The Chamber of Tax Consultants

Proposals in the Finance (No.2) Bill - 2019

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18 July 2019

Topics:

- Tax Rates
- Business Taxation
- Pushing Digital Payments – Move Towards Less Cash Economy
- Tax relief for Start-Ups
- Non-Resident Taxation
- Personal Taxation
- Assessment, Penalty and Prosecution
- Process automation and e-filing

Tax rates

Increase in surcharge for Individual, HUF, AOP, BOI or AJP

Total Income (INR)	Existing Tax Rates				Proposed Tax Rates				Difference in total (%)
	Base Tax Rate[1]	Surcharge	Cess	Total	Base Tax Rate[1]	Surcharge	Cess	Total	
> 50 lakhs to 1 crore	30	10	4	34.32	30	10	4	34.32	NIL
> 1 crores to 2 crores	30	15	4	35.88	30	15	4	35.88	NIL
> 2 crores to 5 crores	30	15	4	35.88	30	25	4	39	3.12
> 5 crores	30	15	4	35.88	30	37	4	42.74	6.86

- Instead of increase in slab rate which would have applied only to excess income in such slab, increase in surcharge will apply evenly across total income
- Marginal relief will be available in all cases where surcharge is proposed to be levied
- Surcharge will also be levied where persons are liable to AMT u/s 115JC
- Applicable MMR for different provisions will now be 42.74%.

[1] *For the sake of simplicity, base tax rate is assumed to be 30%, ignoring slab rate benefit*

Impact of higher surcharge on incomes taxable at special rates

Particulars	Base rate	Existing effective tax rate		Proposed effective tax rate	
		Income > 2Cr to 5 Cr	Income > 5 Cr	Income > 2Cr to 5 Cr	Income > 5 Cr
LTCG u/s 112A	10	11.96	11.96	13	14.25
STCG u/s 111A	15	17.94	17.94	19.5	21.37
LTCG u/s 112					
▪ On unlisted shares and securities in case of NRs or listed shares	10	11.96	11.96	13	14.25
▪ Others	20	23.92	23.92	26	28.50
Super rich tax on dividends u/s 115BBDA	10	11.96	11.96	13	14.25
Royalty, FTS u/s 115A	10	11.96	11.96	13	14.25
Winnings from lotteries, card games u/s 115BB	30	35.88	35.88	39	42.74
Interest income for NRs u/s 194LC/ LD	5	5.98	5.98	6.5	7.12
Undisclosed incomes u/s 115BBE	60	78	78	78	78

Impact of increase in surcharge

- Higher effective TDS and TCS rates in case of payments made to NRs
- Adverse impact for
  - large domestic investors, foreign funds and PE investors investing in India through trusts
  - individuals making one-time gains like promoters selling their stake, carried interest gains, exercise of ESOPs etc
  - individuals selling residential house without availing rollover benefit u/s 54
- Due to increase in surcharge, maximum marginal rate (MMR) also increases

[1] *No change in surcharge for s. 115BBE*

Business Taxation

- Buyback tax on listed company shares [S.115QA & S.10(34A)][w.e.f 5 July 2019]
- Facilitating demergers for Ind-AS companies [proviso to s.2(19AA)(iii)] [w.e.f. 1 April 2020]
- Investment linked incentive for Sunrise Industry: Announced but missed!
- Extending benefit of s.43D to certain NBFCs [w.e.f 1 April 2020]
- Extending actual payment condition of s.43B to interest payable to certain NBFCs [w.e.f 1 April 2020]
- Tax holiday for affordable housing project [s.80-IBA] [w.e.f. 1 April 2020]
- Carve out from S.50CA and S.56(2)(x) in respect of prescribed transactions (w.e.f. 1 April 2020)
- TDS on payments to NR [s.201][w.e.f. 1 September 2019] [s.40(a)(i)][w.e.f. 1 April 2020]

Buyback tax on listed company shares [S.115QA & S.10(34A)][w.e.f 5 July 2019]

- **Current position**
  - S.115QA covers buyback of **unlisted shares** by domestic company (including preference shares)
  - Additional tax (BBT) is 20% + surcharge 12% + cess 4% (**23.296%**)
  - BBT on difference between consideration paid by company and **"amount received by company"**
  - **Rule 40BB** prescribes computation of "amount received" in different circumstances (like merger, demerger, conversion, ESOPs, etc)
  - **FIFO basis** to be applied for shares held in **demat** form
  - BBT to be deposited within 14 days of payment of consideration to shareholder
  - BBT not creditable against any tax payable by company or shareholder
  - Default triggers interest and penalty (no prosecution unlike DDT)
  - S.10(34A) grants exemption to shareholders – loss cannot be set off
- **Buyback by listed companies resulted in tax arbitrage**
  - No DDT for company (20.56%)
  - Shareholders paid capital gains tax (10% plus surcharge & cess) ; treaty exemption can be claimed
  - Buyback through stock exchange with STT enabled LTCG exemption u/s. 10(38) in the past

Buyback tax on listed company shares [S.115QA & S.10(34A)][w.e.f 5 July 2019]

- **Proposed amendment**
  - BBT to apply to all domestic companies **including listed companies**
- **Implications for listed companies**
  - Listed companies will be liable to BBT from 5 July 2019
  - "Amount received" to be computed on FIFO basis as per existing Rule 40BB
    - Will create practical challenges in compliance
  - Impacts existing incomplete buybacks at different stages as on 5 July 2019– BBT burden may need to be borne by company at detriment to other shareholders
    - S.294 does not apply to current situation
- **Exempt income for shareholders u/s. 10(34A)**– loss cannot be set off; treaty benefit academic

Facilitating demergers for Ind-AS companies [proviso to s.2(19AA)(iii)] [w.e.f. 1 April 2020]

- S.2(19AA) of ITL, inter alia, requires transfer of property and liabilities of demerged undertaking (DU) to R Co **at values as appearing in the books of account (BV)** of D Co immediately before the demerger [refer sub-clause (iii) of s.2(19AA)]
- Explanation 3 to s.2(19AA) further provides that, for determining the aforesaid BV, any **change in the value of assets** consequent to their **revaluation** shall be **ignored**
- Demerger under **Ind-AS** poses unique challenges in complying with above condition
- In case of non-common control demerger:
  - In books of D Co, demerger is regarded as distribution of non-cash assets as dividend to shareholders [Appendix A to Ind-AS 10] – D Co is required to de-recognise DU at FV and record difference between BV and FV in P&L
  - R Co, being unrelated party, is required to recognise DU received at **fair value** (FV) which may be different from BV in books of D Co immediately before demerger ['acquisition method' of Ind-AS 103]
  - Requirement of FV recognition by R Co poses challenge in complying with condition of BV transfer u/s. 2(19AA)

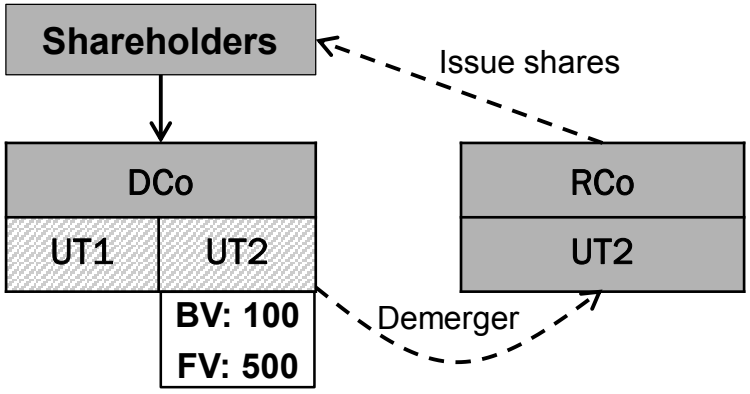
Facilitating demergers for Ind-AS companies [proviso to s.2(19AA)(iii)] [w.e.f. 1 April 2020]

- In case of common control demerger, Ind-AS mandates pooling of interests method i.e. R Co records transfer at BV in hands of D Co - Even in such case, such book value in hands of D Co may not necessarily represent original cost
  - D Co may have chosen revaluation model or deemed cost for PPE and Intangible Assets on convergence to Ind-AS
    - There is an element of doubt whether deemed cost constitutes 'revaluation'
  - Ind-AS mandates companies to fair value equity instruments (other than investment in subsidiary/associate/JV) either though P&L or through OCI. D Co would have been bound by Ind-AS
  - Thus, fair valuation of asset/investment under Ind-AS by D Co makes it impossible for demerger to comply with condition (iii)
- Non-compliance of condition (iii) can create litigation on demerger being non-tax neutral
- FB 2019 proposes to relax condition of BV transfer u/s. 2(19AA)(iii) – but, w.e.f. 1 April 2020
  - **Proposed proviso to clause (iii) - BV transfer condition shall not apply where R Co records value of property and liabilities of DU at a value different from value appearing in books of D Co, immediately before the demerger, in compliance with Ind-AS**
  - Amendment proposed to remove difficulties faced by taxpayers and to facilitate tax neutral demergers by Ind-AS compliant companies

Facilitating demergers for Ind-AS companies [proviso to s.2(19AA)(iii)[w.e.f 1 April 2020]

- Amendment meant to remove difficulty faced by taxpayers – arguably retrospective (Refer, Alom Extrusion Ltd (2009)(319 ITR 306)(SC), Allied Motors (P) Ltd (1997)(224 ITR 677)(SC) in context of s.43B)
- But, proposed amendment does not address similar difficulty faced by IGAAP companies following Revaluation model under revised AS-10
- No guidance on other aspects of demerger where book value is relevant
  - Allocation of general and multi-purpose borrowings (Exp 2 to s.2(19AA))
  - Cost-split of shares of demerged company in hands of shareholders (s.49(2C)/2D)
  - Allocation of losses not directly relatable to demerged undertaking (s.72A(4)(b))
- MAT provisions already amended in 2017 to address demerger at fair value -change in value to be ignored while computing 'book profit' of resulting company (Refer, s.115JB(2A)(d) and s.115JB(2B))

Illustration 1: Non-common control demerger



Extract of Ind-AS P&L account of DCo			
Expense	**Rs.**	**Income**	**Rs.**
		By Dividend Payable	400

Extract of Ind-AS Balance Sheet of DCo			
Liability	**Rs.**	**Assets**	**Rs.**
Retained Earnings	XXX	Assets of UT2 (cost)	100
Less: Dividend payable	(500)	**Less:** Dividend distribution	(100)
Dividend payable	500		
Less: UT2 assets	(100)		
Less: Transfer to P&L	(400)		

- DCo has two business undertakings, UT1 and UT2
- RCo proposes to acquire UT2 by demerger of UT2 into RCo and issuance of shares to Shareholders of DCo
- Date of accounting for demerger is 1 April 2021 having regard to date of acquiring control which may or may not coincide with Court approved appointed date
- Under Ind-AS, accounting treatment in books of DCo is as per Appendix A of Ind-AS 10 (non-cash dividend distribution treatment), when FV of demerged asset is > carrying value of assets:-
  - Dividend liability is recognised at FV of UT2 as under:

    Retained Earnings A/c Dr 500

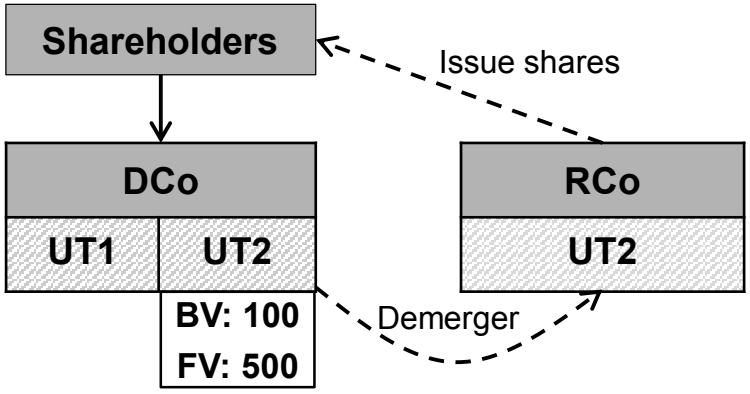
    To Dividend Payable A/c Cr 500
  - Difference between dividend payable (Rs. 500) and carrying value of UT2 (Rs. 100) is recognised in P&L

    Dividend Payable A/c Dr 500

    To UT2 A/c Cr 100

    To P&L A/c Cr 400

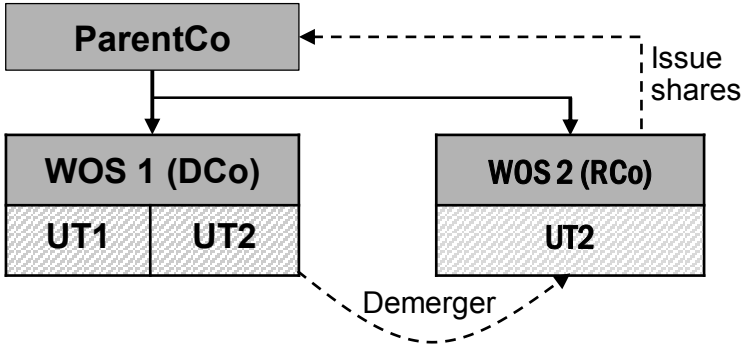
Illustration 1: Non-common control demerger (Continued)



Comparative Extract of IGAAP and Ind-AS Balance Sheet of RCo					
Liability	**IGAAP**	**Ind-AS**	**Assets**	**IGAAP**	**Ind-AS**
Share capital	100	100	Net assets of UT2	100 (BV)	500 (FV)
Share premium		400			
Total	**100**	**500**	**Total**	**100**	**500**

- Under IGAAP, RCo would have recorded assets of UT2 at BV of Rs. 100.
  - This ensures that demerger is tax compliant under s.2(19AA) which inter-alia requires transfer of property and liabilities at BV ignoring revaluation.
- Under Ind-AS, RCo is mandated to:
  - Record net assets of UT2 at FV of Rs. 500;
  - Record consideration issued in form of shares at FV of Rs. 100;
  - Consequentially record the difference, if any, as Goodwill/Capital Reserve.
- As per s.115JB(2A)(d), credit of 400 recorded in P&L will be reduced in “book profit” calculation of D Co
- Correspondingly, as per s.115JB(2B), RCo to determine its **book profit** by considering carrying values in books of DCo of 100 before demerger and ignore variation of 400
- As per proposed amendment, **in normal computation**, condition of BV transfer is not applicable to both D Co (that transfers asset at 500) and R Co (that records at 500)

Illustration 2: Common control demerger



Extract of Ind-AS Balance Sheet of DCo			
Liability	**Rs.**	**Assets**	**Rs.**
Retained Earnings (RE)	XXX	Land @ FV (Cost = 100)	500
Add: Fair valuation gain	400	Other Assets of UT2 (Cost)	100
Less: Demerger of UT2 Assets	(600)	**Less:** Demerger to RCo	(600)

- ParentCo owns WOS 1 and WOS 2
- On Ind-AS convergence, WOS 1 revalued land (forming part of UT2) from cost of 100 to FV of 500 by credit to Retained Earnings A/c (under 'deemed cost' model)
- WOS 1 (DCo) proposes to demerge UT2 to WOS 2 (RCo), in lieu of issuance of shares to ParentCo
- Being common control business combination, RCo needs to record UT2 at book value in hands of DCo
- Date of demerger accounting is 1 April 2021 which coincides with 'appointed date'
- DCo passes following entry for demerger:

RE A/c (Net Worth of UT2)	Dr.	600	
To Land A/c (Deemed Cost)	Cr.	500	
To Other Assets of UT2 A/c		Cr.	100

- RCo passes following entry for demerger:

Land A/c (Deemed Cost of DCo)		Dr.	500
Other Assets of UT2 A/c	Dr.	100	
To RE A/c		Cr.	599
To Share Capital A/c		Cr.	1

- **Proposed amendment may protect tax neutrality if clause (iii) is alleged to be breached.**

Investment linked incentive for Sunrise Industry: Announced but missed!

- FA 2009 introduced investment linked tax exemptions under S. 35AD for specific business sectors like cold chain facilities, hospitals, hotels etc.
  - S.35AD allows 100% deduction for capital expenditure (except land, goodwill & financial instrument) incurred, wholly and exclusively, for the purposes of the specified business carried on during the previous year in which such expenditure is incurred
  - Loss is ring fenced u/s. 73A
  - Intent was to phase out profit linked deductions
- To boost economic growth and Make in India, the FM in her Budget speech has announced proposals to set up mega-manufacturing plants in sunrise and advanced technology areas such as:
  - Semi-conductor Fabrication (FAB) (Already covered by s.35AD)
  - Solar Photo Voltaic cells,
  - Lithium storage batteries,
  - Solar electric charging infrastructure,
  - Computer Servers, Laptops, etc.
  - Such manufacturing plants to be eligible for indirect tax benefits as well
  - **These proposals are yet to be introduced in the Bill**

Extending actual payment condition of s.43B to interest payable to certain NBFCs [w.e.f 1 April 2020]

- Proposed amendment corresponds to amendment proposed in s.43D to cover deposit taking and systematically important non-deposit taking NBFCs
- Since NBFCs will recognise interest on actual receipt, deduction is proposed to be granted to borrowers on actual payment only
- All other nuances of s.43B will equally apply to interest on loans and advances payable to NBFCs
  - Year 1 interest can be claimed in Year 1 if paid by due date of filing return for Year 1 – else, in year of actual payment
  - No deduction for conversion of interest into loan; deduction will be available when converted loan is repaid
  - No double deduction for interest pertaining to pre-amendment years accrued in books but paid post amendment

Tax holiday for affordable housing project [s.80-IBA] [w.e.f. 1 April 2020]

- S.80-IBA grants profit linked tax holiday for qualifying affordable housing project approved till 31 March 2020.
- EM to FB (No. 2) 2019 states that with a view to align definition of affordable housing under ITL with definition under GST, it is proposed to modify certain conditions regarding housing projects approved on or after 1 September 2019
  - Stamp duty value of residential unit in housing project ≤ Rs. 45 L – Regardless of location of project
  - Expands list of metropolitan cities - Conditions hitherto applicable to metropolitan cities therefore become applicable. Refer, next slide
  - Increase maximum carpet area of residential unit for both metropolitan and non-metropolitan cities
- Stamp duty value ≤ Rs. 45 L
  - Date of approval or date of sale?
  - Not feasible in cities like Mumbai
  - Partial compliance = proportionate deduction?

Tax holiday for affordable housing project [s.80-IBA] [w.e.f. 1 April 2020]

- Area limit amendments can be summarised as under. Proposed amendments based on location of housing project are highlighted in red below

Conditions	Chennai, Delhi, Kolkata or Mumbai	Chennai, Delhi, Kolkata or Mumbai, Bengaluru, Delhi NCR (limited to Noida, Greater Noida, Ghaziabad, Gurugram, Faridabad), Hyderabad, whole of Mumbai Metropolitan Region[1]	Any other place in India	
	Existing	**Proposed**	**Existing**	**Proposed**
Minimum size of plot of land	≥ 1000 sq. m.	≥ 1000 sq. m.	≥ 2000 sq. m.	≥ 2000 sq. m.
Maximum carpet area of residential unit	≤ 30 sq. m. (Approx. 323 sq. ft.)	≤ 60 sq. m. (Approx. 646 sq. ft.)	≤ 60 sq. m. (Approx. 646 sq. ft.)	≤ 90 sq. m. (Approx. 969 sq. ft.)
Utilization of permissible floor-area ratio (Total plinth area/Total area of plot of land) as per prescribed rules	≥ 90%	≥ 90%	≥ 80%	≥ 80%

[1] *It comprises of 8 Municipal Corporations viz. Greater Mumbai, Thane, Kalyan-Dombivali, Navi Mumbai, Ulhasnagar, Bhiwandi-Nizamapur, Vasai-Virar and Mira-Bhayandar; and 9 Municipal Councils viz. Ambarnath, Kulgaon-Badalapur, Matheran, Karjat, Panvel, Khopoli, Pen, Uran, and Alibaug (mmrda.maharashtra.gov.in)*

Carve out from S.50CA and S.56(2)(x) in respect of prescribed transactions (w.e.f. 1 April 2020)

- S.50CA triggers normative taxation for transferor in respect of transfer of unlisted/thinly traded shares
- S.56(2)(x) triggers gift taxation for the recipient of specified property /sum of money without consideration or inadequate consideration.
  - S.56(2)(x) is wider and covers immovables, listed shares as also other forms of listed/unlisted securities such as units of mutual fund etc.
  - S.56(2)(x) excludes list of transactions like gifts from relatives, mergers & demergers, inheritance, etc
- S.56(2)(x) and S.50CA has double edged impact as it triggers taxation for both transferor and transferee for same amount
- FB (No.2) 2019 acknowledges that normative FMV determination results into genuine hardship where consideration for transfer of shares is approved by certain authorities and parties do not have control over determination made by regulators
- Effective from 1 April 2020, CBDT will be authorised to prescribe class of persons and conditions subject to which the transferor / recipient will be exempted from trigger of S.50CA/56(2)(x)

Carve out from S.50CA and S.56(2)(x) in respect of prescribed transactions (w.e.f. 1 April 2020)

- Some real life illustrations where the normative rules have impacted bonafide transactions and may get covered by CBDT are as follows:
  - Cases of time interval between fixation of price and consummation of transaction due to compliance of regulatory processes like SEBI Takeover Code where delta between agreed consideration and normative value increases in interregnum
  - Transfer of unlisted shares where FEMA regulations determine the cap on transfer price which is lower compared to normative value (would be covered both by S.56(2)(x) as also S.50CA).
  - Transfer of shares of/held by IBC companies under competitive bidding process where price is approved by NCLT
- Having acknowledged genuine hardship and regulatory compulsion without control with taxpayer, the amendment is arguably curative and therefore retroactive
- The proposed notification will expectedly protect both the transferor as also the transferee – may be by prescribing the qualifying transactions along with some anti-abuse conditions

Relaxing provisions of s.201 and s.40(a)(i) on payments to NRs

- As per s.201(1), if payer, who is required to deduct tax on payments made to resident, is deemed to be an assessee-in-default (AID) if payer –
  - Does not deduct tax or
  - Fails to pay tax after making deduction

  Consequently, revenue expense is disallowed u/s. 40(a)(ia) in the year of TDS default with a rider to gain deduction in the year of compliance
- However, payer is not deemed to be AID if resident payee -
  - has furnished his ROI u/s. 139 and;
  - has taken into account such sum for computing income in his ROI; and
  - paid the tax due on such income and furnished an accountant's certificate (Form 26A) to this effect
- Payer's TDS default made good once resident payee complies with above conditions
  - Interest on TDS default is payable by payer only till date of filing of ROI by resident payee
  - Amount disallowed previously u/s. 40(a)(ia) deductible in the year when payee files ROI
- **Presently, above reliefs are granted only to payments made to residents**
- **To remove this anomaly and create a level playing field, similar provisions are now proposed even in case of payments made to NRs u/s. 201 and s.40(a)(i)**

Relaxing provisions of s.201 on payments to NRs [w.e.f. 1 September 2019]

- Amendment to s. 201 is made effective from 1 September 2019
  - Amendment arguably retrospective and shall apply to all pending litigation u/s. 201
- S.201(3) provides that payer shall not be deemed as AID after expiry of 7 years from the end of FY in which payment is made or credit is given to resident payees
  - No such provision is proposed for payment for NR payees
  - NR cases continue to be governed by applicable jurisprudence
- Similarly, amendment to s.40(a)(i) though made applicable w.e.f. A.Y. 2020-21, arguably, will operate retrospectively.
- Non-discrimination still subsists for payment to NR compared to resident as disallowance u/s.40(a)(i) is 100% of expenditure as against 30% u/s. 40(a)(ia)
  - Treaty non-discrimination clause can help NR argue to limit his disallowance to 30%

Pushing Digital Payments – Move Towards Less Cash Economy

- Prescription of Electronic Mode of Payments
- Introduction of TDS on Cash Withdrawals (S. 194N) [w.e.f. 1 September 2019]
- Mandatory Acceptance of Electronic Payments [w.e.f. 01 November 2019] (S. 269SU and 271 DB)

Prescription of Electronic Mode of Payments

- With a view to encourage other electronic modes of payment, FB 2019 proposes to amend all provisions requiring banking channel payments to include payments/receipts through other electronic modes as may be prescribed.
- Payment modes likely to be covered are BHIM app, Aadhar pay, digital wallets, etc
- The amendments are effective from
  - **1 September 2019 –** In the case of S. 269SS, S. 269ST and S. 269T.
  - **1 April 2020** – In case of S. 13A, S. 35AD, S. 40A, S. 43, S. 43CA, S. 44AD, S.50C and S. 80JJAA.
- The amendment though prospective in nature may be considered as being **clarificatory in nature** and may apply to even pending proceedings

Introduction of TDS on Cash Withdrawals (S. 194N) [w.e.f. 1 September 2019]

- Proposed S. 194N to provide for withholding of taxes on cash withdrawals from banks, co-operative societies and post offices
  - Withholding obligation triggers where the aggregate cash withdrawal ***from an account*** with the bank/ co-operative society/ post office exceeds INR 1 crore during a previous year.
  - Tax to be withheld at 2% on the cash withdrawn in excess of INR 1 Crore.
- S. 194N is being introduced with the objective of (a) discouraging cash transactions, (b) move towards less cash economy
- However, S. 194N will not apply to any payment made to:

  (a) Government

  (b) Banks (including co-operative banks)

  (c) Post office

  (d) White-labelled ATM operator

  (e) A business correspondent of bank (including co-operative bank)

  (f) Any other person to be notified by the Central Government in this regard.

Impact of Introduction of S. 194N [w.e.f. 01 September 2019]

- Unless notified, amendment will apply to withdrawals made in excess of INR 1 cr. by any person including illustratively agriculturists, charitable trusts, political parties, money changers, etc
- Cash withdrawals made prior to 1 September 2019 during the FY 2019-may need to be factored for the threshold limit of INR 1 Cr
- **Illustration**

Date	Cash Withdrawal (Rs)	Cumulative (Rs)	TDS (Rs)
30 June 2019	40L	40L	-
30 September 2019	40L	80L	-
30 December 2019	40L	1.2 Cr	2% of 20L ie 40,000

- Threshold of Rs. 1 Cr to be applied qua ‘an account’ – on literal interpretation applies to only one account.
  - Account may be current account or savings account or cash credit or overdraft

Impact of Introduction of S. 194N [w.e.f. 01 September 2019]

- Can provision be challenged on constitutionality in absence of linkage with “income” of drawer?
  - S.198 deems TDS as income received by taxpayer
- Issue will arise on year in which person withdrawing cash can claim TDS credit since there is no corresponding income against which credit can be claimed
  - Will require amendment in Rule 37BA(3)(i) which provides that credit for TDS shall be given for AY for which such income is assessable.
- Taxpayer cannot claim expense deduction of such TDS (refer, s.40(a)(ii))
- Bank and post offices will need to modify their TDS/accounting software to track and capture such cash withdrawals for TDS compliance
- Issues:
  - Joint bank account holder – TDS in whose name? First name?
  - Payment by bearer cheque – Whether covered?

Mandatory Acceptance of Electronic Payments [w.e.f. 01 November 2019] (S. 269SU and 271 DB)

- FB 2019 proposes to introduce new s.269SU as an additional measure towards less-cash economy, reduction in generation and circulation of black money, and to promote digital economy
- New S. 269SU mandates a person carrying on **business** to mandatorily provide a payment facility through prescribed electronic modes of payment[1] (in addition to existing modes)
  - Will apply only to such businesses whose total sales, turnover or gross receipts, in the **immediately preceding PY** exceeds **Rs. 50 crores**
  - For FY 2019-20, S. 26SU will apply if the threshold of INR 50 crores is crossed in FY 2018-19
- Contravention will attract a penalty of Rs 5,000 per day of default (S. 271DB), unless good and sufficient reasons are proved
  - Mandate to create facility even if there are no retail customers and even if all receipts otherwise are by banking modes?
- Covers only person carrying on 'business' – does not apply to persons carrying on 'profession'
- Further, it is proposed to make consequential amendment in Payment and Settlement Systems Act 2007 to provide that no bank or system provider shall impose any charge upon anyone, either directly or indirectly, for using the modes of electronic payment prescribed u/s. 269SU of Income-tax Act
  - Restriction may apply even if turnover is less than Rs. 50 Cr

[1] *such as BHIM UPI, UPI-QR Code, Aadhaar Pay, certain Debit cards, NEFT, RTGS etc. as per the budget speech*

Non-resident taxation

- Deemed accrual of gift by a resident to a person outside India [s. 9(1)(viii)][w.e.f. 1 April 2020]

Gift taxation of Non-resident [S. 9(1) (viii) – Gifts made on or after 5 July 2019]

- New clause (viii) of s.9(1) states that income shall be deemed to accrue or arise in India if -
  - Sum of money paid by a resident to a person outside India or
  - Any property situated in India transferred by a resident to a person outside India
- Applies only for payment or transfer on or after 5 July 2019
- Amendment is restricted to payment or transfer by resident to a person outside India and does not cover transaction between two NRs
  - Person outside India should ideally be construed as a NR, since global income of a resident is taxable even otherwise u/s. 5(1)

Conditions of s.56(2)(x) remain applicable

- Pre-condition of proposed provision is that the income should be of a nature referred to in s.2(24)(xviia), i.e. any sum of money or value of property referred to in s.56(2)(x)
  - All the conditions as are applicable for taxability u/s 56(2)(x) become applicable
- Taxability is subject to exemption u/s. 56(2)(x) and treaty relief
  - Exp Memo also states that existing provisions of exempting gifts as provided in proviso to s.56(2)(x) will continue to apply for such gifts deemed to accrue or arise in India
  - Exp Memo acknowledges that tax trigger u/s. 9(1)(viii) is subject to treaty obligation

Personal taxation

- Incentives to National Pension Scheme [w.e.f. 1 April 2020]
- Additional interest deduction for ‘first-home’ buyers [s.80EEA] [w.e.f. 1 April 2020]
- Deduction of Interest on loan for purchase of electric vehicle (S. 80EEB) (w.e.f 1 April 2020)
- TDS on non-qualifying life insurance policy [S. 194DA] [w.e.f. 1 September 2019]
- ETFs proposed on lines of ELSS u/s 80C
- TDS on specified personal payments by Individual/HUFs [S.194M] (w.e.f 1 Sep 2019)]
- TDS on purchase of immovable property – S.194IA [w.e.f. 1 September 2019]

Incentives to National Pension System [w.e.f. 1 April 2020]

- In December 2018, certain announcements were made regarding NPS scheme and the proposed amendments are to codify such announcements

Sec	Benefits under the ITA	Existing provision	Proposed Amendment
10(12A)	Exemption of payment made to employees from NPS Trust on closure of account or opting out of the scheme	Exemption of 40% of the total amount payable	Exemption enhanced to 60% of the total amount payable Balance 40% to be mandatorily applied to buy annuity/pension Full 100% becomes tax free in year of withdrawal (but pension income is taxable) – This is comparable to provident fund
80CCD(2) – Employer's contribution	Employer's contribution to NPS [Treated as income received u/s.17(iii) in year of contribution and then allowed as deduction u/s. 80CCD(2)]	Deduction limited to 10% of salary	Deduction of amount contributed **For CG employee** –**14%** of salary for the respective year **For other employees** - 10% of salary (no change)

Incentives to National Pension System [w.e.f. 1 April 2020]

S. No.	Benefits under the ITA	Existing provision	Proposed Amendment
S.80C	Amount deposited as a contribution to Tier-II* account by a CG employee *Tier I is the retirement account which gets a host of tax breaks, whereas Tier II is a voluntary account which allows NPS subscribers to invest and take out money anytime	---	Deduction of full amount subject to lock in period of minimum 3 years for contributions to Tier II account Scheme of Tier II account to be notified by CG in Official Gazette.
	S.80C deduction is subject to overall ceiling limit of INR 1.50 lakhs along with basket of various other investment products.		

Additional interest deduction for ‘first-home’ buyers [s.80EEA] [w.e.f. 1 April 2020]

- Reincarnation of s.80EE in new avatar
- In order to provide an impetus to ‘Housing for all’ objective of Government and to enable home buyer to have low-cost funds at his disposal, FB 2019 proposes to insert new deduction for interest on housing loan
  - Loan taken from any ‘financial institution’ for acquisition of residential house property
  - Loan sanctioned during the period from **1 April 2019 till 31 March 2020**
  - Applicable to individuals not eligible to claim deduction u/s. 80EE
  - Maximum annual deduction is **Rs. 1.5 L**
  - No other residential house property owned as on date of loan sanction
  - Stamp duty value of residential house property **< 45 L**
  - Deduction in addition to (or independent of) deduction up to Rs. 2 lakhs in s.24(b) but no duplicated deduction of same interest under s.24(b) and s.80EEA
- House could be under construction: possession not a pre-requisite
- No condition on self occupation; even let out house eligible`

Deduction of Interest on loan for purchase of electric vehicle (S. 80EEB) (w.e.f 1 April 2020)

- With a view to improve environment and to reduce vehicular pollution, FB 2019 proposes to introduce a new deduction provision (S.80EEB) to encourage ***individuals*** to purchase electric vehicle
- Deduction applicable to purchase of electric vehicles ***by Individuals*** only
  - Is it restricted to electric vehicles used for personal use? However, deduction is restricted for loan on first electrical vehicle*
- The deduction limited to Rs. 1,50,000 for AY 2020-21 and subsequent AYs
  - Disconnect with budget speech which refers to benefit of Rs. 2,50,000 over loan period
- Following conditions are to be satisfied to be eligible for the deduction -
  - Loan has been sanctioned from a financial institution, including NBFC for purchase of electric vehicle
  - Such loan is sanctioned between **1 April 2019 and 31 March 2023;** and
  - The taxpayer **does not own any** other electric vehicle on the date of sanction of loan*
- If deduction is allowed under this section, no deduction shall be allowed under any other provision of ITA for the same or any other AY
- Can individuals under presumptive basis of taxation u/s. 44AD/ADA claim deduction?
  - All expense deductions deemed to be allowed.

** This condition is specified in Explanatory Memorandum and not in the Finance Bill.*

TDS on non-qualifying life insurance policy [S. 194DA] [w.e.f. 1 September 2019]

Current tax position:

- Section 10(10D) provides exemption on any sum received under qualifying life insurance policy (including by way of bonus) except keyman insurance policy and section 80D/DDA covered policies.
- Qualifying life insurance reckoned w.r.t ratio of premium to minimum capital sum assured for policies issued on or after 1 April 2003
  - 20% for policies issued between 1 April 2003 to 31 March 2012
  - 10% for policies issued on or after 1 April 2012
- Death benefit is exempt even if policy is non-qualifying
- Currently, there is ambiguity on characterisation of taxable maturity benefit received on non-qualifying policy – whether as capital gains or income from other sources?
  - Predominant view is ULIP type policy falls under capital gains and guaranteed income policy falls under income from other sources
- Section 194DA provides for withholding on payments made to residents of any sum under a life insurance policy (including bonus) at the rate of 1% other than amount which is exempt under section 10(10D)
  - Generally covers survival benefit payout on non-qualifying life insurance policy
- The withholding rate is applied on the “sum” paid which means gross amount paid subject to threshold of Rs. 1 lac

Withholding u/s. 194DA on taxable life insurance payments [w.e.f 1 September 2019]

Proposed amendment

- TDS rate increased from 1% to 5%
- TDS base changed from ‘sum paid’ to ‘amount of income comprised’ in sum paid (i.e from Gross payout to Net payout after reducing premiums)
- Will enable Tax Department to automatically match income offered by taxpayer in return
- Threshold of Rs. 1 lakh continues to be w.r.t gross sum paid
- TDS rate increases to 20% u/s. 206AA in absence of PAN (providing Aadhar will not be sufficient)
- Nil TDS through furnishing of Form 15G/H facility available
- Illustrative practical challenges for life insurance companies
  - Determination of income – Capital gains v. Income from other sources
  - Quantum of premium deduction if pay-outs are staggered over a period
  - Deduction for Service tax/GST forming part of premium

TDS on specified personal payments by Individual/HUFs [S.194M (w.e.f 1 Sep 2019)]

- FB 2019 proposes to introduce a new TDS provision (S.194M) on “specified personal payments” made by Individuals/HUF
- S.194M intends to cover cases which are not falling under the 194C, 194J – To recollect,
  - S.194C, S.194J are applicable to Individuals/HUF for business/professional payments only if they are subject to audit under S.44AB
  - S.194C and S.194J exempt payments made to contractors or for obtaining professional services for personal purposes of the Individual/HUF
- TDS is applicable @ 5% w.e.f. 1 September 2019-
  - At the time of credit or payment (whichever is earlier) to a resident
  - On the sum or aggregate of sums exceeding Rs. 50 lakhs during the financial year
    - Threshold to be computed qua resident payee
- Relaxation on procuring TAN for S.194M purposes -
  - TDS can be deducted and deposited using PAN by person making such payment (akin to system presently in vogue for s.194IA or s.194IB)
- S.197 has been amended to include S.194M –
  - Payee can obtain a “Nil” or “reduced rate” certificate if conditions laid down in S.197 are satisfied.

TDS on specified personal payments by Individual/HUFs [S.194M (w.e.f 1 Sep 2019)]

- Business / professional payments by individual / HUF liable to tax audit continue to be governed by existing s. 194C (1% / 2% TDS) or s. 194J (5%)
  - New section applies to individuals / HUF.
    - For personal payments regardless whether individual/HUF is liable to tax audit
    - For business/professional payments by Individual/HUF who is not liable to tax audit (But, rare case)
- Payments other than professional services mentioned under S.194J to be excluded:
  - Other payments covered u/s 194J like royalty, fee for technical services, no-compete fees u/s 28(va) are excluded as the intention is to cover professional services only
- In the absence of specific carve out w.r.t TDS compliance under s.194M, time limits for withholding and depositing tax with government, TDS returns and forms will be same as applicable for other TDS provisions (unless specifically exempted)

TDS on purchase of immovable property [S.194IA] [w.e.f. 1 September 2019]

- S.194-IA was inserted by FB 2013 to provide for tax withholding @1% on the amount of consideration paid on transfer of immovable property if consideration payable is Rs. 50L and above
  - The scope of 'consideration for immovable property' is presently not defined for the purposes of this section.
- FB 2019 proposes to introduce definition of the term 'consideration for immovable property' to include payments made for all rights and facilities which are incidental to transfer of the immovable property
  - Such payments may be either under same agreement or under a different agreement
  - Additional charges proposed to be included : **club membership fee; car parking fee; electricity and water facility fees; maintenance fee, advance fee; any other charges of similar nature which are incidental to transfer of the immovable property**
- This proposed amendment will be applicable for credit or payment of consideration on or after 1 September 2019
  - May apply to payment of balance installments, even where agreement to purchase is entered or purchase of property accomplished prior to 1 September 2019
- Arguably, no TDS required on GST levied on any of the additional components covered by amendment (Refer, CBDT Circular No 23/2017 dated 19 July 2017)

Assessment, penalty and prosecution

- Mandatory furnishing of return of income by certain persons [s.139] [w.e.f. 1 April 2020]
- PAN - Aadhaar Number related amendments (w.e.f. 1 September 2019)
- Specified transactions where Aadhaar Number or PAN can be quoted and authenticated (w.e.f. 1 September 2019)
- Consequence of failure to intimate Aadhaar Number by individual taxpayers (w.e.f. 1 September 2019)
- Rationalisation of prosecution provisions of section 276CC (w.e.f 1 April 2020)
- Rationalizing provision for claim of refund [s. 239] [w.e.f. 1 September 2019]
- Levy of penalty for cases where tax return is furnished for the first time under s. 148 of the ITA (w.e.f. 1 April 2017)
- Black Money Act amendments (w.r.e.f 1 July 2015)

Mandatory furnishing of return of income by certain persons [s.139] [w.e.f. 1 April 2020]

- FB 2019 proposes to mandate ROI filing for a person (including an individual) who, **during the previous year**:-
  - Has **deposited** an amount or aggregate of the amounts exceeding **Rs. 1 Cr.** in one or more **current accounts** maintained with a bank (including co-operative bank); or
  - Has incurred **expenditure** of an amount or aggregate of the amounts exceeding **Rs. 2 L** for himself or any other person for **travel to a foreign country**; or
  - Has incurred **expenditure** of an amount or aggregate of the amounts exceeding **Rs. 1 L** towards consumption of electricity; or
  - Fulfils such other conditions as may be prescribed
- Above limits are annual and need to be evaluated for every assessment year
- FB 2019 further proposes to expand list of exemptions or deductions to be ignored while computing total income in hands of Individual, HUF, AOP, BOI, AJP for determining obligation to file ROI u/s. 139
  - Proposed to ignore ss.54, 54B, 54D, 54EC, 54F, 54G, 54GA and 54GB for determining threshold of total income
- Re-introduction of scheme akin to 'one-by-six scheme' as was prevalent before 2006
- Irrelevant to taxpayer already liable to file ROI
- Nature of deposits in current account not relevant – cash or cheque, capital or revenue, transfer from another account, etc

Mandatory obtaining PAN in prescribed cases (w.e.f. 1 September 2019)

- S. 139A(1) of the ITA mandates taxpayer falling within the specified criterion to obtain PAN:
  - Income exceeding maximum amount not chargeable to tax; or
  - Carrying on business or profession whose turnover or gross receipt exceeds Rs. 5 lakhs
  - Taxpayer required to furnish return under s. 139(4A) (i.e. Charitable trust)
- Finance Act 2018 widened the scope of s. 139A(1) by including the following:
  - Resident taxpayer (other than individual) entering financial transaction for an amount exceeding Rs. 2.50 lakhs in a year
  - Managing Director, Director, Partner, Trustee, Author, Founder, Karta , CEO, Principal Officer or Office Bearer of the above or Person competent to act on behalf of the aforesaid person
- S. 272B provides for levy of penalty of INR 10,000 in case where a taxpayer fails to comply with the provision of s. 139A
- Exp Memo to FB 2019 highlights that there are various instances of high value transactions (such as purchase of foreign currency, huge withdrawal from bank, etc.) where the person do not possess PAN
- In order to keep an audit trail of such transaction**, CBDT will be empowered to extend PAN requirement to class / classes of taxpayer who 'intends' to enter such transactions, as may be prescribed, in the interest of revenue**
  - 'intends' - whether the transaction actually happens or not may not be relevant?

PAN - Aadhaar Number related amendments (w.e.f. 1 September 2019)

PAN – Aadhaar Number can be used interchangeability:

- Finance Minister stated that more than 120 crores people now hold Aadhaar Number.
- In order to ensure **the ease of compliance for such taxpayer**, it is proposed to introduce new provision which allows the taxpayers to use PAN or Aadhaar Number interchangeably for the purpose of the ITA
- Proposed s. 139(5E) provides that every person who is required **to furnish / intimate / quote PAN**

Clause	Allotted PAN	Intimated Aadhaar Number to Tax Authority under s. 139AA(2)	Is eligible to quote / intimate / furnish Aadhaar or PAN interchangeably
(a)	No	Not Applicable	Yes
(b)	Yes	No	No
(b)	Yes	Yes	Yes

- Taxpayers falling under clause (a) above shall be allotted PAN in the manner which is yet to be prescribed
- Provision is not applicable to non-individual taxpayers as they are not eligible to obtain Aadhaar Number
- Mandatory PAN-Aadhar linkage by 30 September 2019, else PAN will become inoperative. Such taxpayers will also not be able to use Aadhaar Number in lieu of PAN (Refer clause (b) above)

Specified transactions where Aadhaar Number or PAN can be quoted and authenticated (w.e.f. 1 September 2019)

- S. 139A(5)(c) empowers Tax Authority to prescribe transactions where taxpayers are required to quote PAN.
- CBDT has prescribed Rule 114B which illustratively covers transactions like sale or purchase of motor vehicle, opening bank/demat account, purchase or sale of goods > Rs. 2 lakhs, etc:
- S. 139A(6) provides that every person receiving any document for the transactions specified under s. 139A(5)(c) shall ensure that PAN is duly quoted
  - In line with the proposed amendment of interchangeable use of Aadhaar Number and PAN, s. 139A(6) is proposed to be amended to ensure every person receiving any document for the transactions specified under s. 139A(5)(c) shall ensure that PAN **or Aadhaar Number** is duly quoted
- **Further, new provisions s.139A(6A) and 139A(6B) mandate person entering into transactions (to be prescribed by CBDT) to quote PAN or Aadhar and to authenticate it and person receiving document to ensure that PAN or Aadhar is quoted as also authenticated.**
- Process of 'authentication' is defined to mean the process by which PAN or Aadhaar Number along with demographic or biometric information is submitted to the Tax Authority or prescribed authority for its verification

Specified transactions where Aadhaar Number or PAN can be quoted (w.e.f. 1 September 2019)

- Existing s. 272B provides for penalty of Rs. 10,000 on taxpayer who does not quote PAN while undertaking specified transactions or quotes a false PAN
- S.272B amended to provide for penalty of Rs. 10,000 on a taxpayer **for each default**
- S.272B further amended to cover default under new provisions of s.139(6A)/(6B) which require quoting and authenticating of PAN or Aadhar
- The process of 'authentication' of Aadhaar Number or PAN as also agencies which can carry out the process of authentication are also to be notified

Consequence of failure to intimate Aadhaar Number by individual taxpayers (w.e.f. 1 September 2019)

Current provision:

- S. 139AA(2)[1] of the ITA provides that:
  - All taxpayers holding valid PAN as on 1 July 2017; and
  - Who are eligible to obtain Aadhaar Number

  are required to intimate such Aadhaar Number to Tax Authority in the prescribed manner[2] (Aadhar-PAN linking)
- Aadhaar-PAN linking to be done on or before 30 September 2019[3]
- Such persons will have to intimate Aadhaar Number even if they are not required to file a ROI in view of total income not exceeding threshold limit so as to keep the PAN valid
- **Failure to intimate Aadhaar Number may lead to following consequences [Proviso to s. 139AA(2)]:**
  - **PAN deemed to be invalid and**
  - **Provisions of ITA to apply, as if PAN was not applied for**

1 By way of notification, provision of s. 139AA is not made applicable to taxpayer who does not possess Aadhaar Number and is (a) residing in States of Assam, Jammu and Kashmir and Meghalaya; or (b) Non-resident as per the ITA; or (c) of the age of 80 years or more; or (d) not a citizen of India
2 Procedure for intimation of Aadhaar Number was prescribed in Notification No. 7 / 2017 dated 29 June 2017– (Precisely may be done through SMS, online or with the help of designated PAN service centres)
3 Notification No. 31 / 2019 dated 31 March 2019

Consequence of failure to intimate Aadhaar Number by individual taxpayers (w.e.f. 1 September 2019)

Proposed Amendment:

- Instead of invalidating PAN, amendment proposes to make PAN inoperative if Aadhaar Number is not intimated to Tax Authority on or before 30 September 2019;
- The manner in which PAN will become inoperative is to be prescribed
- Intent is to protect validity of past transactions undertaken by the taxpayers
- Exact scope and effect of PAN being 'inoperative' may need determination once CBDT issues clarifications in this aspect
- If the effect of 'inoperative' of PAN is that PAN is not available for use (though in existence), there may be certain adverse consequences, illustratively:
  - Inability to file tax return
  - Higher withholding at the rate of 20% may apply [s. 206AA]
  - Penalty under s. 272B of Rs. 10,000 on non-compliance of s. 139A
  - PAN is mandatory to quote for various purposes like opening bank / Demat account, investing in IPO, selling immovable property, etc. [Rule 114B]
- How counterparty can ascertain 'inoperative' PAN of taxpayer? For instance, S.139A casts burden on counter-party only to ensure that taxpayer has 'quoted' his PAN.

Consequence of failure to intimate Aadhaar Number by individual taxpayers (w.e.f. 1 September 2019)

- If PAN is inoperative, quoting of Aadhar may also not work
- Procedure for making PAN inoperative to be notified:
  - No order is required to be passed for making PAN inoperative on failure of intimation of Aadhaar Number
  - Impact of amendment on pending assessments including e-assessments, appeals, rectification petitions and refunds cases need to be evaluated
  - There 'may' be a possibility to re-activate the PAN once the Aadhaar Number is intimated to the Tax Authority. However, one may have to wait for the clarification from the CBDT in this regard

Rationalisation of prosecution provisions of section 276CC (w.e.f 1 April 2020)

- Section 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
- Proviso (ii)(b) to s. 276CC provides for relaxation to all taxpayers (excluding companies) against prosecution if the tax payable on regular assessment is less than Rs. 3,000 after reducing advance tax and TDS(relaxation), even assuming that the default is considered to be wilful.
- The section is amended to grant credit additionally also for self-assessment tax paid before the expiry of the assessment year to determine tax liability
- Further, as a rationalization measure, the threshold limit of tax liability on regular assessment for not triggering prosecution has been increased to Rs. 10,000 from existing limit of Rs. 3,000.

Rationalisation of the provisions of section 276CC (w.e.f 1 April 2020)

- Cumulative impact of FB (no. 2) 2019 amendment w.e.f. 1 April 2020

  For taxpayers other than companies, prosecution for willful default in filing ROI u/s 139(1) shall not trigger under this section if tax liability determined on assessment is less than Rs. 10,000 after considering: (a) advance tax; (b) TDS/TCS;(c) Self-assessment tax paid before the end of the assessment year

- Following points worth noting
  - Benefit of proviso (ii)(b) as aforesaid is applicable if there is regular assessment u/s. 143(3) / 144. The benefit is not extended to assessment u/s. 147
  - Relaxation is in respect of default of filing ROI u/s. 139(1). Relaxation does not apply to a case of default in filing ROI in response to notice u/s. 142(1) or S.148
  - In case where taxpayer – though, defaulted in filing ROI u/s. 139(1), filed ROI belatedly u/s. 139(4) before the end of the relevant assessment year, gets immunity under proviso (i)(a) without any further conditions relating to ‘tax payable’

Rationalizing provision for claim of refund [s. 239] [w.e.f. 1 September 2019]

- The existing provisions of s. 239 of the Act provide inter alia that every claim of refund under Chapter XIX of the Act shall be made in the prescribed form and verified in the prescribed manner
- S.239(2) provides for time limit of **one year from last day of AY** for claiming refund
  - Rule 41 of Income Tax rules prescribes that claim of refund is to made in **Form No. 30**
    - Accompanied by a return in the form prescribed under section 139 unless the claimant has already made such a return to the AO
    - Accompanied by certificates prescribed under S.203 in cases where claim for refund is for tax paid on dividends or for taxes withheld under S. 192 to 194, s.194A and s.195
- In practice, Tax Department was issuing refunds based on returns without insisting on Form 30
- In order to simplify the procedure for claim of refund, it is proposed to amend the said section so as to provide that **every refund shall now be claimed by furnishing return of income (ROI) in accordance with the provisions of s. 139**
- As consequential amendment, sub-section (2) in the existing S.239 which provides for time limit of one year from end of AY will be deleted

Levy of penalty for cases where tax return is furnished for the first time under s. 148 of the ITA (w.e.f. 1 April 2017)

Current provision:

- Under the new penalty regime introduced from 1 April 2017, penalty was imposed on under-reported income at the rate of 50% / 200%, as the case may be, on the tax payable on such under-reported income
- Under reported income is defined under s. 270A(2) which generally means difference between assessed / re-assessed income and income determined under s. 143(1)(a)
- In case where taxpayer did not file return u/s. 139 but files it in response to notice us. 148, technically, there was no penalty trigger in respect of income returned

Proposed amendment:

- In order to plug the aforesaid loophole FB proposes to equate filing return of income for the first time under s. 148 with non-filing of return for all penalty consequences.
- Consequently, such taxpayer gets exposed to penalty w.r.t. entire income returned in response to notice u/s. 148 or w.r.t. to entire assessed income
- The amendments are made applicable retrospectively from 1 April 2017 i.e. AY 2017-18 and onwards
  - Article 20 of Constitution prohibits retrospective amendment in penal provisions. Is retrospectivity constitutionality valid?

Amendments to the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 [w.r.e.f. 1 July 2015]

- Existing S. 2(2) of BMA defines "assessee" to mean a person, being resident other than ordinary resident in India within the meaning of S.6(6) of ITA
  - There was controversy as to whether the definition applies only to individual or HUF resident in India
- FB 2019 proposes to amend the above definition of "assessee" retrospectively w.e.f. 1 July 2015.
- Besides clarifying scope of person resident in India, it also include non-residents (NR) and not ordinarily residents (NOR) as per s. 6 and s. 6(6) of the ITA subject to certain conditions
  - Every person resident in India within the meaning of S.6 of ITA in the previous year is covered
  - NRs or NORs in India are covered within the ambit of "assessee" if such person was resident in India either
    - in the previous year to which the undisclosed foreign income referred to in S. 4 relates; or
    - in the previous year in which the undisclosed asset located outside India was acquired
  - The previous year, in case of acquisition of undisclosed asset outside India (whensoever acquired), shall be determined without giving effect to the provisions of S. 72(c) of BMA* if acquired before commencement of Act

**In determination of previous year in respect of undisclosed asset, proviso to S.3 creates a charge in the year in which asset comes to the notice of AO. However, as per S.72(c), any asset acquired prior to commencement of BMA and in respect of which taxpayer has not availed one time declaration scheme, such asset shall be deemed to have been acquired or made in the year in which notice of assessment u/s. 10 is issued by AO*

Amendments to the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 [w.r.e.f. 1 July 2015]

- As per Exp Memo, the amendment is to clarify the legislative intent to tax such foreign income and assets, which were not charged to tax under the ITA
- Amendment puts an end to the controversy by clarifying that BMA can also apply to NR, who acquired the undisclosed foreign asset during the previous year when he was a resident in India
- Amendment also clarifies the scope of resident taxpayer to whom BMA can apply. Thus, controversy as to whether non-individuals (which is company or partnership firm) are covered by definition of “assessee” under BMA stands resolved in favour of their coverage within BMA
- While NR/NOR may be covered under BMA, there is no obligation on them to report foreign assets and income in Schedule FA of ROI (Refer, instruction on Schedule FA to ITR form)
  - Non-reporting of foreign assets/income arguably may not trigger penal consequences under BMA
- There is no corresponding amendment made in penalty provisions of S.42 and 43 as also prosecution provisions of 49, 50, 51. In all these provisions, penalty and prosecution can be levied/initiated for defaults therein by a person resident in India other than NOR u/s. 6(6) of ITA
  - NR/NOR may not be covered by these penal provisions on a strict reading of the provision

Process automation and e-filing

- S.285BA – Specified Financial Transactions (w.e.f 1 September 2019)
- Process Automation to eliminate manual intervention

S.285BA – Specified Financial Transactions (w.e.f 1 September 2019)

- Existing s.285BA casts obligation to file AIR on specified financial transactions (SFT) or reportable accounts under FATCA
- Rule 114E provides list of specified persons who need to file AIR in Form 61A on or before 31 May
  - Illustratively covers banks, company issuing shares, mutual fund, any taxpayer liable for tax audit
  - Specified transactions illustratively cover cash withdrawals & deposits, fixed deposits, credit card expenses, transactions in shares & securities, immovable property, cash sales, etc
  - Different value limits for different transactions – much in excess of Rs. 50,000
- Penalty for delay in reporting or non-removal of defect u/s. 271FA of Rs. 500 per day (Rs. 1000 per day if failure pursuant to notice issued by Tax Authority)
  - Non-removal of defect treated as failure to furnish AIR
- Penalty u/s. 271FAA of Rs. 50,000 for defective/inaccurate filing of FATCA reportable transactions

Proposed amendment

- Scope of persons required to report to be widened to enable pre-filling of return of income by taxpayer
- Threshold of Rs. 50,000 to be removed – will facilitate pre-filling of even small value transactions
- Penalty for non-removal of defect or inaccurate reporting moved to s.271FAA @ Rs. 50,000 instead of Rs. 500/Rs.1000 per day

E-filing of application seeking determination of TDS rates [S.195(2) & S.195(7)](w.e.f 1 November 2019)

Existing position

- S. 195(2) allows a person making a payment to NR recipient to make an application to the AO to determine the appropriate portion of sum chargeable to tax out of the payments made by him for withholding u/s 195
- Similarly, s.195(7) empowers CBDT to cast obligation, by notification in Official Gazette, on specified class of persons or in specified cases to make an application to the Assessing Officer to determine the appropriate portion of sum chargeable to tax out of the payments made to the NR regardless of whether such sum is chargeable under the Act. But this provision is not yet operationalized by CBDT
- The process for applying for lower/NIL TDS certification u/s. 195(2) under the existing provisions is manual

Proposed amendment

- FB 2019 proposes to prescribe an online mode to replace the manual process
- For this purpose, these sections are proposed to be amended to allow prescribing a form and manner of application to the AO
- The revised process is intended to
  - Reduce the time for processing the applications
  - Help tax administration in monitoring such payments.

E-filing of statement of transactions on which tax not withheld (S. 194A and S.206A)(w.e.f 1 September 2019)

Existing position

- S. 194A requires withholding on payment of interest (other than interest on securities)
- Post amendment by FA 2019, TDS threshold is Rs. 40,000 for payer being bank(including co-operative bank) or post office and Rs. 5,000 in case of other payers
- S.206A casts obligation on banks and housing finance companies to furnish information of interest payment to residents of less than Rs 10,000 / Rs 5000 (limits correspond to TDS threshold limits prior to FA 2019 amendment) on floppy, diskette, magnetic tape, etc
- S. 206A also enables Central Government to require, by Notification in Official Gazette, any person (other than above referred persons) to furnish information in relation to payments to a resident on which taxes are required to be withheld under Chapter XVII of the Act. This provision is not yet operationalized by CG.

Proposed amendment

- Consequent to FA 2019 amendment of increase in TDS threshold, FB 2019 proposes to increase the threshold u/s. 206A to INR 40,000.
- Further, the mode of filing will be prescribed by rules. As per Exp. Memo, the amendment is to enable online filing of such statements.
- FB 2019 further proposes to amend S.206A to enable the payer to file correction statement for rectification of any mistake or to add, delete or update information furnished in original statement.

Thank You!

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