CORPORATE UPDATE

INCOME TAX

TAX RATES

I. Corporate Tax Rate

a) Foreign Companies: There is no change in the corporate income tax rate for Foreign Companies.

b) Domestic Companies: The corporate tax rate is proposed to be reduced to 25% (plus applicable surcharge and cess) for the domestic companies where the total turnover or gross receipts in the previous year 2015-16 does not exceed fifty crore rupees (Rs 500 million).

In all other cases, the rate of Income-tax is same @ 30% of the total income.

A summary of the applicable tax rates is given below:

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RECENT NOTIFICATIONS

I. Goods and Services Tax(GST)

II. Common legislative changes Proposed under Central Excise, Customs and Service Tax law Changes effective from enactment of the Finance Bill, 2017

III. Service Tax – Changes effective from enactment of the Finance Bill, 2017

IV. Customs - Changes effective from enactment of the Finance Bill, 2017

V. Central Excise

Particulars	Total Income <= 1 Crore	Total Income >1crores but <=10 crores	Total Income > 10 crores
Domestic Companies having Turnover* <= 50 crores	25.75%	27.5525%	28.84%
Domestic Manufacturing Companies set up and registered after March 1, 2016 (under section 115BA)	25.75%	27.5525%	28.84%
Other Domestic Companies	30.9%	33.063%	34.608%
Foreign Companies	41.2%	42.024%	43.26%

*Turnover of the previous year 2015-16 only.

The above amendment will be applicable from Assessment Year (AY) 2018-19.

II. Personal Tax Rates

- Income tax on income between Rs. 2.5 lakhs (Rs 0.25 million) to Rs. 5 lakhs (Rs 0.5 million) has been reduced to 5% from 10% for Individual (other than resident senior citizen and super senior citizen), HUF, AOP and BOI.
- Rebate under section 87A from income tax liability for resident individual has been reduced to Rs. 2,500/- from Rs. 5,000/-, and shall be available only where total income does not exceed Rs. 3.5 lakhs (Rs 0.35 million).
- Surcharge of 10% has been levied on Individual, HUF, AOP, BOI, Artificial Juridical Person having total income exceeding Rs. 50 lakhs (Rs 5 million) but not exceeding Rs. 1 crore (Rs 10 million), subject to marginal relief.

The above amendments will be applicable from AY 2018-19.

TAX PROPOSALS RELATING TO NON-RESIDENTS

I. Exemption to Foreign Portfolio Investors ('FPI') from indirect transfer provisions

An important proposal made in the Union Budget is the exclusion of Foreign Institutional Investors ('FII') from the ambit of capital gains tax under the indirect transfer provisions, as per Section 9(1)(i) of the Income-tax Act, 1961 ('the Act').

The applicability of the aforesaid provisions on FIIs has always been considered as contentious. Stakeholders had suggested that the aforesaid provisions do lead to multiple taxation, and as such, had flagged their concerns to the Government. In order to address their concerns, the Central Board of Direct Taxes ('CBDT') issued certain clarifications in the form of Frequently Asked Questions (Circular dated December 21, 2016), wherein, the applicability of such provisions on FIIs was explained.

However, the aforesaid circular also met with stakeholder's reservations and eventually, the applicability of the circular was kept in abeyance.

Keeping in view the interests of FPI, it has now been proposed to insert a new Explanation 5A, to exclude FIIs registered under Category - I and Category – II foreign portfolio investor, from the applicability of indirect transfer provisions. Pursuant to this amendment, foreign investors selling their investments in such FIIs shall not be liable to capital gains tax, even if such investments derive their value substantially from assets located in India.

The proposed amendment is applicable retrospectively from April 1, 2012.

II. Meaning of Undefined Terms in Tax Treaties

With a view to provide more clarity and avoid litigation, it is proposed to insert Explanation 4 to Section 90 as well as Section 90A of the

Act to clarify the following:

(a) A term used in a tax treaty and defined therein, shall have the meaning as provided in such tax treaty;

(b) A term which is used in a tax treaty and not defined therein, shall have the same meaning as assigned to it in the Act and any explanation given to it by the Central Government.

The above amendments will be applicable from AY 2018-19.

III. Introduction of Thin Capitalization Rules - Capping of Deductibility of Interest paid to Non Resident AE

The Organisation for Economic Cooperation and Development ('OECD') has laid down a strong framework to counter tax abuse through its Base Erosion and Profit Shifting ('BEPS') initiative.

Action Plan 4 of the BEPS project recognized the issue of profit shifting by preference of debt capitalization over equity, leading to excessive interest deductions. The OECD has recommended several measures to address this issue.

In line with such recommendation, a new Section 94B has been proposed, in terms of which, the admissibility of interest cost claimed as a deduction has been capped at 30% of the earnings before interest, tax depreciation and amortization (EBITDA) or interest paid, whichever is less. The aforesaid provisions are applicable in respect of interest or similar consideration (exceeding Rupees Ten Million) paid by an Indian company or a Permanent Establishment ('PE') of a foreign company, in respect of debts owed to a non-resident Associated Enterprise.

Besides, debts obtained from a third party i.e. a non-associated lender implicitly / explicitly covered by a guarantee issued by an AE, shall also be deemed as a debt issued by the AE, for the purpose of this provision.

Furthermore, it has been proposed that interest which is not deductible in terms of the aforesaid, shall be carried forward to eight successive assessment years and shall be allowed as a deduction, subject to the overall limits prescribed in the provision.

This provision shall not apply to Indian companies or PEs of foreign companies engaged in the banking or insurance business. The said provisions will be applicable from Assessment Year 2018-19.

TRANSFER PRICING PROVISIONS

I. Reduction of Scope of Domestic Transfer Pricing provisions

In India transfer pricing regulations were extended to specified domestic transactions by the Finance Act, 2012 with the insertion of section 92BA in the Act.

The existing section 92BA of the Act include within the ambit of specified domestic transactions the expenditure in respect of which payment has been made by the assessee to certain related parties specified in section 40A(2)(b). .

As the compliance and reporting of such transactions for determination of arm's length price had considerably increased the compliance burden on the taxpayers, the Finance bill proposes to exclude aforesaid payments to related parties from the scope of domestic transfer pricing.

Domestic Transfer Pricing provisions will now be applicable only where one of the entities / unit of the entity involved is a related party which enjoys profit linked deduction under sections like 80IA, Section 10AA etc.

These amendments will be applicable retrospectively from assessment year 2017- 18.

II. Secondary adjustments in certain cases

It is proposed to insert a new section 92CE provide that a Secondary Adjustment shall be made where:

(a) a Primary adjustment to transfer price, has been made by the assessee suo motu in the return of income; or

(b) adjustment made by the Assessing Officer has been accepted by the assessee;

(c) or is determined under an advanced pricing agreement (APA); or

(d) is made as per safe harbour rules; or

(e) arises as a result of resolution of assessment under mutual agreement procedure entered into under section 90 or 90A for avoiding double taxation.

"Secondary adjustment" means an adjustment in the books of accounts of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise, are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.

The proposed section provide that where as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed as the income of the assessee , in the manner as may be prescribed.

It is also proposed that such Secondary Adjustment shall not be carried out if, the amount of Primary Adjustment made in the case of an assessee in any previous year, does not exceed Ten Million rupees and the Primary adjustment is made in respect of an assessment year commencing on or before 1st April, 2016.

This amendment will be applicable from AY 2018-19.

CAPITAL GAINS

I. Curtailment of exemption on long term capital gains tax where no Securities Transaction Tax paid on acquisition of equity shares

Under the existing provisions of the Section 10(38) of the Income-tax Act, 1961, the income arising from a transfer of long term capital asset, being equity share of a company or a unit of an equity oriented fund, is exempt from tax if the transaction of sale is undertaken on or after 1st October, 2004 and is chargeable to Securities Transaction Tax.

This exemption is being found to be misused by certain persons for declaring their unaccounted income as exempt long-term capital gains by entering into sham transactions. With a view to prevent this abuse, it is proposed to amend section 10(38) to provide that exemption under this section for income arising on transfer of equity share acquired or on after 1st day of October, 2004 shall be available only if the acquisition of share is chargeable to Securities Transactions Tax. However, to protect the genuine cases where the Securities Transactions Tax was not applicable such as acquisition of share in IPO, FPO, bonus or right issue by a listed company, acquisition by non-resident in accordance with FDI policy of the Government etc., a notification specifying exemptions shall be issued by the Central Government.

This amendment will be applicable from AY 2018-19.

II. Conversion of Preference shares to Equity shares to be exempt

Under the existing provisions of the Act, conversion of bond or debenture of a company into shares or debenture of that company is specifically exempt from capital gains tax. However, conversion of preference shares was not included in the list of exemptions.

In order to maintain parity, it is proposed to amend section 47 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.

Further, a new sub- section (2AE) is proposed to be inserted in section 49 so as to provide that the cost of acquisition of the capital asset, being equity share of a company, which became the property of the assessee in consideration of a transfer referred to in clause (xb) of section 47, 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.

This amendment will be applicable from AY 2018-19.

III. Cost of acquisition in tax neutral demerger of a foreign company

As per 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 and is exempt from tax. With a view to rationalize the provisions, it is proposed to amend section 49 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.

This amendment will be applicable from AY 2018-19.

IV. Fair market value to be considered as full value of consideration in case of unquoted shares

As per 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 in the case of unquoted shares, 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".

This proposal is in addition to an existing provision providing for taxability in the hands of recipient as income where value of shares as received is less than its fair market value (Section 56(2)).

This amendment will be applicable from AY 2018-19.

TAX INCENTIVES

I. Carry forward and set of losses

It is proposed to amend section 79 to provide that in case of a start-up company (as referred in section 80-IC), loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, if all the shareholders, who held shares carrying voting power on the last day of year in which loss was incurred, continue to hold those shares on the last date of such previous year and such loss has been incurred during the period of seven years from the date of its incorporation.

This amendment will be applicable from AY 2018-19.

II. Extending the period for claiming deduction under section 80-IAC by start-ups in any 3 consecutive years out of 7 years

Deduction of 100% profit under section 80-IAC can be claimed by an eligible start-up for any three consecutive assessment years out of seven years beginning from the year in which such eligible start-up is incorporated. The limit was three consecutive assessment years out of five years before such amendment.

This amendment will be applicable from AY 2018-19.

RATIONALISATION MEASURES

I. Rationalisation of provisions of Section 10AA covering units in Special Economic Zones

Section 10AA allows deduction in computing the total income of the assessee, in respect of profits and gains from his Unit operating in SEZ, subject to fulfillment of certain conditions. The deduction is to be allowed for the total income of the assessee as computed in accordance with the provision of the Act before giving effect to the provisions of section10AA. However, courts have taken a view (while deciding the matter pertaining to section 10A which also contains similar provision) that the deduction is to be allowed from the total income of the undertaking and not from the total income of the assessee.

It is proposed to clarify that the amount of deduction referred to in section 10AA shall be allowed from the total income of the assessee computed in accordance with the provisions of the Act before giving effect to the provisions of the section 10AA and the deduction under section 10AA in no case shall exceed the said total income.

This amendment will be applicable from AY 2018-19.

II. Widening scope of Income from other sources to cover Companies, Trusts – receipts of any money or property without consideration

Under the existing provisions of section 56(2)(vii), any sum of money or any property which is received without consideration (where value exceeds Rs. 50,000) or for inadequate consideration (in excess of the specified limit of Rs. 50,000) by an individual or Hindu undivided family is chargeable to income-tax in their hands under the head "Income from other sources" subject to certain exceptions. Further, receipt of certain shares by a firm or a company in which the public are not substantially interested is also chargeable to income-tax in case such receipt is in excess of Rs. 50,000 and is received without consideration or for inadequate consideration (in excess of the specified limit of Rs. 50,000).

In order to cover all types of assessee under the scope of this section, it is proposed to insert a new clause (x) in sub-section (2) of section 56 so as to provide that receipt of the sum of money or any property by any person without consideration (where value exceeds Rs. 50,000) or for inadequate consideration in excess of Rs. 50,000 shall be chargeable to tax in the hands of the recipient under the head "Income from other sources".

The new clause extends the scope of taxability of gifts to Companies & Trusts.

It is also proposed to widen the scope of existing exceptions by including the receipt by certain trusts or institutions and receipt in relation to certain transfers not regarded as transfer under section 47.

Consequential amendment is also proposed in section 49 for determination of cost of acquisition.

This amendment will be applicable from AY 2018-19.

III. Rationalisation of provisions of Minimum Alternate Tax (MAT) as per Section 115JB in line with Indian Accounting Standards (Ind-AS)

Based on the recommendations of the committee set up by CBDT for suggesting MAT treatment for Ind-AS compliant companies, it is proposed to amend section 115JB so as to provide the framework for computation of Book Profit for compliant companies in the year of adoption and thereafter. Main features are as under:

- No further adjustments to be made to the net profits of Ind-AS complaint companies other than those specified in section 115JB of the Act. In case of Ind-AS complaint companies, such profits are as per P&L account before Other Comprehensive Income (OCI).
- MAT would also be applicable on items forming part of OCI which would never be reclassified to the statement of profit and loss. Such items would be included at the time of realization/disposal.
- Fair value gain or loss recorded in P&L on distribution of non-cash assets to shareholders (for e.g.-in case of demerger) would be excluded from MAT computation.
- First time adoption (FTA) adjustments will be applicable from year of adoption.
- FTA adjustments will be included in MAT computation either on their reclassification to P&L or over a period of five years. Further, it has been clarified that these amendments would be applicable from AY 2017-18 for companies adopting Ind-AS is FY 2016-17.

This amendment will be applicable retrospectively from AY 2017-18.

IV. Carry forward of tax paid under Minimum Alternate Tax (MAT) provisions upto 15 years

It is proposed to amend section 115JAA & 115JD to provide that the tax credit determined under these sections can be carried forward up to fifteenth assessment years immediately succeeding the assessment year in which such tax credit becomes allowable.

Further, with respect to Foreign Tax Credit (FTC), the relevant rules were notified on 27th June, 2016 vide Notification no. 54/2016 effective from 1st April, 2017, providing that MAT/AMT credit to be carried forward would be reduced by excess of FTC allowed under MAT/AMT over FTC allowed under normal provisions of the Act. In line with the said notification, similar provision has now been proposed to be inserted in Section 115JAA and 115JD.

This amendment will be applicable from AY 2018-19.

V. Rationalization of taxation of income by way of dividend

Under the existing provisions of section 115BBDA, income by way of dividend in excess of Rs. One Million is chargeable to tax at the rate of 10% on gross basis in case of a resident individual, Hindu undivided family or firm.

It is proposed to amend section 115BBDA so as to provide that the provisions of the said section shall be applicable to all resident assessees except domestic company and certain funds, trusts, institutions, etc.

These amendments will be applicable from AY 2018-19.

MEASURES TO CURB BLACK MONEY AND DISCOURAGE CASH TRANSACTIONS

I. Restrictions on Payment in cash - Revenue and Capital expenditure

Section	Amendment
Section 40A(3) and 40A(3A) (Related to cash payments of Revenue expenditure)	• Limit of deduction for Cash expenditure is proposed to be reduced from Rupees 20,000 per day to Rupees 10,000 per day to a single person. • Specified mode of payment to include medium of Electronic clearing system (ECS) through a Bank Account.
Section 35AD (Related to Capital expenditure)	• No deduction in respect of a capital expenditure to be allowed in respect of cash payments exceeding Rupees 10,000 per day to a single person. • Specified mode of payment to include medium of Electronic clearing system (ECS) through a Bank Account.
Section 43 (Actual Cost)	• Cash payments exceeding Rupees 10,000 per day to a single person, to be ignored for the purpose of determination of actual cost of the asset. Consequently, depreciation on such asset would be lost. • Specified mode of payment to include medium of Electronic clearing system (ECS) through a Bank Account.

These amendments will be applicable from AY 2018-19.

II. Prohibition on receipt of cash of Rs. 300,000 or more [Section 269ST]

It is proposed to insert a new section 269ST in the Act to provide that no person shall receive an amount of three lakh rupees (Rs 0.3 million) or more by mode of cash:-

• in aggregate from a person in a day;
• in respect of a single transaction; or
• in respect of transactions relating to one event or occasion from a person.

Following are excluded from the ambit of the provisions of above section:

- Government,
- any banking company,
- post office savings bank or co-operative bank,
- Transactions of the nature referred to in section 269SS,
- Such other person or receipts as may be notified by Central Government.

Consequential amendments are also proposed in Section 206C related to Tax Collection at Source at the rate of 1% of sales consideration on cash sale of jewellery exceeding rupees 5,00,000/-.

In case of non-compliance, penalty is proposed to be a sum equal to the amount of such receipt.

These amendments will be applicable from April 1, 2017.

SET OFF AND CARRY FORWARD OF LOSSES

I. Restriction on Set off of loss under the head Income from House Property against income from any other head of income

It is proposed to insert a new sub-section (3A) in section 71 to provide that set off of loss under the head "Income from house property" against any other head of income shall be restricted to two lakh rupees (Rs 0.2 million) for any assessment year. The unabsorbed loss shall be allowed to be carried forward for set-off in subsequent years in accordance with the existing provisions of the Act. The aforesaid provision shall increase the tax liability in the case of let out properties where loss is arising due to interest claim against the rental income.

This amendment will be applicable from AY 2018-19.

AMENDMENTS RELATING TO ASSESSMENT & APPEALS

I. Revision of Income-tax Return – Reduction in time limit

Tax return can now be revised under section 139(5) of the Actbefore end of the relevant assessment year or before the completion of the assessment, whichever is earlier. Thus the time limit earlier available for revising the returnof 1 year from the end of the relevant assessment year,has been substantially reduced.

This amendment will be applicable from AY 2018-19.

II. Amendment of provisions relating to Search & Seizure

In case of search proceedings under Sections 132(1), 132(1A) and 132A, it is proposed to provide that "reason to believe"/ "reason to suspect" as recorded(as the case may be)shall not be disclosed to any person/authority or the Appellate Tribunal to ensure confidentiality of such cases.

This amendment will be applicable retrospectively from April 1, 1962/ October 1, 1975.

(ii) In case of search under Section 132, new sub-sections 9B, 9C, 9D have been inserted to empower the authorised officer for the following:

(a) Provisionally attach any property belonging to the assessee after recoding reasons in writing with the prior approval of Principal Director General or Director General or Principal Director or Director.
(b) Provisional attachment shall cease to have effect after the expiry of six months from the date of order of such attachment.
(c) Authorised officer may make a reference to a Valuation Officer referred to in section 142A, for valuation for the purpose of correct estimation of fair market value of a property.

This amendment will be applicable from April 1, 2017.

(iii) The scope of Section133A has been widened for the purpose of conducting survey, by empowering the income tax authority to enter any place at which an activity for charitable purpose is carried on.

This amendment will be applicable from April 1, 2017.

(iv) Joint Director, Deputy Director and Assistant Director have been empowered to call for information under section 133(6) even when no proceedings are pending.This amendment will be applicable from April 1, 2017.

(v) Section133C has also been amended empowering CBDT to make a scheme for centralised issuance of notice calling for information/ documents for verification, processing of information and making the outcome thereof available to the AO for necessary action.

This amendment will be applicable from April 1, 2017.

III. Rationalisation of time limit for assessment, reassessment, recomputation and search cases assessment

The time limit for completion of above assessments has been considerably reduced. Assessment for A.Y.2018-19 will now be required to be completed within 18 months from the end of relevant assessment year as against 21 months presently applicable. Thereafter for subsequent assessment years, time limit has been proposed to be reduced generally to 12 months. This will facilitate faster disposal of tax assessments.

IV. Income Declaration Scheme, 2016

Clause (c) of section 197of Finance Act, 2016 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 section 142 or 143 or 148 or 153A or 153C is issued by the AO. In order to remove genuine hardship to stakeholders, clause (c) of section 197 is proposed to be omitted.

This amendment will be applicable retrospectively from June 1, 2016.

TDS/ TCS PROVISIONS

I. Insertion of new section 194-IB – Deduction of tax at source out of payment of Rent

Section 194-IB has been introduced in order to widen the scope of Tax Deducted at Source ('TDS'), to cover Individual and Hindu Undivided Family, other than those on whom the provisions of section 44AB are applicable (i.e. persons carrying on business or profession), to deduct and pay TDS on the payment made by way of rent exceeding Rs. 50,000 a month. TDS is to be deducted at the rate of 5%.

For this purpose, Individual, HUF ('deductor') are not required to obtain Tax Deduction Account Number ('TAN'). It is also proposed that the deductor shall be liable to deduct tax only once in a previous year in the last month of the year or the last month of the tenancy, if the property is vacated during the year.

This amendment will be applicable from June 1, 2017.

II. Insertion of new section 194-IC- Deduction of tax at source out of payments under Agreement for Joint Development of property

Payment of monetary consideration to an individual or HUF under a Joint Property Development Agreement referred to in proposed section 45(5A) of the Act shall attract withholding tax at the rate of 10% of such sum.

This amendment will be applicable from April 1, 2017.

III. Amendment in Section 194J- Deduction of tax at source out of payments to Call Centre

It is proposed to amend Section 194J dealing with withholding tax on fees for professional or technical services, by providing for deduction of tax at a lower rate of 2% in case the payee is engaged in the business of operation of call centre.

This amendment will be applicable from June 1, 2017.

IV. Amendment in Section 194LA- Exemption from deduction of tax at source out of payments under any award or agreement

It is proposed to amend section 194LA to provide that no deduction shall be made where such payment is made in respect of any award or agreement which has been exempted from 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 be applicable from April 1, 2017.

V. Amendment in Section 194LC- Extension of eligible period of concessional tax rate on interest in case of External Commercial Borrowing

The existing provisions of section 194LC of the Act provide that the interest payable to a non-resident by a 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 bond including long-term infrastructure bond shall be eligible for concessional tax deduction (TDS) of five per cent in respect of borrowings made before 1stJuly 2017.

This concessional withholding tax rate of 5% would now be available in respect of aforesaid borrowings made before 1stJuly 2020 as against 1stJuly 2017 earlier.

The proposed amendment shall be applicable from AY 2018-19.

VI. Amendment in Section 194LD- Extension of eligible period of concessional tax rate on interest to FII, QFI

The existing provisions of section 194LD of the Act provide for a lower tax deduction (TDS) rate of five per cent in the case of interest payable at any time before the 1stJuly, 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.

It is proposed to amend section 194LD to provide that the concessional rate of five per cent TDS on interest will now be available on interest payable before the 1stJuly, 2020.

The proposed amendment shall be applicable from AY 2018-19.

VII. Insertion of new section 206CC- Extension of PAN quoting mechanism to TCS regime

It is proposed that any person paying any sum or amount, on which tax is collectable at source under Chapter XVII-BB shall furnish his permanent account number to the person responsible for collecting such tax, failing which tax shall be collected at twice the rate mentioned in the relevant section under Chapter XVII-BB or at the rate of five per cent, whichever is higher.

A non-resident not having a permanent establishment in India is exempted from this requirement.

This amendment will be applicable from April 1, 2017.

INTEREST/PENALITIES/REFUNDS

I. Rationalisation of section 211 and section 234C relating to advance tax

Section 211 of the Act provides for installments of advance tax and due dates for depositing the same. Clause (b) of sub-section (1) of the said section provides that an eligible assessee engaged in an eligible business is liable to pay advance tax in a single installment on or before the 15th of March every financial year.

The benefit of the said clause (b) has also been given to the assessee who declares profits and gains in accordance with presumptive taxation scheme provided under section 44ADA.

Further it is also proposed to make consequential amendments in sub-section (1) of section 234C to provide that in respect of an assessee referred to in section 44ADA, interest under the said section shall be levied, if the advance tax paid on or before 15thMarch is less than the tax due on the returned income.

Further in relation to certain dividends received from domestic companies, it is proposed to provide that if shortfall in payment of advance tax is on account of under-estimation or failure in estimation of income of the nature referred to in section 115BBDA, the interest under section 234C shall not be levied subject to fulfilment of conditions specified therein.

These amendments will be applicable retrospectively from AY 2017-18.

II. Fee for delayed filing of return (Insertion of new Section 234F)

It is proposed to insert a new section 234F in the Act to provide for payment of a fee for delay in furnishing of return of income.

The proposed fee structure is as follows:-

(i) a fee of five thousand rupees shall be payable, if the return is furnished after the due date but on or before the 31st day of December of the assessment year;
(ii) a fee of ten thousand rupees shall be payable in any other case.

However, in a case where the total income does not exceed five lakh rupees (Rs 0.5 million), it is proposed that the fee amount shall not exceed one thousand rupees.

It is also proposed to make consequential amendment in section 140A to include that in case of delay in furnishing of return of income, alongwith the tax and interest payable, fee for delay in furnishing of return of income shall also be payable.

Similar amendment has also been proposed in sub-section (1) of section 143, to provide that in computation of amount payable or refund due, as the case may be, on account of processing of return under the said sub-section, the fee payable under section 234F shall also be taken into account.

Consequently, it is proposed that the provisions of section 271F in respect of penalty for failure to furnish return of income shall not apply in respect of assessment year 2018-19 and onwards.

These amendments will be applicable from AY 2018-19.

III. Interest on refund due to deductor [Insertion of new Section 244A(1B)]

The existing section 244A of the Act 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 to provide that where refund of any amount becomes due to the deductor, 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, from the date on which claim for refund is made in the prescribed form
• or in case of an order passed in appeal, from the date on which the tax is paid,

to the date on which refund is granted.

It is also proposed 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 be applicable from April 1, 2017.

IV. Penalty on professionals for furnishing incorrect information in statutory report or certificate (Insertion of new Section 271J)

It is proposed to insert a new section 271J so as to provide that if an accountant or a merchant banker or a registered valuer, furnishes incorrect information in a report or certificate under any provision of the Act or the rules made thereunder, the Assessing Officer or the Commissioner (Appeals) may direct him to pay a sum of ten thousand rupees by way of penalty for each such report or certificate.

It is also proposed to provide (through amendment of section 273B) that if the person proves that there was reasonable cause for the failure referred to in the said section, then penalty shall not be imposable in respect of the proposed section 271J.

This amendment will be applicable from April 1, 2017.

OTHERS

I. Income from transfer of Carbon credits

Carbon Credit is an incentive given to an industrial undertaking for reduction of the emission of GHGs (Green House Gases) including Carbon Dioxide.The Kyoto Protocol commits certain developed countries to reduce their GHG emissions and for this, they are given carbon credits in the form of a Certified Emission Reduction (CER) certificate. The CER is tradable and its holder can transfer it to an entity which needs Carbon Credits to overcome an unfavourable position on carbon credits.

Income-tax Department has been treating the income on transfer of carbon credits as business income which is subject to tax at the rate of 30% plus applicable surcharge & cess, as against claims made by taxpayers of non-taxability of such receipts.

To avoid litigation and provide clarity, it is now proposed to insert a new section 115BBG to provide that where the total income of the assessee includes any income from transfer of carbon credit, such income shall be taxable at the concessional rate of 10% (plus applicable surcharge and cess) on the gross amount of such income.No expenditure or allowance in respect of such income shall be allowed under the Act.

This amendment will be applicable from AY 2018-19.

II. Processing of return within the prescribed time and enable withholding of refund in certain cases (Insertion of section 241A)

In order to address the grievance of delay in issuance of refund in genuine cases which are routinely selected for scrutiny assessment, it is proposed that provisions of section 143(1D) (restricting processing of return in scrutiny cases) shall cease to apply in respect of returns furnished for assessment year 2017-18 and onwards.

However, to address the concern of recovery of revenue in doubtful cases, it is proposed to insert a new section 241A to provide that, for the returns furnished for assessment year commencing on or after 1st April, 2017, where refund of any amount becomes due to the assessee under section 143(1) and the Assessing Officer is of the opinion that grant of refund may adversely affect the recovery of revenue, he may, for the reasons recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, withhold the refund upto the date on which the assessment is made.

This amendment will be applicable from April 1, 2017.

III. Abolition of Research & Development Cess Act, 1986 (R&D Cess)

R&D Cess Act is proposed to be repealed from 1stApril, 2017. Therefore, no R&D Cess would be payable on import of technology under a foreign collaboration with effect from April 1, 2017.

Accordingly, Service tax shall be payable at applicable rates without claiming any deduction of R&D cess.

INDIRECT TAX

RECENT NOTIFICATIONS

I. Goods and Services Tax(GST)

In the Budget tax proposals, no major changes have been proposed in the Indirect taxes, taking into account the fact that the Goods and Services Tax (GST) is now very much likely to be introduced in the next few months, even though no commitment about likely date when it would be implemented has been announced. The Finance Minister stated in his speech that consensus has been reached on all matters with the States of India to introduce GST as one of the major tax reforms pending for the last few years. Draft regulations in respect of GST have already been circulated and the same are likely to be approved by the Indian Parliament in the current ongoing session. It is now expected that GST may become effective from 1st July, 2017.

II. Common legislative changes Proposed under Central Excise, Customs and Service Tax law Changes effective from enactment of the Finance Bill, 2017

Amendment in Authority for Advance Ruling ('AAR') :

• Presently, there are two AAR's – one under Income Tax (Section 245O) and the common AAR for Central Excise, Customs & Service Tax. It is now proposed that there will be only one AAR for Income tax as well as Indirect Taxes.
• All pending applications (at any stage) shall stand transferred to such Authority and fees payable for filing application have been increased from Rs 2,500 to Rs 10,000Time limit for disposing the application is increased from 90 days to six months.

Settlement Commission

• Scope enlarged to enable any person (other than the assessee) who has received a show cause notice to make application to the settlement commission
• The settlement commission may pass an order of rectification to correct any error apparent on record within 3 months

III. Service Tax – Changes effective from enactment of the Finance Bill, 2017

- Retrospective exemption (from 1 June 2007 to 21 September 2016) for payment of Service Tax on upfront development charges/ salami payable to State Government Industrial Development Corporation for grant of long term lease of industrial plot. However, with respect to Service tax collected during the above mentioned period, refund applications to be filed within 6 months from presidential assent to Finance bill.
- Rule 2A of the Service Tax (Determination of Value) Rules, 2006 has been amended retrospectively from 1 July, 2010 to exclude value of land while calculating value of works contract service. (Involving transfer of goods and land/undivided share of land)
- Exemption from service tax for services by way of carrying out any process amounting to manufacturing or production of goods (excluding liquor for human consumption) shifted from Negative List to Mega Exemption Notification.
- Exemption has been provided to services of transport of passengers provided by airlines to the government against viability gap funding (VGF), embarking or terminating from a Regional Connectivity Scheme Airport. Exemption is available up to one year from date of commencement of such airports. Effective from 2nd February, 2017.

IV. Customs - Changes effective from enactment of the Finance Bill, 2017

All items of machinery, including instruments, apparatus and appliances, transmission equipment and auxiliary equipment (including those required for testing and quality control) and components, required for
(a) initial setting up of fuel cell based system for generation of power or for demonstration purposes; or
(b) balance of systems operating on bio-gas or bio-methane or by-product hydrogen
Varied rates 5 Solar tempered glass or solar tempered (anti-reflective coated) glass for manufacture of solar cells/panels/modules, subject to actual user condition 5 NIL All parts used in the manufacture of LED lights or fixtures including LED Lamps/All inputs used in the manufacture of LED (light emitting diode) driver or metal core printed circuit boards for LED lights and fixtures or LED Lamps Varied Rates 5 Cashew nut, roasted, salted or roasted and salted [20081910] – Applicable from immediate effect 30 45 Concept of "beneficial owner" has been introduced under Customs law to widen the ambit of definitions of importer and exporter.

- Customs station' is amended to include international courier terminal and foreign post office.
- Bill of entry for home consumption/ warehousing is to be filed by the end of next day (excluding holidays) from the date on which the vessel, aircraft or vehicle carrying the goods arrives at a customs station.
- Time limit for payment of import duty has been prescribed. In case of self-assessment, duty shall be paid on the date of presentation of bill of entry and in case of assessment, re-assessment or provisional assessment, within one day (excluding holidays) from the date on which the bill of entry is returned to the importer by the proper officer for payment of duty.
- Facility for storage of imported goods in a public warehouse (excluding private warehouse) pending clearance has been extended to goods imported for warehousing before their removal.
- Change in Basic Custom duty on various items (effective from 2ndFebruary, 2017), given as per table below:

Goods	Existing Rate (%)	New Rate (%)
Liquefied natural gas (LNG)	5	2.5
• Micro ATMs as per standards version 1.5.1 & Fingerprint reader/ scanner; • Iris scanner; • Miniaturised POS card reader for mPOS (other than mobile phones or tablet computers); • Parts and components for use in the manufacture of aforesaid goods.	7.5	NIL

V. Central Excise

As per the proviso inserted to Explanation-I (e) of the Rule 6(3D) of the CENVAT Credit Rules, 2004 (CCR), consideration in the form of interest and discount to be included as exempt services and shall be considered for the purpose of reversal of CENVAT Credit in case of banks, financial institutions and NBFC's.

- Time limit of three months has been prescribed from the date of receipt of application (further extendable by six months) for approval of requests regarding transfer of unutilized CENVAT credit lying in accounts in case of transfer of business (e.g. on account of sale, merger, amalgamation or lease). – Effective 2nd January, 2017
- It has been clarified that EOUs are eligible to claim excise exemption in respect of inputs/ raw materials procured by them domestically and utilized for manufacture of goods that are cleared by them to DTA. Accordingly, non-applicability of exemptions under notifications issued under Section 5A of the Central Excise Act, 1944 is only in respect of excisable goods produced or manufactured by an EOU and cleared to DTA.
- Existing exemption from excise duty on Point of Sales devices and all goods used in manufacturing of such devices extended till 30 June, 2017.
- Excise duty rate on all parts for manufacture of LED lights or fixtures, including LED lamps has been reduced to 6% until 30 June, 2017.
- Excise duty rate on motor vehicles for transportation of more than 13 persons including the driver has been reduced to 12.5% with retrospective effect from 1, January, 2017
- Change in Excise duty rate on various items (effective from 2 February, 2017 and applicable until 30 June, 2017), given as per table below:

Goods	Existing Rate (%)	New Rate (%)
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; (d) Solar photovoltaic module and panel for water pumping and other applications	NIL	6
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; (d) Solar photovoltaic module and panel for water pumping and other applications	12.5	6
All items of machinery required for initial setting up of fuel cell based system for generation of power or for demonstration purposes	12.5	6

IMPORTANT

DATES TO REMEMBER

Particulars	Date

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