

ANALYSIS OF UNION FINANCE BILL 2016

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Rating of Union Budget 2016:

The author and his team rates this Union Budget as 7.5 out of 10 after considering the developments and acceleration in the macro factors, the fiscal discipline, 9 point agenda, challenges before the Finance Minister, long terms vision and current situation of the Indian Economy.

Positive Features: There are some positive indication/ proposal such as, Acceleration in the Growth of economy in 2015-16, Increase in foreign exchange reserves, Agriculture and Farmers welfare, Investment in social sector and health care sector, Education skills and job creation in India, skill development, infrastructure development, financial sector reforms, governance and ease of doing business, promoting affordable housing, simplification and rationalization of taxes, transparent procurement procedure proposed.

Drawback: However, some of the expectations have been left high and dry, such as no transparency in the track record of implementation, still no reforms for Banking Sector NPA, no such relief to the middle class society, no commitments for GST implementation, triple taxation on Dividend.

Key Features of the Union Finance Budget 2016:

- ✓ Growth of Economy accelerated to 7.6% in 2015-16.
- ✓ Foreign exchange reserves touched highest ever level of about 350 billion US dollars.
- ✓ Continue with the ongoing reform programme and ensure passage of the Goods and Service Tax bill and Insolvency and Bankruptcy law.
- ✓ Giving a statutory backing to AADHAR platform to ensure benefits reach the deserving.
- ✓ Allocation for Agriculture and Farmers' welfare is Rs. 35,984 crore.
- ✓ Implementation of 89 irrigation projects under AIBP, which are languishing for a long time, will be fast tracked.
- ✓ A dedicated Long Term Irrigation Fund will be created in NABARD with an initial corpus of about Rs. 20,000 crore.
- ✓ 5 lakh farm ponds and dug wells in rain fed areas and 10 lakh compost pits for production of organic manure will be taken up under MGNREGA.
- ✓ Soil Health Card scheme will cover all 14 crore farm holdings by March 2017.
- ✓ Allocation under Pradhan Mantri Gram Sadak Yojana increased to Rs. 19,000 crore. Will connect remaining 65,000 eligible habitations by 2019.
- ✓ Allocation for rural sector Rs. 87,765 crore.
- ✓ Rs. 2.87 lakh crore will be given as Grant in Aid to Gram Panchayats and Municipalities as per the recommendations of the 14th Finance Commission.
- ✓ 100% village electrification by 1st May, 2018.
- ✓ Allocation for social sector including education and health care Rs. 1,51,581 crore.
- ✓ "Stand Up India Scheme" to facilitate at least two projects per bank branch. This will benefit at least 2.5 lakh entrepreneurs.
- ✓ 62 new Navodaya Vidyalayas will be opened.
- ✓ Digital Depository for School Leaving Certificates, College Degrees, Academic Awards and Mark sheets to be set-up.
- ✓ 1500 Multi Skill Training Institutes to be set-up. National Board for Skill Development Certification to be setup in partnership with the industry and academia.
- ✓ Deduction under Section 80JJAA of the Income Tax Act will be available to all assesses who are subject to statutory audit under the Act.
- ✓ 100 Model Career Centres to operational by the end of 2016-17 under National Career Service.
- ✓ Total investment in the road sector, including PMGSY allocation, would be Rs. 97,000 crore during 2016-17. Allocation of Rs. 55,000 crore in the Budget for Roads. Additional Rs. 15,000 crore to be raised by NHAI through bonds. Total outlay for infrastructure Rs. 2,21,246 crore.
- ✓ 100% FDI to be allowed through FIPB route in marketing of food products produced and manufactured in India.
- ✓ Allocation of Rs. 25,000 crore towards re capitalization of Public Sector Banks.
- ✓ Bill for Targeted Delivery of Financial and Other Subsidies, Benefits and Services by using the Aadhar framework to be introduced.
- ✓ Fiscal deficit in RE 2015-16 and BE 2016-17 retained at 3.9% and 3.5%.
- ✓ Revenue Deficit target from 2.8% to 2.5% in RE 2015-16.
- ✓ Withdrawal up to 40% of the corpus at the time of retirement to be tax exempt in the case of National Pension Scheme (NPS). Annuity fund which goes to legal heir will not be taxable.
- ✓ 100% deduction for profits to an undertaking in housing project for flats up to 30 sq. metres in four metro cities and 60 sq. metres in other cities approved during June 2016 to March 2019 and completed in three years. MAT to apply.
- ✓ Committed to providing a stable and predictable taxation regime and reduce black money.

- ✓ High Level Committee chaired by Revenue Secretary to oversee fresh cases where assessing officer applies the retrospective amendment.
- ✓ 13 cesses, levied by various Ministries in which revenue collection is less than Rs. 50 crore in a year to be abolished.
- ✓ Expansion in the scope of e-assessments to all assessees in 7 mega cities in the coming years.
- ✓ 'e-Sahyog' to be expanded to reduce compliance cost, especially for small taxpayers.
- ✓ Surcharge to be raised from 12% to 15% for persons other than company, firms and co-operative societies having income above Rs. 1 Crore.
- ✓ No change in tax rates for individuals, co-operative societies, firms, local authorities and companies.
- ✓ 10% rate of tax on income from patent developed and registered in India by a resident.
- ✓ Extend the presumptive taxation limit for business to 2 crore and coverage of professionals under presumptive taxation u/s 44AD.
- ✓ Under NPS, withdrawal upto 40% of corpus is tax exempt.
- ✓ Under superannuation funds, RPF including EPF, upto 40% of corpus to be tax free.
- ✓ Deduction of rent paid u/s 80GG increased to Rs. 60,000/- per annum.
- ✓ Raising the ceiling of tax rebate u/s 87A to Rs. 5,000/-.
- ✓ Introduction of Direct tax dispute resolution scheme 2016.
- ✓ Introduction of Income Declaration Scheme 2016.
- ✓ Krishi Kalyan cess @ 0.50% on all taxable service w.e.f. 01.06.2016.

Budget Fiscals 2016-17:

Rupee Comes From	Paisa	Rupees Goes To	Paisa
Income Tax	14	States Share of taxes & Duties	23
Corporation Tax	19	Other non-plan expenditure	12
Borrowings & Other Liabilities	21	Subsidies	10
Non Tax Revenue	13	Defense	10
Service tax & Other taxes	12	Plan/Non-plan assistance to state & UT	14
Union excise duties	12	Interest Payment	19
Customs	9	Central Plan	12
Total	100	Total	100

Service Tax Proposals

Enabling provision for levy of “Krishi Kalyan Cess” (refers Chapter VI/Clause 158 of the Bill):

Date of Applicability: 01.06.2016.

Provision: An enabling provision is being made to levy Krishi Kalyan Cess on all taxable services with effect from 1st June, 2016, to finance and promote initiatives to improve agriculture.

Comment: The rate of service tax will be 15% and the abatement shall be received on the Krishi Kalyan Cess also.

Withdrawal of exemptions:

Date of Applicability: The date of effectiveness is mentioned against each provision separately.

Provision:

- Exemption is being withdrawn with effect from 01.04.2016 and Service Tax @ 14% is being levied under forward charge on services provided by:
 - a senior advocate to an advocate or partnership firm of advocates providing legal service; and
 - a person represented on an arbitral tribunal to an arbitral tribunal.
- Exemption is being withdrawn with effect from 01.03.2016 and Service Tax @ 5.60% is being levied on construction, erection, commissioning or installation of original works pertaining to monorail or metro, in respect of contracts entered into on or after 01.03.2016.
- Exemption is being withdrawn with effect from 01.04.2016 and Service Tax @ 14% on the services of transport of passengers, with or without accompanied belongings, by ropeway, cable car or aerial tramway.
- The Negative List entry is amended and service tax @ 5.60% is being levied on transportation of passengers by air conditioned stage carriage with effect from 01.06. 2016, without credit of inputs, input services and capital goods.
- Service Tax @ 14% on services provided by Indian Shipping lines by way of transportation of goods by a vessel from outside India up to the customs station in India with effect from 01.06.2016 so as to complete the credit chain and enable them to avail and utilize input tax credits.

New Exemptions:

Date of Applicability: The date of effectiveness is mentioned against each provision separately.

Provision:

With effect from 01.03.2016, Services by way of construction etc. are being exempted from Service Tax in respect of:

- housing projects under Housing For All (HFA) (Urban) Mission/Pradhan Mantri Awas Yojana (PMAY);
- low cost houses up to a carpet area of 60 square metres in a housing project under “Affordable housing in Partnership” component of PMAY,
- low cost houses up to a carpet area of 60 square metres in a housing project under any housing scheme of the State Government.
- The services provided by Indian Shipping lines by way of transportation of goods by a vessel to outside India. Credit of Input, Input services and capital goods are allowed.

With effect from 01.04.2016, few services are being exempted from Service Tax as mentioned below:

- The service of life insurance business provided by way of annuity under the National Pension System regulated by Pension Fund Regulatory and Development Authority (PFRDA) of India.
 - Services provided by EPFO to employees.
 - Services provided by IRDA of India.
 - The regulatory services provided by SEBI.
 - The rate of Service Tax on single premium annuity (insurance) policies is being reduced from 3.5% to 1.4% of the premium, in cases where the amount allocated for investment, or savings on behalf of policy holder is not intimated to the policy holder at the time of providing of service.
 - The services of general insurance business provided under 'Niramaya' Health Insurance scheme launched by National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability in collaboration with private/public insurance companies.
 - Services provided by National Centre for Cold Chain Development under Department of Agriculture, Cooperation and Farmer's Welfare, Government of India, by way of knowledge dissemination.
 - Services provided by Biotechnology Industry Research Assistance Council (BIRAC) approved biotechnology incubators to incubatees.
 - Services provided by way of skill/vocational training by training partners under Deen Dayal Upadhyay Grameen Kaushalya Yojana.
 - Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development & Entrepreneurship.
 - The threshold exemption to services provided by a performing artist in folk or classical art forms of music, dance or theatre is being enhanced from Rs 1 lakh to Rs 1.5 lakh charged per event.
- W.e.f 01.04.2016, the benefit of quarterly payment of Service Tax and the payment of service tax on receipt basis is being extended to 'One Person Company' (OPC) and HUF.
- Exemptions on services of construction provided to the Government, a local authority or a governmental authority, in respect of construction of govt. schools, hospitals etc., construction of ports, airports, are being restored in respect of services provided under contracts which had been entered into prior to 01.03.2015 on payment of applicable stamp duty, with retrospective effect from 01.04.2015.
- Services provided by way of construction, maintenance etc. of canal, dam or other irrigation works provided to bodies set up by Government but not necessarily by an Act of Parliament or a State Legislature, during the period from the 01.07.2012 to 29.01.2014, are being exempted from Service Tax with consequential refunds, subject to the principle of unjust enrichment.
- W.e.f 01.03.2016, Services provided by the IIM by way of 2 year full time Post Graduate Programme in Management, Integrated Programme in Management and Fellowship Programme in Management.

Amendments from Reverse Charge to Forward Charge:

Date of Applicability: 01.04.2016

Provision: The services provided by mutual fund agent/distributor to a mutual fund or asset management company, are being made taxable under forward charge, so as to enable the small sub-agents down the distribution chain to avail small scale exemption having threshold turnover of Rs 10 lakh per year, subject to fulfilment of other conditions prescribed.

Interest Rate on Service Tax:

Date of Applicability: From the date of enactment of Finance Bill 2016.

Provision: Interest rates on delayed payment of duty/tax across all indirect taxes are being rationalized and made uniform at 15%, except in case of Service Tax collected but not deposited to the exchequer, in which case the rate of interest will be 24% from the date on which the Service Tax payment became due. In case of assessee, whose value of taxable services in the preceding year/years covered by the notice is less than Rs. 60 Lakh, the rate of interest on delayed payment of Service Tax will be 12%.

Rationalization of Abatements:

Date of Applicability: 01.04.2016

Provisions:

Credit of input services is being allowed on:

- Transport of passengers by rail at the existing rate of abatement of 70%.
- Transport of goods, other than in containers, by rail at the existing rate of abatement of 70%.
- Transport of goods in containers by rail at a reduced abatement rate of 60%.
- Transport of goods by vessel at the existing rate of abatement of 70%.

The abatement rate in respect of:

- Services by way of construction of residential complex, building, civil structure, or a part thereof, are being rationalized at 70% by merging the two existing rates (70% for high end flats and 75% for low end flats).
- Services by a tour operator in relation to packaged tour (defined where tour operator provides to the service recipient transportation, accommodation, food etc) and other than packaged tour is being rationalized at 70%.
- Shifting of used household goods by a Goods Transport Agency (GTA) is being rationalized at the rate of 60%, without CENVAT credit on inputs, input services and capital goods. (The existing rate of abatement of 70% allowed on transport of other goods by GTA continues unchanged).
- Services of a foreman to a chit fund is being rationalised at the rate of 30%, without CENVAT credit on inputs, input services and capital goods.

Reduce litigation and providing certainty in taxation:

Date of Applicability: From the date of enactment of Finance Bill 2016/ date mentioned in the provision.

Provision:

- Indirect tax Dispute Resolution Scheme, 2016, wherein a scheme in respect of cases pending before Commissioner (Appeals), the assessee, after paying the duty, interest and penalty equivalent to 25% of duty, can file a declaration, is being introduced. In such cases the proceedings against the assessee will be closed and he will also get immunity from prosecution. However, this scheme will not apply in cases:
 - Where prosecution has already been launched
 - Involving narcotics & psychotropic substances
 - Involving detention under COFEPOSA.
- Section 67A is being amended to obtain rule making powers in respect of the Point of Taxation Rules, 2011, so as to provide that the point in time when service has been provided or agreed to be provided shall be determined by rules made in this regard.
- Section 93A of the Finance Act, 1994 is being amended so as to allow rebate by way of notification as well as rules.

- Explanation 2 in section 65B (44) of the Finance Act, 1994 is being amended so as to clarify that any activity carried out by a lottery distributor or selling agent in relation to promotion, marketing, organizing, selling of lottery or facilitating in organizing lottery of any kind, in any other manner, of the State Government as per the provisions of the Lotteries (Regulation) Act, 1998 (17 of 1998), is leviable to Service Tax.
- Notification No. 27/2012 – C.E. (N.T.) dated 18.06.2012 is being amended with effect from 01.03.2016 so as to provide that time limit for filing application for refund of CENVAT Credit under Rule 5 of the CENVAT Credit Rules, 2004, in case of export of services, is 1 year from the date of receipt of payment in convertible foreign exchange, where provision of service has been completed prior to receipt of such payment; or issue of invoice, where payment, for the service has been received in advance prior to the date of issue of the invoice.
- Assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers thereof is being declared as a service under section 66E of the Finance Act, 1994 so as to make it clear that assignment of right to use the spectrum is a service leviable to Service Tax @ 14% and not sale of intangible goods.
- A condition mandating inclusion of cost of fuel in the consideration for availing abatement on the services by way of renting of motor-cab is being prescribed with effect from 01.04.2016.
- Service tax on the services of Information Technology Software on media bearing RSP is being exempted from Service Tax with effect from 01.03.2016 provided Central Excise duty is paid on RSP in accordance with Section 4A of the Central Excise Act.
- Mutual exclusiveness of levy of excise duty and Service Tax on Information Technology Software in respect of software recorded on media “NOT FOR RETAIL SALE” is being ensured by exempting from excise duty only that portion of the transaction value on which Service Tax @ 14% is paid.

Service Tax Rules:

W.e.f 01.04.2016, to reduce compliance cost, the number of returns to be filed by a central excise assessee, above a certain threshold, is being drastically reduced, from 27 to 13, one annual and 12 monthly return. Monthly returns are already being e-filed. CBEC will provide for e-filing of annual return also. The annual return will also have to be filed by Service Tax assessees, above a certain threshold, taking total number of returns to three in a year for them.

CENVAT Credit Rules:

Date of Applicability: 01.04.2016

Provision:

- The rules are being amended so as to allow banks and other financial institutions to reverse credit in respect of exempted services on actual basis in addition to the option of 50% reversal.
- The rules are being amended to improve credit flow, reduce the compliance burden and associated litigation, particularly those relating to apportionment of credit between exempted and non-exempted final products / services. Changes are also being made in the provisions relating to input service distributor, including extension of this facility to transfer input services credit to outsourced manufacturers, under certain circumstances. The amendments in these rules will also enable manufacturers with multiple manufacturing units to maintain a common warehouse for inputs and distribute inputs with credits to the individual manufacturing units.

- The rules are being amended to provide for reversal of CENVAT Credit of inputs/input services which have been commonly used in providing taxable output service and an activity which is not a 'service' under the Finance Act, 1994.
- The CENVAT credit rules are being amended so as to allow CENVAT credit of Service Tax paid on amount charged for assignment by Government or any other person of a natural resource, over such period of time as the period for which the rights have been assigned.

Miscellaneous:

Date of Applicability: From the date of enactment of Finance Bill 2016.

Provisions:

- Period of issuing demand notice: Section 73 of the Finance Act, 1994 is being amended so as to increase the limitation period from 18 months to 30 months for short levy/non levy/short payment/non-payment/erroneous refund of Service Tax.
- The Negative List entry covering 'educational services by way of (a) pre-school education and education up to higher and secondary school or equivalent, (b) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force and (c) education as a part of an approved vocational education course [Section 66D (I)] and the definition of 'approved vocational education course' are being omitted. However, the exemption shall continue by way of exemption notification No. 25/2012 – ST.
- The power to arrest in Service Tax is being restricted only to situations where the tax payer has collected the tax but not deposited it to the exchequer, and that too above a threshold of Rs 2 crore. The monetary limit for launching prosecution is being increased from Rs. 1 crore to Rs. 2 crore of Service Tax evasion.

Excise and Customs Duty Proposals

Amendments in Central Excise Act, 1944:

Date of Applicability: From the date of enactment of Finance Bill 2016.

Provisions:

- Clause 140 of the Finance Bill, 2016: Section 11A is being amended so as to increase the period of limitation from one year to two years in cases not involving fraud, suppression of facts, wilful mis-statement, etc.
- Clause 141 of the Finance Bill, 2016: Section 37B is being amended so as to empower the Board for implementation of any other provision of the said Act in addition to the power to issue orders, instructions and directions.

Major amendments involving change in the rate of duty:

- Rate of duty increase from 18% to 21% Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured.
- To increase Tariff Value of readymade garments and made up articles of textiles Branded readymade garments and made up articles of textiles of retail sale price of Rs.1000 or more: 2% without Cenvat Credit and 12.50% with cenvat credit.
- Charger / adapter, battery and wired headsets / speakers for supply to mobile phone manufacturers as original equipment manufacturer: 2% without Cenvat Credit and 12.50% with cenvat credit.
- Routers, broadband Modems, Set-top boxes for gaining access to internet, set top boxes for TV, digital video recorder (DVR) / network video recorder (NVR), CCTV camera / IP camera, lithium ion battery [other than those for mobile handsets]: 4% without Cenvat Credit and 12.50% with cenvat credit.
- To discourage consumption of tobacco and tobacco products, FM proposes to increase the excise duties on various tobacco products other than Beedi by about 10 to 15%.
- Branded readymade garments and made up articles of textiles of retails price of Rs.1000 or more would be costly now. Now the manufacturers of above products would be liable to excise duty @ 2% without availing Input tax credit. Earlier manufactures were liable to NIL rate of duty on such product provided non availment of Input Tax Credit.
- Basic excise duty @ 1% is being imposed on Articles of jewellery excluding silver jewellery and this will have major impact on individuals as well as Goldsmiths. Also excise duty on gold bars manufactured from gold ore.
- In order to deal the pollution and traffic problems Finance Minister introduced a new levy called Infrastructure Cess. It shall be lived on Motor Vehicles. Now, Petrol/LPG/CNG /Diesel motors vehicles shall be costlier up to 4%.

MAJOR RULES AND REGULATIONS UNDER THE CUSTOMS ACT, 1962:

- The existing Baggage Rules, 1998 are being substituted with the Baggage Rules, 2016, so as to simplify and rationalize multiple slabs of duty free allowance for various categories of passengers. The new Rules are effective from 01.04.2016.

- The existing Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 are being substituted with the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 with a view to simplify the rules, including allowing duty exemptions to importer/manufacture based on self-declaration instead of obtaining permissions from the Central Excise authorities. Need for additional registration is also being done away with. The new Rules will be effective from 01.04.2016.
- The Customs Baggage Declaration Regulations, 2013 is being amended so as to prescribe filing of Customs declaration only for those passengers who carry dutiable or prohibited goods.
- Section 53 of the Customs Act is amended to enable the proper officer to allow transit of certain goods and conveyance without payment of duty, subject to the conditions specified by the Board by regulations. This amended provision would enable the board to frame regulations for allowing transit of certain goods and conveyance without payment of duty.
- Warehousing provisions are simplified and in the current regime emphasis would be from physical control to record based control. Keeping in mind the said emphasis, many provisions pertaining to the warehousing are amended. Further, new class of warehouses are created for enabling storage of specific goods under physical control of the department, as control over the other types of warehouses would be only record based. Now warehouse can be set up at any places. Earlier it was possible to set up only in warehousing stations. The present amendment has removed the said concept of warehousing stations where alone the warehouses could be set up.
- Section 61 of the Customs Act so as to specify the period for which goods may remain warehoused has been substituted. Now, the unutilized inputs may remain in EOU without till the same are utilized for manufacture of finished goods. Earlier period of three years were provided.
- Government has amended various notifications pertaining to Advance Licence and Duty Free Import Authorization Schemes retrospectively, to correct the reference to "section 8" in such notifications to "section 8B" so as to clearly provide that exemption from safeguard duty under section 8B of the Customs Tariff Act, 1975 was/is available under these notifications on imports under Advance Licence and Duty Free Import Authorization Schemes.
- Indirect tax Dispute Resolution Scheme, 2016 For reducing litigation, new scheme is introduced wherein it is provided that for cases pending before Commissioner (Appeals), the assessee has option to pay the duty, interest and penalty equivalent to 25% of duty and get the case closed. In such cases he will also get immunity from prosecution. The said scheme is subject to following exclusions:
 - where prosecution has already been launched
 - involving narcotics & psychotropic substances
 - involving detention under COFEPOSA

MAJOR AMENDMENTS IN THE CENTRAL EXCISE RULES, 2002 AND THE CENVAT CREDIT RULES, 2004:

- The Central Excise Rules, 2002 are being amended so as to reduce the number of returns to be filed by a central excise assessee above a certain threshold from 27 to 13, that is, one annual and 12 monthly return. Monthly returns are already being e-filed. CBEC will provide for e-filing of annual return also. This annual return will have to be filed by service tax assessee also, above a certain threshold, taking total number of returns to three in a year for them; extend the facility for revision of return, hitherto available to service tax assessee only, to manufacturers also. Provide that in cases where invoices are digitally signed, the manual attestation of copy of invoice, meant for transporter, is done away with. Provide that in case of finalization of provisional assessment, the interest will be chargeable from the original date of payment of duty.

- The CENVAT Credit Rules, 2004 are being amended, so as to improve credit flow, reduce the compliance burden and associated litigations, particularly those relating to apportionment of credit between exempted and non-exempted final products / services. Changes are also being made in the provisions relating to input service distributor, including extension of this facility to transfer input services credit to outsourced manufacturers, under certain circumstances. The amendments in these Rules will also enable manufacturers with multiple manufacturing units to maintain a common warehouse for inputs and distribute inputs with credits to the individual manufacturing units.
- Instructions are being issued to Chief Commissioners of Central Excise to file application to Courts to withdraw prosecution in cases involving duty of less than rupees five lakh and pending for more than fifteen years.
- The existing Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) Rules, 2001 are being substituted with the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) Rules, 2016, so as to simplify the rules, including allowing duty exemptions to importer/manufacture based on self-declaration instead of obtaining permissions from the Central Excise authorities.

MAJOR AMENDMENTS IN CUSTOMS ACT AND RULES:

Sections 28, 47, 51 and 156 are being amended so as to:

- increase the period of limitation from one year to two years in cases not involving fraud, suppression of facts, wilful mis-statement, etc.
- provide for deferred payment of customs duties for importers and exporters to certain class of importers and exporters.

Section 53 is being amended so as to enable the Board to frame regulations for allowing transit of certain goods and conveyance without payment of duty.

Income Tax Proposals

Rates of Income Tax Including Surcharge and Cess for AY 2017-18 (Refer clause 2, 49 and First Schedule of the bill):

- There is no change in the basic rates of Income tax for any assessee except for a company. 29% in case of company having total turnover/ gross receipts till Rs. 5 crore and 30% in case of total turnover/ gross receipts more than Rs. 5 crore.
- In order to provide relief to newly setup domestic companies engaged solely in the business of manufacture or production of article or thing, it is proposed to amend the Act by way of insertion of new section 115BA, to provide that the income-tax payable in respect of the total income of a domestic company for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2017 shall be computed @ 25% at the option of the company, if, -
 - the company has been setup and registered on or after 01.03.2016;
 - the company is engaged in the business of manufacture or production of any article or thing and is not engaged in any other business;
 - the company while computing its total income has not claimed any benefit under section 10AA, benefit of accelerated depreciation, benefit of additional depreciation, investment allowance, expenditure on scientific research and any deduction in respect of certain income under Part-C of Chapter-VI-A other than the provisions of section 80JJAA; and
 - the option is furnished in the prescribed manner before the due date of furnishing of income.
- Further, there is no change in the basic rates of Minimum Alternative Tax and Alternate Minimum Tax.
- There is no change in the chargeability of Ecess and SHEC.
- The rates of surcharge in the case of every individual or Hindu undivided family or every association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act shall be at the rate of 15% of such income tax in case of a person having a total income exceeding one crore rupees. However the benefit of Marginal relief shall be available.
- The rates of surcharge in case of co-operative societies, Firms, Local Authorities shall be at the rate of 12% of such income tax in case of a person having a total income exceeding one crore rupees. However the benefit of Marginal relief shall be available
- The rates of surcharge in the case of domestic companies are categorised as below:
 - Surcharge at the rate of 7% shall be levied in case of a domestic company if the total income of the domestic company exceeds Rs. 1 crore but does not exceed Rs. 10 crore. The surcharge at the rate of 12% shall be levied if the total income of the domestic company exceeds ten crore rupees.
 - In case of companies other than domestic companies, the existing surcharge of 2% shall continue to be levied if the total income exceeds one crore rupees but does not exceed ten crore rupees. The surcharge at the rate of 5% shall continue to be levied if the total income of the company other than domestic company exceeds ten crore rupees.
- In other cases (including sections 115-O, 115QA, 115R or 115TA) the surcharge shall be levied at the rate of 12%.

Rates for Surcharge on TDS of Non Resident during the FY 2016-2017 from certain incomes other than "Salaries":

- Where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees:
 - 15% of such tax, in case of an individual, HUF, AOP, BOI or artificial juridical person;
 - 12% of such tax, in case of a firm or cooperative society,
 - 2% of such tax, in case income of a non-domestic company exceeds one crore rupees but does not exceed ten crore rupees;
- For a non-domestic company at the rate of five per cent of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds ten crore rupees.
- No surcharge will be levied on deductions in other cases.

Rationalization of taxation of income by way of dividend (Section 115-O of IT Act) (Refer clause 7 and 50 of the bill):**Date of Applicability:** These amendments will take effect from AY 2017-18.

- Under the existing provisions of section 10 (34) of the Act, dividend which suffer DDT under section 115-O is exempt in the hands of the shareholder. Under section 115-O dividends are taxed only at the rate of 15% at the time of distribution in the hands of company declaring dividends. This creates vertical inequity amongst the tax payers as those who have high dividend income are subjected to tax only at the rate of 15% whereas such income in their hands would have been chargeable to tax at the rate of 30%.
- With a view to rationalise the tax treatment provided to income by way of dividend, it is proposed to amend the Income-tax Act so as to provide that any income by way of dividend in excess of Rs. 10 lakh shall be chargeable to tax in the case of an individual, HUF or a firm who is resident in India, at the rate of 10%. The taxation of dividend income in excess of Rs. 10 lacs shall be on gross basis.

Change in rate of STT in case where option is not exercised (Refer clause 230 of the bill):**Date of Applicability:** 01.06.2016

Section 98 of the Finance (No.2) Act, 2004 provides that the STT on sale of an option in securities where option is not exercised is 0.017 per cent of the option premium. It is proposed to increase the rate from 0.017 % to 0.05 %.

Tax Collection at Source (TCS) on sale of vehicles, goods or services (Section 206C of IT Act) (Refer clause 86 of the bill):**Date of Applicability:** 01.06.2016

- The existing provision of section 206C of the Act, inter alia, provides that the seller shall collect tax at source at specified rate from the buyer at the time of sale of specified items such as alcoholic liquor for human consumption, tendu leaves, scrap, mineral being coal or lignite or iron ore, bullion etc. in cash exceeding Rs. 2 lacs.
- In order to reduce the quantum of cash transaction in sale of any goods and services and for curbing the flow of unaccounted money in the trading system and to bring high value transactions within the tax net, it is proposed to amend the aforesaid section to provide that the seller shall collect the tax at the rate of 1% from the purchaser on sale of motor vehicle of the value exceeding Rs. 10 lacs and sale

in cash of any goods (other than bullion and jewellery), or providing of any services (other than payments on which tax is deducted at source under Chapter XVII-B) exceeding Rs. 2 lacs.

- It is also proposed to provide that the sub-section (1D) relating to TCS in relation to sale of any goods (other than bullion and jewellery) or services shall not apply to certain class of buyers who fulfil such conditions as may be prescribed.

Comment: 1% TCS need to collect by the seller from buyer in case of sale of any motor vehicle having value more than Rs. 10 lacs. This includes new as well as old cars. This transaction also applies to individuals subject to other provisions and conditions given u/s 206C.

Further, for any sale of goods or services above Rs. 2 lacs in cash, the seller need to collect 1% TCS from the buyer. This provision is also applicable on all the individuals subject to other provisions and conditions given u/s 206C.

Tax on distributed income to shareholder (Section 115QA of IT Act) (Refer clause 56 of the bill):

Date of Applicability: 01.06.2016

- The existing provisions of section 115QA of the Act provide for the levy of additional Income-tax @ 20% of the distributed income on account of buy back of unlisted shares by a company. Recently doubts have been raised regarding the effect of buybacks undertaken by the company under different provisions of the Companies Act, 1956 or the Companies Act, 2013 and applicability of provisions of section 115QA to such transactions. An issue has also been raised regarding lack of clarity in determination of consideration received by the company at the time of issue of shares being bought back by the company.
- In order to provide clarity and remove any ambiguity on the above issues, it is proposed to amend section 115QA to provide that the provisions of this section shall apply to any buy back of unlisted share undertaken by the company in accordance with the provisions of the law relating to the Companies and not necessarily restricted to section 77A of the Companies Act, 1956. It is further proposed to provide that for the purpose of computing distributed income, the amount received by the Company in respect of the shares being bought back shall be determined in the prescribed manner. The rules would thereafter be framed to provide for manner of determination of the amount in various circumstances including shares being issued under tax neutral reorganisations and in different tranches.

Levy of tax where the charitable institution ceases to exist or converts into a non-charitable organization (Section 115TD, 115TE & 115TF inserted in IT Act under chapter XII-EB) (Refer clause 60 of the bill):

Date of Applicability: 01.06.2016

- The existing provisions of section 2(24) of the Act define "Income" in an inclusive manner. Any voluntary contribution received by a charitable trust or institution or a fund is included in the definition of income.
- A society or a company or a trust or an institution carrying on charitable activity may voluntarily wind up its activities and dissolve or may also merge with any other charitable or non-charitable institution, or it may convert into a non-charitable organization. In such a situation, the existing law does not provide any clarity as to how the assets of such a charitable institution shall be dealt with. Under provisions of section 11 certain amount of income of prior period can be brought to tax on failure of certain conditions. However, there is no provision in the Act which ensure that the corpus and asset base of the trust accreted over period of time, with promise of it being used for charitable purpose, continues to be utilized for charitable purposes and is not used for any other purpose.

- In order to ensure that the intended purpose of exemption availed by trust or institution is achieved, a specific provision in the Act is required for imposing a levy in the nature of an exit tax which is attracted when the organization is converted into a non-charitable organization or gets merged with a non-charitable organization or does not transfer the assets to another charitable organization.
- Accordingly, it is proposed to amend the provisions of the Act and introduce a new Chapter XII-EB, containing Section 115TD, 115TE and 115TF, is proposed to be inserted under the Act to provide that 'accreted income' of a trust or institution registered under section 12AA shall be chargeable to tax at the maximum marginal rates in following circumstances:
 - If the trust or institution gets converted into any form which is not eligible under section 12AA;
 - If the trust or institution gets merged into any entity which is not eligible under section 12AA;
 - If the trust or institution, in case of dissolution, fails to transfer its assets to exempt entities under section 12AA and section 10(23C) (iv), (v), (vi) & (via).
- The difference between the fair market value of the assets and liabilities of the trust or institution would be treated as 'accreted income' and tax thereon shall be paid in addition to the income-tax chargeable in respect of the total income of such trust or institution.

Phasing out of deductions and exemptions (Section 10AA, 35AC, 35CCD, 80IA, 80IAB, 80IB, 32, 35(1), 35(1)(ia), 35(1)(iii), 35(2AA), 35(2AB), 35AD, 35CCC of IT Act) (Refer clause 8, 15, 17, 18, 19, 20, 39, 40 and 42 of the bill):

Date of Applicability: From AY 2017-18

The Finance Minister in his Budget Speech, 2015 has indicated that the rate of corporate tax will be reduced from 30% to 25% over the next four years along with corresponding phasing out of exemptions and deductions. The Government proposed to implement this decision in a phased manner. In this regard, broad guiding principles had been put in the public domain for receiving comments from the stakeholders. These guiding principles are listed below for reference:

- Profit linked, investment linked and area based deductions will be phased out for both corporate and non-corporate tax payers.
- The provisions having a sunset date will not be modified to advance the sunset date. Similarly the sunset dates provided in the Act will not be extended.
- In case of tax incentives with no terminal date, a sunset date of 31.3.2017 will be provided either for commencement of the activity or for claim of benefit depending upon the structure of the relevant provisions of the Act.
- There will be no weighted deduction with effect from 01. 04.2017.

Based on the above guiding principles and taking into account the response of the stakeholders on the proposed phasing out plan, the following incentives under the Act are proposed to be phased out in the manner as tabulated below in Tables:

Proposed Phase out plan of incentives (Profit linked Deductions/weighted deduction) available under the Act:

S. No.	Section	Incentive currently available in the Act	Proposed phase out measures/ Amendment
1	10AA- Special provision in respect of newly established units in SEZ.	Profit linked deductions for units in SEZ for profit derived from export of articles or things or services	No deduction shall be available to units commencing manufacture or production of article or thing or start providing services on or after 1st day April, 2020. (from previous year 2020-21 onwards).

2	35AC-Expenditure on eligible projects or schemes.	Deduction for expenditure incurred by way of payment of any sum to a public sector company or a local authority or to an approved association or institution, etc. on certain eligible social development project or a scheme.	No deduction shall be available with effect from 1.4.2017 (i.e. from previous year 2017-18 and subsequent years).
3	35CCD-Expenditure on skill development project.	Weighted deduction of 150 per cent on any expenditure incurred (not being expenditure in the nature of cost of any land or building) on any notified skill development project by a company.	Deduction shall be restricted to 100 per cent from 01.04.2020 (i.e. from previous year 2020-21 onwards).
4	Section 80IA; 80IAB, and 80IB - Deduction in respect of profits derive from a) development, operation and maintenance of an infrastructure facility (80-IA) (b) development of special economic zone (80-IAB) (c) production of mineral oil and natural gas [80-IB(9)]	100 per cent profit linked deductions for specified period on eligible business carried on by industrial undertakings or enterprises referred in section 80IA; 80IAB, and 80IB.	No deduction shall be available if the specified activity commences on or after 1st day April, 2017. (i. e. from previous year 2017-18 and subsequent years).

Date of Applicability: From AY 2018-19

Proposed Phase out plan of incentives (Accelerated Depreciation/Weighted Deduction) available under the Act:

S. No.	Section	Incentive currently available in the Act	Proposed phase out measures/ Amendment
1	32 read with rule 5 of Income-tax Rules, 1962- Accelerated Depreciation.	Accelerated depreciation is provided to certain Industrial sectors in order to give impetus for investment. The depreciation under the Income-tax Act is available up to 100% in respect of certain block of assets.	To amend the new Appendix IA read with rule 5 of Income-tax Rules, 1962 to provide that highest rate of depreciation under the Income-tax Act shall be restricted to 40% w.e.f 01.4.2017. (i. e. from previous year 2017-18 and subsequent years). The new rate is proposed to be made applicable to all the assets (whether old or new) falling in the relevant block of assets.
2	35(1)(ii)- Expenditure on scientific research.	Weighted deduction from the business income to the extent of 175 per cent of any sum paid to an approved scientific research association which has the object of undertaking scientific research. Similar deduction is also available if a sum is paid to an approved	Weighted deduction shall be restricted to 150 per cent from 01.04.2017 to 31.03.2020 (i.e. from previous year 2017-18 to previous year 2019-20) and deduction shall be restricted to 100 per cent from 01.04.2020 (i.e. from previous year 2020-21 onwards).

		university, college or other institution and if such sum is used for scientific research.	
3	35(1)(ia)- Expenditure on scientific research.	Weighted deduction from the business income to the extent of 125 per cent of any sum paid as contribution to an approved scientific research company.	Deduction shall be restricted to 100 per cent with effect from 01.04.2017 (i.e. from previous year 2017-18 and subsequent years).
4	35(1)(iii)- Expenditure on scientific research.	Weighted deduction from the business income to the extent of 125 per cent of contribution to an approved research association or university or college or other institution to be used for research in social science or statistical research.	Deduction shall be restricted to 100 per cent with effect from 01.04.2017 (i.e. from previous year 2017-18 and subsequent years).
5	35(2AA)- Expenditure on scientific research.	Weighted deduction from the business income to the extent of 200 per cent of any sum paid to a National Laboratory or a university or an Indian Institute of Technology or a specified person for the purpose of approved scientific research programme.	Weighted deduction shall be restricted to 150 per cent with effect from 01.04.2017 to 31.03.2020 (i.e. from previous year 2017-18 to previous year 2019-20). Deduction shall be restricted to 100 per cent from 01.04.2020 (i.e. from previous year 2020-21 onwards).
6	35(2AB)- Expenditure on scientific research	Weighted deduction of 200 per cent of the expenditure (not being expenditure in the nature of cost of any land or building) incurred by a company, engaged in the business of bio-technology or in the business of manufacture or production of any article or thing except some items appearing in the negative list specified in Schedule-XI, on scientific research on approved in-house research and development facility.	Weighted deduction shall be restricted to 150 per cent from 01.04.2017 to 31.03.2020 (i.e. from previous year 2017-18 to previous year 2019-20). Deduction shall be restricted to 100 per cent from 01.04.2020 (i.e. from previous year 2020-21 onwards).
7	35AD- Deduction in respect of specified business.	In case of a cold chain facility, warehousing facility for storage of agricultural produce, an affordable housing project, production of fertiliser and hospital weighted deduction of 150 per cent of capital expenditure (other than expenditure on land, goodwill and financial assets) is allowed.	In case of a cold chain facility, warehousing facility for storage of agricultural produce, hospital, an affordable housing project, production of fertilizer, deduction shall be restricted to 100 per cent of capital expenditure w.e.f. 01.4.2017 (i.e. from previous year 2017-18 onwards).
8	35CCC- Expenditure on notified agricultural extension project.	Weighted deduction of 150 % of expenditure incurred on notified agricultural extension project.	Deduction shall be restricted to 100 per cent from 1.4.2017 (i.e from previous year 2017-18 onwards).

Extending the benefit of initial additional depreciation under section 32(1)(ia) for power sector (Refer clause 13 of the bill):

Date of Applicability: From AY 2017-18

Under the existing provisions, the benefit of additional depreciation is not available on the new machinery or plant installed by an assessee engaged in the business of transmission of power. In order to rationalise the incentive of power sector, it is proposed to amend this section so as to provide that an assessee engaged in the business of transmission of power shall also be allowed additional depreciation at the rate of 20% of actual cost of new machinery or plant acquired and installed in a previous year.

Taxation of Income from 'Patents' (Section 115BBF inserted in IT Act) (Refer clause 52 & 53 of the bill):

Date of Applicability: From AY 2017-18

- In order to encourage indigenous research & development activities and to make India a global R & D hub, the Government has decided to put in place a concessional taxation regime for income from patents. The aim of the concessional taxation regime is to provide an additional incentive for companies to retain and commercialise existing patents and to develop new innovative patented products.
- Accordingly, it is proposed to insert new section 115BBF to provide that where the total income of the eligible assessee includes any income by way of royalty in respect of a patent developed and registered in India, then such royalty shall be taxable at the rate of 10% (plus applicable surcharge and cess) on the gross amount of royalty. No expenditure or allowance in respect of such royalty income shall be allowed under the Act. For the purpose of this concessional tax regime an eligible assessee means a person resident in India, who is the true and first inventor of the invention.

Comment: *In order to make India a global R&D hub, a new section 115BBF is proposed to be inserted to provide that any income by way of royalty received in respect of a patent developed and registered in India shall be taxable at the rate of ten per cent (plus applicable surcharge and cess) on gross basis to a person resident in India.*

Tax incentives for start-ups (Section 54EE inserted, 54GB, 80IAC inserted in IT Act) (Refer clause 31, 32 & 41 of the bill):

Date of Applicability: From AY 2017-18

- With a view to providing an impetus to start-ups and facilitate their growth in the initial phase of their business, it is proposed to provide a deduction of 100% of the profits and gains derived by an eligible start-up from a business involving innovation development, deployment or commercialization of new products, processes or services driven by technology or intellectual property started before 01.04.2019 for a period of three consecutive years in the initial five years.
- Keeping this objective in view, it is proposed to insert a new Section 54EE to provide exemption from capital gains tax if the long term capital gains proceeds are invested by an assessee in units of such specified fund, as may be notified by the Central Government in this behalf, subject to the condition that the amount remains invested for three years failing which the exemption shall be withdrawn. The investment in the units of the specified fund shall be allowed up to Rs. 50 lakh.
- With an objective to provide relief to an individual or HUF willing to setup a start-up company by selling a residential property to invest in the shares of such company, it is proposed to amend section 54GB so as to provide that long term capital gains arising on account of transfer of a residential property shall not be charged to tax if such capital gains are invested in subscription of shares of a company which qualifies

to be an eligible start-up subject to the condition that the individual or HUF holds more than 50% shares of the company and such company utilises the amount invested in shares to purchase new asset before due date of filing of return by the investor. The expression "new asset" includes computers or computer software in case of technology driven start-ups so certified by the Inter-Ministerial Board of Certification notified by the Central Government in the official Gazette.

Comment: A new section 80-IAC is proposed to be inserted to provide for a deduction of up to 100% of the profits derived by an eligible startup from a business involving innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property. The deduction can be availed by an eligible start-up for three consecutive assessment years out of five years, at the option of the assessee. Furthermore, the deduction shall be available only to start-ups set-up before 01.04.2019.

Incentives for Promoting Housing for All (Section 80IBA newly inserted, 80EE of IT Act) (Refer clause 37 & 43 of the bill):

Date of Applicability: From AY 2017-18

With a view to incentivise affordable housing sector as a part of larger objective of 'Housing for All', it is proposed to amend the Income-tax Act so as to provide for 100% deduction of the profits of an assessee developing and building affordable housing projects if the housing project is approved by the competent authority before the 31st March, 2019 subject to certain conditions which inter alia, include:

- The project is completed within a period of three years from the date of approval,
- The project is on a plot of land measuring not less than 1000 sq. metres where the project is within 25 km from the municipal limits of four metros namely Delhi, Mumbai, Chennai & Kolkata and in any other area, it is measuring not less than 2000 sq. metres where the size of the residential unit in the said areas is not more than thirty sq. metres and sixty sq. metres, respectively,
- Where residential unit is allotted to an individual, no such unit shall be allotted to him or any member of his family, etc

Under the provisions of section 80EE, it is proposed to incentivise first-home buyers availing home loans, by providing additional deduction in respect of interest on loan taken for residential house property from any financial institution up to Rs. 50,000. This incentive is proposed to be extended to a house property of a value less than Rs. 50 Lacs in respect of which a loan of an amount not exceeding Rs. 35 Lacs has been sanctioned during the period from the 01.04.2016 to the 31.03.2017. It is also proposed to extend the benefit of deduction till the repayment of loan continues. The deduction under the proposed section is over and above the limit of Rs 2,00,000 provided for a self-occupied property under section 24 of the Act.

Comment: Section 80EE proposes an additional deduction of up to Rs. 50,000 every year in respect of interest on housing loan. Such deduction shall be allowed to the first time individual buyers of a residential house property, if:

- Value of residential house property does not exceed Rs. 50 lakh;
- Amount of loan does not exceed Rs. 35 lakh; and
- The loan is sanctioned between 01-04-2016 and 31-03-2017.

The proposed deduction shall be in addition to deduction of Rs. 2,00,000 allowed under section 24 of the Act.

Tax incentive for employment generation (Section 80JJAA of IT Act) (Refer clause 44 of the bill):**Date of Applicability:** From AY 2017-18

- The existing provisions of Section 80JJAA provide for a deduction of 30% of additional wages paid to new regular workmen in a factory for 3 years. The provisions apply to the business of manufacture of goods in a factory where 'workmen' are employed for not less than 300 days in a previous year. Further, benefits are allowed only if there is an increase of at least 10% in total number of workmen employed on the last day of the preceding year.
- With a view to extend this employment generation incentive to all sectors, it is proposed to provide that the deduction under the said provisions shall be available in respect of cost incurred on any employee whose total emoluments are less than or equal to Rs. 25,000/- per month. No deduction, however, shall be allowed in respect of cost incurred on those employees, for whom the entire contribution under EPS notified in accordance with EPF and Miscellaneous Provisions Act, 1952, is paid by the Government. Further proposed to relax the minimum number of days from 300 days to 240 days and also the condition of 10% increase in number of employees is also omitted. It is also proposed to provide that in the first year of a new business, 30% of all emoluments paid or payable to the employees employed during the previous year shall be allowed as deduction.

Provision for Tax benefits to Sovereign Gold Bond Scheme, 2015 and Rupee Denominated Bonds (Section 47, 48 of IT Act) (Refer clause 28 and 29 of the bill):**Date of Applicability:** From AY 2017-18**Sovereign Gold Bond Scheme, 2015:**

- The Government of India has introduced the Sovereign Gold Bond Scheme with the aim of reducing the demand for physical gold so as to reduce the outflow of foreign exchange on account of import of gold.
- It is proposed to amend Section 47 of the Income-tax Act, so as to provide that any redemption of Sovereign Gold Bond under the Scheme, by an individual shall not be treated as transfer and therefore shall be exempt from tax on capital gains. It is also proposed to amend section 48 of the Income-tax Act, so as to provide indexation benefits to long terms capital gains arising on transfer of Sovereign Gold Bond to all cases of assesseees.

Rupee Denominated Bond

- The Reserve Bank of India has recently permitted Indian corporates to issue rupee denominated bonds outside India as a measure to enable the Indian corporates to raise funds from outside India.
- Accordingly, with a view to provide relief to non-resident investor who bears the risk of currency fluctuation, it is proposed to amend section 48 of the Act so as to provide that the capital gains, arising in case of appreciation of rupee between the date of issue and the date of redemption against the foreign currency in which the investment is made shall be exempt from tax on capital gains.

Consolidation of 'plans' within a 'scheme' of mutual fund (Section 47 of IT Act) (Refer clause 28 of the bill):**Date of Applicability:** From AY 2017-18

- Under the existing provisions of section 47(xviii), any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating scheme of a mutual fund, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated scheme of the mutual fund is not chargeable to tax.

- It is proposed to extend the tax exemption, available on merger or consolidation of mutual fund schemes, to the merger or consolidation of different plans in a mutual fund scheme. For this purpose, it is proposed to amend Section 47 so as to provide that any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating plan of a mutual fund scheme, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated plan of that scheme of the mutual fund shall not be considered transfer for capital gain tax purposes and thereby shall not be chargeable to tax.

Rationalization of limit of deduction allowable in respect of rents paid under Section 80GG (Refer clause 28 of the bill):

Date of Applicability: From AY 2017-18

In order to provide relief to the individual tax payers, it is proposed to amend section 80GG so as to increase the maximum limit of deduction from existing Rs. 2000 per month to Rs. 5000 per month.

Tax Treatment of Gold Monetization Scheme, 2015 (Section 2(14) of IT Act) (Refer clause 3 & 7 of the bill):

Date of Applicability: From AY 2016-17

- Under the existing provisions of section 10, interest on Gold Deposit Bonds issued under Gold Deposit Scheme, 1999 is exempt. Further, these bonds are excluded from the definition of capital asset and therefore exempt from tax on capital gains.
- It is proposed to amend section 2 (14), so as to exclude Deposit Certificates issued under Gold Monetisation Scheme, 2015 notified by the Central Government, from the definition of capital asset and thereby to exempt it from capital gains tax. It is also proposed to amend section 10 (15) so as to provide that the interest on Deposit Certificates issued under the Scheme, shall be exempt from income-tax.

Rationalization of section 56 of the Income-tax Act (Refer clause 34 of the bill):

Date of Applicability: From AY 2017-18

- The existing provisions of section 56 (2) (vii) of the Act provide for chargeability of income from other sources in case any money, immovable property or other property with or without consideration in excess of Rs 50,000 is received by an assessee being an individual or an Hindu undivided family (HUF). The provisions also apply where shares of a company are received as a consequence of demerger or amalgamation of a company. Such a transaction is not regarded as transfer where the recipient is a firm or a company.
- With a view to bring uniformity in tax treatment, it is proposed to amend the Act so as to provide that any shares received by an individual or HUF as a consequence of demerger or amalgamation of a company shall not attract the provisions of clause (vii) of sub-section (2) of section 56.

Rationalization of limit of rebate in income-tax allowable under Section 87A (Refer clause 45 of the bill):

Date of Applicability: From AY 2017-18

- The existing provisions of section 87A of Income-tax Act, provide for a rebate of an amount equal to 100% of such income-tax or an amount of Rs. 2,000/-, whichever is less, from the amount of income-tax to an individual resident in India whose total income does not exceed Rs. 5 Lacs.

- With the objective to provide relief to resident individuals in the lower income slab, it is proposed to amend section 87A so as to increase the maximum amount of rebate available under this provision from existing Rs. 2,000 to Rs. 5,000.

Comment: Relief under Section 87A is proposed to be raised from Rs. 2,000 to Rs. 5,000 in order to provide for relief to small taxpayers. Relief under Section 87A is available to a resident individual if his total income does not exceed Rs. 5,00,000. For Assessment Year 2017-18, the relief shall be allowed up to income-tax liability or Rs. 5,000, whichever is less.

Increase in time period for acquisition or construction of self-occupied house property for claiming deduction of interest (Section 24 of IT Act) (Refer clause 10 of the bill):

Date of Applicability: From AY 2017-18

- The existing provision of section 24 (b) provides that interest payable on capital borrowed for acquisition or construction of a house property shall be deducted while computing income from house property. The second proviso to the said clause provides that a deduction of an amount of Rs. 2 Lacs shall be allowed where a house property referred to in sub-section (2) of section 23 (self-occupied house property) has been acquired or constructed with capital borrowed on or after the 1st day of April, 1999 and such acquisition or construction is completed within 3 years from the end of the financial year in which capital was borrowed.
- In view of the fact that housing projects often take longer time for completion, it is proposed that second proviso of clause (b) of section 24 be amended to provide that the deduction under the said proviso on account of interest paid on capital borrowed for acquisition or construction of a self-occupied house property shall be available if the acquisition or construction is completed within 5 years from the end of the financial year in which capital was borrowed.

Comment: An assessee is allowed to claim deduction of up to Rs. 2,00,000 in respect of interest on loan taken for acquisition or construction of self occupied house property, subject to certain conditions, inter-alia, house property should be acquired or constructed within a period of 3 years from the end of the financial year in which loan was taken. In view of the fact that housing projects often take longer time for completion, it is proposed that the deduction shall be available if property is acquired or constructed within 5 years from the end of the financial year in which capital was borrowed.

Simplification and rationalization of provisions relating to taxation of unrealized rent and arrears of rent (Section 24 of IT Act) (Refer clause 10 of the bill):

Date of Applicability: From AY 2017-18

- Existing provisions of sections 25A, 25AA and 25B relate to special provisions on taxation of unrealised rent allowed as deduction when realised subsequently, unrealised rent received subsequently and arrears of rent received respectively. Certain deductions are available thereon.
- It is proposed to simplify these provisions and merge them under a single new section 25A and bring uniformity in tax treatment of arrears of rent and unrealised rent. It is proposed to provide that the amount of rent received in arrears or the amount of unrealised rent realised subsequently by an assessee shall be charged to income-tax in the financial year in which such rent is received or realised, whether the assessee is the owner of the property or not in that financial year. It is also proposed that 30% of the arrears of rent or the unrealised rent realised subsequently by the assessee shall be allowed as deduction.

Enabling provision for implementation of various provisions of the Act in case of a foreign company held to be resident in India (Section 6(3), 115JH of IT Act) (Refer clause 4, 54 & 235 of the bill):

Date of Applicability: From AY 2017-18

The provisions of section 6 of the Act provide for conditions in which residence in India is determined in case of different category of persons. The Finance Act, 2015 amended the above provision so as to provide that a company would be resident in India in any previous year if it is an Indian company or its Place of Effective Management (POEM) in that year is in India. The POEM was defined to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are in substance made.

In the context of implementation of POEM based residence rule, certain issues, relating to the applicability of current provisions of the Act to a company which is incorporated outside India and has not earlier been assessed to tax in India, have arisen. In particular, the issues relate to applicability of specific provisions of the Act relating to Advance tax payment, applicability of TDS provisions, computation of total income, set off of losses and manner of application of transfer pricing regime. These provisions have compliance requirements which would not have been undertaken by the company at relevant time due to absence of any such requirement under tax laws of country of incorporation of such company. Similarly, issues of computation of depreciation also arise when in earlier years it has not been subject to computation under the Act.

In order to provide clarity in respect of implementation of POEM based rule of residence and also to address concerns of the stakeholders, it is proposed to:

- defer the applicability of POEM based residence test by one year and the determination of residence based on POEM shall be applicable from 01/04/17.
- provide a transition mechanism for a company which is incorporated outside India and has not earlier been assessed to tax in India. The Central Government is proposed to be empowered to notify exception, modification and adaptation subject to which, the provisions of the Act relating to computation of income, treatment of unabsorbed depreciation, setoff or carry forward and setoff of losses, special provision relating to avoidance of tax and the collection and recovery of taxes shall apply in a case where a foreign company is said to be resident in India due to its POEM being in India for the first time and the said company has never been resident in India before.
- provide that these transition provisions would also cover any subsequent previous year upto the date of determination of POEM in an assessment proceedings. However, once the transition is complete, then normal provision of the Act would apply.
- provide that in the notification, certain conditions including procedural conditions subject to which these adaptations shall apply can be provided for and in case of failure to comply with the conditions, the benefit of such notification would not be available to the foreign company.
- provide that every notification issued in exercise of this power by the Central Government shall be laid before each house of the Parliament.

Introduction of Presumptive taxation scheme for persons having income from profession (Section 44AA, 44AB, 44ADA of IT Act) (Refer clause 24, 25 & 27 of the bill):

Date of Applicability: From AY 2017-18

- The existing scheme of taxation provides for a simplified presumptive taxation scheme for certain eligible persons engaged in certain eligible business only and not for persons earning professional income. In order to rationalize the presumptive taxation scheme and to reduce the compliance burden of the small tax payers having income from profession and to facilitate the ease of doing business, it is proposed to provide for presumptive taxation regime for professionals.
- In this regard, new section 44ADA is proposed to be inserted in the Act to provide for estimating the income of an assessee who is engaged in any profession referred to in sub-section (1) of section 44AA such as legal, medical, engineering or architectural profession or the profession of accountancy or

technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette and whose total gross receipts does not exceed Rs. 50 Lacs in a previous year, at a sum equal to 50% of the total gross receipts, or, as the case may be, a sum higher than the aforesaid sum earned by the assessee. The scheme will apply to such resident assessee who is an individual, Hindu undivided family or partnership firm but not Limited Liability partnership firm. No further expenditure shall be allowed under this section.

Comment: *Presumptive taxation scheme is proposed for a resident individual engaged in the specified profession. The presumptive scheme shall be available if the gross receipts from the profession does not exceed Rs. 50 lacs. The presumptive income shall be 50% of the gross receipts. The threshold limit for audit under Section 44AB has been proposed to be increase to Rs. 50 lakhs in case of specified professions.*

Increase in threshold limit for audit for persons having income from profession (Section 44AB of IT Act) (Refer clause 25 of the bill):

Date of Applicability: From AY 2017-18

In order to reduce the compliance burden, it is proposed to increase the threshold limit of total gross receipts, specified under section 44AB for getting accounts audited, from Rs. 25 Lacs to Rs. 50 Lacs in the case of persons carrying on profession.

Increase in threshold limit for presumptive taxation scheme for persons having income from business (Section 44AB, 44AD, 211 of IT Act) (Refer clause 25, 26 and 87 of the bill):

Date of Applicability: From AY 2017-18

- In order to reduce the compliance burden of the small tax payers and facilitate the ease of doing business, it is proposed to increase the threshold limit of Rs. 1 Crore specified in the definition of "eligible business" to Rs. 2 Crore. It is proposed to provide that eligible assessee shall be requiring paying advance tax. However, in order to keep the compliance minimum in his case, it is proposed that he may pay advance tax by 15th March of the financial year.
- It is also proposed that the expenditure in the nature of salary, remuneration, interest etc. paid to the partner as per clause (b) of section 40 shall not be deductible while computing the income under section 44AD as the said section 40 does not mandate for allowance of any expenditure but puts restriction on deduction of amounts, otherwise allowable under section 30 to 38.
- It is also proposed that where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five consecutive assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).
- **For example,** an eligible assessee claims to be taxed on presumptive basis under section 44AD for Assessment Year 2017-18 and offers income of Rs. 8 lakh on the turnover of Rs. 1 crore. For Assessment Year 2018-19 and Assessment Year 2019-20 also he offers income in accordance with the provisions of section 44AD. However, for Assessment Year 2020-21, he offers income of Rs. 4 lakh on turnover of Rs. 1 crore. In this case since he has not offered income in accordance with the provisions of section 44AD for five consecutive assessment years, after Assessment Year 2017-18, he will not be eligible to claim the benefit of section 44AD for next five assessment years i.e. from Assessment Year 2021-22 to 2025-26.

Deduction in respect of provision for bad and doubtful debt in the case of Non-Banking Financial companies (Section 36(1)(viia) of IT Act) (Refer clause 21 of the bill):

Date of Applicability: From AY 2017-18

- Under the existing provisions of sub-clause (c) of clause (viia) of sub-section (1) of section 36 of the Act, in computing the profits of a public financial institutions, State financial corporations and State industrial investment corporations a deduction, limited to an amount not exceeding five per cent of the gross total income, computed, before making any deduction under the aforesaid clause and Chapter VI-A, is allowed in respect of any provision for bad and doubtful debt.
- Considering the fact that Non-Banking Financial companies (NBFCs) are also engaged in financial lending to different sectors of society, it is proposed to amend the provision of clause (viia) of sub-section (1) of section 36 so as to provide deduction from total income (computed before making any deduction under this clause and Chapter-VIA) on account of provision for bad and doubtful debts to the extent of five per cent of the total income in the case of NBFCs.

Rationalisation of scope of tax incentive under section 32AC (Refer clause 14 of the bill):

Date of Applicability: From AY 2016-17

- The existing provision of section 32AC (1A) of the Act provides for investment allowance at the rate of 15% on investment made in new assets (plant and machinery) exceeding Rs. 25 crore in a previous year by a company engaged in manufacturing or production of any article or thing subject to the condition that the acquisition and installation has to be done in the same previous year. This tax incentive is available up to 31.03.2017.
- It is proposed to amend the section 32AC (1A) so as to provide that the acquisition of the plant & machinery of the specified value has to be made in the previous year. However, installation may be made by 31.03.2017 in order to avail the benefit of investment allowance of 15%. It is further proposed to provide that where the installation of the new asset is in a year other than the year of acquisition, the deduction under this sub-section shall be allowed in the year in which the new asset is installed.

Exemption from requirement of furnishing PAN under section 206AA to certain non-resident (Refer clause 85 of the bill):

Date of Applicability: 01.06.2016

In order to reduce compliance burden, it is proposed to amend section 206AA so as to provide that the provisions of this section shall also not apply to a non-resident, not being a company, or to a foreign company, in respect of any other payment, other than interest on bonds, subject to such conditions as may be prescribed.

Applicability of Minimum Alternate Tax (MAT) on foreign companies for the period prior to 01.04.2015 (Section 115JB of IT Act) (Refer clause 53 of the bill):

Date of Applicability: From AY 2001-02

Under the existing provisions contained in sub-section (1) of the 115JB in case of a company, if the tax payable on the total income as computed under the Income-tax Act, is less than 18.50% of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee for the relevant previous year shall be 18.50% of its book profit. Issues were raised regarding the applicability of this provision to FII's who do not have a PE in India. Vide Finance Act, 2015 of the provisions of section 115JB were amended to provide that in case of a foreign company any income chargeable at a

rate lower than the rate specified in section 115JB shall be reduced from the book profits and the corresponding expenditure will be added back.

It is proposed to amend the Income-tax Act so as to provide that with effect from 01.04.2001, the provisions of section 115JB shall not be applicable to a foreign company if:

- the assessee is a resident of a country or a specified territory with which India has an agreement referred to in sub-section (1) of section 90 or the Central Government has adopted any agreement under sub-section (1) of section 90A and the assessee does not have a permanent establishment in India in accordance with the provisions of such Agreement; or
- the assessee is a resident of a country with which India does not have an agreement of the nature referred to in clause (i) above and the assessee is not required to seek registration under any law for the time being in force relating to companies.

The Income Declaration Scheme, 2016 (Refer clause 178 to 196 of the bill):

Date of Applicability: From the date of notification in official gazette

An opportunity is proposed to be provided to persons who have not paid full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totalling in all to 45% of such undisclosed income declared. The scheme is proposed to be made applicable in respect of undisclosed income of any financial year up to 2015-16.

Tax is proposed to be charged at the rate of 30% on the declared income as increased by surcharge at the rate of 25% of tax payable (to be called the Krishi Kalyan cess). A penalty at the rate of 25% of tax payable is also proposed to be levied on undisclosed income declared under the scheme.

It is proposed that following cases shall not be eligible for the scheme:

- where notices have been issued under section 142(1) or 143(2) or 148 or 153A or 153C, or
- where a search or survey has been conducted and the time for issuance of notice under the relevant provisions of the Act has not expired, or
- where information is received under an agreement with foreign countries regarding such income,
- cases covered under the Black Money Act, 2015, or
- persons notified under Special Court Act, 1992, or
- cases covered under Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988.

It is proposed that payment of tax, surcharge and penalty may be made on or before a date to be notified by the Central Government in the Official Gazette and non-payment up to the date so notified shall render the declaration made under the scheme void.

It is proposed to provide that declarations made under the scheme shall be exempt from wealth-tax in respect of assets specified in declaration. It is also proposed that no scrutiny and enquiry under the Income-tax Act and Wealth-tax Act be undertaken in respect of such declarations and immunity from prosecution under such Acts be provided. Immunity from the Benami Transactions (Prohibition) Act, 1988 is also proposed for such declarations subject to certain conditions.

In cases where any income has accrued, arisen or received or any asset has been acquired out of such income prior to commencement of this Scheme, and no declaration in respect of such income is made under the Scheme such income shall be deemed to have accrued, arisen or received, or the value of the asset acquired out of such income shall be deemed to have been acquired or made, in the year in which a notice under section 142, section 143(2) or section 148 or section 153A or section 153C of the Income-tax Act is issued by the Assessing Officer and the provisions of the Income-tax Act shall apply accordingly.

The Direct Tax Dispute Resolution Scheme, 2016 (Refer clause 197 to 208 of the bill):

Date of Applicability: From the date of notification in official gazette

Litigation has been a major area of concern in direct taxes. In order to reduce the huge backlog of cases and to enable the Government to realise its dues expeditiously, it is proposed to bring the Direct Tax Dispute Resolution Scheme, 2016 in relation to tax arrear and specified tax. The salient features of the proposed scheme are as under:

- The scheme be applicable to "tax arrear" which is defined as the amount of tax, interest or penalty determined under the Income-tax Act or the Wealth-tax Act, 1957 in respect of which appeal is pending before the Commissioner of Income-tax (Appeals) or the Commissioner of Wealth-tax (Appeals) as on the 29th day of February, 2016.
- The pending appeal could be against an assessment order or a penalty order.
- The declarant under the scheme be required to pay tax at the applicable rate plus interest upto the date of assessment. However, in case of disputed tax exceeding rupees ten lakh, twenty-five percent of the minimum penalty leviable shall also be required to be paid.
- In case of pending appeal against a penalty order, twenty-five percent of minimum penalty leviable shall be payable along with the tax and interest payable on account of assessment or reassessment.
- Consequent to such declaration, appeal in respect of the disputed income and disputed wealth pending before the Commissioner (Appeals) shall be deemed to be withdrawn.

In addition to the above, the scheme proposes that person may also make a declaration in respect of any tax determined in consequence of or is validated by an amendment made with retrospective effect in the Income-tax Act or Wealth-tax Act, as the case may be, for a period prior to the date of enactment of such amendment and a dispute in respect of which is pending as on 29.02.2016 (referred to as specified tax). For availing the benefit of the Scheme, such declarant shall be required to withdraw any writ petition or any appeal filed against such specified tax before the Commissioner (Appeals) or the Tribunal or High Court or Supreme Court, before making the declaration and shall also be required to furnish a proof of such withdrawal. Further if any proceeding for arbitration conciliation or mediation has been initiated by the declarant or he has given any notice under any law or agreement entered into by India, whether for protection of investment or otherwise, he shall be required to withdraw such notice or claim for availing benefit under this Scheme.

It is proposed that person making declaration in respect of specified tax shall be required to furnish an undertaking in the prescribed form and verified in the prescribed manner, waiving the right, whether direct or indirect, to seek or pursue any remedy or claim in relation to the specified tax which otherwise be available to them under any law, in equity, by statute or under an agreement, whether for protection of investment or otherwise, entered into by India with a country or territory outside India. It is proposed that no appellate authority or Arbitrator or Conciliator or Mediator shall proceed to decide an issue relating to the specified tax in the declaration in respect of which an order is made by the designated authority or in respect of the payment of the sum determined to be payable.

It is proposed that where the declarant violates any of the conditions referred to in the scheme or any material particular furnished in the declaration is found to be false at any stage, it shall be presumed as if the declaration was never made under this Scheme and all the consequences under the Income-tax Act or Wealth-tax Act under which the proceedings against declarant were or are pending, shall be deemed to have been revived.

The declarant under the scheme shall get immunity from institution of any proceeding for prosecution for any offence under the Income-tax Act or the Wealth-tax Act. In case of specified tax the declarant shall also get immunity from imposition of penalty under the Income-tax Act or the Wealth-tax Act. However, in case of tax arrears immunity from penalty is proposed to be of the amount that exceeds the penalty payable as per the scheme. The scheme provides waiver of interest under the Income-tax Act or the Wealth-tax Act in

respect of specified tax. However, waiver of interest in respect of tax arrears is to the extent the interest exceeds the amount of interest referred in the scheme.

In the following cases a person shall not be eligible for the scheme:-

- Cases where prosecution has been initiated before 29.02.2016.
- Search or survey cases where the declaration is in respect of tax arrears.
- Cases relating to undisclosed foreign income and assets.
- Cases based on information received under Double Taxation Avoidance Agreement under section 90 or 90A of the Income-tax Act where the declaration is in respect of tax arrears.
- Person notified under Special Courts Act, 1992.
- Cases covered under Narcotic Drugs and Psychotropic Substances Act, Indian Penal Code, Prevention of Corruption Act or Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

A declaration under the scheme may be made to the designated authority not below the rank of Commissioner in such form and verified in such manner as may be prescribed. The designated authority shall within 60 days from the date of receipt of the declaration, determine the amount payable by the declarant. The declarant shall pay such sum within thirty days of the passing such order and furnish proof of payment of such sum. Any amount paid in pursuance of a declaration shall not be refundable under any circumstances.

Providing Time limit for disposing applications made by assessee under section 273A, 273AA or 220(2A) (Refer clause 88, 104 & 105 of the bill):

Date of Applicability: 01.06.2016

- Sub-section (2) of section 220 provides for levy of interest at the rate of 1 % for every month or part of month for the period during which the default continues. Sub-section (2A) of said section inter-alia, empowers the Principal Chief Commissioner, Chief Commissioner, Principal Commissioner or Commissioner to reduce or waive the amount of interest paid or payable under sub-section (2) of the said section.
- Sub-section (4) of section 273A, inter alia, provides that the Principal Commissioner or the Commissioner may, on an application made by an assessee, reduce or waive the amount of any penalty payable by the assessee or stay or compound any proceeding for recovery of the penalty amount in certain circumstances.
- Section 273AA inter alia, provides that the Principal Commissioner or the Commissioner may grant immunity from penalty, if penalty proceedings have been initiated in case of a person who has made application for settlement before the settlement commission and the proceedings for settlement had abated under the circumstances contained in section 245HA of the Act.
- Under the existing provisions no time limit has been provided regarding the passing of orders either under section 220 or sections 273A or 273AA. Further, these provisions do not specifically mandate that assessee be given an opportunity of being heard in case such application is rejected by an authority. Therefore, in order to rationalise the provisions and provide for specific time-line, amendment to the existing provisions have been proposed.
- It is proposed to amend section 220 to provide that an order accepting or rejecting application of an assessee shall be passed by the concerned Principal Chief Commissioner, Chief Commissioner, Principal Commissioner or Commissioner within a period of twelve months from the end of the month in which such application is received.

- It is further proposed to amend section 273A and section 273AA to provide that an order accepting or rejecting the application of an assessee shall be passed by the Principal Commissioner or Commissioner within a period of twelve months from the end of the month in which such application is received.
- It is also proposed to provide that no order rejecting the application of the assessee under section 220 or 273A, 273AA shall be passed without giving the assessee an opportunity of being heard. However, in respect of applications pending as on 1st day of June, 2016, the order under said sections shall be passed on or before 31st May, 2017.

Providing legal framework for automation of various processes and paperless assessment (Section 143, 282A of IT Act) (Refer clause 3, 66 & 109 of the bill):

Date of Applicability: 01.06.2016

- It is proposed to amend the relevant provisions of the Act so as to provide adequate legal framework for paperless assessment in order to enhance efficiency and reduce the burden of compliance. A series of changes are proposed to achieve this end.
- Section 282A (1) provides that where a notice or other document is required to be issued by any income-tax authority under the Act, such notice or document should be signed by that authority in manuscript.
- It is proposed to amend Section 282A (1) so as to provide that notices and documents required to be issued by income-tax authority under the Act shall be issued by such authority either in paper form or in electronic form in accordance with such procedure as may be prescribed.
- Section 143 (2) provides that, if the Assessing Officer considers it necessary and expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, he shall serve on the assessee a notice requiring him to produce, or cause to be produced on a specified date, any evidence on which the assessee may rely in support of the return.
- In order to ensure timely service of notice issued under section 143 (2), it is proposed to amend section 143 (2) to provide that notice under the said sub-section may be served on the assessee by the Assessing Officer or the prescribed income-tax authority, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return.

Exemption of Central Government subsidy or grant or cash assistance, etc. towards corpus of fund established for specific purposes from the definition of Income (Section 2(24) of IT Act) (Refer clause 3 of the bill):

Date of Applicability: AY 2017-18

- The Finance Act, 2015 had amended the definition of income under section 2 (24) of the Act so as to provide that the income shall include assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to section 43 (1) of the Income-tax Act.
- As a result grant or cash assistance or subsidy etc. provided by the Central Government for budgetary support of a trust or any other entity formed specifically for operationalizing certain government schemes will be taxed in the hands of trust or any other entity. Therefore, it is proposed to amend

section 2(24) to provide that subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or State government shall not form part of income.

Extension of scope of section 43B to include certain payments made to Railways (Refer clause 23 of the bill):

Date of Applicability: AY 2017-18

- The existing provisions of section 43B of the Act, inter alia, provide that any sum payable by the assessee by way of tax, cess, duty or fee, employer contribution to Provident Fund, etc., is allowable as deduction of the previous year in which the liability to pay such sum was incurred (relevant previous year) if the same is actually paid on or before the due date of furnishing of the return of income irrespective of method of accounting followed by a person.
- With a view to ensure the prompt payment of dues to Railways for use of the Railway assets, it is proposed to amend section 43B so as to expand its scope to include payments made to Indian Railways for use of Railway assets within its ambit.

Clarification regarding set off losses against deemed undisclosed income (Section 115BBE of IT Act) (Refer clause 51 of the bill):

Date of Applicability: AY 2017-18

- Section 115BBE of the Act, inter-alia provides that the income relating to section 68 or section 69 or section 69A or section 69B or section 69C or section 69D is taxable at the rate of 30% and further provides that no deduction in respect of any expenditure or allowances in relation to income referred to in the said sections shall be allowable.
- Currently, there is uncertainty on the issue of set-off of losses against income referred in section 115BBE of the Act. In order to avoid unnecessary litigation, it is proposed to amend the provisions of the sub-section (2) of section 115BBE to expressly provide that no set off of any loss shall be allowable in respect of income under the sections 68 or section 69 or section 69A or section 69B or section 69C or section 69D.

Taxation of Non-compete fees and exclusivity rights in case of Profession (Section 28, 32 of IT Act) (Refer clause 12 & 13 of the bill):

Date of Applicability: AY 2017-18

- The existing provision of section 28(va) of the Act includes within the scope of "profit and gains of business or profession" any sum received or receivable in cash or in kind under an agreement for not carrying out activity in relation to any business; or not to share any know how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services and is chargeable to tax as business income. Further, the provisions clarify that receipts for transfer of right to manufacture, produce or process any article or thing or right to carry on any business, which are chargeable to tax under the head "Capital gains", would not be taxable as profits and gains of business or profession. Under section 45 of the Act, any capital receipt arising out of transfer of any business or commercial rights is taxable under the head "Capital gains". The amount of "Capital gains" is computed according to section 48 of the Act. For this purpose, 'cost of acquisition' and 'cost of improvement' are defined under section 55. However, non-compete fee received/receivable in relation to carrying out of profession are not covered under these provisions.

- It is proposed to amend clause (va) of section 28 of the Act to bring the non-compete fee received/receivable (which are recurring in nature) in relation to not carrying out any profession, within the scope of section 28 of the Act i.e. the charging section of profits and gains of business or profession. Further, it is also proposed to amend the proviso to clarify that receipts for transfer of right to carry on any profession, which are chargeable to tax under the head "Capital gains", would not be taxable as profits and gains of business or profession. It is also proposed to amend section 55 so as to provide that the 'cost of acquisition' and 'cost of improvement' for working out "Capital gains" on capital receipts arising out of transfer of right to carry on any profession shall also be taken as 'nil'.

Comment: *Compensation paid for restrictive covenant in relation to business is taxable under Section 28(va). However, compensation paid for similar covenant in relation to any profession is not taxable under Section 28(va). Thus, an amendment is proposed to section 28(va) to bring the non-compete fee received/receivable in relation to an agreement for not carrying out any profession shall be charged to tax under the head business or profession. Further, it is also proposed to clarify that receipts for transfer of right to carry on any profession, which are chargeable to tax under the head "Capital gains", would not be taxable as profits and gains of business or profession. In such a case, it is proposed, that the 'cost of acquisition' and 'cost of improvement' for computing capital gains in respect of transfer of right to carry on any profession shall be nil.*

Clarification regarding the definition of the term 'unlisted securities' for the purpose of Section 112 (1) (c) (Refer clause 48 of the bill):

Date of Applicability: AY 2017-18

- Existing provisions of clause (c) of sub-section (1) of section 112 provide tax rate of 10% for long-term capital gain arising from transfer of securities, whether listed or unlisted. The expression "securities" for the purpose of the said provision has the same meaning as in clause (h) of section 2 of the Securities Contracts (Regulations) Act, 1956 (32 of 1956) ("SCRA"). A view has been taken by the courts that shares of a private company are not "securities".
- With a view to clarify the position so far as taxability is concerned, it is proposed to amend the provisions of section 112(1)(c) of the Income-tax Act, so as to provide that long-term capital gains arising from the transfer of a capital asset being shares of a private company shall be chargeable to tax at the rate of 10%.

Time limit for carry forward and set off of such loss under section 73A of the Income-tax Act (Refer clause 35 & 69 of the bill):

Date of Applicability: AY 2016-17

- The existing provisions of section 73A of the Act provide that any loss, computed in respect of any specified business referred to in section 35AD shall not be set off except against profits and gains, if any, of any other specified business. Further, section 80 of the Act inter-alia provides that a loss which has not been determined in pursuance of return filed in accordance with the provisions of sub-section (3) of section 130, shall not be carried forward and set-off under sub-section (1) of section 72 or sub-section (2) of section 73 or sub-section (1) or sub-section (3) or section 74 or sub-section 74A.
- In accordance with the scheme of the Act, this loss is to be allowed if the return is filed within the specified time i.e. by the due date of filing of the return of the income as provided in section 80 for other losses determined under the Act.
- Accordingly, it is proposed to amend section 80 so as to provide that the loss determined as per section 73A of the Act shall not be allowed to be carried forward and set off if such loss has not been determined in pursuance of a return filed in accordance with the provisions of sub-section (3) of section 130.

- It is also proposed to amend the said sub-section (3) of section 139 so as to give reference of sub-section (2) of section 73A in the said sub-section.

Amortisation of spectrum fee for purchase of spectrum (Section 35ABA inserted in IT Act) (Refer clause 16 of the bill):

Date of Applicability: AY 2017-18

Under section 32 of the Act, depreciation is allowed in respect of assets including certain intangible assets. Under section 35ABB of the Act, amortisation of license fee in case of telecommunication service is provided.

There is uncertainty in tax treatment of payments in respect of Spectrum i.e. whether spectrum is an intangible asset and the spectrum fees paid is eligible for depreciation under section 32 of the Act or whether it is in the nature of a 'license to operate telecommunication business' and eligible for deduction under section 35ABB of the Act.

In order to provide clarity and avoid any future litigation and controversy, it is proposed to insert a new section 35ABA in the Act to provide for tax treatment of spectrum fee. The section seeks to provide:

- any capital expenditure incurred and actually paid by an assessee on the acquisition of any right to use spectrum for telecommunication services by paying spectrum fee will be allowed as a deduction in equal instalments over the period for which the right to use spectrum remains in force.
- where the spectrum is transferred and proceeds of the transfer are less than the expenditure remaining un allowed, a deduction equal to the expenditure remaining un allowed as reduced by the proceeds of transfer, shall be allowed in the previous year in which the spectrum has been transferred.
- if the spectrum is transferred and proceeds of the transfer exceed the amount of expenditure remaining un allowed, the excess amount shall be chargeable to tax as profits and gains of business in the previous year in which the spectrum has been transferred.
- un allowed expenses in a case where a part of the spectrum is transferred would be amortised.
- under the scheme of amalgamation, if the amalgamating company sells or transfer the spectrum to an amalgamated company, being an Indian company, then the provisions of this section will apply to amalgamated company as they would have applied to amalgamating company if later has not transferred the spectrum.

Rationalization of tax deduction at Source (TDS) provisions (Section 192A, 194BB, 194C, 194D, 194DA, 194EE, 194G, 194H, 194K, 194L, 194LA of IT Act) (Refer clause 70 to 79 of the bill):

Date of Applicability: 01.06.2016

Under the scheme of deduction of tax at source as provided in the Act, every person responsible for payment of any specified sum to any person is required to deduct tax at source at the prescribed rate and deposit it with the Central Government within specified time. However, no deduction is required to be made if the payments do not exceed prescribed threshold limit.

In order to rationalise the rates and base for TDS provisions, the existing threshold limit for deduction of tax at source and the rates of deduction of tax at source are proposed to be revised as mentioned in table below:

Increase in threshold limit of deduction of tax at source on various payments mentioned in the relevant sections of the Act:

Section	Heads	Existing Threshold Limit	Proposed Threshold Limit
192A	Payment of accumulated balance due to an employee	30,000	50,000
194BB	Winnings from Horse Race	5,000	10,000
194C	Payments to Contractors	75,000	1,00,000
194LA	Payment of Compensation on acquisition of certain Immovable Property	2,00,000	2,50,000
194D	Insurance commission	20,000	15,000
194G	Commission on sale of lottery tickets	1,000	15,000
194H	Commission or brokerage	5,000	15,000

Revision in rates of deduction of tax at source on various payments mentioned in the relevant sections of the Act:

Section	Heads	Existing Rate of TDS (%)	Proposed Rate of TDS (%)
194DA	Payment in respect of Life Insurance Policy	2%	1%
194EE	Payments in respect of NSS Deposits	20%	10%
194D	Insurance commission	10%	5%
194G	Commission on sale of lottery tickets	10%	5%
194H	Commission or brokerage	10%	5%

Certain non-operational provisions to be omitted:

Section	Heads	Proposal
194K	Income in respect of Units	To be omitted w.e.f. 01.06.2016
194L	Payment of Compensation on acquisition of Capital Asset	To be omitted w.e.f. 01.06.2016

Enabling of Filing of Form 15G/15H for rental payments (Section 197A of IT Act) (Refer clause 84 of the bill):

Date of Applicability: 01.06.2016

The provision of sub-section 194-I of the Act, inter alia, provides for tax deduction at source (TDS) for payments in the nature of rent beyond a threshold limit. The existing provisions provide threshold of Rs. 1,80,000 per financial year for deduction of tax under this section. In spite of providing higher threshold for deduction tax under this section, there may be cases where the tax payable on recipient's total income, including rental payments, will be nil. The existing provisions of section 197A of the Income-tax Act, inter alia provide that tax shall not be deducted, if the recipient of certain payments on which tax is deductible furnishes to the payer a self- declaration in prescribed Form No 15G/15H declaring that the tax on his estimated total income of the relevant previous year would be nil. In order to reduce compliance burden in such cases, it is proposed to amend the provisions of section 197A for making the recipients of payments referred to in section 194-I also eligible for filing self-declaration in Form no 15G/15H for non-deduction of tax at source in accordance with the provisions of section 197A.

Rationalization of Section 50C in case sale consideration is fixed under agreement executed prior to the date of registration of immovable property (Refer clause 30 of the bill):

Date of Applicability: AY 2017-18

- Under the existing provisions contained in Section 50C, in case of transfer of a capital asset being land or building on both, the value adopted or assessed by the stamp valuation authority for the purpose of payment of stamp duty shall be taken as the full value of consideration for the purposes of computation of capital gains.
- It is proposed to amend the provisions of section 50C so as to provide that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of computing the full value of consideration.
- It is further proposed to provide that this provision shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, on or before the date of the agreement for the transfer of such immovable property.

Rationalization of conversion of a company into LLP (Section 47 of IT Act) (Refer clause 28 of the bill):

Date of Applicability: AY 2017-18

- Existing provisions of Section 47(xiiib) provides that conversion of a private limited or unlisted public company into Limited Liability Partnership (LLP) shall not be regarded as transfer, if certain conditions are fulfilled, which, inter alia, include a condition that the company's gross receipts, turnover or total sales in any of the preceding three years did not exceed Rs. 60 lakh.
- It is proposed to amend the said section so as to provide that, for availing tax-neutral conversion, in addition to the existing conditions, the value of the total assets in the books of accounts of the company in any of the three previous years proceeding the previous year in which the conversion takes place, should not exceed Rs. 5 crore.

Rationalization of tax treatment of Recognized Provident Funds, Pension Funds and National Pension Scheme (Section 10(12), 10(12A), 10(13), 17, 80CCD of IT Act) (Refer clause 7, 9, 36 & 112 of the bill):

Date of Applicability: AY 2017-18

- Under the existing provisions of the Income-tax Act, tax treatment for the NPS referred to in section 80CCD is Exempt, Exempt and Tax (EET) i.e., the monthly/periodic contributions during the pension accumulation phase are allowed as deduction from income for tax purposes; the returns generated on these contributions during the accumulation phase are also exempt from tax; however, the terminal benefits on exit or superannuation, in the form of lump sum withdrawals, are taxable in the hands of the individual subscriber or his nominee in the year of receipt of such amounts.
- However, commutation of Government Pension and superannuation fund is exempt from taxation. The monthly contribution, annual accrued income, advances/ withdrawals for specific purposes and final withdrawal from the Recognised Provident Funds (RPFs) on superannuation are also accorded EEE status i.e. Exempt, Exempt, Exempt.
- In order to bring greater parity in tax treatment of different types of pension plans, it is proposed to amend section 10 so as to provide that in respect of the contributions made on or after 01.04.2016 by an employee participating in a recognised provident fund and superannuation fund, up to 40 % of the accumulated balance attributable to such contributions on withdrawal shall be exempt from tax.

- Under the existing provisions, any payment from an approved superannuation fund made to an employee in lieu of or in commutation of an annuity on his retirement at or after a specified age or on his becoming incapacitated prior to such retirement is exempt from tax.
- It is proposed to amend the said provisions so as to provide that any payment in commutation of an annuity purchased out of contributions made on or after 01.04.2016, which exceeds 40% of the annuity, shall be chargeable to tax.
- Under the existing provisions of section 80CCD, any payment from National Pension System Trust to an employee on account of closure or his opting out of the pension scheme is chargeable to tax.
- It is proposed to provide that any payment from National Pension System Trust to an employee on account of closure or his opting out of the pension scheme referred to in Section 80CCD, to the extent it does not exceed 40% of the total amount payable to him at the time of closure or his opting out of the scheme, shall be exempt from tax. However, the whole amount received by the nominee, on death of the assessee shall be exempt from tax.
- Under section 17, perquisite includes the amount of any contribution exceeding Rs. 1 Lakh to an approved superannuation fund by the employer in the hands of the assessee.
- Under the Part A of Fourth Schedule to the Income-tax Act contributions made by employer to the credit of an employee participating in a recognised provident fund, which are in excess of 12% of the salary of the employee, are liable to tax in the hands of the employee. However, there is no monetary limit for the contribution made by the employer though there is a monetary ceiling for employee's contribution.
- The limit of contribution by the employee eligible under section 80C of the Act has been increased from Rs. 1 Lacs to Rs. 1.50 Lacs vide Finance Act(No.2), 2014. Therefore, in order to bring parity in the monetary limit for contribution by the employer and the employee, it is proposed to amend the said section and said schedule so as to provide the limit of employer's contribution to Rs. 1 Lacs to Rs. 1.50 Lacs, without attracting tax.
- Further with a view to bring all the pension plans under one umbrella, it is also proposed to amend:
 - the said schedule so as to provide exemption to one-time portability from a recognised provident fund to National Pension System;
 - clause (13) of section 10 so as to provide that any payment from an approved superannuation fund by way of transfer to the account of the employee under NPS referred to in section 80CCD and notified by the Central Government shall be exempt from tax.

Comment: Earlier, RPF, EPF and NPS withdrawals were exempt from taxes but now exempt up to 40% of the accumulated balances. Superannuation fund was taxable at the time of withdrawals but now withdrawals up to 40% of the accumulation are exempt from taxes. Further Public provident Fund is still out of this provisions and amount received at the time of maturity of PPF is still under EEE model.

Filing of return of Income (Section 139 of IT Act) (Refer clause 65 of the bill):

Date of Applicability: AY 2017-18

- Existing provisions of section 139(1) provide that every person referred to therein shall file a return of income on or before the due date. The sixth proviso to the said section provides that every person, being an individual or HUF or an AOP or a BOI, whether incorporated or not or any artificial juridical person, if his total income or of any other person in respect of which he is assessable under this Act during the previous year, without giving effect to provisions of section 10A or section 10B or section

10BA or Chapter VI-A, exceeds the maximum amount which is not chargeable to income tax shall be liable to furnish return on or before the due date.

- Existing provision of sub-section (4) of section 139 provides that a person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under sub-section (1) of section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.
- Sub-section (5) of the section 139 provides that if any person, having furnished the return under sub-section (1), or in pursuance of a notice issued under sub-section (1) of section 142 discovers any omission or any wrong statement therein, he may furnish a revised return at any time before one year from the end of the relevant assessment year or completion of assessment, whichever is earlier.
- Clause (aa) of Explanation to sub-section (9) of the section 139 provides that a return of income shall be regarded as defective unless the self-assessment tax together with interest, if any, payable in accordance with the provisions of section 140A, has been paid on or before the date of furnishing of return.
- Who need to file return: It is proposed to amend the sixth proviso to sub-section (1) of the section 139 to include that if a person during the previous year earns income which is exempt under clause (38) of section 10 and income of such person without giving effect to the said clause of section 10 exceeds the maximum amount which is not chargeable to tax, shall also be liable to file return of income for the previous year within the due date.
- Time duration for filing of return: It is also proposed to substitute sub-section (4) of the aforesaid section to provide that any person who has not furnished a return within the time allowed to him under sub-section (1), may furnish the return for any previous year at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.
- Time duration for revision of return: It is also proposed to substitute sub-section (5) of the aforesaid section so as to provide that if any person, having furnished a return under sub-section (1) or under sub-section (4), or in a return furnished in response to notice issued under sub-section (1) of section 142, discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.
- Defective return: It is also proposed to omit clause (aa) of the Explanation to sub-section (9) of aforesaid section to provide that a return which is otherwise valid would not be treated defective merely because self-assessment tax and interest payable in accordance with the provisions of section 140A has not been paid on or before the date of furnishing of the return.

Processing under section 143(1) is mandated before assessment (Refer clause 66 of the bill):

Date of Applicability: AY 2017-18

- Under the existing provision of sub-section (1D) of section 143, processing of a return is not necessary where a notice has been issued to the assessee under sub-section (2) of the said section.
- It is proposed to amend sub-section (1D) of the aforesaid section to provide that before making an assessment under sub-section (3) of section 143, a return shall be processed under sub-section (1) of section 143.

Comment: Now the refund against the return will be processed before the completion of assessment.

Rationalisation of time limit for assessment, reassessment and recomputation (Section 153 of IT Act) (Refer clause 68 of the bill):

Date of Applicability: 01.06.2016

The existing statutory time limit for completion of assessment proceedings is two years from the end of the assessment year in which the income was first assessable. It is desirable that proceedings under the Act are finalised more expeditiously as digitisation of processes within the Department has enhanced its efficiency in handling workload. In order to simplify the provisions of existing section 153 by retaining only those provisions that are relevant to the current provisions of the Act, section 153 is proposed to be substituted with the following changes in time limit from the existing time limits:

- the period, for completion of assessment under section 143 or section 144 be changed from existing two years to twenty-one months from the end of the assessment year in which the income was first assessable;
- the period for completion of assessment under section 147 be changed from existing one year to nine months from the end of the financial year in which the notice under section 148 was served;
- the period for completion of fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment be changed from existing one year to nine months from the end of the financial year in which the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, or the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner.

It is further proposed to provide that the period for giving effect to an order, under sections 250 or 254 or 260 or 262 or 263 or 264 or an order of the Settlement Commission under sub-section (4) of section 245D, where effect can be given wholly or partly otherwise than by making a fresh assessment or reassessment shall be three months from the end of the month in which order is received or passed, as the case may be, by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. It is also proposed that in a case where it is not possible for the Assessing Officer to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such reasons in writing from the Assessing Officer, if satisfied, may allow additional time of six months to give effect to the said order. However, in respect of cases pending as on 1st June 2016, the time limit for passing such order is proposed to be extended to 31.3.2017.

It is also proposed that where the assessment, reassessment or re computation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, 254, 260, 262, 263, or section 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under the Income-tax Act, then such assessment, reassessment or re computation shall be made on or before the expiry of twelve months from the end of the month in which such order is received by the Principal Commissioner or Commissioner. However, for cases pending as on 1.6.2016, the time limit for taking requisite action is proposed to be 31.3.2017 or twelve months from the end of the month, in which such order is received, whichever is later.

It is also proposed that where an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147, such assessment be made on or before the expiry of twelve months from the end of the month in which the assessment order in the case of the firm is passed. However, for cases pending as on 1.6.2016, the time limit for taking requisite action is proposed to be 31.3.2017 or twelve months from the end of the end of the month in which order in case of firm is passed, whichever is later.

It is also proposed to make consequential changes in time limit for completion of assessment or reassessment by the Assessing Officer in accordance with the extension of time limit provided to the Transfer Pricing Officer in certain cases by amendment in sub-section (3A) to section 92CA.

Rationalisation of time limit for assessment in search cases (Section 153B of IT Act) (Refer clause 69 of the bill):

Date of Applicability: 01.06.2016

It is proposed to amend the time limit for completion of assessments made under section 153A or section 153C cases to bring it in sync with the new time limits provided for other cases. In order to simplify the provisions of existing section 153B by retaining only those provisions that are relevant to the current provisions of the Act, section 153B is proposed to be substituted with the following changes in time limit from the existing time limits as under:

- The limitation for completion of assessment under section 153A, in respect of each assessment year falling within six assessment years referred to in clause (b) of sub-section (1) of section 153A and in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A be changed from existing two years to twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed.
- The limitation for completion of assessment in case of other person referred to in section 153C shall be changed from existing two years to twenty-one months from the end of the financial year in which the last of the authorisation for search under Section 132 or requisition under section 132A was executed or nine months (changed from the existing one year) from the end of the financial year in which the books of account or documents or assets seized or requisition are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later.

The provisions of section 153B as they stood immediately before their amendment by the Finance Act, 2016, shall apply to and in relation to any order of assessment, reassessment or re computation made before the 1st day of June, 2016.

Rationalization of advance tax payment schedule under section 211 and charging of interest under section 234C (Refer clause 87 & 89 of the bill):

Date of Applicability: 01.06.2016

- As per the existing provisions of sub-section (1) of section 211, the advance tax payment schedule for a company is 15%, 45%, 75% and 100% of tax payable on the current income to be paid by 15th June, 15th September, 15th December and 15th March respectively. For other assesseees, the advance tax payment schedule is 45%, 65% and 100% of tax payable on current income to be paid by 15th September, 15th December and 15th March respectively.
- It is proposed to rationalise schedule for advance tax payment and prescribe the same advance tax schedule for all assesseees other than an eligible assessee in respect of eligible business as referred to in section 44AD. The modification in payment schedule will facilitate forecasting of revenue collections during a financial year with greater accuracy.
- It is further proposed that an eligible assessee in respect of eligible business referred to in section 44AD opting for computation of profits or gains of business on presumptive basis, shall be required to pay advance tax of the whole amount in one instalment on or before the 15th March of the financial year.
- Consequential amendments are also proposed to be made to section 234C which provides for chargeability of interest for deferment of advance tax to bring it in sync with the amendments proposed in section 211.
- It is also proposed that interest under section 234C shall not be chargeable in case of an assessee having income under the head "Profits and gains of business or profession" for the first time, subject to fulfilment of conditions specified therein.

Comment: Currently, non-corporates taxpayers pay advance tax in three instalments, viz. @30%, 60%, and 100% of tax on or before 15th September, 15th December and 15th March of each fiscal year respectively. The Finance Bill, 2016 proposes to treat the non-corporates at par with corporate taxpayers. In other words, non-corporate taxpayers shall be required to pay advance tax in four instalments', viz; 15%, 45%, 75% and 100% of tax on or before 15th June, 15th September, 15th December and 15th March respectively.

Earlier the taxpayers opting for presumptive taxation scheme under Section 44AD were not liable to pay advance tax. Further, these taxpayers were not liable for interest under sections 234B and 234C. It is now proposed that such taxpayers shall also pay the advance tax on or before 15th March of each previous year. Consequently, interest for default and deferment of advance tax under Section 234B and Section 234C respectively, shall also be levied.

Payment of interest on refund (Section 244A of IT Act) (Refer clause 90 of the bill):

Date of Applicability: 01.06.2016

- Section 244A inter alia provides that an assessee is entitled to interest on refund arising out of excess payment of advance tax, tax deducted or collected at source. It also provides that the period for which the interest is paid on such excess payment of tax begins from the 1st April of the assessment year and ends on the date on which refund is granted.
- In order to ensure filing of return within the due date it is proposed to amend section 244A to provide that in cases where the return is filed after the due date, the period for grant of interest on refund may begin from the date of filing of return.
- In the interest of fairness and equity, it is further proposed to provide that an assessee shall be eligible to interest on refund of self-assessment tax for the period beginning from the date of payment of tax or filing of return, whichever is later, to the date on which the refund is granted. For the purpose of determining the order of adjustment of payments received against the taxes due, the prepaid taxes i.e. the TDS, TCS and advance tax shall be adjusted first.
- It is also proposed to provide that where a refund arises out of appeal effect being delayed beyond the time prescribed under sub-section (5) of section 153, the assessee shall be entitled to receive, in addition to the interest payable under sub-section (1) of section 244A, an additional interest on such refund amount calculated at the rate of three per cent per annum, for the period beginning from the date following the date of expiry of the time allowed under sub-section (5) of section 153 to the date on which the refund is granted. It is clarified that in cases where extension is granted by the Principal Commissioner or Commissioner by invoking proviso to sub-section (5) of section 153, the period of additional interest, if any, shall begin from the expiry of such extended period.

Comment: Section 244A provides for interest on refund at 0.5% for every month or part of a month. Where the return is filed on or before the due date specified in section 139(1), the refund interest would be paid from 1st day of April of the assessment year. The Finance Bill, 2016 provides clarity by specifying that where the return is filed beyond the due date, interest on refund would be granted from the date of furnishing of the return. It is further proposed that where refund is arises out of self-assessment tax paid under section 140A, such amount shall also be eligible for interest from the date of furnishing of the return or payment of tax, whichever is later, and up to the date on which the refund is granted. · Where refund arises out of appeal effect and there is delay in giving effect to the order beyond the prescribed time-limit, the assessee is entitled to receive an additional interest at the rate of 3% per annum for the period after the date of expiry of the prescribed time-limit and up to the date of grant of refund.

Rationalization of penalty provisions (Section 119, 253, 270A, 271, 271A, 271AA, 271AAB, 273A, 279 of IT Act) (Refer Clause 62, 93, 96, 98, 99, 100, 101, 104 & 107 of the bill):

Date of Applicability: AY 2017-18

Under the existing provisions, penalty on account of concealment of particulars of income or furnishing inaccurate particulars of income is leviable under section 271(1)(c) of the Income-tax Act. In order to rationalize and bring objectivity, certainty and clarity in the penalty provisions, it is proposed that section 271 shall not apply to and in relation to any assessment for the assessment year commencing on or after the 01.04.2017 and subsequent assessment years and penalty be levied under the newly inserted section 270A with effect from 01.04.2017. The new section 270A provides for levy of penalty in cases of under reporting and misreporting of income.

Sub-section (1) of the proposed new section 270A seeks to provide that the Assessing Officer, Commissioner (Appeals) or the Principal Commissioner or Commissioner may levy penalty if a person has under reported his income.

It is proposed that a person shall be considered to have under reported his income if:

- the income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of section 143;
- the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished;
- the income reassessed is greater than the income assessed or reassessed immediately before such re-assessment;
- the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or 115JC, as the case may be, is greater than the deemed total income determined in the return processed under clause (a) of sub-section (1) of section 143;
- the amount of deemed total income assessed as per the provisions of section 115JB or 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed;
- the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

The amount of under-reported income is proposed to be calculated in different scenarios as discussed herein. In a case where return is furnished and assessment is made for the first time the amount of under reported income in case of all persons shall be the difference between the assessed income and the income determined under section 143(1)(a). In a case where no return has been furnished and the return is furnished for the first time, the amount of under-reported income is proposed to be:

- for a company, firm or local authority, the assessed income;
- for a person other than company, firm or local authority, the difference between the assessed income and the maximum amount not chargeable to tax.

In case of any person, where income is not assessed for the first time, the amount of under reported income shall be the difference between the income assessed or determined in such order and the income assessed or determined in the order immediately preceding such order.

It is further proposed that in a case where under reported income arises out of determination of deemed total income in accordance with the provisions of section 115JB or section 115JC, the amount of total under reported income shall be determined in accordance with the following formula:

$$(A - B) + (C - D)$$

where,

A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);

B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under reported income;

C = the total income assessed as per the provisions contained in section 115JB or section 115JC;
 D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of under reported income.

However, where the amount of under reported income on any issue is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

It is clarified that in a case where an assessment or reassessment has the effect of reducing the loss declared in the return or converting that loss into income, the amount of under reported income shall be the difference between the loss claimed and the income or loss, as the case may be, assessed or reassessed.

Calculation of under-reported income in a case where the source of any receipt, deposit or investment is linked to earlier year is proposed to be provided based on the existing Explanation 2 to sub-section (l) of section 271 (1).

It is also proposed that the under-reported income under this section shall not include the following cases:

- where the assessee offers an explanation and the income-tax authority is satisfied that the explanation is bona fide and all the material facts have been disclosed;
- where such under-reported income is determined on the basis of an estimate, if the accounts are correct and complete but the method employed is such that the income cannot properly be deducted therefrom;
- where the assessee has, on his own, estimated a lower amount of addition or disallowance on the issue and has included such amount in the computation of his income and disclosed all the facts material to the addition or disallowance;
- where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction under Chapter X and disclosed all the material facts relating to the transaction;
- where the undisclosed income is on account of a search operation and penalty is leviable under section 271AAB.

It is proposed that the rate of penalty shall be fifty per cent of the tax payable on under-reported income. However in a case where under reporting of income results from misreporting of income by the assessee, the person shall be liable for penalty at the rate of two hundred per cent of the tax payable on such misreported income. The cases of misreporting of income have been specified as under:

- misrepresentation or suppression of facts;
- non-recording of investments in books of account;
- claiming of expenditure not substantiated by evidence;
- recording of false entry in books of account;
- failure to record any receipt in books of account having a bearing on total income;
- failure to report any international transaction or deemed international transaction under Chapter X.

It is also proposed that in case of company, firm or local authority, the tax payable on under reported income shall be calculated as if the under-reported income is the total income. In any other case the tax payable shall be thirty per cent of the under-reported income.

It is also proposed that no addition or disallowance of an amount shall form the basis for imposition of penalty, if such addition or disallowance has formed the basis of imposition of penalty in the case of the person for the same or any other assessment year.

Consequential amendments have been proposed in sections 119, 253, 271A, 271AA, 271AAB, 273A and 279 to provide reference to newly inserted section 270A.

Amendment of section 271AAB (Refer Clause 101 of the bill):

Date of Applicability: AY 2017-18

- Existing provision of section 271AAB(1)(c) provides that in a case not covered under the provisions of clauses (a) and (b) of the said sub-section of section 271 AAB, a penalty of a sum which shall not be less than 30% but which shall not exceed 90% of the undisclosed income of the specified previous year shall be levied in case where search has been initiated under section 132 on or after the 01.07.2012.
- In order to rationalise the rate of penalty and to reduce discretion it is proposed to amend that section 271AAB(1)(c) to provide for levy of penalty on such undisclosed income at a flat rate of 60% of such income.

Amendment of Section 272A (Refer Clause 103 & 111 of the bill):

Date of Applicability: AY 2017-18

- Existing provision of Sub-section (1) provides for levy of penalty of Rs. 10,000/- for each failure or default to answer the questions raised by an income-tax authority under the Income-tax Act, refusal to sign any statement legally required during the proceedings under the Income-tax Act or failure to attend to give evidence or produce books or documents as required under section 131(1) of the Income-tax Act.
- It is proposed to amend section 272A(1) to further include levy of penalty of Rs. 10,000/- for each default or failure to comply with a notice issued under section 142(1) or section 143(2) or failure to comply with a direction issued under section 142(2A).
- It is further proposed to amend section 272A(3) to provide that penalty in case of failure referred above shall be levied by the income tax authority issuing such notice or direction.
- It is also proposed to make consequential amendment to section 288 by insertion of a new clause (d) in sub- section (1) of section 272A in the Income-tax Act relating to penalty for failure to comply with the notices and directions specified therein.

Extension of time limit to Transfer Pricing Officer in certain cases (Section 92CA of IT Act) (Refer clause 46 of the bill):

Date of Applicability: 01.06.2016

- As per the existing provisions, the Transfer Pricing Officer (TPO) has to pass his order sixty days prior to the date on which the limitation for making assessment expires. It is noted that at times seeking information from foreign jurisdictions becomes necessary for determination of arm's length price by the TPO and at times proceedings before the TPO may also be stayed by a court order.
- It is proposed to amend sub-section (3A) of section 92CA to provide that where assessment proceedings are stayed by any court or where a reference for exchange of information has been made by the competent authority, the time available to the Transfer Pricing Officer for making an order after excluding the time for which assessment proceedings were stayed or the time taken for receipt of information, as the case may be, is less than sixty days, then such remaining period shall be extended to sixty days.

Assumption of jurisdiction of Assessing Officer (Section 124 of IT Act) (Refer clause 63 of the bill):Date of Applicability: 01.06.2016

The existing sub-section (3) of the section 124, inter-alia, provides that no person shall be entitled to call in question the jurisdiction of an Assessing Officer in a case where return is filed under section 139, after the expiry of one month from the date on which he was served with a notice issued under sub-section (1) of section 142 or sub-section (2) of section 143 or after the completion of the assessment, whichever is earlier. Currently, this provision does not specifically refer to notices issued under section 153A or section 153C which relate to assessment in cases where a search and seizure action has been taken or cases connected to such cases.

Instances have come to notice wherein the jurisdiction of an Assessing Officer in such cases have been called into question at the appellate stages, despite the fact that order passed under section 153A or 153C is read with section 143(3) of the Act. In order to remove any ambiguity in such cases it is proposed to amend sub-section (3) of section 124 to specifically provide that cases where search is initiated under section 132 or books of accounts, other documents or any assets are requisitioned under section 132A, no person shall be entitled to call into question the jurisdiction of an Assessing Officer after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 153A or sub-section (2) of section 153C or after the completion of the assessment, whichever is earlier.

Legislative framework to enable and expand the scope of electronic processing of information (Section 133C, 143, 147 of IT Act) (Refer clause 64, 66 & 67 of the bill):Date of Applicability: 01.06.2016

- The existing provisions of section 133C empower the prescribed income-tax authority to issue notice calling for information and documents for the purpose of verification of information in its possession.
- In order to expedite verification and analysis of the information and documents so received, it is proposed to amend section 133C to provide adequate legislative backing for processing of information and documents so obtained and making the outcome thereof available to the Assessing Officer for necessary action, if any.
- It is also proposed to amend Explanation 2 to section 147 to provide for reopening of cases by the AO on the basis of the information so received.
- Clause (a) of sub-section (1) of section 143 provides that, a return filed is to be processed and total income or loss is to be computed after making the adjustments on account of any arithmetical error in the return or on account of an incorrect claim, if such incorrect claim is apparent from any information in the return.
- In order to expeditiously remove the mismatch between the return and the information available with the Department, it is proposed to expand the scope of adjustments that can be made at the time of processing of returns under sub-section (1) of section 143. It is proposed that such adjustments can be made based on the data available with the Department in the form of audit report filed by the assessee, returns of earlier years of the assessee, 26AS statement, Form 16, and Form 16A. However, before making any such adjustments, in the interest of natural justice, intimation shall be given to the assessee either in writing or through electronic mode requiring him to respond to such adjustments. The response received, if any, will be duly considered before making any adjustment. However, if no response is received within thirty days of issue of such intimation, the processing shall be carried out incorporating the adjustments.

Immunity from penalty and prosecution in certain cases by inserting new section 270AA (Refer clause 91 & 97 of the bill):

Date of Applicability: AY 2017-18

- It is proposed to provide that an assessee may make an application to the Assessing Officer for grant of immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C, provided he pays the tax and interest payable as per the order of assessment or reassessment within the period specified in such notice of demand and does not prefer an appeal against such assessment order. The assessee can make such application within one month from the end of the month in which the order of assessment or reassessment is received in the form and manner, as may be prescribed.
- It is proposed that the Assessing Officer shall, on fulfilment of the above conditions and after the expiry of period of filing appeal as specified in sub-section (2) of section 249, grant immunity from initiation of penalty and proceeding under section 276C if the penalty proceedings under section 270A has not been initiated on account of the following, namely:
 - misrepresentation or suppression of facts;
 - failure to record investments in the books of account;
 - claim of expenditure not substantiated by any evidence;
 - recording of any false entry in the books of account;
 - failure to record any receipt in books of account having a bearing on total income; or
 - failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction to which the provisions of Chapter X apply.
- It is proposed that the Assessing Officer shall pass an order accepting or rejecting such application within a period of one month from the end of the month in which such application is received. However, in the interest of natural justice, no order rejecting the application shall be passed by the Assessing Officer unless the assessee has been given an opportunity of being heard. It is proposed that order of Assessing Officer under the said section shall be final.
- It is proposed that no appeal under section 246A or an application for revision under section 264 shall be admissible against the order of assessment or reassessment referred to in clause (a) of sub-section (1), in a case where an order under section 270AA has been made accepting the application.
- Clause (b) of sub-section (2) of section 249 provides that an appeal before the Commissioner (Appeals) is to be made within thirty days of the receipt of the notice of demand relating to an assessment order.
- It is proposed to provide that in a case where the assessee makes an application under section 270AA of the Income-tax Act seeking immunity from penalty and prosecution, then, the period beginning from the date on which such application is made to the date on which the order rejecting the application is served on the assessee shall be excluded for calculation of the aforesaid thirty days period. The proposed amendment is consequential to the insertion of section 270AA.

Disclaimer:

Union Finance budget was presented by the Hon'ble Finance Minister of India on 29 February 2016. This document contains the views of the author on the analysis of the Union Finance Bill 2016 with budget highlights, which should not be relied upon for decision making and for giving advices. Though due care has been taken in the preparation however, the observations and comments are the personal opinion of the author. The observations are on the Budget 2016 as presented in the Parliament and are subject to amendments (if any).

The document captures the provisions which are of interest to a larger group of persons (such as service tax and income tax provisions) and do not cover all the amendments proposed in the Budget 2016. The author has taken the initiative to document the analysis of the Union Finance Budget and seeks suggestions or feedback. These suggestions / feedback will encourage the author.

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