KNAV

PARTNERS BEYOND BOUNDARIES

India Interim Budget 2019 - 20

Dear Reader,

The Hon'ble Interim Finance Minister, Mr. Piyush Goyal, presented the eagerly awaited Interim Budget 2019-20 in the Lok Sabha on February 1, 2019, this being an election year. This is the fifth and the last budget of the current Government of their current stint.

The thrust of this year's Interim Budget has been to provide much needed relief to the farmers and lower income groups of the Indian society and has set the momentum for growth in the right direction. Terming that the Budget isn't merely an Interim Budget but a medium of the country's development journey, Mr. Goyal mentioned that the "development has become a mass-movement during the period of our Government."

In addition to spelling out the various projects and tasks undertaken by the Government in the areas of sanitation, health, education, infrastructure, social security, upliftment of rural areas, women empowerment, the Budget Speech by Mr. Goyal also laid down the vision for ten most important dimensions for the next decade:

1. Build physical as well as social infrastructure;
2. Digital India – across all the sectors of the economy;
3. Making India pollution free;
4. Generate massive employment through digital technologies;
5. Clean rivers, safe drinking water;
6. Developing waterways and coastline;
7. Aim at outer skies – space programmes;
8. Agriculture – high farm productivity, self-sufficiency and organic production;
9. Healthy India;
10. Minimum Government Maximum Governance.

KNAV's Thought Leadership team has prepared a summary of the direct and indirect tax perspective of the Interim Budget 2019 presented through the Finance Bill, 2019. Additionally, we have also summarised the key select direct tax and regulatory changes, amendments, notifications and landmark judgements during the year 2018-19 as well as the key changes in GST law made effective from February 1, 2019.

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Fiscal outlook

Direct tax

- Tax collections have increased significantly from INR 6.38 lakh crore in 2013-14 to INR 12 lakh crore in 2018-19

Amounts in INR in crore

Particulars	Budgeted estimate for 2018-19	Revised estimate for 2018-19	Budgeted estimate for 2019-20	Increase (%)
Corporate tax	6,21,000	6,71,000	7,60,000	13.2%
Personal Income tax	5,29,000	5,29,000	6,20,000	17.2%
Total	**11,50,000**	**12,00,000**	**13,80,000**	**15.0%**

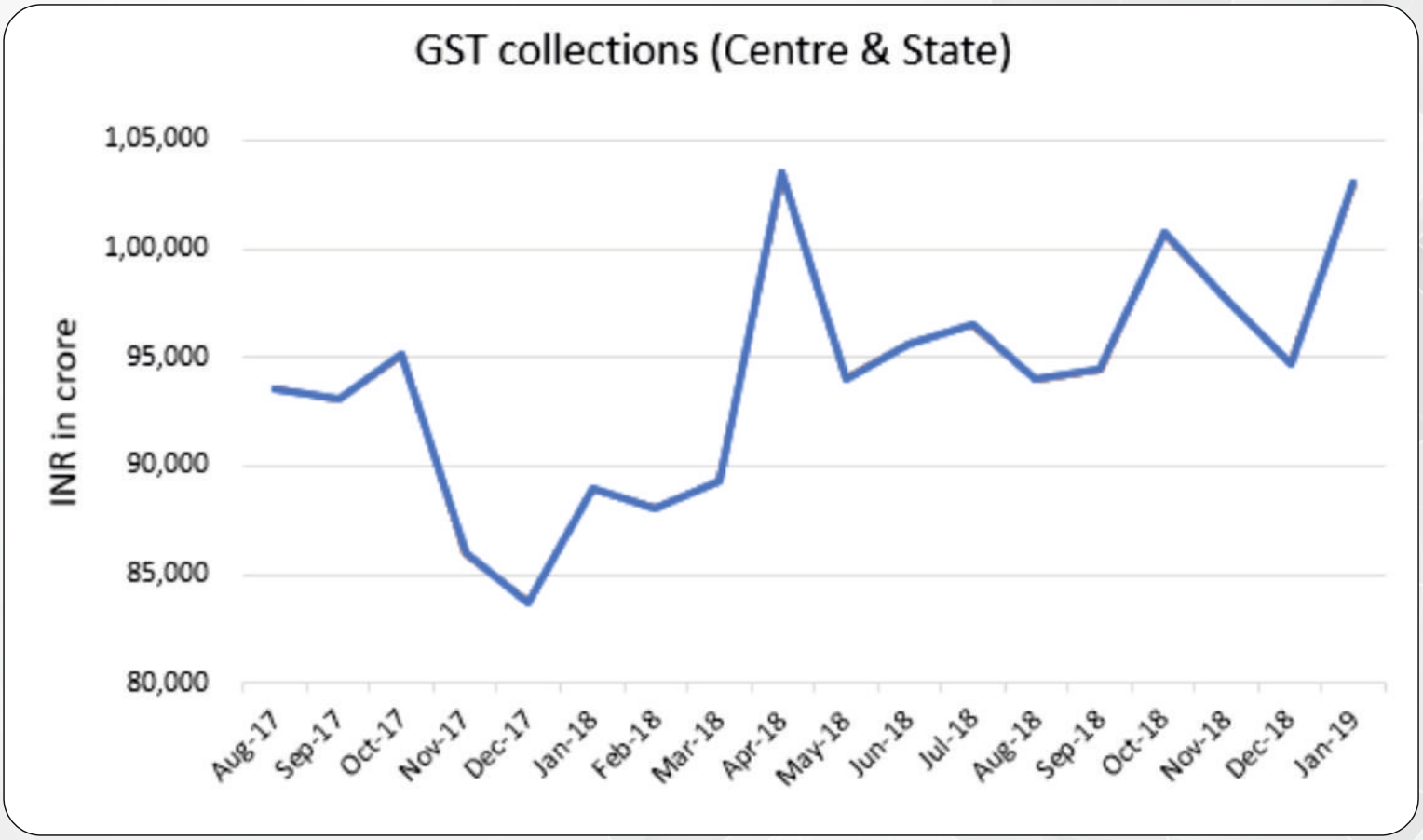
- The proposed rebate under section 87A of Income Tax Act, 1961 ('the Act'), is likely to provided benefit of INR 18,500 crore to an estimated 3 crore middle class tax payers.
- Similarly, the increase in the standard deduction to INR 50,000 will provide additional tax benefit of INR 4,700 crore to more than 3 crore salary earners and pensioners.

Indirect tax

Amounts in INR in crore

Particulars	Budgeted estimate for 2018-19	Revised estimate for 2018-19	Budgeted estimate for 2019-20	Increase (%)
GST	7,43,900	6,43,900	7,61,200	18.2%
Excise duty	2,59,600	2,59,612	2,59,600	–
Customs	1,12,500	1,30,038	1,45,388	11.8%
Service tax	–	9,283	–	–
Total	**11,16,000**	**10,42,833**	**11,66,188**	**11.8%**

- Average monthly GST collection (including State-GST also) in the current year has increased to INR 97,100 crore per month as compared to INR 89,700 crore per month, in the first year of GST, despite of continuous reductions / relaxations in the GST rates
- Tax rates as compared to the pre-GST regime, have been rationalised and reduced to provide a relief of about INR 80,000 crore annually to consumers;
- Stabilisation phase of GST is expected to continue in 2019-20. The complete benefit of GST reforms should start accruing from 2020-21.


GST collections (Centre & State)
INR in crore
1,05,000
1,00,000
95,000
90,000
85,000
80,000
Aug-17
Sep-17
Oct-17
Nov-17
Dec-17
Jan-18
Feb-18
Mar-18
Apr-18
May-18
Jun-18
Jul-18
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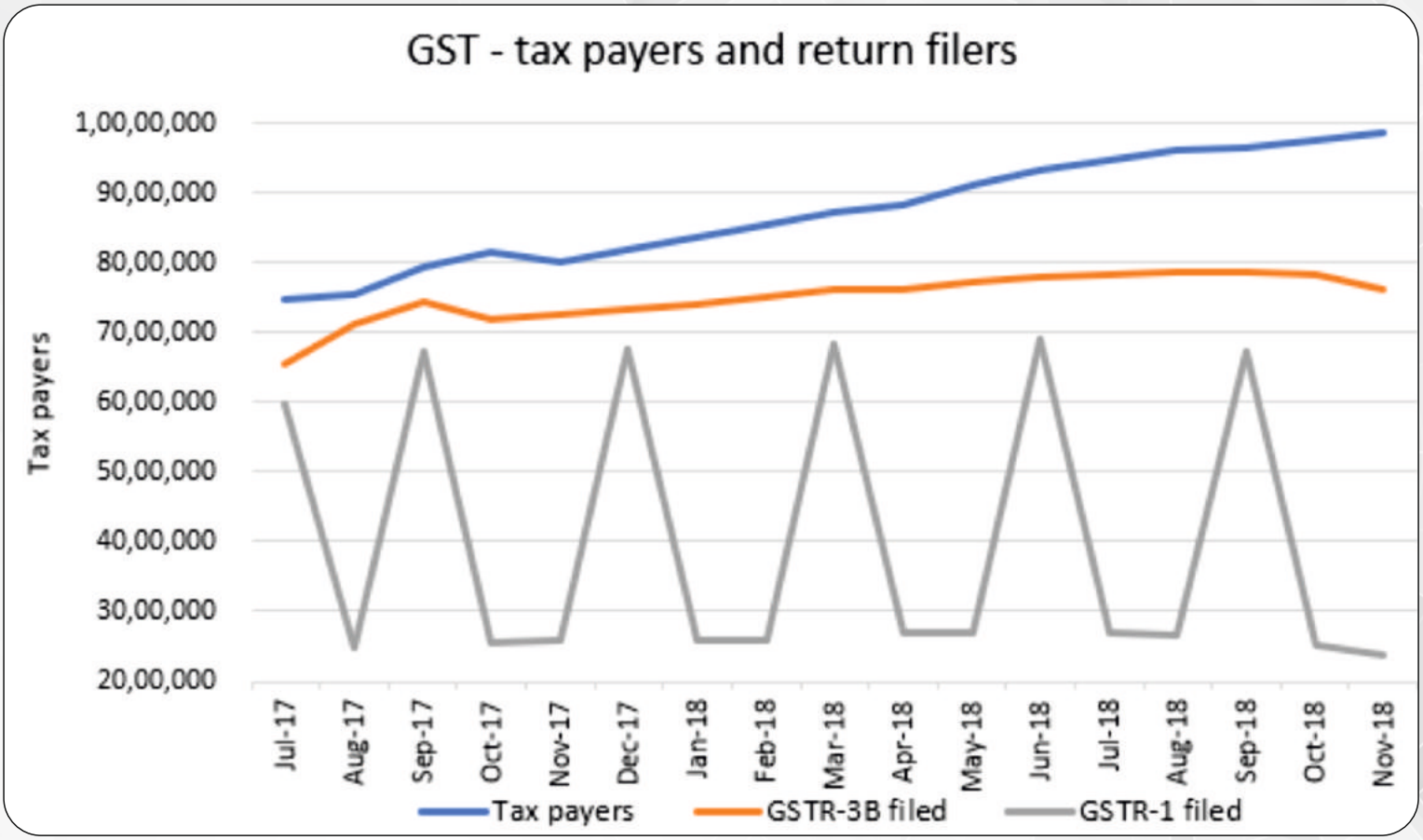
Nov-18
Dec-18
Jan-19


GST - tax payers and return filers
Tax payers
1,00,00,000
90,00,000
80,00,000
70,00,000
60,00,000
50,00,000
40,00,000
30,00,000
20,00,000
Jul-17
Aug-17
Sep-17
Oct-17
Nov-17
Dec-17
Jan-18
Feb-18
Mar-18
Apr-18
May-18
Jun-18
Jul-18
Aug-18
Sep-18
Oct-18
Nov-18
Tax payers
GSTR-3B filed
GSTR-1 filed

Finance Bill 2019 - Tax proposals

I. Rebate

- It is proposed to amend section Act 87A of the Act to provide relief to the individual taxpayers, whose total taxable income does not exceed INR 5,00,000. The current and the proposed limits have been tabulated as under:

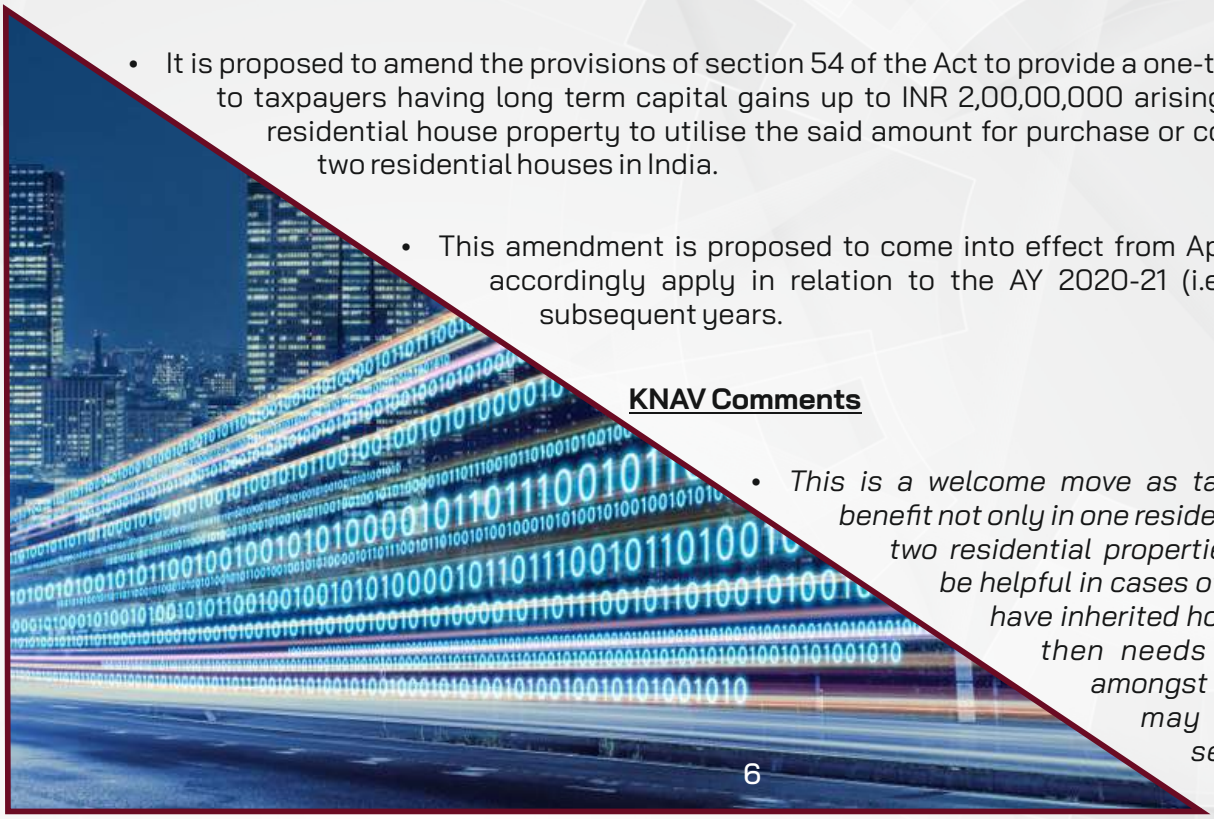
Existing Provision		Proposed Provision	
Taxable income	Rebate	Taxable income	Rebate
INR 3,50,000	INR 2,500	INR 5,00,000	INR 12,500

- This amendment is proposed to come into effect from April 1, 2020 and will, accordingly apply in relation to the AY 2020-21 (i.e. FY 2019-20) and subsequent years.

KNAV Comments

- *This amendment will give a tax relief in form of tax rebate of INR 12,500 to resident individual taxpayers earning taxable income up to INR 5,00,000. Coupled with the other deductions and benefits available as per the scheme of the Act, a resident individual taxpayer having total income upto around INR 8,00,000 wouldn't be paying any tax.*
- *Also, in order to claim the tax rebate, the taxpayer needs to file the tax return. The Government has innovatively ensured that the size of the tax base and its return filing obligations remain intact, while at the same time achieving a reduction in the tax burden.*
- *The proposed amendment has been brought in way of a rebate and hence the existing slab rates continue to be applicable. Thus, taxpayers having taxable income in excess of INR 5,00,000 will continue to pay tax of INR 12,500 as per existing slab for earning income between INR 250,000 to, INR 5,00,000.*

II. Exemption u/s 54 of the Act



- It is proposed to amend the provisions of section 54 of the Act to provide a one-time life time benefit to taxpayers having long term capital gains up to INR 2,00,00,000 arising from transfer of a residential house property to utilise the said amount for purchase or construction of up to two residential houses in India.
- This amendment is proposed to come into effect from April 1, 2020 and will, accordingly apply in relation to the AY 2020-21 (i.e. FY 2019-20) and subsequent years.

KNAV Comments

- *This is a welcome move as taxpayers can claim benefit not only in one residential property but in two residential properties. This would also be helpful in cases of the taxpayers who have inherited house property which then needs to be distributed amongst the legal heir who may want to invest in separate residential house properties.*

III. Enhancement of standard deduction for salaried persons

- It is proposed to amend the provisions of section 16 of the Act which currently provides for a standard deduction of INR 40,000 or the actual amount of salary, whichever is less. The current limit is proposed to be increased to INR 50,000, in line with the intention of the government to provide provide benefits for the salaried class of taxpayers.

- This amendment will take effect from April 1, 2020 and will, accordingly apply in relation to the AY 2020-21 (i.e. FY 2019-20) and subsequent years.

KNAV Comments

This is one of the many initiatives proposed in the budget by the Government to please the salaried taxpayers.

IV. Benefit extended to two self-occupied properties:

- The provisions of section 23 of the Act allows the taxpayer to take a NIL annual value in respect of any one house property which is declared as self-occupied property. It is proposed to amend the provision 23(4) to allow the taxpayer to now claim NIL annual value for two house properties which are declared as 'self-occupied', thereby attempting to reduce genuine inconveniences faced by the middle class people who may have to relocate on account of jobs, education, etc.

- This amendment is proposed to come into effect from April 1, 2020 and will, accordingly apply in relation to the AY 2020-21 (i.e. FY 2019-20) and subsequent years.

KNAV Comments

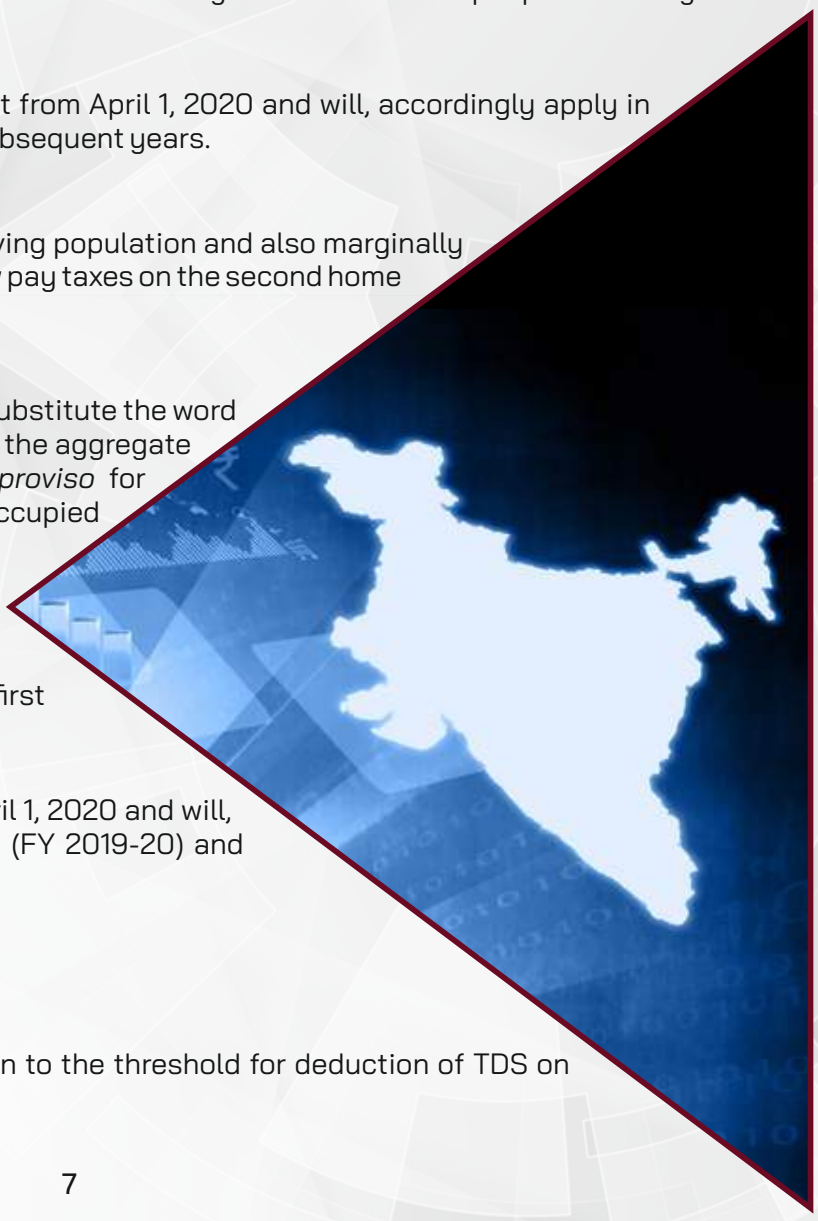
This is a much needed relief for the segment of moving population and also marginally benefits second home owners who don't have to now pay taxes on the second home

V. Interest deduction u/s 24

- It is proposed to amend section 24 of the Act to substitute the word "amount of deduction" with "or the case may be, the aggregate of amount of deduction" in first and second *proviso* for claiming interest in case of more than one self-occupied houses.

- Further, it is proposed to insert a fourth *proviso* to section 24 of the Act which is proposed to limit the aggregate deduction provided by way of the first and second *proviso* to INR 2,00,000.

- The above amendments will take effect from April 1, 2020 and will, accordingly apply in relation to the AY 2020-21 (FY 2019-20) and subsequent years.



VI. Tax Deducted at Source ('TDS')

- The Bill has proposed some relaxation in relation to the threshold for deduction of TDS on interest and rent.

a) Section 194A

- It is proposed to enhance the existing threshold limit for deduction of TDS on interest paid by a banking company, co-operative society carrying on the business of banking or a post office for incomes pertaining to time deposits from INR 10,000 to INR 40,000.

- This amendment is proposed to come into effect from April 1, 2020 and will, accordingly apply in relation to the AY 2020-21 (i.e. FY 2019-20) and subsequent years.

KNAV Comments

- This is a welcome change for smaller taxpayers, housewives and senior citizens earning interest income on deposit with bank / post office who would no longer have to merely file the tax return for claiming the refund of TDS deducted on such interest.

b) Section 194I

- It is proposed to amend the existing threshold limit to deduct TDS on rent from INR 1,80,000 to INR 2,40,000.

- This amendment is proposed to come into effect from April 1, 2020 and will, accordingly apply in relation to the AY 2020-21 (i.e. FY 2019-20) and subsequent years.

KNAV Comments

- The said provision would not only be applicable only on rental income from house property but also would get applied to rental incomes received from plant & machinery and equipment and is keeping in tune with market reality today.

VII. Extension of sunset clause to claim tax incentive for developers of affordable housing projects

- It is proposed to amend section 80-IBA of the Act in order to extend the time limit to obtain approval for the housing project by the developer in affordable housing sectors from the competent authority by a period of one more year i.e. to year ended March 31, 2020.

- This amendment is proposed to come into effect from April 1, 2020 and will, accordingly apply in relation to the AY 2020-21 (i.e. FY 2019-20) and subsequent years.

KNAV Comments

- Through the provisions of this section, developers can claim the deduction of the profits and gains earned from specific housing projects registered by the sunset date which has been extended by a year. This action of the government strengthens its commitment towards supply of affordable houses to the public. Further, the extension of sunset clause by another year is a welcome move for the participants in the real estate ecosystem.

VIII. Relief to builders holding properties as stock-in-trade

- The provisions of section 23 of the Act provide that the annual value of any unsold property or land appurtenant thereto, which is being held as stock-in-trade, is to be taken as NIL for the period upto one year from the end of the financial year in which the certificate of completion of construction is obtained. It is proposed to extend such relief for a period upto two years from the end of the relevant financial year.

- This amendment will take effect from April 1, 2020 and will, accordingly apply in relation to the AY 2020-21 (FY 2019-20) and subsequent years.

IX. Miscellaneous

- The Hon'ble Finance Minister commented that 6.85 crore returns were filed in India. Last year, 99.54% of the tax returns were accepted on 'as is' filed basis. Additionally, the Bill proposes to process the income tax returns within 24 hours and to process refunds simultaneously. This is a historic change and once implemented will elevate India's ease of doing business rankings and India's status in the world community as an efficient and transparent jurisdiction.

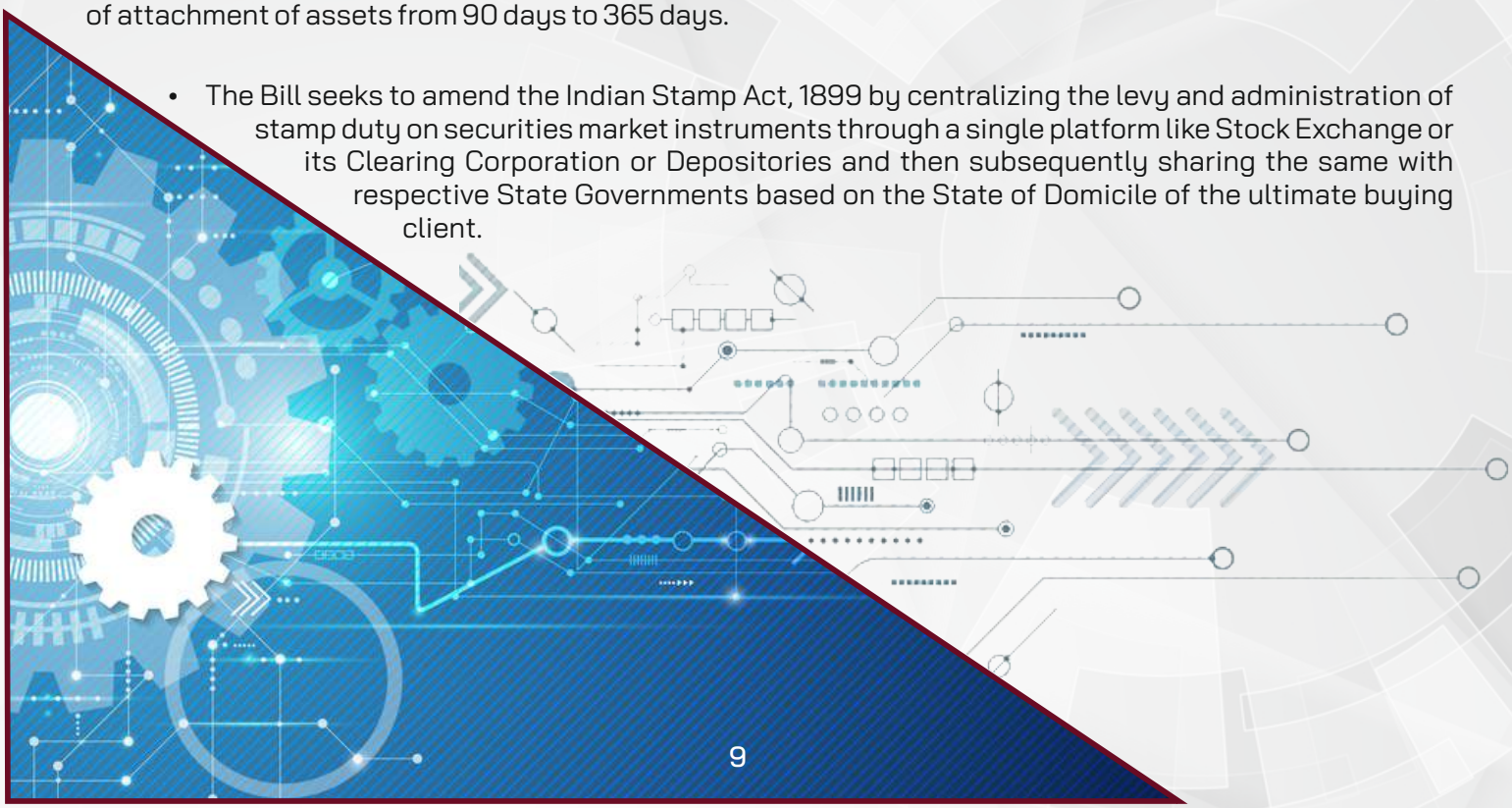
- The Government aims to undertake all the verification and scrutiny assessments of taxpayers electronically through anonymised back office and without any personal interface between the taxpayers and the tax officers.

- Pradhan Mantri Kisan Samman Nidhi (PM-KISAN) scheme to provide INR 6,000 per annum to farmers owning less than 2 hectares of land. The said amount will be transferred to farmers in three equal instalments w.e.f. December 1, 2018.

- Pradhan Mantri Shram-Yogi Maandhan scheme (Mega Pension Yojna) to provide monthly pension of INR 3,000 after the age of 60 years to workers in unorganised sector, on payment of INR 100 per month if enrolled for the scheme after the age of 29 years and INR 55 per month if enrolled after 18 yrs. The Government will make an equal contribution to the Fund for each such worker.

- The Bill seeks to amend section 8(3) of Prevention of Money Laundering Act, 2002 by increasing the time limit of attachment of assets from 90 days to 365 days.

- The Bill seeks to amend the Indian Stamp Act, 1899 by centralizing the levy and administration of stamp duty on securities market instruments through a single platform like Stock Exchange or its Clearing Corporation or Depositories and then subsequently sharing the same with respective State Governments based on the State of Domicile of the ultimate buying client.



Summary of key changes in GST law made effective from February 1, 2019

1. Registration

- Separate registrations can be obtained now for multiple places of business within the same State; earlier the law provided for obtaining separate registrations for business verticals, each business vertical having different risks and returns

  Input tax credit can be transferred to the newly registered place of business in the ratio of value of assets held at the time of registration

- Registration would be suspended during the pendency of proceedings relating to cancellation of registration; during the suspension period monthly / quarterly returns would not be required to be filed

- Clarification issued that compulsory registration is applicable only to those electronic commerce operators who are required to collect tax at source and not all the electronic commerce operators

2. RCM on inward supplies from unregistered dealers

- GST liability on reverse charge basis on inward supplies from unregistered dealers would now be restricted to specified class of registered persons and supply of specified categories of goods or services or both;

  specified class of registered persons and supply of specified categories of goods or services or both, are yet to be notified

3. Composition levy scheme

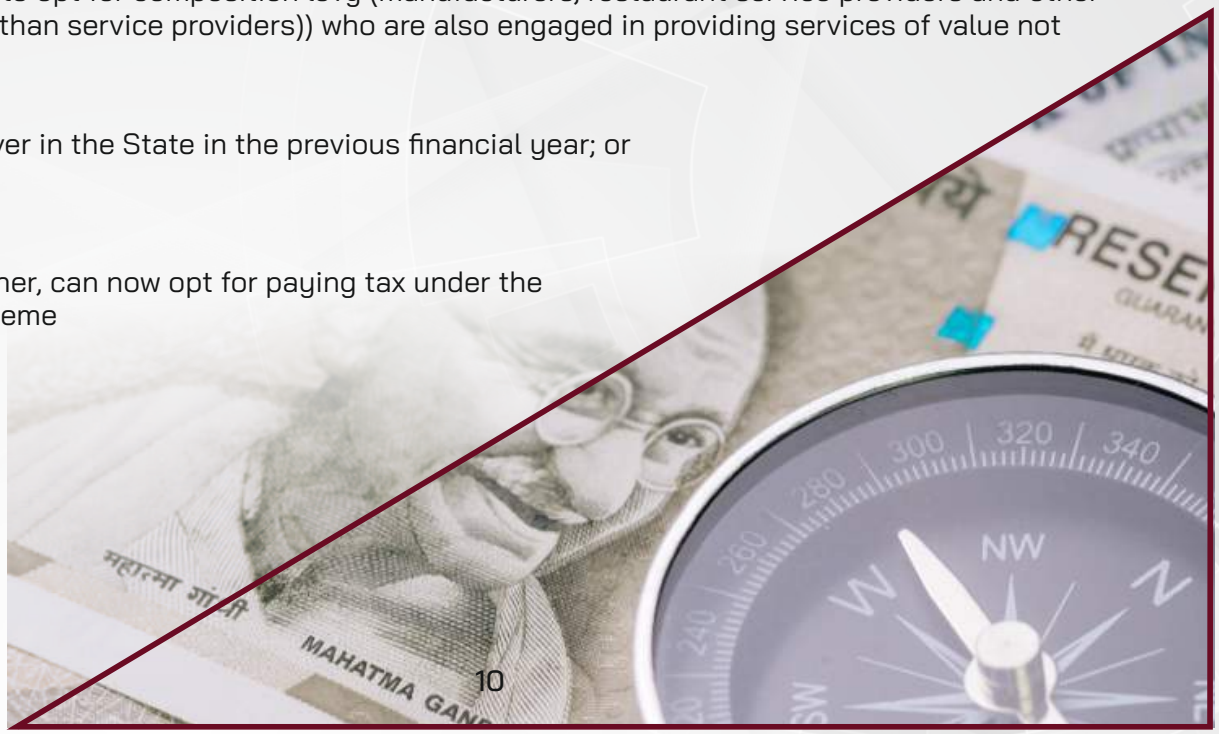
- Upper limit for eligibility to opt for composition scheme increased from INR 1 crore to INR 1.50 crore

- Persons eligible to opt for composition levy (manufacturers, restaurant service providers and other suppliers (other than service providers)) who are also engaged in providing services of value not exceeding:

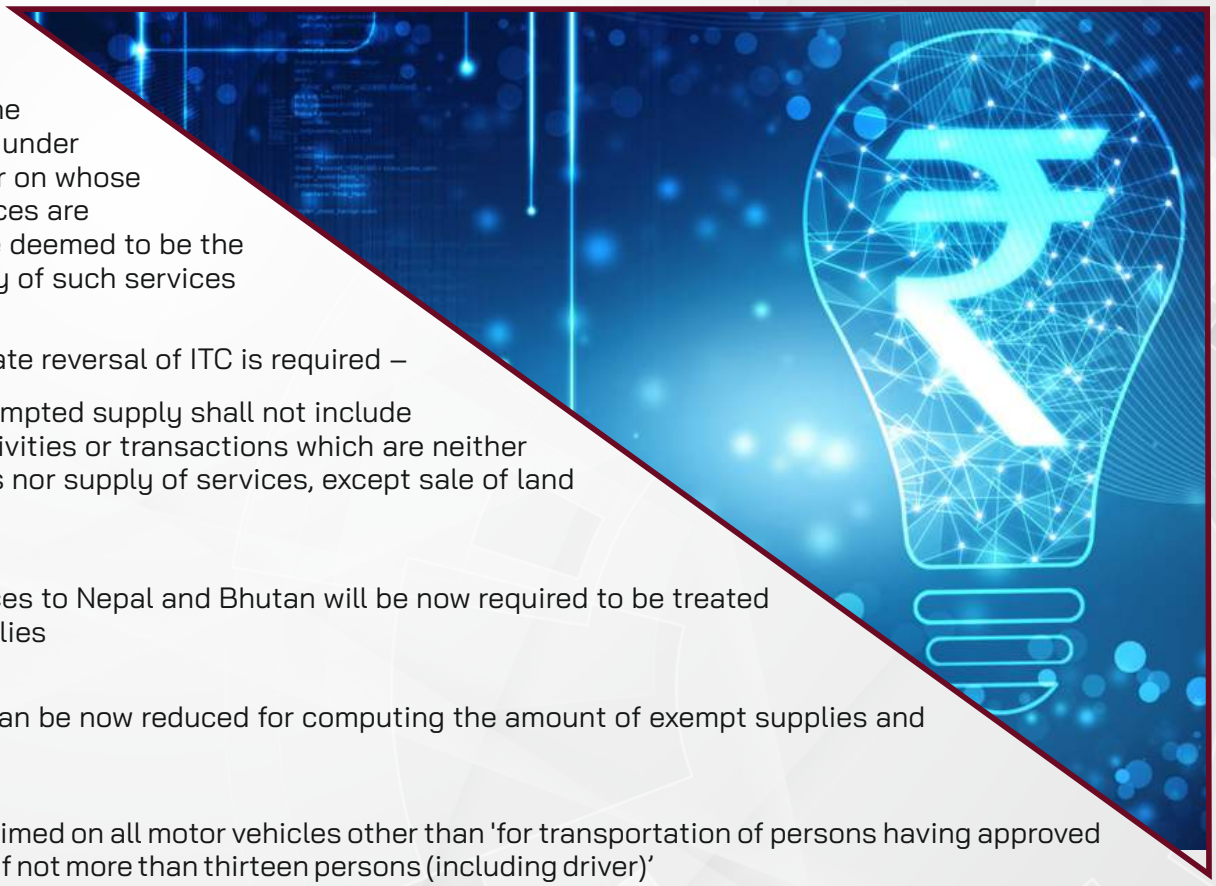
  10% of turnover in the State in the previous financial year; or

  INR 5,00,000

  whichever is higher, can now opt for paying tax under the composition scheme



4. Input Tax Credit ('ITC')



- For availing ITC, the registered person under whose direction or on whose account the services are provided would be deemed to be the recipient of supply of such services

- Where proportionate reversal of ITC is required –
  - the value of exempted supply shall not include value of the activities or transactions which are neither supply of goods nor supply of services, except sale of land and building

    supply of services to Nepal and Bhutan will be now required to be treated as exempt supplies

    sales tax paid can be now reduced for computing the amount of exempt supplies and 'turnover'

- ITC can now be claimed on all motor vehicles other than 'for transportation of persons having approved seating capacity of not more than thirteen persons (including driver)'

- ITC is now restricted on general insurance, servicing, repair and maintenance in respect of motor vehicles (for transportation of persons having approved seating capacity of not more than thirteen persons (including driver)), vessels and aircraft, except where they are used for making specified taxable supplies

- ITC is now available on supply of goods or services or both, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force

- ITC of CGST / SGST / UTGST can be utilized to pay any GST liability only after ITC of IGST has been fully utilized

- ITC of SGST / UTGST can be utilized to pay IGST liability only where the balance of ITC of CGST is not available to pay such IGST liability

5. Credit or debit notes

- Consolidated credit notes / debit notes can be issued now for multiple tax invoices issued during a financial year

  Such credit notes / debit notes should contain the serial number/s and date/s of the corresponding tax invoice/s

6. Distribution of credit by input service distributor

- For the purpose of distribution of credit by input service distributor, sales tax paid can be now reduced for computing the amount of 'turnover'

7. Refund

- Refund of GST paid on zero-rated supplies made to SEZ shall not be allowed now; thus, zero rated supplies to SEZ shall be made only without payment of GST and refund of unutilized ITC can be claimed by the supplier

- For export of services, in addition to payment being received in convertible foreign exchange, it is now allowed to also consider all the payment being received in India rupees wherever permitted by Reserve Bank of India

- For seeking refund of unutilised ITC, wherein ITC has accumulated due to inverted duty structure, the period of limitation of two years for claiming refund is to be calculated from the due date of filing the monthly / quarterly return for the period in which such claim for refund arises; earlier the same was to be calculated from the end of the financial year in which such refund claim arises

8. Recovery of tax

- Where tax is not paid by any person, then the tax authorities can proceed to recover the amount from a distinct person i.e. the same person having registration in one State or more than one State

9. Appeals to Appellate Authority and Appellate Tribunal

- Cap of INR 25 crores and INR 50 crores introduced for payment of pre-deposit while making an appeal before the Appellate Authority and Appellate Tribunal respectively

10. Confiscation of goods or conveyances

- Time limit to initiate confiscation of goods or conveyances proceedings increased to fourteen days from seven days if the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty due

11. Job work

- Time limit for return of inputs and capital goods after completion of job work can be further extended (beyond the current time limit of one year and three years) by one year and two years respectively by the Commissioner

12. Changes in Schedules to the CGST Act

- Import of services from a related person / establishment outside India, in the course or furtherance of business without any consideration, would be now treated as supply even if made by persons other than taxable person

- Following transactions will neither be treated as supply of goods nor supply of services:
  - Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India;
  - Supply of warehoused goods before clearance for home consumption
  - High sea sales

13. Place of supply

- Where transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods; instead of the location of registered person / location where the goods are handed over for transportation

- Where goods are temporarily imported into India for any repairs and exported without being put to use in India, place of supply is not the location where the services are actually performed; hence, the place of supply should be the location of the recipient of service. This clause is now extended to goods temporarily imported into India for any treatment or process and exported without being put to use in India

Summary of key changes in GST law yet to be made effective

1. New procedure of furnishing return and availing input tax credit

2. New time limit for filing the returns and facility of filing quarterly returns for notified class of registered persons to be introduced

Summary of key recommendations of GST Council yet to be implemented

Amendment of section 50 of the Central Goods and Services Tax Act to provide that interest would be charged only on the net tax liability of the taxpayer, after taking into account the admissible input tax credit, i.e. interest would be leviable only on the amount payable through the electronic cash ledger.

There would be two threshold limits for exemption from registration under GST for suppliers of goods i.e. INR 40 lakhs and INR 20 lakhs & States would have an option to decide about one of the limits within a weeks' time. The threshold for registration for service providers would continue to be INR 20 lakhs and in case of special category States at INR 10 lakhs.

More than 35 lakh small traders, manufacturers and service providers are expected to benefit from the various measures under the composition scheme;

A composition scheme shall be made available for suppliers of services (or mixed suppliers) with a tax rate of 6% (3% CGST +3% SGST) having an annual turnover in the preceding Financial Year up to INR 50 lakhs.

Creation of a centralised Appellate Authority for Advance Ruling (AAAR) to deal with cases of conflicting decisions by two or more State Appellate Advance Ruling Authorities on the same issue.

Summary of select changes and judgements for direct tax and regulatory

Direct tax

1. New Year's gift to the Startups:

Provisions of section 56(2)(viib) of the Act were introduced vide Finance Act, 2012 bringing into tax bracket any excess consideration received from any person on issuance of shares over and above the fair market value ('FMV') of shares by a closely held company (popularly termed as 'angel tax'). The said amendment created a lot of issues and challenges, especially for startups considering that they attract a high valuation based on their idea and future growth capabilities. Amid several calls from the startups and media reports that the government may water down the angel tax, it was on January 16, 2019 that the Department of Industrial Policy and Promotion ('DIPP') vide a notification provided relief to the eligible startups from the angel tax u/s 56(2)(viib) of the Act subject to certain conditions.

The said notification provided relief for all future as well previous investments received by a startup. However, the startups which have been issued tax assessment orders for the previous years would not be eligible to claim the exemption from the angel tax applicability.

2. Stepping up the game in line with global initiatives:

The Indian government implemented Country by Country Reporting ('CbCR') filing requirements in line with the OECD guidelines vide Notification No. 88/2018 dated December 18, 2018. CbCR is a step towards achieving the global initiative to prevent base erosion and profit shifting. The amendment made by the Indian government would majorly impact Multinational Enterprises ('MNEs').

This amendment will enhance the compliance obligations on multinational's businesses and the information collated by the revenue authorities through this exercise will lead to greater scrutiny in times to come.

3. CBDT dipsy doodles around the applicability of provisions of section 56(2)(viia):

Provisions of section 56(2)(viia) of the Act were introduced in order to curb abuse of income tax laws whereby, receipt of shares of a closely held company from any person at a consideration less than the FMV of such shares would be chargeable to tax.

With respect to the said provision Central Board of Direct Taxes ('CBDT') within a month's time issued three circulars back-to-back. Initially, vide Circular No. 10/2018 dated December 31, 2018 CBDT clarified that the provisions of section 56(2)(viia) of the Act would not apply in case of fresh issuance of shares by a closely held company. However, the CBDT retracted the said circular vide Circular No. 2/ 2019. Further, CBDT came up with a clarificatory Circular No. 3/ 2019 whereby CBDT stated that the view taken in the first circular was not in line with the legislative intent of the provisions of section 56(2)(viia) of the Act.

4. Valuation of unquoted equity shares only by merchant bankers:

CBDT vide Notification No. 23 / 2018, dated May 24, 2018, amended Rule 11UA of the Income tax Rules, 1962, omitting reference to the term 'Accountant', thus permitting only a merchant banker to determine the FMV of unquoted equity shares as per the discounted free cash flow method.

5. Place of Effective Management ('PoEM') in India? Final notification on tax consequences:

CBDT had issued final guidelines for determination of PoEM vide Circular No. 6/2017 dated January 24, 2017. However, the mechanism to determine unabsorbed depreciation, set off and carry forward of losses in case where foreign company is said to be a tax resident on account of having PoEM in India was laid down vide Notification No. 29/2018 dated June 22, 2018.

6. Claws of tax audit tightened:

CBDT vide Notification No. 33/2018 dated July 20, 2018 incorporated additional reporting requirements to the Tax Audit Report i.e. Form 3CD being: amount chargeable to tax u/s 56(2)(ix) of the Act and 56(2)(x) of the Act as income from other sources, primary adjustments u/s 92CE(1) of the Act, interest expenditure incurred exceeding 1 crore rupees under section 94B(1) of the Act, cash receipt or payment in excess of the limit specified u/s 269ST of the Act, dividend receipts u/s 2(22)(e) of the Act, reporting requirements under CbCR.

7. Relief from STT payments to specified transactions:

CBDT vide Notification No. 60/2018 dated October 1, 2018 specified transactions being: share acquisition in accordance with FDI guidelines or SEBI guidelines or ESOP scheme or approved M&A schemes, etc. where requirement of payment of STT to levy long-term capital gain tax under the provisions of section 112A of the Act would not be mandatory.

8. Co[illegible] filing initiative by CBDT:

[illegible]fication No. 7/2018 dated December 31, 2018 facilitated electronic filing of application for [illegible]lower/ no TDS certificate u/s 197(1) of the Act / collection of the tax at any lower rate u/s 206C(9) [illegible]Act.

Regulatory Corporate laws

1. MCA further tightens the screws through an Ordinance under the Companies Act 2013:

Section 10(A) has been inserted in the Companies Act, 2013 with respect to Commencement of Business by a company having share capital.

A company incorporated after the commencement of this ordinance shall not commence any business or exercise any borrowing powers unless (1) a declaration is filed by a director within 180 days from the incorporation date stating that every subscriber to the memorandum has paid towards their respective subscription value of the shares, and (2) the company has filed a verification with Registrar of Companies.

In case the company fails to file such declaration within the said 180 days, the Registrar may initiate action for the removal of the name of the company from its records.

2. Restraints on unlisted public companies through dematerialization:

Ministry of Corporate Affairs has mandated issuing the securities only in dematerialized form by unlisted public companies, and to convert all its existing securities into dematerialized form in accordance with provisions of the Depositories Act, 1996. Dematerialization to be done by making application to a depository and securing International Security Identification Number (ISIN) for each type of security.

3. Introduction of Companies (Significant Beneficial Owners) Rules, 2018

Every significant beneficial owner shall declare his significant beneficial ownership within prescribed time limit in Form No. BEN-1.

Significant beneficial owner means an individual holding ultimate beneficial interest of at least ten percent, but whose name is not entered in the register of members of a company as the holder of such shares.

Upon receipt of any declaration by the company, it shall file a return in Form No. BEN-2 with the Registrar in respect of such declaration.

4. Foreign investment in India - Reporting in Single Master Form

The Reserve Bank of India vide AP. DIR Series Circular No. 30 dated June 07, 2018, with the objective of integrating the reporting structures of various types of foreign investment in India has laid down the roadmap for introduction of a Single Master Form ('SMF') which subsumes many of the existing reporting requirements. Many different forms have been subsumed in the SMF. Also, the reporting which was earlier done to the Authorized Dealer banks by the entity receiving FDI, shall now report the same online under SMF directly on the RBI's FIRMS portal.

5. Changes to the FDI policy on e-commerce.

Department of Industrial Policy and Promotion ("DIPP"), vide a press note no. 2 (2018 series) dated December 26, 2018, has amended the Consolidated FDI policy on e-commerce activities. The revised policy shall be effective from February 1, 2019.

The revised FDI policy provides that if an e-commerce marketplace entity has equity participation in any entity, such entity will not be permitted to sell its products on the platform run by such marketplace entity. Further, no e-commerce marketplace will be allowed to mandate any seller to sell any product exclusively on its platform only.

6. Rationalization of the External Commercial Borrowing ('ECB') framework and Rupee Denominated Bonds.

The Reserve Bank of India, in consultation with the Government of India rationalized the extant framework for ECB and Rupee Denominated Bonds, vide its notification dated January 6, 2019 to the A.P. (DIR Series) Circular No. 17. The emphasis was on improving the ease of doing business in India.

The ECB framework was consolidated from a 4-tier structure to a 2-tier structure by merging Track I and Track II of the previous framework into Foreign Currency denominated ECB. Track III and Rupee Denominated Bond have been

end use of ECB was amended to allow ECB for working capital purposes, purposes and for repayment of rupee loans from foreign equity holders.

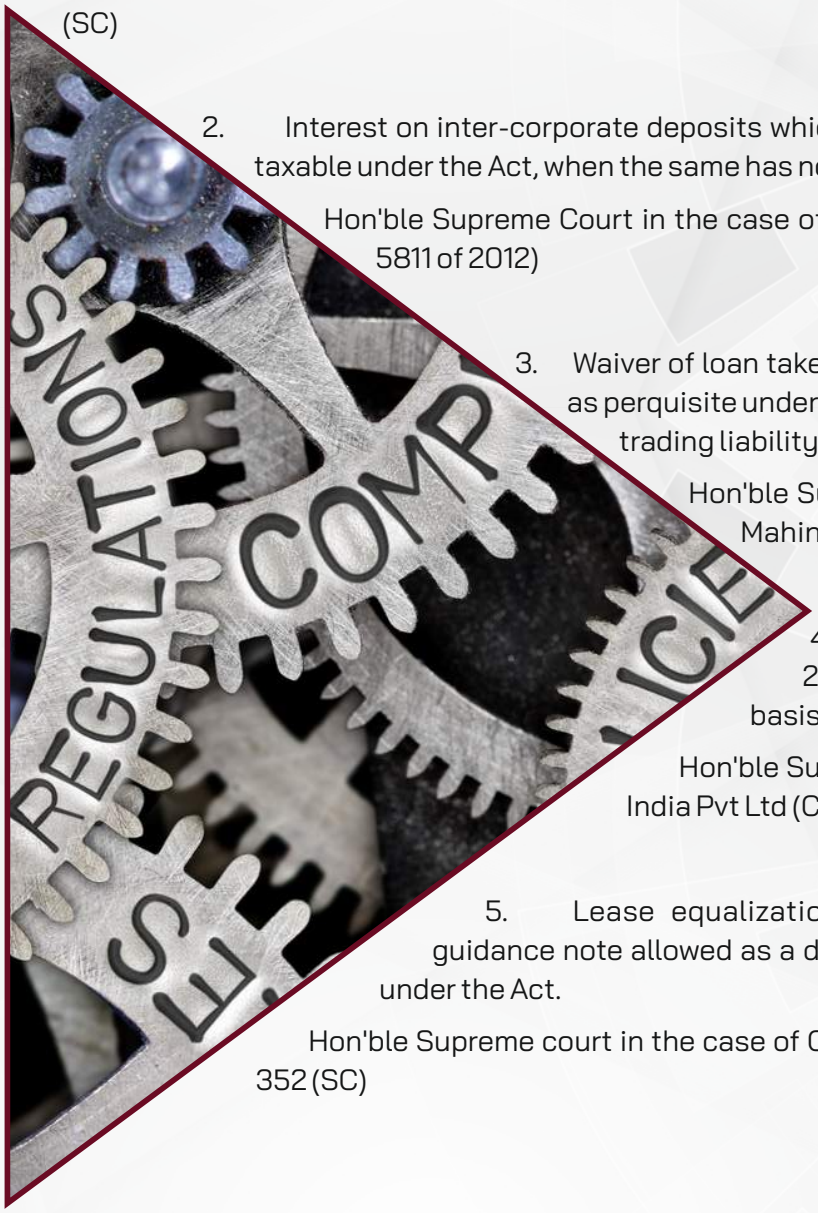
7. Other amendments in FEMA

Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2018 – Amendments have been made to principal Regulation 13 wherein certain clauses of sub-regulations have been deleted as well as added. Importantly, an Indian entity or an investment vehicle making downstream investment in another Indian entity (considered as indirect foreign investment) has to notify the DIPP within 30 days of such investment, even if capital instruments have not been allotted. Form DI has to be filed with the Reserve Bank of India within 30 days

Vide A. P. (DIR Series) Circular No. 29, the Reserve Bank of India has notified the simplified format of capturing the details of the hedges for ECBs in ECB 2 return. The revised monthly reporting format of ECB 2 Return was made applicable from end of June 2018.

Summary of select important judgements of 2018 Direct tax

1. Disallowance u/s 14A of the Act is applicable to expenditure in relation to exempt income even where shares are held as stock-in-trade Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT [2018] 402 ITR 640 (SC)



2. Interest on inter-corporate deposits which have become non-performing assets ('NPA') not taxable under the Act, when the same has not been recognized in line with the RBI directives

Hon'ble Supreme Court in the case of CIT Vs. Vasisth Chay Vyapar Ltd (Civil Appeal No. 5811 of 2012)

3. Waiver of loan taken for purchase of a capital asset is neither taxable as perquisite under section 28(iv) of the Act nor taxable as cessation of trading liability under section 41(1) of the Act.

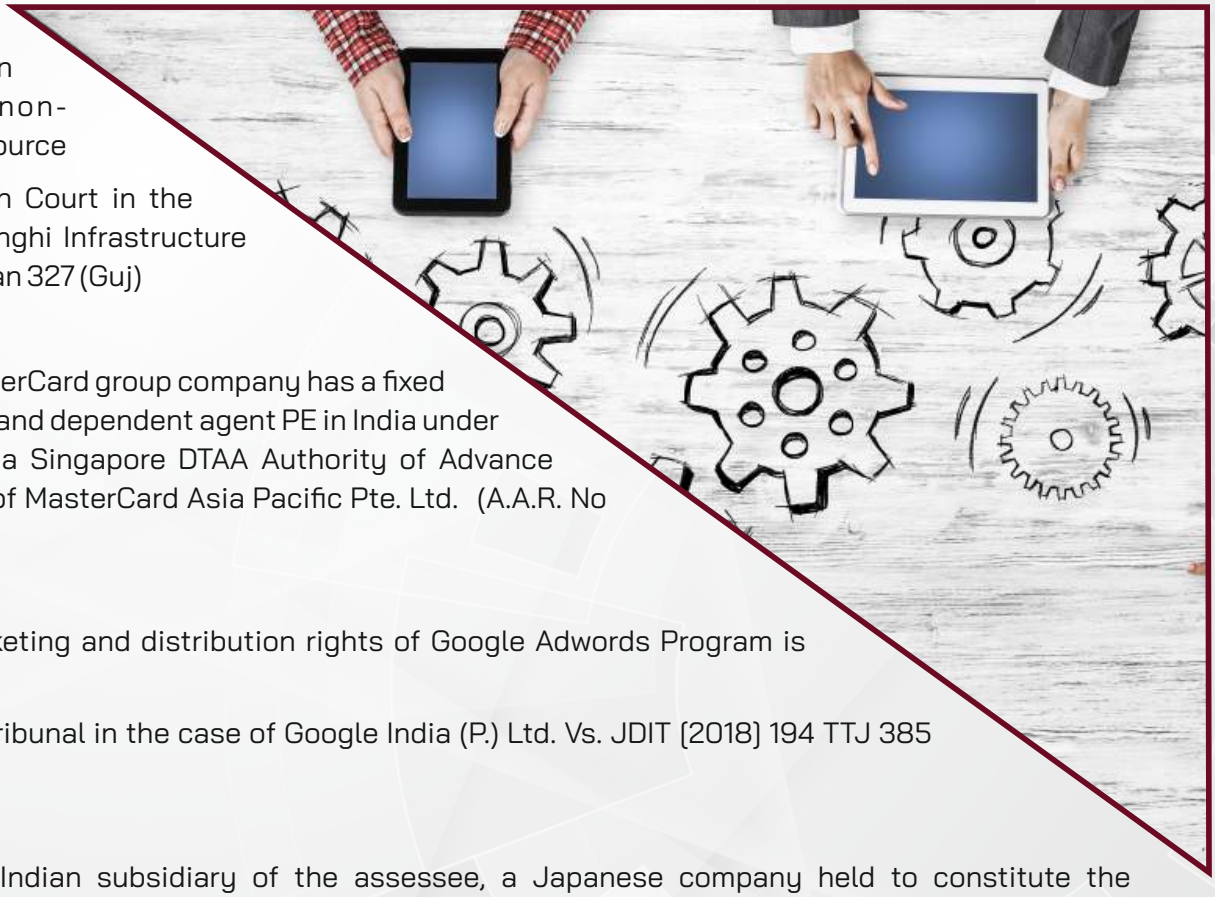
Hon'ble Supreme Court in the case of the Commissioner Vs. Mahindra and Mahindra Ltd.[2018]255 Taxman 305 (SC)

4. Tax authorities may allow deposit of less than 20% of demand to grant stay of demand on the basis of the facts of each case

Hon'ble Supreme Court in the case of PCIT Vs. LG Electronics India Pvt Ltd (Civil appeal No. 6850 of 2018)

5. Lease equalization charge determined in accordance with ICAI guidance note allowed as a deduction while computing the lease rental income under the Act.

Hon'ble Supreme court in the case of CIT Vs. Virtual Soft systems Ltd. [2018] 255 taxman 352 (SC)



6. No disallowance on year end provision of expenses for non-deduction of tax at source

Hon'ble Gujarat High Court in the case of PCIT Vs. Sanghi Infrastructure Ltd. [2018] 257 Taxman 327 (Guj)

7. Singaporean MasterCard group company has a fixed place PE, service PE and dependent agent PE in India under Article 5 of the India Singapore DTAA Authority of Advance Rulings in the case of MasterCard Asia Pacific Pte. Ltd. (A.A.R. No 1573 of 2014)

8. Payment for marketing and distribution rights of Google Adwords Program is taxable as royalty.

Hon'ble Bangalore Tribunal in the case of Google India (P.) Ltd. Vs. JDIT [2018] 194 TTJ 385 (Bang)

9. A wholly owned Indian subsidiary of the assessee, a Japanese company held to constitute the assessee's dependent agent PE

Hon'ble Delhi Tribunal in the case of Daikin Industries Ltd. Vs. ACIT [2018] 171 ITD 301/ 65 ITR 693 (Del)

10. Indian Company having franchise rights from foreign company, does not constitute agency PE of such foreign company in India under the India-US tax treaty.

Hon'ble Delhi Tribunal in case of DCIT Vs. Domino's Pizza International Franchising Inc. [2018] 171 ITD 321 (Del)

11. Provision of section 56(2)(viia) of the Act cannot be invoked in case of buy back of shares.

Hon'ble Mumbai Tribunal in case of Vora Financial Services P. Ltd. v. ACIT [2018] 171 ITD 646 (Mum)

12.GE Energy Parts Inc and its 24 entities constituted a fixed place PE since Liaison Office in India was at the foreign company's disposal and the employees performed core sales activities through such place in India. Further, Dependent Agent PE was also constituted because the employees had the authority to conclude core aspects of the contract such as technical specifications, complex price negotiations, regulatory requirements etc.

Hon'ble Delhi High court in the case of GE Energy Parts Inc. v. CIT [2018] ITA No. 621 of 2017 & others. (Del)

13.Based on the clauses of the race promotion contract entered into between Formula One World Championship Ltd. ('FOWC') and Jaypee Sports International Ltd. it was concluded that FOWC constitutes a fixed place PE in India.

Hon'ble Supreme Court in the case of Formula Once world Championship Ltd. v. CIT [2017] 80 taxmann.com 347 (SC)