THE UNION BUDGET 2017-18

DIRECT & INDIRECT TAX PROPOSALS

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Prepared for the use of clients and professional associates.

The document summarises the proposals made in the Finance Bill 2017-18 and key policy announcements and reviews them objectively.

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ABOUT VAISH ASSOCIATES ADVOCATES

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- Income Tax
- Transfer Pricing
- International Taxation

Indirect Tax

- Goods and Services Tax (GST)
- Customs
- Central Excise
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- Central Sales Tax and Value Added Tax (VAT)

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DIRECT TAX PROPOSALS

PERSONAL TAXATION

RATES OF TAX

Individual, Hindu Undivided Family, Association of Persons, Body of Individuals, Artificial juridical person (Including Surcharge, Education cess and Secondary & Higher Education cess)

Income	Existing Slabs (A.Y. 2017-18)	Proposed Slabs (A.Y. 2018-19)
A) General (other than Senior citizens & Very senior citizens):		
Upto ₹ 2,50,000*	NIL	NIL
Between ₹ 2,50,001 and ₹ 5,00,000*	10.30%	**5.15%**
Between ₹ 5,00,001 and ₹ 10,00,000	20.60%	20.60%
Between ₹ 10,00,001 and ₹ 50,00,000	30.90%	30.90%
Between ₹ 50,00,001 and ₹ 1 crore	30.90%	**33.99%**
Above ₹ 1 crore	35.53%	35.53%
B) Senior citizens - Resident (aged 60 years or above but less than 80 years):		
Upto ₹ 3,00,000*	NIL	NIL
Between ₹ 3,00,001 and ₹ 5,00,000*	10.30%	**5.15%**
Between ₹ 5,00,001 and ₹ 10,00,000	20.60%	20.60%
Between ₹ 10,00,001 and ₹ 50,00,000	30.90%	30.90%
Between ₹ 50,00,001 and ₹ 1 crore	30. 90%	**33.99%**
Above ₹ 1 crore	35.53%	35.53%
C) Super Senior Citizen – Resident (aged 80 years or more)		
Upto ₹ 5,00,000	NIL	NIL
Between ₹ 5,00,001 and ₹ 10,00,000	20.60%	**20.60%**
Between ₹ 10,00,001 and ₹ 50,00,000	30.90%	30.90%
Between ₹ 50,00,001 and ₹ 1 crore	30.90%	**33.99%**
Above ₹ 1 crore	35.53%	35.53%

*** NOTE:**

Rebate - maximum of ₹ 2,500 from the tax payable would be admissible under section 87A of the Act to those individuals whose total income does not exceed ₹ 3,50,000 p.a.

Tax exemption on partial withdrawal from NPS

[Clause 6] **(w.e.f. 01.04.2018)**

- Section 10(12A) provides that payment from National Pension System (NPS) trust to an employee on closure of his account or opting out shall be exempt upto 40% of total amount payable to him.
- Sub-section (2) of section 20 provided in Chapter VI of the Pension Fund Regulatory Development Authority Act, 2013, permits withdrawals, not exceeding twenty-five per cent of the contribution made by the subscriber, from the individual pension account subject to certain conditions specified by the regulations, such as purpose, frequency and limits.
- Such partial withdrawals are presently not exempted from tax under the Act.
- In order to provide further relief to the employee subscriber, clause (12B) is proposed to be inserted to provide exemption in respect of aforesaid partial withdrawals, to the extent of 25% of the original contribution, made by the employee in accordance with the terms and conditions specified under Pension Fund Regulatory Development Authority Act, 2013 and regulations made thereunder

Enhancement of limit of deduction under section 80CCD

[Clause 33] **(w.e.f. 01.04.2018)**

- Under the existing provisions of section 80CCD (1) of the Act, an individual, not under any employment, is allowed deduction in respect of amount deposited in a previous year in his account under a notified pension scheme provided the same does not exceed 10% of his gross total income.
- It has now been proposed to enhance the above limit from 10% to 20% of the gross total income.
- It is, however, to be noted that the amount of deduction allowable under sub section (1) of this section shall not exceed ₹ 1.50 lacs.

Phase out of deduction under section 80CCG

[Clause 34] **(w.e.f. 01.04.2018)**

- Under the existing provisions of section 80CCG, deduction upto ₹ 25,000 is admissible to an individual investor who invests in specified listed equity shares or units of equity oriented fund, subject to conditions specified therein. The said deduction is available for 3 consecutive assessment years starting from the year of initial investment.

- It is now being proposed that deduction under section 80CCG shall be phased out and shall not be available in respect of amount to be first invested during assessment year 2018-19 and onwards.

- Grand fathering provisions are, however, provided in respect of initial investment made during the assessment year 2017-18 or prior thereto.

Rationalization of rebate under section 87A

[Clause 38] (w.e.f. 01.04.2018)

- It is proposed that amount of rebate admissible under section 87A of the Act shall be reduced from ₹ 5,000 to ₹ 2,500 and shall be available to a resident individual assessee having gross total income of upto ₹ 3.50 lacs (as against ₹ 5 lacs earlier)

CHARITABLE TRUSTS AND INSTITUTIONS

Application of income by way of voluntary corpus donation to other trusts

[Clause 8] **(w.e.f. 01.04.2018)**

- Under the existing provisions, donation made by charitable trusts registered under section 12AA and institutions/ trusts referred in clauses (iv)/(v)/(vi)/(via) of section 10(23C) of the Act to other similar trusts/ entities out of their current year's income are treated as application of income for the donor trust.

- Existing provisions of section 11(3)(d) and Explanation to section 11(2) of the Act bars donation given by a charitable trust to another charitable trust/ aforesaid 10(23C) institutions made out of accumulated income and not out of current year's income, from being considered as application of income [refer DIT (E) vs. Bagri Foundation: 344 ITR 193 (Del)].

- Under clause (d) of section 11(1) of the Act, voluntary contributions received with specific direction that they shall form part of corpus are exempt in hands of the donee/ recipient trusts.

- It is now proposed to insert Explanation 2 to sub-section (1) of section 11 to provide that any sum contributed out of current year's income [referred to as income in clause (a) and (b) to section 11(1)] with specific direction that the same shall form part of corpus of the donee/ recipient trust or institution, shall not be treated as application of income in the hands of the donor/ payer trust.

- Similar amendment is proposed in section 10(23C) by way of inserting twelfth proviso to provide that donations/ contributions made by entities exempt under sub-clauses (iv), (v), (vi) or (via) of that section to other such exempt entities or trust under section 12AA of the Act with a specific direction that the same shall form part of the corpus of the trust or institution shall not be treated as application of income in the hands of the payer entity.

Comments/ Observations

- The amendment has been proposed to curb practice of entities exempt under sections 12AA and 10(23C) of the Act making corpus donation to other exempt entities and claiming the same as application of income where such donation is not included in the income of the donee entity nor is the same required to be mandatorily applied for charitable purposes. Being so, there may be instances of non-application of such donations/ contributions for charitable purposes by the donee entity which is claimed as application of income, by the donor.

- The proposed provision does not bar contributions made out of current year's income by a charitable entity to any other similar entity without specific direction that such donation shall form part of the corpus fund of donee.

Additional mandatory requirement in cases where objects of the trust have been modified and filing of returns

[Clauses 9 & 10] **(w.e.f. 01.04.2018)**

- Presently, there is no express provision in the Act which mandates a trust registered under sections 12A/12AA of the Act to approach the prescribed authority being the Principal Commissioner/ Commissioner of Income Tax for obtaining fresh registration certificate on modification of objects in the Trust Deed which do not conform to the conditions on the basis of which registration was earlier granted.
- It is now proposed to insert clause (ab) to section 12A(1) of the Act to provide that fresh registration certificate is required to be obtained by the trust, by making application in prescribed form within 30 days from date of adoption of modified objects which do not conform to the conditions of registration already granted.
- Consequential amendment has been made in section 12AA of the Act which provides the procedure for granting registration.
- It is also proposed to insert clause (ba) to section 12A(1) to provide that exemption under sections 11/12 would be granted only where return is furnished by the trust under section 139(4A) within the time stipulated in section 139 of the Act.

Comments/ Observations

- Form and manner of making application for fresh registration would be notified in due course.
- The condition in proposed clause (ba) to section 12A(1) refers to filing of return of income within time limit prescribed under section 139 of the Act which, inter alia, includes sub-section (4) and (5) to that section. The clause does not provide that return is to be filed within time-limit prescribed under section 139(1) of the Act. Being so, exemption would be available even in cases where return is filed belatedly or exemption is claimed in the revised return of income.
- The Memorandum records the aforesaid amendments to be clarificatory in nature.

Transparency in Electoral Funding- amendment in section 13A

[Clause 11] **(w.e.f. 01.04.2018)**

- Section 13A of the Act provides for exemption of certain incomes of political parties subject to conditions laid down in proviso thereto.

- Clause (b) of proviso to section 13A of the Act is proposed to be amended to recognize donation by way of electoral bonds (defined under section 31(3) of RBI Act, 1934). No record of names and address of person contributing, even more than ₹ 20,000, by such means is required to be maintained.

- It is proposed to insert clause (d) in the proviso to section 13A of the Act to provide that exemption under that section would not be available if any donation in excess of ₹ 2000 is received by the political party otherwise than by way of account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bonds (i.e., not in cash)

- It is now proposed to insert third proviso to section 13A to provide that exemption under that section would be granted only in cases where return is furnished by the political party under section 139(4B) within the time stipulated under section 139 of the Act.

Comments/ Observations

- The condition referred to in proposed third proviso to section 13A refers to filing of return of income within time limit prescribed under section 139 of the Act which, inter alia, includes sub-section (4) and (5) to that section. The clause does not provide that return is to be filed within time-limit prescribed under section 139(1) of the Act. Being so, exemption would be available even in cases where return is filed belatedly or exemption is claimed in the revised return of income.

- Even if a single transaction of donation exceeding ₹ 2000 is received in cash, exemption is denied in toto and not only qua the cash receipt(s).

- Aforesaid amendments have been brought to discourage cash transactions and to promote transparency in the source of funding.

- However, names and address of donors making donation by mode other than cash upto ₹ 20,000 are not required to be maintained/ provided.

Promoting digital economy- cashless donations

[Clause 35] **(w.e.f. 01.04.2018)**

- It is proposed to amend sub-section (5D) of section 80G of the Act to provide that donation exceeding of ₹ 2,000 made in cash would not be allowable as deduction under that section. Earlier, the limit was ₹ 10,000.

BUSINESS INCOME

RATES OF TAX

Domestic Company

(Including surcharge, education cess and higher education cess)

Total Turnover	**Existing Slabs (A.Y. 2017-18)**	**Proposed Slabs (A.Y. 2018-19)**
Upto ₹ 5 crores		
✦ Income upto ₹ 1 crore	29.87%	25.75%
✦ Income above ₹ 1 crore (inclusive of surcharge @ 7%)	31.96%	27.55%
₹ 5 crores to ₹ 50 crores		
✦ Income upto ₹ 10 crores (inclusive of surcharge @ 7%)	33.06%	27.55%
✦ Income above ₹ 10 crores (inclusive of surcharge @ 12%)	34.61%	28.84%
Above ₹ 50 crores		
✦ Income upto ₹ 10 crores (inclusive of surcharge @ 7%)	33.06%	33.06%
✦ Income above ₹ 10 crores (inclusive of surcharge @ 12%)	34.61%	34.61%

Promoting Digital Economy

Disallowance of depreciation u/s 32 and capital expenditure u/s 35AD on cash payment

[Clauses 13 and 16] **(w.e.f. 01.04.2018)**

- Under the existing provisions, depreciation under section 32 is allowed on the "actual cost" of asset as defined in section 43(1) of the Act.
- It is proposed to insert second proviso to section 43(1) to provide that capital expenditure, payment whereof in excess of ₹ 10,000, is made to a person in a day, by mode other than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account, shall be ignored, thereby resulting in non-allowance of depreciation on such component of cost paid in cash.
- Under the existing provisions of section 35AD of the Act, investment-linked tax incentive is available by way of deduction of whole of capital expenditure incurred for specified business in the year of incurrence.
- In order to discourage cash transactions, it is proposed to amend clause (f) to sub-section (8) of section 35AD of the Act to provide for denial of incentive on the amount of capital expenditure payment whereof, in excess of ₹ 10,000, is made otherwise than in the aforesaid modes.
- Under the existing provisions of section 43(1) read with Explanation 13 thereto, cost of capital asset on which deduction is allowed under section 35AD is treated as Nil. Further, sub-section (7B) of section 35AD of the Act provides that in case where such asset is used for purposes other than purposes specified under that section, the cost of such asset, net of depreciation that ought to be allowed if deduction under that section was not allowed, shall be deemed as the business income in the year of violation. There is, however, no corresponding provision to allow depreciation on portion of cost of capital asset deemed to be income under section 35AD(7B) of the Act.
- To remove the aforesaid anomaly, proviso to Explanation 13 to section 43(1) is proposed to be inserted to provide that the portion of cost which is subsequently deemed as income in terms of sub-section (7B) of section 35AD of the Act, shall be treated as actual cost of asset and accordingly, depreciation would be allowed to the assessee with reference to such cost.

Comments/ Observations

- The proposed amendment in relation to sections 43(1) and 35AD, does not contain exceptions corresponding to those provided in Rule 6DD, which would result in genuine hardship to the assessee in the circumstances covered by the said rule.

Deduction in respect of provision for bad and doubtful debts

[Clause 14] **(w.e.f. 01.04.2018)**

- Under the existing provisions of sub-clause (a) of section 36(1)(viia) of the Act, deduction in respect of provision for bad and doubtful debts is allowed to specified banks and financial institutions subject to the following specified limits:

  (a) 7.5 per cent of 'adjusted total income' (computed before making any deduction under section 36(1)(viia) and Chapter VIA); and

  (b) 10 per cent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner at the end of the previous year.

- In order to strengthen the financial position of banks and financial institutions, it is now proposed to enhance the limit of deduction allowable in respect of provision for bad and doubtful debts from 7.5 per cent to 8.5 per cent of the adjusted total income.

Limit on cash transactions under section 40A(3)

[Clause 15] **(w.e.f. 01.04.2018)**

- Under the existing provisions of section 40A(3) of the Act, no deduction shall be allowed in respect of expenditure, payment whereof is made in a single day, otherwise than by account payee cheque or account payee bank draft, in excess of ₹ 20,000.

- In order to discourage cash transactions, it is proposed to amend sub-section (3) of section 40A of the Act to reduce the existing threshold limit of cash payments from ₹ 20,000 to ₹ 10,000 per day.

- It is also proposed to amend the aforesaid sub-sections to include 'use of electronic clearing system through a bank account', as an eligible mode of payment.

Extension of scope of sections 43D and 43B to Co-operative Banks

[Clauses 17 & 18] **(w.e.f. 01.04.2018)**

- The existing provisions of section 43D of the Act provide that interest income in relation to certain categories of bad or doubtful debts received by specified entities would be chargeable to tax only on 'receipt basis', irrespective of the method of accounting followed by such entities. The said benefit is available only to specified banks/ financial institutions and certain public companies, excluding co-operative banks.

- It is now proposed to expand the scope of section 43D of the Act to include co-operative banks also.
- Amendment is proposed in section 43B of the Act to allow deduction in even respect of interest payable on any loan or advance availed from a co-operative bank only on actual payment basis.
- Primary agricultural credit society, primary co-operative agricultural and rural development banks have, however, been excluded from the scope of proposed amendment in sections 43B/43D of the Act.

Comments/ Observations

- In the context of the existing provisions of section 43B of the Act, there is ongoing controversy whether co-operative banks are included within the term 'scheduled bank'.
- The Bombay High Court in the case of CIT vs. Upendra T. Kapadia: 213 Taxman 384 had held that non-payment of interest to a co-operative bank would not attract provisions of section 43B of the Act.
- As a consequence of the proposed amendment, from assessment year 2018-19 onwards, deduction in respect of interest payable on loans or advances from co-operative bank would be allowable deduction only on actual payment.

Threshold for maintenance of books of accounts

[Clause 19] **(w.e.f. 01.04.2018)**

- In order to reduce compliance burden, the monetary threshold limits for maintenance of books of accounts in case of individuals and HUF as provided under section 44AA of the Act is proposed to be amended as under:

Source	Existing threshold	Proposed threshold
Income from business or profession [other than profession specified in sub-section (1) of section 44AA]	₹ 1,00,000	₹ 2,50,000
Total sales, turnover or gross receipts	₹ 10,00,000	₹ 25,00,000

Requirement of audit of accounts under section 44AB

[Clause 20] **(w.e.f. 01.04.2017)**

- Vide Finance Act, 2016, the threshold limit for applicability of presumptive taxation in case of eligible business carried on by eligible assessee was increased from ₹ 1 crore to ₹ 2 crores.
- Subsequently, it was clarified vide press release dated 20.06.2016 that if a person opts for presumptive taxation as per section 44AD(1), he shall not be required to get his accounts audited under section 44AB of the Act.
- It is now proposed to amend provisions of section 44AB to provide that if an eligible person opts for presumptive taxation in terms of section 44AD(1) of the Act, he shall not be required to get his accounts audited.

Presumptive taxation scheme under section 44AD

[Clause 21] **(w.e.f. 01.04.2017)**

- The existing provisions of section 44AD of the Act provides for presumptive taxation @8% of total turnover or gross receipts not exceeding ₹ 2 crores in a previous year.
- In order to incentivize cashless transactions, it is now proposed to amend section 44AD to reduce the existing rate of presumption taxation from 8% to 6% in respect of such amount of total turnover or gross receipts which is received by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account before the due date of filing the return of income.
- The existing presumptive rate of 8% shall continue to apply in respect of total turnover or gross receipts received in modes other than those specified above.

EXEMPTIONS AND DEDUCTIONS

Tax incentive for development of capital city of Andhra Pradesh

[Clause 6] **(w.r.e.f. 01.04.2015)**

- The existing provisions of the Act do not provide for exemption from tax on transfer of land under The Land Pooling Scheme as well as on transfer of Land Pooling Ownership Certificates (LPOCs) or reconstituted plot or land.
- The Land Pooling Scheme is an alternative form of arrangement made by the Government of Andhra Pradesh for formation of new capital city of Amaravati to avoid land-acquisition disputes

and lessen the financial burden associated with payment of compensation under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2014, wherein compensation received by the landowner in lieu of acquisition of land is exempt from income tax. Further, in Land pooling scheme, compensation may also be provided to the landowners in the form of reconstituted plot or land.

- By inserting clause (37A) in section 10, it is proposed to exempt any income arising in the hands of an individual or a HUF that is chargeable under the head "Capital gains" in respect of transfer of a specified capital asset provided the assessee:

  i. is the owner of such specified capital asset as on 02.06.2014 (date on which the State of Andhra Pradesh was reorganized) and

  ii. transfers such land under the Land Pooling Scheme covered under the relevant rules made under the provisions of the Andhra Pradesh Capital Region Development Authority Act, 2014.

- In this regard, the term 'specified asset' is defined to include:

  i. land or building or both, owned by the assessee as on 02.06.2014 and which is transferred under the scheme; or

  ii. LPOCs received in lieu of land transferred under the scheme; or

  iii. the reconstituted plot or land, if sold by the said persons within two years from the end of the financial year in which the possession of such plot or land was handed over to them.

- The above amendment is applicable retrospectively from 01.04.2015 (i.e., AY 2015-16).

- Consequential amendment is also proposed to be made in section 49 of the Act to provide that where reconstituted plot or land, received under Land Pooling Scheme is transferred after the expiry of two years from the end of the financial year in which the possession of such plot or land was handed over to the said assessee, the cost of acquisition of such plot or land shall be deemed to be its stamp duty value on the last day of the second financial year after the end of financial year in which the possession of such asset was handed over to the assessee.

- This amendment is applicable from 01.04.2018 and will apply from assessment year 2018-19 onwards.

Exemption to foreign company from sale of leftover stock of crude oil after expiry of agreement/ arrangement

[Clause 6] (w.e.f. 01.04.2018)

- Under the existing provisions, clause (48A) of section 10 of the Act provides that any income accruing or arising to a foreign company on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India shall be exempt if:

  i. the said storage and sale is pursuant to an agreement or an arrangement entered into by the Central Government or approved by the Central Government; and

  ii. the said foreign company and the said agreement or arrangement is notified by the Central Government in that behalf.

- In order to enable India to augment its strategic petroleum reserves, it is proposed to provide vide clause (48B), exemption to any income accruing or arising to a foreign company on account of **sale of leftover stock of crude oil,** if any, from the facility in India **after the expiry of the agreement or the arrangement referred to in clause (48A)** to section 10 of the Act.

- The aforesaid exemption is however subject to such conditions as may be notified by the Central Government.

Rationalization of provisions of section 10AA

[Clause 7] (w.e.f. 01.04.2018)

- Section 10AA of the Act was introduced through the Special Economic Zones Act, 2005, w.e.f., February 10, 2006 providing for deduction in respect of profits and gains derived by the undertaking established in Special Economic Zone from export of any article or thing **<u>in computing the total income</u>** of the taxpayer.

- There has been judicial controversy as to whether section 10AA is to be considered as a "deduction" or "exemption" provision. In case it is in the nature of an exemption provision, then the of the eligible unit would have to be ignored, and not be available for set off against profits of the non-eligible units. Conversely, in case section 10AA is construed as a 'deduction provision', the issue is the stage at which the deduction of profits derived from the eligible unit is to be allowed in the computation of 'total income'.

- The Courts in the context of the provisions of section 10A/10B, providing for similar deduction of profits of 100% EOU/STP units **<u>from the total income,</u>** held that profits of the eligible unit, computed on stand-alone basis, are to be reduced at the first stage, viz. while computing business income; in case of loss in the eligible units, there is no question of claiming deduction under section 10A of the Act; loss of the eligible unit would be available for set off against profit of non-eligible units. [refer Hindustan Unilever Ltd vs. DCIT: 325 ITR 102 (Bom), CIT vs. Galaxy Surfactants Ltd: 343 ITR 108 (Bom), CIT vs Black and Veatch Consulting (P) Ltd.: 348 ITR 72 (Bom), Scientific Atlanta India Technology (P) Limited: 38 SOT 252/ 129 TTJ 273 (Chennai Special Bench), CIT vs. Tyco Electronics Tools India (P) Ltd : 205 Taxman 403 (Kar HC), CIT vs Yokogawa India Limited: 341 ITR 385 (Kar HC), TEI Technologies Pvt. Ltd.: 259 CTR 186 (Del)]

- Vide Circular No.7/DV/2013 dated 16.07.2013, the Central Board of Direct Taxes ("CBDT"), opined that sections 10A/10B/10AA of the Act, are in the nature of deduction provision and accordingly, provisions of section 70/71 and 72/74 of the Act shall be applicable to said sections. The Circular, however, also provides that losses of ineligible units, if any, should be set off against the profits of the eligible units before allowing deduction under the above sections of the Act.

- The aforesaid Circular was applied by the Bangalore Bench of the Tribunal in the case of **Mindteck (India) Ltd.: 151 ITD 251** to hold that loss suffered by the unit eligible for deduction under section 10A could be set off against income from other sources, in view of the Circular issued by the CBDT, which was mandatory for the Department to apply, notwithstanding the contrary decisions rendered by the Courts.

- It was held likewise by the Delhi Bench of the Tribunal in the case of NEC HCL System Technologies Ltd. vs. ACIT: ITA No. 54597/Del/2012 vide order dated 22-01-2016. The Tribunal further held that the Department was bound by the Circulars issued by CBDT, even if such Circulars are found not to be in accordance with the law and depart/ deviate from the construction of law.

- The Supreme Court recently in a batch of cases, reported as **CIT & Anr. vs.Yokogawa India Limited: CA No. 8498 of 2013,** held that section 10A of the Act, post its amendment, was a deduction provision; the true and correct purport and effect of the amended section would have to be construed from the language used and not merely from the fact that the section had it has been retained in Chapter III; introduction of the word 'deduction' in section 10A of the Act embodied a clear enunciation of the legislative decision to alter its nature from one providing for exemption to one providing for deduction. Accordingly, the SC concluded that:

    - Deduction contemplated in section 10A of the Act is qua the eligible undertaking of an assessee to the exclusion of other eligible or non-eligible units, and

    - Deduction is to be allowed at the stage of determination of profits and gains of an eligible unit under Chapter IV and without aggregating results, including losses of other units (eligible or non-eligible) of the assessee.

- In order to nullify the law as laid down by the SC and to reiterate the position taken by the CBDT in the aforesaid Circular, Explanation is sought to be inserted in the provisions of section 10AA to clarify the intention of the Legislature to allow deduction under the section from the total income computed in accordance with the provisions of this Act, before making any deduction under the said section. In other words, such deduction is to be allowed from the total income of the assessee (as opposed to the gross total income) and not from the total income of the undertaking. It would be pertinent to note that section 80B(5) of the Act defines 'gross total income' to mean the total income computed in accordance with the provisions of the Act, before making any deduction under Chapter-VIA of the Act.

- The Finance Bill further provides that deduction under section 10AA of the Act shall not exceed the total income of the assessee, meaning whereby, in case there is a loss in the non-eligible unit, deduction under section 10AA shall be allowed out of the resultant income viz, after setting of the loss of non-eligible unit.

- The impact of the proposed amendment can be explained through following illustrations:

Case	Eligible Undertaking	Non-eligible Undertaking	Before Amendment			After Amendment		
			GTI	10AA	Total Income	GTI	10AA	Total Income
A	30	70	70	30	70	100	30	70
B	30	(70)	(70)	30	(70)	(40)	**0**	**(40)**
C	(40)	70	30	0	30	30	0	**30**
D	(80)	70	(10)	0	(10)	(10)	0	**(10)**

Comments/ Observations

- It would also be pertinent to point out that the language employed in section 10AA differs from that of section 10A/10B of the Act in as much as the latter sections provide for deduction "from the total income" whereas the former section does not provide for deduction "from the total income", but 'in computing the total income'. This distinction is however, of little significance in view of the proposed amendment. An issue may arise whether the clarification proposed in section 10AA would alter the position settled by the apex Court in relation to provisions of section 10A/10B of the Act also?

- Another issue that arises is whether the amendment could be considered as retrospective? In our opinion, although the Explanation proposed to be added uses the phrase "for the removal of doubts", the same cannot be construed as retrospective, since the said Explanation seeks to amend the substantive law relating to stage of computation of deduction, affecting the tax liability of taxpayers. [Refer Sedco Forex International Drilling Inc. vs. CIT 279 ITR 310 (SC)]

Extension of time period for profit linked deduction of start-ups

[Clause 36] (w.e.f. 01.04.2018)

- The proposed amendment seeks to extend profit linked deduction available to start-ups from 3 consecutive assessment years out of five assessment years to 3 consecutive assessment years out of seven assessment years beginning from the year when the eligible start-up is incorporated.
- This amendment is applicable in relation to assessment year 2018-19 and onwards.

Deduction in respect of profits and gains from housing projects

[Clause 37] (w.e.f. 01.04.2018)

- The existing provisions of section 80-IBA provide for 100% deduction in respect of profits and gains derived from developing and building certain housing projects subject to conditions specified therein, which, inter alia, include:
  – upper limit for built-up area of residential unit comprised in the housing project does not exceed: (i) thirty square metres in the cities of Chennai, Delhi, Kolkata and Mumbai and any place within the distance of twenty-five kilometres, measured aerially, from the municipal limits of the said cities; sixty square metres in any other place; and
  – the project shall be completed within a period of three years.
- In order to encourage the scheme for profit-linked income tax exemption for promoters of affordable housing and make the scheme more attractive, 'built-up area' has been substituted with 'carpet area'.
- "Carpet area", as per section 2 (k) of Real Estate (Regulation and Development) Act, 2016, means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under service shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.
- That apart, restriction of aerial distance of twenty-five kilometres measured from the municipal limits of the above said cities in clause (f) of sub-section (2) is also proposed to be done away with.
- Further, it is also proposed to relax the condition of period of completion of the project for claiming deduction which is presently fixed at three years to five years.

MINIMUM ALTERNATE TAX

Rationalization of the provisions of MAT/ AMT

[Clauses 46 and 48] **(w.e.f. 01.04.2018)**

- Section 115JAA is proposed to be amended to extend the period of carry forward of tax credit up to fifteen assessment years, instead of ten assessment years, immediately succeeding the assessment years in which such tax credit becomes allowable.
- Similar amendment is proposed in section 115JD to allow carry forward of AMT paid under section 115JC upto fifteen assessment years in case of non-corporate assessees.
- It is also proposed to amend section 115JAA and 115JD to provide that the amount of tax credit in respect of MAT/ AMT shall not be allowed to be carried forward to subsequent year to the extent such credit relates to the difference between the amount of foreign tax credit (FTC) allowed against MAT/ AMT and FTC allowable against the tax computed under regular provisions of Act other than the provisions relating to MAT/AMT.

  For example, the MAT liability (before FTC) is ₹ 120 and FTC is ₹ 100. Further, tax liability (before FTC) under the normal provisions of the Act is ₹ 80. The amount of tax credit of ₹ 20 in respect of MAT/ AMT computed as under shall not be allowed to be carried forward to subsequent year:

Particulars	Under MAT	Under Normal Provisions of the Act
Tax Liability (before FTC)	120	80
Less: FTC	(100)	(80)
Amount to be ignored for carry forward of tax credit		20 (Rs. 100- Rs. 80)

Rationalization of Section 115JB in line with Indian Accounting Standard (Ind-AS)

[Clause 47] **(w.e.f. 01.04.2017)**

- Every company incorporated under the Companies Act is mandatorily required to follow the provisions of the Companies Act, 2013 ("2013 Act") for the purpose of maintaining books of accounts. Section 129 of the 2013 Act (corresponding to sub-section (3A) read with sub-section (3C) of section 211 of the Companies Act) provides that every profit and loss account and balance sheet of the company shall comply with the Accounting Standards ("AS") notified under section 133 of the 2013 Act.

- In terms of section 133, the Central Government ("CG") may prescribe standards of accounting or any addendum thereto as recommended by ICAI in consultation with and after examination of the recommendation made by National Financial Reporting Authority. The Ministry of Company Affairs, Government of India ("MCA") vide vide GSR(E) 111E dated 16.02.2015 notified Companies (Indian Accounting Standards) Rules, 2015 which laid down a roadmap for implementation of Ind AS.

- Ind-AS brings a paradigm shift in the method of computation of "book profits" in view of the concept of "fair value accounting", which is a major deviation from extant accounting standards. Thus, "book profit" under section 115JB may now include a sizeable amount of notional/unrealised profits and losses which was not the case earlier.

- In view of the above, the Central Board of Direct Taxes (CBDT) constituted a committee in June, 2015 for suggesting the framework for computation of MAT liability under section 115JB for Ind AS compliant companies in the year of adoption and thereafter. After taking into account all the suggestions/ comments received, the Committee submitted its final report on 22nd December, 2016.

- In light of the aforesaid report, section 115JB is proposed to be amended to provide the framework for computation of book profit for Ind AS compliant companies in the year of adoption and thereafter.

- The main features of the proposed framework are as under:

  A. MAT on Ind AS compliant financial statement

  - No further adjustment to the net profit before Other Comprehensive Income ("OCI") of Ind-AS compliant companies, other than those already specified under section 115JB of the Act shall be made.

  - The items included in OCI which will never be reclassified to the statement of profit and loss shall be included in the computation of book profit at the point of time as specified below—

Sl. No.	Items	Point of time
1.	Changes in revaluation surplus of Property, Plant or Equipment (PPE) and Intangible assets (Ind AS 16 and Ind AS 38)	To be included in book profit at the time of realisation/ disposal/ retirement or otherwise transfer
2.	Gains and losses from investments in equity instruments designated at fair value through OCI (Ind AS 109)	To be included in book profit at the time of realisation/ disposal/ retirement or otherwise transfer
3.	Re-measurement of defined benefit plans (Ind AS 19)	To be included in book profit every year as the re-measurement gains and loss arise
4.	Any other item (for example, share of OCI in Associates and joint ventures, etc)	To be included in book profit every year as the gains and loss arise

- Any distribution of non-cash assets to shareholders in a demerger shall be accounted for at fair value as per Appendix A of Ind AS 10. The difference between the carrying value of the assets and the fair value is recorded in the profit and loss account. It is proposed that book profit shall be increased by the aforesaid amount debited to profit and loss account.
- Similar approach to be followed in a converse situation.
- In so far as the resulting company is concerned, where the property and the liabilities of the undertaking or undertakings being received are recorded at values different from values appearing in the books of account of the demerged company immediately before the demerger, any change in such value shall be ignored for the purpose of computing book profit of the resulting company.

B. MAT on first time adoption

- The adjustments arising on account of transition to Ind AS from existing Indian GAAP, which are required to be recorded directly in Other Equity (retained earnings) at the date of transition to Ind AS, and would subsequently never be reclassified to the statement of profit and loss, shall be included in the computation of book profit, as under:

Sl.No.	Items	Point of time
1.	Changes in revaluation surplus of PPE and Intangible assets (Ind AS 16 and Ind AS 38)	To be included in book profit at the time of realisation/ disposal/ retirement or otherwise transfer
2.	Gains and loss from investments in equity instruments designated at fair value through OCI (Ind AS 109)	To be included in book profit at the time of realisation/ disposal/ retirement or otherwise transfer
3.	Re-measurement of defined benefit plans (Ind AS 19)	To be included in book profits equally over a period of five years starting from the year of first time adoption of Ind AS
4.	Any other item (for example, lease, etc)	To be included in book profit equally over a period of five years starting from the year of first time adoption of Ind AS

- All other adjustments recorded in Reserves and Surplus (excluding Capital Reserve and Securities Premium Reserve) as referred to in Division II of Schedule III of 2013 Act, which would otherwise never subsequently be reclassified to the profit and loss account (e.g., cash flow hedge, debt instruments) shall be included in the book profit, equally over a period of five years starting from the year of first time adoption of Ind AS.

C. Cumulative translation differences

- Under IndAS, an entity has been provided an option whereby the cumulative translation differences for all foreign operations are deemed to be zero at the date of transition to Ind AS. In such cases, the gain or loss on subsequent disposal of any foreign operation shall exclude translation differences that arose before the date of transition to Ind AS and shall include only the translation differences after the date of transition.

- To ensure that aforesaid Cumulative translation differences on the date of transition (which have been transferred to retained earnings) are taken into account, the same shall be included in book profit at the time of disposal of foreign operations as mentioned in paragraph 48 of Ind AS 21.

D. Reference year for first time adoption adjustments

- In the first year of adoption of Ind AS, the companies would prepare Ind AS financial statement for reporting year with a comparative financial statement for immediately preceding year.
- As per Ind AS 101, a company is required to make all Ind AS adjustments on the opening date of the comparative financial year and present an equity reconciliation between previous Indian GAAP and Ind AS amounts, both on the opening date of preceding year as well as on the closing date of the preceding year.
- It is proposed that the amounts adjusted as on the opening date of the first year of adoption shall be considered for the purposes of computation of book profit of the year of adoption. For example,
    - Companies adopting Ind AS, w.e.f.,1 April 2016
    - First financial statements as per Ind AS – PY 2016-17
    - Comparative period PY 2015-16
    - Opening balance sheet shall be prepared as on 1 April 2015
    - The first time adoption adjustments as on 31 March 2016- Considered for computation of MAT liability for PY 2016-17 (Assessment year 2017- 18) and thereafter the period of five years shall be PY 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21.

INTERNATIONAL TAXATION

Provisions relating to indirect transfer of assets not applicable to Foreign Institutional Investors (FII) and Foreign Portfolio Investors (FPI)

[Clause 4] **(w.r.e.f. 01.04.2012)**

- Section 9(1) of Act, inter alia, deems income accruing or arising, whether directly or indirectly through or from the transfer of a capital asset situated in India, to accrue or arise in India.

- The Supreme Court had, in the case of Vodafone International Holdings BV: 341 ITR 1 held that transfer of shares of a non-resident company by one non-resident to another, would not be covered within the ambit of the aforesaid section, notwithstanding the fact that value of the shares in the non-resident company was derived from underlying assets in India.

- In order to overcome the aforesaid judgment, the Finance Act, 2012 inter alia, inserted Explanation 5 in section 9(1)(i) with retrospective effect from 1.04.1962, to the effect that an asset or capital asset, being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be situated in India if the share or interest derives, directly or indirectly, its value "substantially" from the assets located in India.

- The term 'substantially' was not defined by the Finance Act 2012. Explanation 6 to section 9(1)(i), was inserted by the Finance Act 2015 to provide that share or interest of the foreign company or entity would be deemed to derive its value substantially from assets located in India, if on the specified date, the value of Indian asset:

  - Exceeds the amount of INR 10 crores; and

  - Represents at least 50% of the value of all assets owned by the company or entity, as the case may be.

- The aforesaid amendments, however, failed to clarify a number of issues and concerns were raised, especially by foreign investors. Accordingly, on June 15, 2016, the Central Board of Direct Taxes (CBDT) constituted a working group to examine the issues raised by stakeholders (especially from offshore funds registered as FPIs) with regard to the applicability of the indirect transfer provisions. After considering the comments of the working group, CBDT vide Circular No. 41 of 2016 dated 21.12.2016 issued clarification through a set of 19 FAQs regarding applicability of indirect transfer provisions to offshore funds which have invested in companies in India, under various scenarios.

- The aforesaid Circular, inter-alia, clarified that section 9(1)(i) of the Act read with Explanation 5 of the Act would be applicable in case of an offshore fund where the value of shares/units held by it in the sub-fund derives its value from assets located in India irrespective of shareholding of the ultimate investors.

- The Circular stirred up a hornet's nest for offshore investors, especially for FIIs/FPIs, which had been struggling with lack of guidance on the issue of taxation relating to indirect transfers. The Circular failed to address the concerns of the FPIs/FIIs with regard to issues such as multiple taxation, onerous compliance requirements, and lack of tax neutral foreign corporate restructuring.

- Given the expansive nature of the aforesaid Circular No. 41 of 2016, several representations were made before the authorities highlighting the concerns of various stakeholders especially in relation to multiple taxation of FIIs/ FPIs. In view of such representations, the CBDT issued Press Release dated 17.01.2017 for keeping the aforesaid Circular in abeyance.

- To address the aforesaid concerns of FIIs/FPIs, the Finance Bill, 2017 proposes to insert Explanation 5A to section 9 of the Act so as to clarify that Explanation 5 to the said section shall not apply to any asset or capital asset mentioned therein which is held by a non-resident by way of investment, directly or indirectly, in:

    - A FII as referred to in clause (a) of Explanation to section 115AD of the Act and registered as Category-I or Category-II FPI under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 made under the Securities and Exchange Board of India Act, 1992

    - The aforesaid amendment is clarificatory in nature and is applicable with retrospective effect from assessment year 2012-13

Comments/ Observations

- The proposed amendment provides much needed relief to Category I and II FPIs which mainly comprise of sufficiently regulated sovereign, pension or broad based funds and are more of a pooling vehicle collecting funds from small investors.

- Private Equity funds, Venture Capital funds, individuals and other high-risk foreign investors would not be entitled to any relief by virtue of the aforesaid proposed amendment. However, the said entities can claim relief under the relevant Tax Treaty, if available.

Modification in conditions of special taxation regime for off shore funds under section 9A of the Act

[Clause 5] (w.r.e.f. 01.04.2016)

- In order to facilitate location of fund managers of offshore funds in India, section 9A of the Act had been introduced by the Finance Act, 2015 with effect from 01.04.2016, which provides that in the case of an "eligible investment fund", the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund, subject to fulfilment of eligibility conditions specified for both the offshore fund and the onshore fund manager.
- "Eligible investment fund" has been defined under sub-section (3) to section 9A of the Act to mean a fund registered or incorporated outside India which collects funds from its members for investing it for their benefit and which fulfils certain conditions which, inter-alia, include that the monthly average of the corpus of the fund shall not be less than ₹ 100 crores and if the fund has been established or incorporated in the previous year, the corpus of fund shall not be less than ₹ 100 crores at the end of such previous year.
- Representations had been made by various stakeholders stating that in the year in which the fund is being wound up, it would not be possible to maintain the monthly average corpus of the fund at ₹ 100 crores.
- Accordingly, in order to address the concerns of the stakeholders, the Finance Bill, 2017, proposes to insert second proviso to clause (j) of sub-section (3) to section 9A of the Act to provide that in the previous year in which the fund is being wound up, the condition that the monthly average of the corpus of the fund shall not be less than ₹ 100 crores, shall not apply.
- The aforesaid amendment shall take effect retrospectively from 01.04.2016 and shall apply from assessment year 2016-17.

Clarification with regard to interpretation of 'terms' used in an agreement entered into under section 90 and 90A of the Act

[Clauses 39 and 40] (w.e.f. 01.04.2018)

- The Finance Bill, 2017, proposes to insert Explanation 4 to sections 90 and 90A of the Act, to provide that where any 'term' is defined in a Double Taxation Avoidance Agreement (DTAA) entered into under sub-section (1) of Section(s) 90 and 90A of the Act, the said term shall be assigned the meaning as provided in the said DTAA and where the term is not defined in the DTAA, but is defined in the Act, it shall be assigned the meaning as defined in the Act or any explanation issued by the Central Government.

- The aforesaid amendment shall take effect from 01.04.2018 and shall apply from assessment year 2018-19.

Comments/ Observations

- Explanation 2 to section 9(1)(vi) defines 'royalty' to mean, inter alia, consideration for transfer of all or any right in respect of a copyright, patent, invention, model, design, secret formula or process or trade mark or similar property. Explanation 6 to section 9(1)(vi) of the Act which was inserted with retrospective effect, from 01.06.1976, enlarged the meaning of the term 'process' to include transmission by satellite, cable, optic fibre or any other similar technology.

  The term "royalty' has been similarly defined in most of the DTAAs entered into by India with other countries to mean consideration for transfer of all or any right in respect of a copyright, patent, invention, model, design, secret formula or process or trade mark or similar property. However, there is no provision like Explanation 6 to section 9(1)(vi) in the DTAA, which artificially expands the scope of the term 'royalty' by providing that the term 'process' includes transmission by satellite, cable, optic fibre or any other similar technology.

- Further, Article 3(2) of the DTAA provides that any term not defined therein shall have the meaning which it has under the laws of that State. Accordingly, a controversy arose as to whether by virtue of Article 3(2) of the DTAA, any subsequent unilateral amendment to the meaning of the term 'royalty' under the Act could be construed to override the meaning of the term 'royalty' referred to under the DTAA.

- In this regard, reference is made to the decision of the Delhi High Court in the case of DIT vs. New Skies Satellite BV:382 ITR 114 wherein the Court observed that by virtue of a unilateral amendment under the Act, it was not possible for one nation to tax income which otherwise was not subject to tax under the relevant DTAA. The Court further observed that since the term "royalty" had been defined under the DTAA, there was no need to take recourse to Article 3 of the DTAA and refer to Explanations 5 and 6 inserted in section 9(1)(vi) of the Act by the Finance Act, 2012, with retrospective effect..

  To the same effect are the following decisions:

  - DIT vs. Nokia Network OY: 358 ITR 259 (Del. HC)
  - CIT vs. Siemens Aktiongesellschaft: 310 ITR 320 (Bom. HC)
  - Galatea Ltd. v. DCIT: 179 TTJ 265 (Mum)

- ADIT v. Baan Global BV: 49 ITR(T) 73 (Mum)
- Datamine International Ltd. v. Addl. DIT: 178 TTJ 560 (Del)
- DDIT v. Reliance Industries Ltd.: 180 TTJ 22 (Mum)

✦ It may, however, be pointed out that the Madras High Court in the case of Verizon Communications Singapore Pte Ltd vs. ITO: 361 ITR 575 and Mumbai Tribunal in the case of Viacom 18 Media Pvt. Ltd. vs. ADIT: TS-179-ITAT-2014, have taken a contrary view and held that retrospective amendment made in section 9(1)(vi) of the Act can be read into the DTAA.

✦ The principle laid down by the Courts in the aforesaid decisions would, in our opinion, not be altered by the aforesaid amendment proposed by Finance Bill, 2017 since the amendment only seeks to assign meaning to the terms which have been defined under the Act but not under the DTAA.

✦ However, any explanation issued by the Central Government in relation to any term used in the Act would be considered as definition of the 'term' under the Act. This power needs to be judiciously exercised as it is not subject to legislative review; over zealous and expansive interpretation should, therefore, be avoided.

INCOME FROM OTHER SOURCES

Widening scope of Income from other sources

[Clauses 25 & 29] **(w.e.f. 01.04.2017)**

- Section 56(2)(vii)/(viia) provides for taxation of sum or property received without consideration or for inadequate consideration by individual or HUF/ Firm or Company in excess of ₹ 50,000 as "Income from other sources".
- It is proposed to insert clause (x) in sub-section (2) of section 56 of the Act to provide for taxation of receipt of the sum of money/ property by any person (other than relatives) without consideration or for inadequate consideration (value/differential exceeding ₹ 50,000) shall be taxed as "Income from other sources", thereby widening the scope of said provision to include all taxpayers including Trusts, etc.
- In case of immovable property, the Stamp Duty Value is to be considered. In case of movable property, Fair market Value determined as per prescribed method is to be considered.

Comments/ Observations

- The ambit of section 56(2) has been substantially widened by including all properties and all persons in its ambit, reducing tax planning options.

Disallowance for non-deduction of tax from payment to resident

[Clauses 30] **(w.e.f. 01.04.2018)**

- Existing provisions of section 58 of the Act, provide for amounts which are not deductible in computing the income under the head "Income from other sources".
- It is now proposed to amend the said section to provide that disallowance made for non-deduction of tax from payment to resident under section 40(a)(ia) for computing income under the head "Profits and gains of business or profession", would also apply in computing income chargeable under the head "income from other sources".

Ambit of entities liable to tax on dividend widened

[Clause 44] **(w.e.f. 01.04.2018)**

- Vide Finance Act, 2016, section 115BBDA was inserted to provide that dividend income exceeding ₹ 10 lakhs, received by an individual, HUF or a firm, resident in India, shall be taxable @10%.

- With a view to streamlining taxation of different assessees deriving income from dividend, it is proposed to substitute the words "an assessee being an individual, HUF or a firm" with the words "a specified assessee".

- "Specified assessee" has been defined to mean a person other than:

  (i) A domestic company;

  (ii) A fund/ institution/ trust/ university/ other educational institution/ hospital or other medical institution referred to in various sub-clauses of section 10(23C) of the Act;

  (iii) A trust or institution registered under section 12AA.

TAXATION OF CAPITAL GAINS

Exemption of long term capital gains tax under section 10(38)

[Clause 6] **(w.e.f. 01.04.2018)**

- Under the existing provisions of section 10(38), income arising from transfer of long term capital asset, being equity share of a company or unit of an equity oriented fund, is exempt from tax if the sale is undertaken on or after October 1, 2004 and is chargeable to securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004 ["STT"].

- It is proposed to insert second proviso to clause (38) of section 10 to provide that any income arising from the transfer of a long-term capital asset, being equity share in a company, shall not be exempted, if the transaction of acquisition of equity share, other than the acquisition notified by the Central Government in this behalf, is entered into on or after the 1st day of October, 2004 and such transaction is not chargeable to STT.

Comments/ Observations

- The rationale of the proposed amendment is to curb misuse of exemption by certain persons for declaring their unaccounted income as long-term capital gains by entering into sham transactions.

- The proposed amendment does not cover transaction of sale of equity oriented fund and only covers equity shares in a company.

- The Memorandum to the Finance Bill clarifies that for genuine cases where STT could not have been paid, like transaction of acquisition of share in IPO, FPO, bonus or right issue by a listed company, acquisition by non-resident in accordance with FDI policy of the Government, etc., shall be notified as transfers for which the condition of chargeability to STT shall not be applicable, in order to protect the exemption.

- The proposed amendment may have far-reaching impact on the following transactions, unless the same are notified by the Central Government:

  1. Shares acquired pursuant to merger/ demergers
  2. Off-market acquisition of shares in private deals
  3. Preferential allotment to investors;
  4. Shares granted via employee stock option plans (ESOPs);
  5. Shares acquired in a private company, which got listed subsequently

6. Shares acquired pursuant to exempt transfers, particularly the one referred to in section 47 like:

   - Shares received by way of gift;
   - Shares settled in Trust;
   - Shares acquired under a will or by way of inheritance;
   - Partition of HUF;
   - Transfer from holding to subsidiary Indian company and vice-versa.

Shifting base year from 1981 to 2001 for computation of capital gains

[Clauses 24 and 28] **(w.e.f. 01.04.2018)**

- Under the extant provisions for computing capital gains in respect of assets acquired prior to 1.04.1981, fair market value of the asset as on 01.04.1981 or the actual cost of the asset, whichever is higher is adopted. Consequently, 1981 is taken as the base year for the purpose of indexation.
- It is proposed to shift the base year from 1981 to 2001 for determining cost of acquisition of capital asset for computing capital gains. Accordingly, amendments are proposed in section 48 and section 55 of the Act.

Taxation of gains in case of Joint Development Agreement

[Clauses 22 and 25] **(w.e.f. 01.04.2018)**

- Under the extant tax regime, capital gain is chargeable to tax under section 45 in the year in which "transfer" as defined in section 2(47) of the Act takes place, which includes, inter alia, any transaction allowing handing over of possession in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882, and any transaction having the effect of transferring or enabling the enjoyment of any immovable property.
- The execution of Joint Development Agreement between the owner of immovable property and the developer has been held to be falling within the purview of the aforesaid definition of transfer, thereby attracting capital gains tax in the hands of the owner in the year of handing over of possession to the developer, notwithstanding that the project had not completed and/or full consideration had not been received by the owner.
- In order to minimise genuine hardship caused to the owner of land, who may not receive or receive only part consideration in cash or kind until the project is complete and considering that project may not be completed or abandoned or there may be disputes between the parties, it is proposed to

insert new sub-section (5A) in section 45 to provide that in case of an assessee, being an individual or Hindu undivided family, who enters into specified registered agreement for development of a project, capital gains shall be chargeable to income-tax in the previous year in which certificate of completion for the whole or part of the project is issued by the competent authority.

- It is also proposed that for computing capital gains under section 48 of the Act, stamp duty value of the share of the owner, being land or building or both, in the project, on the date of issue of completion certificate, as increased by any monetary consideration received, if any, shall be taken as "full value of the consideration" received or accruing as a result of the transfer.
- It is also proposed to provide that the aforesaid benefit shall not be available to an assessee who transfers his share in the project to any other person on or before the date of issuance of certificate of completion. In such cases, capital gains shall be levied in the previous year in which such transfer takes place under the general provisions of the Act.
- The expressions "competent authority", "specified agreement" and "stamp duty value" have been defined for the purpose of the aforesaid proposed clause.
- Consequential amendment is proposed by way of insertion of clause (7) in section 49 to provide that the cost of acquisition of the share in the project, being land or building or both, in the hands of the land owner shall be the amount which is deemed as full value of consideration under section 45(5A) of the Act.

Comments/ Observations

- Registration of specified agreement is a condition precedent for availing the benefit of proposed section 45(5A) of the Act.
- It appears that in case of phased development of project, capital gains liability may trigger with reference to the whole project, even though completion certificate is received for only part of the project, in the year of receipt of such certificate.
- Apparently, as per proviso to the proposed section, capital gains tax shall continue to be leviable in the year in which possession is handed over, even though transfer to third party may have been effected in subsequent year(s), but prior to grant of completion certificate. In such scenario, procedure of taxation is not specifically spelt out.
- For example, if possession is handed over in assessment year 2018-19 and share in project is transferred in assessment year 2020-21, then, capital gains tax may be levied in assessment year 2018-19. There may be practical difficulties in revising tax return for the earlier assessment year.

- The proposed amendment needs further clarification with respect to the following aspects-
  - whether capital gains would be taxed in two stages, viz, firstly, in the year of possession with reference to the difference between stamp duty valuation and cost of acquisition, and secondly, in the year of transfer of right with reference to the difference between sale consideration actually received and the stamp duty valuation paid at the first stage in the year of handing over of the possession?
  - what would be the period of holding for computing capital gains on sale of the right in the share to third party, considering that right in share may not qualify as “land and building” per se?
  - whether the stamp duty value with reference to which capital gains was paid at first stage (year of handing over of the possession) would be considered to be cost of acquisition on sale of the right in the share to the third party?

Tax neutrality on conversion of preference shares to equity shares

[Clauses 3, 23 and 25] **(w.e.f. 01.04.2018)**

- Under the existing provisions, tax neutrality has been provided under clause (x) of section 47 of the Act in respect of conversion of bonds or debentures or debenture stock or deposit certificates in any form of a company into shares or debentures of that company.

- It is now proposed to specifically provide tax neutrality to conversion of preference shares of a company into equity shares of that company.

- Clause (2AE) is also proposed to be inserted in section 49 of the Act to provide that the cost of acquisition of the equity share shall be the cost of the preference share in relation to which equity share is acquired by the assessee.

- Consequentially, clause (hf) is also proposed to be inserted in Explanation (i) to section 2(42A) to provide that the period of holding shall be reckoned from the date the preference share was acquired by the assessee.

Comments/ Observations

- Section 55(2)(b)(v)(e) requires that on conversion of one kind of shares into another kind, the cost of acquisition has to be taken as that of the original “shares or stock from which such asset is derived”. The legislative intent was thus clear to consider conversion of preference shares into equity shares as not resulting in “transfer” so as to give rise to any capital gains. This was clarified by Circular dated 12-5-1964 [F. No. 12/l/64-IT(Al)] issued pursuant to introduction of section 55(2)(b)(v) by Finance Act, 1964.

- The above Circular was followed and applied by the Mumbai Bench of Tribunal in the case of ITO vs. Vijay M Merchant:19 ITD 510 (Mum) to hold that there is no transfer when one type of share is converted into another type of share and accordingly, such conversion would not lead to a taxable event. Contrary view has, however, being expressed by the High Courts in the case of ACIT v HEH NizamTrust :102 ITR 248 (AP) and CIT v Santosh L. Chowgule : 234 ITR 787 (Bom).
- The proposed amendment provides clarity and certainty to the fundamental principle that on conversion of preference share to equity share, there is no transfer.

Extension of capital gain exemption to Rupee Denominated Bonds

[Clause 24] **(w.e.f. 01.04.2018)**

- The Finance Act, 2016, amended section 48 of the Act to provide that gains arising to an investor on account of appreciation of rupee against foreign currency at the time of redemption of rupee denominated bonds of an Indian company subscribed by him, shall be ignored for purpose of computation of full value of consideration.
- It is proposed to amend fifth proviso to section 48 to substitute the word "subscribed" by the word "held" so as to extend the aforesaid benefit to secondary holder of rupee denominated bonds.
- Clause (viiaa) is also proposed to be inserted in section 47 of the Act to exempt from tax capital gains arising on transfer of rupee denominated bonds of Indian company issued outside India, by a non- resident to another non- resident.

Cost of acquisition in tax neutral demerger of a foreign company

[Clauses 25] **(w.e.f. 01.04.2018)**

- Presently, clause (vic) of section 47 exempts from capital gains tax, transfer of shares in an Indian company, held by the demerged foreign company to the resulting foreign company.
- It is proposed to amend section 49(1)(iii)(e) to provide that cost of acquisition of shares of the Indian company in the hands of the resulting foreign company shall be the same amount as in the hands of the demerged foreign company.

Fair Market Value (FMV) of unlisted shares to be full value of consideration on transfer

[Clause 26] (w.e.f. 1.4.2018)

- Under the existing provisions, income chargeable under the head "capital gains" is computed by taking into account the amount of full value of consideration received or accruing on transfer of a capital asset.
- It is now proposed to insert new section 50CA to provide that where consideration for transfer of shares of a company (other than quoted shares) is less than the FMV determined in accordance with the prescribed manner, the FMV shall be deemed to be the full value of consideration.

Comments/ Observations

- Pertinently, receipt of shares for inadequate consideration is taxed in the hands of the recipient presently under section 56(2)(vii)/(viia) [and section 56(2)(x) proposed to be inserted w.e.f. 1.04.2018]. Hence, taxation of capital gains based on FMV in the hands of the transferor may result in double taxation.
- The aforesaid proposal upsets the settled position of law that for the purpose of computing capital gains, the sale consideration actually received is sacrosanct; such amount cannot be substituted with any notional amount for computing capital gains (except in terms of specific provision of sections 50C of the Act) [Refer: CIT V. Gillanders Arbuthnot & Co.: 87 ITR 407 (SC); K. P. Verghese: 131 ITR 597 (SC); CIT v. Shivakami Co. P. Ltd. 159 ITR 71 (SC); CIT V. George Henderson and Co. Ltd. 66 ITR 622 (SC)].

Expanding the scope of long term bonds under 54EC

[Clause 27] (w.e.f. 01.04.2018)

- Section 54EC provides exemption from levy of tax on capital gains where the assessee invests upto Rs.50 lakhs in certain specified bonds, viz, bonds issued by the National Highways Authority of India or by the Rural Electrification Corporation Limited within the specified time.
- The scope of section 54EC is proposed to be widened to include that investment in any bond redeemable after three years which has been notified by the Central Government in this behalf.

SEARCH, SEIZURE & SURVEY

Reason to believe not to be disclosed

[Clauses 50 and 51] **(w.r.e.f. 01.04.1962/ 01.10.1975)**

- Under Section 132, the prescribed income-tax authority can authorize search if on the basis of the available information he has 'reason to believe' that the circumstances prescribed for conducting the search are satisfied.
- Further, during the course of search, the prescribed authority can authorize the search team to conduct search at any place not mentioned in the warrant of authorization if he has 'reason to suspect' that undisclosed asset is available at such other place.
- Similarly, under section 132A, the prescribed income-tax authority can, based on 'reason to believe' authorize other income tax authority to requisition books of account, documents or other assets from any other authority or officer.
- It is now proposed to retrospectively amend sections 132 and 132A to provide that 'reason to believe' or 'reason to suspect' recorded by the prescribed authority cannot be disclosed to any person or any authority or the Appellate Tribunal.

Comments/ Observations

- It is settled law that existence of reasonable belief, on the basis of tangible information, of fulfilment of conditions prescribed for conducting search is sine qua non for authorizing search and seizure operation [Refer L.R. Gupta: 194 ITR 32 (Del)(SLP dismissed), Dr. NandLalTahiliani: 170 ITR 592 (All) (SLP dismissed)].
- There is ongoing dispute as to whether the Tribunal has the power to examine the validity of the search by calling for and examining the reasons recorded before authorizing the search. In the following cases, it was held that validity of search cannot be examined by the Tribunal:
  - M.B. Lal V. CIT: 279 ITR 298 (Del.)
  - Gaya Prasad Pathak vs. ACIT: 162 Taxman 307 (MP)
  - Promain Ltd V. DCIT: 95 ITD 489 (Del) (SB)
- A contrary view has, however, been taken in the following decisions wherein the Courts held that validity of search can be examined by the Tribunal:

- C. Ramaiah Reddy vs. ACIT: 339 ITR 210 (Kar)
- CIT V. Smt. Chitra Devi Soni: 313 ITR 174 (Raj.) [SLP dismissed 313 ITR (St.) 28]
- J.R. Tantia Charitable Trust V. DCIT: 355 ITR 226 (Raj)

✦ In the case of Chitra Devi Soni (supra), the Tribunal drew adverse inference against the Revenue, holding the search to be invalid on account of non-production of relevant material including authorization based on reasons recorded.

✦ In an earlier decision in the case of DIT (Inv) V. Spacewood Furnishers (P) Ltd: Civil Appeal No.4394 of 2015 dated 13.05.2015, the Supreme Court held that the reasons for the belief need not be communicated to the person against whom warrant is issued at that stage. Such reasons, however, may be placed before the Court in the event of a challenge to formation of belief. The Court further held that the assessee does not have right of inspection of the documents or to the communication of the reasons at the stage of issuing the authorization and it is only at the stage of the commencement of the assessment after completion of search, the assesssee may be disclosed the requisite material.

✦ Recently, the Supreme Court in the case of Ess Dee Aluminium Ltd V. DDIT: SLP No. 15734-35/ 2016 dated 17.11.2016, however, observed that if the assessment order based on search operations is under challenge, the validity of the search proceedings can also be gone into by the CIT(A).

✦ Now, as a consequence of the proposed retrospective amendment prohibiting communication of reasons recorded to the CIT(A)/ Tribunal, it may no longer be possible for the CIT(A)/ Tribunal to adjudicate the issue of validity of search on the ground of existence of reason to believe, thereby rendering the remedy of challenging the validity of search before CIT(A)/ Tribunal on such ground to be totally ineffective. Consequently, the only efficacious remedy against invalid search would be to challenge the same by filing writ petition in the High Court.

Provisional attachment of assets during search

[Clause 50] (w.e.f. 01.04.2017)

* It is proposed to insert sub-sections (9B) and (9C) in section 132 to empower the authorized officer to provisionally attach, in order to protect the interest of the Revenue and safeguard recovery in such cases, any property belonging to the assessee during the course of search or within a period of 60 days from the date of execution of last authorization, with the prior approval of the prescribed authority.

- Such provisional attachment would be valid for six months from the date of order of attachment.
- It is also proposed to insert sub-section (9D) in section 132 to provide that the authorized officer may make reference to valuation officer for estimating the fair market value of the property. Such authorization may also be made during the course of search or within 60 days from the date on which last authorization of search was executed.

Comments/ Observations

- Presently, section 281B empowers the assessing officer to order provisional attachment of a property upto 2 years or 60 days after the date of assessment order, whichever is later.
- The rationale of the proposed amendment is to confer power of provisional attachment to the authorized officer during search and post search investigation proceedings, when such power is not available to the assessing officer.

Search assessment and IDS, 2016

[Clauses 59, 61 and 150] (w.e.f. 01.04.2017)

- By the Finance Act, 2016, Income Declaration Scheme, 2016 (IDS) was introduced for making declaration of undisclosed income and undisclosed asset for any assessment year upto assessment year 2016-17. The said scheme was in force from 1.6.2016 to 30.9.2016.
- Presently, as per section 197(c) of the Finance Act, 2016, which was part of IDS, any undisclosed income/ assets earned/acquired prior to the commencement of IDS and in respect of which no declaration was made under IDS, is deemed to be income of the year in which notice is issued by the assessing officer under section(s) 142(1) or 143(2) or 148 or 153A or 153C.
- It is now proposed to omit the aforesaid clause with retrospective effect from 01.06.2016, i.e. the date of coming into force of IDS, 2016.
- Presently, under section 153A, search assessment is made for six assessment years immediately preceding the year of search under section 132 or requisition under section 132A. This is similarly provided under section 153C in case of any other person, other than the searched person, in respect of whom certain assets are found during the course of search.
- As a sequel to the aforesaid omission, it is also proposed to amend sections 153A and 153C to extend the period of assessment from existing six assessment years prior to the date of search, to ten assessment years, to bring to tax any undisclosed income found in the form of undisclosed investment in any asset.

- It is now proposed to provide that notice for four assessment years, prior to the existing period of six assessment years [thereby extending the search assessment period to ten prior assessment years], shall be issued on satisfaction of the following conditions:

  (i) The assessing officer has in his possession books of account, documents or evidence revealing escapement of income amounting to ₹ 50 lakhs or more in one year or in aggregate during the relevant four assessment years;

  (ii) Such escaped income is represented in the form of assets; and

  (iii) Such escaped income relates to such four assessment year(s).

Comments/ Observations

- The constitutional validity of section 197(c) of the Finance Act, 2016 was suspect inasmuch as the said section conferred arbitrary powers to tax undisclosed income/ assets without any limitation, despite specific period of limitation being prescribed in the Act. Therefore, omission of the said section with retrospective effect is welcome as it imparts much needed certainty in respect of a provision which could have had wide ramifications and was open to misuse.

Extension of power to survey

[Clause 53] **(w.e.f. 01.04.2017)**

- The existing provisions of section 133A empowers an income-tax authority to enter and conduct survey at any place at which business or profession is carried on by any person or a place where books of account or other documents or cash or stock relating to the business are kept.

- It is now proposed to amend the existing provision to widen its scope by providing that survey can be conducted at any place at which any charitable activity is carried on.

Comments/ Observations

- The proposed amendment has apparently been made in the wake of recent news regarding abuse of charitable institutions to launder money and/or legitimize undeclared/ undisclosed income, more particularly in the light of recent demonetization. The proposed amendment, therefore, grants power to the income-tax authorities to enter and conduct survey at any premise occupied by any charitable institution/ trust in order to verify their books of account.

Collection/ verification of information

Power to call information – Section 133

[Clause 52] **(w.e.f.01.04.2017)**

- Presently, section 133(6) empowers the prescribed income tax authority to call for any information from any person, including a banking company, which may be considered useful/ relevant for/ to any enquiry or proceeding under the Act, with the prior approval of Pr. CIT/ CIT/ Pr. DIT/ DIT.
- It is now proposed to amend first and second proviso in section 133 to authorize Joint Director/ Deputy Director/ Assistant Director to call for such information without seeking prior approval of the higher authority.

Centralized issuance of notice and processing of information – Sec 133C

[Clause 54] **(w.e.f. 01.04.2017)**

- Presently, section 133C empowers prescribed income tax authority to issue notice and call for information and documents for verification of information in his possession.
- It is now proposed to amend section 133C to empower CBDT to formulate scheme to facilitate centralized issuance of notice calling for information and documents for verification of information.

RETURNS & ASSESSMENT

Rationalization of time limits for completion of assessment, reassessment and re-computation and reducing the time for filing revised return

[Clauses 55, 58 & 78] **(w.e.f. 01.04.2017)**

- Section 153 of the Act provides for time limit for completion of assessment, reassessment and re-computation.
- The recent advancement of technology and computerization has led to enhanced efficiency in the functioning of the Department and therefore, it is proposed to reduce the time-limit for carrying out assessment proceedings, as under:

Section	Particulars of Section	Existing time-limit	Proposed time limit
153 (1)	Time-limit for making assessment under section(s) 143/144 of the Act	**21** months from the end of the assessment year	**For AY 2018-19: 18** months from the end of the assessment year **For AY 2019-20 onwards: 12** months from the end of assessment year
153(2)	Time-limit for passing of assessment/re-assessment under section 147 of the Act	**9** months from the end of financial year in which notice for re-assessment under section 148 is served	**For notices served on or after 01.04.2019**: **12** months from the end of financial year in which notice for re-assessment under section 148 is served
153(3)	Time limit for passing fresh assessment order in pursuance of an order passed under section 254 or 263/264, setting aside or cancelling an assessment	**9** months from the end of financial year in which the order is received/passed by the concerned Authority.	**For orders passed or received in FY 2019-20 and onwards**: **12** months from the end of financial year in which the order is received/passed by the concerned Authority.

- Section 153(5) is amended to provide that where order giving effect to order passed under section 250/254/260/262/263/264 of the Act, requires verification/opportunity of being heard to the assessee, the time limit relating to fresh assessment would apply thereto.
- It is also proposed to amend 153(9) to provide that where notice under sections 142(1)/143(2)/148 was issued prior 1.06.2016 and assessment/reassessment has not been completed by such date due to exclusion of time referred to in Explanation 1, such assessment/reassessment shall be completed in accordance with the provisions of section 153 as applicable prior to substitution by Finance Act, 2016.
- In order to expedite completion of assessments by the Department as proposed above, it is also proposed to amend Section 139(5)to reduce the time limit for furnishing revised return. The return can now be revised only before the end of the relevant assessment year.

Rationalization of provisions in respect of time limits for completion of search assessment

[Clause 60] (w.e.f. 01.04.2017)

- Section 153B provides for the time limit for completion of search assessment under section 153A. Consequent to rationalization of time limit for completion of assessment under section 153, it is proposed to rationalize the time limit for completion of search assessment as under:

Section	Particulars of Section	Existing time-limit	Proposed time limit for Search and seizure conducted in	
Second proviso to section 153B(1)	Time–limit for passing order under section 153A of the Act in case of person on whom search is conducted.	**21** months from the end of the financial year in which the last of the authorizations for search under section 132 or for requisition under section 132A was executed.	**FY 2018-19** **18** months from the end of the financial year in which the last of the authorizations for search under section 132 or for requisition under section 132A was executed.	**FY 2019-20 Onwards** **12** months from the end of the financial year in which the last of the authorizations for search under section 132 or for requisition under section 132A was executed.

Third proviso to section 153B(1)	Time–limit for passing order under section 153C of the Act, i.e. in case of any other person.	Period available to make assessment or reassessment in case of person on whom search is conducted (as above) **OR** **9** months from the end of the financial year in which books of accounts or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, **whichever is later.**	Period available to make assessment or reassessment in case of person on whom search is conducted (as above) **OR** **12** months from the end of the financial year in which books of accounts or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, **whichever is later.**

- It is also proposed to insert proviso in the Explanation after the second proviso of the said section to provide that where proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under 153B for assessment or reassessment shall after the exclusion of the period under section 245HA(4) (i.e. from date of application to Settlement Commission to specified date of abatement), shall not be less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year.

- It is also proposed to amend sub-section (3) of section 153B to provide that where notice under 153A/153C has been issued prior to 01.06.2016 and the assessment has not been completed by such date due to exclusion of time referred to in the Explanation, such assessment shall be completed in accordance with provisions of section 153, as applicable, prior to substitution by the Finance Act, 2016. (applicable w.r.e.f. 01.04.2016).

Enabling claim of credit for foreign tax paid in cases of dispute

[Clause 62] **(w.e.f. 01.04.2018)**

- Section 155 relaxes the time-limit for rectification of mistakes under section 154 of the Act in case of certain specified errors.

- It is proposed to insert sub-section (14A) in Section 155 to provide that the assessing officer shall rectify the assessment order/intimation not allowing foreign tax credit (FTC) where payment of foreign tax is in dispute, upon production of proof of settlement of dispute and payment of tax alongwith the undertaking that FTC has not been claimed in any other assessment year, within 6 months from the end of the month in which the dispute is settled.

Fee for delayed filing of return

[Clauses 56, 57, 75 & 85] **(w.e.f. 01.04.2018)**

- It proposed to insert new section 234F for levying mandatory fee for delay in furnishing of return beyond prescribed due-date under section 139(1), as follows:
  - ₹ 5000 – return furnished after due date but on or before the 31st day of December of the relevant assessment year;
  - ₹ 10,000 in other cases.
- Where total income does not exceed ₹ 5 lakh, fee would be restricted to ₹ 1,000.
- Consequential amendment made in section 140A to provide that in case of delay in furnishing return of income, fee for delay in furnishing of return of income shall also be payable, in addition to tax and interest payable.
- Consequential amendment made in section 143(1) to provide that in computation of amount payable/refund due on account of processing of return, fee payable under section 234F shall also be taken into account.
- The provisions of section 271F in respect of penalty for failure to furnish return of income before the end of the relevant assessment year shall not apply in respect of assessment year 2018-19 and onwards.

Processing of return and withholding of refund in certain cases

[Clauses 57 & 76] **(w.e.f. 01.04.2017)**

- Vide Finance Act, 2016, section 143(1D) was amended to provide that with effect from 01.04.2017, return of income shall be processed under section 143(1) before the passing of assessment order under section 143(3). The said amendment rationalized provisions existing prior to 01.04.2017 which provided that processing of a return shall not be necessary where notice has been issued to the assessee under section 143(2).

- Finance Bill, 2017 proposes to amend section 143(1D) to reinstate provisions existing prior to amendment introduced by Finance Act, 2016, thereby proposing that return need not be processed where assessment has been initiated vide notice issued under section 143(2).
- The amendment, however, proposes to introduce a sunset clause by providing that sub-section (1D) shall not apply in respect of returns furnished for assessment year 2017-18 and onwards.
- It is further proposed to insert a new section 241A to clothe assessing officer with power to withhold refund due to the assessee under section 143(1) in respect of returns furnished for assessment year 2017-18 and onwards, in cases where notice has been issued under section 143(2) in respect of such return and the assessing officer is of the opinion that grant of refund may adversely affect the recovery of revenue.
- In such cases, it is proposed that the assessing officer may, for reasons recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, withhold refund upto the date on which assessment is made.

SET OFF & CARRY FORWARD OF LOSS

Set off Loss under the head House Property

[Clause 31] **(w.e.f. 01.04.2018)**

- Section 71 of the Act provides for inter-head set-off of loss. Under the existing provisions, loss under the head 'house property' could be set-off against income under any other head of income without any cap/upper limit.

- With the insertion of sub-section (3A) to that section, it is now proposed to restrict the set off of loss under the head 'house property' against income under any other head, to ₹ 2,00,000 for an assessment year.

Carry forward and set off of loss in case of certain companies

[Clause 32] **(w.e.f. 01.04.2018)**

- The existing provisions of section 79 of the Act restricts carry forward and set off of losses in the hands of a closely held company, if the shares of such company carrying at least 51% of voting power are not beneficially held by persons who beneficially held such shares on the last day of the previous year in which the loss was incurred.

- In order to facilitate ease of doing business and to promote start up companies in India, it is proposed to amend the said section to provide that where a change in shareholding has taken place in an eligible start-up company referred to in section 80 –IAC of the Act, loss shall be carried forward and set off against the income of the previous year, if all the shareholders of such company who held shares carrying voting power on the last day of the year/years in which the loss was incurred, being loss incurred during the period of seven years beginning from the year in which such company is incorporated, continue to hold those shares on the last day of such previous year.

Comments/ Observations

- The language of the enactment gives an impression that even if one of the shareholders (having insignificant holding) were to exit, the carry forward of loss would be denied, which does not seem to be the legislative intent.

TAX DEDUCTION/ COLLECTION AT SOURCE

TDS on payment of rent by individuals or HUF

[Clause 63] **(w.e.f. 01.06.2017)**

- Under the existing provisions of section 194-I, any Individual or HUF making payment of rent beyond the threshold limit and who are required to get their accounts audited under section 44AB are liable to deduct tax at source at the rates specified, either at the time of credit or payment, whichever is earlier.
- In order to widen the scope of tax deduction at source, section 194-IB is proposed to be inserted to provide that any individual or HUF (other than those required to get their accounts audited under section 44AB), making payment of rent exceeding ₹ 50,000 per month or part of the month shall deduct tax on such payments @ 5%.
- Such tax is to be deducted either at the time of credit or payment, whichever is earlier, once in a previous year, i.e., either from rent for the last month of the previous year or from the last month of tenancy.
- In order to reduce the compliance burden, it is further proposed that the deductor is not required to obtain TAN as per section 203A of the Act.
- Where tax is to be deducted as per the provisions of section 206AA, such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be.

Comments/ Observations

- Mechanism of deposit of tax, issuance of certificate and filing of return, if any, not provided.
- Even rent paid for property used for personal purposes would suffer TDS, if threshold limit is crossed.

TDS in case of payments under specified agreements

[Clause 64] **(w.e.f. 01.04.2017)**

- It is proposed to insert new section 194-IC in the Act to provide that in case any monetary consideration is payable under a specified agreement referred to in sub-section (5A) of section 45, i.e., a registered agreement in which a person owning land or building or both agrees to allow another person to develop a real estate project on such land or building or both, then the monetary consideration other than the consideration in kind, viz. share in land or building or both, shall be subject to TDS @ 10%.

TDS in case of fees for professional or technical services under section 194J

[Clause 65] (w.e.f. 01.06.2017)

- As per the existing provisions of section 194J, payment exceeding ₹ 30,000 to a resident by way of fees for professional or technical services is subject to TDS @10%.
- It is proposed to insert fourth proviso in section 194J to provide that in case of payee engaged only in the business of operation of call center, tax shall be deducted @ 2% instead of 10%.

Non-deduction of tax in case of exempt compensation under RFCTLAAR Act, 2013

[Clause 66] (w.e.f. 01.04.2017)

- Under the existing provision of section 194LA, any person paying compensation on account of compulsory acquisition of any immovable property (other than agricultural land) is required to deduct tax @10% on such compensation.
- The Central Government has enacted a new law, namely, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, ('RFCTLARR Act') on 26th September, 2013 w.e.f. 1st January, 2014. Section 96 of the RFCTLARR Act provides that income-tax shall not be levied on compensation received for compulsory acquisition of land under the RFCTLARR Act (except those made under section 46 of RFTCLARR Act).
- It is proposed to insert proviso to section 194LA to provide that no tax shall be deducted in case of payment made in respect of any award or agreement which has been exempted from levy of income-tax under section 96 (except those made under section 46) of RFCTLARR Act.

TDS on income by way of interest on loan, certain bonds and Government securities

[Clauses 67 and 68] (w.e.f. 01.04.2018)

- As per section 194LC any Indian company or Business Trust responsible to pay any income, before the 1st day of July, 2017, to a non-resident by way of interest, on monies borrowed either under a loan agreement or by issue of long term bond including long-term infrastructure bond, is required to deduct tax thereon at the concessional rate of 5%.
- As per section 194LD any person responsible for paying any income, before the 1st day of July, 2017, to Foreign Institutional Investor or Qualified Foreign Investor by way of interest on a Government security or rupee denominated bond of an Indian company is required to deduct tax thereon at the concessional rate of 5%.

- In order to continue to provide the benefit of concessional rate of tax, it is proposed to extend the time limit from 1st day of July, 2017 to 1st day of July, 2020.

- The benefit of concessional rate of tax withholding under section 194LC of the Act is also proposed to be extended to monies borrowed by an Indian company in rupee denominated bonds (popularly known as 'Masala Bonds') before the 1st day of July, 2020. This provision is retrospectively effective from 01.04.2016.

Benefit of Form 15G/15H for commission payments specified under section 194D

[Clause 69] (w.e.f. 01.06.2017)

- In terms of the proposed amendment, benefit of non-deduction of tax by providing declaration in Form 15G/15H to the effect that there would be nil tax on total income after including such income, has now been extended to income in the nature of insurance commission.

Meaning of persons as mentioned in sub-section (1F) of section 206C

[Clause 71] (w.e.f. 01.04.2017)

- In terms of the proposed amendment, new clause (iii) is to be inserted in Explanation to section 206C to provide that 'buyer' in terms of sub- section (1F) (relating to sale of motor vehicles having value exceeding Rs.10 Lakhs) does not include the following persons:
    - Central Government, State Government, Embassy, High Commission, legation, commission, consulate and the trade representations of a foreign State;
    - Local authority as defined in Explanation to clause (20) of section 10; or
    - Public sector company which is engaged in the business of carrying passengers.

Requirement of furnishing PAN by the collectee in the case of TCS

[Clause 72] (w.e.f. 01.04.2017)

- Under the existing provisions of the Act, there is no provision which mandates necessary quoting of PAN by the persons making payment of any amount on which provisions of section 206C of the Act apply.

- As a consequence, the collectee who does not furnish PAN or furnishes incorrect PAN still remains outside the ambit of tax authorities.

- In order to prevent leakage of tax, it is proposed to insert section 206CC to provide for necessary furnishing of valid PAN by collectee failing which the tax shall be collected at the higher of the following rates:

- twice the rate specified in the relevant provision; or
- 5%

- ✦ If the declaration becomes invalid at a later stage, then, TCS shall be collected at the rates specified in section 206CC.
- ✦ PAN of the collectee is to be mandatorily quoted by the buyer and the seller in all correspondences, bills, vouchers and other documents sent to each other.
- ✦ In case valid PAN is not provided to the collector, no TCS certificate shall be issued to the collectee.

No TCS on purchase of jewellery

- ✦ Under the existing provisions of section 206C of the Act, tax is required to be collected at source by the seller @ 1% from the buyer of jewellery, if sale consideration exceeds ₹ 5 lakhs.
- ✦ In view of proposed insertion of section 269ST and 271DA prohibiting cash transaction exceeding Rs.3 lakhs, it is proposed amend section 206C to omit the requirement of collecting TCS on sale of jewellery.

Comments/ Observations

- ✦ The proposed section 269ST of the Act apparently provides for absolute ban on cash transactions beyond ₹ 3 lakhs irrespective of the nature of the payment, whether the transaction be in the nature of revenue expenditure or capital expenditure or reimbursement of expense, etc.
- ✦ The last limb of section 269ST is very wide and covers all payment "in respect of transactions relating to one event or occasion from a person". For example, aggregate cash payments to event manager/ wedding planners, etc., for planning various programs relating to one event/ occasion cannot exceed ₹ 3 lakhs.

MISCELLANEOUS PROVISIONS

No taxation on notional basis for vacant property held as stock-in-trade

[Clause 12] **(w.e.f. 01.04.2018)**

- Under the existing provisions of section 23 of the Act, the annual letting value ('ALV') of property, which remained vacant throughout the relevant year, is taken as the sum for which the said property might reasonably be expected to let. The said section, however, does not provide any exception in relation to the properties held as 'stock-in-trade'.

- The Courts too have held that incidence of income tax is not premised on whether the assessee carries on business, as landlord, but on the basis of ownership and therefore, ALV of vacant properties held as 'stock-in-trade' should be determined in accordance with section 23 of the Act (Refer: Ansal Housing Finance & Leasing Co. Ltd: 354 ITR 180 (Del.)]

- It is now proposed to insert sub-section (5) in section 23 of the Act providing that where any property, consisting of any building and land appurtenant thereto held as stock-in-trade and which remained vacant during the whole or any part of the relevant previous year, then, ALV of such property shall be taken to be NIL for the period upto one year from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority.

Income from transfer of carbon credits

[Clause 45] **(w.e.f. 01.04.2018)**

- It is proposed to insert new section 115BBG to provide that where total income of the assessee includes any income from transfer of carbon credits, such income shall be taxable @ 10% (plus applicable surcharge and cess) on the gross amount of such income.

- It is further proposed that no expenditure or allowance would be allowed against such income.

Comments/ Observations

- The Revenue has been treating income on transfer of carbon credits as business income taxable @ 30%. Various Courts and Benches of the Tribunal have, however, held that income received on transfer of carbon credits constitutes capital receipt not exigible to tax. Reference may be made to the following decisions:

  - CIT III vs SubhashKabini Power Corporation Ltd: 385 ITR 592 (Kar)
  - CIT IV vs My Home Power Ltd: 365 ITR 82 (AP)

- DCIT vs SreeRayalaseema Green Energy Ltd: 58 taxmann.com 62 (Hyderabad – Trib.)
- ACIT vs Intex: 154 ITD 365 (Chennai – Trib.)

✦ The aforesaid amendment seeks to nullify the aforesaid decisions to bring income from transfer of carbon credits under the tax net. The issue to be considered would be whether the proposed amendment could be applied to pending matters?

Rationalization of section 211 relating to advance tax

[Clause 73] (w.e.f. 01.04.2017)

✦ Under the existing provisions of section 211 of the Act, an assessee referred to in section 44AD is liable to pay advance tax in a single instalment on or before the 15th of March every financial year. The presumptive taxation regime was further extended to professionals covered under section 44ADA vide the Finance Act, 2016.

✦ It is now proposed to allow such professionals who declare profits and gains under section 44ADA of the Act pay advance tax in one instalment on or before the 15th of March.

✦ This provision is proposed to be made applicable even for the ongoing assessment year 2017-18.

Applicability of section 234C

[Clauses74] (w.e.f. 01.04.2017)

✦ Consequential amendment has been proposed in section 234C(1)(b) to provide that in respect of an assessee referred to in section 44ADA of the Act, interest under section 234C shall be levied where the advance tax paid on or before 15th March is less than the tax due on returned income.

✦ In addition to above, in respect of shortfall in payment of advance tax attributable to under-estimation or failure in estimation of income referred to in section 115BBDA (dividend from domestic companies in excess of Rs.10 lakhs), it is proposed that no interest shall be levied under section 234C of the Act subject to the conditions prescribed therein.

✦ This amendment is proposed to be made applicable from assessment year 2017-18 itself.

Interest on refund to the deductor

[Clause 77] (w.e.f. 01.04.2017)

✦ Under the existing provisions of section 244A of the Act, assessee is entitled to receive interest on refund arising on account of excess payment of advance tax, tax deducted or collected at source, etc.

It is now proposed to insert new sub-section (1B) to provide that where refund of any amount becomes due to the deductor, such person shall be entitled to receive simple interest @ 0.5% for every month or part of month on such refund, in addition to the principal amount of refund, from the date on which:

- claim for refund is made in the prescribed form (to be notified); or
- tax is paid, where refund accrues/ arises on account of giving effect to an order under section(s) 250/254/260/262;

till the date of grant of refund.

✦ However, interest shall not be allowed for the period for which the delay in proceedings resulting in the refund is attributable to the deductor.

Restrictions on cash transactions

[Clauses 71, 83 and 84] (w.e.f. 01.04.2017)

✦ It is proposed to insert new section 269ST to prohibit any person from receiving sum of ₹ 3 lakhs or more otherwise than by account payee cheque or account payee bank draft or use of electronic clearing system through a bank account:

(a) in aggregate from a person in a day; or

(b) in respect of a single transaction; or

(c) in respect of transactions relating to one event or occasion from a person.

✦ The aforesaid section would not cover the following:

- Where recipient is
  (i) Government;
  (ii) any banking company, post office savings bank or co-operative bank;
- transactions referred to in section 269SS [which covers transactions of loans/ advances and specified transactions relating to real estate];
- such other persons which the Central Government may specify.

Penalty for cash payments

✦ It is also proposed to insert section 271DA in Chapter XXI for levying penalty equivalent to the amount received in contravention of aforesaid provisions of section 269ST. Only Joint Commissioner has been authorized to initiate/ levy such penalty.

- No penalty shall, however, be levied if the person proves good and sufficient cause for the contravention.

Levy of Penalty under section 271J

[Clauses 86 and 87] **(w.e.f. 01.04.2017)**

- The existing provisions of the Act provide for penalizing defaulting assessees who may have furnished incorrect information. However, no penal provisions exist for levy of penalty on qualified professionals, viz. Accountants, Merchant Bankers or Registered Valuers, who are responsible for certifying various reports required by an assessee.

- With a view to enhancing accountability of aforementioned qualified professionals and to ensure that appropriate due diligence is undertaken before making such certification, it is proposed to insert new section 271J to provide for levy of penalty by the assessing officer or Commissioner (Appeals), amounting to a sum of ten thousand rupees for furnishing incorrect information in any report or certificate issued by the professional.

- It is also proposed to amend section 273B so as to provide that if the professional proves that there was reasonable cause for the failure referred to in section 271J, penalty shall not be levied under the said proposed section.

Amendments to structure of Authority for Advance Rulings

[Clauses 79, 80 & 81] **(w.e.f. 01.04.2017)**

- It has been proposed to merge the Authority for Advance Rulings (“AAR”) for income-tax, central excise, customs, and service tax into one consolidated Authority. Consequential amendments to the definition of (i) applicant under section 245N; (ii) application under section 245Q; and (iii) the constitution and qualification to be appointed as Member of AAR under section 245O, have been proposed by way of appropriate references to Customs, Excise and Service Tax laws.

RATIONALIZATION OF TRANSFER PRICING RELATED PROVISIONS

Persons specified in section 40(A)(2)(b) outside the purview of section 92BA

[Clauses 15 & 41] **(w.e.f. 01.04.2017)**

- The Finance Act, 2012, extended the mechanism for determination of arm's length price in Chapter-X to specified domestic transactions, as defined in section 92BA of the Act.
- In terms of clause (i) to section 92BA of the Act, any expenditure in respect of which payment has been made by the assessee to certain "specified persons" under section 40A(2)(b) is covered within the ambit of specified domestic transactions. With the aforesaid amendment, the onus of demonstrating such specified domestic transaction(s) at arm's length price had shifted from the Revenue to the taxpayer.
- It is now proposed to omit clause (i) from section 92BA with effect from 1st April, 2017 to exclude transactions referred to in section 40A(2) from the scope of section 92BA. Pursuant to the aforesaid amendment, the taxpayer would not be required to undertake annual transfer pricing compliances such as maintenance of transfer pricing documentation, furnishing transfer pricing audit report in Form 3CEB in respect of transactions undertaken with persons referred to in section 40A(2)(b) after 31-03-2016.
- Consequential amendment is also proposed in section 40(A)(2)(b) of the Act.

Comments/ Observations

- Section 40A(2) of the Act authorizes the assessing officer to make disallowance of expenditure which, in his opinion, is excessive or unreasonable having regard to the market price. Disallowance of expenses under section 40A(2) of the Act could be made only after a finding was recorded by the assessing officer that (i) the parties are related in terms of section 40A(2)(b) of the Act, (ii) the expenditure was excessive or unreasonable having regard to (a) the fair market value of goods or services; (b) the legitimate business needs; (c) benefit derived by or accruing to the taxpayer.
- Since after the amendment, payments made to persons specified in section 40(A)(2)(b) would be excluded from the purview of transfer pricing regulations, the onus of demonstrating that such payments are excessive or unreasonable, having regard to the market price would again shift from the taxpayer to the Revenue.
- Thus, the initial onus for invoking section 40A(2) of the Act would now be on the assessing officer to find out the fair market value of goods and services and to bring on record comparable

instances, as held in the following decisions:

- Voltamp Transformers (P) Ltd. vs. CIT: 129 ITR 105(Guj.)
- Beta Naphthol P. Ltd. vs. DCIT: 50 TTJ 375 (Ind)
- Hathiwala Silk Mills vs. ITO: 19 TTJ 284 (Ahd)
- M & Co. vs. ITO: 23 Taxman (Mag)27 (Ahd)
- Binit Corporation vs. ITO: 25 Taxman 238 (Ahd) (Mag).
- Upvan International vs. ITO: 15 ITD 215 (Del)
- Rangoon Chemical Works P. Ltd. vs. ACIT: 100 Taxman (Mag) 163 (Ahd).
- Shriram Pistons & Rings Ltd. vs. IAC : 39 TTJ 132 (Del).
- Vikshra Trading and Investment Private Ltd. vs. CIT: 61 TTJ 6 (Ahd.)
- BatliwalaKarani vs. ACIT: (2005) 2 SOT 379 (Mumbai)
- Nestle (India Ltd (ITA No.4545/D/2000 and 2239/D/2002
- Shankar Trading Co Pvt. Ltd. vs. ACIT: ITA No.2792 to 2794/D/2004 and 2155/D/2002.
- DCIT vs. Lab India Instruments (P) Ltd: 93 ITD 120 (Pune)

✦ The taxpayer now may seek to justify the payment as not being excessive and unreasonable by taking conventional arguments, e.gd. commercial expediency or benefits accruing from the payments made to persons specified in section 40A(2)(b).

✦ It would also be possible now to contend that both the payer and the payee, both tax paying entities and the transaction, being revenue neutral, section 40(A)(2)(b) should not be invoked. [refer Circular No. 6-p dated 06.07.1968 issued by the CBDT and CIT Vs. Glaxo SmithKline Asia (P) Ltd. : 195 Taxman 35 (SC)].

✦ The aforesaid is a welcome amendment, which will significantly ease the compliance burden on the taxpayer.

Limitation on interest deductions

[Clause 43] **(w.e.f. 01.04.2018)**

✦ The Organization for Economic Co-operation and Development (OECD) in the report on Base Erosion and Profit Shifting (BEPS) Action Plan 4 project set out a best practice approach for countries to prevent erosion of the tax base by way of excess interest deductions by the MNEs.

- BEPS Action Plan 4 is focused on the use of third-party, related party and intragroup debt to obtain "excessive" deductions or to "finance the production of exempt or deferred income."

- OECD in its final report recommended limitation on deduction of interest expenditure to a fixed ratio rule, i.e. ratio of interest expenditure to earnings before interest, tax, depreciation and amortization (EBITDA) of the taxpayer. OECD further recommended the fixed ratio to be in the range of 10% to 30%.

- As per OECD's BEPS Action Plan 4, the fixed ratio approach can be supplemented by a worldwide group ratio rule, as well as certain targeted rules.

- The Finance Bill, 2017 adopting the recommendations of OECD's BEPS Action Plan 4 proposes to insert section 94B denying deduction of excess interest while computing the taxable income of a taxpayer.

- Excess interest has been defined to mean the amount of total interest paid or payable by the taxpayer in excess of 30% of EBITDA or interest paid or payable by the taxpayer to associated enterprises, whichever is less.

Illustration:

Particulars	**I**	**II**
Interest Expense on amount borrowed from associated enterprises - (A)	30	30
Interest on amount borrowed from third parties - (B)	20	20
Total interest expenses - (C = A+B)	50	50
Earnings before Tax, Interest, Depreciation and Amortization ('EBITDA') - (D)	100	-100
30% of EBITDA (E = 30% of D)	**30**	**0***
Amount of total interest paid in excess of 30% of EBITDA – (F = C – E))	**20**	**50**
Amount of interest paid to associated enterprise (G)	**30**	**30**
Excess interest not deductible (Lower of A & F))	**20**	**30**

**In line with example in report for BEPS Action Plan 4.*

- Deduction of entire interest on loans availed from associated enterprises would be disallowed if the taxpayer has negative EBITDA.

- The provision is applicable to an Indian company, or a PE of a foreign company being the borrower who pays interest in respect of any form of debt issued, to a non-resident who is an associated enterprise of the borrower.

- Where the debt is issued by a third party lender, to whom the AE either provides an implicit or explicit guarantee or with whom the AE deposits corresponding and matching amount of funds, the same shall be deemed to be issued by an AE. Such debt inured by third party lender, in any case, may be a deemed international transaction in terms of section 92B(2) of the Act.

- "Debt" has been defined under clause (ii) of section 94B(5) to mean any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts or other finance charges that are deductible in the computation of income chargeable under the head "Profits and gains of business or profession. [Clause (ii) of section 94B(5)]

- The amount so disallowed under proposed regulations shall be allowed to be carried forward for subsequent eight assessment years and set off against profit and gains of business and profession, subject to limitation of interest deduction of 30% of EBITDA in that subsequent year..

- It is proposed to provide threshold of interest expenditure in excess of ₹ 1 crore for the provision to be applicable.

- The above provisions shall not apply to an Indian company or PE of a foreign company, which is engaged in the business of banking or insurance.

Comments/ Observations

- OECD recommends EBITDA of the taxpayer to be computed with reference to the taxable income, which should further be adjusted for interest, depreciation and amortization. Tax exempted incomes are not to be included in EBITDA.

  However, in absence of similar provision in the proposed amendment, EBITDA may be worked out on book profits.

- The rule for limitation of interest deduction has generally been implemented by developed countries, such as, OECD countries, USA, Australia, France, Germany, Japan, Netherlands, New Zealand, Sweden and UK, China, Russia, etc.

- Implementation of these rules may act as a double edge sword, viz. protecting the tax base at the cost of inflow of foreign investments, which may be necessary for investment in infrastructure and large capital intensive projects with long gestation.

Secondary Adjustments

[Clause 42] **(w.e.f. 01.04.2018)**

- 'Secondary adjustment' in transfer pricing parlance means the actual allocation of profits consistent with the primary transfer pricing adjustment by a constructive transaction (a secondary transaction), whereby excess profits resulting from a primary adjustment are treated as having been transferred in some other form and taxed accordingly.

- Secondary adjustment is a notional income which is a product resulting from primary adjustment, and in absence of a corresponding adjustment or other relief provided in the hands of the associated entity by the other country for the additional tax liability, results in double taxation on the income.

- The transfer pricing regulations in India hitherto did not provide for 'secondary adjustment' and for that reason 'secondary adjustment', attempted by the Revenue in transfer pricing assessments were not approved by the Courts. In a recent decision in the case of PMP Auto Components Pvt. Ltd. (ITA No. 1484/Mum/2014), the Mumbai ITAT, ruling in favour of the taxpayer held that the secondary adjustment was not permissible as per the existing transfer pricing provisions under the Act.

- Internationally, some developed countries, e.g. Austria, Germany, France, UK, USA, South Africa, Korea and Canada, etc. have permitted secondary adjustments in transfer pricing by conferring the powers upon the taxing authorities under their domestic tax laws.

- In order to aligning the transfer pricing provisions with OECD guidelines/ international best practices, the concept of 'secondary adjustment' is proposed to be introduced by the Finance Bill, 2017 by incorporating section 92CE which provides for secondary adjustment in cases where primary transfer pricing adjustment of INR 10 million or more has been made:

  - suomotu by the taxpayer
  - by the assessing officer and has been accepted by the taxpayer
  - in accordance with the Advance Pricing Agreement entered into by the taxpayer
  - as per the Safe Harbour Rules
  - as a result of resolution of an assessment by way of Mutual Agreement Procedure

- If the amount corresponding to the primary adjustment is not repatriated to India by the concerned associated enterprise within a prescribed time, then, it would be deemed to be an advance made by the taxpayer in favour of such associated enterprise and interest on the same shall be imputed (in a manner, as may be prescribed).

- Provisions for 'secondary adjustment' would not apply in case (i) the amount of primary adjustment in any previous year does not exceed INR 10 million, and (ii) the primary adjustment relates to transaction for financial year 2015-16 or before.

Comments/Observations

- The proposed provision related to 'secondary adjustment' would be applicable for primary transfer pricing adjustment computed in respect of international transaction undertaken during the current financial year, i.e. assessment year 2017-18.
- Primary transfer pricing adjustment made on an entity-wide transfer pricing analysis, combining international transactions with different foreign AEs, may require a rational basis for allocating such adjustment between the AEs for repatriation of the amount.
- 'Secondary adjustment' are made solely for tax purposes and are recorded outside books of accounts – only receipt of the amount of primary adjus5tment could get accounted in the books of accounts.
- Whether it will be possible to reduce profit as per profit and loss account by the amount of primary transfer pricing adjustment received by the Indian taxpayer while computing book profit under section 115JB of the Act? – No.
- Whether it will be possible to reduce the amount of primary adjustment repatriated by the foreign AE for computing taxable income under the normal provisions of the Act? – No.
- Whether the amount received by the taxpayer from the associated enterprise as secondary adjustment would be subjected to tax again? – No.
- Whether adjustment / refund of tax withheld on payments would be available to the extent of the amount of primary adjustment remitted by the AE.
- Commentary on OECD model convention in paragraph (2) of article 9 does not prohibit a 'secondary adjustment'.
- OECD commentary, however, is silent on 'corresponding adjustment' by way of set off to the foreign AE in respect of such 'secondary adjustment'.
- Internationally, some developed countries, e.g. Austria, Germany, France, South Africa, Korea and Canada, UK, USA, etc. have permitted secondary adjustments in transfer pricing by conferring the powers under their domestic tax laws.
- 'Secondary adjustment' is a strong step by the Government which would significantly increase the tax incidence in respect of TP adjustments.

INDIRECT TAX PROPOSALS

CUSTOMS

LEGISLATIVE CHANGES

Proposed change to provision of Customs Act, 1962 to introduce the concept of beneficial owner

[Clause 88] **[w.e.f. date of enactment of Finance Bill]**

- The term "beneficial owner" has been included by insertion of clause (3A), as any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported. Accordingly, the scope of term "exporter" in clause (20) and "Importer" in clause (26) has been widened to include "beneficial owner". Accordingly, the concept of beneficial owner has been defined so as to make accountability on exports and import.

Proposed changes to provisions of Customs Act, 1962 pertaining to definition of Custom Station

[Clauses 88, 89, 102 & 103] ***[w.e.f. date of enactment of Finance Bill]***

- The scope of the term "custom station" in clause (13) of Section 2 has been widened to include "foreign post office", "custom airport" and "international courier terminal".

- The term "Foreign Post Office" has been defined in clause (20A), as any post office appointed under clause (e) of sub-section (1) of section 7 to be a foreign post office.

- The term "international courier terminal" has been defined in clause (28A), as any place appointed under clause (f) of subsection (1) of section 7 to be an international courier terminal.

- Amendment to Section 7 by insertion of clause (e) and (f) has been made, which authorizes the Central Board of Excise and Customs ('Board') to notify places appointed as "foreign post offices" and "international courier terminals".

- To align with the above, Section 82 of the Customs Act relating to goods exported and imported by post has been deleted, since Foreign Post Office has been included in the Customs Station.

- Section 69 relating to clearance of warehoused goods for exportation is being amended to align it with the proposed omission of Section 82.

Proposed changes to provisions of Customs Act, 1962 pertaining to self-assessment of duty

[Clause 90] ***[w.e.f. date of enactment of Finance Bill]***

- The powers of the proper officer of customs to ask for documents has been extended to 'any documents' that may be required for import and export as opposed to specific documents namely contract, brokers note, insurance policy, catalogue etc. which were required to be furnished under the unamended Section 17.

Proposed changes to provisions of Customs Act, 1962 pertaining to refund of duty

[Clause 91] ***[w.e.f. date of enactment of Finance Bill]***

- Sub-section (2) of section 27 is being amended so as to keep outside the ambit of unjust enrichment, the refund of duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made, where - (i) such excess payment is evident from the bill of entry in the case of self-assessed bill of entry or (ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment. In such case doctrine of unjust enrichment will not be applicable.

Proposed changes to provisions of Customs Act, 1962 pertaining to advance rulings

[Clauses 92, 93, 95 & 96] *[w.e.f. date of enactment of Finance Bill]*

- Clarification on definition of "authority" has been proposed, by substituting definition in clause (e) of section 28 E. The proposed definition provides that the Authority for Advance Rulings constituted under Section 245-O of the Income Tax Act, 1961 shall be the "authority" for giving advance rulings for the purposes of the Customs Act. It further seeks to provide that the Member of the Indian Revenue Service (Customs and Central Excise), who is qualified to be a Member of the Board, shall be the Technical Member of the Authority for the purposes of Customs Act, 1962.

- It also seeks to provide for transferring the pending applications before the Authority for Advance Rulings (Central Excise, Customs and Service Tax) to the Authority constituted under Section 245-O of the Income Tax Act, 1961 from the stage at which such proceedings stood as on the date on which the Finance Bill, 2017 receives the assent of the President.

- Section 28(G) relating to vacancies not to invalidate proceedings has been omitted, being now redundant.

- Sub-section (3) of section 28H is being amended so as to increase the application fee for seeking advance ruling from rupees two thousand five hundred to rupees ten thousand on the lines of the Income Tax Act, 1961.

- Sub-section (6) of section 28I is being amended so as to provide time of limit of six months by which Authority shall pronounce its ruling on the lines of the Income Tax Act, 1961.

Proposed changes to provisions of Customs Act, 1962 pertaining to conveyances

[Clauses 97, 98 & 107] *[w.e.f. date of enactment of Finance Bill]*

- Amendment has been proposed by introducing Section 30A to make it obligatory on the person-in-charge of a conveyance that enters India from any place outside India or any other person as may be specified by the Central Government by notification in the Official Gazette, to deliver to the proper officer the passenger and crew arrival manifest before arrival in the case of an aircraft or a vessel and upon arrival in the case of a vehicle; and passenger name record information of arriving passengers in such form, containing such particulars, in such manner and within such time as may be prescribed. The section also intends to provide for imposition of a penalty not exceeding fifty thousand rupees as may be prescribed, in the case of delay in delivering the information

- Amendment has been proposed by introducing section 41A is being introduced so as to make it obligatory on the person-in-charge of a conveyance that departs from India to a place outside India or any other person as may be specified by the Central Government by notification in the Official Gazette, to deliver to the proper officer the passenger and crew departure manifest and passenger name record information of departing passengers before the departure of the conveyance in such form, containing such particulars, in such manner and within such time as may be prescribed. The section also intends to provide for a penalty not exceeding fifty thousand rupees as may be prescribed in the case of delay in delivering the information.

- Section 157 is being amended so as to empower Board to make regulations for specifying the form, particulars, manner and time of providing the passenger and crew manifest for arrival and departure and passenger name record information and penalty in the case of delay in delivering the information.

- The term “Passenger Name Record Information” has been included by insertion of clause (30B) to section 2, to means the records prepared by an operator of any aircraft or vessel or vehicle or his authorized agent for each journey booked by or on behalf of any passenger.

Proposed changes to provisions of Customs Act, 1962 pertaining to clearance of imported and exported goods

[Clauses 99, 100 & 101] *[w.e.f. date of enactment of Finance Bill]*

- Sub-section (3) of section 46 is being substituted so as to make it mandatory to file the bill of entry before the end of the next day following the day (excluding holidays) on which the vessel or aircraft or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing and to provide for imposition of such charges for late presentation of the bill of entry as may be prescribed. All importer will have to file Bill of Entry on very second day, otherwise late fees will be charged and duty applicable on very next day of arrival of the Vessel/ Aircraft at the Customs Station.

- Sub-section (2) of section 47 is being amended so as to provide the manner of payment of duty and interest thereon in the case of self-assessed bills of entry or, as the case may be, assessed, reassessed or provisionally assessed bills of entry. Thus, duty will have to be paid on the date of filing the Bill of Entry based on self-assessment or within one day after assessment otherwise interest will be payable.

- Section 49 is being amended to extend the facility of storage under section 49 to imported goods entered for warehousing before their removal. Thus, as per the amended provisions the Assistant Commissioner / Deputy Commissioner of Customs is empowered to direct storage for warehouse of imported goods before clearing when clearance is likely to be delayed for a period not exceeding 30 days. The period extendable by another 30 days by the Principal Commissioner of Customs or Commissioner of Customs.

Proposed changes to provisions of Customs Act, 1962 pertaining to settlement of cases

[Clauses 105 & 106] *[w.e.f. date of enactment of Finance Bill]*

- Section 127B is being amended so as to insert a new sub-section (5) therein to enable any person, other than applicant, referred to in sub-section (1) to make an application to the Settlement Commission. This change has been introduced to redress the situation where the co-noticees (against whom penal provision s were invoked), did not file applications for settlement when the main noticee had filed applications and granted immunity from prosecution. Thus, such proceedings against co-noticees continued before the adjudicating authority.

- Amendment has been made to sub section (3) of section 127C by changing the name of authority as Commissioner of Customs or Principal Additional Director General of Revenue Intelligence or Additional Director General of Revenue Intelligence, as the case may be, having jurisdiction and such Commissioner or Additional Director General.

- Section 5A has been inserted to section 127C to empower the Settlement Commission to carry out rectification in its orders passed in order to "rectify any error apparent on the face of record"either *suo motu* or on an application within 3 months of passing the order.

- The amendment was a necessary correction to finding of the Apex Court in **Brijlal&Ors. vs. CIT 2010-TIOL 81 SC IT CB,** that the Settlement Commission has no power to reopen a proceedings concluded by a final order under Section 245D(4) of the Income Tax Act,1961. The decision was also being followed by subordinate courts. This change will reduce litigation as the assessee had to previously approach appellate authorities to rectify any apparent on the face of record.

Proposed changes to countervailing investigations under the Custom Tariff Act, 1975

[Clause 108] ***[w.e.f. date of enactment of Finance Bill]***

- Amendment has been made by substituting clause (c) of sub section (3) of section 9 as to withdraw the exemption to three categories of non-actionable subsidies namely research activities, assistance to disadvantaged regions and assistance to promote adaptation of existing facilities, from the scope of anti-subsidy investigations.

RATE CHANGES

Change in rate of Basic Customs Duty ('BCD')

[w.e.f. 02.02.2017]

	Industry	Rate	
Sl. No.		From	To
FOOD PROCESSING			
1	Cashew nuts, roasted, salted or roasted and salted	30%	45%
2	RO membrane element for household type filters	7.50%	10%
MINERAL FUELS AND MINERAL OILS			
3	Liquefied natural gas	5%	2.50%
CHEMICALS & PETROCHEMICALS			
4	o-Xylene	2.50%	Nil
5	Medium Quality Terephthalic Acid (MTA) & Qualified Terephthalic Acid (QTA)	7.50%	5%
6	2-Ethyl Anthraquinone [29146990]for use in manufacture of hydrogen peroxide	7.50%	2.50%
7	Clay 2 Powder (Alumax) for use in ceramic substrate for catalytic convertors	7.50%	5%
8	Vinyl Polyethylene Glycol (VPEG) for use in manufacture of Poly Carboxylate Ether	10%	7.50%
Textiles			
9	Nylon mono filament yarn for use in monofilament long line system for Tuna fishing	7.50%	5%

FINISHED LEATHER, FOOTWEAR AND OTHER LEATHER PRODUCTS			
10	Vegetable tanning extracts, namely Wattle extract and Myrobalan fruit extract	7.50%	2.50%
METALS			
11	Co-polymer coated MS tapes / stainless steel tapes for manufacture of telecommunication grade optical fibres or optical fibre cables	Nil	10%
12	Nickel	2.50%	Nil
13	MgO coated cold rolled steel coils [7225 19 90] for use in manufacture of CRGO steel	10%	5%
14	Hot Rolled Coils [7208], when imported for use in manufacture of welded tubes and pipes falling under heading 7305 or 7306	12.50%	10%
CAPITAL GOODS			
15	Ball screws, linear motion guides and CNC systems for use in manufacture of all CNC machine tools : Ball screws and linear motion guides	7.50%	2.50%
	CNC systems	10%	2.50%
RENEWABLE ENERGY			
16	Solar tempered glass for use in the manufacture of mobile phones	5%	Nil
17	Resin and catalyst for manufacture of cast components for Wind Operated Energy Generators [WOEG]	7.50%	5%

18	All items of machinery required for fuel cell based power generating systems to be set up in the country or for demonstration purposes	10% / 7.5%	5%
19	All items of machinery required for balance of systems operating on biogas/bio-methane/ by-product hydrogen	10% / 7.5%	5%
MISCELLANEOUS			
20	All parts for manufacture of LED lights or fixture, including LED lamps	10% / 7.5%	5%
21	All inputs for use in manufacture of LED drivers and MCPCB for LED lights or fixtures, including LED lamps	10% / 7.5%	5%
22	Miniaturized POS card reader for m- POS (not including mobile phones, or tablet computers), micro ATM as per standards version 1.5.1, Finger Print Reader/Scanner or Iris Scanner	10% / 7.5%	Nil

Change in rate of Special Additional Duty ('SAD')

[w.e.f. 02.02.2017]

	Industry	Rate	
Sl. No.		**From**	**To**
RENEWABLE ENERGY			
1	Resin and catalyst for manufacture of cast components for Wind Operated Energy Generators [WOEG]	4%	Nil
ELECTRONICS AND HARDWARE			
2	Populated PCBs for manufacture of	Nil	2%

	mobile phones		
MISCELLANEOUS			
3	Miniaturized POS card reader for m-POS (not including mobile phones, or tablet computers), micro ATM as per standards version 1.5.1, Finger Print Reader/Scanner or Iris Scanner	4%	Nil
4	Parts and components for manufacture of miniaturized POS card reader for m-POS (not including mobile phones, or tablet computers), micro ATM as per standards version 1.5.1, Finger Print Reader/Scanner or Iris Scanner	4%	Nil

Change in rate of Countervailing Duty ('CVD')

[w.e.f. 02.02.2017]

	Industry	**Rate**	
Sl. No.		**From**	**To**
RENEWABLE ENERGY			
1	Parts/raw materials for manufacture of solar tempered glass for use in solar photovoltaic cells/modules, solar power generating equipment or systems, flat plate solar collector, solar photovoltaic module and panel for water pumping and other applications	12.50%	6%
2	Resin and catalyst for manufacture of cast components for Wind Operated Energy Generators [WOEG]*	12.50%	Nil

3	All items of machinery required for fuel cell based power generating systems to be set up in the country or for demonstration purposes	12.50%	6%
4	All items of machinery required for balance of systems operating on biogas/bio-methane/ by-product hydrogen	12.50%	6%
MISCELLANEOUS			
5	Membrane Sheet and Tricot / Spacer for use in manufacture of RO membrane element for household type filters	12.50%	6%
6	All parts for manufacture of LED lights or fixture, including LED lamps	12.50%	6%
7	Miniaturized POS card reader for m- POS (not including mobile phones, or tablet computers), micro ATM as per standards version 1.5.1, Finger Print Reader/Scanner or Iris Scanner	12.50%	Nil
8	Parts and components for manufacture of miniaturized POS card reader for m-POS (not including mobile phones, or tablet computers), micro ATM as per standards version 1.5.1, Finger Print Reader/Scanner or Iris Scanner*	12.50%	Nil
9	Silver medallion, silver coins having silver content not below 99.9%, semi-manufactured form of silver and articles of silver	Nil	12.50%

Change in Export Duty Rate

[w.e.f. 02.02.2017]

	Industry	Rate	
Sl. No.		From	To
	ORES AND CONCENTRATES		
1	Other aluminium ores and concentrate	Nil	30% (Effective rate is 15%)

CENTRAL EXCISE

LEGISLATIVE CHANGES

Proposed changes to provisions of Central Excise Act, 1944 pertaining to advance rulings

[Clauses 111, 113 and 114] *[w.e.f. date of enactment of Finance Bill, 2017]*

- Clarification on definition of “authority” has been proposed, by substituting definition in clause (e) of Section 23A. The proposed definition provides that the Authority for Advance Rulings constituted under Section 245-O of the Income Tax Act shall be the “authority” for giving advance rulings for the purposes of the Customs Act. It further seeks to provide that the Member of the Indian Revenue Service (Customs and Central Excise), who is qualified to be a Member of the Board, shall be the Technical Member of the Authority for the purposes of Central Excise Act, 1944.

- Section 23I is being inserted to provide for transfer of pending applications before the Authority for Advance Rulings (Central Excise, Customs and Service Tax) to the Authority constituted under Section 245-O of the Income Tax Act, 1961 from the stage at which such proceedings stood as on the date on which the Finance Bill, 2017 receives the assent of the President.

- Section 23B relating to vacancies not to invalidate proceedings has been omitted, being now redundant.

- Sub-section (3) of section 23C is being amended so as to increase the application fee for seeking advance ruling from rupees two thousand five hundred to rupees ten thousand on the lines of the Income Tax Act, 1961.

- Sub-section (6) of section 23D is being amended so as to provide time of limit of six months by which Authority shall pronounce its ruling on the lines of the Income Tax Act.

Amendment to provisions of Customs Act, 1962 pertaining to settlement of cases

[Clauses 116 and 117] *[w.e.f. date of enactment of Finance Bill]*

- Section 32E is being amended so as to insert a new sub-section (5) therein to enable any person, other than applicant, referred to in sub-section (1) to make an application to the Settlement Commission. This change has been introduced to redress the situation where the co-noticees (against whom penal provisions were invoked), did not file applications for settlement when the main noticee had filed applications and granted immunity from prosecution. Thus, such proceedings against co-noticees continued before the adjudicating authority.

- Section 5A has been inserted to Section 32F to empower the Settlement Commission to carry out rectification in its orders passed in order to "rectify any error apparent on the face of record" either *suo motu* or on an application within 3 months of passing the order. The amendment was a necessary correction to finding of the apex court in **Brijlal&Ors. vs. CIT 2010-TIOL 81 SC IT CB** that the Settlement Commission has no power to reopen a proceedings concluded by a final order under Section 245D(4) of the Income Tax Act, 1961. The decision was also being followed by subordinate courts. This change will reduce litigation as the assessee had to previously approach appellate authorities to rectify any apparent on the face of record.

Amendment to Rule 21 of the Central Excise Rules 2002

(w.e.f. from 02.02.2017)

- The proposed amendment involves direction with respect to limitation of period for granting remission of duty for reasons of damage, fire etc. within a time limit of three months from the date of receipt of application. However, the said time limit of three months can be further extended by a period not exceeding six months, only where sufficient reasons are recorded by the authority and the extension is being granted by the higher authority.

Clarification by Board on procurement by EOUs

- The proviso to sub-section (1) of Section 5A of the Central Excise Act, 1944 stating that unless specifically provided in a notification, no exemption therein shall apply to excisable goods which are produced or manufactured by an EOU and cleared to the DTA was examined by the Board. It has been clarified that non-applicability of exemptions under notifications issued under section 5A of the Central Excise Act, 1944 is only in respect of excisable goods produced or manufactured by an EOU and cleared to DTA and not in respect of inputs/raw materials procured by them domestically and utilized for production/manufacture of goods which are cleared by them to DTA.

- Further, EOUs will also be eligible to import or procure raw materials/ inputs at other concessional/ Nil rate of BCD, excise duty/ CVD or SAD, as the case may be, provided they fulfill all conditions for being eligible to such concessional or Nil duty.

- The above exemption/ concession can be availed without obtaining fresh registration under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 or the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) Rules, 2016.

DUTY CHANGES

Amendment pertaining to First Schedule to the Central Excise Tariff Act, 1985

[Clause 118] *[w.e.f. 02.02.2017]*

SI. No.	Amendments involving change in the rate of Basic Excise Duty	Rate of Duty	
	Commodity	From	To
A.	Tobacco and Tobacco Products		

1	Cigar and cheroots	12.5% or Rs.3755 per thousand, whichever is higher	12.5% or Rs.4006 per thousand, whichever is higher
2	Cigarillos	12.5% or Rs.3755 per thousand, whichever is higher	12.5% or Rs.4006 per thousand, whichever is higher
3	Cigarettes of tobacco substitutes	Rs.3755 per Thousand	Rs.4006 per thousand
4	Cigarillos of tobacco substitutes	12.5% or Rs.3755 per thousand, whichever is higher	12.5% or Rs.4006 per thousand, whichever is higher
5	Others of tobacco substitutes	12.5% or Rs.3755 per thousand, whichever is higher	12.5% or Rs.4006 per thousand, whichever is higher

Amendments pertaining to Seventh Schedule to the Finance Act, 2005

[Clause 146] ***[w.e.f. 02.02.2017]***

SI. No.	Amendments involving change in the rate of Additional Excise duty	Rate of Duty	
	Commodity	**From**	**To**
A.	Tobacco and Tobacco Products		

1	Non-filter Cigarettes of length not exceeding 65mm	Rs.215 per thousand	Rs.311 per thousand
2	Non-filter Cigarettes of length exceeding 65mm but not exceeding 70mm	Rs.370 per thousand	Rs.541 per thousand
3	Filter Cigarettes of length not exceeding 65mm	Rs.215 per thousand	Rs.311 per thousand
4	Filter Cigarettes of length exceeding 65mm but not exceeding 70mm	Rs.260 per thousand	Rs.386 per thousand
5	Filter Cigarettes of length exceeding 70mm but not exceeding 75mm	Rs.370 per thousand	Rs.541 per thousand
6	Other Cigarettes	Rs.560 per thousand	Rs.811 per thousand
7	Chewing tobacco (including filter khaini)	10%	12%
8	Jarda scented tobacco	10%	12%
9	Pan Masala containing Tobacco (Gutkha)	10%	12%

Retrospective amendments pertaining to First Schedule to the Finance Act, 2005

[Clause 119] *[w.e.f. 02.02.2017]*

SI. No.	**Retrospective amendments involving change in the rate of Excise Duty**	**Rate of Duty**	
	Commodity	**From**	**To**
1	Motor vehicles for transport of more than 13 persons falling under tariff	27%	12.50%

	items 8702 90 21 to 8702 90 29 of the First Schedule to the Central Excise Tariff Act, 1985.		

Changes in rate of Excise Duty

[w.e.f. 02.02.2017]

SI. No.	Amendments involving change in the rate of Additional Excise Duty under Finance Act, 2005	Rate of Duty	
	Commodity	**From**	**To**
1	Pan Masala	6%	9%
A.	Tobacco and Tobacco Products		
1	Unmanufactured tobacco	4.20%	8.30%
B.	Amendments involving change in the rate of Basic Excise duty		
1.	Paper rolled biris – handmade	Rs.21 per thousand	Rs.28 per thousand
2.	Paper rolled biris – machine made	Rs.21 per thousand	Rs.78 per thousand
C.	Renewable Energy		
1.	Solar tempered glass for use in solar photovoltaic cells/modules, solar power generating equipment or systems, flat plate solar collector, solar photovoltaic module and panel for water pumping and other applications, subject to actual user condition	Nil	6%

2.	Parts/raw materials for manufacture of solar tempered glass for use in solar photovoltaic cells/modules, solar power generating equipment or systems, flat plate solar collector, solar photovoltaic module and panel for water pumping and other applications, subject to actual user condition	12.50%	6%
3.	Resin and catalyst for manufacture of cast components for Wind Operated Energy Generators [WOEG], subject to actual user condition	12.50%	Nil
4.	All items of machinery required for fuel cell based power generating systems to be set up in the country or for demonstration purposes	12.50%	6%
5.	All items of machinery required for balance of systems operating on biogas/ bio-methane/ by-product hydrogen	12.50%	6%
D.	Miscellaneous		
1.	Membrane Sheet and Tricot / Spacer for use in manufacture of RO membrane element for household type filters, subject to actual user condition	12.50%	6%
2.	All parts for manufacture of LED lights or fixtures, including LED lamps, subject to actual user condition	Applicable duty	6%
3.	Miniaturized POS card reader for m-POS (not including mobile phones, or tablet computers), micro ATM as per standards version 1.5.1, Finger Print Reader / Scanner or Iris Scanner	Applicable duty	Nil

4.	Parts and components for manufacture of miniaturized POS card reader for m-POS (not including mobile phones, or tablet computers), micro ATM as per standards version 1.5.1, Finger Print Reader / Scanner or Iris Scanner, subject to actual user condition	Applicable duty	Nil
5.	a) Waste and scrap of precious metals or metals clad with precious metals arising in course of manufacture of goods falling in Chapter 71 b) Strips, wires, sheets, plates and foils of silver c) Articles of silver jewellery, other than those studded with diamond, ruby, emerald or sapphire d) Silver coin of purity 99.9% and above, bearing a brand name when manufactured from silver on which appropriate duty of customs or excise has been paid	NIL	Nil, subject to the condition that no credit of duty paid on inputs or input services or capital goods has been availed by manufacturer of such goods

SERVICE TAX

Proposed change in the Negative List

[Clauses 120 & 121] ***[w.e.f. date of enactment of Finance Bill]***

- Clause (f) of Section 66D of the Finance Act, 1994 ("the Act") covering 'services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption' is proposed to be omitted. Consequently the definition of "process amounting to manufacture or production of goods" as per Section 65B (40) of the Act would also be omitted.

Proposed changes under Notification No.25/2012-ST dt. 20.06.2012

[w.e.f. date of enactment of Finance Bill]

- Services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption has been omitted from negative list of services and has been incorporated under the exemption notification.

[w.e.f. date of enactment of Finance Bill]

- Service tax exemption to taxable services provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds by way of life insurance to members of the Army, Navy and Air Force under the Group Insurance Schemes of the Central Government, is being made effective from 10.09.2004 (i.e. from the date of levy of service tax on life insurance business). The refund application to be filed within the prescribed period.

[w.e.f. 02.02.2017]

- One year service tax exemption has been provided from operations commencement date of regional connectivity scheme (RCS), with respect to viability gap funding amount payable by government to selected airline operator for the service of transport of passenger, with/ without accompanied belongings, by air embarking from RCS airports.

Proposed changes under Notification No.41/2016-ST dt. 22.09.2016

[Clause 127] *[w.e.f. date of enactment of Finance Bill]*

- Retrospective exemption from the date of levy of service tax on renting of immovable property service (i.e. 1.06.2007) has been advanced to one time upfront amount (i.e. premium, salami, cost, price etc.) payable for grant of long term lease of industrial plots (30 years or more) by State Government industrial development corporations/ undertaking to industrial units. The refund application is to be filed within the prescribed period – effective from June 1, 2007.

Proposed change under Rule 2A of Service Tax (Determination of Value) Rules, 2006

[Clause 128] *[w.e.f. date of enactment of Finance Bill]*

- Rule 2A of the Service Tax (Determination of Value) Rules, 2006 ("Valuation Rules") has been amended to distinguish the two options provided for determining service tax under works contract service. As per the proposed retrospective amendment service tax is payable under any of the following options:

  a) If actual value of goods and labour is segregated then service tax is payable at full rate on labour portion only and it has been made clear that value of service portion in execution of works contract shall not include the transfer of property in goods or the value of land or undivided share of land.

  b) If actual value is not segregated then even for works contract service valuation rules has been proposed to be retrospectively amended in such a way that it is in *parimateria* with serial number 12 of notification number 26/2012-ST dated 20.06.2012, which is abatement notification and deals with the construction services.

- Therefore, by way of this retrospective amendment under first option, it has been clarified that when service tax has been paid on labour portion, it shall not include the value of land and under second option if value of land has been included, service tax is payable at 25% or 30%. As per the proposed retrospective amendment period-wise comparative rate chart for works contract and construction services will be as follows:

Period	Construction service	Works Contract service
01.07.2010 to 30.06.2012	Service Tax is payable on 25% of the value of service where the value of land has been included and Cenvat credit of inputs, capital goods and input services used for providing the said taxable services has not been availed as well as benefit of notification number 12/2003 has not been availed.	Service Tax is payable on 25% of the value of service where the value of land has been included and Cenvat credit of inputs, capital goods and input services used for providing the said taxable services has not been availed as well as benefit of notification number 12/2003 has not been availed.
01.07.2012 to 28.02.2013	Service Tax is payable on 25% of value of service where the value of land has been included and Cenvat credit on inputs used for providing the taxable service has not been availed.	Service Tax is payable on 25% of value of service where the value of land has been included and Cenvat credit on inputs used for providing the taxable service has not been availed.
01.03.2013 to 07.05.2013	The service tax shall be payable on 25% where the value of land has been included and it is a residential unit having carpet area up to 2000 square feet OR amount charged for single residential unit is less than rupees one crore and Cenvat credit on inputs used for providing the taxable service has not been taken.	The service tax shall be payable on 25% where the value of land has been included and it is a residential unit having carpet area up to 2000 square feet OR amount charged for single residential unit is less than rupees one crore and Cenvat credit on inputs used for providing the taxable service has not been taken.
	In other cases, service tax is payable on 30% of the value of service and it shall include the value of land but Cenvat credit on inputs used for providing the taxable service has not been taken.	In other cases, service tax is payable on 30% of the value of service and it shall include the value of land but Cenvat credit on inputs used for providing the taxable service has not been taken.
08.05.2013 to 31.03.2016	The service tax shall be payable on 25% where the value of land has been included and it is a residential unit having carpet area up to 2000 square feet AND amount charged for single residential unit is less than rupees one crore and Cenvat credit on	The service tax shall be payable on 25% where the value of land has been included and it is a residential unit having carpet area up to 2000 square feet AND amount charged for single residential unit is less than rupees one crore and Cenvat credit on inputs used for providing the taxable service has not been taken.

	inputs used for providing the taxable service has not been taken.	
	In other cases, service tax is payable on 30% of the value of service and it shall include the value of land but Cenvat credit on inputs used for providing the taxable service has not been taken.	In other cases, service tax is payable on 30% of the value of service and it shall include the value of land but Cenvat credit on inputs used for providing the taxable service has not been taken.
01.04.2016 onwards	Service Tax is payable on 30% of the value of service where the value of land has been included and Cenvat credit of inputs used for providing the said taxable services has not been taken.	Service Tax is payable on 30% of the value of service where the value of land has been included and Cenvat credit of inputs used for providing the said taxable services has not been taken.

- In view of the said amendment, the recent Delhi High Court judgment in case of **Suresh Kumar Bansal v. UOI 2016 (43) STR 3 (Del.)** no longer holds good. In this case, the Hon'ble High Court held that neither the Act nor the Rules framed therein provide for a machinery provision for excluding all components other than service components for ascertaining the measure of service tax. The abatement to the extent of 75% by a notification or a circular cannot substitute the lack of statutory machinery provisions to ascertain the value of services involved in a composite contract. Thus, service tax could not be charged in respect of composite contracts for purchase of units in a complex, entered into by the buyers with the builder, in view of the absence of the specific machinery provisions for the valuation of the same.

Repeal of Research and Development Cess Act, 1986

[w.e.f. date of enactment of Finance Bill]

- Notification No.14/2012-ST dated 17.03.2012 exempts taxable service involving import of technology from so much of the service tax leviable thereon as is equivalent to the amount of R&D cess payable on the said import of technology. Consequent to the abolition of Research and Development Cess Act, 1986, the exemption from service tax under notification No. 14/2012-ST would be not available. Therefore, full service tax along with cess would be applicable to such taxable service.

Amendment to CENVAT Credit Rules, 2004

[w.e.f. 02.02.2017]

- For the purposes of determination of "value" under Rule 6 (applicable to assesses providing taxable as well as exempt services), the interest and discount earned by Banks and NBFC's will be included and they cannot take benefit of exclusion under Explanation I(e), which benefit is applicable only to entities other than Banks and NBFC's in respect of their interest and discount income from extension of deposits, loans or advances.

- A new sub-rule 4 is being inserted in Rule 10 of Cenvat Credit Rules, so as to provide that transfer of Cenvat Credit by the jurisdictional Dy/ Assistant Commissioner of Central Excise, shall be allowed within 3 months from the date of receipt of application from the manufacturer or service provider in this regard, subject to the fulfillment of conditions prescribed under Rule 10(3).

Amendment to Advance Ruling provisions

[Clauses 124, 125 & 126] *[w.e.f. date of enactment of Finance Bill]*

- The Advance Ruling Authority for Central Excise, Customs and Services Tax are being merged into the Income Tax Advance Ruling Authority;

- All pending applications before the existing Advance Ruling authority to be automatically transferred (from the same stage) to the Income Tax Advance Ruling Authority;

- Application fee for seeking advance ruling increased from Rs. 2500 to Rs. 10000;

- Time limit for pronouncing advance ruling extended from 90 days to 6 months.

KEY ECONOMIC POLICY ANNOUNCEMENTS

AND

INDUSTRY SPECIFIC IMPACT

DEENDAYAL UPADHYAYA GRAM JYOTI YOJANA

- Proposal to increase the allocation to Rs. 4,814 crores under this scheme to achieve 100% village electrification by 1st May 2018.

DEENDAYAL ANTYODAYA YOJANA- NATIONAL RURAL LIVELIHOOD MISSION

- Allocation for Deendayal Antyodaya Yojana has been enhanced for promotion of skill development and livelihood opportunities for people in rural areas.
- The allocation for Prime Minister's Employment Generation Programme (PMEGP) and credit support schemes has been increased more than three times.

FASAL BIMA YOJANA

- The coverage of this scheme will be increased from 30% of cropped area in 2016-17 to 40% in 2017-18 and 50% in 2018-19 for which there will be a proposed allocation of ₹ 9,000 crores to settle the arrear claims.

MISCELLANEOUS

- As part of a sub mission of the National Rural Drinking Water Programme (NRDWP), it is proposed to provide safe drinking water to over 28,000 arsenic and fluoride affected habitations in the next four years.
- For imparting new skills to people in rural areas, mason training will be provided to five lakh persons by 2022.

MGNREGA

- Against target of five lakh farm ponds under MGNREGA, ten lakh farm ponds would be completed by March 2017;
- During 2017-18, another five lakh farm ponds will be taken up;
- Women participation in MGNREGA has increased to 55% from less than 48%.

- Provision of ₹ 38,500 crores under MGNREGA in 2016-17 has been increased to ₹ 48,000 crores in 2017-18.

PRADHAN MANTRI MUDRA YOJANA

- Government doubles the lending target to ₹ 2.44 lakh crore for 2017-18.
- Priority under this scheme to be given to dalits, tribals, backward classes, minorities and women.

PRADHAN MANTRI GRAM SADAK YOJANA

- Pace of construction of roads under this yojana accelerated to 133 km roads per day in 2016-17, against an average of 73 km during the period 2011-2014.
- Government has taken up the task of connecting habitations with more than 100 persons in left wing extremism affected blocks under this scheme. All such habitations are expected to be covered by 2019 and the allocation for this scheme, including the State's share is ₹ 27,000 crores for the period 2017-18.

PRADHAN MANTRI AWAAS YOJANA – GRAMIN

- Allocation proposed to be increased from ₹ 15,000 crores to ₹ 23,000 crores with a target to complete one crore houses by 2019 for the houseless and those living in kutcha houses.

PROGRAMME OF "HUMAN RESOURCE REFORMS FOR RESULTS"

- A programme of "Human Resource Reforms for Results" is proposed to be launched addressing the issue of lack of human resources in the Panchayati Raj institutions for implementing development programmes.

SCHEMES FOR WELFARE OF SCHEDULED CASTES, SCHEDULED TRIBES AND MINORITIES

- Allocation for the welfare of scheduled castes proposed to be increased from ₹ 38,833 crores 2016-17 to ₹ 52,393 crores in 2017-18.
- Allocation for welfare of scheduled tribes has been increased to ₹ 31,920 crores and for minority affairs to ₹ 4,195 crores.

SCHEME FOR SENIOR CITIZENS

- Aadhar based smart cards containing health details of senior citizens will be introduced through a pilot project initially in 15 districts during 2017-18.

- LIC will implement a scheme for senior citizens to provide assured pension, with a guaranteed return of 8% per annum for 10 years.

SECTOR SPECIFIC

AGRICULTURE

- Ministry of Agriculture and Farmers' Welfare has been allocated ₹ 51,026 crores in the budget for the year 2017-2018 and total budget allocation for agriculture, rural and allied sector stood at ₹ 1,87,223 crores, which is 24% higher than the previous year.

- The target for agricultural credit in 2017-18 has been fixed at a record level of ₹ 10 lakh crores. Special efforts are proposed to be made to ensure adequate flow of credit to the under serviced areas, the Eastern States and Jammu & Kashmir.

- The Primary Agriculture Credit Societies (PACS) act as the front end for loan disbursements, the government will support NABARD for computerisation and integration of all 63,000 functional PACS with the Core Banking System of District Central Cooperative Banks. This is expected to be done in three years at an estimated cost of ₹ 1,900 crores, with financial participation from respective State Governments.

- The proposal to set up new mini labs in Krishi Vigyan Kendras(KVKs), in addition to 1000 mini labs proposed to be set up by qualified local entrepreneurs, is aimed at increasing the reach of Krishi Vigyan Kendras (KVKs) to every village to help farmers enhance productivity by getting their soil samples tested and know the nutrient level of the soil. This could have a positive impact on the farmers' produce and contribute towards overall growth of the agricultural sector.

- It is proposed to allocate ₹ 20,000 crores to the corpus of Long Term Irrigation Fund set up in NABARD.

- Setting up of Micro Irrigation Fund in NABARD with a initial corpus of ₹ 5,000 crores to achieve the goal, 'per drop more crop'.

- Assistance up to a ceiling of ₹ 75 lakhs will be provided to every e-National Agriculture Market market (e-NAM) for establishment of cleaning, grading and packaging facilities to add value to the farmers produce and increase of such markets from current 250 to 585 e-NAMs.

- Proposal to form model law on contract farming to integrate farmers who grow fruits and vegetables with agro processing units for better price realisation and reduction of post-harvest losses.

- A Dairy Processing and Infrastructure Development Fund would be set up in NABARD with a corpus of ₹ 8,000 crores over three years. Initially, the Fund will start with a corpus of ₹ 2,000 crores.

BANKING AND FINANCE

- The National Housing Bank will refinance individual housing loans of about ₹ 20,000 crores in 2017-18.
- In line with the 'Indradhanush' roadmap, ₹ 10,000 crores for recapitalisation of Banks in 2017-18 will be provided.

DEFENCE

- The Government has developed a "Centralized Defense Travel System" through which travel tickets can be booked online by the soldiers and officers.
- It is proposed to establish a comprehensive Web Based Interactive Pension Disbursement System for Defence Pensioners. This system will receive pension proposals and make payments centrally.
- The Government for the Defence expenditure excluding pensions, has allocated a sum of ₹ 2,74,114 crores including ₹ 86,488 crores for Defence capital. Also, there is an increase in the allocation for Scientific Ministries to ₹ 37,435 crore in 2017-18.

DIGITAL ECONOMY

- Introduction of additional 10 lakh new PoS terminals by March 2017 and 20 lakh Aadhar based PoS by September 2017 for those who do not have debit cards, mobile wallets and mobile phones.
- Steps would be taken to promote and possibly mandate petrol pumps, fertilizer depots, municipalities, block offices, road transport offices, universities, colleges, hospitals and other institutions to have facilities for digital payments.
- To bring requisite changes in Payment and Settlement Systems Act, 2007. It is proposed to create a Payments Regulatory Board in the Reserve Bank of India by replacing the existing Board for Regulation and Supervision of Payment and Settlement Systems.
- Two new schemes to be launched in order to promote the usage of BHIM app for making payments; i.e. Referral Bonus Scheme for individuals and a Cashback Scheme for merchants.

EDUCATION

- Government's thrust for improving over-all quality education is reflected in the decision of granting ₹ 79,686 crores, a 10% increase from last year, in the fund allocated to Ministry of Human Resource Development.
- National Testing Agency to be set up as an autonomous and self-sustained premier testing organization to conduct all entrance examinations for higher education institutions.
- Proposal to extend Pradhan Mantri Kaushal Kendras to more than 600 districts across the country. One Hundred India International Skills Centres will be established across the country.
- Skill Acquisition and Knowledge Awareness for Livelihood Promotion programme (SANKALP) proposed to be launched at a cost of ₹ 4000 crores which will provide market relevant training to 3.5 crore youth.
- Next phase of Skill Strengthening for Industrial Value Enhancement (STRIVE) is proposed to be launched in 2017-18 at a cost of ₹ 2,200 crores.

HEALTH

- It is proposed that additional 5,000 Post Graduate seats per annum will be created to ensure adequate availability of specialist doctors to strengthen Secondary and Tertiary levels of health care.
- Proposal for conversion of 1.5 lakh Health Sub Centers into Health and Wellness Centers.
- The Government proposes to set up two All India Institutes of Medical Sciences (AIIMS) in the States of Jharkhand and Gujarat.
- Elimination of Kala-Azar and Filariasis by 2017, Leprosy by 2018, Measles by 2020 and tuberculosis by 2025 is targeted.
- The Government has allocated ₹ 27131 crores towards the National Health Mission and ₹ 48853 crore for the Ministry of Health and Family Welfare for the year 2017-18.

INFRASTRUCTURE

- For the year 2017-18, the total capital and development expenditure of Railways has been pegged at ₹ 1,31,000 crores.
- It is proposed to create a Rashtriya Rail Sanraksha Kosh for passenger safety with a corpus of ₹ 1 lakh crores over a period of five years. Proposal to eliminate crossings on broad gauge lines by year 2020.

- The Government plans to commission railway lines of 3,500 kms in 2017-18 as against 2,800 kms in year 2016-17.
- Setting up of at least 25 stations during 2017-18 for station redevelopment and 500 stations will be made differently abled friendly by providing lifts and escalators.
- It is proposed to feed about 7,000 stations with solar power in the medium term.
- There is also a proposal to launch 'Coach Mitra', a single window interface, to register all coach related complaints and requirements. It is proposed that by 2019, all coaches of Indian Railways will be fitted with bio toilets. Setting up of five solid waste management plants will be taken up. Introduction of SMS based Clean My Coach Service.
- In the road sector, allocation for highways increased from ₹ 57,976 crores in 2016-17 to ₹ 64,900 crores in 2017-18.
- 2,000 kms of coastal connectivity roads have been identified for construction and development.
- A specific programme for development of multi-modal logistics parks, together with multi modal transport facilities, will be drawn up and implemented.
- Setting up of strategic crude oil reserves at two more locations, namely, Chandikhole in Odisha and Bikaner in Rajasthan.
- Undertaking development of second phase of Solar Park for additional 20,000 MW capacity.
- Provision of ₹ 745 crores has been made to create an eco-system to make India a global hub for electronics manufacturing.
- Allocation of ₹ 2,41,387 crores during year 2017-18 for the transportation sector as a whole, including rail, roads, shipping.
- Steps proposed to be taken for launch of dedicated trains for tourism and pilgrimage would assist in promotion of tourism sector in India.

TELECOM

- Telecom sector has been allocated ₹ 10,000 crores for 'Bharat Net' in Financial Year 2017-18.

IMPACT OF BUDGET ON CAPITAL MARKETS

- It is proposed to permit listing and trading of security receipts issued by securitization companies or reconstruction companies on SEBI registered stock exchanges. The proposal is made to enhance the flow of capital into securitization industry and to deal with non-performing assets of banks effectively.
- A common application form for registration, opening of bank and demat accounts and issue of PAN for Foreign Portfolio Investors (FPIs) will be introduced. SEBI, RBI and CBDT will jointly put in place the necessary systems and procedures. The proposal is made to enhance the operational flexibility and ease of access to the Indian capital markets.
- Category I and II foreign portfolio investors (FPIs) are to be exempted from taxation on indirect transfers. Indirect transfer provision does not apply to redemption of shares or interests outside India as a result of or arising out of redemption or sale of investment in India which is chargeable to tax in India. The proposal aims at benefitting category I and II FPIs in terms of no incidence of tax on indirect transfers.
- An expert committee will be constituted for introducing reforms in the Commodities Markets for the benefit of farmers. The expert committee will study and promote the creation of an operational and legal framework to integrate spot market and derivatives market for commodities trading. e-NAM would be an integral part of such framework.
- Listing of shares of railway public sector enterprises like IRCTC, IRFC and IRCON on stock exchanges is proposed. In addition to this, it is also proposed to list shares of identified Central Public Sector Enterprises (CPSEs) on the stock exchanges for greater public accountability and unlocking true value of those companies. It is proposed to revise the mechanism and procedure to ensure time bound listing of CPSEs on the stock exchanges.
- It is proposed to continue the dis-investment policy for CPSEs announced in the Union Budget, 2016. The Central Government will continue to use exchange traded funds (ETFs) for dis-investment of shares.
- Online registration process for registration of the financial market intermediaries like mutual funds, brokers, portfolio managers etc. by SEBI will be introduced.

- It is proposed to link individual demat accounts of investors with their Aadhar.
- It is proposed to allow systematically important non-banking financial companies regulated by RBI and above a certain net worth to be categorized as Qualified Institutional Buyers (QIBs) by SEBI and to participate in IPOs so that these companies can access the capital market. The proposal has been made to strengthen the IPO market and channelize more investments.
- It is proposed to levy tax at the rate of 10% on the on dividend income exceeding Rs.10 lakh to all resident persons except domestic companies or trust or institution or fund registered under section 12AA or referred to in section 10(23C) of the Income Tax Act, 1961. Presently, these provisions are applicable only to the individuals, Hindu undivided family (HUF) and firms.
- It is proposed to restrict the exemption from long term capital gains in case of transfer of listed shares by providing that the exemption, subject to notification of certain exceptions, shall be available if security transaction tax has been paid at the time of acquisition of such shares where they have been acquired after 1st October, 2004. Investors are further not required to pay LTCG where STT could not be paid on acquisition of shares in IPO, FPO, bonus issue, rights issue, acquisition by non-resident in accordance with FDI policy of the Government etc. etc. The proposal is made to enhance the flow of capital into the capital markets. This amendment will take effect from 1st April, 2018.
- The commodities and securities derivative markets will be further integrated by integrating the participants, brokers, operational frameworks and the various tax benefits offered by the government.
- It is proposed to cut tax rate by 5% for domestic companies having turnover of less that Rs. 50 Crores which will enhance capital flow in the hands of such companies which may be utilized for business expansion, dividend distribution etc.
- It is proposed to provide a concessional TDS of 5% on interest earned by foreign entities in external commercial borrowings or in bonds and Government securities. This concession will be extended to 30th June, 2020. It is also proposed to extend the benefit to Rupee Denominated (Masala) Bonds also. The proposal will facilitate Indian businesses to raise funds from international markets at lower interest rates to boost growth.

- Integration of spot and derivatives markets for commodity trading has been proposed for the benefit of farmers and an expert committee will be constituted for creation of an operational and legal framework for such integration. This move will go a long way in enhancing the depth and width of the spot and derivatives market in the country.
- An integrated public sector 'oil major' has been proposed to be set up by merging various PSEs in the oil and gas sector, which will be able to match the performance of international and domestic private sector oil and gas companies. Such integrations, by way of consolidation, mergers or acquisitions, will give such PSEs capacity to bear higher risks, avail economies of scale, take higher investment decisions and create more value for the stakeholders.