The Chamber of Tax Consultants

Proposals in the Finance Bill - 2018

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15 February 2018

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Individual Taxation

- Standard deduction on salary income
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- Withholding on interest on deposits
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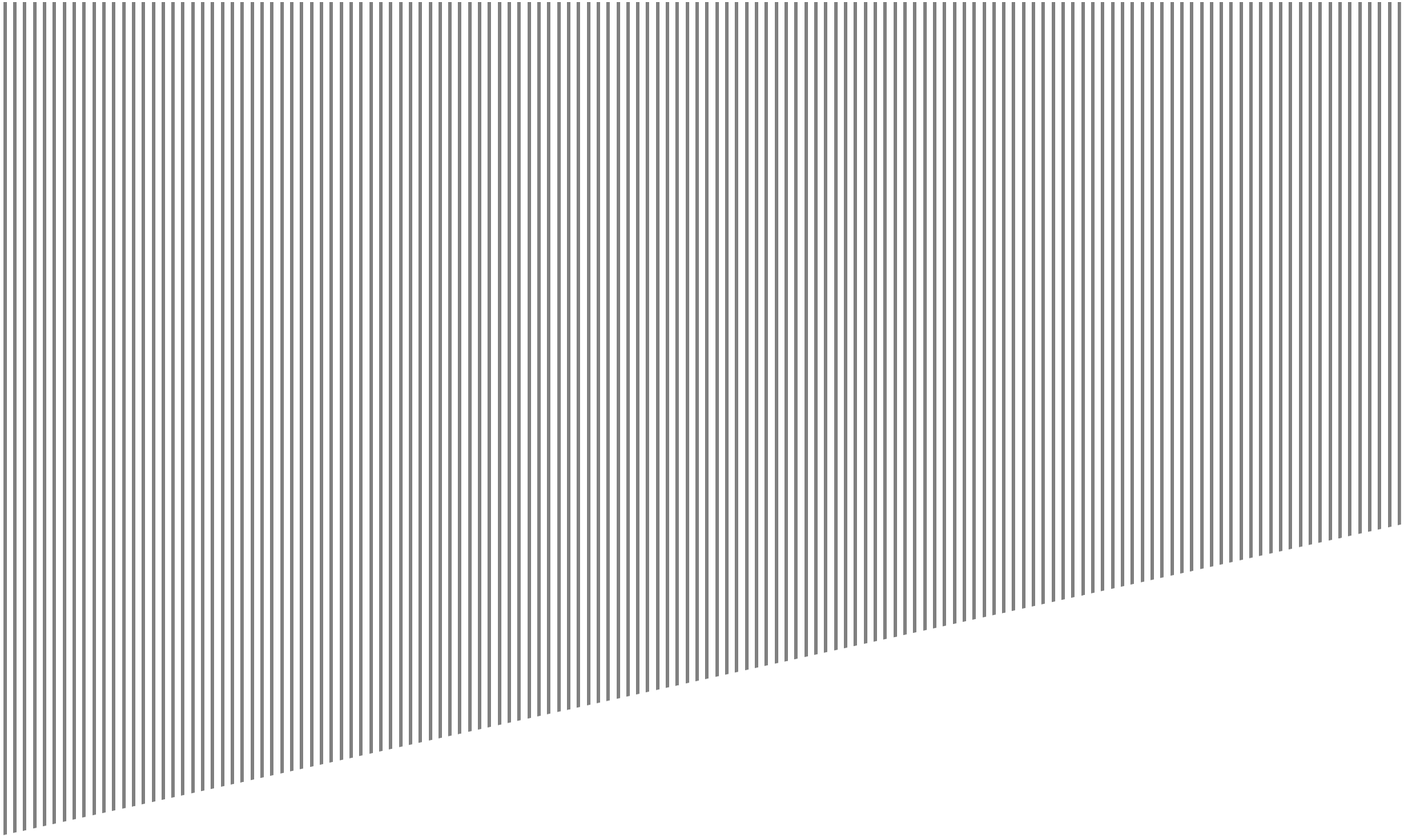
- Expanding scope of taxability of capital receipts on termination of contracts

Standard deduction on salary income [S.16(ia), fifth proviso to S. 17(2)(viii)] [w.e.f A.Y. 2019-20]



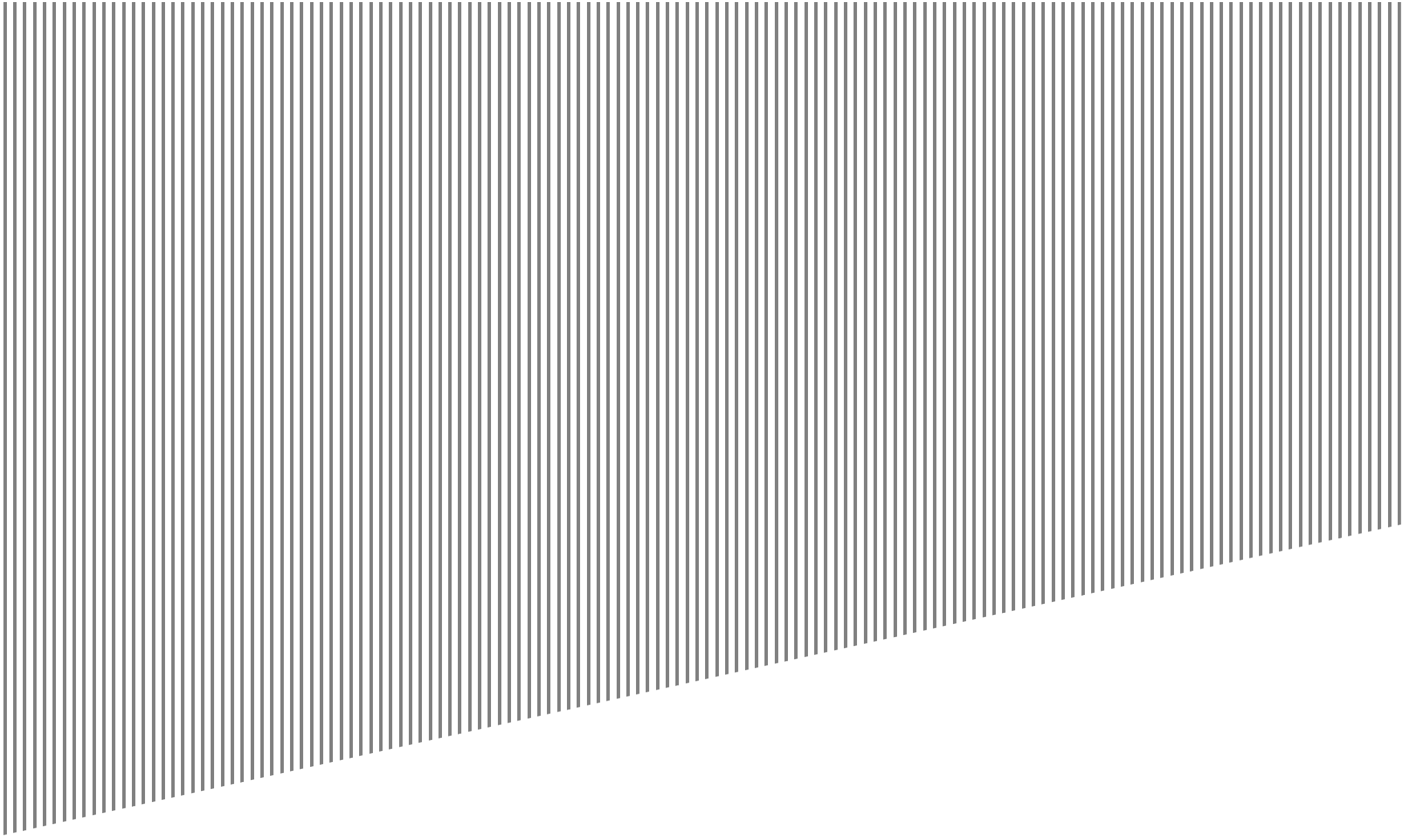
Standard deduction on salary income [S. 16(ia), fifth proviso to S.17(2)(viii)] [w.e.f 1 April 2019]

	Existing	Proposed	Difference
Transport allowance	19200	Nil	-
Medical allowance	15000	Nil	-
Standard deduction	Nil	40,000	-
Total	**34,200**	**40,000**	**5,800**

Numerical Tax Impact: Standard deduction is an eye wash with net benefit of INR 150 if following numbers are considered

Particulars	**Existing provisions (INR 34,200 & 3% cess)**	**Proposed provisions (INR 40,000** & 4%cess)**
Income	10,00,000	10,00,000
Deductions	34,200	40,000
Taxable Salary	9,65,800	9,60,000
Total tax as per slab rates	1,05,660	1,04,500
Cess	3,170	4,180
Total Tax	1,08,830	1,08,680
Net tax benefit of INR 150		

Enhanced deductions to senior citizens [s.80D, 80DDB, 80TTA, 80TTB, 194A] [w.e.f. A.Y. 2019-20]



Enhanced deduction to senior citizens [s.80D, s.80DDB][w.e.f. 1 April 2019]

- With an intention to improve horizontal equity of tax system in the view of personal circumstances, certain reliefs are proposed to senior citizens by way of enhanced deductions

Section	Provisions	Current deduction	Proposed enhanced deduction
80D	Payments made towards annual premium on health insurance policy or preventive health check-up towards senior citizens and medical expenditure towards very senior citizens.	For senior citizens and very senior citizens - INR 30,000.	• For all senior citizens –INR 50,000 • Proportionate deduction basis no. of years for single premium health insurance policies having cover of more than a year.
80DDB	Payment made towards medical treatment of specified diseases[1]	For senior citizens –INR 60,000 For very senior citizens – INR 80,000	For all senior citizens –INR 1,00,000

[1] As per Rule 11DD of the Income Tax Rules

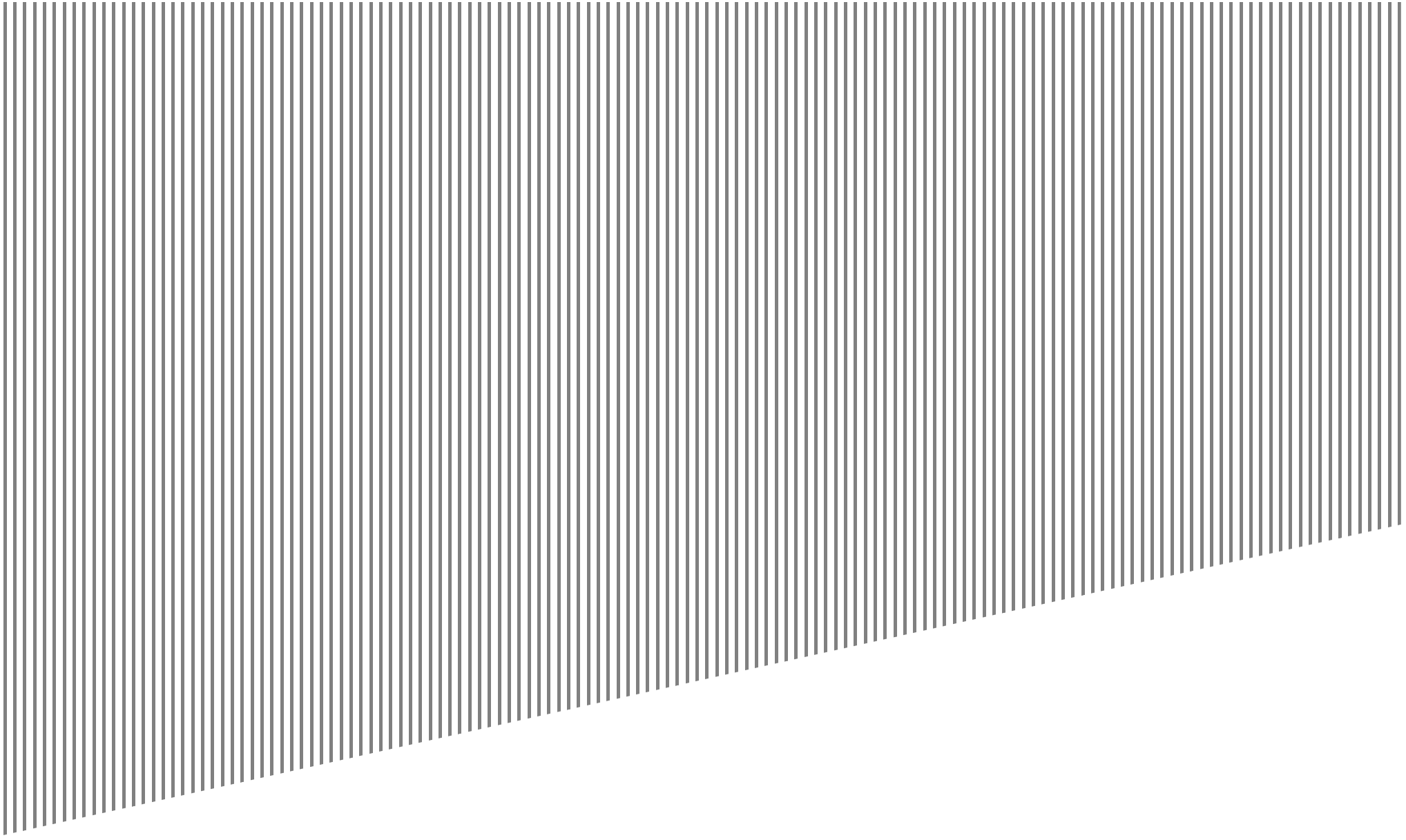
Enhanced deduction to senior citizens [s.80TTA; s.80TTB] [w.e.f. 1 April 2019]

Section	Provisions	Current deduction	Proposed enhanced deduction
80TTA	Existing S. 80TTA provides deduction in respect of interest income from savings account	For all up to INR 10,000	• Proposal to exclude persons covered under S. 80TTB. • Deduction of INR 10,000 to continue for others
80TTB	FB 2018 proposes to insert a new s. in respect of interest income from specified deposits (i.e deposits with banking company, post office and co-operative society engaged in the business of banking) held by senior citizens	N.A	• For all senior citizens deduction up to INR 50,000* • No deduction available to partners/members in respect of interest on deposits made by Firm, AOP or BOI

- FB 2018 proposal brings parity between senior citizens and very senior citizens for the purpose of benefits under these sections

* Consequential amendment in S.194A. No TDS till threshold of Rs. 50,000/-

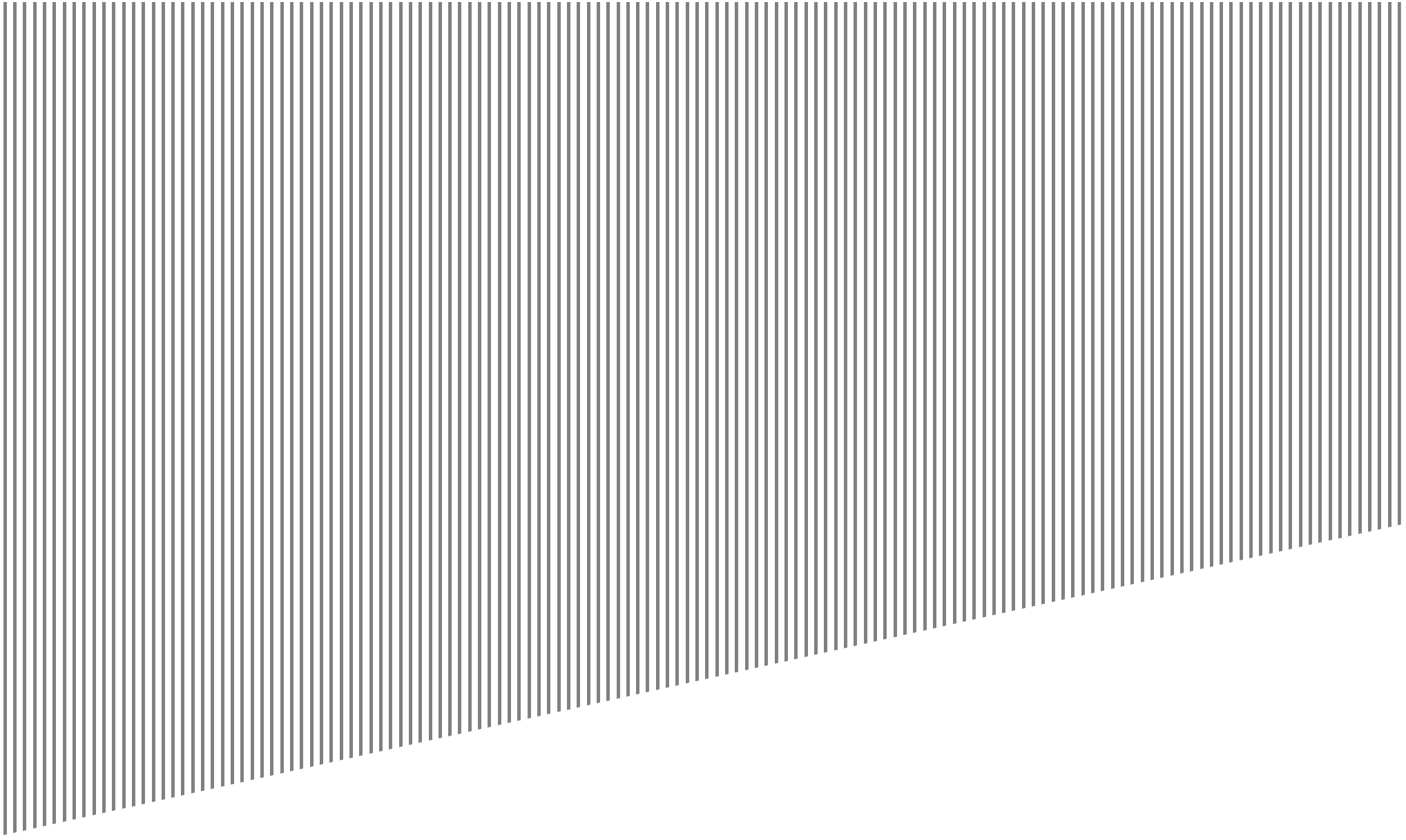
Tax-free withdrawal from National Pension Scheme (NPS) [s.10(12A)] [w.e.f A.Y. 2019-20]



Tax-free withdrawal from National Pension Scheme (NPS) [s.10(12A)] [w.e.f A.Y. 2019-20]

- S.10(12A) provides exemption in respect of amount payable to **an employee** from NPS on closure of his account or on his opting out of the pension scheme
- However, this exemption is limited to 40% of the total amount payable to him on withdrawal/closure of pension scheme
- In order to provide a level playing field to non-employee subscribers, FB 2018 proposes to extend the exemption under this s. to **all the taxpayers** contributing to NPS
  - Consequently, all taxpayers will be eligible for exemption up to 40% of the total amount payable by NPS at the time of withdrawal
- Contribution to NPS is deductible under s.80CCD and this exemption is over and above the limit available under s.80C
  - By extending exemption on withdrawals to all subscribers, it will now encourage taxpayers to invest in the NPS
- This beneficial amendment is proposed to take effect from 1 April 2019

Taxability of compensation earned under employment contract [S.56(2)(xi)] [w.e.f. 1 April 2019]



Taxability of compensation earned under employment contract [S.56(2)(xi)] (Contd..)

Existing Provision:

- S.17(3)(i) covers compensation received from employer or former employer in connection with termination of employment or modification of terms of employment contract
  - Coverage of S.17(3)(i) also triggers corresponding withholding obligation for the employer

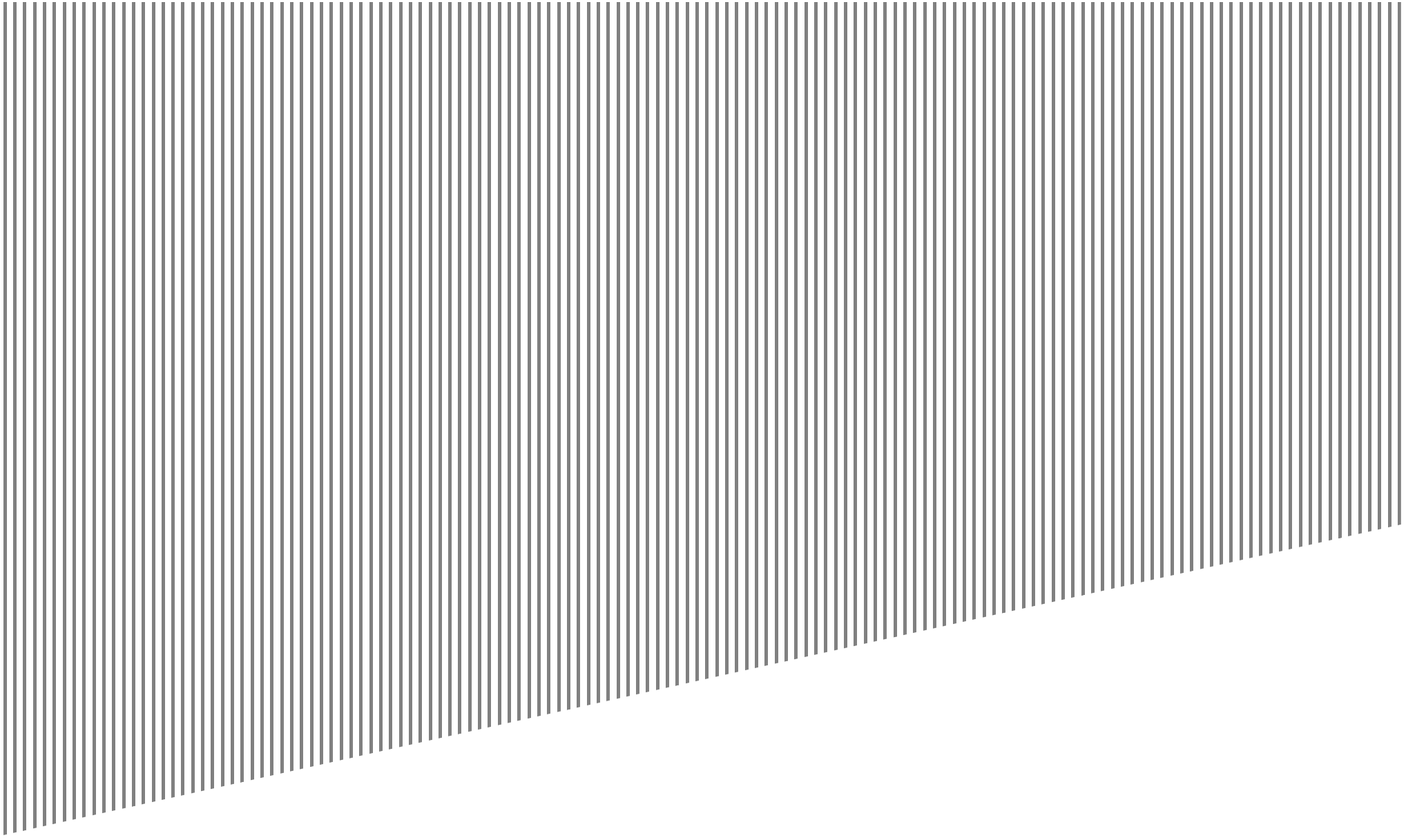
Proposed Provision:

- A new sub-clause (xi) in S.56(2) is proposed w.e.f. A.Y. 2019-20 to tax as other income compensation received in connection with termination of employment or modification of its terms and conditions relating thereto
  - Provisions of S.56(2)(xi) will apply only if compensation is not otherwise covered by S.17(3)(i)
- Illustrative circumstance which may get covered by S.56(2)(xi) are:
  - Compensation received from the promoter or say PE investor who may not answer to the description of legal or economic employer
  - Compensation may also get paid by the promoter if they require key employee to extend the terms of employment. Modification may also include extension of the contract
- S.56(2)(xi) trigger will not attract TDS under s.192 though it may require evaluation under s.195 for non-resident recipient

Business Income

- Conversion of Stock-In-Trade into Capital Asset
- Incentive for employment generation
- Mandate of filing ROI in time extended to all profit linked tax holiday deductions
- Taxability of compensation earned under business contract
- ICDS

Conversion of Stock-In-Trade into Capital Asset



Conversion of stock-in-trade (SIT) into capital assets (CA)

- Express provision under ITA, for conversion of CA in SIT (s. 45(2))
  - No upfront taxation. Taxation in the year of disposal of SIT
  - FMV as on the date of conversion to be full value of consideration received
  - FMV considered for transfer of CA is cost of acquisition of SIT
  - In the year of sale of SIT, gain/loss split between capital gains and business income
- Presently, no provision for taxability of conversion of SIT into CA
- **Proposed provision:**
  - Business of income to include FMV of SIT on conversion of SIT into CA(s. 28(via))
  - Upfront taxation in the year of conversion of SIT into CA
  - FMV of SIT to be considered as cost of acquisition of CA (s. 49(9))
  - Period of holding of CA to be reckoned from date of conversion (s. 2(42A))

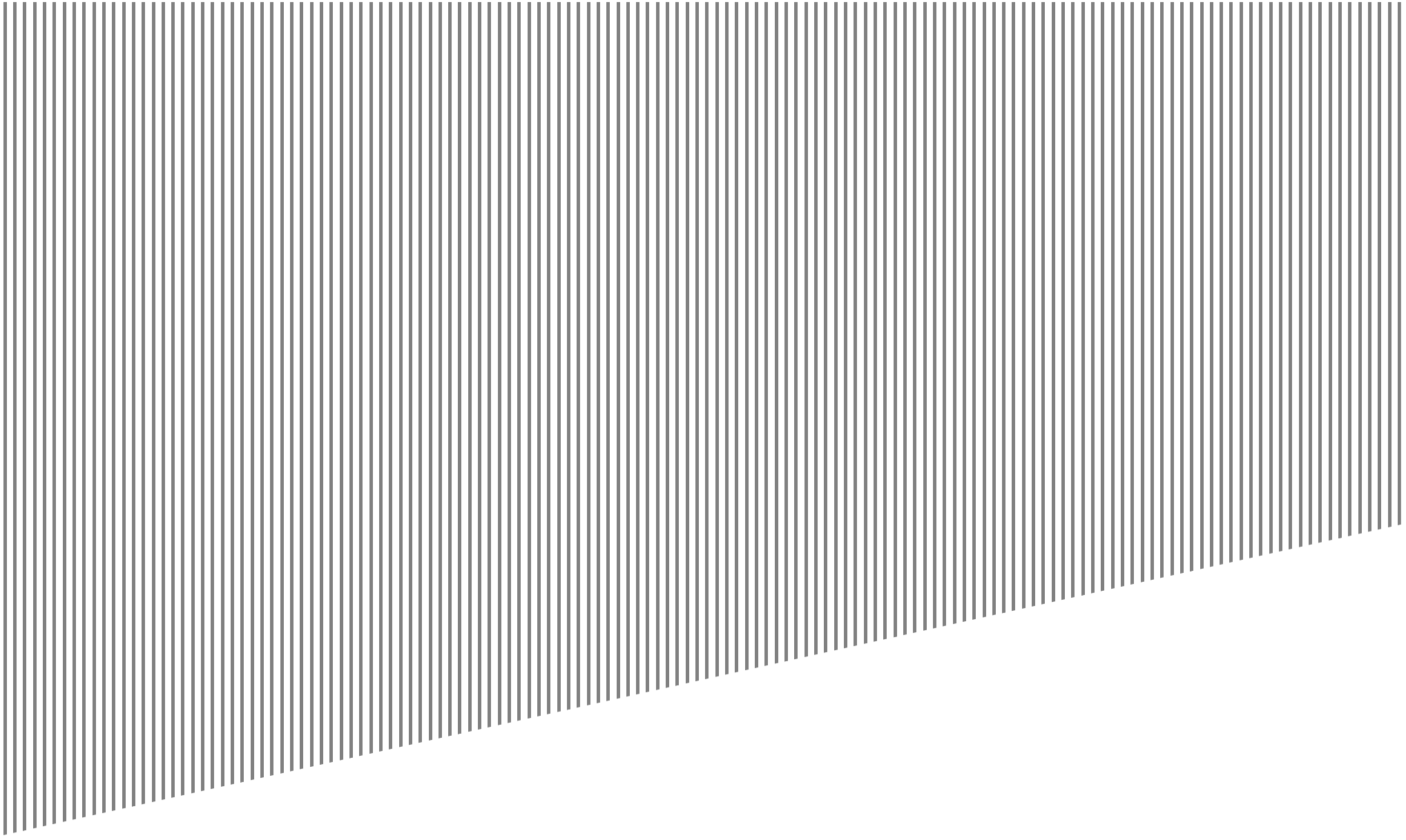
Impact of proposed amendment and major issues

- Cash flow difficulty on account of upfront taxation without realisation of asset
- Conversion of SIT into CA prior to 1 April 2018 to be governed by old law
- CBDT has power to notify the manner of computation of business income
- MAT impact of conversion of SIT or sale of CA will be governed by treatment provided in books of accounts
- Whether on dissolution of proprietary concern, residual SIT be covered by proposed amendment?

Computation of income under proposed provision

Particulars		Case 1	Case 2
Acquisition of SIT (shares) on April 2018	(a)	100	1000
FMV of SIT as on date of conversion (May 2019)	(b)	1,000	300
Sale price of CA (April 2020)	(c)	1,800	900
Business income / (loss) taxable in May 2019	**(b-a)**	**900**	**(700)**
Capital gains / (loss) taxable in April 2020/April 2022	**(c-b)**	**800 (STCG)**	**600 (STCG)**

Incentive for employment generation [w.e.f. A.Y. 2019-20]



Incentive for employment generation [w.e.f. A.Y. 2019-20]

Existing Provision:

- Incentive provisions are provided under s. 80JJAA for generation of employment on satisfaction of certain conditions
  - One of the conditions is that the employee must be employed for a minimum period of 240 days (minimum period) in the year for which the deduction is being claimed
  - The minimum period is reduced to 150 days where the employer who recruits the new employees, is engaged in the business of manufacturing of apparel
- To encourage creation of new employment it is proposed to extend relaxation of minimum period of 150 days to footwear and leather industry
- Uncertainty prevailed on claiming deduction when the employee failed to complete the minimum period in the first year of employment and completed the minimum period in second year of employment

Incentive for employment generation [w.e.f. A.Y. 2019-20]

Proposed Provision:

- It is proposed that for new employee who is employed for less than minimum period in first year but employed for minimum period in second year, shall be deemed to qualifying additional employee from second year onwards.

Example 1

- Mr.X a newly recruited employee has completed 180 days[1] of employment in the first year of employment and in the second year has completed 250 days of employment and continues to remain in employment
- Deduction under s.80JJAA can be claimed in respect of wages paid to Mr X from second year onwards

- **Example 2**
  - Mr.X a newly recruited employee in an apparel manufacturing enterprise[2] has completed 10 days of employment in the first year of employment and in the second year has completed 140 days of employment and quit the employment
  - Deduction under s.80JJAA cannot be claimed in respect of wages paid to Mr X since he has failed to complete the minimum period in either of the years, even though on an aggregate basis Mr X has completed employment of 150 days.

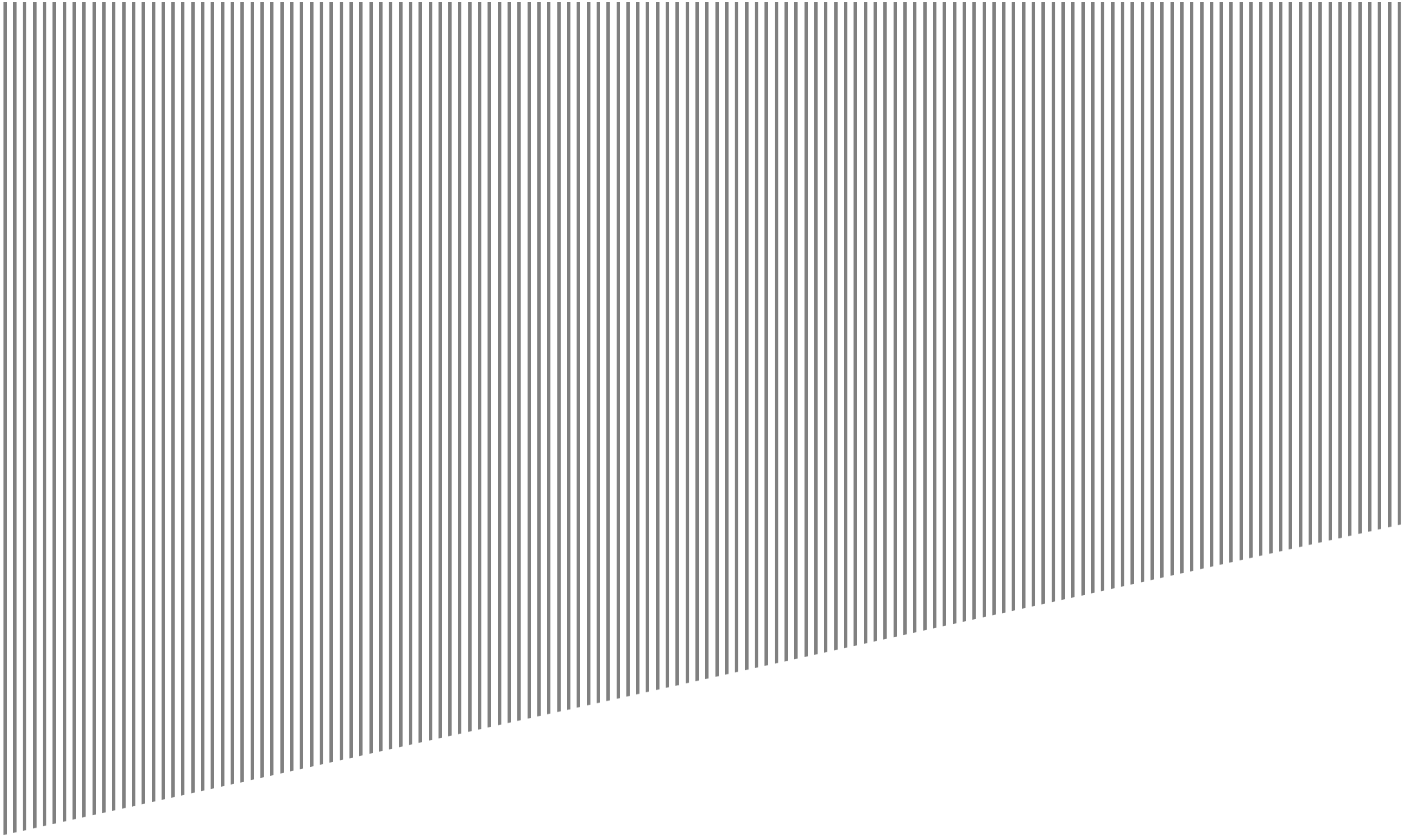
[1] Minimum period of employment is 240 days
[2] Minimum period of employment is 150 days

Incentive for employment generation [w.e.f. A.Y. 2019-20]

- The proposed amendment is effective from AY 2019-20 and hence an issue arises as to whether this can be applicable in cases where the second year of employment is prior to AY 2019-20.
  - Effectively, the proviso is likely to be considered as a rationalization measure removing ambiguity and impossibility
  - Amendment carried out to overcome a lacuna and which is curative in nature will have retrospective effect and will operate from the year of insertion. Refer, for instance, following decisions:
    - Allied Motors (P) Ltd. Etc. vs. CIT [(1997) 224 ITR 677 (SC)]
    - CIT vs. Alom Extrusions Ltd. [(2009) 319 ITR 306 (SC)]

    Applying the same analogy, proposed amendment to S.80JJAA should arguably have retrospective effect

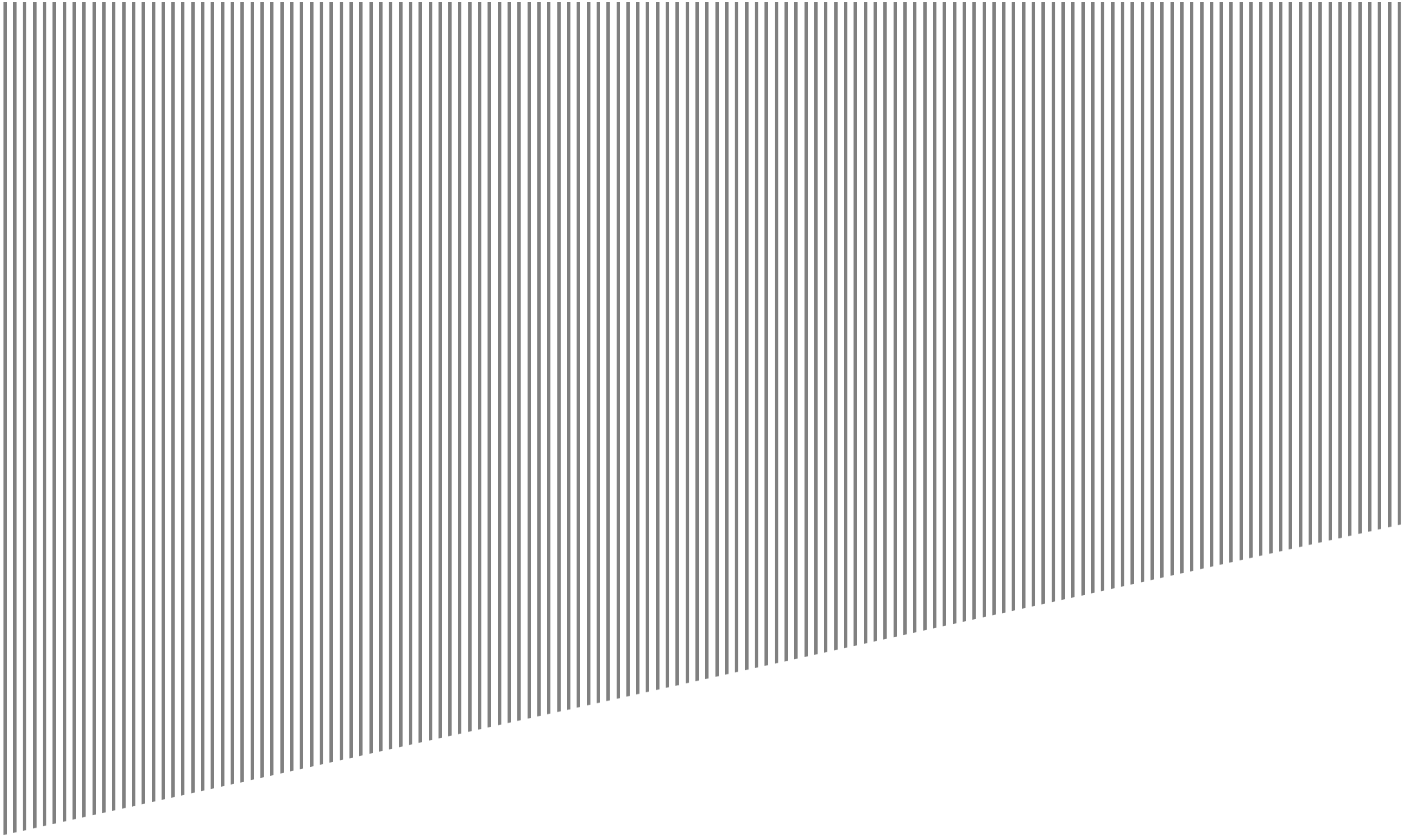
Mandate of filing ROI in time extended to all profit linked tax holiday deductions under Chapter VI-A [s.80AC] [w.e.f. 1 April 2018]



Mandate of filing ROI in time extended to all profit linked tax holiday deductions under Chapter VI-A [s.80AC] [w.e.f. 1 April 2018]

- As per s. 80AC of the ITA, there is mandate to furnish tax return on or before due date as a condition for claiming certain selective profit linked tax holiday deductions i.e.:
  - Infrastructure development (s. 80IA);
  - Development of SEZ (s. 80IAB);
  - Certain industrial undertakings other than infrastructure development undertaking (s. 80IB);
  - Certain undertakings in special category states (s. 80IC);
  - Business of hotels and convention centres in specified area (s. 80ID); and
  - Undertakings in North-eastern states (s. 80IE)
- Additionally, requirement of timely filing tax return is also applicable for claiming deduction under s.10A / 10B of the ITA
- It is proposed to extend the requirement of filing tax return before due date specified in s. 139(1) of the ITA to all profit linked tax holiday deductions specified in *'Part C – Deductions in respect of certain incomes'* of Chapter VI-A of the ITA.
  - Illustratively, cases of eligible start up (S.80IAC), eligible housing project (S.80IBA)
- However, taxpayer claiming deduction under s.10AA of the ITA technically is still outside the purview of mandate of timing filing of ROI

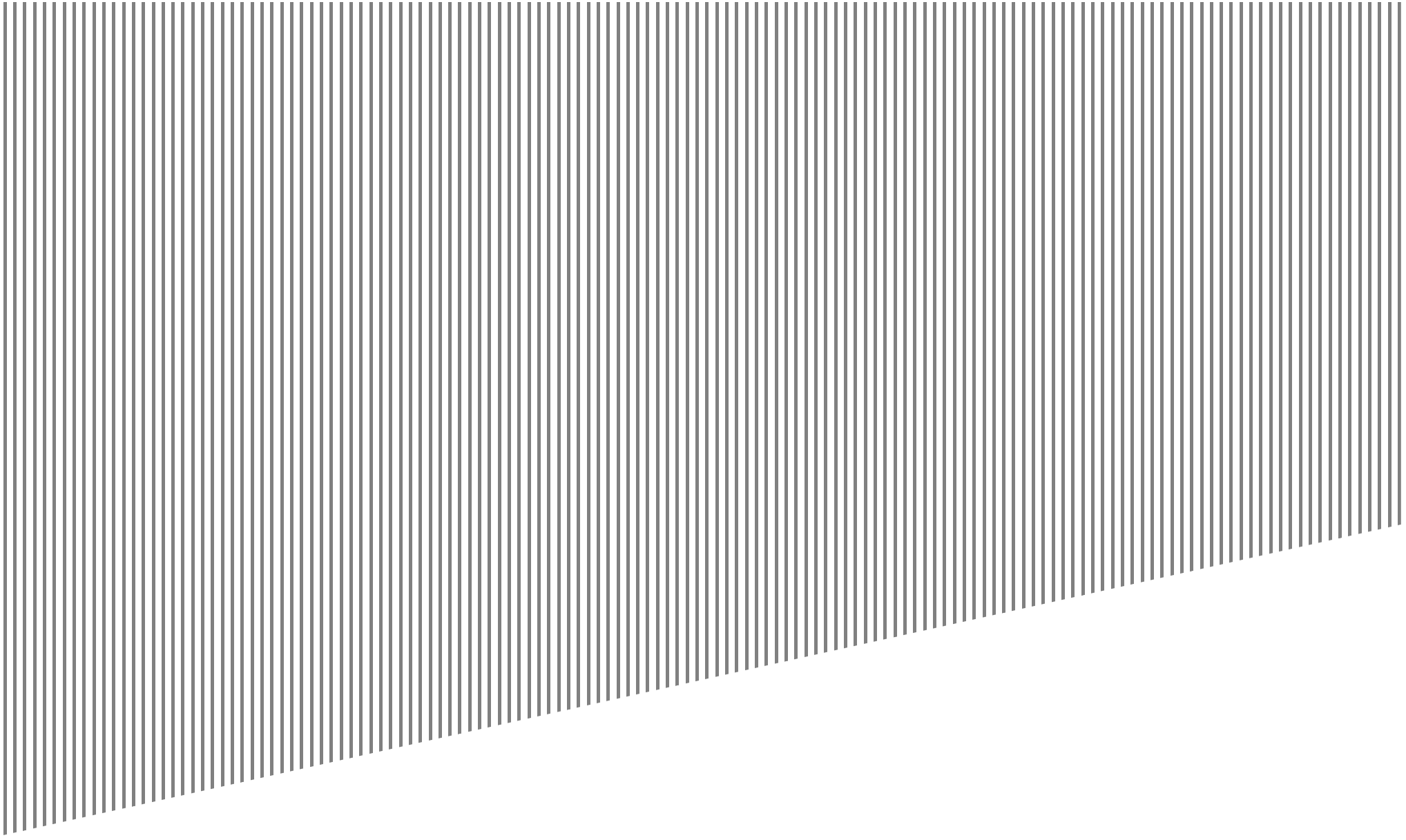
Taxability of compensation earned under business contract [S.28(ii)(e)] [w.e.f. 1 April 2019]



Taxability of compensation earned under business contract [S.28(ii)(e)]

- Presently, business taxation is triggered under s.28(ii) in respect of compensation or other payments received for termination or modification of terms of managing agency agreement
- FB 2018 proposes to insert a new sub-clause (e) under s.28(ii) to cover within scope of business income any compensation or other payments earned for termination or modification of any contract relating to business whether revenue or capital in nature
- The amended clause gets covered within the scope of definition of income as S.2(24)(v) already includes income earned under s.28(ii)
- The term *'any contract relating to his business'* is wide enough to cover contracts which may relate to:
  - Termination of the contract involving acquisition or transfer of business or the source which constituted substratum of business
  - Breach of supply agreement
  - Termination of long drawn manufacturing arrangement
  - Modification in duration of contract

ICDS related amendments [s. 36(1)(xviii), 40A(13), 43AA, 43CB, 145A, 145B] [w.r.e.f AY 2017-18]



ICDS related amendments [s. 36(1)(xviii), 40A(13), 43AA, 43CB, 145A, 145B] [w.r.e.f AY 2017-18]

Existing Provision:

- ICDS was notified by the CG as a delegated legislation u/s 145(2) w.e.f. AY 2017-18[1] to for incomes under head PGBP and IFOS and applied to all taxpayers following mercantile method of accounting, except individuals and HUFs not liable to tax audit
  - Revised ICDS were notified in September 2016 and FAQs also released by the CBDT in March 2017 to address the implementation issues faced by taxpayers
  - Meanwhile, the Delhi HC in case of Chamber of Tax Consultants (255 Taxman 77) struck down several contentious provisions of the ICDS, thus rendering ICDS substantially ineffective and raising doubts on the legitimate applicability of the ICDS

Proposed Amendment:

- In order to provide legitimacy to ICDS and to bring certainty in the wake of recent judicial pronouncements on the issue of applicability of ICDS, FB 2018 proposes to insert certain provisions to codify ICDS in ITA (refer next slide for detailed amendments)
- EM states that retrospective amendment is to regularize the compliance by large number of taxpayers and to prevent any further inconvenience to them

1. Postponed by one year from AY 2016-17 in view of implementation difficulties faced by taxpayers

ICDS related amendments [s. 36(1)(xviii), 40A(13), 43AA, 43CB, 145A, 145B] [w.r.e.f AY 2017-18]

The following is the summary of provisions proposed to be introduced by FB 2018:

- New S.36(1)(xviii) provides for deductibility of Marked to market (MTM) loss/ expected loss only to the extent permissible under the ICDS
- New S.40A(13) disallows any MTM loss or expected loss unless it is covered u/s.36(1)(xviii)
- New S.43AA provides for taxability of gain or loss arising on all foreign currency transaction, monetary or non-monetary items, forward contracts and foreign currency translation reserve (except exchange fluctuation gain or loss arising in case of imported assets) computed in accordance with ICDS
- New S.43CB provides that profits or gains arising from construction contracts and service contracts (except where duration <90 days or involves indeterminate number of acts) shall be computed as per POCM in accordance with ICDS

ICDS related amendments [s. 36(1)(xviii), 40A(13), 43AA, 43CB, 145A, 145B] [w.r.e.f AY 2017-18]

- Amended S.145A provides that inventory shall be valued at lower of actual cost or net realisable value (NRV) as computed under the ICDS and further adjusted to include the amount of any tax, duty, cess etc.
  - Inventory being unlisted securities, or listed but not quoted with regularity, shall be valued at actual cost initially recognised as per ICDS
  - Other listed securities shall be valued at lower of actual cost or NRV as computed under the ICDS with comparison of actual cost and NRV of securities on a category-wise basis
- New S.145B provides that:
  - Export incentives or claims for price escalation shall be taxable in the year in which reasonable certainty of its realisation is achieved
  - Subsidy/ grants covered u/s.2(24)(xviii) shall be taxed on receipt basis, if not offered to tax in any earlier tax year

LTCG Exemption on Listed shares

- Taxation on long term capital gains on transfer of listed equity shares, equity oriented mutual fund, units of business trust [w.e.f. 1 April 2019]

Discussion is limited to equity shares

Withdrawal of Exemption on transfer of listed shares, equity oriented fund and units of business trust [s.10(38)] [w.e.f. 1 April 2019]

Current tax position:

- S. 10(38) exempts gain arising on transfer capital asset being listed shares, if purchase has suffered STT, unless relieved.

Proposed Amendment:

- S. 10(38) is proposed to be withdrawn from A.Y. 2019-20
- The benefit of exemption under s.10(38) on transfer of listed shares **available** on transfer taking place on or before 31 March 2018

New taxation regime for long term capital gains [s.112A] [w.e.f. 1 April 2019]

- With withdrawal of s. 10(38), new tax regime is proposed for transfer of specified assets
  - S. 112A is applicable to a resident as well non-resident.
- Benefit of concession rate of taxation @ 10% subject to denial of benefit of indexation and Forex fluctuation
- Blanket exemption of Rs. 1,00,000 available to all taxpayer (qua taxpayer and not qua transaction)
  - 10% tax on LTCG on an amount in excess of Rs.1,00,000
- **Conditions to be satisfied in relation to equity shares to qualify under s. 112A:**
  - STT is paid at the time of transfer of shares
  - STT is paid on acquisition of shares at the time of acquisition unless notified
    - Notification issued in context of s. 10(38) adopted; Protects a gift, inheritance, IPO, bonus, rights, etc
- **Cases where section 112A is not applicable:**
  - Transfer of short term capital asset
  - Transfer of shares off market sale
  - Transfer of unlisted shares (no STT payable)
- If conditions fulfilled – S. 112A mandatory
- No need to enter s. 112A if computation results in loss. Governed by s. 112
- Companies governed by MAT may be neutral with introduction of new tax regime

New taxation regime for long term capital gains [s.112A]

- **If conditions of s. 112A applies, cost of acquisition of capital asset:**

Date of acquisition	Cost
Capital asset acquired prior to 1 February 2018	Higher of (a) or (b): a) Actual cost of acquisition and b) Lower of: • **Fair market value of capital asset as on 31 January 2018** • Consideration received or accrued on transfer of capital asset
Capital asset acquired on or after 1 February 2018	Actual cost incurred for acquiring capital asset

New taxation regime for long term capital gains [s.112A]

- **Determination of fair market value of capital asset:**

Capital asset	Manner of determining cost of acquisition having regard to substitution of FMV as aforesaid
Capital asset listed on any RSE as on the date of acquisition	► Highest price of the capital asset as on 31 January 2018 ► Where the capital asset was not traded on RSE on 31 January 2018, highest price of capital asset on immediately preceding day on which such capital asset was quoted
Equity shares which are unlisted when acquired	No specific methodology but arguably FMV determined as per s. 2(22B) may be adopted

Determination of cost of acquisition under s.112A

- **Cost of acquisition of capital asset for capital asset acquired prior to 1 February 2018:**

Particulars	Case 1	Case 2	Case 3	Case 4
(a) Actual cost of acquisition if higher than (b)	1000	1000	1000	1000
(b) Lower of				
► FMV of listed capital asset/NAV of units on 31 January 2018	900	600	1200	1400
► Consideration received on transfer	800	800	1200	1500
Cost of acquisition of shares for s. 112A	1000	1000	1200	1400

Computation of capital gains under different situations – s.112A and s.10(38)

Particulars	Case 1	Case 2	Case 3	Case 4
Date of acquisition	1 Jan 2017	1 Jan 2017	1 Jan 2017	1 Jan 2017
Date of sale	1 May 2018	1 May 2018	1 May 2018	1 May 2018
(a) Cost of acquisition if it is higher than (b)	100	100	100	100
(b) Lower of:				
FMV as at 31.1.18	90	1000	90	1000
Sale consideration	40	1200	150	600
Cost for LTCG calculation[1]	100	1000	100	600

Particulars	Case 1	Case 2	Case 3	Case 4
Sale consideration	40	1200	150	600
Cost of acquisition	100	1000	100	600
Chargeable capital gain > 1 lac	(60)	200	50	Nil

[1] *Higher of 1) Actual cost **OR** 2) Lower of FMV as at 31.1.18 or actual sales consideration*

Computation of capital gains : Interplay of bonus shares

Situation 1	Original	Bonus	Total
Sale consideration	40,000	40,000	80,000
Less: Cost of acquisition	(70,000)	Nil	Nil
Gain (a-b)	(30,000)	40,000	10,000
Tax @ 10% (of C)			1,000

Situation 2	Original	Bonus	Total
Sale consideration	40,000	40,000	80,000
Less: Cost of acquisition	(70,000)*	Nil	Nil
Gain (a-b)	NIL	40,000	40,000
Tax @ 10% (of C)			4,000
	*Loss not admissible		

- A holds shares of ListCo since 2002
- FMV of ListCo shares as on 31 Jan 2018 is 70,000
- ListCo gives bonus in May 2018 in the ratio of 1:1
- Situation 1 : Sale of original shares in March 2018 and purchases back at Rs.70,000
- Situation 2 : Sale of original and bonus shares on stock exchange in May 2019 when the market price of ListCo is 40,000.

New taxation regime for long term capital gains – [s.112A]

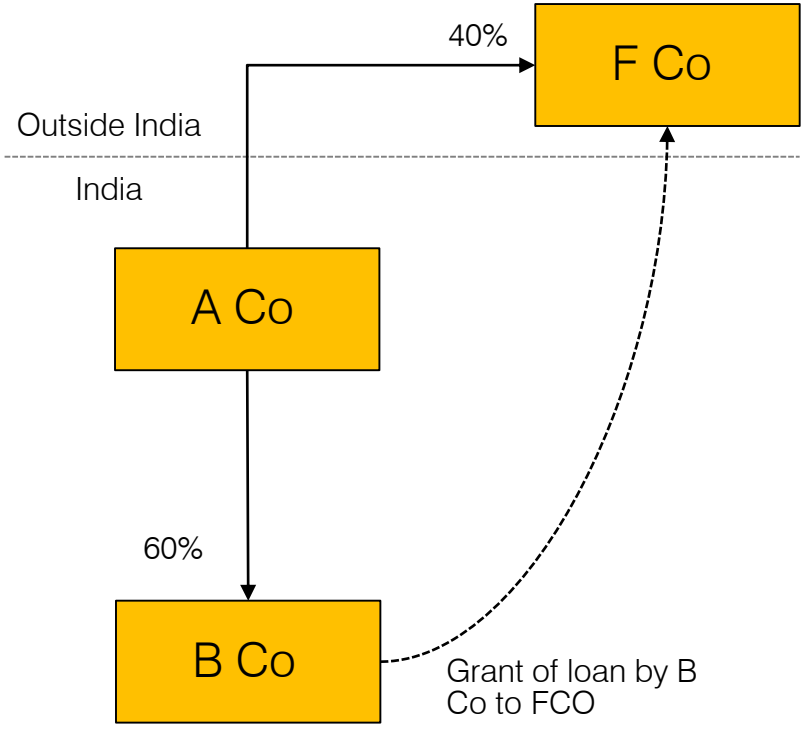
Impact:

- Cost substitution of FMV as on 1 April 2001 arguably available
- Substituted cost of acquisition provided deemed cost substitution does not result in loss
- MAT liability will continue to be governed by book treatment
- Amendment is academic for taxpayer enjoying beneficial treatment under DTAA
- Cost of acquisition of right shares and bonus shares shall be FMV as on 31 January 2018
- Withholding u/s. 195 on payment made to NR
- No withholding on payment made to FII for acquisition of shares (s. 196D)

Deemed Dividend

- DDT applicable on loans and advances qualifying as Deemed Dividend

S. 2(22)(e) – Existing controversy



- Presently, as per S. 115-O, DDT is applicable on all dividends except for deemed dividend under S.2(22)(e)
- S. 2(22)(e) provides
  - That any advances and loans to a specified shareholder or specified concern by closely held companies, shall be deemed to be dividend
  - Is not applicable in case of widely held company granting loans/advances
  - Triggers to the extent of company possesses accumulated profits
- Presently the taxation of deemed dividend u/s 2(22)(e) is in the hands of shareholders
- Judiciary is divided on interpretation and taxability of deemed dividend under s.2(22)(e) –
  - Whether tax liability in case of loan to concern should be in the hands of the shareholder or the concern
  - Whether F Co can mitigate tax liability by reliance on its treaty

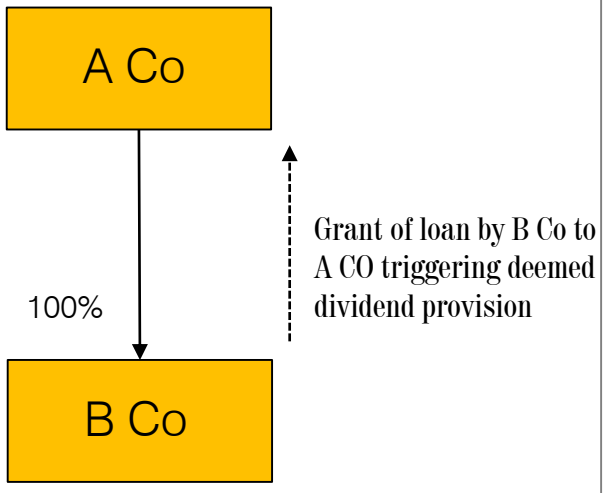
Proposed amendment and its impact

- FB 2018 proposes to tax such divided under s.2(22)(e) also within the ambit of DDT levy.
- Deemed dividend to be subject to DDT @30% (without grossing up).
- Effective rate of taxation @ 34.94% (including surcharge and cess) as against the DDT rate of other dividend of 20.56%
- Applies in respect of payment or grant of loan / advance post 1 April 2018 and not from A.Y. 2018-19
- Dividend income received by the shareholders will be exempt u/s 10(34)
- Super rich levy u/s 115BBDA will not applicable in respect of deemed dividend referred in section 2(22)(e)

Proposed amendment and its impact

- Hardship for companies even in case where loan is (a) for interest; (b) temporary; (c) repaid subsequently.
- No FTC can be claimed by shareholders in respect of DDT paid by the company
- Arguably in respect of DDT paid by the company, roll over benefit u/s 115-O(1A) is available (refer subsequent slides)
- Where a company advances loan to a shareholders holding 15% of shares. DDT outflow results detriment to remaining 85% shareholders as well.
- Going forward, while implementing a transaction, it may be advisable to use the firm/LLP structure.

Case study 1 - Roll over benefit when loan provided to a shareholder



- B Co, a CHC is a WOS of A Co. B Co grants loan to A Co and AP are present
- B Co is liable to pay DDT @ 30% as per the proposed amendment
- A Co declares dividend to its shareholders within the same financial year
- Roll over benefit u/s 115-O(1A) should be available to A Co as:
  - A Co satisfies holding-subsidiary relationship
  - A Co receives the dividend [deemed dividend under s.2(22)(e)]
  - Declaration of dividend is in the same financial year
  - B Co has paid DDT @34.94% on such dividend as required.

Amendment to S.2(22)(e) : Impact analysis

Corporate tax (Rs. In crore)

Particulars	Scenario 1	Scenario 2
Net profit of the company	100.00	100.00
Add: Disallowance u/s 43B	-	20.00
Total income	100.00	120.00
Corporate tax (assuming the company is paying tax @ 30%) (including surcharge and cess) (A)	34.94	41.93

Deemed dividend taxation

Grant of loan Rs. 65 by company to shareholder (Mr. A) holding 50% of shares and trigger of section 2(22)(e) - DDT liability (B)	22.71	22.71

Declaration of actual dividend

Company declares dividend of Rs. 55 to all shareholders (C)	11.31	11.31

Super rich tax levy in the hands of shareholder - S. 115BBDA (no super rich levy on dividend u/s 2(22)(e)

Super rich tax levy on Rs. 55 @ 10% (D)	6.41	6.41
Total tax outflow (corporate tax + DDT) (A+B+C+D)	**75.37**	**82.36**

Notional Value Assessment

- Rationalisation of notional taxation on transfer/receipt of immovable property [ss.43CA, 50C, 56(2)(x)] [w.e.f. 1 April 2019]

Proposed amendment in ss.43CA and 50C

- Presently, ss. 43CA, 50C and 56(2)(x) do not provide any threshold exemption for comparing the stamp duty value with the consideration. Incidentally, the comparable statutory provisions in the past had provided for delta of 25% and 15% (see S.269C(2)(a) and s. 52(2))
- EM to FB as well FM's Budget Speech provide that variation in respect of stamp duty value and consideration can occur for variety of factors, including shape of the plot or location
- In order to reduce the genuine hardship to real estate sector it is proposed to amend ss.43CA and 50C to provide that:
  - Where stamp duty value does not exceed 105% of consideration received or accruing on transfer/receipt of asset, consideration received or accruing shall be deemed to be full value of consideration
- However, once difference exceeds 5%, stamp duty value itself be full value of consideration without any relaxation for 5%.

Impact of amendment in ss.43CA and 50C

- A feeble attempt to codify the view adopted by tribunals/courts in certain judicial precedents wherein it has been held that if the difference between consideration and stamp valuation is not more than 10%, such difference is to be ignored. Illustratively refer,
  - Smt. Sita Bai Khetan vs. ITO (ITA No. 823/JP/2013) (delta of 10%)
  - John Fowler (India) Private Ltd v DCIT (ITA No. 7545/Mum/2014) (delta of 10%)
  - Krishna Enterprises v ACIT [ITA No. 5402/Mum/2014) (delta of 10%)

Proposed amendment in s.56(2)(x) and its impact

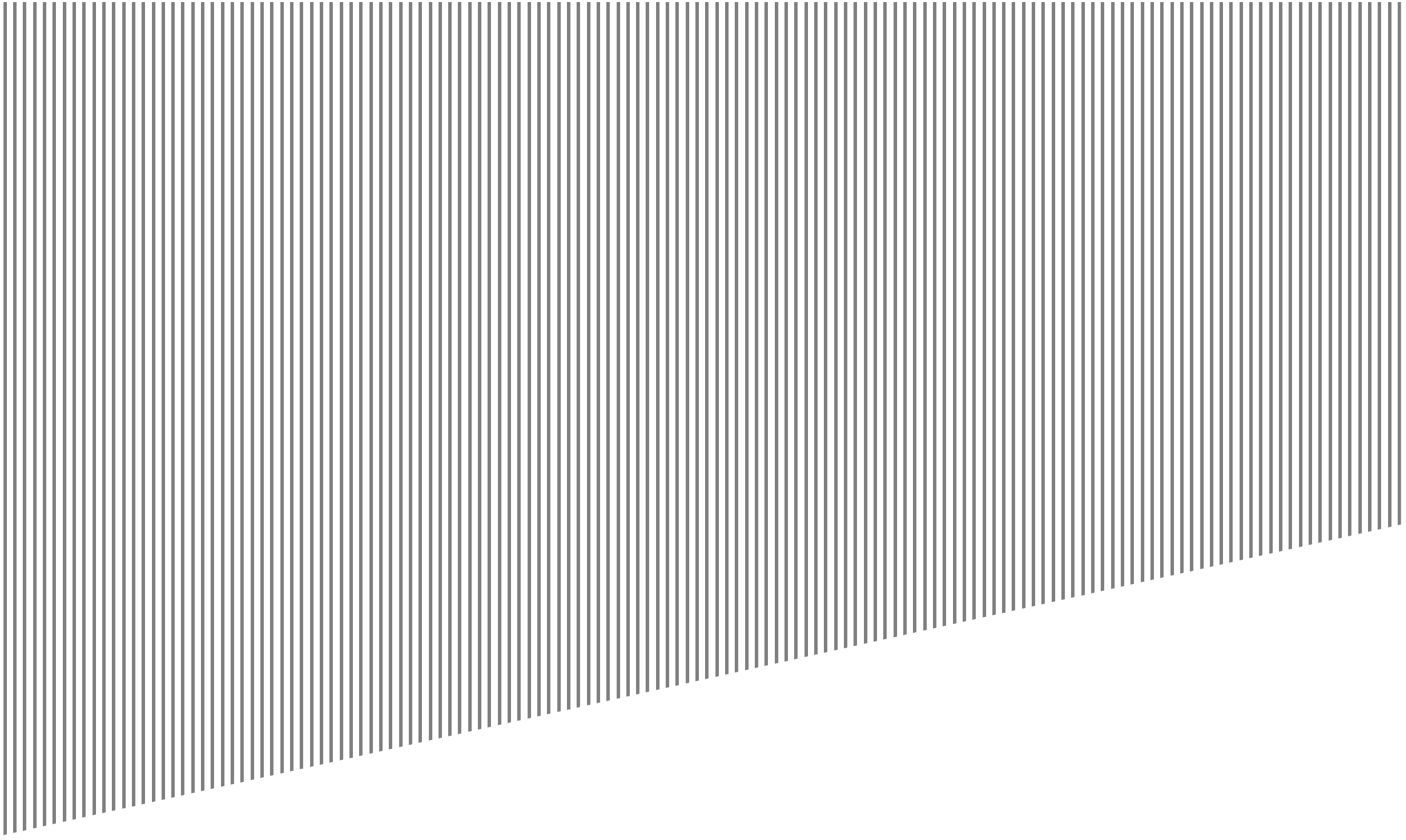
- S. 56(2)(x)(b)(B) is proposed to be amended to provide that where immovable property is received for a consideration, stamp duty value in excess of consideration shall be taxable if the difference exceeds
  - INR 50,000 and
  - Amount equal to 5% of consideration

Particulars	Pre-amendment		Post-amendment	
	Scenario 1	Scenario 2	Scenario 1	Scenario 2
Consideration received or accrued on transfer of immovable property	100	100	100	100
Stamp value adopted or assessed or assessable	104	110	104	110
105% of consideration	NA	NA	105	105
Full value of consideration for s. 43CA or 50C or 56(2)(x)	**104**	**110**	**100**	**110**

Amendments relating to IBC

- Partial relief under MAT for companies undergoing IRP under IBC
- Benefit of carry forward and set off of losses for companies undergoing IRP
- Clarification on verification of ROI of companies undergoing IRP

Partial relief under MAT for companies undergoing IRP under IBC



Relief while computing MAT liability of companies undergoing IRP (S.115JB) (w.e.f. A.Y 2018-19)

Existing Provisions:

- Deduction is allowed in computation of book profits under s.115JB of an amount which is lower of brought forward losses or unabsorbed depreciation
  - No deduction if depreciation or brought forward loss is NIL
- Specific relief available for sick companies from applicability of MAT till the period the net worth of such company remains negative
- Sick Industrial Companies Act 1985 (SICA) has now been repealed
- Insolvency and Bankruptcy Code (IBC), like SICA was introduced with a intent to revive financially distressed companies
  - However, IBC becomes operational at an early stage i.e. when there is default in payment of debt
  - Representations were made to allow deduction of aggregate losses and depreciation to support their revival.

Relief while computing MAT liability of companies undergoing IRP

Proposed Provisions:

- A new clause (iih) in S.115JB has been inserted to provide downward adjustment as follows:
  - It applies to a company against whom a IRP application has been admitted by adjudicating authority (AA) under s. 7, 9 or 10[1] of IBC
  - Deduction will be allowed in respect of ***aggregate*** of unabsorbed depreciation and brought forward loss
- Will be applicable for entities already undergoing IRP or where IRP is completed in the FY 2017-18 and onwards
- Acceptance of resolution plan even in FY 16-17, may make the company eligible to claim relief in ROI filed for FY 17-18

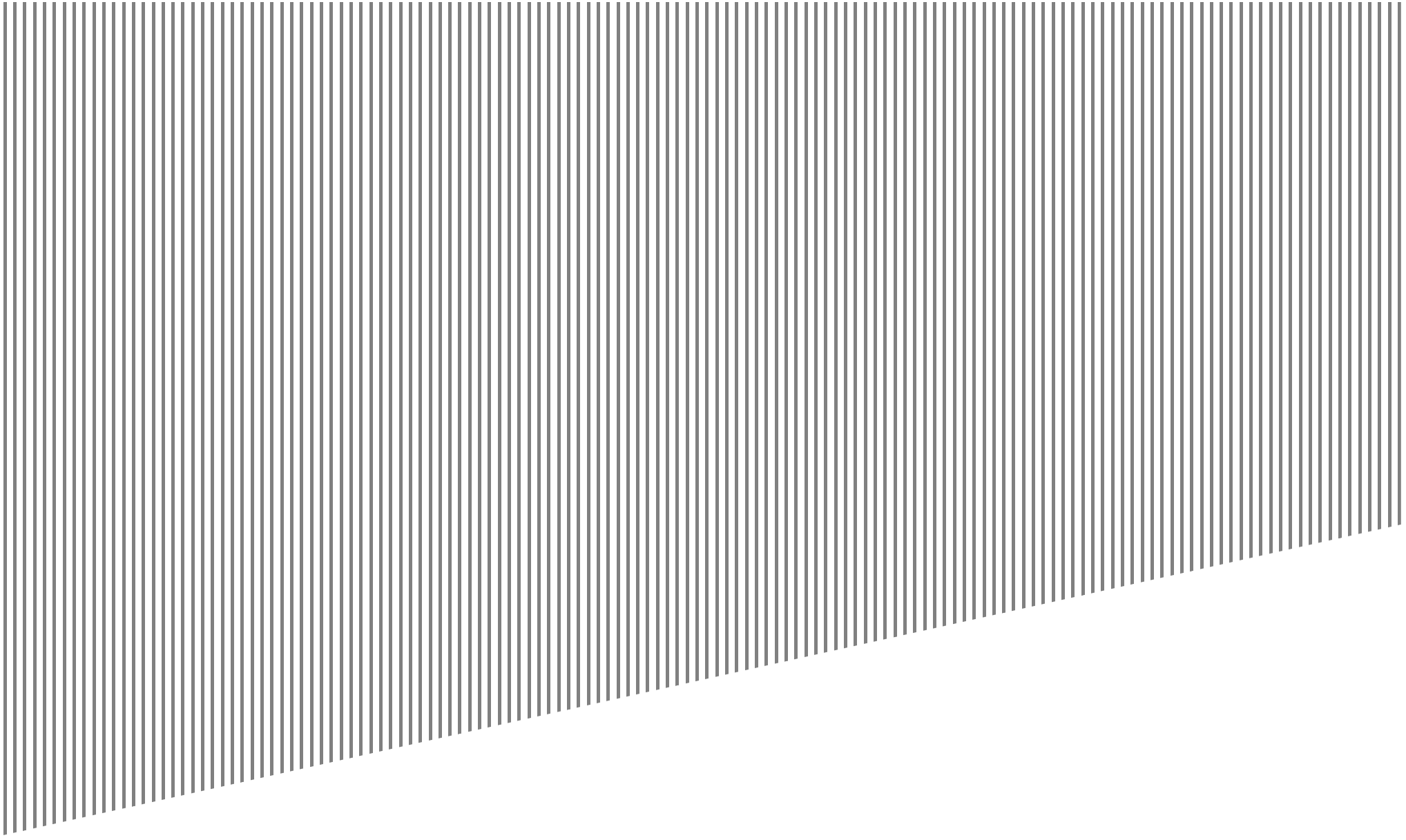
1 Section 7, 9 and 10 of IBC explains the mechanism of filing an application for initiating resolution process by Financial, operation , operational creditors and Corporate applicant respectively and its approval by the AA.

Relief while computing MAT liability of companies undergoing IRP

- Following is an illustration of the impact of the amendment

Particulars		Existing provisions	Proposed amendment
Book profit after giving effect to all upward and downward adjustment, except brought forward loss adjustment	A	900	900
Total loss brought forward (including unabsorbed depreciation)	B	1000	1000
Unabsorbed depreciation	C	40	40
Business loss brought forward (excluding depreciation)	D	960	960
Amount of deduction	E	Lower of C or D	Aggregate of B and C
Deduction to be allowed	F	40	1000
Book profit for the purpose of the MAT provisions	**G=A-F**	**860**	**NIL**

Benefit of carry forward and set off of losses for companies undergoing IRP [s.79] [w.e.f. 1 April 2018]



Benefit of carry forward and set off of losses for companies undergoing IRP

Existing Provision:

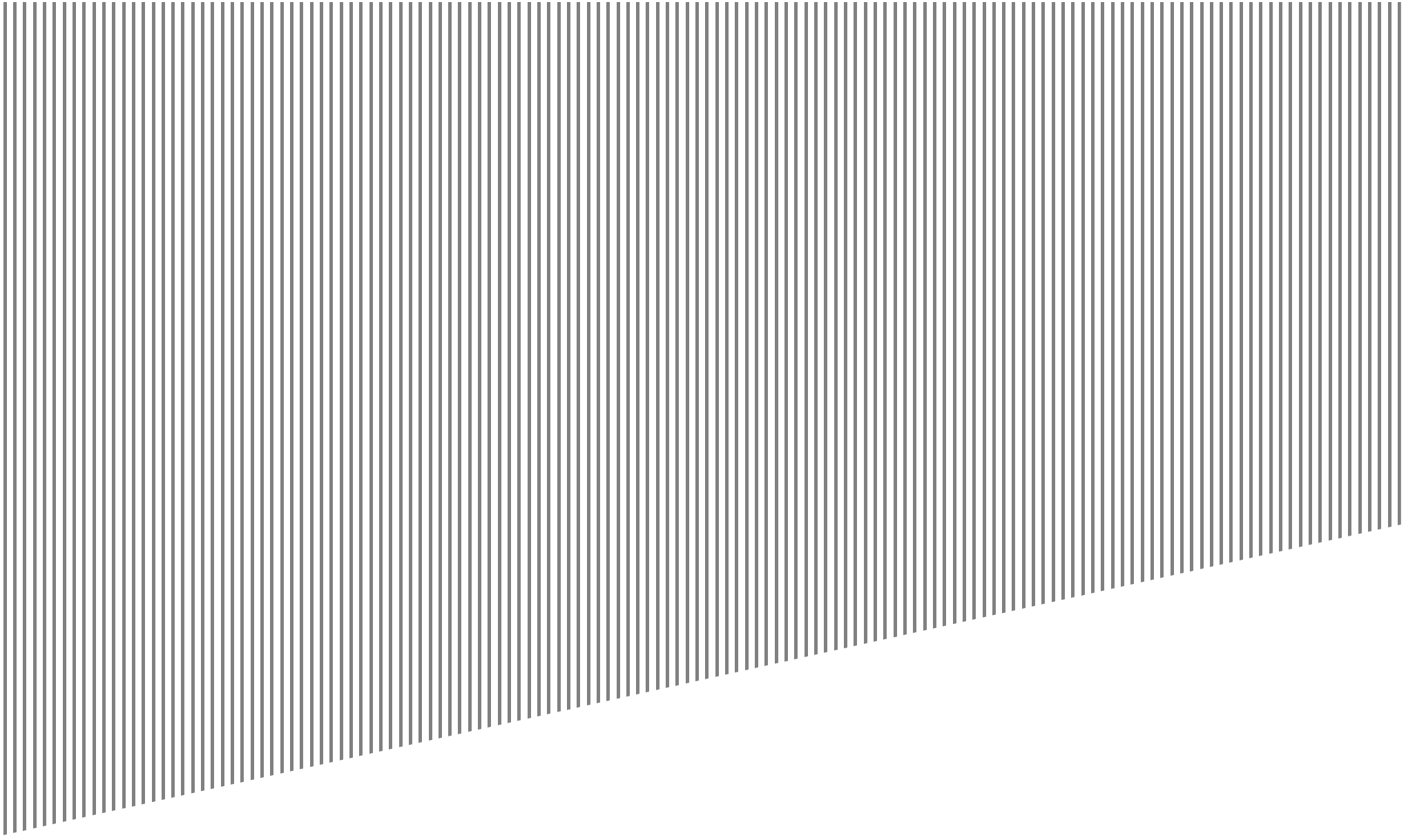
- S.79 restricts carry forward and set off of losses in the hands of a closely held company, if there is no continuity of 51% beneficial owner of shares as was existing on the last day of the year to which such losses relate to.
- IBC aims at reviving and rehabilitating financially distressed companies through implementation of a resolution plan
  - A resolution plan may entail issue of additional shares and/or a reorganisation of such company
  - Implementation of resolution plan may result in change in shareholding of IBC companies beyond 49%
  - Applicability of S. 79 acts as a hurdle in formulation of IRP
  - In any case if IRP is not implemented or agreed, it would trigger liquidation of IBC companies
    - This would work against the very object of reviving distressed companies

Benefit of carry forward and set off of losses for companies undergoing IRP

Proposed Provision:

- FB 2018 proposes to relax the rigors of s.79 in case of company under IRP by adding a new proviso to S. 79
- In terms of the proviso following conditions are to be satisfied for S. 79 relief
  - Applies to companies whose shareholding undergoes a change in the previous year
  - Such change is pursuant to a resolution plan approved under IBC
  - Relief will be available only after a reasonable opportunity of being heard is given to jurisdictional Principal Commissioner / Commissioner
    - As it appears, no separate order to be passed by CIT; the order of AA prevails
- S. 79 relief will be available in the year of change in shareholding if such change is pursuant to a resolution plan
  - Even in case where change in shareholding in more than one previous year but, pursuant to resolution plan relief may arguably be available
- However, losses which have already lapsed in the past due to change in shareholding are not revived

Clarification on verification of ROI of companies undergoing IRP [s.140] [w.e.f. 1 April 2018]



Clarification on verification of ROI of companies undergoing IRP [s.140] [w.e.f. 1 April 2018]

Existing Provision:

- In case of a company, ROI can be verified by Managing Director (MD) or in case where MD cannot verify or if there is no MD, it can be verified by a director of the company
- Under IBC, in case where an application for a resolution plan is accepted, following consequential effect takes place
  - The powers of Board of Directors as well as MD stand suspended
  - Insolvency professional (IP) takes over the management of the company

Proposed Provision:

- FB proposes to amend s.140 so to enable a IP to verify the ROI as follows:
  - ROI of a company in respect of which a IRP application has been accepted by AA under IBC shall be verified by IP appointed by AA
- Under IBC, once the insolvency resolution period is completed the management of the company is handed back to its board of directors
  - Amendment to s. 140, is thus arguably applicable only for ROI filed during the insolvency resolution period
- Amendment is effective for ROI filed after 1 April 2018.

Rationalisation of capital gains exemption under s.54EC by restricting it to transfer of long term land and building

Rationalisation of capital gains exemption under s.54EC by restricting it to transfer of long term land and building

Existing Provision:

- Capital gains arising on transfer of "**any** long term capital asset**"** is not charged to tax if the taxpayer has reinvested such gains in the long term specified asset (S.54EC)
  - Investment has to be within a period of six months from the date of such transfer
  - "Long term specified asset" is defined to mean any bond redeemable after three years and issued on or after 1 April 2007 by the NHAI or the RECL or any other notified bond

Proposed Provision:

- Capital gains exemption under s.54EC shall now be restricted only to long term capital assets being **land or building or both**
- Lock-in period of long term specified asset has been increased from three years to five years in case of bonds issued on or after 1 April 2018
  - This is with the intention to make available funds at the disposal of eligible bond issuing company for > 3 years

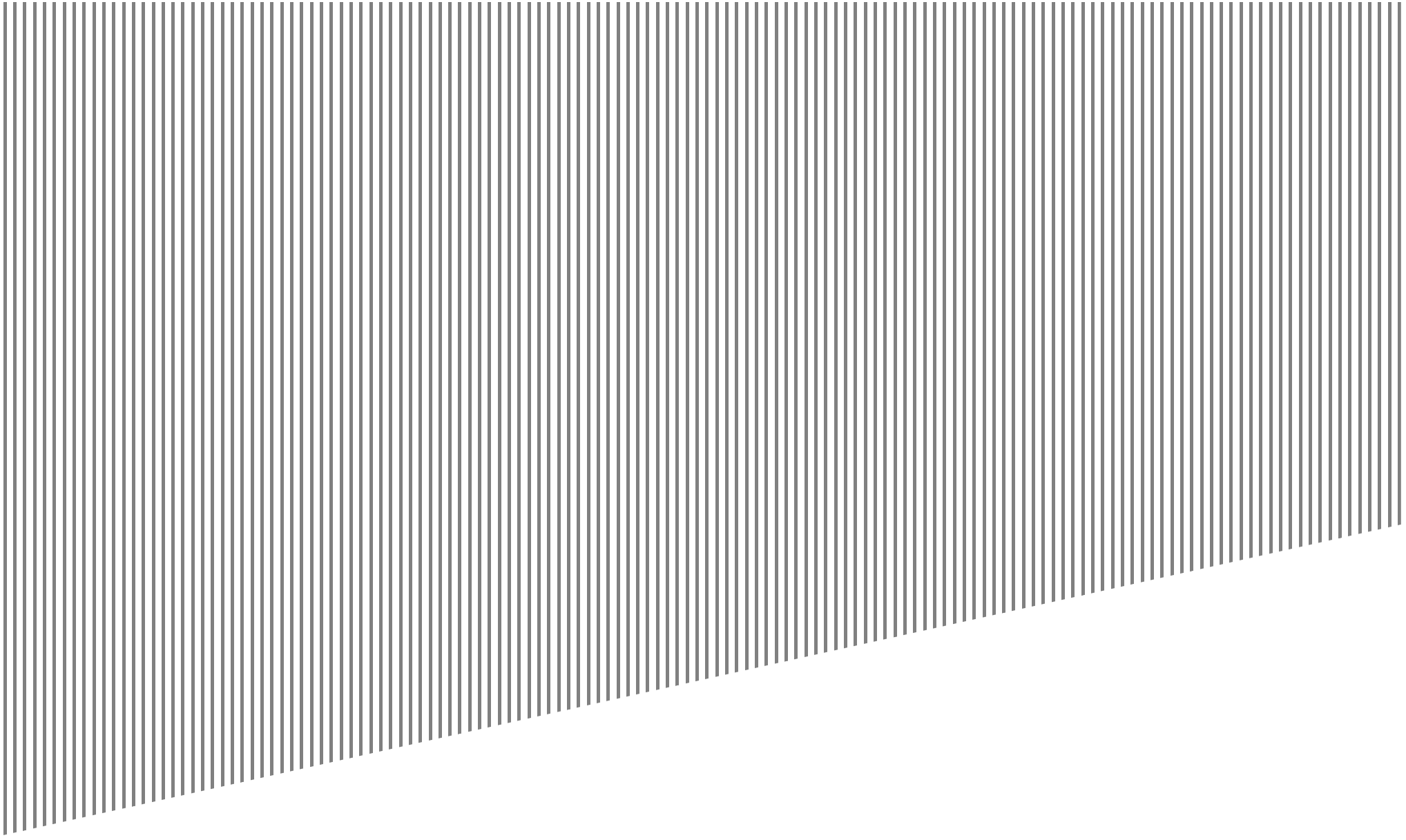
Rationalisation of capital gains exemption under s.54EC by restricting it to transfer of long term land and building

- Taxpayers earning capital gains on sale of plants, machinery, jewellery, bonds or unlisted shares etc. will now no longer be eligible to claim exemption under this s.
- Exemption will also not be available against the LTCG arising on listed shares and units of equity oriented mutual funds
- For capital gains earned up to 31 March 2018, one may avail the benefit on all long term assets with a reduced lock-in period of three years
  - However, any investment post 1 April 2018 in bonds in respect of capital gains earned upto 31 March 2018 may entail larger lock in period of 5 years

Assessment

- PAN requirement for non-individual entities entering into financial transaction
- E-assessment scheme
- No relaxation for companies against prosecution due to failure to furnish returns

PAN requirement for non-individual entities entering into financial transaction



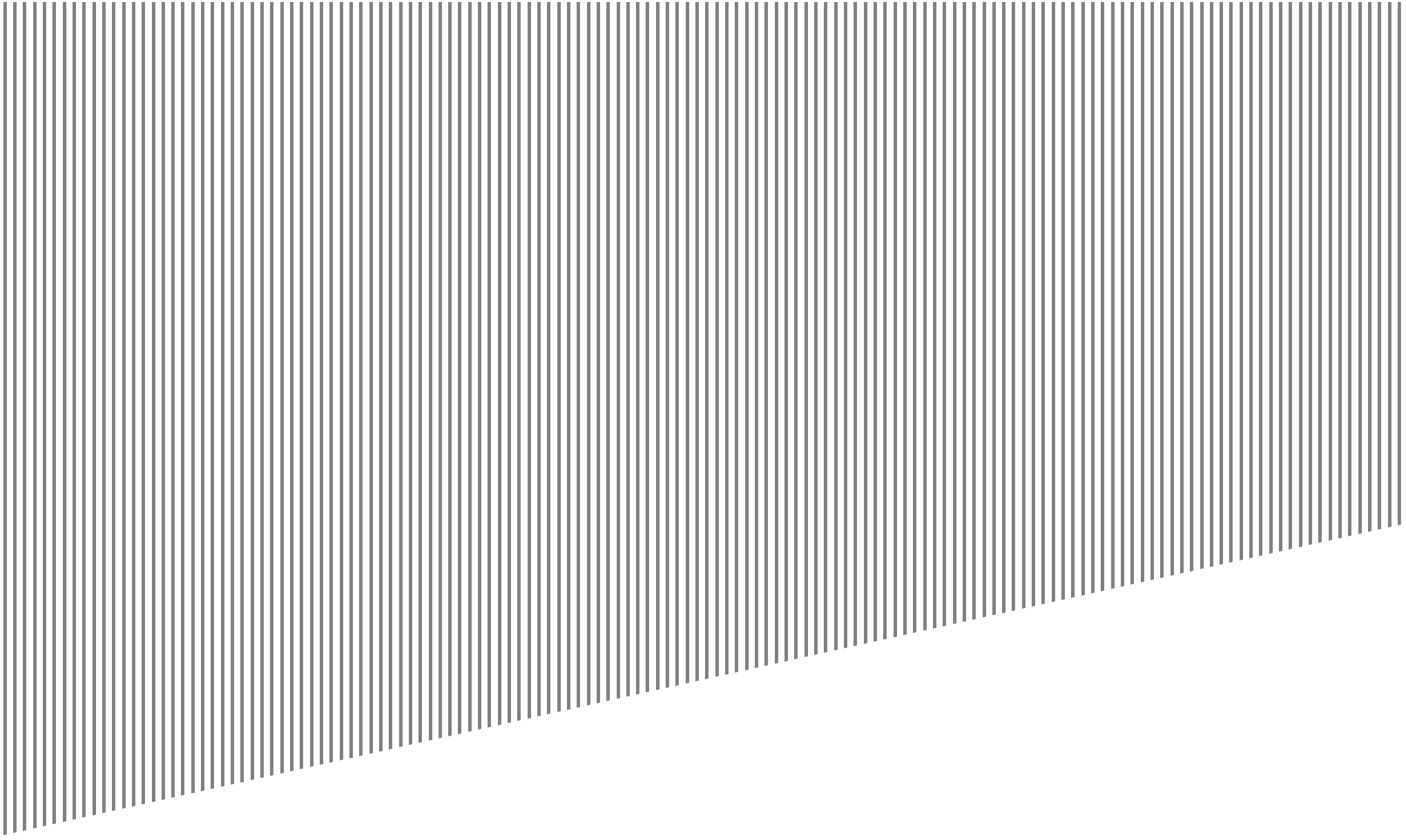
PAN requirement for non-individual entities entering into financial transaction

- **Requirement for obtaining PAN under s. 139A is proposed to extend to**:
  - **Clause (v) to s. 139A:** *"not being an individual, which enters into a financial transaction of an amount aggregating to two lakh fifty thousand rupees or more in a financial year"*
  - **Clause (vi) to s. 139A:** *"who is the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred to in clause (v) or any person competent to act on behalf of the person referred to in clause (v)"*
- Default leads to penalty of Rs. 10,000 (S. 272B)

Issues:

- Meaning of 'Financial transaction' not defined – creates absurdity
- Too wide a coverage of clause (vi)

E-assessment scheme [w.e.f. 1 April 2018]



E-assessment scheme

Existing position:

- S. 143(3) is silent as to whether the assessments need to be conducted specifically way of physical meetings with the taxpayer or the same may be done through the use of electronic media.
- With the advent of e-governance drive of the GOI, CBDT initiated the idea of undertaking various proceedings under ITA electronically (e-assessments) as well to ensure non-personal interface between Tax Authority and taxpayer.
- However, there was no specific power with the CG under ITA to mandate and issue guidelines for conduct of assessments electronically

E-assessment scheme(Proposed)

- In order to provide a statutory framework to the scheme of ‘e-assessment’ or ‘e-proceedings’ initiative of the CBDT, following amendments are proposed to s. 143
  - Introduction of sub-s. (3A): CG to notify a scheme for the purpose of making assessment of total income under s.143(3) (E-assessment scheme)
  - Introduction of sub-s. (3B): For the purpose of giving effect to e-assessment scheme notified under ss. (3A) above, CG to issue directions (by way of notification) to provide for:
    - Carve outs: Non applicability of certain provisions of the Act pertaining to assessments to certain taxpayers/ certain cases of proceedings;
    - Exceptions/ modifications/ adaptations with which certain provisions of the Act pertaining to assessments would apply to certain taxpayers/ certain cases of proceedings

    No such direction under ss. (3B) shall be issued after 31 March 2020
  - Every notification issued under ss. (3A) and ss. (3B) to be laid before each House of Parliament.
- ***Objective of the e-assessment scheme [s. 143(3A)]:*** To impart greater efficiency, transparency and accountability by:
  - Eliminating interface between Tax Authority and taxpayer during proceedings to the extent technologically feasible;
  - Optimising utilization of resources through economies of scale and functional specialization;
  - Introducing team based assessment with dynamic jurisdiction

E-assessment scheme: Issues

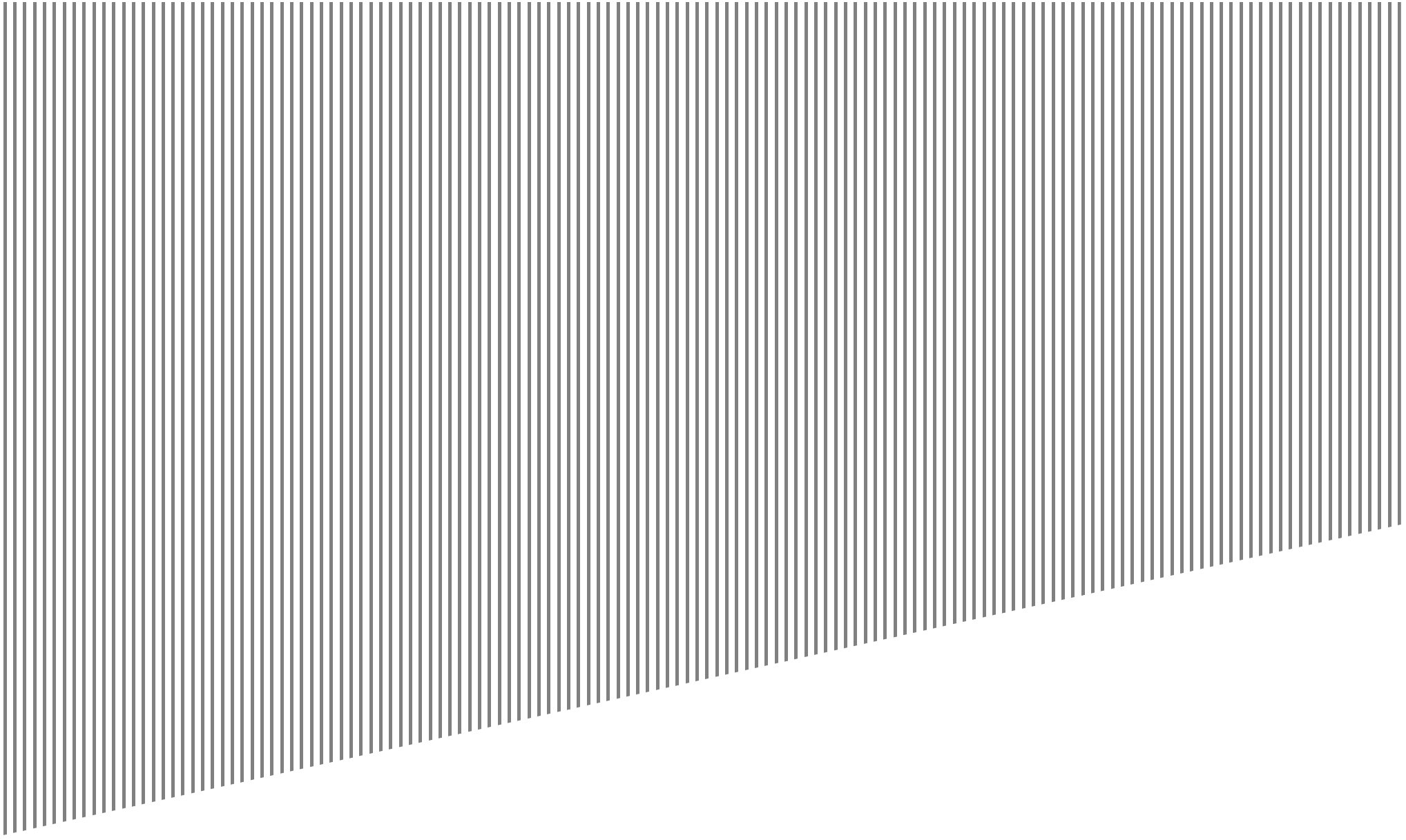
- Presently, in following cases, e-assessment is to be relieved:
  - Where manual books of accounts / original documents required to be examined
  - Provision of s. 131 are invoked by Tax Authority or notice is issued for third party enquiries / investigations
  - Where examination of witness is required by taxpayer or Tax Authority
  - Where a show-cause notice contemplating adverse view is issued by the Tax Authority and taxpayer requested personal hearing to explain the matter
- Whether identity of taxpayer and Tax Authority will be hidden? Seems unlikely
- If more than two AOs are conducting assessment, whether decision of majority will prevail?
- Is there year on year shift of jurisdiction?
- Whether assessment initiated by one Tax Authority can be continued by another depending on the availability of bandwidth with each of them?

E-assessment scheme

Caution Points:

- Exclusive e-mail address (on e-filling account) for interaction between taxpayer and Tax Department.
- Exclusive Mobile connection to be (registered on the e-filling website of the Tax Department) for receipt of any alert message from the Tax Department.
- Secured login id and password of taxpayer’s account on e-filing website
- Taxpayer may develop system to save – electronically or physically response or documents submitted to the Tax Authority
- Vigilant about timelines specified in each notices. May be possible that taxpayer will not be able to submit response after due date as specified in such notices.

No relaxation for companies against prosecution due to failure to furnish returns [s.276CC] [w.e.f. 1 April 2018]



Failure to furnish returns in time will expose companies to risk of prosecution [s.276CC] [w.e.f. 1 April 2018]

Current provision:

- S. 276CC provides for imprisonment along with fine in case of taxpayers who willfully fail to furnish returns before end of the relevant assessment year within the due date specified under the ITA
  - Section attracted only in case of wilful failure
  - The thrust of the s. is on non-furnishing of return; it may not be attracted merely because there is delay in furnishing the return
- S. 276CC provides for relaxation to all taxpayers (including companies) against the prosecution due to failure in furnishing return under s.139(1) if the tax payable is less than INR 3,000 after reducing advance tax and TDS, even assuming that the default is considered to be wilful
- Benefit of above relaxation is not available to default in filing ROI in response to notice under s.142(1) or 148.

Failure to furnish returns in time will expose companies to risk of prosecution [s.276CC] [w.e.f. 1 April 2018]

- In order to prevent the abuse of the relaxation by shell companies and companies holding benami properties, **FB 2018 proposes to amend the proviso to s. 276CC in order to withdraw this relaxation in case of all companies**
  - FB 2018 proposes to amend proviso (ii)(b) to s. 276CC by substituting the phrase “tax payable by him” with the phrase “tax payable by such person, ***not being a company”***
- The relaxation continues to apply in case of non-corporate taxpayers
- As a consequence, all companies will be exposed to risk of prosecution on failure to furnish tax returns in timely manner
  - However, if such company files its tax return before end of relevant assessment year, it will continue to avail the benefit of relaxation provided under proviso (ii)(b) of the s. 276CC
- Will apply to all company taxpayers even if they are not shell companies.
- Willful non filing of ROI by Foreign companies may now be exposed to prosecution risk even if eventually, there may be no tax payable due to withholding of tax.
- Amendment is applicable from 1 April 2018 meaning thereby any default committed on or after 1 April 2018 will be governed by amendment

Charity- Requirement of payment through banking channel and tax withholding

Requirement of payment through banking channel and tax withholding on charitable entities [S. 10(23C) & 11] [W.e.f. AY 2019-20 & onwards]

Present Provision:

- Presently, there was no impact on computation of income of charitable entities due to cash payment exceeding prescribed limits or due to withholding defaults. Provisions of S.40A(3) or 40(a)(ia) are not applicable to charity

Proposed Provision:

- In case of qualifying charity for 'determining amount of application' following provisions to apply mutatis mutandis as they apply to business income
  - s. 40(a)(ia) (disallowance on tax withholding default) and
  - s. 40A(3) and 40A(3A) (disallowance on cash payment)
- Provisions to be applied 'mutatis mutandis' as applicable for computing PGBP income
- Illustrative payments:
  - Scholarships paid in cash > Rs. 10,000 in a town school
  - Amount paid to contractor for construction of hospital without TDS

Issues:

- Would expression '*mutatis mutandis'* suggest that defaults be considered only in computing business income?
- Cash payment leads to permanent disallowance but would withholding default leads to temporary disallowance?

Requirement of payment through banking channel and tax withholding on charitable entities [S. 10(23C) & 11] [W.e.f. AY 2019-20 & onwards]

Particulars	Proposed Provision (Rs. in Lacs)			
	Year 1		Year 2	
Interest Income (Total Income)	**A**	**100L**	**C**	**100L**
Application of income:				
Amount applied:		85L		70L
(Less): Paid in cash	(5L)		Nil	
(Less) / Add: Paid without withholding tax (i.e. 50L but disallowed only 30%)	(15L)		+15L	
Eligible Application		**65L**		**85L**
Accumulation (Maximum 15%)		**15L**		**15L**
Total Application	**B**	**80L**	**D**	**100L**
Taxable Income (Benefit of s. 11(2) available)??	**A-B**	**20L**	**C-D**	**Nil**

Thank You !

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