiting period from five years to seven years beginning from the year in which such eligible start-up is incorporated.

8. Deduction in respect of affordable housing – Section 80-IBA

Section 80-IBA grants deduction in respect of profits and gains derived from the business of developing and building housing projects. The deduction is subject to satisfaction of conditions mentioned in the section. The section has been amended to make the following changes in the conditions –

(i) The project which is currently required to be completed within a period of three years can be completed within a period of five years;

(ii) The reference to the built-up area is now changed to carpet area;

(iii) where the project is located –

  a. within the cities of Chennai, Delhi, Kolkata or Mumbai the carpet area of the residential unit comprised in the housing project cannot exceed thirty square metres carpet area as against the current requirement of thirty square metres built-up area; and

  b. in any other place, the carpet area of the residential unit comprised in the housing project cannot exceed sixty square metres carpet area as against the current requirement of sixty square metres built-up area.

(iv) in respect of projects located within the distance, measured aerially, of twenty five kilometres of cities of Chennai, Delhi, Kolkata or Mumbai can now have residential units of carpet area of sixty square metres as against the present restriction of built-up area of thirty square metres.

I. MINIMUM ALTERNATE TAX AND ALTERNATE MINIMUM TAX

1. Reference to the Companies Act, 2013 instead of the Companies Act, 1956 – Section 115JB

Section 115JB levies minimum alternate tax of 18.5% on book profits of a company. Sub-section (2) of section 115JB provides the manner of calculation of book profit. It makes reference to several provisions of the erstwhile the Companies Act, 1956. With the introduction of the Companies Act, 2013, section 115JB has now been amended to make references to the corresponding provisions of the Companies Act, 2013 in place of the provisions of the Companies Act, 1956.

2. Framework for computation of book profit for companies preparing financial statements under Indian Accounting Standards (Ind AS) – Section 115JB(2A) to (2C)

Section 129 of the Companies Act, 2013 provides that the financial statements shall be in the form as may be provided for different class or classes of companies as per Schedule III to the Act. *Vide* notification dated 6th April 2016, the Ministry of Corporate Affairs inserted Division II in Schedule III which is applicable for companies required to comply with Companies (Indian Accounting Standards) Rules, 2015. Division II of Schedule III provides instructions for preparation of financial statements and additional disclosure requirements for companies required to comply with Ind AS. The form of Statement of Profit and Loss given therein, *inter alia,* includes the following:

Profit / (loss) for the period xxx

Other Comprehensive Income (OCI)

A (i) Items that will not be re-classified to profit or loss

(ii) Income-tax relating to items that will not be re-classified to profit or loss

B (i) Items that will be re-classified to profit or loss

(ii) Income-tax relating to items that will be re-classified to profit or loss

Total Comprehensive Income for the period (Comprising Profit (Loss) and Other Comprehensive Income for the period)

Para 6 of the General Instructions for Preparation of Statement of Profit and Loss requires the OCI to be classified into the following.

A) Items that will not be reclassified to profit or loss;

(i) Changes in revaluation surplus;

(ii) Remeasurements of the defined benefit plans;

(iii) Equity Instruments through Other Comprehensive Income;

(iv) Fair value changes relating to own credit risk of financial liabilities designated at fair value through profit or loss;

(v) Share of Other Comprehensive Income in Associates and Joint Ventures, to the extent not to be classified into profit or loss; and

(vi) Others (specify nature).

B) Items that will be reclassified to profit or loss;

(i) Exchange differences in translating the financial statements of a foreign operation;

(ii) Debt Instruments through Other Comprehensive Income;

(iii) The effective portion of gains and loss on hedging instruments in a cash flow hedge;

(iv) Share of Other Comprehensive Income in Associates and Joint Ventures, to the extent to be classified into profit or loss; and

(v) Others (specify nature)

In the light of above background, the provisions of section 115JB have been amended by inserting new sub-sections (2A) to (2C) which are applicable to companies whose financial statements are drawn up in compliance to Ind AS. Since the Ind AS are required to be adopted by certain companies from financial year 2016-17 onwards, the following adjustments are to be done to the 'book profit' as computed in accordance with Explanation 1 to sub-section 2 of section 115JB of the Act from assessment year 2017-18 onwards:

1. Section 115JB(2A) provides that any item credited or debited to OCI being 'items that will not be reclassified to profit or loss' should be added to or subtracted from the 'book profit', respectively. It is also provided that for the following items included in OCI, viz., Revaluation surplus for assets in accordance with Ind AS 16 and Ind AS 38 and gains or losses from investment in equity instruments designated at fair value through OCI as per Ind AS 109 the amounts will not be added to or subtracted. However, it will be added to or subtracted from 'book profit' in the year of realisation / disposal / retirement or otherwise transfer of such assets or investments.

2. Sub-section (2A) further provides for addition to or reduction from the book profit of any amount or aggregate of the amounts debited or credited respectively to the Statement of Profit and Loss on distribution of non-cash assets to shareholders in a demerger as per Appendix A of the Ind AS 10.

3. Sub-section (2B) provides that in the case of resulting company, if the property and liabilities of the undertaking(s) being received by it are recorded at values different from values appearing in the books of account of the demerged company immediately before the demerger, any change in such value shall be ignored for the purpose of computing of book profit of the resulting company.

4. Sub-section (2C) provides that the 'book profit' in the year of convergence and subsequent four previous years shall be increased or decreased by 1/5th of transition amount. The term 'transition amount' is defined to mean the amount or the aggregate of the amounts adjusted in Other Equity (excluding equity component of compound financial instruments, capital reserve and securities premium reserve) on the convergence date but does not include the following:

    a) Amounts included in OCI which shall be subsequently reclassified to the profit or loss;

    b) Revaluation surplus for assets as per Ind AS 16 and Ind AS 38;

    c) Gains or losses from investment in equity instruments designated at fair value through OCI as per Ind AS 109;

    d) Adjustments relating to items of property, plant and equipment and intangible assets recorded at fair value as deemed cost as per paras D5 and D7 of Ind AS 101;

    e) Adjustments relating to investments in subsidiaries, joint ventures and associates recorded at fair value as deemed cost as per para D15 of Ind AS 101;

    f) Adjustments relating to cumulative translation differences of a foreign operation as per para D13 of Ind AS 101

5. Proviso to sub-section (2C) further provides that the effect of the items listed at (b) to (e) above, shall be given to the book profit (i.e. either increased or decreased) in the year in which such asset or investment is retired, disposed, realised or otherwise transferred. Further, the effect of item listed (f) shall be given to the book profit (i.e. either increased or decreased) in the year in which such foreign operation is disposed or otherwise transferred.

6. The term 'year of convergence' means the previous year within which the convergence date falls. The term 'convergence date' means the first day of the first Ind AS reporting period as per Ind AS 101.

These amendments are applicable with immediate effect from AY 2017-18.

3. Extension of period for availing of MAT and AMT credit – Sections 115JAA and 115JD

Under the existing provisions of section 115JAA credit for Minimum Alternate Tax (MAT) paid by a company under section 115JB is allowable for maximum of ten assessment years immediately succeeding the assessment year in which the tax credit becomes allowable. Similarly, for non-corporate assessees liable to alternate minimum tax (AMT) under section 115JC, credit for AMT is allowable for maximum of ten assessment years as per section 115JD. Both the sections 115JAA and 115JD have been amended to increase the period of carry forward to 15 years from the existing period of 10 years.

4. Restriction of MAT and AMT credit with respect to foreign tax credit (FTC) – Sections 115JAA and 115JD

Section 115JAA and section 115JD have been amended to provide that if the Foreign Tax Credit (FTC) allowed under section 90 or 90A or 91 against MAT or AMT liability, is more than the FTC admissible against the regular tax liability (tax liability under normal provisions – i.e. other than section 115JB or 115JC), such excess amount of FTC shall be ignored for the purpose of calculating MAT or AMT credit to be carried forward.

J. FOREIGN INVESTORS

1. Exemption from indirect transfer provisions for Foreign Portfolio Investors (FPI) – Section 9 Explanation 5A

Section 9(1) provides that all income accruing or arising, whether directly or indirectly, through or from any business

connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India shall be deemed to accrue or arise in India. Explanation 5, which was inserted in section 9(1)(i) w.e.f. 1st April, 1962 *vide* Finance Act, 2012, clarified that an asset or capital asset, being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

The CBDT issued Circular No. 41 of 2016 to clarify on the various aspects of the indirect transfer provisions including their applicability to FPIs. However, the said circular was kept in abeyance due to the concerns raised regarding multiple taxation.

Now Explanation 5A has been inserted to clarify that Explanation 5 shall not apply to any asset or capital asset, being investment held by a non-resident, directly or indirectly, in a Foreign Institutional Investor (as referred to in section 115AD Explanation clause (a)) and registered as Category-I or Category-II Foreign Portfolio Investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 made under the Securities and Exchange Board of India Act, 1992.

This amendment is retrospectively applicable from AY 2012-13.

2. Relaxation in conditions of special taxation regime for eligible investment funds – Section 9A

Section 9A provides for a special taxation regime for offshore funds. In the case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection of the said fund in India. Further, such fund shall not be resident in India merely because the eligible fund manager undertaking fund management activities on its behalf is located in India.

One of the conditions for an investment fund to be eligible for the special regime is that the monthly average of its corpus shall not be less than ₹ 100 crore. Where the fund has been established or incorporated in the previous year, instead of the monthly average condition for eligibility, the corpus of fund is required to be not less than ₹ 100 crore at the end of such previous year.

Following representations received by the Government and to address the concerns of the industry regarding the difficulty to meet this condition in the year in which the fund is wound up, it is now provided that the monthly average condition for eligibility shall not apply in the year in which the fund is being wound up.

This amendment is retrospectively applicable from AY 2016-17.

K. TRANSFER PRICING

1. Reduction in scope of Domestic Transfer Pricing provisions – Sections 40A(2)(a) and 92BA

Presently, the provisions of Domestic Transfer Pricing provisions introduced *vide* Finance Act, 2012 broadly cover the following two types of transactions:

i. Payments made by an assessee to certain "specified persons" under section 40A(2)(b) of the Act; and

ii. Transactions where one of the entities/unit of the entity involved is related party transactions enjoys specified profit linked deduction viz., section 80IA, section 10AA, etc.

An amendment has been made to exclude the transaction as referred in (i) above from the purview of Specified Domestic Transfer Pricing provisions, thereby restricting the applicability of said provisions only to transactions covered in (ii) above.

The amendment is applicable with immediate effect from AY 2017-18.

2. Secondary adjustments introduced with respect to transfer pricing – Section 92CE

A new section 92CE has been introduced to provide that a secondary adjustment shall be made by the assessee where:

- there is a primary adjustment made *suo motu* by the assessee in his return of income; or
- made by the Assessing Officer which has been accepted by the assessee; or

- determined by an advance pricing agreement entered into by the assessee under section 92CC; or
- made as per the safe harbour rules framed under section 92CB; or
- arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered under section 90 or 90A for avoidance of double taxation.

The terms 'primary adjustment' and 'secondary adjustment' have been defined in section 92CE(3).

Where as a result of the primary adjustment, there is an increase in the total income or reduction in the loss of the assessee, the assessee is required to repatriate the excess money available with the associated enterprise to India, within the time as may be prescribed. If the repatriation is not made within the prescribed time, the excess money shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed as the income of the assessee, in the manner as may be prescribed.

This section shall not apply where the primary adjustment made in any previous years does not exceed ₹ 1 crore and where the primary adjustment is made in respect of assessment year 2016-17 or earlier.

3. Restriction on deduction in respect of interest paid/ payable to associated enterprise (Thin Capitalisation) – Section 94B

New section 94B has been introduced to provide that where an Indian company or permanent establishment of a foreign company in India, being a borrower, pays interest or similar consideration exceeding ₹ 1 crore and where such interest is deductible in computing income chargeable under the head "Profits and Gains from Business and Profession" in respect of debt issued by a non-resident, being an associated enterprise of such borrower, deduction shall be limited to 30 per cent of EBITDA (earnings before interest, taxes, depreciation and amortisation) or interest paid, whichever is less. It has been also provided that for the purpose of determining the debt issued by the non-resident, the funds borrowed from a non-associated lender shall also be deemed to be borrowed from an associated enterprise if such

borrowing is based on implicit or explicit guarantee of an associated enterprise.

It is however provided that interest which is not deductible as aforesaid, shall be allowed to be carried forward for 8 assessment years immediately succeeding the assessment year in which the interest was first computed, to be set-off against income of subsequent year(s) subject to overall deductible limit of 30 per cent.

These provisions shall not apply to entities engaged in Banking or Insurance business.

L. CHARITABLE TRUSTS

1. No exemption in respect of donations by trust/institution towards corpus of another trust/institution – Sections 10(23C) and 11

The income of trust or institution from properties held for charitable or religious purposes is exempt subject to the provisions of sections 11 and 12. As per section 11(1)(d), any voluntary contributions received by such trust or institution with a specific direction that they shall form part of its corpus (i.e. corpus donations) are exempt. The balance income including other voluntary contributions is exempt under section 11(1)(a) to the extent to which it is applied to charitable or religious purposes in India.

Under the existing provisions of section 11, the corpus donations given by one trust to another trust were considered as application of income in the hands of donor trust. Further, the recipient trust was able to claim the exemption in respect of such corpus donations without applying them for charitable or religious purposes.

In order to curb such a practice, Explanation 2 has been inserted in section 11(1). It provides that any corpus donations credited or paid, out of income referred to in section 11(1)(a) / (b) read with Explanation 1, to any other trust or institution registered under section 12AA shall not be treated as application of income for charitable or religious purposes.

Similar amendment has been made in section 10(23C) in respect of corpus donations given by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in its sub-clauses (iv), (v), (vi) or (via), to any other trust or institution registered under section 12AA.

2. Modifications of objects and filing of return of income – Sections 12A and 12AA

(a) Chapter XII-EB was introduced by the Finance Act, 2016 which provided for levy of tax on accreted income where the charitable institution ceases to exist or converts into a non-charitable organisation in the event of adoption or undertaking modifications of the objects etc.

However, at present there is no explicit provision in the Act which mandates said trust or institution to approach for fresh registration in the event of adoption or undertaking modifications of the objects after the registration has been granted.

Section 12A has now been amended to provide that the trust shall be required to obtain fresh registration by making an application within a period of thirty days from the date of such adoption or modifications of the objects in the prescribed form and manner.

(b) Further, the entities registered under section 12AA are required to file return of income, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax.

To provide clarity in this regard, clause (ba) has been inserted in section 12A(1) so as to provide for further condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Act.

In case return of income is not filed in accordance with provisions of section 139(4A) within the time allowed, the trust or institution would lose exemption under sections 11 and 12.

3. Cost of Acquisition of capital assets – Section 49(8) r.w.s. Section 115TD

Chapter XII-EB provides for levy of additional income-tax in certain cases mentioned therein on the accreted income of the trust or institution. Accreted income takes into account the Fair Market Value of the Asset as on the specified date mentioned in explanation

to section 115TD. However, there is no provision of computation of cost of acquisition in a case where the capital gain arises from the transfer of an asset, being the asset held by a trust or an institution in respect of which accreted income has been computed, and the tax has been paid thereon.

Now, section 49(8) provides that in such cases, the cost of acquisition of such asset shall be deemed to be the fair market value of the asset which has been taken into account for computation of accreted income as on the specified date referred to in Sub-section (2) of section 115TD.

This amendment is effective from 1-6-2016, i.e. the date on which section 115TD came into force.

M. ASSESSMENTS, APPEALS, REFUNDS ETC.

1. Carry forward and set-off of losses on dilution in shareholding for start-ups – Section 79

Currently, a closely held company is not allowed to carry forward the losses and set-off against income of a subsequent year if there is change in shareholding carrying more than 49% of the voting power in the said subsequent year as compared to the shareholding that existed on the last day of the year in which such loss was incurred.

It is now provided to relax the applicability of the said provision to start-ups eligible under section 80-IAC of the Act. The provisions will enable the eligible start-up companies to carry forward the losses incurred during the period of seven years beginning from the year in which such company is incorporated, and set off against the income of any subsequent previous year. However, it is provided that such benefit shall be available only if all the shareholders of such company who held shares carrying voting power on the last day of the year or years in which the loss was incurred continue to hold those shares, on the last day of the previous year in which loss is sought to be set-off. Thus dilution of voting powers of existing shareholders would therefore not impact the carry forward of losses so long as there is no transfer of shares by the existing shareholders.

However, change in voting power and shareholding consequent upon the death of a shareholder or on account of transfer of shares by way of gift to any relative of shareholder making such gift, shall not affect carry forward of losses.

2. Processing of return and withholding of refunds – Sections 143(1D) and 241A

Currently, section 143(1D) states that in cases where a notice under section 143(2) is issued for scrutiny assessment, it is not mandatory to process the return under section 143(1) within one year from the end of the financial year in which the return was made, but instead it is required to be processed before passing the assessment order. Consequently, issue of refund is delayed where a case is selected for scrutiny assessment.

Section 143(1D) is now substituted to effectively provide that in case of returns filed for AY 2017-18 and subsequent years, the processing of returns and issuance of refunds shall be done in accordance with section 143(1), even if notice for scrutiny assessment under section 143(2) has been issued.

However, section 241A is introduced with effect from AY 2017-18, empowering the Assessing Officer to withhold refund till the date of completion of the assessment, if he is of the opinion that issuing the refund will adversely affect the revenue and he records his reasons in writing and obtains the prior approval of the Principal Commissioner or Commissioner.

3. Time limit for completion of assessment, reassessment and recomputation – Section 153(1)

Section 153 provides for time limit for completion of assessment, reassessment and recomputation, being specified number of months from the end of the assessment year, as follows:

Particulars	Earlier Time Limits (from end of AY)	Revised Time Limits (from end of AY)
Completion of assessment under section 143 or 144*:		
(i) Relating to AY 2018-19	21 months	18 months (30-9-2020)
(ii) Relating to AY 2019-20 or later	21 months	12 months
Completion of assessment under section 147 where notice under section 148 is served on or after 1st April 2019*	9 months from end of financial year	12 months from end of financial year

Particulars	Earlier Time Limits (from end of AY)	Revised Time Limits (from end of AY)
Completion of fresh assessment in pursuance to an order passed by the ITAT or revision order by CIT	9 months from end of financial year	12 months from end of financial year
Order giving effect to an order of the CIT(A), ITAT, High Court, Supreme Court which requires verification of any issue by way of submission or where opportunity of being heard is to be provided to the assessee (w. r. e. f. 1st June 2016)	9 months from end of financial year	12 months from end of financial year

** Where a reference is made to the TPO, the time limits for assessment would be increased by 12 months.*

Similar time limits have been prescribed for completion of assessments under search (section 153A).

4. Enabling claim of credit for foreign tax paid in cases of dispute – Section 155(14A)

A new sub-section (14A) in section 155 is inserted to enable an assessee to claim credit for foreign taxes paid, in cases of taxes paid under dispute, within six months from the end of the month in which such dispute is settled.

Accordingly, sub-section (14A) provides that, where credit for income-tax paid in any country outside India or a specified territory outside India referred to in sections 90, 90A or section 91 has not been given on the grounds that the payment of such tax was under dispute, the Assessing Officer shall rectify the assessment order or an intimation under sub-section (1) of section 143, if the assessee, within six months from the end of the month in which the dispute is settled, furnishes evidence of settlement of dispute and evidence of payment of such tax along with an undertaking that no credit in respect of such amount has directly or indirectly been claimed or shall be claimed for any other assessment year.

Proviso to sub-section (14A) provides that the credit of tax which was under dispute, shall be allowed for the year in which such income is offered to tax or assessed to tax in India.

5. Amendments to the structure of Authority for Advance Rulings – Chapter XIX-B

With a view to promote ease of doing business, amendments have been made in Chapter XIX-B relating to Advance Rulings to merge the Authority for Advance Ruling (AAR) for Income-tax, Central Excise, Customs Duty and Service Tax. Accordingly, consequential amendments are made to the definition of 'applicant' under section 245N(b), manner of application for Advance Ruling under section 245Q and appointment of revenue Member under section 245-O.

Further, with respect to appointment of the Chairman, the Chief Justice of a High Court or a Judge of a High Court, who has been a Judge for at least 7 years is now eligible for appointment. New sections 245-O(6A) and 245-O(6B) are inserted to allow Vice Chairman to discharge the functions of the Chairman in the case of temporary and permanent vacancy in the office of the Chairman.

These amendments are effective from 1st April, 2017.

6. Advance tax installment for assessees covered under presumptive taxation – Sections 211 and 234C

Currently, eligible assessees as per section 44AD enjoy the relaxation of paying the entire advance tax in a single installment, on or before 15th March, as against 4 instalments for other assessees. However, no such relaxation is given to professionals opting for similar scheme for presumptive taxation under section 44ADA.

Section 211 is amended to extend this relaxation to assessees opting for presumptive taxation as per section 44ADA. Further, section 234C is also amended to charge interest on shortfall of advance tax installments only for one installment in such cases.

These amendments are applicable with immediate effect from AY 2017-18.

7. Interest on shortfall of advance tax installments in case of dividend income – Section 234C

Currently, interest on shortfall in the payment of advance tax as per the prescribed installments is not charged in certain situations of windfall gains or inability to estimate income. The amount and timing

of declaration of dividend, which is taxable under section 115BBDA, is also difficult to estimate.

Thus, the first proviso to section 234C is now amended with effect from AY 2017-18, to provide that interest shall not be chargeable in case of shortfall on account of under-estimation or failure to estimate the taxable dividend as long as advance tax on such dividend is paid in the remaining instalments or before the end of the financial year, if no instalments remain.

8. Interest on refund of TDS – Section 244A(1B)

Where TDS has been paid in excess, it is possible for the deductor to claim a refund of the excess TDS by making a claim for such refund in Form 26B. In case of refund of TDS under section 195, interest under section 244A is payable in view of Supreme Court judgment in the case of *Union of India vs. Tata Chemicals Ltd. [2014] 43 taxmann.com 240 (SC)* and CBDT Circular No. 11/2016 dated 26th April 2016. However, no express provision exists in the Income-tax Act to pay interest on refund of TDS.

Sub-section (1B) is now inserted in section 244A with effect from 1st April, 2017, to enable payment of simple interest on refund of TDS at the rate of 0.5% per month or part thereof. The interest shall be paid for the period beginning from the date on which the claim in Form 26B is made, or, where the refund has resulted from giving effect to an order of any appellate authority, from the date on which the tax is paid, till the date of grant of refund. However, no interest will be paid for any delay attributable to the deductor.

9. Appeal before Appellate Tribunal – Section 253(1)(f)

Currently, section 253(1)(f) provides that an order passed by the prescribed authority under section 10(23C)(vi) (educational institutions) or 10(23C)(via) (hospitals) shall be appealable before the Appellate Tribunal.

The aforesaid provision is extended to include even the orders passed by the prescribed authority under section 10(23C)(iv) (approved charitable institution of national importance) and 10(23C)(v) (approved religious trust).

This amendment will take effect from 1st April, 2017.

N. SEARCH, SURVEY & SEIZURE

1. Search and seizure and requisition of books of account etc. – Sections 132 and 132A

The prerequisite for issuing search warrant for conducting search under section 132 is that the prescribed income tax authority in consequence of information in his possession, has reason to believe that:

a. Any person to whom summons or notice is issued for production of books of account or other documents has omitted or failed to produce or would not produce the books of account or other documents; or

b. Any person who is in possession of any money, bullion, jewellery or other valuable article or thing which represents his income or property which has not been or would not be disclosed for tax purposes.

Now it is provided that the 'reason to believe' or 'reason to suspect' recorded prior to authorising the search would not be disclosed to any person or any authority or the Appellate Tribunal.

The amendment is retrospectively effective from 1st April, 1962.

Similar provision is inserted in section 132A dealing with requisition of books of account, documents etc.

The amendment to section 132A is retrospectively effective from 1st October, 1975.

2. Power of provisional attachment and to make reference to Valuation Officer – Sections 132(9B) and (9C)

Sub-sections (9B) and (9C) have been inserted in section 132 to provide that during the course of a search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, the authorised officer for protecting the interest of the revenue, may attach provisionally any property belonging to the assessee, with the prior approval of Principal Director General or Director General or Principal Director or Director. Such provisional attachment shall cease to have effect after the expiry of six months from the date of order of such attachment.

In a case of search, the authorised officer may, for the purpose of estimation of fair market value of a property, make a reference to a Valuation Officer referred to in section 142A. It also provides that the Valuation Officer shall furnish the valuation report within sixty days of receipt of such reference.

3. Rationalisation of the provisions in respect of power to call for information – Section 133

Section 133 empowers certain income-tax authorities to call for information for the purpose of any inquiry or proceeding under the Act.

The first proviso to section 133 is amended to extend the powers of calling for the information to Joint Director, Deputy Director or Assistant Director.

The second proviso to the said section currently provides that the power in respect of an inquiry, in a case where no proceeding is pending, shall not be exercised by any income-tax authority below the rank of the Principal Director or Director or the Principal Commissioner or Commissioner without the prior approval of such authorities. This proviso is amended to provide that officers of the rank of Joint Director, Deputy Director or Assistant Director are also empowered to exercise the power in respect of an inquiry without the prior approval of Principal Director or Director or the Principal Commissioner or Commissioner.

This amendment is effective from 1st April, 2017.

4. Extension of the power of survey – Section 133A(1)

Section 133A(1) empowers an income-tax authority to enter any place, at which a business or profession is carried on, or at which any books of account or other documents or any part of cash or stock or other valuable article or thing relating to the business or profession are kept, for the purposes of conducting a survey.

Section 133A(1) and the Explanation 1 to the sub-section have been amended to widen the scope by way of including any place, at which an activity for charitable purposes is carried on. Thus, now survey can also be conducted on charitable trusts.

This amendment is effective from 1st April, 2017.

5. Centralised issuance of notice and processing of information – Section 133C

Section 133C(1) of the Act empowers the prescribed income-tax authority to issue notice to any person calling for information and documents for the purpose of verification of information in possession of such person.

Section 133C(2), inserted *vide* Finance Act, 2016 w.e.f 1st June 2016, provided that adequate legislative backing for processing of information and documents so obtained would be provided and the outcome thereof would be made available to the Assessing officer for necessary action, if any.

It has now been further provided by insertion of sub-section (3) that the Central Board of Direct Taxes may make a scheme for enabling the centralised issuance of notices, processing of information or documents and for making available the outcome of the said processing to the Assessing Officer.

This amendment is effective from 1st April, 2017.

6. Assessment in case of search or requisition and assessment of income of any other person – Sections 153A and 153C

Section 153A relates to assessment in case of search or requisition. It provides for assessment of income under section 153A when there is a search under section 132 or requisition under section 132A.

Currently notices can be issued for six preceding assessment years under these provisions. This has now been extended to ten preceding assessment years. The extension of four years is available if the following conditions are satisfied:

(i) The Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income which has escaped assessment amounts to or is likely to amount to ₹ 50 lakh or more in aggregate in the relevant four assessment years (falling beyond the sixth year);

(ii) Such income escaping assessment is represented in the form of asset which shall include immovable property being land or building or both, shares and securities, deposits in bank account, loans and advances;

(iii) The income escaping assessment or part thereof relates to such year or years; and

(iv) Search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

In a case where above conditions are satisfied, a notice can be issued for the relevant assessment year beyond the period of six years.

Further, similar amendment has been made to section 153C relating to assessment of income of any other person.

These amendments are effect from 1st April, 2017.

7. Income Declaration Scheme, 2016 – Removal of potential hardship - Section 197(c) of Finance Act, 2016

According to the understanding of the department, under the above provisions, notice for assessment or reassessment could be issued for income escaping assessment for any number of assessment years including beyond 6 years. This could have created unending long term litigation. Perhaps, recognising this possibility of hardship and litigation, this provision is omitted from Finance Act, 2016 retrospectively from 1st June, 2016.

O. OTHERS

1. Interpretation of 'terms' used – Sections 90 and 90A

Sections 90 and 90A of the Act provide that any 'term' used but not defined in the Act or in the agreement referred to in sub-section (1) of respective provisions shall have the meaning assigned to it in the notification issued by the Central Government in the Official Gazette in this behalf, unless the context otherwise requires, provided the same is not inconsistent with the provisions of the Act or the agreement.

Both the sections 90 and 90A have been amended by inserting Explanation 4 in both sections, clarifying that where any 'term' used in an agreement entered into under sub-section (1) of sections 90 and 90A of the Act, is defined under the said agreement, the said term shall be assigned the meaning as provided in the said agreement and where the term is not defined in the agreement, but is defined in the Act, it shall be assigned the meaning as definition in the Act or any explanation issued by the Central Government.

2. Time for filing revised return reduced – Section 139(5)

The return furnished under section 139(1) or 139(4) can be revised as per the provisions of section 139(5). Currently, such revised return is allowed to be filed before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier.

The time available for filing revised return has been reduced and it shall be up to the end of the relevant assessment year or before the completion of assessment, whichever is earlier.

3. Fee for default in furnishing return of income – Sections 234F, 271F, 140A and 143(1)

A new section 234F has been inserted to provide that a fee shall be levied where a person required to furnish a return of income under section 139 fails to furnish it within the due dates specified under section 139(1). The fee payable in such a case is as follows:

Status of return furnished	**Amount of Fee**	
	Total income does not exceed ₹ 5,00,000	**Total income exceeds ₹ 5,00,000**
If the return is furnished on or before 31st December of the relevant assessment year	₹ 1,000	₹ 5,000
In any other case [i.e. return is furnished after 31st December or return is not furnished at all]	₹ 1,000	₹ 10,000

The aforesaid fee is payable mandatorily irrespective of the cause for not furnishing return within the due date. As a result of levy of fee, the penalty leviable under section 271F for failure to furnish return of income will not be leviable.

The consequential amendment is also made in section 140A to include a reference to the fee payable under section 234F. Therefore, the assessee is required to pay tax, interest as well as fee before

furnishing his return. In case of short payment, the amount paid shall first be adjusted towards the fee payable and thereafter towards the interest payable and the balance, if any, shall be adjusted towards the tax payable.

Section 143(1) has also been amended to provide that in computation of amount payable or refund due, as the case may be, on account of processing of return, the fee payable under section 234F shall also be taken into account.

4. Penalty for furnishing incorrect information in reports or certificates – Sections 271J and 273B

The assessees are required to obtain reports or certificates from a qualified professional under several provisions of the Act. In order to ensure that such professional issuing report or certificate undertakes due diligence, penal provision is introduced for levy of penalty upon him for furnishing incorrect information.

New section 271J provides that the Assessing Officer or the Commissioner (Appeals) may levy penalty upon an accountant or a merchant banker or a registered valuer if it is found that he has furnished incorrect information in any report or certificate furnished under any provision of the Act or the Rules. The amount of penalty shall be ₹ 10,000 for each such report or certificate wherein incorrect information has been furnished.

Consequential amendment is also made in section 273B to provide that if the concerned accountant or merchant banker or registered valuer proves that there was reasonable cause for the failure referred to in section 271J, then penalty shall not be imposed in such case.

These amendments are effective from 1st April, 2017.

P. MEASURES FOR PROMOTING DIGITAL ECONOMY

1. Disallowance of capital expenditure incurred in cash – Section 35AD

Section 35AD provides for investment linked deduction on capital expenditure incurred, wholly or exclusively for the purposes of the specified business excluding capital expenditure incurred for acquisition of any land, goodwill or financial instrument.

The amendment now provides that any capital expenditure exceeding ₹ 10,000 paid to a person in a day otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account shall not be allowed as deduction.

2. Disallowance of expenses incurred in cash – Sections 40A(3) and 40A(3A)

Payments for expenses made otherwise than by an account payee cheque or demand draft in excess of ₹ 20,000 are not allowed as a deduction under section 40A(3). Similarly, payment of liability in a subsequent year in respect of such expenses by a mode otherwise than by account payee cheque or demand draft is taxed in that subsequent year under the head "Profits and Gains of Business or Profession".

Amendments have been made in these sections to enable payments by electronic clearing system through bank accounts. Also, the limit of ₹ 20,000 has been reduced to ₹ 10,000. Thus, payments in excess of ₹ 10,000 otherwise than by account payee cheque, demand draft or electronic clearing system through bank accounts will attract disallowance under section 40A(3) or taxation as income under section 40A(3A), as the case may be.

3. Presumptive taxation – Section 44AD

With a view to encourage digital transactions and discourage the use of cash in business, an amendment has been made to section 44AD(1) by adding a proviso to state that in case of an assessee covered by the section, the profit presumed to have been earned would be 6% (instead of 8%) of the gross turnover or gross receipts which is received by account payee cheque or bank draft or by use of electronic clearing system through a bank account either during the relevant previous year or before the due date for filing the return of income as prescribed under section 139(1). For the turnover in other modes, the rate of 8% will continue.

This amendment is applicable with immediate effect from AY 2017-18.

4. Donations in cash – Section 80G

Currently, under provisions of section 80G(5D) deduction in respect of donation in excess of ₹ 10,000 made in cash is not allowable. An amendment has been made to reduce this limit to

₹ 2,000. This has been done with a view to promote cashless economy and also bringing in transparency.

5. Curbing transactions in cash – Sections 269ST, 271DA and 206C(1D)

A new section 269ST is introduced to discourage people from transacting in cash. The section prohibits a person from receiving an amount of ₹ 3 lakh or more in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person. The section excludes from its scope receipts by government, banks, post office savings bank, co-operative bank, transactions referred to in section 269SS and receipts by such other persons or class of persons or receipts which may be notified by the government. It may be relevant to note that the section refers to a "person" and not an "assessee". Therefore, any entity that falls within the definition of "person" would be covered by this amendment.

Section 271DA has been introduced to provide for a penalty for contravention of section 269ST. The amount of penalty would be equal to the amount received in contravention of the section. The penalty has to be levied by a Joint Commissioner of Income-tax. If the concerned person is able to prove that there were good and sufficient reasons for the contravention then the penalty may not be levied.

In light of the introduction of these two sections, corresponding amendments are made to section 206C to exclude from the provisions of tax collection at source, the sale consideration in excess of ₹ 5 lakh for sale of jewellery.

These provisions will come into effect from 1st April, 2017.

Q. AMENDMENTS MADE BY THE TAXATION LAWS (SECOND AMENDMENT) ACT, 2016

1. Increase in rate of tax & surcharge applicable on income from unexplained sources – Sections 115BBE and 2(9) of the Finance Act, 2016

The rate of tax applicable on income referred to in sections 68, 69, 69A, 69B, 69C or 69D [income from unexplained sources] is enhanced from 30% to 60%. The enhanced rate of 60% shall apply to both –

1. Income from unexplained sources but disclosed by the assessee by reflecting it in the return furnished u/s. 139.

2. Income from such unexplained sources and also undisclosed but found by the Assessing Officer.

The surcharge as applicable otherwise, if the total income exceeds the specified amount, is not applicable on the tax calculated in accordance with the provisions of section 115BBE. Instead, surcharge of 25% shall apply on the amount of such tax. The surcharge of 25% is applicable irrespective of the amount of income from unexplained sources and also irrespective of the amount of total income.

These amendments are effective from AY 2017-18.

2. Penalty where search is initiated – Section 271AAB

Section 271AAB provides for levy of penalty in respect of undisclosed income of the specified previous year in a case where search has been initiated u/s. 132. The rate at which the penalty is leviable under section 271AAB is amended as follows:

Sr. No.	Type of Case	Rate of Penalty	
		Prior to amendment	Post amendment
1	If the assessee admits the undisclosed income in a statement recorded u/s. 132(4) and specifies the manner in which such income has been derived*	10% of undisclosed income	30% of undisclosed income
2	If the assessee does not admit the undisclosed income in a statement recorded u/s. 132(2) but declares it in the return of income furnished for the specified previous year*	20% of undisclosed income	60% of undisclosed income
3	Any other case	60% of undisclosed income	

* In first two cases, the lower rate of penalty is applicable subject to fulfilment of conditions as provided for this purpose.

The enhanced rate of penalty is applicable in respect of search initiated u/s. 132 on or after the date on which the Taxation Laws (Second Amendment) Bill, 2016 received the assent of the President i.e., 15th December, 2016.

3. Penalty in respect of income from unexplained sources – Section 271AAC

New section 271AAC is inserted which provides for levy of penalty if the income of the assessee includes income from unexplained sources. The penalty @ 10% of tax payable u/s. 115BBE may be levied by the Assessing Officer.

No penalty is leviable under section 271AAC if the following conditions are satisfied –

(i) The income from unexplained sources has been included by the assessee in the return of income furnished u/s. 139; and

(ii) Tax in accordance with the provisions of section 115BBE has been paid on or before the end of the relevant previous year.

The penalty u/s 270A for under-reporting of income is not leviable in respect of income on which penalty can be levied u/s. 271AAC. However, where penalty is imposable u/s. 271AAB due to search being conducted u/s. 132, penalty may be levied in accordance with that provision.

The levy of this penalty is subject to the provisions of section 274 which provide for procedure and section 275 which provide for limitation period to pass the order.

These amendments are effective from AY 2017-18.

4. Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016 – Chapter IX-A of the Finance Act, 2016

The Finance Act, 2016 is amended to insert Chapter IX-A incorporating Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016 (the Scheme'). The salient features of this Scheme are as follows:

(i) Declaration under the Scheme can be made by any person in respect of undisclosed income which is in the form of

cash or deposit in an account maintained with a specified entity. The 'specified entity', for this purpose, means the Reserve Bank of India, any banking company or co-operative bank, head post office or sub-post office and any other notified entity.

(ii) No deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed against the income in respect of which declaration is made.

(iii) Tax @30% of the undisclosed income, surcharge @33% of tax and penalty @10% of such income is payable (aggregating to 49.9% of the amount of undisclosed income declared) besides mandatory deposit of 25% of the undisclosed income in Pradhan Mantri Garib Kalyan Deposit Scheme, 2016. The deposits are interest free and have a lock-in period of four years.

(iv) The income declared under the Scheme shall not be included in the total income of the declarant under the Income-tax Act for any assessment year.

(v) Section 199-O of the Scheme provides for cases in which the provisions of the Scheme are not applicable. Thus, no declaration can be made under the Scheme in these specified cases.

(vi) The declarations made under the Scheme shall not be admissible as evidence under any Act (e.g., Central Excise Act, Wealth-tax Act, Companies Act etc.). However, no immunity will be available under certain Acts mentioned in section 199-O of the Scheme.

(vii) Unlike IDS, this Scheme does not provide for any restriction on making declaration where the assessment proceeding is pending before the Assessing Officer or search / survey has already been conducted.

INDIRECT TAXES

SERVICE TAX

All amendments proposed in the Finance Bill, 2017 of Chapters V and VA of the Finance Act, 1994 (the Act), Notifications issued and the following Rules framed thereunder are discussed below:

- The Service Tax (Determination of Value) Rules, 2006
- CENVAT Credit Rules, 2004 (CCR)

The amendments come into effect on the enactment of the Finance Bill except specifically mentioned otherwise.

1. Rate of Tax

The effective rate of service tax of 15% including Swachh Bharat Cess and Krishi Kalyan Cess, remains unchanged.

2. Legislative Changes

i. Negative list of services

- 'Services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption' is currently in the negative list of services under section 66(D)(f) of the Act. This entry is removed from the negative list and inserted in the Mega Exemption Notification No. 25/2012-ST dated 20-6-2012, as a separate entry 30(i). Consequently, the definition of 'process amounting to manufacture' is removed from section 65B and added to the said Notification under clause (ya).

ii. Retrospective exemptions granted

- One time upfront premium, by whatever name called, paid to any State Government Industrial Development Corporation or undertaking for grant of long term lease of industrial plot (thirty years or more) is exempted retrospectively from 1-6-2007 up to 21-9-2016. After this date, exemption

is available *vide* Notification No. 41/2016-ST dated 22-9-2016.

- Services provided by the Army, Naval and Air Force Group Insurance Funds by way of life insurance to members of the Army, Navy or Air Force respectively under the Group Insurance Schemes is exempted retrospectively from 10-9-2004 up to 1-2-2016. After this date, exemption is available under the Mega Exemption Notification No. 25/2012-ST dated 20-6-2012 (refer Exemption-Modifications).

In both the above situations, refund of service tax paid during this period will be granted if an application for such refund is made within six months from the date of enactment of the Finance Bill, 2017. (Sections 104 and 105 inserted in the Act).

iii. Exemption in respect of Research and Development Cess ('R&D Cess') withdrawn

- Consequent upon proposed repeal of the Research and Development Act, 1986, the exemption available, for an amount equivalent to R&D Cess paid on import of technology during provision of service, is withdrawn.

iv. Advance Rulings

- Authority for Advance Rulings is constituted under section 245-O of the Income-tax Act, 1961. All proceedings pending before the Authority for Advance Rulings (Central Excise, Custom and Service Tax) shall stand transferred on the date of enactment to such authority. Application made hereafter shall be only to such authority. Application fees for advance ruling is increased to ₹ 10,000/- from ₹ 2,500/-. Time limit for pronouncement of advance ruling by authority is increased from 90 days to 6 months. (Refer sections 96A, 96C, 96D, and 96HA).

3. Exemptions [Notification No. 25/2012-ST dated 20-6-2012]

i. Modifications in existing exemption entries

- Under existing Entry 9B, the exemption in relation to services provided by the Indian Institutes of Management

shall now be extended to specified two year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management to which admissions are made on the basis of Common Entrance Test, conducted by Indian Institute of Management, **whether residential or not.**

[Notification No. 07/2017-ST dated 2-2-2017 effective from the said date]

- Services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption. [Entry 30 as sub-clause (i)].
- All other existing sub-entries in Entry 30 are renumbered as (ii).

ii. New exemptions [Notification No. 25/2012-ST dated 20-6-2012]

- Services of life insurance business by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government. [Entry 26D]. [*Effective from 2-2-2017*].
- Services provided to the Government by way of transport of passengers, with or without accompanied belongings, by air, embarking from or terminating at a Regional Connectivity Scheme Airport, against consideration in the form of Viability Gap Funding (VGF). **This exemption shall not be available after the expiry of a period of one year from the date of commencement of operations of the Regional Connectivity Scheme Airport as notified by the Ministry of Civil Aviation** [Entry 23A].

[Notification No. 07/2017-ST dated 2-2-2017 effective from the said date]

4. Service tax (Determination of Value) Rules, 2006

- Rule 2A is retrospectively amended with effect from 1-7-2010, so as to exclude the value of property in land or undivided share of land from the value of service

portion in execution of works contract involving transfer of goods and land or undivided share of land as the case may be. Further, the provisions of abatement relating to construction service is also incorporated in the said Rule as applicable at relevant time corresponding to changes in the Abatement Notification No. 1/2006-ST dated 1-3-2006 and Notification No. 26/2012-ST dated 20-6-2012 in respect of construction service. This is meant to overcome the impact of the decision of the Hon'ble Delhi High Court in the case of *Suresh Kumar Bansal vs. Union of India* [2016-TIOL-1077-HC-Del-ST].

5. CENVAT Credit Rules, 2004 ('CCR')

- In Rule 6(3D) of CCR, Explanation I provides the meaning of 'value' for the purpose of sub-rules (3) and (3A). Clause (e) in the said explanation provides that the value for the purpose of reversal of common CENVAT credit on inputs and input services used for providing taxable and exempt services shall not include the value of service by way of extending deposits, loans or advances against consideration in the form of interest or discount. A proviso is inserted in the said clause (e) to provide that the said clause does not apply to a banking company and a financial institution including a Non-Banking Finance Company ('NBFC') providing services by way of extending deposits, loans or advances. In other words, the amount of income from interest or discount is treated as value of exempted services in case of banking company and financial institution including a NBFC.

- Rule 10 of CCR deals with procedure for transfer of CENVAT credit on account of sale, merger, amalgamation, lease, transfer of business, etc., Transfer of CENVAT credit is permitted subject to fulfilment of conditions prescribed under sub-rule 3 and if the Deputy/Assistant Commissioner of Central Excise is satisfied that the credit is duly accounted. Under the **new sub-rule 4,** the Deputy/Assistant Commissioner is required to grant approval for transfer of CENVAT credit balance within

three months from the date of receipt of application from the manufacturer or service provider. If such transfer is not granted within 3 months, Principal Commissioner after recording reasons in writing is empowered to extend the period by not more than six months.

[Refer Notification No. 4/2017-Central Excise (N.T.) dated 2-2-2017].

CENTRAL EXCISE

Amendments proposed in the Central Excise Act, 1944 – (the Act) come into effect from the date of enactment of the Finance Bill, 2017 unless specifically mentioned otherwise.

1. Legislative changes

i. Settlement Commission

At present an assessee, in respect of a case relating to him only, is allowed to make an application before to the Settlement Commission to have the case settled. Now any person, other than assessee, also may make an application to the Settlement Commission. The Settlement Commission is now empowered to call for a report even from Principal Additional Director General/ Additional Director General of Central Excise Intelligence in addition to jurisdictional Commissioner of Central Excise or Commissioner.

Further the Settlement Commission is also empowered now to amend its order or to rectify any other error apparent on the face of the record, at any time within three months from the date of passing of the order. [Sections 32E and 32F]

ii. Advance Rulings

Same as 2 iv under Service Tax – Refer page 48 of this booklet.

2. First Schedule in Central Excise Tariff Act, 1985

- Basic rate of Duty in case of Cigar and Cheroots, Cigarillos, Cigarettes of tobacco substitutes, Cigarillos of tobacco substitutes and other tobacco substitutes is being increased from 12.5% or ₹ 3,755 per thousand to 12.5% or ₹ 4,006 per thousand, in each case, whichever is higher (with immediate effect).
- In case of Motor Vehicles for transport of more than 13 persons (falling under Tariff Items 87029021 to 87029029) Tariff rate of Excise duty is reduced from 27% to 12.5% (Retrospectively with effect from 1-1-2017).

3. Clarification for Export Oriented Units (EOU)

The Government has clarified that EOU will be eligible to import or procure raw materials/inputs at other concessional/Nil rate of BCD, excise duty/CVD or SAD, as the case may be, provided they fulfil all conditions prescribed for being eligible for such concessional or Nil duty.

4. For changes in the rates of excise duty on individual products please refer BCAS website.

CUSTOMS

The Amendments proposed in the Customs Act, 1962 (the Act) come into effect from the date of enactment of the Finance Bill, 2017 unless specifically mentioned otherwise. All the sections referred are of the said Act.

1. Definitions

- Foreign Post Office, International Courier Terminal to be treated as Customs Station.

  Presently, notified Customs port, airport and land customs stations are treated as "customs station" for the purpose of clearance of goods for imports and exports. Now, International Courier Terminal and Foreign Post Office would also be treated as Customs stations. The step may increase the ease of import/export (section 7 read with section 2).

- Beneficial Owner to be treated as "importer/exporter"

  The definition of 'Importer' and 'Exporter' is restricted to owner or any person holding himself to be importer/exporter. Now the definition will include beneficial owner; "beneficial owner"' means a person on whose behalf the goods are imported/exported, or who exercises effective control on the goods that are imported/exported. Consequently the relevant rights and obligations may arise to such beneficial owner. (sections 2(20) and 2(26)).

2. Refund of excess duty paid

At present, an excess payment of duty by an importer is not allowed to be refunded unless it is proven by the importer that the burden of duty is not passed on to any other person. Now the same will be refunded without providing such proof subject to the condition that such excess duty payment is evident from the bill of entry (section 27(2)).

3. Delivering information of passengers and crew

A person in charge of a conveyance departing from or arriving to India is required to deliver the passenger and crew manifest and passenger name record information. If such information is not delivered within prescribed time and proper officer is satisfied that

there is no sufficient cause for delay, penalty up to ₹ 50,000/- may be levied (section 30A and section 41A inserted).

4. Time limit for submission of Bill of Entry

A Bill of Entry can be filed at any time after the delivery of import manifest/import report under the current provisions. Also, Bill of Entry can be filed before import manifest/import report if the aircraft/vessel/vehicle is expected to arrive within 30 days. Now the importer is required to present the Bill of Entry within one day of arrival of aircraft/vessel/vehicle carrying the goods at a customs station. Also, the Bill of Entry is required to be filed within 30 days before the expected arrival of aircraft/vessel (section 46(3)).

5. Time limit for payment of import duty

At present, for failure to pay import duty within two days of the date on which Bill of Entry is returned to the importer for payment or in case of a deferred payment, as prescribed in rules, an interest is required to be paid. Now, the importer is required to pay import duty on the date of presentation of the bill of entry in case of self-assessment or within one day from the date on which it is returned to him for payment. If the importer fails to pay the duty within above time limits, interest is required to be charged (section 47(2)).

6. Storage of goods in public warehouse

Importers can utilise the warehouses specified under Chapter IX for storing goods for a longer period of time and by following the procedure as specified in Chapter IX. However, imported goods which cannot be cleared for home consumption on payment of duty can be temporarily stored in a warehouse at present. The provisions of Chapter IX do not apply to such goods. This facility is now extended even to the goods which cannot be transferred to a warehouse specified under Chapter IX. Hence the goods can be temporarily stored in a warehouse before they can be transferred to the warehouse specified under Chapter IX by following due procedure (section 49).

7. Declaration for export of goods without payment of import duty

Imported goods kept in a warehouse without payment of import duty can be exported without payment of import duty when other documents, label or declaration have been presented at the time

of export. Now, submission of mere label or declaration will not be sufficient for exporting such imported goods without payment of duty. A form to be prescribed will be required to be presented (section 69 read with section 84).

8. Advance Rulings

Same as 2 iv under Service Tax – Refer page 48 of this booklet.

9. Settlement Commission

Presently, an importer, exporter or any other person may disclose additional Customs Duty liability and apply to the Settlement Commission subject to following conditions:

- The applicant has filed bill of entry, shipping bill etc. and Show Cause Notice (SCN) is issued to him.
- Additional Customs Duty accepted exceeds ₹ 3 lakh and
- Such additional Customs Duty is paid along with interest.

Now, if such applicant's case is settled or pending before the Settlement Commission and a SCN is issued to any other person in relation to such case, such other person will also be allowed to make an application to Settlement Commission. However, such application can be made only if the SCN is pending before an adjudicating authority. The Settlement Commission is now empowered to call for report and the relevant records from Principal Additional Director/ Additional Director General of Revenue Intelligence in addition to jurisdictional Principal Commissioner/Commissioner of Customs. Further the Settlement Commission is also empowered now to amend any order passed by it within three months from the date of passing of the order to rectify any error apparent on face of record (sections 127B and 127C).

10. Amendments in Tariff

Readers may refer to BCAS website for changes in Tariff rates.

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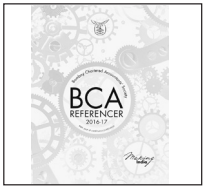

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HUMAN DEVELOPMENT & TECHNOLOGY INITIATIVES	**Leadership Workshop 2017 (Non residential) Based on CHANAKYA BUSINESS SUTRA**	24th and 25th February 2017 9.00 a.m. to 5.30 p.m.	BCAS Hall, Jolly Bhavan 2, New Marine Lines, Mumbai 400 020.	Leadership Camp
INDIRECT TAXATION	**3rd Seminar on Model GST Law**	25th & 26th February 2017 9.30 a.m. to 5.30 p.m.	Navinbhai Thakkar Auditorium, Shraddhanand Road, Near Shiv Sagar Restaurant, Vile Parle (East), Mumbai 400057	Seminar
MEMBERSHIP & PUBLIC RELATIONS	**4th Youth Residential Refresher Course Jointly Programme with ICAI**	10th to 12th March 2017	Fountainhead Leadership Centre, Alibaug	RRC
HUMAN DEVELOPMENT & TECHNOLOGY INITIATIVES	**Workshop Audit In IT Empowered World - Techniques For Effectiveness & Efficiency**	Thursday, 16th March 2017 9.00 a.m. to 5:30 p.m.	BCAS Hall, Jolly Bhavan 2, New Marine Lines, Mumbai-400 020.	Workshop
INTERNATIONAL TAXATION	**Four Days Orientation Course on Foreign Exchange Management Act (FEMA)**	17th, 18th March 2017 (Friday, Saturday) 24th, 25th March 2017 (Friday, Saturday)	BCAS Hall, Jolly Bhavan 2, New Marine Lines, Mumbai-400 020.	Course
INTERNATIONAL TAXATION	**3 Days Workshop on Advanced Transfer Pricing**	Friday 7th April 2017, Saturday 8th April 2017 & Saturday 15th April 2017	BCAS Hall, Jolly Bhavan 2, New Marine Lines, Mumbai-400 020.	Workshop
CORPORATE & ALLIED LAWS	**Two Days Comprehensive Workshop on Valuation**	Friday 21st & Saturday 22nd April, 2017	BCAS Hall, Jolly Bhavan 2, New Marine Lines, Mumbai-400 020.	Workshop

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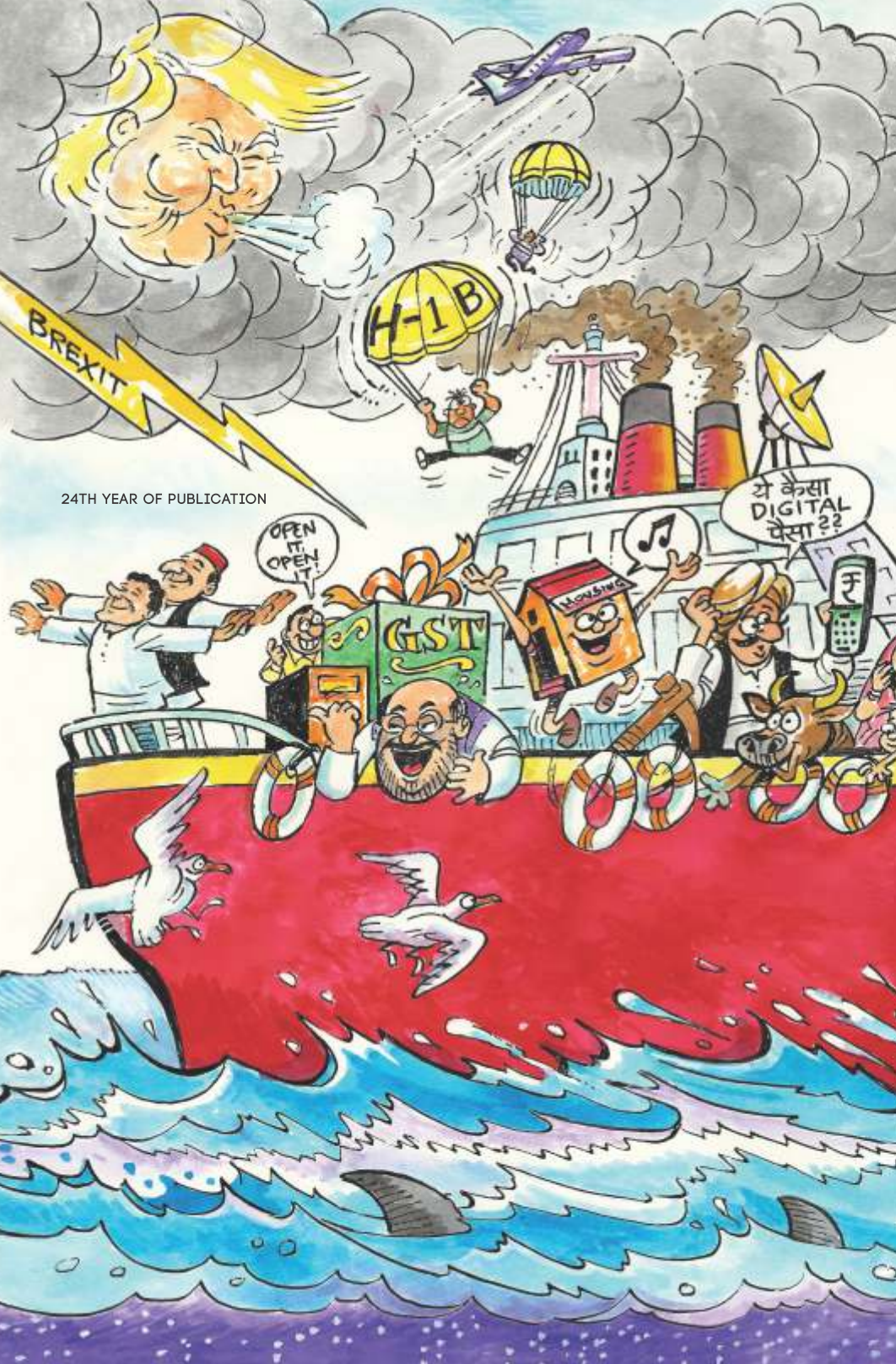

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