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90th Year

ज्ञानं परमं बलम्

The Chamber of Tax Consultants

THE BUDGET ANALYSIS

One Team One Mission

ABOUT CTC

The CTC established in 1926, is one of the oldest voluntary non-profit making organisation formed with the object of educating and updating its members on the Direct Tax Laws and other Allied Laws. It has a robust membership strength exceeding 3,500 members comprising of Chartered Accountants, Advocates, Tax Practitioners, Corporate Members and Student Members.

- The CTC regularly organises Workshops, Seminars, Lecture Meetings, Study Circle Meetings, Study Group Meetings, Outstation Conferences, etc., for the benefit of members which keeps them up-to-date with the latest developments in Tax and Allied Laws.
- Its popular monthly journal 'The Chamber's Journal' consists of Special Issues covering in depth analysis on topics day to day of professional interest. These special issues have found a permanent place in libraries of leading tax professionals.
- CTC functions through various sub-committees comprising of above 250 core group members and maintains excellent rapport with the Tax Department and Government authorities.
- CTC is active in filing public interest litigation, for instance TDS, DIS, Service Tax, etc., presenting pre and post-budget memorandum and making representations on various Tax and Corporate Laws to the Government and regulatory authorities.
- CTC manages two libraries at prominent places at Aayakar Bhavan, New Marine Lines and Pratyakshakar Bhavan, Bandra, which are widely used by the professionals. These libraries have more than 4,000 titles, various leading law journals/magazines and books.
- The members of the CTC enjoy a unique bond of fellowship and brotherhood which is evident in all its activities and programmes. Its monthly newsletter, The CTC NEWS keeps members updated on various events.

VISION STATEMENT

The Chamber of Tax Consultants (The Chamber) shall be a powerhouse of knowledge in the field of fiscal laws in the global economy.

The Chamber shall contribute to the development of law and the profession through research, analysis and dissemination of knowledge.

The Chamber shall be a voice which is heard and recognised be all Government and Regulatory agencies through effective representations.

The Chamber shall be pre-eminent in laying down and upholding, among the professionals, the tradition of excellence in service, principled conduct and social responsibility.

THE TEAM

FOREWORD

During the presentation of the Union Budget, the Honourable Prime Minster of India and Honourable Finance Minster deserve to be appreciated for focussing more on the rural side, and recognising that demonetisation had brought some hardship to the people of India. The government has attempted to mitigate the demonetisation effect as much as possible, with some rural schemes and reduction in taxation for people with low income. I see that the present Finance Bill, 2017 reported in [(2017) 391 ITR 1 (St.), is a revolutionary Finance Bill as it gives a clear impression that this bill wants to be citizen friendly, business friendly and is perhaps for the people, by the people and of the people. It has a long-term view for the growth of the economy and lays down a clear path of anchoring India's economy in an uncertain global economic scenario.

According to me accountability of the Assessing Officers has not been addressed in this year's budget which is a pressing requirement in the current scenario. The need of accountability by the Assessing Officers had been pointed out by the Tax Reforms Committee in their final report (1992) 197 ITR 177 (St.). Infact, if the parameters of accountability are not drawn soon, and wide powers as per the amendments in S.132 are bestowed upon such officers, the powers may be misused. The potential of being misused needs to be reigned in by introducing accountability provisions for the greater good and better justice for the country and its people.

At this juncture I would like to specially emphasize on the amendment w.r.t. section 132 wherein, retrospective effect has been given to prior amendment which gives the right to the authorities to not reveal the reasons for search or reasons for suspicion for any search conducted. It is also mentions that the reasons need not be produced before any authority till the Tribunal. This move may lead to increased burden on the High Court, which in my opinion, the government should aim at reducing.

The above amendment, seems to me, as a draconian provision which also reflects itself to be contrary to the promise made by the Hon'ble Prime

Minister and Finance Minister, with regard to not bringing in retrospective enactments.

There is another provision which may require attention. The Transfer Pricing Provision introducing restriction on deduction in respect of interest paid/payable to associated enterprise u/s 94B. The provision implies that even though the rate of interest passes the test of transfer pricing, it will not be allowed, if the interest payment exceeds 30% of the earnings of that company before taking into account interest, taxes, depreciation and amortisation. Allowance of interest cannot depend upon the earnings of the entity. However, the reason given is that people pay excessive interest, because the recipient is another country, where the interest is taxed at a lower rate. Now if someone else has taken advantage of this, then why the assessee suffer and disallowance be attracted. Similarly, Section 92A and 92CE along with the above mentioned provision, stand contrary to the DTAA provisions already entered into.

Various amendments have been carried out in the Finance Bill, 2017 which could lead to increased litigation.

In substance, the Budget has a transformative agenda built on nine pillars-agriculture and farmer's welfare, rural employment and infrastructure, social sector, education, skills and job creation, infrastructure and investment, financial sector reforms, governance and ease of doing business, fiscal discipline and tax reforms. The task now is to sustain the growth in a difficult global environment. The achievements of the government are remarkable, given the continuing global headwinds and two successive poor monsoons.

The Finance Bill needs to be studied, examined and analysed in the above background. Moreover, there appears to be a healthy coordination between the bureaucracy on the one hand and the political leadership on the other, both of which constitute and form the Government. Moreover, as tax practitioners, we have a responsibility to take a lead to see that the various schemes announced by the Government, really benefit the persons for whom they are meant.

After Demonetization, the preliminary analysis of data mining will help the revenue to expand the tax net as well as increase the revenue.

It was stated in the Budget speech [(2017) 391 ITR 1 (St) (23) para 140] :

"For the A.Y.2016-17, that 2.76 lakh companies have shown losses or zero income. 2.85 lakhs companies have shown profit before Tax of less than 1 crore. 28667 companies have shown profit of Rs 1 crore to 10 crores and only 7781 companies have profit before tax more than Rs 10 crores."

(Para 141) "Amongst the 3. 7 crores individuals who have filed the tax returns in F.Y. 2015-16 , 99 lakh have shown income below the exemption limit of Rs 2.5 lakhs p.a. 1.95 crore show income between 2. 5 lakh to 5 lakh, 52 lakh show income between 5 to 10 lakhs and only 24 lakh show income above 10 lakhs. Of the 76 lakh individual assesses who declare income above Rs 5 lakh are the salaried class . The number of people showing income more than Rs 50 lakhs in the entire country is only 1. 72 lakh. We can contradict this with the fact that last five years more than 1.25 crores, cars have been sold."

This makes it very clear that the Govt is unable to bring more assesses under the tax net, though the tax rate is reasonable. The reasons for which people are not ready to pay taxes should be one of the many questions arising for consideration. According to me the following could be some of the many reasons for the reluctance on the part of the citizens to pay tax:

1. We are not able to bring tax service culture, we only have a tax collection culture. Unless the mind set of tax administration is changed, such a trend of evading taxes may continue
2. The Citizens are needed to be educated by explaining the advantages of paying the taxes and how it will be helpful in building the nation.

3. Tax payers must be treated with respect and there has to be more transparency in the way the tax payer's money is spent.
4. Tax evaders feel that, the Govt brings amnesty schemes every five years and they will pay as per the scheme which is more advantageous than paying yearly.
5. Assuming the tax evaders are caught, they can manage to get free from the shackles of the legal system, due to delay in disposal of cases by the Courts.
6. Tax evaders feel, that assuming they are caught, that they can approach the settlement commission and get it settled
7. There is no fear of prosecution at all, reason being, the Govt has not been able to get the prosecution matters decided within reasonable time. It takes more than 20 years to reach finality of many matters.
8. Honest tax payers are not getting the refunds , credit for tax deducted at source is not given, appeal effects are not given for years, etc, then a tax payer's immediate thought process would question his conscious as to why they should pay the taxes, since payment of taxes seem to initiate all the problems.
9. There is no social security to the honest taxpayers i.e. no benefit is accruing to the taxpayers personally, even though they are regular in paying their taxes. An example of social security could be the UK's National Health Services which provide free health services, which is mostly funded by the general taxes collected.
10. It is desired that the Hon'ble Finance Minister should interact with the professional organisations like the Chamber of Consultants, before introduction of the Finance Bill. It is the professional organisations which give suggestions objectively without any fear, taking into consideration, the interest of the tax payers and the nation.

The tax professionals must debate on these issues and white paper may be presented to the Government on the above issues.

Apart from above, professionals should also represent for introduction of section 271J being penalty levied on Chartered Accountants. It may be noticed that no appeal has been provided against such penalty. The only remedy against penalty is by way of writ petition. Such penalty brings a stigma on professional, a proper representation should be made, opposing such harsh provisions.

The Chamber is doing an excellent service to tax professionals and tax payers of our Country. Every year, the Chamber publishes special issue on Finance Bill which always comes handy to understand the various provisions of the Finance Bill. I thank and appreciate all our readers, members who form the backbone of our publication. I am sure this publication will help us to understand in on exhaustive manner the amendments and implications of the proposal made by Hon'ble Finance Minister in Budget Speech.

My best wishes to the team of the Chamber for bringing out the e-publication on Finance Bill, 2016 in particular to the editors and the authors. I am sure in the years to come there could be innovation and better presentation after getting feedback from the stake holders.

I would like to specially thank Mr. Vipul Choksi, Chairman of Journal Committee, and Mr. Paras S. Savla, Chairman of Research & Publication Committee, for bringing out the publication in an effort of disseminating knowledge and information and making it a grand success.

Dr. K. Shivaram
Senior Advocate

PRESIDENT MESSAGE:

Dear Readers,

The Chamber is a **great institution** with a tradition of high **integrity, independence and professionalism.** The Chamber act as power house of knowledge in the field of fiscal law, contributes to the development of law and profession through research, analysis and dissemination of knowledge. Chamber has entered its 90th year and our theme for 90th year is **"Gyanam Param Balam" means "Knowledge is Supreme Power" . W**e are celebrating 90th year by way of spreading knowledge by various means. The Chamber is also instrumental in making active representations before regulatory authorities. Continuing with its tradition this year also Chamber has come out with **E book on Finance Bill 2017** . Research and publication committee under the leadership of Advocate Paras Savla and Journal Committee under the leadership of CA Vipul Choksi has put enormous effort with the objective of bringing out with **E book c**ontaining indepth analysis of Finance Bill 2017.

This year budget assumes an importance on two counts viz. merging of Railway budget with general budget and by announcing budget on 1st February will allow Parliament to vote on tax, finalise spending proposals before the beginning of the new financial year on April 1 and direct tax measures to have full year's play.

Every year Budget was looked at with expectations. Will, the finance minister, give India a tax break? Will he ease service tax, lower corporate tax rate? This year is different. All the demands fused into one - **no more jolts like demonetisation and in that sense this budget is positive.**

The hallmarks of the 2017-18 Budget are prioritising investment expenditure, focusing on inclusive growth , less Govt borrowing and working within a prudent fiscal framework.

In the budget significant funds have been allocated for farmers, education and infrastructure, which are three pillars of the economy

Carrots and stick approach has been adopted for taxpayer, it proposes to reduce income tax rate for those earning up to Rs 5 lakh which is reduced to 5% thereby flat Rs 12,500 rebate offered to all taxpayers. But tax compliance will become stricter and delays in filing tax returns will cost money by way of penalties or fees.

Impetus has been given to small and medium enterprises (SMEs) with the lower tax rate of 25%. This tax saving will give them additional liquidity for growing business.

More powers to tax officers to conduct searches and provisionally attach properties could lead to arbitrariness & harassment This goes against the tenet of non adversial tax regime.

Cash transactions of more than Rs.3 lakh have been banned **however measures to curb black money are half hearted unless agriculture income is brought to tax** exempting poor people by putting higher threshold limit .

The Hon'ble Finance Minister in his budget speech stated that we are largely a non tax compliant society. **Hence it is necessary to expand the tax base of the country** and concentrate on people who are not filing return of Income by making effective use of Information Technology tool.

For the first time that significant steps have been taken to clean up political funding by initiating more transparency measures.

Finally the global winds of a strong dollar, the risk of capital outflows on account of **Monetary Policy stance of the US Federal Reserve** to increase rates in 2017, **the uncertainty around commodity prices**, especially that of crude oil and **growing protectionism** which have potential to affect exports, provided the backdrop to the Budget. **Any changes in the such uncertainties will change the mathematics of budget.**

I thank all authors for their contribution to this E-book on Finance Bill 2017. I also acknowledge support of the Editor K Gopal in bringing out this E- book. This E-book on "Finance Bill 2017" deals in-depth analysis of provisions covering Direct and Indirect Taxes. This issue will be of immense help to the readers in understanding the nuances of provisions contained in the Budget.

I would like to end with the quote of Dr. A. P. J. Abdul Kalam.

"*Learning gives creativity,*

creativity leads to thinking,

thinking provides knowledge,

knowledge makes you great"

President

HITESH R SHAH

Chairman's Message

Dear Readers,

Countries have a tax system in place to pay for public/common/agreed national needs and government functions. States and their functional equivalents throughout history have used money provided by taxation to carry out many functions. Some of these include expenditures on economic infrastructure (roads, public transportation, sanitation, legal systems, public safety, education, health-care systems), military, scientific research, culture and the arts, public works, distribution, data collection and dissemination, public insurance, and the operation of government itself. A government's ability to raise taxes is called its fiscal capacity. Governments in more advanced economies tend to rely more on direct taxes, while developing economies rely more on indirect taxes.

According to the United Nations in July 2016, Indian population stood at 1,326,801,576. However, only 3.7 crores individuals (Out of about 132 crores) have filed tax returns in 2015-16. As mentioned by the Finance Minister, out of the above 3.7 crores individual tax returns, 99 lakh show income below the exemption limit of 2.5 lakh p.a., 1.95 crore show income between 2.5 to 5 lakh, 52 lakh show income between 5 to 10 lakhs and only 24 lakh people show income above 10 lakhs. Of the 76 lakh individual assesses who declare income above 5 lakh, 56 lakh are in the salaried class. The number of people showing income more than 50 lakh in the entire country is only 1.72 lakh. This certainly is a tragic state, however it also reflects the trust a citizen reposes on the Government. The Finance minister has commented on taxpayers database without touching on any of its own performance indicators. The honest taxpayers are unnecessarily harassed due to various reasons. Further the logic of paying tax being contribution towards national needs is never felt, but taxpayer only sense as if it's a donation to the Government. A citizen would always turn to a private player first, for the quality of product or service, as compared to Government players.

However, this cannot be changed, without transformation both from the Government front as well as taxpayers front. The Government and also the Citizens need to develop a sense of responsibility. The Government has launched a war against black money and have come out with various measures to fight it. Government should extend its war to corrupt officers also.

Despite various challenges, the budget is a good budget for various reasons like Small and medium enterprise taxes reduced, Ease of business by abolishing FIPB, focused quality spending, etc.

I would like to thank the Authors and editors for their support and cooperation, at such a short notice.

I am grateful to the Vipul Choksi, Haresh Kenia, K. Gopal and other team members for their support and commitment.

We have made efforts to help readers have ease of reading this publication by providing appropriate hyperlinks.

Hope you find a good read.

Regards,
Paras S. Savla
Chairman, Research and Publication Committee

EDITORIAL

The Union Government was successful in presenting the Finance Bill on 1st February, 2017, in spite of several hurdles which were expected to be there for doing so. This shows the determination on the part of the Government to walk the talk. The Hon'ble Finance Minister, before speaking about the Direct Tax provisions has put forward some statistics with respect to the number of assessees. The information provided is very crucial and important. The Hon'ble Finance Minister has mentioned as under:

"140. India's tax to GDP ratio is very low, and the proportion of direct tax to indirect taxes is not optimal from the view point of social justice. I place before you certain data to indicate that our direct tax collection is not commensurate with the income and consumption pattern of Indian economy. As against estimated 4.2 crore persons engaged in organised sector employment, the number of individuals filing return for salary income are only 1.74 crore. As against 5.6 crore informal sector individual enterprises and firms doing small business in India, the number of returns filed by this category are only 1.81 crore. Out of the 13.94 lakh companies registered in India up to 31st March, 2014, 5.97 lakh companies have filed their returns for Assessment Year 2016-17. Of the 5.97 lakh companies which have filed their returns for Assessment Year 2016-17 so far, as many as 2.76 lakh companies have shown losses or zero income. 2.85 lakh companies have shown profit before tax of less than ` 1 crore. 28,667 companies have shown profit between ` 1 crore to ` 10 crore, and only 7,781 companies have profit before tax of more than ` 10 crores. 141. Among the 3.7 crore individuals who filed the tax returns in 2015-16, 99 lakh show income below the exemption limit of ` 2.5 lakh p.a., 1.95 crore show income between ` 2.5 to ` 5 lakh, 52 lakh show income between ` 5 to ` 10 lakhs and only 24 lakh people show income above ` 10 lakhs. Of the 76 lakh individual assessees who declare income above ` 5 lakh, 56 lakh are in the salaried class. The number of people showing income more than ` 50 lakh in the entire country is only 1.72 lakh. We can contrast this with the fact that in the last five years, more than 1.25 crore cars have been sold, and number of Indian citizens who flew abroad, either for business or tourism, is 2 crore in the year 2015. From all these figures we can conclude that we are largely a tax non-compliant society. The predominance of cash in the economy makes it possible for the

people to evade their taxes. When too many people evade taxes, the burden of their share falls on those who are honest and compliant."

The above observations of the Finance Minister may be correct but he has to consider the aspect which we professional organisations, have been putting forward before the policy makers. The tax gatherer overcomes judicial decisions and the inherent inefficiency of the system by amending the statutory provisions in every finance bill. The Finance Bill, 2017 is not an exception. This attitude and behaviour of the executive makes the citizens skeptical about the intention of the tax authorities. Every effort of the policy makers to eradicate black money and abuse of tax laws makes the laws stringent. This impacts the tax compliant citizens by burdening him with prohibitive cost of compliance. The Hon'ble Finance Minister may be right in generalisation of his observation that as a society we are not tax compliant. But what are his views on the levels of corruption within the tax gathering machinery. The generalisation made by the Hon'ble Finance Minister is a sorry state of affairs.

The Hon'ble Finance Minister may also consider that unbridled discretion has been vested with the tax authorities. So, amendments of the Finance Bill, 2017 propose that the authorities are not bound to provide the reasons to any appellate authority for carrying out the most stringent form of investigation against a citizen. Thus, a citizen whose privacy has been invaded by the unbridled power of the tax authority can seek protection under the Constitution by approaching either High Court or Supreme Court. The Appellate authorities who determine the *lis* between the assessee and Assessing Officer have no jurisdiction to look into the reason for such extreme action. These provisions are going to further widen the trust deficit between the tax department and the assessees. These amendments have been brought in to overcome decisions of the Courts. This attitude on the part of the executive hardly creates a conducive atmosphere for compliance. After providing such discretion, the Hon'ble Finance Minister should also come up with a scheme where an independent authority is going to monitor the conduct of the tax authorities who are carrying out the quasi-judicial function. In the absence of any check on the discretion and conduct of the tax authorities, abuse of the same is not an exception but it has become a rule. The Hon'ble Finance Minister should give some time to various professional organisations to find out what "efforts" the tax authorities make to promote policy decisions of the Government like IDS 2016 and PMJKY. I am sure such interaction with the professionals will help the society in becoming a tax compliant society.

This special e-publication is on Finance Bill 2017. In a very short period, eminent professionals have agreed to contribute. I am thankful to them for their support. I thank all the contributors to this issue of the Chamber.

K. GOPAL
Editor

Overview of the Finance Bill 2017
– Something For Every One

CA Jayant Gokhale

This year's budget had many path breaking initiatives. It was also presented in the backdrop of very significant transitions in the economic environment. In the midst of this stormy weather, the Budget presented by Shri Arun Jaitley on 1st February, 2017 shows that the nation is in charge of a confident 'helmsman', with a competent crew to help him steer the national economy to more pleasant climes. The Hon'ble Finance Minister (FM) seems to have charted this course in his mind with clarity, as he himself mentions (Para 8 of his Budget Speech) that *"The Government has continued on the steady path of fiscal consolidation, without compromising on the public investment requirements of the economy."*

This 'steady path' steered by the FM is one of the biggest positives for the economy from a long-term perspective. It is all the more commendable because one must consider the overall economic environment in which the Budget was presented. The economy is still feeling the after-shocks of demonetisation. The stock market, IIP and GDP growth rate had contracted in the preceding months. There was also the political imperative to boost the party's chances in the forthcoming State elections. The election of Trump as POTUS and consequent changes in the Dollar Index and prospects of rough weather for Indian IT Sector (which has been a driver for the Indian economy) coupled with gradually rising oil prices have undoubtedly added to the difficulties.

In the face of these situations, it requires 'courage of conviction' and self-belief in the long-term positives of economic initiatives taken till date, to not succumb to the temptation of short term populism. This, by itself, is a heartening feature of the Budget and the FIIs, stock markets and analysts have taken positive note of this fact. Coupled with this the FM took the pragmatic step of changing the date of the Budget and combining the Railway Budget with the main one doing away with the Railway Budget as a separate document.

Having put the challenges in perspective I would now look at the broad scope of the Direct Tax provisions. Apart from the normal breakdown into Reliefs, Rationalisations, Anti-abuse measures etc., we may look at the Direct tax proposals from a different perspective:-

A. **Changes driven by policy and populism;** which are decided more by the FM and his economic and policy advisors. These represent the more significant changes that are most often driven by the policy priorities of the FM and the Government. Thus, these are usually the more far-reaching and significant changes that one finds in the budget. As analysed later in this article, thankfully, such changes in the present budget are quite positive, though not large in number.

B. There are other changes, often initiated by representations from taxpayers (Chambers of Commerce, Trade Bodies and Professionals) **to remove certain hardships**. These have to be considered since no Government can afford to ignore genuine hardships, faced by the voters. Such changes are characterised by concessions, being granted, rather grudgingly.

C. Changes driven by need to **plug loopholes in the law, prevent revenue leakage and tighten the anti-evasion and anti-abuse mechanisms**. Most often these changes are driven by suggestions, made by Commissioners of Income Tax or initiated by Tax Planning & Legislation (TPL) wing in the Ministry of Finance, arising from their study of tax data, judicial trends etc. Some of these changes also result from representations in national interest by bodies such as ICAI, The Chamber of Tax Consultants, etc.

I make this different type of classification because, on a broad scale, I perceive a different mind-set driving the three types of changes.

I will not enter into the nitty-gritty of analysing the specific direct tax changes proposed; (this has been wonderfully done by my specialist colleagues whose articles follow in this issue). Instead I will look at the broader characteristics of these classes of change.

A) Changes drivens by policy and populism. I would guess that these changes would have a more direct level of involvement and initiative by the FM. The changes falling in this category are marked by a broader vision and policy perspective but which have a certain boldness in departing from convention where required. Notable among these are

1. **Incentives to Housing Sector** which would include the clarity provided in regard to year of taxability of Joint Development agreements (S.45). This was very necessary as it was iniquitous to seek to recover tax when the owner in fact received no liquid funds. This, coupled with the non-taxing of notional income from flats, held as stock-in-trade by builders, would provide some relief to the real- estate

business which has been under pressure for some period. The reduction in the period of holding necessary to qualify as a capital asset (in case of land and building), is also expected to make more 'housing stock' available to those in need of housing; especially in urban areas. The amendments in the provisions of S. 80-IBA, increasing the effective area, which could be made available to the purchasers / erstwhile tenants by changing the reference from built-up area to carpet area, is also widening the eligibility for this relief and thus supporting the housing industry.

Coupled with this, is the step to **include 'housing' within the meaning of 'infrastructure'**. This will increase funding availability at lower cost to the borrowers and simultaneously enable credit growth in banks and housing finance companies. Stagnation of credit growth is also an area of economic concern which is also indirectly addressed through these changes.

Taken together this indicates conscious effort to pursue a policy of promoting revival in housing industry. While the policy move in this regard is worth appreciating, more such boosts to other sectors that would enable 'job-creation' would have been ideal; but then the FM also has to keep an eye on the deficits. Yet, this latter factor can hardly justify the pin-prick of curtailing the deduction available for set-off of interest paid on housing loan to Rs. 2 lakhs (instead of the actual deficit presently allowed) S. 71 r.w.s.23.

2. The decision to grant **relief in rate of tax** applicable to individuals in the slab upto Rs. 5 lakhs also reflects an awareness to grant some relief to the lower income brackets. Similarly, the decision to shift the base year for indexation in Computation (S.55 & S.48) would afford considerable relief to a large category of investors. Similarly, broadening the investment options for 54EC bonds will also enable channellisation of funds to other sectors while simultaneously providing greater options in investment for relief from capital gains tax to investors.

3. The **banking sector** has for quite some time been undergoing a tough time. This sector and economic growth are closely intertwined and therefore the small but much needed relief by way of increase in allowable provision for bad and doubtful debts is welcome. The increase of 1% in S. 36(1) (viia) [From 7.5 to 8.5] would provide some relief to banks, which are already having a huge burden arising from stressed assets. Similarly, the extension of applicability of S.43B (e) would also encourage payment of interest to co-operative banks. Similarly, the clarity provided in regard to revenue recognition in case of NPAs, even post-implementation of ICDS

reflects a clear policy to support the banking sector; and the fact that the problem of your of taxability of interest on NPA is addressed even before it has arisen must be appreciated.

4. Another initiative that none had anticipated is the introduction of the electoral bonds, coupled with the lowering of the limit for cash donation to Rs. 2,000. It is likely that this change too will be circumvented by political parties. However, it is a step in the right direction; and reflects an awareness on the part of FM of the imperative for change. This is tempered by the awareness that change in the present democratic environment cannot be pushed through, but has to be managed in a phased manner.

5. Initiatives for encouraging growth of digital economy. A carrot and stick approach has been adopted in this regard. This is clearly a policy initiative, intended as a follow-up to the demonetisation. Given the bold step taken by the government, the carrots offered in this regard, leave much to be desired. There is indeed a concession given in regard to presumptive tax payable u/s. 44AD by the effective concession by changing the presumptive rate of income computation from 8% to 6% in case of a transactions. However, this would amount to a maximum relief of Rs. 1 lakh for a person who does 80% of his turnover through digital mode. In reality, small traders and business having turnover of much less than Rs. 2 crores would get a relief of not more than Rs. 30,000 in tax. Undoubtedly, it is a positive step, but considering that this is more of a policy initiative, it is felt that a bit more could have been done. As against this limited carrot, the stick in the nature of disallowance of revenue or capital expenditure incurred in cash S. 40A(3) & S. 35 AD along with the penal consequences in S. 269ST & 271DA are far more sweeping in scope.

B. As in every Finance Bill, the Finance Bill, 2017 also contains numerous amendments intended to alleviate hardships. However, the process of granting the relaxations is often hedged by numerous ifs and buts which renders the law complex to understand and implement. This, in turn, fosters litigation and vitiates the atmosphere of trust that desperately needs to be created between the administration and taxpayers.

However, the changes arising through these processes, not being part of the 'big picture' of the FM's policy, implementation is delegated to the 'babus'. It is here that the problem arises. The official concerned, has a limited brief of setting right a particular problem and goes about this task without having the vision to realise that the remedy may often result in a different problem. Such piece-meal changes are seen in numerous areas, particularly because the draftsman does not have the authority or vision to make structural changes and therefore can only tinker around the 'problem' sections. Some examples of this sort of situation are: -

1. **Taxation of Carbon Credits.** The intention is to settle the controversy arising out of various judgments by providing a flat tax of 10%. The Memorandum recognises that courts have held such receipts to be 'capital receipts'. Despite this, no amendment to the definition of income has been made. Thus the issue of whether such receipts are at all taxable continues to be prone to litigation since the fundamental issue remains unaddressed.

2. The applicability of **tax u/s. 115 BBDA – 10% tax on Dividend** – is expanded to cover all resident assessees (except companies, funds, trusts etc). Though this may net the Government some additional tax, it may have an unintended consequence of sinking the Revenue's argument that Dividend income is exempt. This may result in a far greater negative impact on applicability of S.14A and may result in altering the ratio of Bombay H. C. in Godrej Boyce case.

3. The **levy of MAT** in case of companies adopting Ind AS is another complex situation provided in S. 115JB. Sub-Sections 2A, 2B and 2C are added. Numerous large listed companies have already adopted Ind AS in F. Y 2016-17 (as required under the Cos Act 2013). The clarity in this regard was overdue. However; it is worth noting that MAT is fundamentally an alternative methodology and is not truly a tax on income. With different classes of assessees required to transit to Ind AS in a phased manner, the issue of 'ensuring horizontal equity' is going to be complex. The methodology proposed by these newly introduced sections, will call for an elaborate set of adjustments – virtually all of these not being in the books of account. To add to the problem, taxability or adjustment in regard to some of them will be spread over 5 years. Applicability of Ind AS to different assessees is itself staggered over multiple years. The challenges posed in implementation of Ind. AS are already huge and many senior Chartered Accountants are finding it difficult to grapple with this issue. Given this scenario, one needs to take a realistic look at how Departmental Officers, across the country, are updated and equipped to cope with the situation. In this backdrop, it would be fruitful to consider whether this whole effort makes economic sense. Mr. Jayesh Gandhi in his article has dealt with the complex subject. Without getting into the specific issues, one needs to note that MAT credit set-off is now extended to a period of 15 years. So is all this effort really

worth the time, cost, litigation that will surely go into the matter. Over 10 to 15 years; the aggregate tax realisation will equalise because eventually tax is on income – by whichever way computed. At a policy level, the FM must really consider that when the only incremental revenue is the present value of money arising from front ending tax collection; is all this really worth it. Offset it against the damage done to concept of 'Ease of Doing Business' and one may conclude that it is not really worth it. In this draftsman may have done an honest and competent job in providing a detailed solution. But in attending to the detail, he cannot visualise the big picture. This begs the question 'Is anyone looking at the big picture'; or are we destined to be a nation of clerks as Lord Macaulay purportedly said about Indians during the British Raj.

It is therefore my belief that while some tinkering with tax legislation is inevitable in each Budget – such areas need to be evaluated in the context of a larger game plan so that petty changes that are 'not material' for a global economic power, that India aspires to be could well be avoided.

4. Finally, I come to the changes, generally labelled as Anti-abuse, Rationalisation etc. Many of these derive from bitter experiences of the Department and are suggested with a view to block escape routes for tax evaders. These changes are invariably driven by the bureaucracy and therefore very focused on remedying a specific lacuna or loophole in drafting such provisions; the collateral damage, likely to be caused to honest taxpayers is totally lost sight of.

A case in point is the draconian extension of power of search and seizure. The introduction of the concept of ***'reason to suspect'*** in S.132 coupled with the fact that such **reason need not be disclosed** to any authority is legally and ethically flawed. To add insult to injury, this power to refuse disclosure of reasons is introduced retrospectively. Such sweeping powers, given to Revenue Officials who may exercise them with hardly any effective checks and balances, bring to mind the Orwellian police state of 1984. It is an irony that such sweeping powers are sought to be given by a FM who was imprisoned in the dark days of Emergency without informing him of the purported offence he had committed[1]. Surely, the FM is aware that unrestrained discretionary power and its abuse is the fountain-head of corruption. The excellent initiative of demonetisation will be significantly wiped out if revenue laws create new areas of such absolute discretion. One can only hope that these provisions and others that would dent the image of India as a business destination will be deleted before enactment.

In a similar manner, provisions of the newly introduced 94B giving a formula based disallowance of interest is making a departure from ground reality. The provisions of secondary adjustment also prescribe adjustments in the books of account that may vitiate a 'true and fair view'. The only saving grace is that such amendments, as referred to in one of the earlier para's above may apply to a few assessees only and their impact may thus be limited.

Conclusion

Thus as stated in the opening paragraphs, the Budget in its macro view, in areas of policy and where it has widespread impact, shows clarity and focus. In areas meant to address specific problems, the devil is in the detail. In taking an overview of the Budget – I have therefore taken a look at the big picture and only given a sampler of some of the details. The item wise detailed topics have been dealt with by very experienced and competent colleagues. I am sure you will find their views educative and enlightening. From an overall perspective, one can say that the Budget is extremely positive on the policy front, is pragmatic and within the limitations of the economic environment; has provided something good for the economy as a whole, the stock markets, MSME businesses, banking and housing sector and given something for everyone. In fact, as pointed out in the latter part of my article – the FM seems to have taken care that even the media, analysts, critics and writers like myself have got something new to discuss, debate and write- about. So in effect, it is a Budget with something for everyone; and with which we professionals, revenue officials, the PM and the FM himself can be happy about.

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1. See Facebook blog of Arun Jaitley dt 24th June 2014

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Rates of Taxes

CA Usha Kadam

Major thrust of the budget is on agriculture and rural development. The Budget contains a number of tax proposals for providing relief to small taxpayers, measures to promote digital transactions, cashless economy and affordable housing. Reduction of tax rate for lower slab and selective reduction of corporate tax rate for companies having turnover below ` 50 crore will encourage higher compliance at lower level of the pyramid.

A. Rates of income tax in respect of income liable to tax for the Assessment Year 2018-19

1. Tax rate for Individual, HUF, AOP/BOI, Firms etc.

In respect of income of all categories of assessees liable to tax for the Assessment Year 2017-18, the rates of income tax have been specified in Part I of the First Schedule to the Bill. These are the same as those laid down in Part III of the First Schedule to the Finance (No. 2) Act, 2016 as amended by the Taxation Laws (Second Amendment) Act, 2016 for the purposes of computation of "Advance tax", deduction of tax at source from "Salaries" and charging of tax payable in certain cases.

There has been **no change** in the Rate of Taxes in case of Co-operative Societies, Firms and LLP. The tax rate chart for others is as under:

1. For Individual, other than resident individuals mentioned below, HUF, AOP/BOI :

Sr. No.	Net Income Range	Income tax Rate
1	Up to Rs. 2,50,000	Nil
2	Rs. 2,50,001 to Rs. 5,00,000	5%
3	Rs. 5,00,001 to Rs. 10,00,000	20%
4	Above Rs. 10,00,000	30%

For Resident Individuals who is of the age 60 years or more but less then age of 80 years at any time during the year

Sr. No.	Net Income Range	Income tax Rate
1	Up to Rs. 3,00,000	Nil
2	Rs. 3,00,001 to Rs. 5,00,000	5%
3	Rs. 5,00,001 to Rs. 10,00,000	20%
4	Above Rs. 10,00,000	30%

For Resident Individuals who is of the age 80 years or more at any time during the year

Sr. No.	Net Income Range	Income tax Rate
1	Up to Rs. 5,00,000	Nil
2	Rs. 5,00,001 to Rs. 10,00,000	20%
3	Above Rs. 10,00,000	30%

The only change is reduction in lowest slab rate from 10% to 5%. The assessee shall get maximum benefit of ` 12,500 across all levels of income. The next slab is 4 times of 5% which is 20%. This may encourage few assessees to under report their income so that they may fall in 5%.

2. The rates of taxes for Corporate is as under:

Sr No.	Types of assessee		Income tax Rate
1.	Domestic Company		
	i)	Where its total turnover or gross receipts in the previous year 2015-16 does not exceed Rupees Fifty Crores	25%
	ii)	Other than (i) above	30%
2.	Companies other than Domestic Company		
	i)	On the Income consisting of	
		A Royalties received in pursuance of an Agreement entered after 31-3-1961 but before 1-4-1976	50%
		B Fees for technical services received in pursuance of an agreement entered after 29-2-1964 but before 1-4-1976	50%
	ii)	On the balance income	40%

3. Surcharge

Surcharge has been levied/increased as mentioned below:

Co-op. Societies, Firms & Local authority	Individuals, HUFs, AOP, BOI		Co-op. Societies, Firms & Local authority		Domestic Companies		Foreign Companies	
	A.Y. 2017 -18	A.Y. 2018 -19	A.Y. 2017 -18	A.Y. 2018 -19	A.Y. 2017 -18	A.Y. 2018 -19	A.Y. 2017 -18	A.Y. 2018 -19
50 lakh to Rs. 1 crore	NIL	10%	NIL	NIL	NIL	NIL	NIL	NIL
Above Rs. 1 crore and up to Rs. 10 crores	15%	15%	12%	12%	7%	7%	2%	2%
Above Rs. 10 crores	15%	15%	12%	12%	12%	12%	5%	5%

The marginal relief is continued to be granted in appropriate cases where the total income exceeds ` 50 lakh or ` 1 crore or ` 10 crore as the case may be.

4. Surcharge for sections 115BBE, 115JB, 115JC, 115-O, 115QA, 115R, 115TA or 115TD

In case of Section 115BBE surcharge shall be payable at the rate of 25%.

In case of Sec 115JB and 115JC surcharge shall be applicable at the rate of 7% or 12% depending upon the total income. In all other above cases surcharge shall be applicable at the rate of 12%.

5. Education cess

The additional surcharge called Education Cess and Secondary & Higher Education Cess remains unaltered.

6. New Sections 194-IB and 194-IC have been introduced in relation to deduction of tax at source. Also some amendments have been proposed in Sections 194J, 194LA, 194LC, 194LD. The provisions have been discussed in detail in the subsequent chapter.

The rates provided in Part II of the First Schedule which *inter alia* provides the rates of deduction of tax at source for the Non-resident Assessee governed by Sections 115A to 115F, have remained unchanged.

7. Reduction in rebate u/s 87A

Section 87A provides that a resident individual if his total income does not exceed ` 5,00,000 is eligible for rebate up to ` 5,000. The rebate is proposed to be reduced to ` 2,500 and will be available to a resident individual if his total income does not exceed ` 3,50,000.

8. Furnishing of return by exempt entities & revised return – Amendment in Section 139

Section 139(4C) requires certain entities exempt u/s. 10 of the Income-tax Act from the levy of income tax to file the return of income. It is proposed that any person referred to in clause (23AAA), Investor Protection Fund as referred to in clause (23EC) or (23ED), Core Settlement Guarantee Fund as referred to in clause (23EE) and any Board of Authority as referred to in clause (29A) of section shall furnish a return of income.

The revised return can be filed at any time before the expiry of one year from the end of relevant assessment year or before the completion of assessment whichever is earlier. Thus currently revised return for A.Y. 2016-17 can be filed before 31-3-2018 or before the completion of assessment whichever is earlier. The said time limit is proposed to be reduced. As per the proposed amendment revised return can be filed at any time before the end of relevant assessment year or before the completion of assessment whichever is earlier.

9. Payment of fees for delayed filing of return of income

In order to ensure that return is filed within due date it is proposed to insert Section 234F which provides that fee for delay in furnishing of return shall be levied. Section 140A of the Income-tax Act is also proposed to be amended so that the fee for delay in furnishing of return of income shall also be payable along with tax and interest as self assessment tax before filing the return of income.

While processing the return u/s. 143(1) the tax, interest and the fee for delay in furnishing the return if any shall be computed on the basis of total income computed under clause (a) of Section 143(1).

□

The Finance Bill 2017 – Trusts

CA C. N. Vaze

1. Introduction

The Hon'ble Finance Minister presented the Finance Bill 2017 to the Parliament on the 1st of February. I have been entrusted with the task of dealing with the income tax proposals in respect of charitable trusts.

It is interesting to note that right since the year 1961 when the present Income-tax Act came into force, there has been hardly any year in which there was no amendment in the provisions relating to the trusts. In the recent years, the tax department's approach towards charitable trusts has not remained as lenient as it used to be. On the contrary, it is becoming harsher and harsher. This is because globally the Government's perception about NGOs is becoming negative since a lot of malpractices are revealed under the garb of charity.

This year's Finance Bill has proposed the following 3 amendments in the relevant provisions. The same are briefly discussed in the succeeding paragraphs.

2. Amendment to Clause (23C) of Section 10

Clause (23C) enumerates the list of various funds and institutions whose income is exempt fully. It is proposed to expand the list with the insertion of sub-clause (iiiaaaa) pertaining to:

2.1 The Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund in respect of any State or Union Territory as referred to in sub-clause (iiihf) of clause (a) of sub-section (2) of section 80G; or".

Comments

As such, the total income of these two funds also will qualify for exemption. This insertion is effective retrospectively from 1-4-1998 i.e. A.Y. 1998-99.

2.2 After the eleventh proviso, the following proviso shall be inserted w.e.f. 1-4-2018 (i.e. A.Y. 2018-19)

"***Provided*** *also that any amount credited or paid out of income of any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), to any trust or institution registered under section 12AA, being voluntary contribution made with a specific direction that they shall form part of the corpus of the trust or institution, shall not be treated as application of income to the objects for which such fund or trust or institution or university or educational institution or hospital or other medical institution, as the case may be, is established:";*

Comments

It covers the following categories of Trusts,

Sub-clause (iv) Institutions of National or State importance

(v) Approved public religious and charitable trusts

(vi) University or educational institutions not falling in sub-clause (iiiab) or (iiiad) and approved by CBDT

(via) Hospital or other such institutions not calling in sub-clause (iiiac) or (iiiae) and approved by CBDT)

The proposed amendment says that if the above-mentioned trusts grant any donation to the corpus of other institutions registered u/s. 12AA with a specific direction that those voluntary contributions shall form part of the corpus of the recipient trust, then such payments shall not be treated as application of income to the objects of the trust. Thus grant of donation by one trust to another trusts is further restricted.

This is probably to avoid the incongruent situation that the paying trust treats it as its application so as to avail tax benefit and at the same time, receiving trust does not add it to its revenue receipts. Thus, it will have no obligation to spend the prescribed percentage on its objects, out of the said amount.

3. Amendment to section 11

In section 11 of the Income-tax Act, in sub-section (1), the Explanation below clause (d) shall be numbered as Explanation 1 thereof and after Explanation 1 as so numbered, the following Explanation shall be inserted with effect from the 1st day of April, 2018, namely:—

"Explanation 2.—Any amount credited or paid, out of income referred to in clause (a) or clause (b) read with Explanation 1, to any other trust or institution registered under section 12AA, being contribution with a specific direction that they shall form part of the corpus of the trust or institution, shall not be treated as application of income for charitable or religious purposes.".

Comments

If a trust registered u/s. 12AA gives voluntary contribution towards corpus of another trust registered u/s. 12AA, the same shall not be treated as application of income by the paying trust. This is in line with the amendment discussed in respect of clause (23C) of section 10.

It is worth noting that donations made to trusts falling u/s. 10(23C) are not affected by these amendments in view of the fact that the distinction between corpus and other donation has no relevance for such institutions.

4. Amendment to section 12A

4.1 Section 12A: Conditions for applicability of Section 11 & 12 (i.e. exemptions)

After clause (aa), the following clause (ab) shall be inserted with effect from 1-4-2018 (A.Y. 2018-19)

"(ab) the person in receipt of the income has made an application for registration of the trust or Institution, in a case where a trust or an institution has been granted registration under section 12AA or has obtained registration at any time under section 12A (as it stood before its amendment by the Finance (No. 2) Act, 1996), and, subsequently, it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, in the prescribed form and manner, within a period of thirty days from the date of said adoption or modification, to the Principal Commissioner or Commissioner and such trust or institution is registered under section 12AA;

Comments

It means that if the registration is obtained u/s. 12A or 12AA based on the objects of the Trust, and if any modification of the objects is adopted or undertaken by the trust subsequently, then, it will have to obtain a fresh registration u/s. 12AA by making an application in the prescribed form within 30 days from the date of adoption or modification.

Apparently, it has not covered a situation where the trust has adopted or undertaken a modification prior to 31-3-2018. This seems to be an unintended omission. So also, in the drafting the operative word like 'shall apply' seems to be missing. It seems that this amendment has been proposed considering the introduction of Section 115TD vide Finance Act 2016.

4.2 In section 12A, the following clause (ba) shall be inserted w.e.f. 1-4-2018 (A.Y. 2018-19) after

clause (b)

(ii) after clause (b), the following clause shall be inserted, namely:-

"(ba) the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section."

Comments

Thus, filing of return within the time as per sub-section (4A) of section 139 is now made mandatory for availing exemption u/s. 11. In other words failure to file return in time may deprive trust of Trust/Institution of the exemption u/s 11.

5. **Amendment in section 12AA –** which is procedural – is consequential upon the preceding amendments.

6. **In section 13A,** w.e.f. 1-4-2018 (A.Y. 2018-19), the following amendments are proposed.

In section 13A of the Income-tax Act, with effect from the 1st day of April, 2018,—

(I) In the first proviso,—

(i) In clause (b),—

(A) After the words "such voluntary contribution", the words "other than contribution by way of electoral bond" shall be inserted;

(B) The word "and" occurring at the end shall be omitted;

(ii) In clause (c), the word "; and" shall be inserted at the end;

(iii) After clause (c), the following clause shall be inserted, namely:—

'(d) No donation exceeding two thousand rupees is received by such political party otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bond.

Explanation.—For the purposes of this proviso, "electoral bond" means a bond referred to in the Explanation to sub-section (3) of section 31 of the Reserve Bank of India Act, 1934.';

(II) After the second proviso, the following proviso shall be inserted, namely:—

*"**Provided** also that such political party furnishes a return of income for the previous year in accordance with the provisions of sub-section (4B) of section 139 on or before the due date under that section.".*

Comments

Previously, the political parties were required to maintain prescribed record of all contributions individually exceeding Rs. 20,000/-. Henceforth, no donation exceeding Rs. 2,000/- shall be accepted otherwise than through bank or electronic/ digital mode; or through electoral bonds.

A new concept of electoral bonds has been introduced.

Further, henceforth, the political parties will also be required to file the returns within the prescribed time in terms of sub-section (4B) of section 139.

7. Amendment to section 253

Section 253 enumerates the orders appealable to the Hon'ble Tribunal. It already covers the orders passed by the prescribed Authority in terms of sub-clauses (vi) and (via) of sub-section (23C) of section 10 i.e. Educational and medical institutions not covered by earlier sub-clauses (iiiab), (iiiac), (iiiad) or (iiiae).

> *"In section 253 of the Income-tax Act, in sub-section (1), in clause (i), after the words "authority under", the words, brackets and figures "sub-clause (iv) or sub-clause (v) or" shall be inserted".*

Henceforth, even the orders in respect of sub-clauses (iv) and (v) are also made appealable i.e. institutions of national/state importance and public religious and charitable trusts.

Conclusion

The overall approach seems to be logical and consistent with the Government's objective of cashless economy, transparency, financial discipline, etc. No further complication as such has been introduced.

□

Amendments in Chapter – 'Income from house property' and 'Income from other sources'

Dharan V. Gandhi, *Advocate*

Amidst much fanfare the Finance Budget for the FY 2017-18 was presented by the Hon'ble Finance Minister Shri Arun Jaitley on 1st February, 2017. This year's budget was different as compared to the earlier years in following aspects:

a. First time the budget was presented on the first day of February as against last day

b. Merger of Rail Budget with Finance Budget and

c. Classification of expenditure as plan and non-plan done away with.

Apart from the above, the budget also assumed significance in view of many controversial and historic actions taken in the last year starting with the Income Disclosure Scheme, 2016, passage of the Constitutional Amendment Bill paving way for GST and demonetisation. Indian economy suffered a massive jolt after the Hon'ble Prime Minister of this country banned the two highest denomination currency prevalent in the country which constituted 86% of the total cash in the economy. Though the ripples of the said move have subdued, but it can be still strongly felt. Also, with elections round the corner, the Government was expected to come out with a people friendly budget, so that the image of the Government created in the last year would have improved. Expectedly so, the Government has proposed higher spending on the agricultural and rural areas so also on the poor people of this country. Also, the proposed spending on infrastructure has increased substantially. It will be reasonable to say that the budget has been perceived well by many intellectuals.

Before delving into the subject matter of the article, it will be worthwhile to gauge the mood of the Government in bringing out the direct tax amendments. This can be ascertained from our Hon'ble Finance Minister's speech wherein, he stated that "from all these figures we can conclude that we are largely a tax non-compliant society". Number of measures have been taken to deal with the menace of black money. Many amendments have already been made and many amendments are proposed in the current Finance Bill, whereby the Government has tried to plug the leakages in the revenue.

Coming to the subject matter of this article, I shall be dealing with the amendments brought out in Chapter IVC 'Income from house property' and Chapter IVF – 'Income from other sources'. As we all know, Chapter IV deals with the heads of income, which *inter alia* include the above-mentioned heads. Under the said chapters, the mechanism to compute the income arising from the activity of letting out of house property and income arising from sources which are not covered under any other head of income is given respectively.

Amendment in Chapter IVC – 'Income from house property'

There is only one amendment in this chapter but it is very significant. The Government has classified the said amendment under the head 'Measures for Promoting Affordable Housing and Real Estate Sector' but in my view the said amendment should fall under the head 'Additional Resource Mobilisation'. Let me explain how.

To give a brief background, section 23 is a computation provision which provides for mechanism to compute the annual letting value derived from letting out of house property for the purposes of section 22. In case of properties which are actually let during the year, it is higher of the fair rent and the actual rent received or receivable and in case of the other properties, it is the fair rent which the property would fetch had it been let out. Thus, in case of properties which are not let out, the fair rent of the property is subject to tax which in effect is taxing notional rent.

Many Assessing Officers, harping over this concept of taxing notional rent, brought many builders and developers who were holding properties as stock-in-trade under the tax net. The builders and developers who had unsold properties as their stock-in-trade were taxed on notional rent on such properties. The said issue went up to the Hon'ble Delhi High Court in case of *CIT vs. Ansal Housing Finance and Leasing Co. Ltd. (2013) 354 ITR 180 (Del.),* wherein the Court upheld the action of the Department in taxing notional rent on unsold stock of flats. The Court also held that the unsold stock cannot be said to be occupied for the purpose of business. However, in rendering the said judgment, the Court did not consider the judgment of the Full Bench of the same Court in case of CIT vs. Modi Industries (210 ITR 1), wherein the Court held that when a house property is occupied as residence by the employees concerned with the promotion of the business, whether on payment of rent or otherwise, to enable them to discharge their functions efficiently and the letting out of the property is subservient and incidental to the main business of the assessee, such an occupation amounts to an occupation and user of the property by the assessee itself for the purposes of its business, even though no business is actually run in such premises. Thus, when the property is used for the purpose of business and it is subservient and incidental to the main business, the Court held that the property is occupied for the purpose of business even if no business is actually run in such premises, then all the more a better case if the person trades in a property and which is his main business.

Special Leave Petition of the assessee against the judgment in case of Ansal has been admitted by the Hon'ble Supreme Court. In wake of the said judgment, the officers all over the country started taxing notional rent on the unsold stock of flat held as stock-in-trade.

By virtue of clause 12 of the Finance Bill, 2017, the Government has proposed to insert sub-section (5) in section 23 w.e.f. AY 2018-19, wherein they have proposed to exempt the properties held as stock-in-trade from being taxed on notional rent up to one year from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority.

Thus, by virtue of this amendment, the builders and developers or any other persons holding properties as stock-in-trade are given a breathing space of one year from the end of the financial year in which the completion certificate is obtained to either sell the property or to let out. However, if the person fails to do so, then notional rent on the said property is subject to tax u/s. 22 read with section 23(1). Indirectly, the Government has brought the concept of taxing notional income arising from the business of the assessee in contradistinction with the consistent ruling of the Hon'ble Supreme Court, tax can be levied only on real income of the assessee (See 225 ITR 746, 240 ITR 355).

By this amendment, it seems that the Government presupposes the fact that properties held as stock-in-trade are falling within the ambit of section 22. This very issue is sub judice before the Hon'ble Supreme Court in case of Ansal. The assessee in that case has challenged the applicability of section 22 to the properties held as stock-in-trade on the ground that such properties are business assets or are occupied for business purpose and therefore, they fall outside the ambit of section 22. Thus, without addressing the issue whether section 22 would apply to such kind of property, the Government has proposed the amendment to tax notional rent after the expiry of 1 year from the end of the year in which completion certificate is obtained. Therefore, as stated earlier the said amendment should fall in the category of 'Additional resource mobilisation' as the Government has indirectly proposed bringing stock-in-trade u/s. 22. Subsequently, if the Hon'ble Supreme Court affirms the above contention of the assessee, then one can only guess the fate of the proposed amendment.

Now, the Department, relying upon the said amendment, will contend that the amendment is applicable from AY 2018-19 and therefore, in respect of earlier years, notional rent was taxable from the first year itself. Of course, the assessee may also argue that it is only from the AY 2018-19 that the notional rent on stock-in-trade is subject to tax and in prior years, the Department lacked the power to do so.

If we look at the proposed amendment from a different angle, the said amendment compels the person dealing in properties to either dispose of the properties or let it out within one year time and if they fail to do so the Government would tax them on the notional rent of such unsold stock. This, in my view, intervenes with the right of the person in managing the business in the manner in which they want. What if the person is unable to sell the properties or let out the same due to some external factors viz, unviability of the project. The persons despite endeavouring to dispose of the stock, would be liable to tax on notional rent which will add to their cash liquidity woes.

It would not be out of context to refer to the judgment of the Hon'ble Supreme Court in case of *Chennai Properties Ltd. vs. CIT (373 ITR 673),* wherein the Court has held that if letting out of property is the main business of the assessee, then the income derived therefrom is taxable under the head 'Profits and gains from business or profession' and not 'Income from house property'. The said principle has been followed by the same court in case of *Rayala Corporation P. Ltd. vs. ACIT (386 ITR 500).* Now, if the main object of a person includes developing properties and disposing of the same either by way of selling or by letting out the same, the income from such properties shall be taxable under the head business income by virtue of the above given judgments. Then, how does one reconcile the provision of proposed section 23(5) and the judgment of the Hon'ble Supreme Court in case of Chennai Properties. In my view, if the main object of a person includes letting out of properties, then the source falls outside the purview of chapter 'Income from house property' and would fall in the chapter 'Business income' and therefore, provision of section 23(5) would have no application; by taking the above view the provisions of proposed section is not rendered nullity as it would still have application to cases where main object of the assessee does not include letting out of house properties.

Strong representation is required in respect of the proposed amendment so that it does not see the light of the day.

Amendment in Chapter IVF – 'Income from other sources'

There are two amendments in the said chapter. Let us deal with the simpler one first.

Section 57 of the Act provides for the allowable deductions in computing income from other sources, whereas section 58 specifies the amounts which cannot be claimed as a deduction. Section 58, *inter alia*, contains disallowance of the nature referred to in section 40A(2) i.e. disallowance of payment made to relatives which is excessive or unreasonable, 40A(3) i.e. disallowance of cash payment exceeding certain limits, 40(a)(iia) i.e. payment of wealth-tax, disallowance of salaries and interest payable outside India on which tax has not been paid or deducted at source.

There was no disallowance of payments made to residents on which tax was not deducted at source similar to one contained in section 40(a)(ia). Therefore, by virtue of clause 30 of the Finance Bill, 2017 it is proposed to introduce disallowance of the nature referred to in section 40(a)(ia) under section 58(1A), with effect from AY 2018-19. The explanation provided in this behalf is to improve the compliance of TDS provisions.

Section 40(a)(ia) provides for disallowance of 30% of any sum payable to a resident on which tax was deductible at source under Chapter XVII-B and where such tax was not deducted or after deduction was not paid before the due date of filing return of income u/s. 139(1). Proviso to the said sub-clause allows the deduction of the said 30% of the amount in the year in which such tax is paid, whereas second proviso, specifies that if the recipient of the said amount has paid tax on the same and the assessee complies with the conditions specified in proviso to section 201(1), then it shall be deemed that the assessee has deducted and paid tax on such sum in the year in which return of income is furnished by the recipient. The above provision shall now apply *mutatis mutandis* while computing income under the head 'Income from other sources'.

The second amendment deals with the provision of sections 56(2)(vii) and 56(2)(viia) which are fondly referred to as tax on gifts.

To give a background of the above-mentioned sections, section 56(2)(vii) provided that where an individual or a HUF receives the following in any previous year, from any person or persons, it shall be taxable under the head Income from other sources:

Type of property	Consideration	Amount chargeable to tax
Sum of money	Without consideration, the aggregate value of which exceeds ` 50,000	Whole of the aggregate value of such sum shall be chargeable to tax
Immovable property	Without consideration, whose Stamp duty value exceeds ` 50,000.	Whole of the stamp duty value
Immovable property	Consideration which is less than the Stamp Duty Value of the property by an amount exceeding ` 50,000	The Stamp Duty Value of such property exceeding such consideration
Property other than immovable Property	Without consideration, whose aggregate fair market value exceeds ` 50,000	Whole of the aggregate fair market value
Property other than immovable property	Consideration which is less than the aggregate fair market value of the property by an amount exceeding ` 50,000	The aggregate fair market value of such property exceeding such consideration

Further, there are certain safeguards in so far as immovable property is concerned viz. if the assessee disputes the stamp duty value of the property then he can ask the AO to refer the valuation of the property to DVO and accordingly the provision of section 50C in this respect would apply.

Also, there were certain exceptions to the above categories of income viz. receipt from a relative, or on the occasion of marriage or under a will or by way of inheritance etc. as given in second proviso to section 56(2)(vii). The Explanation to section 56(2)(vii) defined certain terms, which *inter alia,* included definition of the term property to mean only 9 categories of capital assets of the assessee viz., immovable property, shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures, any work of art or bullion. The explanation also contained definition of the term relative.

Section 56(2)(viia), which was inserted w.e.f. 1-6-2010, was applicable to firms or companies in which public are not substantially interested. This section triggers when such persons receives shares of the companies in which public are not substantially interested either without consideration, the aggregate value of which exceeded ` 50,000/- or for a consideration which is less than the aggregate fair market value by an amount exceeding ` 50,000/- and in such scenarios, the difference between the actual consideration and the fair market value was taxed as the income. There were certain exceptions to the said provision.

In both the above cases, the fair market value was to be computed in accordance with Rule 11U and 11UA of the Income-tax Rules, 1962.

The above provisions were inserted as an anti-abuse measure to curb bogus capital-building and money-laundering activities (see Circular No. 5 dated 15-7-2005 and Circular No. 5 dated 3-6-2010).The provisions of section 56(2)(vii) were applicable only to individuals and HUF's and provision of 56(2)(viia) were applicable only to firm and company in which public are not substantially interested. Therefore, to cover all other categories of persons, certain amendments are proposed in the Finance Bill, 2017.

Clause 29 of the Bill, proposes to restrict the application of provision of section 56(2)(vii) and 56(2)(viia) to the receipts taking place before 1-4-2017 and it is proposed to insert a new clause (x) in section 56(2) to tax receipts taking place on or after 1-4-2017 by any person from any persons of the items mentioned in table given above as the income of the recipient.

Section 56(2)(x) is verbatim reproduction of section 56(2)(vii). Thus, all the provisions relating to referring the valuation to DVO in case of immovable property and in relation to the relevant date to be taken for ascertaining the stamp duty value in case where the date of registration and date of agreement is different have been retained in the new section also. Even the definition of the terms including that of 'relative' and 'property' has been retained in the proposed clause also. Thus, even the new section shall apply only to the assets which are capital assets for the recipient.

In so far as exceptions are concerned, since all other categories of persons are now proposed to be included, consequently, number of exceptions are also increased apart from keeping the earlier exceptions there in section 56(2)(vii). Now, the exception to the said clause also includes,

a. Receipt by a trust or institution registered u/s. 12AA,

b. By any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10; or

c. By way of transaction not regarded as transfer under clause (i) – distribution of capital asset on total or partial partition of HUF or clause (vi) – transfer of asset in a scheme of amalgamation or clause (via) – transfer of capital asset being shares of Indian company on amalgamation of two foreign companies or clause (viaa) - transfer of asset in a scheme of amalgamation of a banking company with a banking institution or clause (vib) – transfer of asset in a scheme of demerger or clause (vic) – transfer of capital asset being shares of Indian company on demerger of a foreign company or clause (vica) – transfer of capital asset in a scheme of business reorganisation of a co-operative bank or clause (vicb) – transfer of shares by shareholder of predecessor co-operative bank in consideration of shares of successive co-operative bank or clause (vid) – any transfer or issue of shares by a resulting company to the shareholders of the demerged company in a scheme of demerger or clause (vii) transfer of shares by shareholder of amalgamating company in consideration of shares of amalgamated company, of section 47.

Corresponding amendment has been proposed in section 49(4), to allow the fair market value or the stamp duty value of the property suffering tax u/s. 56(2)(x) as the cost of acquisition while calculating capital gains on transfer of the same in the hands of the recipient.

At this juncture, I'm reminded of the article of Senior Advocate Shri S. N. Inamdar titled 'Is the Tax Department ignoring the Constitution of India?' published in the CTC journal in June 2016 issue wherein the author had raised grave concern that the Government was slowly transgressing into the no-income zone by bringing provisions to tax capital receipts which in no sense could have been brought to tax. The author christened such acts of the Government as 'tax terrorism' and suggested challenging the authority. In the said article, one of the issues highlighted by the author was taxability u/s. 56(2)(vii)/(viia) and (viib) and it was his view that 'these sections can be held to be constitutionally valid, if and only if, they are applied where there is proof or evidence of the transaction not being genuine or the consideration received if any is not fully disclosed'.

The learned Senior Advocate has expressed his view on the validity of the provisions of section 56(2)(vii) and others which are equally applicable to the proposed amendment and therefore, I need not venture into that arena. However, by virtue of the proposed expansion, there are many genuine transactions that may get trapped. Some of those transactions which have come to my mind are dealt with in this article.

Receipt of property by the partnership firm from the partner for inadequate consideration would be taxable in the hands of the firm. Consideration in this case would be the amount recognised in the capital account of the partner which is also in accordance with section 45(3). Similar will be the fate where sum of money or capital asset is received by an association of person or body of individual from its members. Receipt of property by a company on conversion of a partnership firm or a proprietary concern into a company for inadequate consideration would be taxable in the hands of the company. Similarly, receipt of property by an LLP from the company or a firm on its conversion for inadequate consideration would get exposed to the provision contained in the proposed amendment.

In case of revocable transfer of property, whether the recipient of the property be subject to tax u/s. 56(2)(x) especially in view of the fact that the income arising therefrom, would be taxable in the hands of transferor and not the transferee by virtue of section 61? One has to also explore as to whether receipt of property under irrevocable transfer would be taxable in the hands of recipient? In so far as charitable and religious trusts are concerned, a specific exemption is provided. But, whether receipt of property or sum of money by way of donation to a private trust would come within the purview of section 56(2)(x)? In this regards, the Hon'ble Delhi Tribunal in case of *Mridu Hari Dalmia Parivaar Trust (158 ITD 521)* has held that receipt of money from a trustee by a private trust cannot be taxed in the hands of the private trust u/s. 56(2)(vii) as the same would apply only to an individual whereas private trust was an AOP. The above judgment shall now lose its relevance in view of the proposed amendment whereby the provisions are made applicable to all type of persons. Of course when all the beneficiaries of the private trust are individuals then the income can be assessed in the same capacity as the individuals and when the receipt is from a relative then such beneficiaries can claim exemption from the application of the said provision.

Whether receipt of shares on conversion of bond where the market value of shares received is much higher than the value of bonds be subject to the provision of proposed section 56(2)(x)? Also, the ongoing controversy of whether, receipt of shares on issue of the same be subject matter of the provisions of section 56(2)(x)*? [See 148 ITD 260 (Mum) Sudhir Menon HUF vs. ACIT]*

The plain reading of the proposed section suggest taxability in the hands of the recipient wherever any specified property is received without consideration or for inadequate consideration. However, the above issues are not something which are easy for one to be certain about. One will have to wait for law to evolve.

On the contrary can one argue that since receipt by charitable trust registered u/s. 12AA or institutions referred to in sub-clauses (iv) or (v) or (vi) or (via) of clause (23C) of section 10 is outside the ambit of section 56(2)(x) in view of a specific explanation therefore, the donations received by the trusts are not *per se* taxable without there being any requirement of application of such income for the object of the trust? This argument may seem fancy on first reading but may not survive. Section 2(24)(iia) specifically includes any donation received by the above mentioned organisations as income of the organisations. Therefore, even prior to the proposed amendment, the said donations were taxable. Accordingly, one may argue that the proposed proviso to section 56(2)(x) will have the effect of excluding the donations of the organisations only from the purview of section 56(2)(x), however, the same shall still be taxable unless the same is applied for the object of the trust.

In its overzealousness to combat the larger issue of black money, Government has proposed number of amendments to tax notional income and capital receipts, thereby doing away with the onus to prove actual receipt of the same. As a result, even certain genuine transaction are brought under scrutiny and there are no adequate safeguards to protect the same. This again leads to harassment of the honest taxpayers due to unscrupulousness of the dishonest ones. In such situation we can only hope that the Department deals with maturity and good sense. Amen!

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Income from Business & Profession and Presumptive Taxation

CA Sanjeev Lalan & CA Amit Sawant

In the Finance Bill, 2017 presented before the parliament on 1st February, 2017 following proposals are put-up in respect of income from business and profession and same shall take effect from 1st April, 2018, unless otherwise stated.

1. Clauses 13 & 16: Disallowance of Cash Payments under Section 35AD & Restrictions on Claim of Depreciation of Disallowed Capital Expenditure

1.1 Presently under section 35AD investment linked deduction is available in respect of capital expenditure laid out for certain specified businesses. An amendment is proposed to curb the incurring of any expenditure in cash on such expenditure which is eligible for deduction under section 35AD and accordingly an expenditure of above Rs. 10,000/- in aggregate made to a person in a day shall not qualify for deduction under the provisions of the said section.

1.2 Under the existing provisions of the Act revenue expenditure incurred in cash exceeding Rs. 20,000 is disallowed under section 40(A)(3) except in specific circumstances referred in Rule 6DD of Income Tax Rules, 1962. There is no clarification on disallowance of capital expenditure incurred in Cash under section 35AD of the Act.

1.3 In order to discourage cash transactions even for capital expenditure it is proposed to amend clause (f) of Section 35AD(8) of Act whereby any capital expenditure in respect of which aggregate payment made to a person in a day otherwise then by account payee cheque, draft or ECS through bank account exceeding Rs. 10,000/- , same shall be disallowed.

1.4 Furthermore, as per the provisions of section 35AD(7B) if any asset, in respect of which deduction has been allowed earlier, is put to use for the purpose other than the specified business, then the expenditure allowed as reduced by depreciation calculated in terms of section 32, shall be added back to the income of the assessee in the year in which the asset is so used for purpose other than specified business. There was no clarity as to what would be the actual cost of such asset for the purpose of section 43. Accordingly, a proviso is being sought to be inserted to Explanation 13 in the section 43 in lines with the provisions of section 35AD(7B) which will provide that the actual cost of such asset shall be the actual cost to the assessee, as reduced by depreciation that would have been allowable if the asset had been used for such purpose (i.e for other than the specified business) since the date of its acquisition. The Kolkata bench of ITAT has in *Bhagwati Sponge (P) Ltd. vs. DCIT, Circle 1, Asansol [(2016) 72 taxmann.com 40]* held that depreciation would be allowable on actual cost of asset before reducing subsidy received from State under incentive scheme.

2. Clause 14 – Increase in limit for deduction in respect of provision for bad and doubtful debts

2.1 Presently under section 36(1)(viia) as per clause (a) deduction of 7.5% of the total income is available to a scheduled bank incorporated in India or a non-scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank and an amount not exceeding 10% of the aggregate average advances made by the rural branches of such banks.

2.2 It is stated that in order to strengthen the financial position of the specified entities engaged in banking & financial sectors as specified in the sub-clause (a) of section 36(1)(viia), it is proposed to enhance the present limit for deduction in respect of provision for bad & doubtful debts from 7.5% to 8.5% of the amount of the total income (computed before making any deduction under that clause and Chapter VIA).

3. Clause 15 – Disallowance of cash payment under section 40(A)(3)

3.1 Under present provisions section 40A(3) of the Act, any payment for expenditure made to single person in a day otherwise than by an account payee cheque drawn on a bank or account payee bank draft exceeding in aggregate Rs. 20,000 in a day is disallowed. Further, exception in respect of the same are also provided for in rule 6DD.

3.2 Similar provisions are contained in section 40A(3A) for payments incurred in any previous year but are paid in subsequent years.

3.3 Further, as per section 40A(4) there is restriction on any person to take a plea, in any suit or other proceedings, that payment otherwise required to be made in cash as per any law or contract is not so made, if the payee has made the payment in compliance of modes prescribed under section 40A(3).

3.4 In all the said three provisions the scope is sought to be widened by including payment by use of electronic clearing system through a bank account. Further, the limit of Rs. 20,000/- prescribed under sections 40A(3) and (3A) is sought to be reduced to Rs. 10,000/-.

3.5 It may be noted that payments through “electronic clearing system through a bank account” are through a process accepted in banking system whereby mandate for debit or credit is given by the payer or payee after following necessary steps that are prescribed by banks in this regards. This would strictly not include payments made through digital wallets till the same are also included within the exceptions provided in rule 6DD.

4. Clauses 17 & 18 – Extension of scope of Section 43D to co-operative Banks and Disallowance under Section 43B

4.1 Presently under section 43D certain scheduled banks, public financial institutions, State financial corporations, State industrial investment corporations and certain public companies like housing finance companies have to follow prudential norms laid down by the Reserve Bank of India for recognition of interest income. Accordingly, no interest is recognised on certain loans and advances that are considered to be Non-Performing Assets. It is further provided that such interest shall be charged to tax in the year in which the said interest is credited to the profit and loss account or is actually received.

4.2 The benefit of the above provision was not available to co-operative banks. To provide level playing field to such banks also, it is proposed that Interest income will be taxable on actual receipt instead of accrual basis in respect of NPA accounts of all non-scheduled co-operative banks which in result be treated at par with scheduled banks. Primary agricultural credit society, primary co-operative agricultural and rural banks are not included for the above purpose.

4.3 Consequentially, in case of borrowers of such co-operative banks, it is proposed that any sum payable by the assessee as interest on any loan or advances taken from such banks shall be allowed as deduction when it is actually paid or during the relevant previous year if it is paid before the due date of furnishing the return of income of the relevant previous year under section 43B(e).

5. Clause 19 - Increasing the threshold Limit for Maintenance of Books of Account in case of Individuals and HUF

5.1 As per the current provisions of section 44AA(2), every person carrying on business or profession are required to maintain such books of account and documents in the previous year to enable the Assessing Officer to compute his total income in accordance with the provisions of Act, if his:

a. Income from business or profession exceeds Rs. 1,20,000, or

b. Total sales, turnover or gross receipts from business or profession exceeds Rs. 10,00,000.

5.2 In order to reduce the compliance burden, it is proposed to amend the provisions of section 44AA to increase the monetary limits for maintaining books of account only in case of individuals and HUF carrying on business or profession as under:

a. Income from business or profession exceeds Rs. 2,50,000, or

b. Total sales, turnover or gross receipts from business or profession exceeds Rs. 25,00,000.

5.3 It may be noted that the above amendment is applicable only in the following cases:

i. If the assessee is individual or Hindu Undivided Family and

ii. The assessee should not be engaged in legal, medical, engineering or architectural profession or profession of accountancy or technical consultancy or interior decorator or profession of authorised representative or the profession of film artist (actor, cameraman, director, art director, dance director, editor, singer, lyricist, story writer, screen play writer, dialogue writer and dress designer).

6. Clause 20 – Exclusion of certain specified persons from requirement of Audit of Accounts under Section 44AB

6.1 The threshold limit of total turnover/ gross receipts for applicability of presumptive taxation in case of an eligible business carried by an eligible person under section 44AD was increased to Rs. 2 crores by the Finance Act, 2016.

6.2 While in the section 44AD(5) there is a provision exempting an eligible assessee from maintaining books of account and getting them audited, no such amendment was made in section 44AB which prescribes tax audit in various situations. *Vide* press release dated 20th June, 2016, it was clarified that an eligible opting for the scheme of section 44AD shall not be required to get the accounts audited.

6.3 In order to reduce the compliance burden of the small business, in the current Finance Bill, it is proposed to insert a proviso to section 44AB that an assessee opting for presumptive taxation under section 44AD(1) shall not be required to get accounts audited as per provision of section 44AB.

6.4 The above amendment will take effect from AY 2017-2018 and all the subsequent years ahead.

6.5 While the provisions are introduced to reduce the compliance burden on small assessees no corresponding amendments are proposed in TDS compliance for such assessees. The said issue of compliance with TDS provision was discussed after the amendment proposed in Finance Bill, 2015 also. The problem arises because in all the provisions relating to liability to deduct TDS, except section 194C, the reference is to clauses (a) and (b) of section 44AB.

7. Clause 21 – Concessions for calculating presumptive Income and promoting Digital Payments

7.1 Presently, any eligible assessee carrying on eligible business having total turnover or gross receipts of not more than Rs. 2 crores can offer 8% of such turnover or gross receipts or higher amount as their income without requirement of maintaining books of account. The provisions for computing deemed income are contained in section 44AD.

7.2 In order to promote digital transactions and to encourage small unorganized business to accept digital payments, it is proposed to reduce the existing rate for calculating deemed income u/s. 44AD from 8% to 6% in respect of the receipts from such sales or gross receipts through account payee cheques or account payee bank drafts or use of electronic clearing system (ECS) through a bank account during the year or before the due date specified in section 139(1). Accordingly, insertion of a proviso to section 44AD(1) is bring proposed.

7.3 It may be noted that proceeds of sales shall have to be realised by an assessee in respect of credit sales before due date of filing the return of income in the modes prescribed. Thus, if the proceeds are realised after the due date prescribed under section 139(1), then possibly the said concessional treatment may not be available.

7.4 Also, as stated earlier, payments/receipts through "electronic clearing system through a bank account" are through a process accepted in banking system whereby mandate for debit or credit is given by the payer or payee after following necessary steps that are prescribed by banks in this regards. This would strictly not include payments received through digital wallets or other modes unless same are also included in the purview of the said proviso and collections from such modes shall not be eligible to 6% concessional rate for deeming income. Further no similar benefits has been extended to presumptive income taxed in the hands of professionals u/s 44ADA.

8. Clause 32 – Carry forward and set-off of loss in case of certain companies being start-ups

8.1 Presently, if there is a change in shareholding of a private limited company of over 51%, then losses of previous years cannot be carried forward and set-off as per the provisions of section 79.

However, losses are allowed to be carried forward and set-off only if 51% voting power is continued to be held by the existing shareholders post such change.

8.2 Now it is proposed to relax the said condition in respect "eligible start-up" as defined under section 80-IAC of the Act which fulfil prescribed conditions and hold certificate of eligible business issued by Inter-Ministerial Board of Certification. Accordingly section 79 is proposed to be divided into two clauses (a) and (b). Clause (a) shall continue to govern the entities as hitherto and clause (b) shall govern such start-ups.

8.3 A start-up shall be eligible for set-off of losses, if all the shareholders holding voting power on the last day of year or years in which loss was incurred:-

I. Continue to hold those shares on the last day of such previous year; and

II. Such loss has been incurred during the period of seven years beginning from the year in which such company is incorporated.

9. Clause 73 & 74 – Rationalisation of Section 211 and Section 234C relating to payment of Advance Tax

9.1 Following are the eligible assessees where advance tax will now have to be paid in one instalment on 15th March:

I. Assessee's carrying on business and filing return under presumptive taxation under section 44AD (Existing provision).

II. Professionals filing return under presumptive taxation u/s. 44ADA (Proposed Amendment).

9.2 Interest under section 234C is leviable if shortfall is made in payment of advance tax where assessee is filing return under presumptive taxation u/s. 44AD (Existing provision) and 44ADA (Proposed Amendment).

9.3 No interest under section 234C is proposed to be levied on short payment of advance tax due to underestimation of income on account of dividend income taxable under section 115BBDA.

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Capital Gains and Joint Development Agreement

Rahul Hakani, *Advocate*

SPECIAL/RELAXED PROVISIONS FOR COMPUTATION OF CAPITAL GAINS IN CASE OF JOINT DEVELOPMENT AGREEMENT

Existing provision

Under the existing provisions of the section 45, the capital gains is chargeable in the year in which transfer takes place except in certain cases as provided in the said section.

Further, the existing provisions contained in sub-section (1) of section 49 provides that where the capital asset became the property of the assessee under certain situations, the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be.

Proposed amendment

Clause 22 of the Bill seeks to amend section 45 of the Income-tax Act relating to Capital gains.

The Finance Bill, 2017 proposes to insert a new sub-section (5A) in the said section so as to provide that where the capital gains arises to an assessee being an individual or Hindu undivided family, from the transfer of a capital asset, being land or building or both, under a specified agreement, the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority.

It is further proposed to provide that the stamp duty value of assessee share, being land or building or both, in the project on the date of issuing of said certificate as increased by consideration received in cash, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

It is also proposed to provide by way of a proviso that the provisions of this sub-section shall not apply where the assessee transfers his share in the project to any other person on or before the date of issue of said certificate of completion and the capital gains shall be deemed to be the income of the previous year in which such transfer took place and the provisions of the Act, other than the provisions of this sub-section, shall apply for the determination of the full value of consideration received or accruing as a result of such transfer.

It is also proposed to define the expressions "competent authority", "specified agreement" and "stamp duty value" as under:

(i) “Competent authority” means the authority empowered to approve the building plan by or under any law for the time being in force;

(ii) “Specified agreement” means a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash;

(iii) “Stamp duty value” means the value adopted or assessed or assessable by any authority of Government for the purpose of payment of stamp duty in respect of an immovable property being land or building or both.’.

Consequential amendment

Further clause 25 of the Bill seeks to amend section 49 of the Income-tax Act relating to cost with reference to certain modes of acquisition. It is proposed to insert a new sub-section (7) in the said section so as to provide that the cost of acquisition of the share in the project, in the form of land or building or both, as referred to in sub-section (5A) of section 45, not being the capital asset referred to in the proviso of the said sub-section, shall be the amount which is deemed as full value of consideration in that sub-section.

Reason for the amendment

Under the existing provisions of section 45, capital gain is chargeable to tax in the year in which transfer takes place except in certain cases. The definition of 'transfer', *inter alia*, includes any arrangement or transaction where any rights are handed over in execution of part performance of contract, even though the legal title has not been transferred. In such a scenario, execution of Joint Development Agreement (JDA) between the owner of immovable property and the developer triggers the capital gains tax liability in the hands of the owner in the year in which the possession of immovable property is handed over to the developer for development of a project. With a view to minimise the genuine hardship which the owner of land may face in paying capital gains tax in the year of transfer, the Finance Minister has proposed to insert section 45(5A) to provide that in case of an assessee being individual or Hindu undivided family, who enters into a specified agreement for development of a project, the capital gains shall be chargeable to income-tax as income of the year in which the certificate of completion for the whole or part of the project is issued by the Municipal Corporation or competent authority.

The taxation in case of Joint Development Agreement was an area of litigation and big dispute. The amendment aims in putting a curtain on such uncertainty and reduce the litigation.

Analysis of the proposed amendment

Most often owner of a vacant land or an old and dilapidated building requiring redevelopment does not possess the expertise or the finances to construct a property or redevelop the property himself. Hence, throughout India Joint Development Agreements/Development Agreement (JDA) are entered into between owner of a land and developers whereby the owner of the land contributes his land and developer agrees to construct at his own cost and is entitled to sell the constructed area. Typically, a developer pays consideration to the owner partly in monetary terms and partly by way of constructed area. The monetary consideration is discharged by paying certain percentage at the time of execution of the JDA and balance consideration upon completion of certain events/conditions.

Section 2(47) of the Income-tax Act defines transfer and section 2(47)(v) provides that "transfer", in relation to a capital asset includes any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882). Thus existence of a formal conveyance deed was not the prerequisite for determining whether there was a transfer or not. Though it is a settled principle of law that notional income could not be taxed but in case of capital gains, section 45 which is the charging section and section 48 which is the computation section, makes it absolutely clear that rigour of tax in case of capital gain would come into play on the transfer of capital asset and total consideration which was arising on such transfer, had to be taxed. Section 48 clearly talks about full consideration received or accruing as a result of transfer.

Thus, on a co-joint reading of section 2(47), section 45 and section 48, the owner of the land could be faced with a situation where it would have to pay capital gain tax on the value of constructed area in the year of entering into JDA though the constructed area is not received by the owner. Hence, determination of year of transfer on reading of the JDA became pertinent and also a complex exercise and raised following possibilities :

– Whether it would be chargeable to tax when agreement has been entered into?

– Whether it would be chargeable to tax when possession of land has been given to the builder for some survey work, etc.?

– Whether it would be chargeable to tax when possession of land has been given to the builder for starting the development work?

– Whether it would be chargeable to tax when various permissions have been received from authorities, which are necessary for the contract to come into operation?

– Whether it would be chargeable to tax when exclusive possession has been given to the transferee, i.e., when transferee gets right of possession to the exclusion of anybody else?

– Whether it would be chargeable to tax when whole consideration has been received by the assessee?

– Whether it would be chargeable to tax when the final conveyance deed has been registered?

Further, the capital gains are treated as exempt u/ss. 54/54F against investment in constructed area to be received. However, several issues arose with regards to compliance of conditions of those sections in terms of completion of constructed area or number of houses eligible for exemption in the constructed area.

The taxation authorities generally rely upon on the judgment of the Bombay High Court in the case of *Chaturbhuj Dwarkadas Kapadia vs. CIT [2003] 129 Taxman 497* for the proposition that a taxable event emanates from the execution of a joint development agreement and it will be taxed in the year of execution of the said agreement. However, said decision has been considered subsequently in *CIT vs. Geetadevi Pasari [2009] 17 DTR 280 (Bom.), C.S. Atwal vs. CIT [2015] 378 ITR 244 (P&H), ACIT vs. Jawaharlal Agicha 2016] 161 ITD 429 (Mumbai - Trib.), Fibars Infratech (P.) Ltd. vs. ITO [IT Appeal No. 477 of 2013, dated 3-1-2014] (Hyd.–Trib.)* etc for the proposition that it is only when possession is handed-over and all conditions of section 53A of Transfer of Property Act are satisfied that there will be a transfer. However, litigation on the point of transfer seemed unending. However, the present amendment will bring to rest the issue of year of transfer and consequent charge of capital gains.

The amendment as per the memorandum explaining the Finance Bill is made with a view to minimise the genuine hardship which the owner of land may face in paying capital gains tax in the year of transfer. However, it is felt that the said purpose won't be achieved for following reasons :

– Under a joint development agreement, the owner essentially saves the cost of construction. It is this cost of construction which is the full value of consideration given by the developer over and above the monetary consideration. In *Prabhandam Prakash vs. ITO [2008] 22 SOT 58 (Hyderabad), Essae Teraoka Ltd. vs. DCIT [2016] 157 ITD 728 (Bengaluru - Trib.)* and *CIT vs. Khivraj Motors (2016) 380 ITR 215 (Karn.)* both the assessee as well the revenue have adopted cost of construction as full value of consideration u/s. 48. However the proposed section 45(5A) takes stamp valuation/market value of constructed area as full value of construction. Thus, the capital gains liability will be manifold.

– The huge capital gains liability may in fact usurp the entire monetary consideration and the owner may face grave difficulty in paying the capital gains tax.

– Both sections 54 and 54F permit investment in one residential house only for being eligible for exemption. However the constructed area received by the owner may be more than one residential flats. With a huge capital gains liability on account of market value being full value of consideration and restriction of one house u/ss. 54/54F the hardships of owner of land may continue to remain the same.

There are certain anomalies which need to be clarified as under:

– Section 45(5A) is applicable to transfer of "land or building or both". Hence, issues will arise as to whether rights in land in building such as development rights transferred would be covered by S. 45(5A). Further in many cases, tenant is also part of JDA wherein he receives constructed area from developer for surrendering the tenancy rights. Whether S. 45(5A) would then apply?

– The proviso speaks "transfer his share". Whether proviso contemplated transfer his entire share or would even include transfer of proportionate transfer?

Effective date

The amendments in clauses 22 and 25 will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-2019 and subsequent years.

INCENTIVES FOR PROMOTING INVESTMENT IN IMMOVABLE PROPERTY – AMENDMENT TO SECTION 2(42A)

Existing provision

The existing provisions contained in clause (42A) of the said section defines the expression "short-term capital asset" to be a capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its transfer. Further Explanation 1 of the said clause provides for determining the period for which the capital asset is held by the assessee.

Proposed amendment

Clause 3 of the Bill seeks to amend section 2 of the Income-tax Act relating to definitions. It is proposed to amend the third proviso to the said clause so as to provide that in the case of an immovable property being land or building or both, the aforesaid period of holding shall be less than twenty-four months for it to be treated as short-term capital asset.

Reason

With a view to promote the real-estate sector and to make it more attractive for investment, it is proposed to amend section 2(42A) of the Act so as to reduce the period of holding from the existing 36 months to 24 months in case of immovable property, being land or building or both, to qualify as long-term capital asset.

Analysis

The amended section 2(42A) is applicable to land or building or both. Hence, amended section 2(42A) will not apply where capital asset constitutes right in land or building. Hence it will not be applicable to tenancy rights as held in *Atul G. Puranik vs. ITO (2011) 132 ITD 499 (Mum.), Kancast Pvt. Ltd. vs. ITO (2015) SOT 110 (Pune) (Trib.)* and *DCIT vs. Tejinder Singh {2012} 16 ITR (Trib.) 45 .(Kol).* It will not be applicable to booking rights. [*ITO vs. Yasin Moosa Godil (2012) 72 DTR 167 (Ahd.) (Trib).*

Effective date

This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

SHIFTING BASE YEAR FROM 1981 TO 2001 FOR COMPUTATION OF CAPITAL GAINS

Existing provision

Under the existing provisions of the said section, the cost of long-term capital asset acquired before the 1st day of April, 1981 is taken to be the cost of acquisition to the assessee or the fair market value of the asset on that date, at the option of the assessee. The cost of improvement is also taken into account after the assessee has acquired the asset on or after 1st April, 1981.

Proposed amendment

Clause 28 of the Bill seeks to amend section 55 of the Income-tax Act relating to meaning of "adjusted", "cost of improvement" and "cost of acquisition". It is proposed to amend the said section so as to advance the aforesaid cut-off date to 1st day of April, 2001. Where the long-term capital asset has been acquired before the 1st day of April, 2001, then, the cost of acquisition will be taken to be the value of the asset as on the 1st day of April, 2001. Similarly, in such cases the cost of improvement will be taken to be the cost of improvement after this date.

Consequential amendment

Further, under the existing provisions of the section 48, "indexed cost of acquisition" is defined to be an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on the 1st day of April, 1981, whichever is later. Clause 24 of the bill proposes to make consequential amendments to the said section so as to replace the reference of 1st day of April, 1981 with the 1st day of April, 2001.

Effective date

These amendments in clause 28 and clause 24 will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-2019 and subsequent years.

CONVERSION OF PREFERENCE SHARES INTO EQUITY SHARES – TAX NEUTRAL TRANSFER

Existing provisions

Under the existing provisions of the Act, conversion of security from one form to another is regarded as transfer for the purpose of levy of capital gains tax. However, tax neutrality to the conversion of bond or debenture of a company to share or debenture of that company is provided under sections 47(x) and (xa) of the Act respectively. No similar tax neutrality to the conversion of preference share of a company into its equity share is provided.

Proposed amendment

Clause 23 of the Bill seeks to amend section 47 of the Income-tax Act by inserting new clause (xb) so as to provide that the conversion of preference share of a company into its equity share shall not be regarded as transfer.

Reason

In order to provide tax neutrality to the conversion of preference share of a company into equity share of that company.

Consequential amendments

Clause 25 of the Bill seeks to amend section 49 by inserting new sub-section (2AE) so as to provide that where the capital asset, being equity share of a company, became the property of the assessee in consideration of a transfer referred to in clause (xb) of section 47, the cost of acquisition of the asset shall be deemed to be that part of the cost of the preference share in relation to which such asset is acquired by the assessee.

Clause 3 of the Bill seeks to amend section 2(42A) by inserting new sub-clause (hf) in clause (i) of Explanation 1 to provide that the period for which the preference shares were held shall be included for computing period of holding of resulting equity shares on conversion for the purpose of determining whether equity shares are short-term capital asset or long-term capital asset.

Effective date

These amendments in clauses 3, 23 and 25 will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

COST OF ACQUISITION IN TAX NEUTRAL DEMERGER OF A FOREIGN COMPANY

Existing provisions

Under the existing provision of section 47(vic), the transfer of shares of an Indian company by a demerged foreign company to a resulting foreign company is not regarded as transfer.

Proposed amendment

Clause 25 of the bill seeks to amend sub-clause (e) of clause (iii) of section 49(1) dealing with cost to previous owner so as to provide that cost of acquisition of the shares of Indian company referred to in section 47(vic) in the hands of the resulting foreign company shall be the same as it was in the hands of demerged foreign company.

Effective date

This amendment in clause 25 will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

EXTENSION OF CAPITAL GAIN EXEMPTION TO RUPEE DENOMINATED BONDS

Existing provision

The fifth proviso to section 48 provides that in case of an assessee being a non-resident, any gains arising on account of appreciation of rupee against a foreign currency at the time of redemption of rupee denominated bond of an Indian company subscribed by him, shall be ignored for the purposes of computation of full value of consideration.

Proposed amendment

Clause 24 of the Bill seeks to amend fifth proviso to section 48 of the Income-tax Act relating to mode of computation. It is proposed to amend the said proviso so as to provide that in case of an assessee being a non-resident, any gains arising on account of appreciation of rupee against a foreign currency at the time of redemption of rupee denominated bond of an Indian company held by him, shall be ignored for the purposes of computation of full value of consideration.

Clause 23 of the Bill proposes to insert a new clause (viiaa) in section 47 so as to provide that any transfer made outside India of a capital asset being rupee denominated bond of Indian company issued outside India, by a non-resident to another non-resident shall not be regarded as transfer.

Reason

With a view to provide relief to non-resident investor, in the wake of permission to the Indian corporates by the Reserve Bank of India (the RBI) to issue rupee denominated bonds outside India as a measure to enable the Indian corporates to raise funds from a source outside India, the Finance Act, 2016, *inter alia*, amended section 48 of the Act with effect from 1st April, 2017 so as to provide that the gains arising on account of appreciation of rupee against a foreign currency at the time of redemption of rupee denominated bond of an Indian company subscribed by him, shall be ignored for the purpose of computation of full value of consideration.

Representations were received to allow exemption from capital gains arising to secondary holders as well. It had also been represented to allow exemption in respect of transfer of Rupee Denominated Bonds from non-resident to non-resident for the purpose of increasing acceptability and transferability of such instrument in the foreign market.

In order to further provide relief in respect of gains arising on account of appreciation of rupee against a foreign currency at the time of redemption of rupee denominated bond of an Indian company to secondary holders as well, it is proposed to amend section 48 providing that the said appreciation of rupee shall be ignored for the purposes of computation of full value of consideration.

Further, with a view to facilitate transfer of Rupee Denominated Bonds from non-resident to non-resident, it is proposed to amend section 47 so as to provide that any transfer of capital asset, being rupee denominated bond of Indian company issued outside India, by a non- resident to another non-resident shall not be regarded as transfer.

Effective date

These amendments in clauses 23 and 24 will take effect from 1st April, 2018 and will, accordingly, apply in relation to the Assessment Year 2018-19 and subsequent years.

CONSOLIDATION OF PLANS WITHIN A SCHEME OF MUTUAL FUND

Existing provision

Finance Act, 2016 amended section 47(xix) of the Act so as to provide tax neutrality to the transfer of units in a consolidating plan of mutual fund scheme made in consideration of the allotment of units in the consolidated plan of that mutual fund scheme.

Proposed Amendment

Clause 3 proposes to amend section 2(42A) by inserting sub-clause (hg) in clause (i) of Explanation 1 to section 2(42A) and clause 25 proposes to amend section 49 by inserting new sub-section 2(AF) so as to provide that cost of acquisition of the units in the consolidated plan of mutual fund scheme referred to in section 47(xix) shall be the cost of units in consolidating plan of mutual fund scheme and period of holding of the units of consolidated plan of mutual fund scheme shall include the period for which the units in consolidating plan of mutual fund scheme were held by the assessee.

Effective date

These amendments in clause 3 and clause 25 will take effect accordingly, from 1st April, 2017 and will, accordingly, apply in relation to the Assessment Year 2017-18 and subsequent assessment years.

TAX INCENTIVE FOR THE DEVELOPMENT OF CAPITAL OF ANDHRA PRADESH – EXEMPTION TO CAPITAL GAINS FROM TRANSFER OF LAND UNDER LAND POOLING SCHEME

Existing Provision and Reason

As per section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2014, the specified compensation received by the landowner in lieu of acquisition of land is exempt from income tax. The Land Pooling Scheme is an alternative form of arrangement made by the Government of Andhra Pradesh for formation of new capital city of Amaravati to avoid land-acquisition disputes and lessen the financial burden associated with payment of compensation under that Act. In Land Pooling Scheme, the compensation in the form of reconstituted plot or land is provided to landowners. However, the existing provisions of the Act do not provide for exemption from tax on transfer of land under the Land Pooling Scheme as well as on transfer of Land Pooling Ownership Certificates (LPOCs) or reconstituted plot or land.

Proposed Amendment

With a view to provide relief to an Individual or Hindu Undivided Family who was the owner of such land as on 2nd June, 2014, and has transferred such land under the Land Pooling Scheme notified under the provisions of Andhra Pradesh Capital Region Development Authority Act, 2014, clause 6 of the Bill proposes to insert a new clause (37A) in section 10 to provide that in respect of said persons, capital gains arising from following transfer shall not be chargeable to tax under the Act:

(i) Transfer of capital asset being land or building or both, under Land Pooling Scheme.

(ii) Sale of LPOCs by the said persons received in lieu of land transferred under the scheme.

(iii) Sale of reconstituted plot or land by said persons within two years from the end of the financial year in which the possession of such plot or land was handed over to the said persons.

Effective Date

This amendment in clause 6 will take effect retrospectively, from 1st April, 2015 and will, accordingly, apply in relation to the Assessment Year 2015-16 and subsequent years.

Consequential Amendment

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

Effective Date

This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the Assessment Year 2018-19 and subsequent years.

FAIR MARKET VALUE TO BE FULL VALUE OF CONSIDERATION IN CASE OF TRANSFER OF UNQUOTED SHARES – INSERTION OF NEW SECTION 50CA

Existing Provisions

Under the existing provisions of the Act, income chargeable under the head "capital gains" is computed by taking into account the amount of full value of consideration received or accrued on transfer of a capital asset. In order to ensure that the full value of consideration is not understated, the Act also contained provisions for deeming of full value of consideration in certain cases such as deeming of stamp duty value as full value of consideration for transfer of immovable property in certain cases.

Proposed Amendment

Clause 26 of the Bill seeks to insert a new section 50CA in the Income-tax Act relating to special provision for full value of consideration for transfer of share other than quoted share. It is proposed to provide that where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being share of a company other than a quoted share, is less than the fair market value of such share determined in such manner as may be prescribed, the value so determined shall, for the purposes of section

48, be deemed to be the full value of consideration received or accruing as a result of such transfer.

It is also proposed to define the term “quoted share”. “Quoted Share” means the share quoted on any recognised stock exchange with regularity from time-to-time, where the quotation of such share is based on current transaction made in the ordinary course of business.

Reason

In order to rationalise the provisions relating to deeming of full value of consideration for computation of income under the head "capital gains", it is proposed to insert a new section 50CA to provide that where consideration for transfer of share of a company (other than quoted share) is less than the Fair Market Value (FMV) of such share determined in accordance with the prescribed manner, the FMV shall be deemed to be the full value of consideration for the purposes of computing income under the head "capital gains".

Analysis

At present if unquoted shares are received by an individual or HUF for a consideration which is less than the FMV as determined under Rule 11U & 11UA by an amount exceeding Rs. 50,000/- such difference is taxed u/s. 56(viii) in the hands of such individual or HUF as the case may be. Similarly firms and closely held companies are taxed u/s. 56(viia). Now, in the case of the transfer of such unquoted shares also the sale consideration/full value of consideration shall be the notional/derived Fair Market Value.

Effective Date

The amendment in clause 26 will take effect from 1st April, 2018 and will, accordingly, apply in relation to the Assessment Year 2018-19 and subsequent assessment years.

EXPANDING THE SCOPE OF LONG TERM BONDS UNDER SECTION 54EC

Existing provision

The existing provision contained in section 54EC provides that capital gain to the extent of Rs. 50 lakh arising from the transfer of a long-term capital asset shall be exempt if the assessee invests the whole or any part of capital gains in certain specified bonds, within the specified time. Currently, as per the provisions contained in clause (ba) of sub- section (3) of section 54EC investment in bonds issued by the National Highways Authority of India or by the Rural Electrification Corporation Limited is eligible for exemption under this section.

Proposed Amendment

Clause 27 of the Bill seeks to amend section 54EC of the Income-tax Act relating to capital gains not to be charged on investment in certain bonds. It is proposed to amend the said clause (ba) so as to include any other bond as notified by the Central Government in this behalf.

Reason

In order to widen the scope of the section for sectors which may raise fund by issue of bonds eligible for exemption under section 54EC, the Finance Minister has proposed to amend section 54EC so as to provide that investment in any bond redeemable after three years which has been notified by the Central Government in this behalf shall also be eligible for exemption.

Effective Date

This amendment in clause 27 will take effect from 1st April, 2018 and will, accordingly, apply in relation to the Assessment Year 2018-19 and subsequent years.

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Article on proposals relating to International Tax

CA Paresh P. Shah

1. Income accruing or arising through or from any business connection or asset or any source of income in India [Section 9(1)(i)] {Clause 4 of the Finance Bill, 2017}

1.1 Current provisions

Section 9(1)(i) provides that all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India shall be deemed to accrue or arise in India.

Finance Act, 2012 included insertion of Explanation 5 in section 9(1)(i) w.e.f. 1st April, 1962 to the effect that the capital assets, being shares and interest in a non-resident company, is deemed to be situated in India if such shares or interest derives its value substantially from the assets located in India. In response to various queries raised by stakeholders seeking clarification on the scope of indirect transfer provisions, the CBDT issued Circular No. 41 of 2016. However, concerns about the scope of indirect transfer provisions remained.

1.2 Proposed amendment

It is proposed to insert Explanation 5A in Section 9(1)(i) of the Act which clarifies that the above- mentioned Explanation 5 shall not be applicable to any asset or capital asset, being investment held by non-resident, directly or indirectly, in a foreign institutional investor ('FII') which is registered as Category-I and Category-II Foreign Portfolio Investor ('FPI') (mainly investing in portfolio investments in India) under the SEBI Act, 1992 and Regulations thereto.

This amendment will take effect retrospectively from 1st April, 2012.

1.3 Implications of proposed amendment

Thus, such non-resident investors investing through FIIs/FPIs are outside the ambit of taxation of capital gains arising on indirect transfers of shares. This amendment sets at rest the various debatable issues that were raised by the CBDT

Circular No. 41 of 2016 and provides a satisfactory closure to the uncertainty and controversy that plagued the indirect transfer provisions.

2. Certain activities of Offshore Funds not to constitute business connection in India [Section 9A] {Clause 5 of the Finance Bill. 2017}

2.1 Current provisions

Section 9A of the Act provides for a special regime in respect of eligible investment funds established outside India. Such an offshore fund shall not be said to be resident in India merely because the eligible fund manager undertaking fund management activities on its behalf is located in India.

The benefit under Section 9A is available subject to certain conditions, one of which is in relation to the corpus of the fund which stipulates that the monthly average of the corpus of the fund shall not be less than one hundred crore rupees except where the fund has been established or incorporated in the previous year.

2.2 Proposed amendment

A proviso has been inserted in Section 9A of the Act which clarifies that in the previous year in which the fund is being wound up, the condition that the monthly average of the corpus of the fund shall not be less than one hundred crore rupees, shall not apply.

The amendment will take effect retrospectively from 1st April, 2016.

2.3 Implications of proposed amendment

It removes the practical issues that would be faced for maintaining monthly average corpus by a fund that is being wound up.

3. Double Tax Avoidance Agreements (DTAA) [Sections 90 & 90A] {Clauses 39 & 40 of the Finance Bill, 2017}

3.1 Current provisions:

Currently, Explanation 3 to Sections 90 and 90A provides that where any term which was used in any DTAA that India has entered into with a country or specified territory; or in any agreement that any specified association in India has entered into with any specified association in the specified territory outside India and where such term was not defined under the said DTAA or agreement or the Act, but was assigned a meaning to it in the notification issued under Sections 90(3)/90A(3) then, the meaning assigned to such term was deemed to have effect from the date on which the said DTAA or agreement came into force.

Thus notification issued under this section will have an overriding effect on the provisions of the treaty and that too with retrospective effect. Only Notification so far issued under this Explanation is on meaning of 'may be taxed' *vide* Notification No. 91 dated 28-8-2008.

The above has led to lack of clarity about any undefined terms in the DTAA and consequent litigation.

3.2 Proposed amendments

It is now proposed that any term used in any DTAA that India has entered into with a country or specified territory; or in any agreement that any specified association in India has entered into with any specified association in the specified territory outside India, the meaning of the 'term' shall be:

- If the term is used and defined in an agreement entered into, then the said term shall have the same meaning as assigned to it in the agreement; and
- If the term is not defined in the said agreement, but is defined in the Act, then it shall have the same meaning as assigned to it in the said Act and any explanation to it by the Central Government

These amendments are applicable from the assessment year 2018-19.

3.3 Implications of proposed amendments

This amendment seeks to eliminate the ambiguity in interpretation of DTAA and is in line with the decision of the Hon'ble Supreme Court in the case of Kulandagan Chettiar [(2004) 267 ITR 654 (SC)].

4. Tax credit for Alternate Minimum Tax [Section 115JD] {Clause 48 of the Finance Bill, 2017}

4.1 Current provisions:

Section 115JC provides for computation and levy of alternate minimum tax ('AMT') in the case of a non-corporate assessee. Section 115JD relates to tax credit for such AMT and provides that such tax credit can be carried forward up to tenth assessment year. Further, tax credit to be allowed shall be the excess of AMT paid over the regular income tax payable of that year. As regards treatment of foreign tax credit ('FTC'), there are no stipulations.

4.2 Proposed amendments

It is proposed to amend Section 115JD so as to provide that tax credit determined under this section can be carried forward up to fifteenth assessment years immediately succeeding the assessment years in which such tax credit becomes allowable.

Also, the difference between the amounts of foreign tax credit (FTC) allowed against AMT and FTC allowable against the tax computed under regular provisions of Act other than the provisions relating to AMT shall not be allowed to be carried forward to subsequent year.

These amendments are applicable from the assessment year 2018-19.

4.3 Implications of proposed amendments

Extension of carry forward period from ten years to fifteen years is a relief measure for the tax payer. The amendment relating to allowability of FTC is to align it with the FTC Rule No. 128 which was notified by the CBDT on 27-6-2016 and is effective from 1-4-2017.

For example, let us consider the case of an Indian non-corporate assessee whose net income is Rs. 1 crore and who has FTC of Rs. 30 lakhs. If the taxable payable under regular provisions is Nil or less than the AMT, he is liable to AMT of Rs. 19.05 lakhs. As per the proposed amendment, he can set off the FTC against the AMT only to the extent of tax computed under regular provisions. Therefore, if computation of normal tax works out to Rs. 10 lakhs, FTC only to the extent of Rs. 10 lakhs shall be allowed against the AMT of Rs. 19.05 lakhs and the unutilised FTC of Rs. 20.00 lakhs shall lapse and cannot be set off and carried forward unlike the case of Advance tax paid/TDS which would be refundable to him. In case the normal tax is NIL, the assessee loses the availability of the full FTC of Rs. 30 lakhs.

5. Amendment of completed assessments in case of settlement of disputed foreign tax [Section 155] {Clause 62 of the Finance Bill, 2017}

5.1 Current provisions

The existing provisions of section 155 of the Act provide for procedure for amendment of assessment order in case of certain specified errors but does not cover claim of credit for foreign tax paid in cases of dispute.

5.2 Proposed amendment

In view of rule 128 of the Income-tax Rules, 1962, which provides a mechanism for claim of foreign tax credit, it is proposed that where credit for foreign taxes paid is not given on the grounds that the payment of such foreign tax was in dispute, the Assessing Officer shall rectify the assessment order within six months from the end of the month in which the dispute is settled, if the assessee:

a. Furnishes proof of settlement of such dispute,

b. Submits evidence before the Assessing Officer that the foreign tax liability has been discharged and

c. Furnishes an undertaking that credit of such amount of foreign tax paid has not been directly or indirectly claimed or shall not be claimed for any other assessment year.

This amendment will apply from assessment year 2018-19.

5.3 Implications of proposed amendment

This amendment aligns the provisions in the Act relating to claim of foreign tax credit on settlement of foreign tax disputes with that of Foreign Tax Credit Rule No. 128 of the Income-Tax Rules, 1962 notified by the CBDT on 27-6-2016 effective from 1-4-2017.

6. Concessional tax rate on interest income on certain bonds and Government securities [Section 194LD] {Clause 68 of the Finance Bill, 2017}

6.1 Current provisions

The existing provisions of Section 194LD of the Act, provides for lower TDS at the rate of five per cent in the case of interest payable at any time on or after 1st June, 2013 but before the 1st July, 2017 to FIIs and QFIs on their investments in Government securities and rupee denominated corporate bonds provided that the rate of interest does not exceed the rate notified by the Central Government in this behalf.

6.2 Proposed amendment

It is proposed to amend Section 194LD to extend the period for which such concessional rate of five per cent TDS on interest shall be available up to 1st July, 2020.

This amendment will apply from assessment year 2018-19.

6.3 Implications of proposed amendment

This amendment is in nature of extension of period of concessional rate which provides incentive to FIIs & QFIs to invest in such bonds.

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Transfer Pricing

CA Bhavesh Dedhia & CA Paras Gada

The Union Budget 2017-18 was delivered amidst a high level of expectations to announce tax reform measures to promote growth, boost investments and give impetus to the ease of doing business initiative.

In the transfer pricing (TP) space, the Government has proposed a few significant amendments with an objective to reduce compliance burden on taxpayers, bolster tax revenue and discourage uneven debts raised by Indian entities from their overseas related parties. It is stated that these amendments are in line with the recommendation made in the Base Erosion and Profit Shifting (BEPS) initiative of the Organization for Economic and Cooperation Development (OECD) and G20 countries and international best practices. In the following section of the article, we have outlined detailed analysis of these amendments.

1 Scope of Domestic Transfer Pricing restricted to tax holiday scenarios only

As per the existing provisions, any "Specified Domestic Transaction" (SDT) exceeding INR 20 crore, entered into by the taxpayer, needs to be compliant of an arm's length standard. The specified domestic transactions as per section 92BA of the Income-tax, Act, 1961 (the Act), covers following transactions:-

- Payments made to the "specified persons", referred under section 40A(2)(b) of the Act;
- Any transaction referred under section 80A of the Act;
- Inter unit transfer of goods or services referred under section 80IA(8) of the Act;
- Transaction between the taxpayer and other person having close connection as referred under section 80IA(10) of the Act;
- Inter unit or intra group transactions for taxpayers enjoying benefit of Chapter VI-A or section 10AA of the Act (SEZ units); or
- Any other transaction as may be prescribed.

The Finance Bill 2017 has proposed to exclude "specified persons" referred under section 40A(2)(b) of the Act, from the purview of SDT provisions, thereby restricting the scope of domestic transfer pricing to entities enjoying tax holiday benefits, w.e.f. financial year (FY 2016-17). Consequently, the Assessing Officer (AO) is empowered to make disallowance in respect of section 40A(2)(b) transactions excluded from the ambit of section 92BA of the Act.

The genesis of domestic transfer pricing emanates from an observation made by the Hon'ble Supreme Court in the case of *CIT vs. Glaxo SmithKline Asia (P) Ltd. [2010-195 Taxman 35 (SC)].* The Apex Court had observed that there is a need for domestic transactions between related parties to be brought within ambit of TP regulations, especially the transactions between non-tax holiday undertakings and the undertakings enjoying tax holiday benefits.

Subsequently, the Finance Act 2012 introduced the SDT provisions under section 92BA of the Act, which covered within its ambit not only entities enjoying tax holiday benefits but also covered the tax neutral transactions entered between domestic related parties as per section 40A(2)(b) of the Act.

Inclusion of section 40A(2)(b) transactions within the ambit of the SDT regulations, caused severe hardship to the taxpayers in terms of compliance requirements and maintenance of contemporaneous documentation, especially for certain unique transactions like payment of managerial remuneration, wherein it was difficult to establish the arm's length nature, considering the complex nature of such transaction.

Further, in the recently concluded audit cycle for FY 2012-13, the SDTs were tested for the first time and the tax authorities have subjected tax neutral transactions to a rigorous scrutiny and in certain cases even disallowed the same.

The proposed exclusion of section 40A(2)(b) transactions from the scope of SDT regulations is indeed a welcome move, as neither any tax arbitrage was obtained by taxpayers nor any loss of revenue was suffered by the exchequer in respect of tax neutral transactions entered between domestic related parties. This amendment, being applicable from FY 2016-17 onwards, will provide significant relief to the taxpayers from the cumbersome compliance requirements.

Having said that, in order to give full respite to the taxpayers and reduce redundant litigation, it would now be useful if the Central Board of Direct Taxes (CBDT), based on the intent behind the proposed amendment, issues an appropriate guidance to the field officer on the approach to be adopted while examining tax neutral SDTs in the pending audit cycles.

2. Secondary Adjustments introduced in the Indian Transfer Pricing regulations

As a measure of aligning the Indian TP regulations with OCED Guidelines and international best practices, the Finance Bill 2017 has introduced a concept of "secondary adjustment" by inserting a new section 92CE in the Act, with effect from FY 2017-18 onwards.

According to the new section, as a result of primary adjustment to the transfer price, if there is an increase in the total income or reduction in the loss, the excess money which is available with the associated enterprise (AE), if not repatriated to India within the prescribed time, the same shall be deemed to be an advance made by the taxpayer to such AE and the interest on such advance shall be computed as the income of the taxpayer, in the manner as may be prescribed.

Further, the provision also provides that secondary adjustment should be made pursuant to the primary adjustment made by the taxpayer in the following situations:

- *Suo motu* adjustment made in the return of income;
- Adjustment made by the tax authorities, not challenged;
- Adjustment determined as per Advance Pricing Agreement (APA) or Safe Harbour provisions; and
- Settlement under mutual agreement procedure (MAP)

The above provisions shall not be applicable in the following situations:-

- The primary adjustment made is less than INR 1 crore; or[1]
- The primary adjustment relates to FY 2015-16 or prior years.

The concept of "secondary adjustment" is an international phenomena, already present in many of the advanced countries, and also recognized by the OECD. A secondary adjustment may result in double taxation unless a corresponding credit or some other form of relief is provided by the other country for the additional tax liability that may result from a secondary adjustment.

In the Indian context, the secondary adjustment was made by the Indian tax authorities in the past in case of few taxpayers[2]. In such cases, as the primary adjustment was subsequently quashed, there was no explicit discussion on the secondary adjustment.

It is important that the scope of secondary adjustment is revisited to provide exclusion to taxpayers facing genuine difficulty. For e.g. suppose an Indian captive entity engaged in rendering back office services to its AEs, operates on cost plus 18 per cent mark-up pricing policy. In order to avoid audit/ scrutiny proceedings, it intends to opt for safe harbour provisions wherein cost plus 20 / 22 per cent mark-up is prescribed for back office services. It is well-accepted view that the pricing criteria prescribed under safe harbour provisions are not arm's length prices, but premium prices, which provide an option to taxpayer to avoid audit/ scrutiny proceedings.

In the aforesaid scenario due to overarching group transfer pricing policy, the taxpayer may not be able to get actual remittance of the cash from AEs. Thus, the proposed amendment may discourage taxpayers from adopting the safe harbour route. Further, exchange control regulations of overseas countries may not permit the remittance of funds by the AEs. Also, the prescribed time limits for cash settlement, manner of computing interest, etc., would have a significant impact on the practical application of these provisions.

Considering above, it would be useful if the Government could take into account practical challenges faced by the taxpayers and frame rules carefully to avoid unintended consequences of this amendment.

3. Introduction of Thin Capitalization rules

The concept of "Thin Cap" refers to those 'Thinly Capitalized' companies, whose greater proportion of 'capital-structure' is made up of 'debt' instead of 'equity'. In such case, higher interest payment on high debt capital results in reducing the corporate tax burden, and hence there is a need to prevent such tax avoidance. According to Thin Capitalization rules, interest paid on that part of "high debt" which has resulted in 'Thin Capital', shall be treated as 'dividend' and hence disallowed, thereby tax avoided is restored by restructuring ' high debt' into 'Thin Cap' and 'allowable debt'.

As a measure of continuing its efforts in implementing the recommendations of BEPS Action Plan, the Indian Government introduced the "Thin Capitalization" rules, largely in line with the BEPS Action Plan 4 – Limiting Base Erosion involving Interest Deductions and Other Financial Payments.

A new section 94B is proposed to be inserted in the Act, with effect from FY 2017-18 onwards, to restrict the interest deductions in respect of the loan / debt borrowed from the AE. The new section provides that interest paid by an Indian company or a permanent establishment of a foreign company, to its non-resident AE exceeding INR 1 crore, shall not be deductible to the extent it qualifies as "excess interest".

The term "excess interest is defined as:

- Amount of total interest which is in excess of 30% of earnings before interest, tax and depreciation (EBIDTA); or
- Actual amount of interest paid to the AE,

whichever is less.

Further, the above restrictions are also applicable to the interest paid on debt borrowed from an unrelated party, if such debt is guaranteed (implicitly or explicitly) by the non-resident AE. Any "excess interest" disallowed by virtue of aforesaid provisions, shall be allowed to be carried forward for a period of eight years and allowed as deduction to the extent of maximum allowable interest expenditure as aforesaid. These provisions shall not be applicable to a taxpayer engaged in the business of banking or insurance.

The above amendment is simply explained by way of following example:

(Amount in INR)

Particulars	Reference	Year 1		Year 2		Year 3	
		Case 1	Case 2	Case 1	Case 2	Case 1	Case 2
EBITDA		100,000	100,000	300,000	300,000	500,000	500,000
30% of EBITDA	A	30,000	30,000	90,000	90,000	150,000	150,000
Interest paid to:							
– AE	B	20,000	80,000	20,000	80,000	20,000	80,000
– Non AE	C	80,000	20,000	80,000	20,000	80,000	20,000
Total interest paid	**D = B + C**	**100,000**	**100,000**	**100,000**	**100,000**	**100,000**	**100,000**

Add: brought forward interest disallowed of last year	E	-	-	20,000	70,000	30,000	80,000
Total interest for the purpose of deduction	**F = D + E**	**100,000**	**100,000**	**120,000**	**170,000**	**130,000**	**180,000**
Interest to be disallowed, lower of:							
– Excess of total interest over @ 30% of EBITDA	G = F – A	70,000	70,000	30,000	80,000	NA*	30,000
– Actual interest paid to AE (including last year's brought forward)	H = B + E	20,000	80,000	40,000	150,000	50,000	160,000
Disallowance to be carried forward for 8 years	**Lower of G or H**	**20,000**	**70,000**	**30,000**	**80,000**	**NIL***	**30,000**
* In this case, since total interest paid is less than 30% of EBIDTA, hence there will be no disallowance.							

Thin Capitalisation norms have already been introduced by several countries. In the Indian context, even though section 2(22) of the Act recognizes the concept of “deemed dividend”, there were no thin cap rules in the Indian regulations until now. On few occasions the tax authorities have questioned excess interest payments by the Indian entity. The Hon’ble Bombay High Court in the case of *Director of Income-tax, International Taxation-II, Mumbai vs. Besix Kier Dabhol SA [ITA No. 776 of 2011]* held that in spite of having an abnormal debt-equity ratio of 248:1, the tax department’s contention to recharacterise debt as equity (and thereby disallow the interest on such a disproportionate debt), cannot be upheld in the absence of specific Thin Capitalisation rules in the Indian regulations.

While these provisions aim to protect the tax base of India, the stringent requirement of 30% of EBIDTA may pose some challenges in the genuine cases, especially for start-up companies which are in the initial years of incurring losses. Further, capital intensive companies or infrastructure companies with long gestation period may also suffer disallowances, until such disallowances are fully absorbed by the profits. Another issue could arise in the situations where interest paid to the AE is considered to be at arm’s length but because of these provisions (and the manner of computation) some portion of arm's length interest paid to the AE, may need to be disallowed.

Considering the business scenarios peculiar to various industries, it is imperative that appropriate leeway in the above provisions are granted to protect interest of the taxpayers.

Conclusion

It is clear that the Government intends to reduce compliance burden on the taxpayers and repeal provisions which do not result into meaningful outcome for the tax administration. This is a well thought out approach and received positively by the taxpayers.

Further, it can be inferred that the intention behind introducing aforesaid new provisions is to curb the loop holes and restrict excessive/undue benefits, if any, available based on existing law. In this regard, it is extremely important to analyse unintended consequences of proposed amendments and make appropriate exceptions to protect interest of taxpayers facing genuine hardship.

Thus the above TP amendments should be enacted with suitable modifications, appropriate clarifications and exclusions, to reinforce and enhance the trust and confidence among the taxpayers.

□

Exemptions and Deductions

CA Ketan Vajani

The provisions of exemptions and deductions are always the ones which any assessee would look at with anxiety. These are the provisions of the Act which reduces the tax outgo of an assessee and therefore are most dear to the heart of the assessee. All exemptions and deductions have some inbuilt conditions which have to be fulfilled to qualify for the same. Income-tax Act, 1961 contains several provisions giving various exemptions and deductions to the assessees.

Finance Bill, 2017 makes amendments to some of the provisions in the area of exemptions and deductions. This article seeks to discuss the amendments made by the Finance Bill, 2017 in this field.

Exemptions under sections 10 and 10AA

Let us first look at the amendments made in provisions of sections 10 and 10AA which provide for exemptions from the Income. Section 10 of the Act lists down incomes, which does not form part of total income. Section 10AA of the Act contains special provisions in respect of newly established units in SEZ. Finance Bill has proposed some amendments in both the above sections as under :

Amendment to clause (4) of section 10

Existing provisions

Sub-clause (ii) of clause (4) of section 10 provides that any income of an individual by way of interest on moneys standing to his credit in a Non-Resident (External) Account in any bank in India in accordance with the Foreign Exchange Management Act, 1999 (42 of 1999), and the rules made thereunder shall not form part of the total income of the individual. The proviso to the said sub-clause puts a condition that for this exemption will be available to an individual who is a person resident outside India, as defined in clause (q) of section 2 of the Foreign Exchange Management Act, 1999 or is a person who has been permitted by the Reserve Bank of India to maintain the aforesaid account.

Proposed amendment

Clause 6(a) of the Finance Bill seeks to amend proviso to sub-clause (ii) of clause 4 so as to change the reference to clause (w) of section 2 of Foreign Exchange Management Act, 1999 instead of clause (q) at present.

Reason

The definition of the expression "person resident outside India" is provided under clause (w) of section 2 of FEMA. At present the definition of the term is adopted from section 2(q) of the Foreign Exchange Regulations Act, 1973, which now stands repealed. Accordingly the amendment is proposed in the proviso with a view to reflect the correct definition of the term "person resident outside India".

Effective date

The above amendment has been proposed with retrospective effect from 1-4-2013 and will be applicable from A.Y. 2013-14 onwards.

Insertion of a new clause (12B) in section 10

Existing provisions

Clause (12A) of section provides that the payment from National Pension System (NPS) trust to an employee on closure of his account or opting out shall be exempt up to 40% of total amount payable to him.

Proposed amendment

Clause 6(b) of the Finance Bill seeks to insert an additional clause 12B in section 10 so as to provide for an exemption in respect of any payment from the National Pension System Trust to an employee on partial withdrawal made out of his account in accordance with the terms and conditions specified under the National Pension Fund Regulatory and Development Authority Act, 2013 and the regulations made thereunder. The exemption is provided to the extent of 25% of the amount of contributions made by the employee.

Reason

Though clause 12A provides for exemption at the time of the closure of the account or at the time of opting out of the scheme, there is no exemption provision available in a case where an employee wants to make partial withdrawal out of his account. The amendment is proposed with a view to provide for further relief to an employee who is subscriber of the NPS.

Effective date

The amendment is proposed with effect from 1-4-2018 and will accordingly apply from A.Y. 2018-19 onwards.

Insertion of sub-clause (iiiaaaa) in clause (23C) of section 10

Existing provisions

Clause 23C of section 10 lists down various funds whose incomes are not subject to Income-tax. The list *inter alia* includes the Prime Ministers National Relief Fund.

Proposed amendment

Clause 6(c)(I) of the Finance Bill seeks to insert an additional sub-clause (iiiaaaa) in clause 23C of section 10 so as to provide that the income of the Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund in respect of any State or Union Territory as referred in section 80G(2)(a)(iiihf) shall also not be taxable income

Reason

The Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund, which is of the same nature at the level of state or the Union Territory as is the Prime Minister's National Relief Fund at the national level, is not exempted under section 10. In the absence of such exemption, these funds are required to obtain registration under section 12A of the Act in order to avail exemption of its income under sections 11 and 12 of the said Act and are required to fulfil certain conditions. The amendment is made with a view to avoid the above difficulty.

Effective date

The above amendment has been proposed with retrospective effect from 1-4-1998 and will be applicable for A.Y. 1998-99 and subsequent years.

Insertion of clause (48B) in section 10

Existing provisions

Clause (48A) of section 10 provides that any income accruing or arising to a foreign company on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India shall be exempt, if the said storage and sale is pursuant to a notified agreement or arrangement entered into by the Central Government.

Proposed amendment

Clause 6(f) of the Finance Bill seeks to insert a new clause (48B) in section 10. Clause 48B seeks to provide that any income accruing or arising to a foreign company on account of sale of left over stock of crude oil, if any, from a facility in India after the expiry of an agreement or an arrangement referred to in clause (48A) of section 10 of the Act shall also be exempt subject to such conditions as may be notified by the Central Government in this behalf.

Reason

The benefit of exemption under the present clause 48A is not available to sale out of the left over stock of crude after the expiry of said agreement or the arrangement. The amendment is proposed considering the strategic nature of the project benefiting India to augment its strategic petroleum reserves.

Effective date

The amendment is proposed with effect from 1-4-2018 and will accordingly apply from A.Y. 2018-19 onwards.

Insertion of Explanation after sub-section (1) of section 10AA

Existing provisions

Section 10AA of the Income-tax Act, 1961 provides for deduction of total income of an assessee in respect of profits and gains from unit operating in SEZ, which are engaged in manufacturing or production of articles or things or providing any service, subject to fulfilment of certain conditions.

Proposed amendment

Clause 7 of the Finance Bill seeks to insert an Explanation after section (1) of section 10AA to so as to clarify that deduction u/s. 10AA shall be allowed from total income of the assessee computed as per provisions of Income-tax Act, before giving effect to the provisions of the said section and the deduction under the said section shall not exceed such total income of the assessee.

Analysis and reasoning

The provisions of section 10AA are similar to the provisions of section 10A of the Income-tax Act. There has been a controversy as to whether the provisions of section 10A are exemption provisions or deduction provisions. An exempt income does not enter the computation of income at all and therefore the computation provisions of the Act do not apply to an exempt income. As against this, in the case of a deduction the income is first computed applying the normal provisions of the Act and then the deduction in respect of the said income is allowed as provided in the respective section. Various courts have taken a view that considering the fact that section 10A falls under Chapter III of the Income-tax Act, which primarily consists of incomes which are exempt from taxation, the said section is an exemption section though it has been said to be a deduction provision.

In the case of *CIT vs. TEI Technologies Pvt. Ltd. (2014) 361 ITR 36,* the court was concerned with a situation where the assessee was having profit from a unit, which was eligible for deduction u/s. 10A and loss from another unit which was not an eligible unit u/s. 10A. The assessee claimed that the loss from the ineligible unit is not to be adjusted against profit from the eligible unit and the entire loss is to be carried forward to future years. Accordingly exemption was to be allowed for the profit from the eligible unit without setting off the loss from the ineligible unit. The Delhi High Court allowed the claim of the assessee and held that the section 10A is an exemption section and accordingly the profit of the eligible unit will not enter the computation at all. Accordingly, the profit from the eligible unit was not required tobe set off against the loss from the ineligible unit.

The Bombay High Court in the case of *CIT vs. Black & Veatch Consulting Pvt. Ltd. (2012) 348 ITR 72* has held that the brought forward unabsorbed depreciation and losses of the unit the Income which is not eligible for deduction under s. 10A of the Act cannot be set off against the current profit of the eligible unit for computing the deduction under s. 10A of the IT Act.

In view of the above views of the courts and similarity of the provisions of sections 10A and 10AA, it is possible to take a view that the deduction u/s. 10AA is to be allowed from the total income of the undertaking and not from the total income of the assessee. The amendment proposed is with a view to avoid such an interpretation of provisions of section 10AA. With the above amendment, the legislature has also made it clear that section 10AA is a deduction and not an exemption and accordingly the deduction amount cannot exceed the total income of the assessee.

Effective date

The amendment is proposed with effect from 1-4-2018 and will accordingly apply from A.Y. 2018-19 onwards.

These are the exemption provisions that have been proposed to be amended by the Finance Bill, 2017. There are three more amendments proposed in section 10 in the Finance Bill. The amendments proposed by clause 6(c)(II), clause 6(d) and clause 6(e) of the Finance Bill are consequential amendments made and the substantive amendments for these clauses are made in the areas of section 12AA and capital gains. These clauses have been accordingly discussed in the articles dealing with Charitable Trusts and Capital Gains.

Having discussed the amendments to the exemption provisions, let us now understand the amendments made to the provisions dealing with deductions under Chapter VI-A of the Act.

Deductions under Chapter VI-A

Amendment to section 80CCD

Existing provisions

Section 80CCD of the Income-tax Act provides for deduction in respect of contribution to pension scheme of Central Government. The section allows deduction to employee or other individuals are of amount deposited in National Pension System trusts (NPS). Deduction is restricted to 10% of salary in case of an employee or 10% of gross total income in case of other individuals. However an employee is also allowed additional deduction of 10% of his salary in respect of contribution made by his employer. Thus, deduction in case of an employee adds up to 20% of salary whereas in the case of other individuals deduction is limited to 10% of his gross total income.

Proposed amendment

Clause 33 of the Finance Bill seeks to amend clause (b) in sub-section (1) of section 80CCD so as to enhance the upper limit of deduction in the case of a self employed individual to 20% of the gross total income from the present upper limit of 10%.

Reason

The above amendment is proposed with a view to bring parity between an individual who is an employee and an individual who is self-employed.

Effective date

The amendment is proposed with effect from 1-4-2018 and will accordingly apply from A.Y. 2018-19 onwards.

Amendment to section 80CCG

Existing provisions

Section 80CCG of the Act provides for deduction in respect of investment made under an equity savings scheme. The section provides for deduction of 50% of the amount invested subject to maximum Rs. 25,000/- in a case where a resident individual, has acquired listed equity shares or listed units of an equity oriented fund in accordance with a Govt. notified scheme. The deduction is allowed for three consecutive assessment years beginning with the assessment year in which the listed equity shares or units of equity oriented fund were first acquired.

Proposed amendment

Clause 34 of the Finance Bill seeks to insert sub-section (5) in section 34 so as to provide that no deduction shall be allowed under the section with effect from A.Y. 2018-19. The proviso to this sub-section, however seeks to provide that where an assessee who has claimed deduction under this section in A.Y 2017-18 or earlier year, he shall be allowed deduction under the said section till A.Y. 2019-20, if he is otherwise eligible to claim the deduction under this section.

Reason

As per memorandum explaining the provisions, limited number of individuals availed this deduction. Further the purpose of the amendment is to rationalise the multiplicity of deductions available under Chapter VI-A.

Amendment to section 80G of the Act

Existing provisions

Section 80G of the Act provides for deduction in respect of donations to certain funds, charitable institutions etc. Sub-section (5D) of the section provides that no deduction shall be allowed where donation exceeding Rs. 10,000/- is paid by cash.

Proposed amendment

Clause 35 of the Finance Bill seeks to amend sub-section (5D) of section 80G so as to reduce the limit of permissible cash donations from the present Rs. 10,000/- to Rs. 2,000/-.

Reason

The amendment is made as a measure of promoting digital economy and in order to provide cashless economy and transparency.

Effective date

The amendment is proposed with effect from 1-4-2018 and will accordingly apply from A.Y. 2018-19 onwards.

Amendment to section 80-IAC of the Act

Existing provisions

Section 80-IAC has been inserted in the Income-tax Act, 2016 by the Finance Act, 2016 w.e.f. 1-4-2017. The section provides for special provision in respect of start-ups. Deduction is allowed to an eligible start up of an amount of 100% of its profits. Sub-section (2) of the section provides that an eligible start-up is allowed this deduction for 3 consecutive assessment years out of 5 years beginning from the year in which such eligible start-up is incorporated, at the option of the assessee.

Proposed amendment

Clause 36 of the Finance Bill seeks to amend sub-section (2) so as to provide that the deduction shall be allowed for any 3 consecutive assessment years out of 7 years (instead of 5 years provided at present), beginning from the year in which such eligible start-up is incorporated.

Reason

The amendment is proposed considering the fact that start-ups may take time to derive profit out of their business.

Effective date

The amendment is proposed with effect from 1-4-2018 and will accordingly apply from A.Y. 2018-19 onwards.

Amendment to section 80-IBA of the Act

Existing provisions

Section 80-IBA has also been inserted in the Income-tax Act by Finance Act, 2016. The section provides for deduction of 100% of the profits in respect of profits and gains from housing projects subject to specified conditions. One of the conditions specified is that the size of each residential unit shall not be more than 30 square metres of built-up area of in respect of project located in the Chennai, Delhi, Kolkata and Mumbai or within 25 kms from the municipal limits of these four cities. Further, it is also provided that in order to be eligible to claim deductions, the project shall be completed within a period of three years from the date of approval by the competent authority.

Proposed amendment

Clause 37 of the Finance Bill seeks to amend section 80-IBA. The amendments seek to provide as under :

(a) The restriction on the size of the residential unit is proposed to be measured in terms of carpet area instead of built-up area.

(b) The restriction of 30 square metres is proposed to be restricted to only the projects situated in metro cities. This condition is proposed to be done away with in relation to the project situated within 25 kms from the metro cities. Accordingly the restriction for the projects within the 25 kms from the metro cities will be now 60 square metres instead of 30 square metres at present

(c) It is also proposed to extend the period of completion of the housing project from present 3 years to 5 years from the date of approval by the competent authority.

Reason

The amendments are proposed in order to promote the development of affordable housing sector in the country.

Effective date

The amendment is proposed with effect from 1-4-2018 and will accordingly apply from A.Y. 2018-19 onwards.

The amendments proposed by the Finance Bill to the exemptions and deductions are primarily relaxing some of the conditions or bringing clarity on any particular issue where there is a possibility of controversy. Thankfully, the Government stands by its commitment not to make retrospective amendments unless it is unavoidable.

I express my sincere thanks to the Journal Committee of the Chamber of Tax Consultants for enabling me this opportunity to be a part of this prestigious project of the Committee. This opportunity has made me understand the amendments in the above areas in a detailed and analytical manner.

☐

Finance Bill, 2017 – TDS Provisions

CA Atul T. Suraiya

A. Section 194(IB) – TDS on rent in excess of ` 50,000 per month

A new section 194-IB is proposed to be introduced, relating to payment of rent by Individuals or Hindu Undivided Family.

Individuals and HUFs, which were required to get their accounts audited u/s. 44AB only, were required to deduct tax at source from the payments made by them on specified payments, including Rent. The limit beyond which tax was required to be deducted was ` 1,80,000 per annum.

With a view to expand the base of taxation and to ensure that the landlords declare the rental income received by them, a proposed new section provides that any person, being an Individual or a Hindu Undivided Family (particularly who is not covered by section 194(I)), responsible for paying to a resident any income by way of rent exceeding **fifty thousand rupees for a month or part of a month** during the previous year, shall **deduct an amount equal to five per cent of such income as tax.**

It is further proposed that such tax shall be deducted on such income:

a. At the time of credit of rent, for the last month of the previous year or the last month of tenancy, if the property is vacated during the year, as the case may be, to the account of the payee or

b. At the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

Thus the deduction and payment is required to be done only once in the year.

The proposed section also lays down the provisions of section 203A shall not apply. Thus there is no need for the deductor to obtain a TAN number and file returns or issue certificates. The challan itself will prove the compliance.

It is further provided that where the deductee does not have a PAN, and the provisions of section 206AA are attracted, then such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be.

The term "rent" for the purposes of this section to mean any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or building or both.

In fact The Chamber has represented for non-applicability of various TDS provisions on payments for personal or non-business purposes. However instead of providing exclusion, new provision has been introduced for TDS on rent property used for personal purposes.

This amendment will take effect from 1st June, 2017.

B. ***Clause 64*** of the Bill seeks to insert a n**ew section 194-IC** relating to deductions in respect of **payment under specified agreement**

This insertion of a new section is a consequence of the insertion of a new section 45(4), inserted in respect of Capital Gains arising on the transfer arising on joint development of a property wherein the owner (Individual or HUF) “transfers” or grants possession of his land for development into a new construction of the property owned by him. Such projects would normally spread over more than one year and hence the provisions have been introduced to bring in clarity about the event triggering the arising of Capital Gains. The section states that the capital gains “arises to an assessee being an Individual or Hindu Undivided Family, from the transfer of a Capital asset, being land or building or both, under a specified agreement, the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority.” **Thus there is no mention about part of the consideration being settled by way of payment in cash or through banking channels.**

It is also proposed to provide that the provisions of this sub-section shall not apply where the assessee transfers his share in the project to any other person on or before the date of issue of said certificate of completion and the capital gains shall be deemed to be the income of the previous year in which such transfer took place and the provisions of the Act, other than the provisions of this sub-section, shall apply for the determination of the full value of consideration received or accruing as a result of such transfer.

It is also proposed to define the expressions "competent authority", “specified agreement" and "stamp duty value".

It is also pertinent to note that the section is applicable from AY 2018-19.

The proposed new section seeks to provide that notwithstanding anything contained in section 194-IA, any person responsible for paying to resident any sum by way **of consideration, not being consideration in kind, under the agreement referred to in sub-section (5A) of section 45, shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof** in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, **deduct an amount equal to ten per cent** of such sum as income-tax thereon. **Thus by inference, if part of the consideration is paid in cash/cheque or through banking channel, and not by way of providing constructed accommodation, the same shall be taxed in the year of payment/provision thereof.**

This amendment will take effect from 1st April, 2017, i.e. A Y 2017-18.

There seems to be an apparent drafting lacunae which needs to be looked into and amended before the Bill becomes an Act.

C. Section 194J of the Income-tax Act which provides for deduction of tax at source on fees for professional or technical services.

The said section provides that a person, not being an Individual or a Hindu Undivided Family, who is responsible for paying to a resident any sum by way of fees for professional or technical services or other services mentioned therein shall deduct an amount equal to ten per cent of such sum as income-tax on income comprised therein.

It is proposed to insert a proviso in the said section so as to reduce the rate of **tax deduction at source to two per cent** from ten per cent in case of payments received or credited to a **payee, who is engaged only in the business of operation of Call Centre.**

This amendment has been introduced to address two issues:

a. The payment to Call Centres fall within the definition of fees for technical services, and

b. A new rate of lower deductions applies on payments to Call Centres.

This amendment will take effect from 1st June, 2017.

D. *Clause 66* of the Bill seeks to **amend section 194LA** relating to payment of compensation on acquisition of certain immovable property.

The said section, inter alia, provides that any person responsible for paying compensation to a resident shall deduct tax at source at the rate of ten per cent on the compensation or enhanced compensation or consideration on account of compulsory acquisition of any immovable property (other than agricultural land) under any law for the time being in force subject to certain conditions specified therein.

It is proposed to amend the said section so as to insert a new proviso to provide that **no deduction of tax at source shall be made under this section, where such payment is made in respect of any award or agreement which has been exempted from the levy of income-tax under section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.**

This amendment will take effect from 1st April, 2017.

The amendment was preceded by the Circular of the CBDT *vide* Circular No.36 of 2016 dated 25-10-2016.

E. ***Clause 67*** of the Bill seeks to amend **section 194LC** relating to **income by way of interest from Indian company.**

The existing provisions contained in sub-section (2) of the said section, specify the interest eligible for lower withholding tax at the rate of five per cent. It shall be the interest income payable by the specified company on borrowings made by it in foreign currency from sources outside India under a loan agreement or by way of issue of any long-term bonds including long-term infrastructure bonds subject to the approval by the Central Government.

Specifically listed loan agreements, viz:

a. Entered into on or after the 1st day of July, 2012, but before the 1st day of July, 2017; and

b. By way of any long-term bond including long-term infrastructure bond on or after the 1st day of October, 2014, but before the 1st day of July, 2017, respectively

were subject to lower deduction of Taxes. **The said dates of July 2017 are extended to 1st day of July, 2020.**

These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to the **Assessment Year 2018-2019 and subsequent years.**

It is also proposed to **insert a new clause (ia) in sub-section (2)** of the said section to extend the benefit of the said section to the **rupee denominated bond issued outside India before 1st July, 2020 also.**

This amendment will take effect retrospectively from 1st April, 2016 and will, accordingly, apply in relation to the **Assessment Year 2016-2017 and subsequent years.**

F. ***Clause 68*** of the Bill seeks to amend **section 194LD** relating to income by way of **interest on certain bonds and Government securities.**

Under the existing provisions contained in sub-section (2) of the said section, the interest income eligible for lower withholding tax rate of five per cent as provided in sub-section (1) has been specified to be the interest payable on or after the 1st day of June, 2013 but **before 1st day of July, 2017.**

It is proposed to amend the aforesaid sub-section so as to provide concessional rate of five per cent withholding tax on interest payment in respect of investments in Government securities and rupee denominated corporate bonds to be **made available on interest payable before 1st day of July, 2020.**

This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-2019 and subsequent years.

G. ***Clause 69*** of the Bill seeks to amend **section 197A** relating to no deduction to be made in certain cases.

The existing provisions provide that no deduction of tax shall be made if the recipients of the income furnish to the persons responsible for paying any income of the nature referred to, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be nil.

It is proposed to amend the said section so as to cover deduction at source under section 194D, viz., Insurance Commission under the provisions of section 197A so that agents with small incomes can get the benefit of non-deduction of tax.

There are many insurance agents who were active in the activity of procurement of business for Insurance Companies. They may not be active any more, but continue to receive commission on renewal commission. The gross commission may be above the threshold of ` 15,000 but the total receipt may be well below ` 2,50,000 and hence no tax is required to be paid or deducted in their case. Such agents are facilitated and compliance in case of small agents is reduced for Insurance companies.

This amendment will take effect from 1st June, 2017.

H. ***Clause 70*** seeks to amend **section 204** relating to meaning of "person responsible for paying".

It is proposed to insert a new clause (iib) in the said section so as to provide that **in the case of furnishing of information relating to payment to a non-resident,** as described u/s. 195, the person responsible for paying shall be:

a. The payer himself, or,

b. If the payer is a company, the company itself including the principal officer thereof shall also be the person responsible for paying,

within the meaning of definition under this section. This shall make such persons responsible for all the duties cast upon by the Act in respect of Deduction of tax, viz.:

a. Deduction of tax, in time,

b. Payment of tax, in time,

c. Filing of the statements, in time and

d. Issue of the certificates in time.

Any delay or default in any of the above attract interest, penalty, fee and in specific cases prosecution.

This amendment will take effect from 1st April, 2017.

I. ***Clause 71*** of the Bill seeks to amend section 206C relating to profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.

a. **Deletion of** Clause relating to tax collection at source at the rate of one per cent of **sale consideration on cash sale of jewellery exceeding five lakh rupees.** It is proposed to omit the said clause **in view of restriction on cash transactions as proposed to be provided under section 269ST.**

b. **Sub-section (1F)** of the said section, inter alia, provides that the **seller who receives any amount as consideration for sale of a motor vehicle of the value exceeding ten lakh rupees,** shall at the time of receipt of such amount, collect from the buyer a sum equal to **one per cent of the sale consideration** as income-tax.

However, the following class of buyers are exempt from the provision of sub-section (1F) :—

(i) The Central Government, a State Government and an embassy, a High Commission, Legation, Commission, Consulate and the Trade representation of a foreign State; or

(ii) Local authority as defined in the Explanation to clause (20) of section 10; or

(iii) A public sector company which is engaged in the business of carrying passengers.

These amendments will take effect from 1st April, 2017.

J. ***Clause 72*** of the Bill seeks to insert a **new section 206CC** after section 206CB relating to requirement to **furnish Permanent Account Number by collectee.**

The proposed sub-section (1) of the said section specifies that any person paying any sum or amount, on which tax is collectible at source under Chapter XVII-BB (herei**n referred to as collectee) shall furnish his Permanent Account Number** to the person responsible for collecting such tax (herein referred **to as collector), failing which tax shall be collected at twice the rate mentioned in the relevant section or at the rate of five per cent., whichever is higher.**

All the compliances in respect of :

a. Declaration that the material purchased is not for trading purposes, but for manufacturing activity,

b. The certificate for Collection of tax,

c. All its correspondence, bills, vouchers and other documents which are sent to each other.

Sub-section (6) of the said section provides that where the Permanent Account Number provided by the collectee is invalid or it does not belong to the collectee, then it shall be deemed that Permanent Account Number has not been furnished to the collector and the tax shall be collected as mentioned above.

Sub-section (7) provides that the new section 206CC shall not apply to a non-resident who does not have permanent establishment in India and also to explain the expression 'permanent establishment'.

This amendment will take effect from 1st April, 2017.

K. ***Clause 77*** of the Bill seeks to amend section 244A relating to interest on refunds.

The said section provides that an assessee is entitled to receive interest on refund arising out of excess payment of advance tax, tax deducted or collected at source, etc.

It is proposed to insert a new sub-section (1B) in the said section so as to provide that where **refund of any amount becomes due to the deductor,** then such person shall be entitled to receive, in addition to the refund, **simple interest on such refund, calculated at the rate of one-half per cent for every month or part of a month** comprised in the period,

a. From the date on which claim for refund is made in the prescribed form or

b. For giving effect to an order under section 250 or 254 or 260 or 262 from the date on which the tax is paid up to the date on which refund is granted.

It is also proposed to amend sub-section (2) of the said section to give reference of the deductor in addition to the assessee and to provide that the interest shall not be allowed for the period for which the delay in the proceedings resulting in the refund is attributable to the deductor.

These amendments will take effect from 1st April, 2017.

The introduction of clause (1B) has its genesis arising from two circulars which had prohibited the granting of interest on refunds arising out of deductions made u/s 195. The said circulars were Circular Nos. 769 [1998] 232 ITR (St.) 25 and 790 [2000] 243 ITR (St.) 58 issued by the Board which specifically provided that the benefit of interest under section 244A of the Act on such refunds would not be available to the deductor. The said circulars laid down specific circumstances under which the interest would not be allowed to the assessees, in case of refunds of taxes paid under section 195. However the refusal of interest was being made in all cases of such refunds.

The Hon. Supreme Court held in the case of *Union of India vs. Tata Chemicals Ltd 363 ITR 658* as under:

> *"The amount paid by the assessee was retained by the Government till a direction was issued by the Commissioner (Appeals) to refund it. When the amount is refunded it should carry interest as a matter of course. The payment of tax made by the assessee was in excess and the Department chose to refund the excess tax to the depositor. Interest required to be paid on such refund. In the absence of an express provision as contained in clause (a) of section 244A(1), it could not be said that the interest was payable from the 1st of April of the assessment year. Since the payment was not made pursuant to a notice issued under section 156 of the Act, the Explanation to clause (b) would have no application. In such cases, as the opening words of clause (b) specifically refer to "in any other case", the interest would be payable from the date of payment of tax. The assessee was entitled not only to the refund of tax deposited under section 195(2) of the Act, but to interest from the date of payment of such tax."*

Keeping the above decision in mind, **the CBDT issued a circular No. 11/2016 dated 26th April 2016,** stating as under:

> "**2.** *The issue of eligibility for interest on refund of excess TDS to a tax deductor has been a subject matter of controversy and litigation. The Hon'ble Supreme Court of India in the case of Tata Chemical Limited, Civil Appeal No. 6301 of 2011* vide *order dated 26-2-2014, held that, "Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there being no express statutory provision for payment of interest on the refund of excess amount/ tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. "*
>
> *3. In view of the above judgment of the Apex Court it is settled that if a resident deductor is entitled for the refund of tax deposited under section 195 of the Act, then it has to be refunded with interest under section 244A of the Act, from the date of payment of such tax.*
>
> *4. Accordingly, it is advised that no appeals may henceforth be filed on this ground by the officers of the department and appeals already filed on this issue may not be pressed upon."*

The Legislature has now thought it fit to legislate what the Judiciary held and the Executive directed.

Conclusion

The provisions of TDS have been amended by the Finance Bill 2017, some for the harsher compliance, some for the benefit of the assessees.

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The Finance Bill, 2017
– Provisions relating to MAT/AMT

CA Jayesh Gandhi

1. Applicability of Ind AS

As we are aware, the Ministry of Corporate Affairs (MCA) had notified the roadmap for adoption of Ind AS to converge Indian Accounting Standards with International Financial Reporting Standards (IFRS). As per the roadmap, Ind AS will be applicable in different phases and the first phase for companies with net worth of more than Rs. 500 crores is applicable from financial year 2016-17. As the book profit under Ind AS is likely to be materially different than under the earlier Indian GAAP for many companies, it is important to clarify the effect of MAT provisions under the Income-tax Act (the Act) for such companies. For this purpose CBDT had constituted a committee for suggesting the framework for applicability of MAT in the first year of adoption and thereafter. The said committee had submitted its final report in December 2016 and considering the same, provisions of section 115JB of the Act has been proposed to be amended. The proposed amendments will take effect from 1st April, 2017 and therefore will apply to the companies adopting Ind AS for the first time in the financial year 2016-17 (corresponding Assessment Year 2017-18).

2. Proposed amendments

The proposed amendments are almost in line with the final recommendation of the committee and largely clarifies controversial issues. The Amendment to the provisions proposed in section 115JB of the Act can be divided into two parts:

- To address adjustments on account of transition to Ind AS
- To address items that will form part of Other Comprehensive Income (OCI). Such items of OCI will include items which will be reclassified / transferred to the statement of Profit & Loss at a future date and items that will never affect current or future statement of Profit & Loss.

In the subsequent paragraphs attempt is made to analyse proposed amendments, its implications and suggestions for further clarification.

3. MAT impact for the first year of Ind AS transition

As per Ind AS, in the year of adoption, comparative figures of the previous year also need to be Ind AS compliant and therefore first time adoption will go back to the beginning of the previous period. Take an example of a company which has the first year of adoption as Year ending on 31st March 2017. For such company, transitional provision under Ind AS 101 will apply to the balance sheet of 1st April, 2015. It means that the adjustments to assets and liabilities arising on account of transition to Ind AS is required to be recorded on 1st April, 2015, by accounting the difference in 'Equity' (Reserves & Surplus).

As per the proposed Finance Bill, for the purpose of computation of book profit in the year of adoption, the adjustment made as on 1st April, 2016 need to be considered. Consequent to this, any adjustment to OCI in the year 2015-16 and other adjustments into the Statement of Profit & Loss of the year 2015-16 due to Ind AS need to be considered in the computation of book profit as if they are transitional adjustments in the year 2016-17.

Treatment of items recorded in OCI at the first time adoption –

- Items which would be subsequently classified to Statement of Profit & Loss shall be included in book profits in the year of reclassification as P&L item
- Items which would never be subsequently reclassified to Statement of Profit & Loss shall be included in book profit equally over a period of 5 years other than changes in revaluation surplus of Fixed Assets and Gains/Losses from equity investments designated at fair value through OCI (as per option in Ind AS 109). Those 2 items shall be included in book profits on disposal or transfer.
- Actuarial Gain/Loss on remeasurement of defined employees benefit plans (as per Ind AS 19) is treated as one of the items which would never be reclassified to Statement of Profit & Loss. In the view of the author, at some point of time, it may get recycled in P&L, for instance, when all employees retire.

It has been proposed that all other adjustments recorded directly in Reserves & Surplus (other than capital reserve and securities premium), which would not be subsequently reclassified to the Statement of Profit & Loss, shall be included in the computation of book profits, equally over a period of five years starting from the year of adoption of Ind AS, subject to the following items:

- PPE and intangible assets (fixed assets) at fair value as deemed cost – when fair value is used as deemed cost for first time adoption, the difference between the fair value and carrying value of such assets shall be ignored for the purpose of computation of book profit. Further, book depreciation shall be considered ignoring the impact of revaluation on the depreciation of the current and subsequent years. Similarly, Gain or Loss on disposal of such assets shall also be computed ignoring such revaluation. In nutshell, for the purpose of book profit computation the adjustment of a fair value to the fixed assets will have to be ignored.

- Fair value of investment in subsidiaries, joint ventures and associates considered as deemed cost on first time adoption – such fair value adjustment also needs to be ignored and to be considered as an adjustment to book profit only on disposal/transfer of such investments.
- Cumulative translation differences of foreign operations – Earlier Indian GAAP provides that any foreign currency translation differences of non-integral operations shall be taken to Reserves & Surplus and will be recycled to the Statement of Profit & Loss only on disposal of such investments. To continue the existing provision of computation of book profit, it is provided that such differences, whether transferred to Reserves (as per option provided in Ind AS) or otherwise will be considered for computation of book profit only on disposal of such foreign operations.
- By way of clarification it has also been proposed that any adjustments to deferred tax which is recorded through Reserves & Surplus, shall be ignored.

One may argue that time period of 5 years for spreading for inclusion of book profit is not sufficient, particularly for infrastructure companies. However it is beneficial compared to 3 years proposed by the committee.

4. MAT impact for Ind AS companies on year-to year basis

- For items of Net profit before OCI, old (existing) provisions of section 115 JB will be applicable
- Items that would remain as OCI and would never be subsequently reclassified to Statement of Profit & Loss shall be included in book profit for each respective year, other than changes in revaluation surplus of Fixed assets and Gains/Losses from equity investments designated at fair value through OCI (as per option in Ind AS 109). Those 2 items shall be included in book profits on disposal or transfer, treatment similar to OCI at the first time adoption.
- Ind AS 10 provides accounting of any distributions of non-cash assets to shareholders at fair value. This will apply to even de-merger of the undertaking. As per Ind AS the difference between carrying value of the assets and the fair value is taken to Statement of Profit & Loss, and correspondingly reserves are reduced to the extent of the fair value. The proposed amendment provides that the adjustment on account of fair value shall be ignored for the purpose of book profit in case of a transferee and resulting company. In other words, fair value change becomes MAT neutral for both the companies.

5. Key issues – May require further clarification

- Preference shares – Under Ind AS 109, certain preference shares are to be treated as a financial liability in the Balance Sheet. Dividend payment on the said shares needs to be charged to the Statement of Profit & Loss as finance cost. As this aspect is not covered in the proposed amendment, one may presume that for book profit, such charge will be allowed.
- As per Ind AS any gain or loss on derivative instruments needs to be taken to the Statement of Profit & Loss, unless it is hedged for highly probable future transaction.

  Gain/Loss to the extent taken to the Statement of Profit & Loss account may not be required to be adjusted from book profit.
- For borrowings accounted at amortised cost under Ind AS, certain adjustments at the time of first time adoption is required. This will reverse initial borrowing cost incurred by the company in the earlier years and claimed as deduction in Income computation. In the first time adoption there is likely to be a credit to reserves on this account. For such items also amortisation over 5 years need to be applied for book profit computation.
- As per Ind AS there will be notional finance income and finance cost due to discounting of certain assets and liabilities. In the absence of any clarification, no adjustment may be required for book profit computation.

  The author suggests that the above aspects can be examined by the earlier committee formed for the purpose of MAT, which may suggest any further amendments to clarify the position.

6. Extension of time for carry forward of tax credit

- Sections 115 JAA and 115 JD allows carry forward and set off of tax credit in respect of MAT and Alternate Minimum Tax (AMT) up to 10 succeeding years. It has been proposed that this time limit is increased to 15 years. This relief will be available only if 10 years are not lapsed up to 31st March, 2017
- Sections 115 JAA and 115 JD is also proposed to be amended to provide that any tax credit shall not be allowed to carry forward, if such credit relates to the difference between the amount of Foreign Tax Credit (FTC) allowed against MAT/AMT and FTC allowable against normal tax provisions.

7. Conclusion

- The proposed amendments are fair to a large extent and is likely to avoid controversy which may arise on applicability of MAT due to introduction of Ind AS.
- There is going to be a challenge in maintenance of records for various adjustments required for book profit calculation to apply MAT. There may be three sets of records required, one for ICDS (Income Computation and Disclosure Standards), another for MAT, besides maintenance of normal books of account.
- At some point of time, the Government and CBDT may have to think in terms of considering book profit arrived on the basis of applicable Accounting Standards, without any adjustments for the purpose of MAT/AMT. This will avoid lot of hardship in maintenance of different set of accounting records.

□

Promoting less cash economy

CA Amit Purohit

1. Introduction

The Finance Bill, 2017 ("the Finance Bill") has proposed a slew of measures including tax proposals, to promote India's movement towards less cash economy and to curb cash transactions. The Government has been aggressively pushing for this tectonic shift in the form of digital economy especially after the cancellation of high value notes in November 2016. It is also felt that vision of Digital India cannot be complete without digitising cash use in the economy. Further, these measures can get greater mileage if suitable amendments are made in the Taxation law to discourage higher use of cash dealings.

In this regard, the Finance Bill contains many Direct Tax proposals which discourages usage of cash for certain purposes. Some of key initiatives taken by the Government on the Direct Tax front have been discussed in this write up for the benefit of the readers. It may be noted that curbing of transactions in cash and anti- evasion measures are already present in the Income-tax Act, 1961 ("the Act"). Sections 269 SS/269T/40A(3) are some of the examples. These provisions have embedded thresholds for usage of cash, beyond which the transaction suffers disallowance/penalty etc. under the Act.

2. Restrictions on Cash Donations

2.1 Existing provisions

Section 80G allows deduction (either 100% or 50%) in respect of donations given by the assessee, subject to the conditions mentioned therein. At present, under sub-section (5D) of section 80G, deduction for the donation is not allowed to the assessee if the donation exceeding Rs. 10,000/- is given in cash. This section has been prone to widespread misuse and mal-practice.

2.2 Proposed amendment

In order to curb such practice of cash donations and splitting it in smaller amounts, the Finance Bill proposes to amend sub-section (5D) of section 80G of the Act providing that no deduction shall be allowed under the section 80G in respect of donation of any sum exceeding Rs. 2,000/- unless such sum is paid by any mode other than cash. Thus, reduction in threshold from Rs. 10,000/- to Rs. 2,000/- will help discourage cash donations related malpractices.

2.3 Effective date of amendment

This amendment will apply in relation to the assessment year 2018-19 and subsequent years.

3. Measures to discourage revenue expenditure in cash

3.1 Existing provisions

The existing provision of sub-section (3) of section 40A of the Act provides that any expenditure in respect of which payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds Rs. 20,000/-, shall not be allowed as a deduction.

Further, sub-section (3A) of section 40A provides for deeming a payment as profits and gains of business of profession, if the deduction for expenditure is claimed in a particular year but the payment is made in any subsequent year of a sum exceeding Rs. 20,000/- otherwise than by an account payee cheque drawn on a bank or account payee bank draft.

However, in the case of payment made for plying, hiring or leasing goods carriages, sub-sections (3) and (3A) provide for higher threshold of Rs. 35,000/-. The limits as specified under these two sub-sections are subject to the cases and circumstances as specified under rule 6DD of the Rules.

3.2 Proposed amendment

In order to discourage cash transactions, it is now proposed to amend the provisions of section 40A of the Act whereby:

- The existing threshold of cash payment to a person under sub-sections (3) and (3A) is proposed to be reduced from Rs. 20,000/- to Rs. 10,000/- in a single day, which means that any payment in cash above Rs. 10,000/- to a person in a day, shall not be allowed as deduction in computation of income from "Profits and gains of business or profession".
- Expanding the specified mode of payment under sub-sections (3) and (3A) to include use of electronic clearing system through a bank account. Thus, in addition to accounting payee cheque/account payee bank draft, electronic payments (such as NEFT/RTGS etc.) are also included as eligible payment mode in order claim deduction for the expenditure. Even though electronic payment mode was not included earlier, the common view was that since it is a mode of payment through bank account, it is an eligible mode of payment. Also, sections 269SS and 269T

already included electronic mode as an eligible mode for acceptance/repayment of loan/deposit etc. Thus, the proposed amendment now brings parity of eligible payment modes across these sections.

- It may be noted that even after the reduction in the threshold, rule 6DD will still hold good in case the payment exceeding the limit is made in cases and circumstances as referred to under the said rule.

3.3 Effective date

These amendments will apply in relation to the assessment year 2018-19 and subsequent years.

4. Disallowance of depreciation under section 32 and capital expenditure under section 35AD on account of cash payment

4.1 Existing provisions

As mentioned earlier, sub-sections (3) and (3A) of section 40A deal with revenue expenditure. However, at present there is no similar provision in the Act to disallow the capital expenditure incurred in cash. Thus, in the absence of specific provision dealing with the capital expenditure incurred in cash, actual cost of the asset (as referred to in section 43) for the purpose of claiming depreciation cannot be adjusted so as to exclude the capital expenditure incurred in cash.

Further, section 35AD of the Act, *inter alia* provides for investment linked deduction on the amount of capital expenditure incurred, wholly or exclusively, for the purposes of business, during the previous year for a specified business. However, clause (f) of sub-section (8) of the said section provides for exclusion of any expenditure incurred on the acquisition of any land or goodwill or financial instrument from the purview of expenditure of capital nature and accordingly, not allowed as a deduction.

4.2 Proposed amendment

In order to bring parity and neutrality between revenue and capital expenditure incurred in cash, the Finance Bill proposes to amend the provisions of section 43 of the Act by inserting another proviso before Explanation 1 of clause (1) to provide that where an assessee incurs any expenditure for acquisition of any asset in respect which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account, exceeds Rs. 10,000/-, then such expenditure shall be ignored for the purposes of determination of actual cost of such asset. The same effectively means that the assessee will not be able to claim depreciation on the capital expenditure incurred in in cash exceeding the threshold.

It is further proposed to amend clause (f) of sub-section (8) of the section 35AD of the Act so as to provide that any expenditure in respect of which payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account, exceeds Rs. 10,000/-, no deduction shall be allowed in respect of such expenditure.

4.3 Effective date

These amendments will apply in relation to the assessment year 2018-19 and subsequent years.

5.0 Measures for promoting digital payments in case of small businesses

5.1 Existing provisions

The existing provisions of section 44AD of the Act, *inter alia*, deal with the presumptive income scheme in case of eligible assessees carrying out eligible businesses. As per the said section, in case of an eligible assessee engaged in eligible business having total turnover or gross receipts not exceeding Rs. 2 crore in a previous year, 8% of the total turnover or gross receipts, or a sum higher than the aforesaid sum declared by the assessee in his return of income, is deemed to be the profits and gains of such business chargeable to tax under the head "profits and gains of business or profession". Thus, small businesses can get themselves assessed at the rate of 8% (deemed income) of the total turnover/gross receipts without having to maintain the regular books of account and undergo tax audit under section 44AB.

5.2 Proposed amendment

With the view to promote digital transactions and to encourage small businesses to accept digital payments, the Finance Bill proposes to amend section 44AD of the Act thereby further incentivising the small businesses by reducing the existing rate of 8% to 6%. However, such reduced rate to apply in respect of the amount of such total turnover or gross receipts as received by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account during the previous year or before the due date of filing the tax return as specified in sub-section (1) of section 139 in respect of that previous year. The same also implies that the present rate of 8% shall continue to apply in respect of total turnover or gross receipts received in any other mode (e.g. in cash).

The proposed amendment not only reduces the rate of deemed income but also extends the benefit in respect of the turnover/gross receipts realised after the end of the financial year-end but before the date of filing of the return. However, in such cases, the assessee will need to be careful to ensure that the same receipt is not treated as part of the turnover/gross receipts in two financial years. This is a welcome amendment and will encourage small businesses to conduct transactions in digital mode.

5.3 Effective date

This amendment will apply in relation to the assessment year 2017-18 and subsequent years.

6. Restriction on cash transactions exceeding specified limit

6.1 Introduction of new sections 269ST and 269DA

In order to curb black money and related unaccounted wealth and to achieve the mission of the Government to move towards a less cash economy, the Finance Bill proposes to insert section 269ST in the Act to provide that no person shall receive an amount of Rs. 3,00,000/- or more:

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

(b) In respect of a single transaction; or

(c) In respect of transactions relating to one event or occasion from a person,

otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account.

6.2 Exclusions

The above-mentioned restriction shall not apply to:

(a) Government

(b) Any banking company

(c) Post office savings bank or co-operative bank

(d) Such other persons or class of persons or receipts may be notified by the Central Government, for reasons to be recorded in writing, on whom the proposed restriction on cash transactions shall not apply.

(e) Transactions (loans/deposits/transfer of properties) which are referred to in section 269SS. It means that such kind of transactions shall continue to attract lower threshold of Rs. 20,000/- as envisaged under section 269SS.

6.3 It is also proposed to insert new section 271DA in the Act to provide for levy of penalty by the Joint Commissioner for contravention of the provisions of the proposed section 269ST. The penalty is proposed to be a sum equal to the amount of such receipt. However, the said penalty shall not be levied if the person proves that there were good and sufficient reasons for such contravention.

6.4 It is also proposed to consequentially amend the provisions of section 206C to omit the provision relating to tax collection at source at the rate of 1% of sale consideration on cash sale of jewellery exceeding five lakh rupees.

6.5 Effective date

These amendments will take effect from 1st April, 2017.

6.6 With the proposed introduction of sections 269ST and 271DA which aims at combating tax evasion and black money, the Act now specifies the outer limit of Rs. 3,00,000/- for transaction in cash. Though the proposed section 269ST does not define transaction or event or occasion, it may be noted that the provisions of this section can apply to transactions/events such as cash receipts on sale of gold/jewellery, receipts on sale of business/non-business assets, receipts from events, performances etc.

6.7 The Act already contains provisions for discouraging cash expenses, acceptance or repayment loans/deposit/transactions for immovable property, capital expenditure incurred in cash (as proposed in the Finance Bill) etc. As a result, now the Act has different limits for cash payment in respect of different types of transactions as tabulated below:

Section	Particulars	Consequence for contravention
40A(3) / (3A)	Payment for expenditure in cash exceeding Rs. 10,000/- (limit as proposed in the Finance Bill)	Disallowance of the expenditure
43	Payment for Asset exceeding Rs. 10,000/- in cash ((limit as proposed in the Finance Bill)	Such payment not to be considered as a part of actual cost of an asset
35AD	Payment for Capital expenditure exceeding Rs. 10,000/- in cash for	Such payment not to be considered as deductible expenditure

Section	Particulars	Consequence for contravention
	specified business (limit as proposed in the Finance Bill)	
269SS	Acceptance of Loan /deposit /specified sum in contravention of section 269SS	Penalty under section 271D of sum equal to the amount of loan/deposit/specified sum so taken or accepted
269T	Repayment of loans/deposits/specified advances in contravention of section 269T	Penalty under section 271E of sum equal to the amount of loan/deposit/specified advance so repaid
269ST	Receipt of any sum in contravention of section 269ST	Penalty under section 271DA of sum equal to the amount of such receipt

7. Conclusion

The objective behind introduction of above-mentioned amendments is pretty clear which also echoes the voice of the Government in brining digital payment revolution and making India less cash economy by fighting black-money and tax evasion. The proposed amendments/provisions, if complied with honesty and administered with sincerity, will definitely bear the fruits in the long run for everyone to enjoy.

☐

Amendments proposed to Search and Seizure, Survey, Processing of Return, Time Limit for Completion of Assessments, Refunds

CA Dilip Sanghvi

CLAUSES 50 & 51 OF THE FINANCE BILL, 2017

Section 132(1): Search and Seizure

Existing Provisions

Sub-clauses (a), (b) and (c) of sub-section (1) of section 132 provides that where an income-tax authority mentioned therein, based on the information in his possession, has 'reason to believe' or 'reason to suspect' of circumstances specified therein, he may authorise an authority specified therein to carry out search and seizure.

Section 132A(1): Powers to requisition books of account, etc.

Existing Provisions

Sub-section (1) of Section 132A provides that where an authority mentioned therein, based on the information in his possession, has 'reason to believe' or 'reason to suspect' of the circumstances specified therein, he may authorise an authority specified therein to requisition books of account, documents or assets.

Proposed Amendment

Section 132(1)

It is proposed to insert an *Explanation* after the fourth proviso to section 132(1) so as to provide that the reason to believe recorded by the income-tax authority specified therein under the said sub-section shall not be disclosed to any person or any authority or the Appellate Tribunal.

Section 132A(1)

Similarly, it is proposed to insert an Explanation to Section 132A(1) so as to provide that the reason to believe recorded by the income-tax authority under the said sub-section shall not be disclosed to any person or any authority or the Appellate Tribunal.

Purpose/ Rationale

As per speech of Finance Minister, said amendment is clarificatory in nature. It is introduced in order to maintain the confidentiality and sensitivity of the source of the information and the identity of the informer. However, certain judicial pronouncements have created ambiguity in respect of the disclosure of 'reason to believe' or 'reason to suspect' recorded by the income-tax authority to conduct a search under section 132 or to make requisition under section 132A.

Recently, Hon'ble Supreme Court in *DGIT (Inv.) vs. Spacewood Furnishings Pvt. Ltd. (2015) 57 Taxmann.com 292 (SC);* itatonline appeal no 4394 dated 13th May, 2015 clarified that Section 132 would not confer in the assessee right of inspection of the documents or to a communication of the reasons for the belief at the stage of issuing of authorisation, however, at the stage of commencement of assessment proceedings after completion of the search and seizure, if any, the requisite material may have to be disclosed to the assessee.

The Appellate Tribunals in the past, had called for the reasons to believe recorded by the competent authority u/s. 132(1) to carry out the search and seizure operation and after examining/finding that the authorisation to conduct search based on reason to believe did not exist and hence the search became invalid. Therefore, the assessment order based on said search could not stand and was quashed on validity of said reasons alone.

To nullify the effect of the above judgment, the above amendment is proposed wherein no person, authority or even Appellate Tribunal shall be entitled to refer to the reasons to believe or reasons to suspect, as the case may be, during the course of assessment or appellate proceedings.

Now post amendment, neither the appellants can take shelter of validity of the reasons recorded under section 132 nor can any authority Tribunal refer the said material while deciding the appeal before it. However, such reasons may have to be placed before the Court in the event of challenge to the formation of belief of authorised officials in which event the Court would be entitled to examine the relevance of the reasons for the formation of belief for such action.

The amendment in section 132 will take effect retrospectively from 1st April, 1962, the date of commencement of the Income-tax Act, 1961.

The amendment in section 132A will take effect retrospectively from 1st October, 1975.

New inserted Sub-Section (9B)

It is further proposed to insert sub-section (9B) in the said section, to provide that in a search case, where the authorised officer is satisfied that for the purpose of protecting the interest of revenue and for reasons to be recorded in writing it is necessary so to do he may, by order in writing, attach provisionally any property belonging to the assessee with the prior approval of Principal Director General or Director General or Principal Director or Director.

New inserted Sub-Section (9C)

It is also proposed to insert sub-section (9C) in the said section, so as to provide that such provisional attachment shall cease to have effect after the expiry of six months from the date of order of attachment.

New inserted Sub-Section (9D)

It is also proposed to insert sub-section (9D) in the said section, to provide that in a search case, the authorised officer for estimation of fair market value of a property, may make a reference to a Valuation Officer referred to in section 142A, for valuation in the manner provided under the said sub-section. It is also proposed that the Valuation Officer shall furnish the valuation report within sixty days of receipt of such reference.

Purpose/ Rationale – Sub-Sections 9B, 9C and 9D of Section 132

The purpose of introduction of these provision of sub section 9B and 9C is to protect the interest of revenue and safeguard recovery in search cases.

Sub-section 9D is introduced in order to enable correct estimation and quantification of undisclosed income held in the form of investment or property by the assessee by the Investigation wing of the Department.

These amendments will take effect from 1st April, 2017.

CLAUSE 52 OF THE FINANCE BILL, 2017

Section 133 – Power to Call for Information

Section 133(6) of the Income-tax Act empowers Assessing Officer to require any person to furnish information which will be useful or relevant for proceedings under this Act.

The first proviso to section 133(6) is amended to include the Joint Director or Deputy Director or Assistant Director.

In addition to existing authorities i.e., Principal Director General or Director-General, the Principal Chief Commissioner or Chief Commissioner, the Principal Director or Director and the Principal Commissioner or Commissioner, w.e.f. 1st April, 2017 the Joint Director or Deputy Director or Assistant Director are also empowered to issue notices u/s. 133(6) of the Income-tax Act, 1961.

Second proviso to section 133(6) stated that in case wherein no proceedings are pending, power to inquiry shall not be exercised by any income-tax authority below the rank of

Principal Director or Director or Principal Commissioner or Commissioner without the prior approval of the Principal Director or Directors or as the case may be, the Principal Commissioner or Commissioner:

The second proviso is amended to provide that the Joint Director or Deputy Director or Assistant Director may exercise the powers in respect of such inquiry, without seeking prior approval of higher authorities.

These amendments will take effect from 1st April, 2017.

Purpose/ Rationale

This amendment is proposed to empower the lower rank authorities as specified in investigation wing to seek inquiry under this section.

CLAUSE 53 OF THE FINANCE BILL, 2017

Section 133A – Power of Survey

The existing provisions of section 133A empower an income-tax authority to enter any place, at which a business or profession is carried on, or at which any books of account or other documents or any part of cash or stock or other valuable article or thing relating to the business or profession are kept, for the purposes of conducting a survey.

Section 133A is proposed to be amended to enable income tax authority to enter place at which a business or profession or an activity for charitable purpose is carried on, whether such place be the principal place or not of such business or profession or of such activity for charitable purpose, and require any proprietor, trustee, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession or such activity for charitable purpose

Consequential amendment is made in explanation to sub section (1) of section 133A to include activity for charitable purpose.

This amendment will take effect from 1st April, 2017.

Purpose/ Rationale

This amendment has extended power of income tax authority of survey by including any place at which activity for charitable purpose is carried on.

CLAUSES 57(b) AND 76 OF THE FINANCE BILL, 2017

CLAUSE 57(b):

Section 143(1D) – Processing of Return (Clause 57(B))

Existing provision – (w.e.f. A.Y. 2017-18)

As per section 143(1D), in case where notice u/s. 143(2) of the Income-tax Act, 1961 is issued, processing of return is not necessary within time limit specified u/s. 143(1) i.e., one year from the end of the financial year in which the return is made. However, in such cases return must be processed u/s. 143(1) before order u/s. 143(3) is issued.

Proposed Amendment

As per proposed amendment, sub-section (1D of section 143) of the Income Tax Act, 1961 shall not be applicable to return filed for assessment year 2017-18 and subsequent years. Consequently even in case wherein notice u/s. 143(2) is issued, the return can be processed u/s. 143(1) even after the issue of notice under section 143(2).

Purpose/ Rationale

The amendment is proposed to be introduced to address hardship to assessee for delay in issuance of refund in genuine cases wherein the returns were not processed before issuance of notice u/s. 143(2) and the refunds were not issued to the eligible assessees, now under the proposed amendment the returns can be processed even after issuance of notice u/s. 143(2).

CLAUSE 76

New Section 241A is proposed to be inserted

For returns furnished for Assessment Year 2017-18 and onwards, in cases where return is processed u/s. 143(1) of the Income-tax Act, 1961 determining refund due to assessee and Assessing Officer is of the opinion that, having regard to the fact that a notice has been issued under sub-section 143(2) in respect of such return, that the grant of the refund is likely to adversely affect the revenue, he may withhold the refund up to the date on which the assessment is made. For withholding refund Assessing Officer must record reasons in writing and shall obtain previous approval of the Principal Commissioner or Commissioner.

The said section 241A shall be applicable to returns filed for A.Y. 2017-18 and onwards.

Purpose/ Rationale

Consequent to proposed amendment to section 143(1D), the new section 241A is added to address the concern of recovery of revenue by the Assessing Officer in doubtful cases.

CLAUSE 58 OF THE FINANCE BILL, 2017

Section 153 – Rationalisation of time limit for completion of assessment, reassessment and recomputation

Section 153 specifies time limit for completion of assessment, reassessment and recomputation of cases mentioned therein.

The above time limits proposed to be amended are as under:

Sub-Section/Proviso /Expl.	Existing time limit	Proposed time limit and applicable w.e.f.
Sub-Section (1) Time limit for making an assessment order under sections 143 or 144	21 months from the end of the assessment year in which the income was first assessable	New proviso inserted: 18 months from end of the Assessment Year 2018-19 and 12 months from the end of the Assessment Year Applicable w.e.f. 1-4-2017:
Sub-Section (2) Time limit for making an assessment order under section 147	9 months from the end of the financial year in which the notice under section 148 was served	New proviso inserted 12 months from the end of the financial year in which notice under section 148 is served on or after 1st day of April, 2019
Sub-Section (3) Fresh assessment in pursuance of an order under section 254 or section 263 or section 264	9 months from the end of the financial year in which the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner OR the order under section 263 or section 264 is passed	New proviso inserted 12 months from the end of the financial year in which order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner OR the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner on or after 1st day of April, 2019

Sub-Section/Proviso/Expl.	Existing time limit	Proposed time limit and applicable w.e.f.
	by the Principal Commissioner or Commissioner	
Sub-section (5) Effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264	3 months from the end of the month in which order under section 250 or section 254 or section 260 or section 242 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or Order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner	<u>New proviso inserted</u> Where an order under section 250 or 254 or 260 or 262 or 263 or 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee then time limit will be 12 months from the end of the month in which order under section 250 or section 254 or section 260 or section 242 is received by the by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or Order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner Applicable w.e.f. 1-6-2016
Sub-section (9)	The provisions of this section as they stood immediately before the commencement of the Finance Act, 2016, shall apply to and in relation to <u>any order</u> of assessment, reassessment or recomputation made	<u>New proviso inserted</u>: <u>Where a notice under section 142(1) or 143(2) or under section 148 has been issued</u> prior to the 1st day of June, 2016 and the assessment or reassessment has not been completed by such date due to exclusion of time referred to in *Explanation 1*, such assessment or reassessment shall be completed in accordance with the

Sub-Section/Proviso /Expl.	Existing time limit	Proposed time limit and applicable w.e.f.
	before the 1st day of June, 2016.	provisions of section 153 as it stood immediately before its substitution by the Finance Act, 2016 Applicable w.e.f. 1-6-2016
Third proviso to Explanation 1 to section 153	Where a proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, shall, after the exclusion of the period under sub-section (4) of section 245HA, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year; and for the purposes of determining the period of limitation under sections 149, 153B, 154, 155 and 158BE and for the	Omitted the reference of section 153B Applicable w.e.f. 1-4-2017

Sub-Section/Proviso /Expl.	Existing time limit	Proposed time limit and applicable w.e.f.
	purposes of payment of interest under section 244A, this proviso shall also apply accordingly.	

Purpose/ Rationale

In the effort to minimise human interface and move towards technology, massive computerisation has been carried out in the Department, which has translated into overall enhanced efficiency in the functioning of the Department. In view of the same, this amendment is proposed to rationalize and reduce the time limits for completion of assessment, reassessment and recomputation and reduce the time for filing revised return.

CLAUSES 59 & 61 OF THE FINANCE BILL, 2017

Sections 153A & 153C – Assessment in case of search or requisition

Existing Provisions

Section 153A provides the procedure for completion of assessment where a search is initiated under Section 132 or books of account, or other documents or any assets are requisitioned under Section 132A after May 31, 2003. In such cases, the Assessing Officer shall issue notice to such person requiring him to furnish, within such period as may be specified in the notice, return of income in respect of six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted under Section 132 or requisition was made under Section 132A.

The Assessing Officer shall assess or reassess the total income of each of these six assessment years. Assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under Section 132 or requisition under Section 132A, as the case may be, shall abate.

Sections 153C provides that, if during the course of the search it is noticed that any books of account, documents, assets etc. are found or seized belonging to any other person, the Assessing Officer shall transfer the same to the officer who has jurisdiction over that other person and then officer shall proceed against that other person as provided in sections 153A and 153B.

Proposed Amendment

In order to protect the interest of the revenue in cases, where tangible evidence(s) are found during a search or seizure operation (including 132A cases, powers to requisition books of account, etc.) and the same is represented in the form of undisclosed investment in any asset, it is proposed that section 153A relating to search assessments be amended to provide that notice under the said section can be issued for an assessment year or years beyond the sixth assessment year already provided, up to the tenth assessment year if—

(i) The Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income which has escaped assessment, amounts to or is likely to amount to fifty lakh rupees or more in one year or in aggregate in the relevant four assessment years (falling beyond the sixth year);

(ii) Such income escaping assessment is represented in the form of asset;

(iii) The income escaping assessment or part thereof relates to such year or years.

It is however proposed that the amended provisions of section 153A shall apply where search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

It is also proposed to consequentially amend section 153C to provide for the above amendment.

These amendments will take effect for initiation of search under section 132 or requisition u/s.132A is made on or after 1st day April, 2017

Purpose/ Rationale

There were various representations by the stakeholders citing genuine hardship if the provisions of section 197(c) of the Finance Act, 2016 is made applicable which provided that where any income has accrued, arisen or been received or any asset has been acquired out of such income prior to commencement of the Income Declaration Scheme, 2016 (the Scheme), and no declaration in respect of such income is made under the Scheme, then, such income shall be deemed to have accrued, arisen or received, as the case may be, in the year in which a notice under sub-section (1) of section 142 or sub-section (2) of section 143 or section 148 or section 153A or section 153C of the Income-tax Act is issued by the Assessing Officer, and provisions of the said Act shall apply accordingly.

This section has been amended to provide that notice under the said section can be issued for an assessment year or years beyond the sixth year already provided up to the tenth assessment year and widened to further four years beyond the six years to protect the interest of the revenue in the cases where tangible evidence(s) are found during a search or seizure operation in the form of undisclosed investment in any asset and the income which has escaped assessment is Rs. 50 lakh or more.

Impact

The assessee will have to keep the records for preceding 10 Assessment Years instead of 6 Assessment Years preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made, as against the old provisions and has to substantiate the sources of evidences for the assets found during the search and seizure operations for beyond six years if the amount of investments in assets found during the year is Rs. 50 lakh or more related to that years.

There will be genuine hardship to assessees who have not maintained records beyond six years, as it is required to be maintained, hence the said proposed amendment shall be made applicable after 4 years so as the records can be maintained by the assessees.

CLAUSE 60 OF THE FINANCE BILL, 2017

Section 153B: Time Limit for completion of Assessment Under Section 153A

Existing Provisions :-

The existing provisions of section 153B provide for the time limit for completion of assessment under section 153A.

Under section 153B, the assessment proceeding in respect of

(i) Each of the assessment years falling within the six assessment year preceding the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed and

(ii) The assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132AA

shall be completed within a period of twenty one months from end of the financial year in which last of the authorisation of the search was executed. Provisions have been made for extending this time limit where special tax audit u/s. 142(2A) has been ordered or where stay order by court has been issued or in similar circumstances.

Proposed Amendment

It is proposed to amend the second and third provisos to sub-section (1) of the said section to provide that in the case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on the 1st day of April, 2018, the time limit for making an assessment order under section 153A shall be reduced from existing twenty-one months to eighteen months from the end of the financial year in which the last of the authorisations for search under section 132 or requisition under section 132A was executed.

It is further proposed that in the case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on or after the 1st day of April, 2019, the time limit for making an assessment order under section 153A shall be further reduced to twelve months from the end of the financial year in which the last of the authorisations for search under section 132 or requisition under section 132A was executed.

It is further proposed to provide that period of limitation for making the assessment or reassessment in case of other person referred to in section 153C, shall be the period available to make assessment or reassessment in case of person on whom search is conducted or twelve months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other persons, whichever is later.

It is also proposed to insert a proviso to the *Explanation* of the said section to provide that where a proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section for assessment or reassessment shall after the exclusion of the period under sub-section (4) of section

245HA shall not be less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year.

It is also proposed to amend sub-section (3) of section 153B to provide that where a notice under section 153A or section 153C has been issued prior to 1st day of June, 2016 and the assessment has not been completed by such date due to exclusion of time referred to in the *Explanation*, such assessment shall be completed in accordance with the provisions of this section as it stood immediately before its substitution by the Finance Act, 2016.

These amendments will take effect from 1st April, 2017.

Purpose/Rationale

As the time limit for completion of assessment under section 153 is proposed to be rationalised, the time limit for completion of assessment under section 153A is also proposed to be rationalized in line with the time limit under section 153. In view of the same and to sync with section 153, this amendment is proposed to rationalize and reduce the time limits for completion of assessments under section 153A consequent to search and seizure operation.

CLAUSE 77 OF THE FINANCE BILL, 2017

244A – Interest on Refunds

Existing Provision

At present there is no provision in Income-tax Act to grant interest on refund to deductor on excess payment of tax deducted at source.

Proposed Amendment

New sub-section (1B) is proposed to be inserted in Section 244A providing simple interest at the rate of one-half per cent for every month or part of a month on any amount becoming due to the deductor in respect of amount paid by him under Chapter XVII-B (deduction at source). Such interest shall be payable from the date on which claim for refund is made in prescribed form till date on which refund is granted. In cases where refund is on account of order giving effect to an order under sections 250, 254, 260, 262 the interest shall be payable from date on which tax is paid to the date on which refund is granted.

Corresponding amendment is made in sub-section (2) of section 244A, providing that no interest is payable to deductor for period for which delay is attributable to deductor.

These amendment will take effect from 1st April, 2017.

Purpose/ Rationale:

This amendment will address the genuine hardship of deductors where there is delay in granting refund.

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Interest and Penalties

CA Viraj Mehta & Ms. Keerthiga Sharma, *Advocate*

The Finance Bill, 2017 has introduced certain new penalties and fee, while amending certain provisions which levy interest. Some of the important and contentious amendments relating to interest and penalties are considered in this article.

Amendment to section 234C

Section 234C of the Act provides for interest payable in case the installments of the advance tax are not paid on the specified dates (15th of June, September, December and March). For assessees who offer their business income to tax on presumptive basis u/s. 44AD, the multiple dates of installments are waived off and advance tax is payable in a single installment on or before 15th of March.

The Finance Act, 2016 introduced similar presumptive taxation for professionals referred to in section 44AA(1), *vide* section 44ADA. However, the onus of paying advance tax in quarterly installments continued for such professionals.

Finance Bill, 2017 has proposed to extend the benefit of single installment of advance tax to professionals offering their income to tax on presumptive basis u/s. 44ADA of the Act. Consequently, an amendment is also made in section 234C(1) of the Act to provide that interest shall be charged, if assessee as referred in section 44ADA of the Act fails to pay advance tax less than its tax on returned income on or before 15th March.

Further, proviso to section 234C has also been amended to provide that if there is any shortfall to pay advance tax due to short estimation or failure in estimation of income on account of income as specified in section 115BBDA, interest under section 234C shall not be leived of the same has been paid by the end of the financial year. The said provision has been rationalised on account of uncertain nature of declaration and receipts of dividend for which assessee might face difficulty to determine and consequently incur liability to pay interest u/s. 234C.

The aforesaid amendments will take effect from 1st April, 2017 and will be applicable from AY 2017-18 onwards. This amendment now ensures that sections 44AD and 44ADA are *pari materia*.

Insertion of section 234F – Fees for delay in filing of return

The Finance Minister in his Budget Speech brought to limelight the disparity between the direct tax collection and economy's income and consumption pattern, and thus, how we are a largely tax non-compliant society. The Memorandum to the Finance Bill, 2017 states that there is a desire to improve tax compliance by encouraging non-intrusive information driven approach so as to ensure effective utilisation of such information by the tax administration. Further, filing of return of income on time is a necessary precursor to introduce corresponding reduction in the time limits for assessments.

Section 271F of the Act gave the power to the Assessing Officer to levy penalty of Rs. 5,000 in case an assessee, required to file his return of income, does not do so until the end of the relevant assessment year. However, penalty was not leviable in case there was reasonable cause for the assessee to not file his return of income.

The Finance Bill, 2017 has decided to do away with the ambiguity of a penalty on late filing of return of income, and has instead proposed to introduce a fee for late filing of return of income. Section 234F has been proposed to be introduced w.e.f. AY 2018-19 onwards, to levy a late filing fee on a person who does not file his return of income within time prescribed under section 139(1) of the Act. Consequently, penalty under section 271F will not be levied from AY 2018-19 onwards.

The proposed fee structure is as follows:

Particulars	Fee
If return is furnished on or before 31st December of the Assessment Year	Rs. 5,000
If return is furnished after 31st December of the Assessment Year	Rs. 10,000

However, respite is given to assessees in the lower income bracket. If the total income of a person does not exceed Rs. 5,00,000, then the fee shall not exceed Rs. 1,000. Further, since the trigger for the levy of fee is requirement of filing return of income u/s.

139(1), no fee is leviable in case a person's (other than a company or a firm) income is below the taxable limit.

Sections 140A and 143(1) of the Act have also been correspondingly amended. The proof of payment of the above-mentioned fee along with tax and interest should accompany the return of income and any shortfall of payment will first be adjusted against the interest and aforementioned fee.

However, a petition to challenge the constitutional validity may be considered since the levy of a flat fee may be burdensome on taxpayers, who did not file their return of income within the prescribed time limit, due to genuine hardship and difficulty. Further, question also arises on whether the fee is payable in cases where there is no tax payable. There is no loss of revenue to the Government in case there is excess advance tax paid or excess TDS has been deducted. Levy of a late-filing fee in such scenarios may be debated.

Insertion of section 271DA – Penalty in case of cash transactions

The eradication of black money and abolishing the parallel cash economy is close to the heart of the present Government. In another attempt to discourage cash transactions and to exterminate the menace of black money, the Finance Bill, 2017 introduces section 269ST, which prevents any person to receive any sum in cash above the amount of Rs. 3,00,000, from a person in a day, or in respect of a single transaction, or in respect of transactions relating to an event or occasion from a person. A violation of section 269ST will attract penalty u/s. 271DA of the Act. Penalty levied will be equivalent to 100% of the amount received in cash. Such penalty will be imposed by the Joint Commissioner. However, no penalty will be levied in case there is a good and sufficient reason for the person to receive the amount in cash. The section will take effect from 1st April, 2017.

Insertion of section 271J – Penalty on professionals for furnishing incorrect information

The Government is trying to encourage voluntary tax compliance by the citizens of India. Certification of various reports and certificates by a qualified professionals are required as per various provisions of the Act to ensure that the information furnished by an assessee under the said provisions is correct. While there are various provisions under the Act that penalise the defaulting assessee in case of furnishing incorrect information, there is no penal action taken on the professional certifying/reporting such incorrect information.

The Finance Bill, 2017 in order to ensure that the professional furnishing the report or certificate undertakes due diligence before making such certification, proposes to introduce section 271J so as to penalise any certification/report of incorrect information. Section 271J is proposed to apply to accountants, merchant bankers and registered valuers. Any furnishing of incorrect information in any certificate or report by any of these professionals will attract a penalty of Rs. 10,000 for each of such certificate or report. The AO or the CIT(A) may direct such defaulting professional to pay the said penalty. However, section 273B of the Act rescues the professional in case there is a reasonable cause for such failure.

This section will take effect from 1st April, 2017.

The penalty is levied in case incorrect information is provided in the certificate/ report by the aforementioned professionals. The Finance Bill does not define what is incorrect information and thus, the AO and CIT(A) may consider any information, to which they do not agree to, as incorrect information and accordingly levy penalty on the professional. This controversial section places an onerous responsibility on accountants, merchant bankers and registered valuers. An instance where the levy of penalty is debatable is in case a report of a registered valuer is submitted by assessee in case the value of their immovable property is disputed by the AO. Since valuation is a subjective exercise, there will always be a conflict between the valuation by the DVO and that of the registered valuer. Further, the levy is questionable in case of a report from an accountant is necessary u/s. 92E of the Act, to prove that the international transaction / specified domestic transaction entered into by the assessee is at arm's length. Transfer Pricing is another subjective area where the arm's length price is determined by adopting any of the prescribed methods. Furthermore, the CBDT had introduced the sixth method of determining the arm's length price, being the "other method". Evidently, the selection of the method as well as the determination of arm's length price is left to the accountant's knowledge and expertise, and any disagreement with the same by the AO, may lead to levy of penalty u/s. 271J of Rs. 10,000. The relief granted by section 273B presupposes the existence of a failure on part of the professional, which may be due to a "reasonable cause". However, divergent view on the method to be adopted or the valuation cannot be a failure *per se*; there is only a difference of opinion, which should not attract any penalty at all. Considering the fact that the phrase “incorrect information” is ambiguous, there are bound to a numerous debates over it. Further, there is no provision for appealing against the levy of penalty and the AO / CIT(A) will have unfettered power to levy such penalty on professionals at their discretion.

To conclude, the above new sections are litigious and will definitely raise a number of questions and controversies. These can be minimised either through an explicit legislation or we’ll have to wait for them to be ironed out by judicial precedents.

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Miscellaneous Provisions

CA Heneel K. Patel

Finance Bill, 2017 Clause 44

Section 115BBDA – Amendment in respect of tax on certain dividends received from domestic companies

Currently in the case of an assessee being individual, HUF, firm who are resident in India tax is chargeable at the rate of 10% on income by way of dividend if it exceeds Rs. 10 lakhs.

It is now proposed to apply the said section to all residents except a domestic company, a fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred in Sub-clause (iv) or Sub-clause (v) or Sub-clause (vi) or Sub-clause (via) of Section 10(23C), trust or institution registered under Section 12AA.

The rule has now been extended to include private trusts in the Budget on Wednesday. Promoters holding shares through private trusts will have to pay 10% tax on dividend income for more than Rs. 10 lakhs.

It is further proposed that interest on deferment of advance tax shall not be levied if the shortfall in the advance tax payment is due to such additional tax on dividend income.

The proposed amendment will take effect from April 1, 2018.

Finance Bill, 2017 Clause 45

Section 115BBG – Income from transfer of carbon credit

Presently, as per view of Income Tax department, income on transfer of carbon credits is being treated as business income and taxed @ 30%. There are certain judicial decisions where such receipts are considered as capital receipt.

In order to provide clarity, it is now proposed that income earned from transfer of carbon credits will be subject to tax @ 10%. Further no expenditure or allowance shall be allowed to be set off while computing such income.

The Karnataka High Court in *Commissioner of Income Tax-III vs. Subash Kabini Power Corporation Ltd. [2016-TIOL-1001-HC-KAR-IT]* and the Andhra Pradesh High Court in the case of *Commissioner of Income Tax, Hyderabad vs. My Home Power Ltd. [365 ITR 82],* subsequently followed by various judicial fora, have held that carbon credits are entitlements or accretion to capital, hence income earned on the same are capital receipt and not taxable under the Income-tax Act as business income. However there are contrary decisions to this position as well. The amendment is geared to clarify this contentious issue.

The proposed amendment will take effect from April 1, 2018.

Finance Bill, 2017 Clause 54

Section 133C – Centralisation of Information received by authorised authority

Section 133C of the Act empowers the prescribed income-tax authority to issue notice calling for information and documents for the purpose of verification of information in its possession.

In order to expedite verification and analysis of the information and documents so received, it is proposed to amend section 133C to empower the Central Board of Direct Taxes to make a scheme for centralised issuance of notice calling for information and documents for the purpose of verification of information in its possession, processing of such documents and making the outcome thereof available to the Assessing Officer for necessary action, if any.

This amendment will take effect from 1st April, 2017.

Finance Bill, 2017 Clause 78

Section 245A – Rationalisation of time limits for identifying case under Settlement Commission

The Settlement Commission can be approached for settlement of a 'case' i.e. any proceeding for assessment pending before an Assessing Officer. In this regard, sub-clause (iv) of clause (b) of Section 245A provides when an assessment proceeding would be deemed to have been commenced and concluded.

In this regard, an amendment is proposed to revise the time limit for conclusion of assessment in cases where no assessment is made from "two years from the end of the relevant assessment year" to "the time specified for making assessment under sub-section (1) of section 153", i.e. eighteen months from the end of the assessment year and from assessment year 2019-20 onwards the said time limit will be 12 months from the end of the assessment year in which the income was first assessable.

The proposed amendment will take effect from April 1, 2018.

Finance Bill, 2017 Clauses 79, 80 & 81

Sections 245N, 245Q & 245O – Authority for Advance Ruling

Advance ruling machinery for customs, excise and service tax proposed to be merged with Income-tax Act. Consequently, the pending applications to be transferred to such authorities. Accordingly, necessary amendment have been proposed to amend the definition of applicant, process for application for advance ruling and authority for advance ruling.

The definition of "Applicant" provided under Section 245N is proposed to be enlarged to cover the following:

– An applicant as defined in clause (c) of Section 28E of the Customs Act, 1962

– An applicant as defined in clause (c) of Section 23A of the Central Excise Act, 1944

– An applicant as defined in clause (b) of Section 96A of the Finance Act, 1994 (Service tax)

Similarly, amendment has been proposed to Section 245Q which relates to application for advance to provide reference of applications for Advance Ruling made under the Customs Act, 1962, the Central Excise Act, 1944 and the Finance Act, 1994 (which makes provisions in respect of Service Tax Matters).

The constitution of the Authority for Advance Ruling provided under Section 245-O is proposed to be amended as under:

Sub-Section	Earlier provision	Proposed provision
3(a)	Chairman, who has been a Judge of the Supreme Court	Chairman, who has been a Judge of the Supreme Court or the Chief Justice of a High Court or for at least seven years as a Judge of a High Court
3(c)	A revenue member from the Indian Revenue Service, who is a Principal Chief Commissioner or Principal Director General or Chief	A revenue member – i. From Indian Revenue Service, who is, or is qualified to be, a Member of the Board; or

Sub-Section	Earlier provision	Proposed provision
	Commissioner or Director General	ii. From the Indian Customs and Central Excise Service, who is, or is qualified to be, a Member of the Central Board of Excise and Customs, on the date of occurrence of vacancy
3(d)	A law member from the Indian Legal Service, who is, or is qualified to be, an Additional Secretary to the Government of India	A law member from the Indian Legal Service, who is, or is qualified to be, an Additional Secretary to the Government of India on the date of occurrence of vacancy

Sub-Section 6A is proposed to be inserted providing that in the event of any vacancy in the office of Chairman by reason of his death, resignation or otherwise, the senior most Vice-Chairman shall act as a Chairman until the appointment of a new Chairman.

Sub-Section 6B is proposed to be inserted providing that in case the Chairman is unable to discharge his function owing to absence, illness or any other causes, the senior most Vice-Chairman shall discharge the functions of Chairman until the Chairman resumes.

This amendment will take effect from April 1, 2017.

Changes in Time limits as proposed by Finance Bill, 2017

CA Namrata Dedhia

Budget 2017 has proposed several changes to the time limits prescribed under various provisions of the Income-tax Act, 1961 as well as Customs, Excise and Service Tax. The following table provides a comparative summary of the existing time limits and the changes proposed thereto –

Income-tax Act, 1961

Sr. No.	Section	Provision	Existing time limit	Proposed time limit
1	132(9B) & 132(9C)	Time limit for provisional attachment of property	No such provision exists currently	For provisional attachment of property: During the course of search or seizure or within 60 days from the date on which the last authorization for search was executed For ceasing of provisional attachment: After the expiry of 6 months from the date of the order for provisional attachment
2	139(5)	Time limit for filing belated return of income	1 year from the end of the assessment year	End of the assessment year
3	153(1)	Time limit for completion of assessment u/ss. 143 or 144	21 months from the end of the assessment year	a) For assessments relating to AY 2018-19: 18 months from the end of the assessment year b) For assessments relating to AY 2019-20 and subsequent years: 12 months from the end of the assessment year
4	153(2)	Time limit for completion of assessment, reassessment or recomputation u/s. 147	9 months from the end of the financial year in which notice u/s. 148 is served	For notice served on or after 1-4-2019: 12 months from the end of the financial year in which the notice is served

Sr. No.	Section	Provision	Existing time limit	Proposed time limit
5	153(3)	Time limit for completion of fresh assessment pursuant to an order u/ss. 254 or 263 or 264	9 months from the end of the financial year in which order u/s. 254 is received by Pr. CCIT, CCIT, Pr. CIT or CIT or order u/ss. 263 or 264 is passed by Pr. CIT or CIT	For order u/s. 254 received or order u/ss. 263 or 264 passed on or after 1-4-2019: 12 months from the end of the financial year in which the order is received or passed
6	153B(1)	Time limit for completion of assessment or reassessment in case of search or requisition	1) For the person referred to in section 153A: 21 months from the end of the financial year in which last authorisation for search u/s. 132 or requisition u/s. 132A is executed 2) For the other person referred to in section 153C: 21 months (as in pt. 1 above) or 9 months from the end of the financial year in which the books, etc. requisitioned are handed over u/s. 153C, whichever is later. 3) Where reference is made to the TPO during the course of such assessment or reassessment proceedings:	1) For the person referred to in section 153A: a) For authorisation or requisition executed during FY 2018-19: 18 months from the end of the financial year in which last authorisation for search u/s. 132 or requisition u/s. 132A is executed b) For authorisation or requisition executed during FY 2019-20 or subsequent years: 12 months from the end of the financial year in which last authorisation for search u/s. 132 or requisition u/s. 132A is executed 2) For the other person referred to in section 153C: a) For authorisation or requisition executed during FY 2018-19: 18 months (as in pt. 1.a above) or 12 months from the end of the financial year in which the books, etc. requisitioned are handed over u/s. 153C, whichever is later. b) For authorisation or requisition executed during FY 2019-20 or subsequent years: 12 months (as in pt. 1.b above) or 12 months from the end of the financial year in which the books, etc. requisitioned are handed over u/s. 153C whichever is later. 3) Where reference is made to the TPO during the course of such assessment or reassessment proceedings: Respective period shall be extended by 12 months.

Sr. No.	Section	Provision	Existing time limit	Proposed time limit
			a) For the person referred to in section 153A: 33 months from the end of the financial year in which last authorization for search u/s. 132 or requisition u/s. 132A is executed. b) For the other person referred to in section 153C: 33 months (as in pt. 3.a above) or 21 months from the end of the financial year in which the books, etc. requisitioned are handed over u/s. 153C, whichever is later	
7	155 (14A)	Time limit for submission of details to the AO for allowing credit of disputed foreign tax	No such provision exists currently	6 months from the end of the month in which the dispute relating to the payment of foreign tax is settled.

Customs, Excise and Service Tax :

Sr. No.	Section	Provision	Existing time limit	Proposed time limit
1	28I(6) of Customs Act, 1962; 23D(6) of Central Excise Act, 1944; 96D(6) of Finance Act, 1994	Time limit for pronouncement of ruling by Authority for Advance Ruling	90 days from receipt of application	6 months from receipt of application.
2	127C(5A) of Customs Act, 1962; 32F(5A) of Central Excise Act, 1944	Time limit for rectification of error apparent on the face of record by Settlement Commission	No such provision exists currently	3 months from the date of passing the order u/s. 127C(5) or 32F(5).
3	Rule 21(2) of Central Excise Rules, 2002	Time limit for granting remission of duty	No such provision exists currently	3 months
4	Rule 10(4) of CENVAT Credit Rules, 2004	Time limit for approving transfer of CENVAT credit in certain cases	No such provision exists currently	3 months

Analysis of Finance Bill, 2017
Provisions related to Service Tax

CA Rajiv Luthia & Mr. Bhavesh Khona

PREAMBLE

Departing from the colonial era tradition of presenting the Union Budget on the last working day of February, the Hon'ble Finance Minister Shri Arun Jaitley presented the 4th Budget of the present NDA Government on 1st February, 2017.

In recently released statistics, the World Bank has pared India's growth forecast for F.Y. 2016-17 to 7% from earlier estimate of 7.6% attributing it partly to demonetisation of specified high value currency notes.

Considering weakened economy in the wake of demonetisation, dropping demand and surging crude oil prices, Union Budget, 2017 has assumed material significance for the Government and the common public alike.

The Union Budget, 2017 has continued the Government's ongoing reforms agenda whilst abstaining from any surprises. Instead of focusing on freebies and subsidies, the budget has focused intervening in certain sectors like low cost housing, direct taxes, land and property and rural infrastructure.

On the Indirect Taxes front, the Hon'ble FM has abstained himself from making much of the tinkering given that India is on the brink of introduction of GST.

In this article, the authors have tried to analyse the amendments in Service Tax provisions proposed by the Finance Bill, 2017, relevant Notifications and Circulars.

ANALYSIS AND IMPACT OF AMENDMENTS

Tax rate

- Effective tax rate remains unchanged at 15% consisting of Service Tax 14%, Swachh Bharat Cess ("SBC") 0.5% and Krishi Kalyan Cess 0.5% ("KKC").

Amendments effective from 2nd February, 2017

Education

- Presently, Entry No. 9B(a) of Notification No. 25/2012-ST dated 20th June, 2012 (hereinafter referred to as "Mega Exemption Notification") grants exemption to services provided by Indian Institutes of Management ("IIM") to their students, by way two-year full time residential Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT), conducted by IIM.

The said entry is amended to omit the reference to term “residential” hence non-residential Post Graduate Programmes would also be eligible for exemption.

Passenger transportation through Air

- Based on one of the objectives of National Civil Aviation Policy (“NCAP”) 2016, the Central Government had unveiled a Regional Connectivity Scheme (“RCS”) known as UDAN (Ude Desh ka Aam Nagrik) during October, 2016.

  The said RCS is basically an initiative to promote affordable flying and increase the air connectivity. Under the RCS, the Government will make flying much cheaper so that more and more passengers avail flights especially from unserved airport, so that air connectivity is utilised and expanded.

  Vide Notification No. 38/2016-ST dated 30th August, 2016, the Central Government had granted abatement of 90% to the services of transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in a RCS Airport subject to fulfilment of certain conditions.

  In order to further incentivise the air transport operators under the said scheme, Entry No. 23A is inserted in Mega Exemption Notification to grant exemption to services provided to the Government by way of transport of passengers, with or without accompanied belongings, by air, embarking from or terminating at a RCS Airport, against consideration in the form of Viability Gap Funding (VGF).

  The said exemption will be available for a period of 1 year from the date of commencement of operations of the RCS Airport as notified by the Ministry of Civil Aviation.

Life Insurance service

- Entry No. 26D is inserted in Mega Exemption Notification to grant exemption to services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government.

CENVAT Credit

- Presently, banking companies and financial companies including NBFC have an option of claiming full CENVAT Credit and paying 7% of value of exempted services u/r. 6(3) of the CENVAT Credit Rules, 2004 (hereinafter referred to as "CCR") or to proportionately reverse CENVAT Credit attributable to exempt services under Rule 6(3A) of the CCR. The above options are in addition to the option of claiming 50% of eligible CENVAT Credit u/r. 6(3B) of CCR.

  Explanation I(e) to Rule 6(3D) of CCR provides that "value. of exempted service" for the purpose Rule 6(3) and Rule 6(3A) shall not include the interest or discount being value of services by way of extending deposits, loans or advances.

  A proviso is now inserted to provide that the said explanation shall not apply to a banking company and a financial institution including a NBFC, engaged in providing services by way of extending deposits, loans or advances.

  With this amendment, banking company and a financial institution including a NBFC, engaged in providing services by way of extending deposits, loans or advances would have to include the interest or discount in the value of exempted service for the purpose of determining the amount payable under Rule 6(3) or reversal of CENVAT u/r 6(3A) of CCR.

- Rule 10 of CCR provides for transfer of unutilised CENVAT Credit in certain situations such as shifting of factory, transfer of business on account of sale, merger, amalgamation etc.

  Such transfer of unutilised CENVAT Credit is allowed subject to condition that the stock of inputs or the capital goods is also transferred along with the factory/business premises to the new site/ownership and the same are duly accounted for to the satisfaction of the AC/DC of the Central Excise.

  The said rule is now amended to provide that such transfer of CENVAT Credit shall be allowed by AC/DC within 3 months from the date of receipt of application for such transfer.

  The Principal Commissioner or Commissioner of Central Excise is empowered to extend the said period by a further period up to 6 months on sufficient cause being shown and reasons to be recorded in writing.

Amendments effective from enactment of Finance Bill, 2017

Research and Development Cess

- Presently, Notification No. 14/2012-ST dated 17th March, 2012 grants exemption to taxable services involving import of technology from so much of the service tax leviable thereon as is equivalent to the amount of cess payable on the said import of technology under the Research and Development Cess Act, 1986.

  It is proposed to repeal the said Research and Development Cess Act, 1986 w.e.f. 1st April, 2017.

  Consequently, R & D Cess will not be payable on import of technology. Full Service Tax, wherever applicable, would be payable on import of such technology.

Process amounting to manufacture

- Presently, services way by of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption are covered under the Negative List u/s. 66D(f).

  It is proposed to omit the said entry from Negative List. However, the said service would continue to remain exempt under Entry No. 30 of Mega Exemption Notification.

  Consequently, the definition of "process amounting to manufacture or production of goods" contained in Section 65B(40) is omitted and contained under clause (ya) of the said Mega Exemption Notification.

Advance Ruling

- It is proposed to merge the Authority for Advance Ruling (AAR) for Income Tax with AAR for Customs, Central Excise and Service Tax; and create common AAR. For this purpose, Section 96A(d) is proposed to be amended to provide that "authority" for the purpose of Advance Ruling shall be the authority as defined in Section 28E(e) of the Customs Act, 1962 read with Section 245-O of the Income-tax Act, 1961.

  Presently, Section 96B provides that no proceeding before, or pronouncement of advance ruling would be invalidated on the ground merely due to any vacancy or defect in the constitution of the Authority. The said section is omitted since similar provisions are already contained in Section 245-P of the Income Tax Act, 1961.

The filing fees for making an application for seeking AAR is proposed to be increased from Rs. 2,500/- to Rs. 10,000/-.

The time limit for pronouncing the advance ruling is proposed to be increased from 90 days to 6 months from the date of receipt of application.

Further, Section 96HA is proposed to be inserted to provide for transfer of existing applications and proceedings pending before erstwhile Authority as on the date of presidential assent to new Authority.

Long-term lease

- Applicability of Service Tax on premium paid for long-term leases has always been a debatable issue.

  Hon'ble New Delhi CESTAT in the case of *Greater Noida Industrial Development Authority vs. CCE (2014-TIOL-1741-CESTAT-DELHI)* has held that upfront lease premium or salami paid by the lessee to the lessor for transfer of interest in the property from the lessor to the lessee cannot be taxed under the category of Renting of Immovable Property.

  Vide Notification No.41/2016-ST dated 22nd September, 2016, Central Government had granted exemption from levy of Service Tax to one time upfront amount (called as premium, salami, cost, price, development charges or by any other name) received by State Government Industrial Development Corporations/ Undertakings for providing taxable services by way of granting long-term (30 years or more) lease of industrial plots to industrial units.

  With a view to settle the disputes arising in the period prior to such exemption, Section 104 is proposed to be inserted to give retrospective exemption to such services rendered during the period from 1st June, 2007 to 21st September, 2016.

  It is also proposed to grant refund of such service tax which has been collected but which would not have been collected during the material period owing to such exemption. The claim for such refund needs to be filed within 6 months of date of enactment of Finance Bill, 2017.

Life insurance service

- Section 105 is proposed to be inserted to give retrospective exemption to services of life insurance business provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government during the period from 10th September, 2004 to 1st February, 2016. It appears that through oversight exemption is not granted for the period from 2nd February, 2016 to 1st February, 2017. One may expect corrigendum in this regard.

  It is also proposed to grant refund of such service tax which has been collected but which would not have been collected during the material period owing to such exemption. The claim for such refund needs to be filed within 6 months of date of enactment of Finance Bill, 2017.

Construction service

- Section 66E(h) covers service portion in the execution of a works contract under Declared Services.

  Rule 2A of the Service Tax (Determination of Value) Rules, 2006 (hereinafter referred to as the "Valuation Rules") provides for valuation mechanism for determining service portion in execution of works contract.

  Hon'ble Delhi High Court in the case of *Suresh Kumar Bansal & Others vs UOI & Others (2016-TIOL-1077-HC-DEL-ST)* has held that sale of under construction flats/units is a works contract service and levy fails in such case due to absence of valuation mechanism to exclude value of land while working out value of taxable services in this regard.

  To overcome this decision, following amendments are proposed in Valuation Rules:

  – Rule 2A(i) is proposed to be amended retrospectively w.e.f. 1st July, 2010 so as to make it clear that value of service portion in execution of works contract involving transfer of goods and land or undivided share of land, as the case may be, shall not include value of property in such land or undivided share of land.

  – Similarly, it is proposed to amend Rule 2A(ii) providing alternative valuation mechanism for valuing Works Contract Services. It proposes to value such services at 25% or 30% of contract value respectively for the period from 1st July, 2010 and onwards.

Settlement Commission

- It is proposed that application to Settlement Commission can also be made by any person against whom proceedings are initiated in respect of case relating to another assessee which has been settled or is pending before the Settlement Commission.

  Settlement Commission, may at any time within 3 months from the date of passing order u/s. 32F(5) of the Central Excise Act,1944, amend such order to rectify any error apparent from record either *suo motu* or when brought to it's notice by specified person or applicant. However, any such amendment having effect of enhancing liability of the applicant shall not be made without granting reasonable opportunity of being heard to the applicant.

CONCLUSION:

The Hon'ble Finance Minister has made many welcome amendments to settle the pending disputes and clarified various provisions under Service Tax. In a way, authors feel this budget is positive as it focuses on increasing consumption, infrastructure development and overall growth of economy.

Overall, the Budget builds positive sentiments that the Government is committed to boost economic growth of the nation.

□

Union Budget 2017
– Changes in Central Excise

CA Vasant K. Bhat

With the GST roll out in mind, Hon'ble Finance Minister has not considered any major amendments in Indirect tax laws. There is no change in the peak rate of excise duty and it continues to be 12.5% ad valoem. In the Central Excise law, very few changes have been made which are as under.

A. Tariff Notifications

1. Increase in additional duty of pan masala and tobacco products:

   a. Earlier few pan masala and tobacco products enjoyed partial exemption on additional duty of excise (commonly known as health cess/ surcharge) *vide* exemption notification 06/2005-CE. Now, the effective rate of addition duty of excise levied on various tobacco and pan masala products have been increased by reducing the given exemption to some extent.

   The revised rates are as follows:

Commodity	CETH	Present Health Cess (%)	Proposed Health Cess (%)
Pan Masala	2106 90 20	6	9
Gutkha	2403 99 90	6	12
Unmanufactured Tobacco bearing a brand name	2401	4.2	8.3
Chewing Tobacco	2403 99 10	6	12
Zarda Scented Tobacco	2403 99 30	6	12

[Notification No. 3/2017-Central Excise, dated 2-2-2017 effective from 2-2-2017]

b. Further, cigarettes are considered to be sin products and always attracts higher taxes and year-on-year there will be increase in the tax. There is no change in the Basic Excise Duty leviable under the First Schedule to the Central Excise Tariff Act, 1985 and the NCCD leviable under Seventh Schedule to the Finance Act, 2001 (Refer clause 146 of the Finance Bill). The changes in additional duty of excise rates on cigarettes are summarised below.

Tariff Item	**Description**	**Additional duty of Excise (Rs. per 1000 sticks)**	
		Existing Rate	**New Rate**
2402 20 10	Non-filter not exceeding 65 mm	215	311
2402 20 20	Non-filter exceeding 65 mm but not exceeding 70 mm	370	541
2402 20 30	Filter not exceeding 65 mm	215	311
2402 20 40	Filter exceeding 65 mm but not exceeding 70 mm	260	386
2402 20 50	Filter exceeding 70 mm but not exceeding 75 mm	370	541
2402 20 90	Other	560	811

2. Increase in Basic Excise Duty on other tobacco products

a. Earlier in case of pan masala (tobacco) products, rate of excise duty was prescribed on machine capacity basis *vide* notification 42/2008-CE and 16/2010-CE dated 27th Feb, 2010.

Notification 04/2017-CE and 07/2017-CE has been issued to increase the rate of duty prescribed for various pan masala and chewing tobacco products respectively on which duty of excise levied on machine capacity basis.

[Notification No. 4/2017 & 07/2017-Central Excise, dated 2-2-2017 effective from 2-2-2017]

b. Further, Basic Excise Duty on other tobacco products falling under Heading 2402 is being increased as under (Refer Clause 118 of the Finance Bill):

Tariff Item	Description	Basic Excise Duty rate	
		Existing (per thousand)	New (per thousand)
2402 10 10	Cigars and cheroots	12.5% or Rs. 3,755, whichever is higher	12.5% or Rs. 4,006, whichever is higher
2402 10 20	Cigarillos	12.5% or Rs. 3,755, whichever is higher	12.5% or Rs. 4,006, whichever is higher
2402 90 10	Cigarettes of tobacco substitutes	Rs. 3,755	Rs. 4,006
2402 90 20	Cigarillos of tobacco substitutes	12.5% or Rs. 3,755, whichever is higher	12.5% or Rs. 4,006 whichever is higher
2402 90 90	Others of tobacco substitutes	12.5% or Rs. 3,755, whichever is higher	12.5% or Rs. 4,006 whichever is higher

3. Exemption to Initial set up for generation of power [Notification No. 5/2017 – Central Excise, dated 2-2-2017 effective from 2-2-2017]

Excise duty exemption has been given, in excess of 6% on machinery including instruments, apparatus and appliances, transmission equipment and auxiliary equipment (including those required for testing and quality control) and components required for initial setting up of fuel cell based system for generation of power or for demonstration purposes or balance of systems operating on bio-gas or bio-methane or by product hydrogen, subject to the production of a certificate from an officer not below the rank of a Deputy Secretary to the Government of India in the Ministry of New and Renewable Energy recommending the grant of this exemption and certifying that these items are required for the said project and an undertaking from the manufacturer regarding its compliance.

4. Increase in duty on bidis [New S. Nos. 48A and 48B to Notification No. 12/2012 dated 17-3-2012]

Excise duty rate on handmade paper rolled biris and machine made paper rolled bidis [both falling under tariff item 2403 19 29] is being increased from Rs. 21 per thousand to Rs. 28 per thousand and from Rs. 21 per thousand to Rs. 78 per thousand respectively.

However, there is no change in Basic Excise Duty rate on other goods falling under Tariff Item 2403 19 29, which will continue to be Rs. 21 per thousand.

[Notification No. 6/2017-CE dated 2-2-2017 with effective from 2-2-2017]

5. Exemption to Animal or Vegetable Fertilisers under CH 3101[S. No. 128 to Notification No. 12/2012 dt. 17-3-2012]

Earlier certain Fertilisers falling under Chapter Heading 31 were subjected to 1% excise duty and other Fertilizers were exempt under Notification No.12/2012-Central Excise dated 17-3-2012.

In the Budget, Animal or Vegetable Fertilizers falling under Chapter Heading 3101 have been exempted from 1% excise duty.

[Notification No. 6/2017-CE dated 2-2-2017 with effective from 2-2-2017]

6. Exemption to Catalyst and Resin [New S. Nos. 145 B and 145C to Notification No. 12/2012 dt. 17-3-2012]

Excise duty is being exempted on Catalyst [3815 90 00] and Resin [3909 40 90] for use in the manufacture of cast components of Wind Operated Electricity Generator subject to actual user condition.

The exemption will be valid till 30th June, 2017.

[Notification No. 6/2017-CE dated 2-2-2017 with effective from 2-2-2017]

7. Concessional duty on Membrane Sheet [New S. No. 148AAA to Notification No. 12/2012 dt. 17-3-2012]

Excise duty on Membrane Sheet and Tricot/ Shaper, falling under Tariff Item 39211900, for use in the manufacture of Reverse Osmosis (RO) membrane for household type filters is being reduced from 12.5% to 6% subject to actual user condition.

The exemption will be valid till 30th June, 2017.

[Notification No. 6/2017-CE dated 2-2-2017 with effective from 2-2-2017]

8. Exemption withdrawn on Solar Tempered Glass [S. No. 187C to Notification No. 12/2012 dt. 17-3-2012]

Earlier Solar Tempered Glass for use in the manufacture of (a) solar photovoltaic cells or modules, (b) solar power generating equipment or systems, (c) flat plate solar collectors were exempt from excise duty.

In the Budget, the Solar Tempered Glass for use in the manufacture of the above goods and additionally (d) solar photovoltaic module and panel for water pumping and other applications, have been subjected to 6% excise duty based on actual user condition.

This 6% concessional excise duty will be valid till 30th June, 2017.

[Notification No. 6/2017-CE dated 2-2-2017 with effective from 2-2-2017]

9. Concessional duty on Parts/RM for Solar tempered glass [New S. No. 187D to Notification No. 12/2012 dt. 17-3-2012]

The excise duty is being reduced from 12.5% to 6% on Parts/Raw Material for use in the manufacture of Solar Tempered Glass, for use in (a) solar photovoltaic cells or modules; (b) solar power generating equipment or systems, (c) flat plate solar collectors, or (d) solar photovoltaic module and panel for water pumping and other applications, subject to actual user condition.

This 6% concessional excise duty will be valid till 30th June, 2017.

[Notification No. 6/2017-CE dated 2-2-2017 with effective from 2-2-2017]

10. Condition to exemption on Scrap/ waste of precious materials [S. No. 195 to Notification No. 12/2012 dt. 17-3-2012]

Earlier duty was exempt unconditionally on Waste and Scrap of precious metals or metals clad with precious metals, arising in course of manufacture of goods.

In the budget a condition is being added to the exemption that no credit of input or input services or capital goods has been availed by manufacturers of such goods, if the exemption is to be availed.

[Notification No. 6/2017-CE dated 2-2-2017 with effective from 2-2-2017]

11. Condition to exemption on Strips, Wires, Sheets etc. [S. No. 196 to Notification No. 12/2012 dated 17-3-2012]

Earlier duty was exempt un-conditionally on Strips, Wires, Sheets, Plates and Foils of Silver.

In the Budget a condition is being added to the exemption that no credit of input or input services or capital goods has been availed by manufacturers of such goods.

[Notification No. 6/2017-CE dated 2-2-2017 with effective from 2-2-2017]

12. Condition to exemption on Articles of Silver Jewellery [S. No. 199(III) to Notification No. 12/2012 dt. 17-3-2012]

Earlier duty was exempt unconditionally on Articles of Silver Jewellery, other than those studded with diamond, ruby, emerald or sapphire.

In the Budget, a condition is being added to the exemption that no credit of input or input services or capital goods has been availed by manufacturers of such goods.

[Notification No. 6/2017-CE dated 2-2-2017 with effective from 2-2-2017]

13. Condition to exemption on Silver coins [S. No. 200(III) to Notification No. 12/2012
dt. 17-3-2012]

Earlier duty was exempt unconditionally on Silver Coins of purity 99.9% and above, bearing a brand name when manufactured from silver on which appropriate duty of customs or excise had been paid.

In the Budget, a condition is being added to the exemption that no credit of input or input services or capital goods has been availed by manufacturers of such goods.

[Notification No. 6/2017-CE dated 2-2-2017 with effective from 2-2-2017]

14. Exemption to Micro ATMs, Miniaturised POS Card reader etc. [New S. No. 256C to Notification No. 12/2012 dt. 17-3-2012]

Excise duty is being exempted on Micro ATMs as per standards version 1.5.1, fingerprint reader/ scanner, and Iris Scanner miniaturised POS card reader for mPOS (other than Mobile phone or Tablet Computer). Further, excise duty is also being exempted on parts and components for manufacture of these devices, subject to actual user condition.

This exemption from excise duty will be valid till 30th June, 2017.

[Notification No. 6/2017-CE dated 2-2-2017 with effective from 2-2-2017]

15. Exemption extended to all parts of LED Lights [S. No. 321A to Notification No. 12/2012 dt. 17-3-2012]

Earlier 6% concessional excise duty was applicable to LED (Light Emitting Diode) driver and MCPCB (Metal Core Printed Circuit Board) for use in the manufacture of LED lights and fixtures or LED lamps.

In the Budget, the exemption is being extended to all parts for use in the manufacture of LED lights or fixtures including LED Lamps subject to actual user condition.

The concessional excise duty will be valid till 30th June, 2017.

[Notification No. 6/2017-CE dated 2-2-2017 with effective from 2-2-2017]

B. NON-TARIFF NOTIFICATION

16. Bifurcation of duty on Tobacco and Pan Masala

The excise duty is payable on tobacco products including pan masala under Compounding Levy Scheme i.e., based on the capacity of machines per month. Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 and Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 provides for ratio/break up of total levy in to Basic Excise Duty, Additional Excise Duty and National Calamity Contingent Duty. Since the total duty is being increased on the said goods in the current budget, Notification No. 2/2017-Central Excise (N.T.) and Notification No. 3/2017-Central Excise (N.T.), both dated 2-2-2017 have been issued to provide for the bifurcation of total duty on the said products into Basic Excise Duty, Additional Excise Duty and National Calamity Contingent Duty.

AMENDMENT TO CENTRAL EXCISE RULES, 2002 *[Notification No. 5/2017-CE (NT)]*

17. Time limit fixed for remission application

The authority to whom application is made for remission of duty under Rule 21 of CER, 2002 is required to decide on the application within 3 months from the date of its receipt.

It may, on sufficient cause being shown, be further increased by next higher authority. But such extension shall not be allowed beyond six months.

This is effective from 2-2-2017.

18. For the sake of brevity, the budget proposals in respect of provisions relating to:

a. CENVAT Credit Rules, 2004,

b. Advance Ruling,

c. Settlement Commission

are given along with the budget proposals/changes relating to service tax.

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Allied Acts referred to in the Finance Bill 2017 and their Implications

CA. Mayur B. Nayak

The Finance Bill, 2017 makes reference to certain Allied Acts. It would be interesting to study the implications of these provisions.

THE RESERVE BANK OF INDIA ACT, 1934

Income of political parties are exempt under section 13A of the Income-tax Act, 1961 subject to fulfilment of certain conditions.

To avail the exemption, the political parties are required to submit a report to the Election Commission of India as mandated under sub-section (3) of section 29C of the Representation of the People Act, 1951 (43 of 1951) furnishing the details of contributions received by a political party in excess of Rs. 20,000/- from any person.

However, under the existing provisions, there is no restriction on receipt of any amount of donation in cash nor there is a mandatory requirement to file the return of income to claim exemption.

The Finance Bill seeks to amend the section 13A with effect from 1st April 2018 (AY 2018-19) to provide that

(i) No donations (Contribution) of Rs.2000/- or more is received otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or ***through electoral bonds****,*

(ii) Political party shall furnish a return of income for the previous year in accordance with the provisions of sub-section (4B) of section 139 on or before the due date under section 139.

(iii) The political parties shall not be required to furnish the name and address of the donors who contribute by way of electoral bond.

Explanation.—For the purposes of this proviso, "electoral bond" means a bond referred to in the Explanation to sub-section (3) of section 31 of the Reserve Bank of India Act, 1934.'

Section 31(3) defines 'electoral bond' as:

'For the purposes of this sub-section, ''electoral bond'' means a bond issued by any scheduled bank under the scheme as may be notified by the Central Government.'

Impact/Comments:

The impact of the above amendment would be that all political parties will have to file return of income within the due date provided under section 139 of the Act and cannot accept voluntary contributions in cash in excess of Rs. 2000/-. However, in order to address the concern of anonymity of the donors, it is proposed to amend the said section to provide that where the contribution is by way of electoral bond, then the requirement to maintain the name and address of the person who has made such contribution would not be applicable.

Electoral bonds are a new way of funding political parties. Donors purchase the bonds from scheduled banks. They get credited after a prescribed time into the bank accounts of political parties.

The above amendment is aimed at bringing much needed transparency in political funding.

THE ANDHRA PRADESH CAPITAL REGION DEVELOPMENT AUTHORITY ACT, 2014

The amendment to the Income-Tax Act, 1961 is explained as follows:

Current Coverage	The capital gains arising on the transfer of land under the land pooling scheme or transfer of Land Pooling Ownership Certificates (LPOC) or reconstituted plot of land was not exempt from Capital gain Tax.
Proposed Coverage	It is proposed to add a new clause 37A in section 10 which would provide a relief to Individual and HUF who owned such land under the land pooling scheme or LPOC's or specified, as on 2nd June, 2014 and have transferred the same under the land pooling scheme by the Andhra Pradesh Capital Region Development Authority Act, 2014, Subject to: a) The capital Asset so transferred is a Land or Building. b) The LPOC's transferred shall be the ones received in lieu of land transferred under the scheme. c) In case of reconstituted land or plot, the sale should be made within 2 years from the end of financial year in which such land or plot was obtained.

	(This amendment will take effect retrospectively from 1st April, 2015 i.e. From A.Y. 2015-16) Also, section 49 of the Act is so amended that where the reconstituted plot so obtained is transferred after 2 years, the cost of acquisition of such land or plot shall be considered to be its stamp duty value on the last day of the second financial year in which the possession was handed over. *(This amendment will take effect from 1st April, 2018 i.e. From A.Y. 2018-19)*
Impact	The provision excludes the transfers specified above from the ambit of capital gain tax thereby providing an incentive for the development of the new capital city of Andhra Pradesh, namely, Amravati.

Impact/Comments:

As per section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2014, the specified compensation received by the landowner in lieu of acquisition of land is exempt from income tax. The Land Pooling Scheme is an alternative form of arrangement made by the Government of Andhra Pradesh for formation of new capital city of Amravati to avoid land-acquisition disputes and lessen the financial burden associated with payment of compensation under that Act. In Land pooling scheme, the compensation is not provided in the form of money. It is paid in the form of reconstituted plot or land or a Land Pooling Ownership Certificate (LPOC) to landowners. However, the existing provisions of the Act do not provide for exemption from tax on transfer of land under the land pooling scheme as well as on transfer of LPOCs or reconstituted plot or land. Hence, the new section was inserted.

SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

A new section, Section 271J has been inserted in the Act. To summarize,

Proposed Coverage	Section 271J is proposed to be inserted in the Act which stipulates that a penalty of ₹10,000 shall be imposed on accountant or a merchant banker or a registered valuer, if he furnishes incorrect information in a report or certificate under any provisions of the Act

	(This amendment will take effect from 1st April, 2017)
Impact	The provision will now result into better precaution on part of professionals in filing required details.

In the Finance Bill, the "Merchant Banker" is defined as:

"Merchant Banker" means Category I Merchant Banker registered with the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;

Section 3 of the Securities and Exchange Board of India Act, 1992, defines a category I Merchant Banker as follows:

'Category I, that is—

(i) *to carry on any activity of the issue management, which will, inter alia, consist of preparation of prospectus and other information relating to the issue, determining financial structure, tie up of financiers and final allotment and refund of the subscriptions; and*

(ii) *to act as adviser, consultant, manager, underwriter, portfolio manager'*

Impact/Comments:

Certification of various reports and certificates by a qualified professional has been provided in the Act to ensure that the information furnished by an assesse under the provisions of the Act is correct. Various provisions exist under the Act to penalize the defaulting assesse in case of furnishing incorrect information. However, there exists no penal provision for levy of penalty for furnishing incorrect information by the person who is responsible for certifying the same. The section 271J is introduced with a view to ensure that person furnishing report or certificate undertakes due diligence before making such certification.

The category I merchant banker is one of the many professionals on which the said penalty can be imposed.

It is strange to note that no such penalty is prescribed on other professionals who may be issuing reports or certificates relied by the tax authorities.

THE CUSTOMS ACT, 1962, THE CENTRAL EXCISE ACT, 1944 & THE FINANCE ACT, 1994 (SERVICE TAX)

In the Union budget 2017-18, it is proposed to merge the Authority for Advance Rulings (AAR) made under the Income-tax Act, 1961, the Customs Act, 1962, the Central Excise Act, 1944 and the Finance Act, 1994. Accordingly, a reference to above Acts is essential to get the meaning of 'applicant' under the above acts.

As per Section 28E(c) of the Customs Act, 1962:

"Applicant" means –

i. (a) a non-resident setting up a joint venture in India in collaboration with a non-resident or resident; or

   (b) a resident setting up a joint venture in India in collaboration with a non-resident; or

   (c) a wholly owned subsidiary Indian company, of which the holding company is a foreign company, who or which, as the case may be, proposes to undertake any business activity in India

ii. a joint venture in India; or

iii. a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf, and which or who, as the case may be, makes application for advance ruling under sub-section (1) of section 28H;

   Explanation - For the purposes of this clause, "joint venture in India" means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holder is a non-resident having substantial interest in such arrangement.

As per Section 23A(c) of the Central Excise Act, 1944:

"Applicant" means –

i. (a) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or

   (b) a resident setting up a joint venture in India in collaboration with a non-resident; or

(c) a wholly owned subsidiary Indian company, of which the holding company is a foreign company, who or which, as the case may be, proposes to undertake any business activity in India;

ii. a joint venture in India; or

iii. a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf, and which or who, as the case may be, makes application for advance ruling under sub-Section (1) of Section 23C;

As per Section 96A(b) of the Finance Act, 1994:

"Applicant" means –

i. (a) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or

(b) a resident setting up a joint venture in India in collaboration with a non-resident; or

(c) a wholly owned subsidiary Indian company, of which the holding company is a foreign company, who or which, as the case may be, proposes to undertake any business activity in India;

ii. a joint venture in India; or

iii. a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf, and which or who, as the case may be, makes application for advance ruling under sub-section (1) of section 96C;

Explanation- For the purposes of this clause, "joint venture in India" means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders is a non-resident having substantial interest in such arrangement;

Impact/Comments:

The impact would be widening of scope of persons that can be covered within the meaning of 'applicant'. The merger of AARs under direct and indirect taxes could be with a view to enable the Authority to take a holistic view of the matter covering both direct as well as indirect taxes. Advance ruling in such cases become a one-step solution for seeking clarity regarding judicial matters.

However, considering the large pendency of cases only in respect of Income-tax matters, whether the AAR will be able to discharge its obligation effectively under various Statutes is a matter of concern.

REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

Section 80-IBA was amended in the Finance Bill, 2017. The amendment is summarized as follows:

Current Coverage	Section 80-IBA provides for 100% deduction in respect of Profits & gains derived from developing and building certain housing projects subject to certain conditions. Section 80-IBA (2)(f) specifies that the deduction will be given only if the **built-up** area of the residential property does not exceed – (i) 30 sq. m if the location is in the metro-cities or within 25 km. of the municipal limits of these cities. (ii) 60 sq. m otherwise
Proposed Coverage	Section 80-IBA shall be amended such that the specified conditions for developing and building housing projects be altered in such a way that; 1) The size of the residential unit be determined by considering the "**Carpet Area**" and not built up Area. 2) For projects in places situated within 25kms from Mumbai, Delhi, Chennai or Kolkata, the limit of 30Sq. meters on the size of residential units shall not apply. 3) The Project should be completed within **5 years** (Previously 3 years) for claiming the deduction. *(These amendment take effect from the 1st day of April, 2017)*
Impact	This amendment seeks to encourage more affordable housing projects by providing tax incentives and relaxations for claiming the same.

Section 80-IBA(6)(a) has also defined 'built-up' area. 'Built-up' are means the inner measurements of the residential unit at the floor level, including projections and balconies, as increased by the thickness of the walls, but does not include the common areas shared with other residential units, including any open terrace so shared.

The amendment replaces 'built up' area with a 'carpet area'. But Section 80-IBA doesn't define 'carpet area'. The amendment defines 'carpet area' as defined in Real Estate (Regulation and Development) Act, 2016

As per Section 2 (k) of the Real Estate (Regulation and Development) Act, 2016,

"Carpet area" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

Explanation— For the purpose of this clause, the expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and "exclusive open terrace area" means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee.

Impact/Comments:

The amendment is a positive step towards affordable housing. Although the area for which exemption is granted is only marginally more, it is significant considering it from a macro perspective.

THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 (FEMA)

A clarificatory amendment is proposed to sub-clause (ii) of clause 4 of section 10 which deals with exemption of interest on NRE bank accounts and deposits. The said section inadvertently so far has been making reference to individual to be resident outside India, as defined in clause (q) of section 2 of the Foreign Exchange Regulation Act, 1973, (FERA) which stands repealed and re-enacted as the Foreign Exchange Management Act, 1999 (FEMA). The definition of person outside India is occurring in clause (w) of section 2 of FEMA. With a view to reflect the correct definition of the expression "person resident outside India", it is proposed to amend the said proviso.

Conclusion

One needs to interpret the terms referred to in the Finance Bill from the other Statutes in the proper context. Sometimes there may be a change in the meaning of the term in the Allied Act, of which a reference is made in the Income tax Act. At that time a question arises as to whether one would interpret its meaning as it was when the particular provision was introduced under the Income-tax Act, or the meaning as amended in the Allied Act. Internationally there are two approached to this issue, namely, (i) Static Approach (meaning you interpret the term as it was when the original provision under the Income-tax was enacted) or (ii) Ambulatory Approach (meaning you interpret the term as per its meaning on the date of application of the provision i.e. changed/amended meaning in the Allied Act). Between the two the Ambulatory approach is widely accepted internationally.

Interpretation of Statues has always been an interesting subject for professionals, tax officials and judiciary. One of the Judges very aptly remarked in his judgement, “language at best is an imperfect instrument for the expression of human thoughts and behaviour”. Therefore, the disputes due to interpretations shall remain as long as we will use language to communicate our intentions, emotions and feelings.