INDIA BUDGET 2018-19

An Analysis

February 2018

FOREWORD

The Government of India's Annual Budget for the year 2018-19 was presented by the Hon'ble Finance Minister, Government of India, on 1st February, 2018.

The Budget as presented outlines various policies to be pursued by the Government, and a few changes in tax laws as well. In his budget speech, the Hon'ble Finance Minister stated that the Indian Economy is now a 2.5 trillion dollar economy – the seventh largest in the world and is expected to become the fifth largest economy very soon.

In his speech, the Hon'ble Finance Minister stated that India's GDP growth is expected to be between 7.2% and 7.5%. The growth rate forecast by the International Monetary Fund stands at 7.4%. Furthermore, forecast of the fiscal deficit for the Financial Year 2018-19 stands at 3.3% of GDP.

The main focus of this year's Budget is on Agriculture and Rural economy, infrastructure creation, improving quality of education etc. Various policies have been announced for the agriculture sector, with an overall objective of providing financial stability to farmers.

One of the major policy announcements relates to providing medical insurance coverage up to Rupees half million per family, per year, for Secondary and Tertiary care hospitalization of the poor people, which will be one of the largest population coverage in the world.

Certain announcements have also been made for encouraging employment generation and security for employees employed by Micro, Small and Medium enterprises.

'Ease of doing business' has always been a focus area of the Narendra Modi led Central Government. Taking it a step further, the Government has now promised reforms to focus on 'Ease of Living' for the middle class and economically weaker sections of the society.

On the tax side, various announcements have been made, including reduction of corporate tax rate to 25% for domestic companies having turnover upto INR 2.5 Billion, as well as reintroduction of standard deduction for the salaried individuals. Significant tax sops have also been extended to senior citizens and pensioners.

On the other hand, amendments in the Indirect Tax front have largely been restricted to Customs Laws, considering that amendments in the newly introduced Goods and Service Tax ('**GST**') legislation is primarily the prerogative of the GST council.

In the run up to the General Elections due in 2019, it is generally viewed that the Union Budget 2018, being the last full budget before the elections, has somewhat been driven by electoral considerations.

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DIRECT TAX PROPOSALS

SNAPSHOT OF TAX RATES

- No changes announced in the tax rates for **Individuals** and other artificial persons for the Assessment Year ('**AY**') 2019-20, i.e. Financial Year 2018-19.

- No changes in the tax rates applicable for **foreign companies**.

- In respect of **domestic companies**, the corporate tax rate is proposed to be reduced to 25% (plus applicable surcharge and cess) where the total turnover or gross receipts in the financial year 2016-17 does not exceed INR 2.5 Billion (earlier limit was INR 0.5 Billion).

- For all tax payers, Education Cess at the rate of 2% and Secondary & Higher Education Cess on income tax at the rate of 1% have been replaced by a new cess called "Health and Education Cess on income tax, leviable at 4% of the aggregate of tax and surcharge.

- No changes in the rates of surcharge have been prescribed.

- A table depicting effective rates of tax for companies for the AY 2019-20 has been provided in *Appendix A*.

INTERNATIONAL TAXATION

Expansion of scope of 'business connection' in line with BEPS

Under most of the tax treaties, the activities of a foreign enterprise of selling goods and merchandise in India through a dependent agent constitute a Permanent Establishment ('**PE**') if such agent habitually concludes or habitually exercises an authority to conclude contracts in India. 'Conclusion' of contracts has generally been interpreted as formal conclusion of contracts by the agent. The OECD in its Action Plan 7 (Prevention of Artificial Avoidance of Permanent Establishment Status) under the BEPS initiative has noted that the enterprises are artificially avoiding creation of a PE by demonstrating that the contracts are formally signed by the foreign enterprise.

In order to address such issues, the OECD, recommended the modification of Article 5(5) (Permanent Establishment) of the Model Tax Convention, so as to provide that incidence of a Dependent Agent PE ('DAPE') shall arise if such agent plays the '**principle role**' leading to the conclusion of the contracts that are routinely concluded without material modification by the enterprise.

The aforesaid recommendations were also codified in the OECD driven Multilateral Convention To Implement Tax Treaty Related Measures To Prevent Base Erosion and Profit Shifting ('**MLI**'), which was signed by various countries, including India. The MLI has the effect of modifying various provisions of the bilateral tax treaties (including PE related provisions), where both countries have opted for such modification.

Under the corresponding domestic tax law provisions, i.e. in the concept of 'Business Connection' under Explanation 2 to Section 9(1)(i) of the Income-tax Act, 1961 ('**ITA**'), provisions similar to Dependent Agent PE have been laid down. The Finance Ministry has proposed to align such domestic law provisions with the provisions of the MLI and OECD recommendations.

As such, it is proposed that 'business connection' would include not only a dependant agent who habitually conclude contracts but also an agent who habitually plays a principal role leading to the conclusion of the contract by the non - resident. Furthermore, it is also proposed that in order to attract the provisions of Explanation 2, such contract should either be:

(i) in the name of the non-resident; or
(ii) for the transfer of ownership / granting the right use the property owned by the non - resident or that non-resident has the right to use; or
(iii) for the provision of services by the non-resident.

The aforesaid changes will not impact transactions with countries which have not yet signified their assent for the modification of their tax treaty with India under the MLI. Such tax treaties shall therefore be unaffected, as the corresponding provisions of DAPE under Article 5 shall continue to be narrower in scope.

It is noteworthy that the amended provisions in the MLI also provide for an additional condition, that the contract must be concluded without any material modification by the non-resident. Such condition has been omitted from the proposed amendment in the Finance Bill, 2018. Therefore, in terms of the proposed amendment, activities performed by the dependent agent may lead to the incidence of business connection irrespective of the fact that the contract is materially modified at the stage of conclusion, and therefore, enlarging the scope of income taxable in India.

The abovementioned provision will be effective from April 1, 2019 and will accordingly apply from AY 2019-20 onwards.

Business Connection to include 'Significant Economic Presence'

Traditionally, the concepts of Permanent Establishment and Business Connection have been associated with physical presence in a Contracting State. However, with the advancement in technology by leaps and bounds, especially digital technology, the requirement of actual physical presence for doing business in another state has greatly been diminished.

The OECD, in its Action Plan 1 under the BEPS project, had realized the need to bring the concept of Permanent Establishment in tune with the current technological environment.

In the same spirit, the Finance Ministry has proposed to amend the corresponding provisions dealing with 'Business Connection' under Section 9(1)(i) of the ITA, in terms of which, 'Significant Economic Presence' shall constitute a Business Connection. The expression 'Significant Economic Presence' has been defined as under:

a) Any transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India if the aggregate of payments arising from such transaction or transactions during the previous year exceeds the amount as may be prescribed; or
b) Systematic and continuous soliciting of its business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means.

Thus, by virtue of the proposed amendment, emerging business models based on digital technology, which do not require physical presence, may be brought within the tax net.

It is also clarified that aforesaid activities shall lead to the constitution of Significant Economic Presence regardless of whether the foreign entity has any residence / place of management in India, or whether such non-resident renders services in India. It has also been clarified that only the income attributable to such transactions shall be deemed to accrue or arise in India.

The relevant rules for prescribing the value of payments / users shall be issued after enactment of the Finance Bill, 2018.

It may however be noted that unless corresponding modification to PE rules are made in bilateral tax treaties, cross border business profits will continue to be taxed as per the existing rules under such treaties.

The proposed amendment will take effect from April 1, 2019 and will accordingly apply from AY 2019-20 onwards.

Relief to non-residents from applicability of Minimum Alternate Tax (MAT) provisions where presumptive scheme of taxation applicable

The provisions of section 115JB provide for levy of MAT on certain companies on the basis of "book profit", irrespective of its tax liability as per normal provisions of tax.

It is proposed to retrospectively amend (from AY 2001-02) Section 115JB so as to make such provision inapplicable to foreign companies whose profits and gains are computed on presumptive basis, namely, Section 44B (Shipping Business), Section 44BB (Exploration of Mineral Oils), Section 44BBA (Operation of Aircrafts) and Section 44BBB (turnkey power projects).

Rationalization of time limits in Country by Country Reporting (CbCR)

The Finance Act, 2016 introduced Section 286 to provide a framework for CbCR by Indian group entities belonging to international group. The provisions as introduced were in line with the recommendation of OECD in its Action Plan 13 Report under the BEPS initiative.

In order to enhance the effectiveness and to rationalize the existing provisions, the following amendments have been proposed:

- To provide uniform time limit for furnishing the CbCR, the provision is amended to provide time limit of twelve months from the end of the reporting accounting year of the parent entity, as against the existing provisions of filing by the due date for filing the tax return (extended to Mar 31, 2018 for FY 16-17).

- The CbCR shall be furnished by the Indian constituent entity within the aforementioned time limit if there is no obligation for furnishing CbCR by the non - resident Parent Entity/ Alternate Reporting Entity in their country/ territory.

The abovementioned amendments are applicable from retrospective effect from April 1, 2017. As such, the same shall be applicable from AY 2017-18 onwards.

Royalty and FTS payment by NTRO to a non-resident to be tax-exempt

It is proposed to introduce a new exemption under section 10(6D) in respect of payments received by non-resident from National Technical Research Organisation (NTRO) by way of royalty or fees for technical services rendered in or outside India.

Consequently, NTRO will not be required to deduct tax at source on such payments.

This amendment will take effect retrospectively from 1st April, 2018 and will, accordingly, apply in relation to AY 2018-19 onwards.

CAPITAL GAINS

Reintroduction of tax on long term capital gains on sale of equity shares, etc.

As per the existing provisions of the Section 10(38) of the ITA, long term capital gains arising from transfer of equity shares of a company or a unit of equity oriented fund or a unit of business trust, is exempt from income tax, provided Securities Transaction Tax ('**STT**') is paid at the time of sale and acquisition except certain notified acquisitions.

The Government has proposed to withdraw this exemption in respect of such long term capital gains exceeding INR 100,000. Such gains would be taxed at ten per cent without giving effect to inflation index benefit and exchange currency benefit.

However, long term capital gains arising on or before January 31, 2018 shall be grandfathered and therefore, shall be exempt. Accordingly, the cost of acquisitions in respect of the long term capital asset acquired before February 1, 2018, shall be deemed to be the higher of –

a) actual cost of acquisition; and
b) the lower of –
    (i) the fair market value; and
    (ii) the full value of consideration received or accruing as a result of the transfer.

Similarly, Foreign Institutional Investors ('**FIIs**') will also be liable to tax on such long term capital gains in respect of amount of such gains exceeding INR 100,000. For this purpose, the provisions of Section 115AD are also proposed to be amended.

This amendment will be applicable from AY 2019-20 onwards.

Restriction of scope of Exemption from Capital Gains under Section 54EC

Under the provisions of Section 54EC of the ITA, capital gain arising from the transfer of **any** long-term capital asset is exempt from tax, if it is invested within six months in the specified bonds redeemable after three years.

It is proposed to restrict the scope of this section only to capital gains arising from long-term capital assets, being land or building or both.

Further, it is proposed to provide that long-term specified asset, for making any investment under this section on or after the April 1, 2018, shall mean any bond, redeemable after five years and issued on or after April 1, 2018 by the National Highways Authority of India or by the Rural Electrification Corporation Limited or any other bond notified by the Central Government in this behalf.

This amendment will be applicable from AY 2019-20.

Introduction of Tolerance Band for under-valued consideration in respect of Transfer of Land and Building

Under Section 50C of the ITA, where the sale consideration in respect of land and building is less than the value assessable by the stamp valuation authority, the latter value is regarded as the full value of consideration for computation of capital gains.

To avoid hardships, it is proposed to provide a tolerance limit of 5%. In other words, if the value adopted for stamp duty purposes does not exceed 105% of the sale consideration, the sale consideration shall be accepted as the full value of consideration for capital gain purposes. Such tolerance limit has also been proposed in similar provisions contained in Section 43CA and Section 56(2)(x) of the Act, where stamp value forms a benchmark for valuation purposes.

Section 43CA is applicable in a case where land or building or both are kept otherwise than as a capital asset (i.e. as inventory).

Section 56(2)(x) seeks to tax the transfer of property (including immovable property) in the hands of the transferee, where such property is received for inadequate consideration or for nil consideration.

This amendment will be applicable from AY 2019-20 onwards.

No Deemed Taxability in Case of Transfer of Capital Asset Between Holding and Subsidiary Company in the Hands of Recipient, due to Inadequate or Nil Consideration

Under Section 56(2)(x), in a transaction of transfer of various types of properties, the transferee is taxable if the property is transferred without consideration or for inadequate consideration.

However, certain exceptions have been carved out for transfers which are tax exempt under capital gains tax provisions, such as amalgamation, demerger, business reorganization etc.

It is proposed to expand the scope of such exceptions to the following two transactions, which are also tax exempt from capital gains perspective:

(a) transfer of a capital asset by a holding company to its wholly owned Indian subsidiary company;
(b) Transfer by a subsidiary company to its Indian holding company holding the whole of the share capital.

This amendment shall take effect from April 1, 2018 and would apply in relation to transactions made on or after April 1, 2018.

DIVIDENDS

Expansion of Scope of Dividend Distribution Tax (DDT)

Under the scheme of the ITA, dividend distributed by a company is subject to DDT @15% on grossed-up amount of dividend in the hands of such company (effective tax rate of 20.36%). Such dividend is exempt in the hands of the shareholder.

The scope of DDT extends to most payments which are deemed to be dividends under Section 2(22) of the ITA. The only exception to this rule is payment deemed to be dividend under section 2(22)(e), which is taxable in the hands of the shareholder.

It is proposed to bring such deemed dividend under the scope of Dividend Distribution Tax under section 115-O and consequently, such payment, deemed to be dividend, shall be exempt in the hands of the shareholder.

Such payments deemed to be dividend shall be taxable at the rate of 30 per cent without grossing-up. This amendment will be applicable from April 1, 2018 and will apply to such payments made on or after April 1, 2018.

Tax on distributed income by Mutual Fund extended to Equity Oriented Fund

Under Section 115R, any amount of income distributed by the specified company or a Mutual Fund to its unit holders is chargeable to tax in the hands of company or Mutual Fund on such distributed income. However, any income distributed by equity oriented funds to its unit holder is not chargeable to tax under the said section.

It is now proposed to amend the said section to provide that where any income is distributed by a Mutual Fund being an equity oriented fund, the mutual fund shall be liable to pay additional income tax at the rate of ten per cent on income so distributed.

This amendment will be applicable from April 1, 2018 and will apply to income distributed on or after April 1, 2018.

Widening of scope of Accumulated profits for the purposes of Deemed Dividend

As per Section 2(22) of the ITA, dividend includes any distribution to shareholders by various modes, to the extent of accumulated profits, which have been stipulated in clauses (a) to (e) to Section 2(22) of the Act.

The expression 'accumulated profits' has been defined in Explanation 2 to the section 2(22) of the Act as all profits of the company up to the date of distribution or payment or liquidation, subject to certain conditions.

Certain instances have come to light where companies with large accumulated profits circumvent the provisions of Section 2(22)(d) of the Act {distribution of profits by capital reduction} by resorting to amalgamation with companies with accumulated losses.

It is proposed to insert a new Explanation 2A in clause (22) of section 2 of the Act to widen the scope of the term 'accumulated profits' so as to provide that in the case of an amalgamated company, accumulated profits, whether capitalised or not, or losses as the case may be, shall be increased by the accumulated profits of the amalgamating company, whether capitalized or not, on the date of amalgamation.

This amendment will be applicable from April 1, 2018.

AMENDMENTS RELATED TO BUSINESS INCOME

Rationalization of provisions of Income Computation and Disclosure Standards ('ICDS')

In order to provide uniform tax treatment and consistency in approach of taxation, the CBDT vide its notification no. 87/2016 dated September 29, 2016 notified ten ICDS in terms of section 145 of ITA, covering certain types of transactions and accounting/ tax treatments. The same were applicable from AY 2017-18 for the purpose of computation of income under the head 'Profits and Gains of Business or Profession' or 'Income from Other Sources' in the case of specified taxpayers, which were following mercantile system of accounting.

In November 2017, the High Court of Delhi, on a writ petition filed by the Chamber of Tax Consultants, *inter-alia*, challenging the constitutional validity of ICDS held that various provisions of ICDS are contrary to or seek to overcome binding judicial precedents. The High Court struck down various provisions of the ICDS to the extent the same were contrary to the law settled by various decisions of the Apex Court.

In order to neutralize the aforesaid judgment of the High Court of Delhi, various changes have been proposed in the Finance Bill, 2018. It is proposed as under:

(i) Section 36 has been amended to provide that Marked to Market loss or other expected loss as computed in the manner provided in the ICDS notified under sub-section (2) of section 145, shall be allowed as a deduction (ICDS-I).

(ii) Section 40A is proposed to be amended to provide that no deduction or allowance in respect of Marked to Market loss or other expected loss shall be allowed except as allowable under Section 36 (ICDS-I).

(iii) A new section 43AA is proposed to be inserted to provide that, subject to the provisions of section 43A, any gain or loss arising on account of variation in foreign exchange rates in respect of specified foreign currency transactions shall be treated as income or loss, which shall be computed in the manner provided in ICDS.

(iv) A new section 43CB is proposed to be inserted to provide that profits arising from a construction contract or a contract for providing services shall be determined on the basis of Percentage of Completion method except for certain service contracts. Furthermore, contract revenue shall include retention money and contract cost shall not be reduced by incidental interest, dividend and capital gains (ICDS-III, ICDS-VI & ICDS-IX).

(v) Section 145A is proposed to be amended to provide that for the purpose of determining the income chargeable under the head 'Profits and gains of business or profession'-

- The valuation of inventory shall be made at lower of actual cost or net realizable value (ICDS-II).
- The valuation of purchase and sale of goods or services and of inventory shall be adjusted to

include the amount of any tax, duty, cess or fee actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation (ICDS-II).

- Inventory being securities not listed, or listed but not quoted on a recognised stock exchange shall be valued at actual cost initially recognised in the manner provided in ICDS (ICDS-VIII).
- Inventory being listed securities shall be valued at lower of actual cost or net realisable value (ICDS-VIII).

(vi) A new section 145B is proposed to be inserted to provide that-

- Interest received on compensation or on enhanced compensation, shall be deemed to be the income of the year in which it is received (ICDS-IV).
- The claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved (ICDS-IV).
- Any assistance in the form of a subsidy, grant, incentive, etc. by Government or any authority, referred to in Section 2(24), shall be deemed to be the income of the financial year in which it is received, if not charged to income tax for any earlier previous year (ICDS-VII).

The aforesaid amendments shall be applicable with retrospective effect from AY 2017-18.

Taxability of compensation received in connection with termination/ modification of employment contract or contract relating to business

Under the provisions of the section 28 (Scope of Profits and Gains from Business and Profession), certain types of compensation receipts are taxable under the head “Profits and gains of business or profession”.

The scope of such provision is proposed to be expanded to provide that any compensation, whether revenue or capital, due or received by any person in connection with the termination or the modification of the terms and conditions of any contract relating to his business shall be chargeable to tax as business income.

Furthermore, the compensation receivable by any person in connection with the termination of his employment or the modification of the terms and conditions relating to employment shall be taxable as ‘Income from Other Sources’.

These amendments will be effective from AY 19-20 onwards.

TAX INCENTIVES AND DEDUCTIONS

Certain deductions not to be allowed upon delay in filing tax return

The scheme of the ITA lays down various profits linked deductions from total income. Tax payers are not eligible for certain prescribed deductions provided under Sections 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID and 80-IE, if the tax return is not filed within the prescribed due date. However, such restriction is not applicable to **all** profit linked deductions, i.e. the said deductions may be claimed even if a tax return is filed belatedly.

In order to enforce strict compliance with respect to timely filing of return, it is proposed to provide that the benefit of other deductions available under Section 80H to section 80TT, shall not be allowed if the returns for assessment years commencing on or after April 1, 2018 are not filed within the prescribed due date.

Rationalization of deduction in respect of employment of new employees

Under the provisions of Section 80JJAA, additional deduction of 30% is allowed in respect of emoluments paid to eligible new employees who have been employed for a minimum period of 240 days during the year. However, the minimum period of employment had earlier been relaxed to 150 days in the case of apparel industry. This relaxation is proposed to be extended to footwear and leather industry as well.

Furthermore, in cases where a new employee is employed for less than 240/150 days during the first year but continues to remain employed for the minimum period in subsequent year, then such employee would be deemed to be employed in the succeeding year and the additional deduction would be allowed in the second year and onwards.

This amendment will take effect from 1st April, 2019 and shall apply from AY 2019-20 onwards.

Measures to Give Impetus to Start-Ups

In 2015, the Central Government had announced the 'Start Up India' program to incentive start-ups in India. In pursuance of this initiative, the Finance Act, 2016 introduced a profit linked deduction for start- ups under Section 80-IAC of the ITA.

In terms of the existing provisions, the start-ups which have been incorporated on or after April 1, 2016 but before April 1, 2019 are eligible for such deduction.

To give further impetus to this scheme, it has been proposed that start-ups incorporated upto March 31, 2021 shall also be eligible for deduction.

Furthermore, the restriction of maintaining maximum total turnover shall apply to seven tax years, as against the period stipulated under the present laws, i.e. period between April 1, 2016 to March 31, 2021. The prescribed maximum turnover limit is unchanged at INR 25 crores (INR 0.25 billion).

The definition of 'eligible business' has also been enlarged, to include business with high potential of employment generation or wealth creation.

INSOLVENCY AND BANKRUPTCY RELATED PROVISIONS

Relaxation of condition relating to carry forward of losses to companies seeking insolvency resolution under Insolvency and Bankruptcy Code 2016

Section 79 of ITA provides that carry forward and set off of losses in a closely held company shall be allowed only if there is continuity in the beneficial owner of the shares carrying not less than 51% of the voting power as on the last day of the year or years in which the loss was incurred.

In order to address the problem of companies seeking insolvency resolution under the Insolvency and Bankruptcy Code, 2016, where the change in the beneficial owners of shares is beyond the permissible limit under section 79, it is proposed to relax the rigors of section 79 in case of such companies, whose plan is approved under the insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

This amendment will take effect from 1st April 2018 and will retrospectively apply from AY 2018-19 onwards.

Return of income of a company under Insolvency Resolution process to be signed by Insolvency Professional

It is proposed to amend section 140 of Act so as to provide that during the resolution process under the Insolvency and Bankruptcy Code, 2016, the return of income shall be verified by an Insolvency Professional appointed by the Adjudicating Authority under the said Code. This amendment will take effect from 1st April, 2018 and retrospectively apply to AY 18-19.

Relaxation in certain conditions under Minimum Alternate Tax Computation

Under the provisions of MAT, for the purpose of computing book profit, companies are eligible for deduction equal to the amount of unabsorbed depreciation or amount of brought forward loss, whichever is less as per books of account.

In order to relax MAT provisions relating to rehabilitating companies seeking insolvency resolution, it is proposed to amend Explanation 1 to section 115JB so as to provide that in case of a company, against whom an application for corporate insolvency resolution process has been admitted under the Insolvency and Bankruptcy Code, 2016, the aggregate amount of unabsorbed depreciation and loss brought forward (excluding Unabsorbed depreciation) shall be allowed to be reduced from the book profit.

Accordingly, total accumulated losses (i.e. including unabsorbed depreciation) of earlier years, as per books of account, shall be allowed to be reduced from current year's 'book profits' for computation of MAT liability.

This amendment will take effect retrospectively from April 1, 2018 and will apply from AY 2018-19 onwards.

PROCEDURAL AMENDMENTS

Restriction of Scope of Adjustments while Processing of Tax Returns

Vide Finance Act, 2016, the scope of processing of return under section 143(1) was expanded to include, *inter alia*, addition of income based on entries appearing in Form 26AS or Form 16A or Form 16, which had not been included in computing the total income in the return.

Such provision has caused significant financial burden and hardship to tax payers, where a mismatch existed between such withholding tax statements / certificates (Form 26AS/ Form 16A/ Form 16) and the return of income. Items appearing in the withholding tax statements and not considered in the return of income would lead to a tax demand in the intimation issued under Section 143(1) after such processing.

Various instances of mismatch are generally on account of genuine reasons, such as different accounting policies adopted by the deductor and the deductee.

In order to avoid hardships being faced by tax payers, it has been proposed to withdraw such provision. Such amendment shall be applicable for returns filed for AY 2018-19 onwards.

Legal Framework for E-Assessment

The Government has proposed to lay down a legal framework to facilitate electronic assessment proceedings. To facilitate the same, it has been proposed to insert sub-sections (3A), (3B) and (3C) in the provisions of Section 143 of the ITA, which deals with regular tax assessment proceedings.

Under such framework, the Government shall roll out a scheme which shall focus on greater transparency and accountability by eliminating the interface between the Assessing Officer and the Assessee. It is also proposed to introduce a 'team based assessment system'.

Such amendment shall take effect from April 1, 2018, while the scheme for e-assessment shall be notified in due course.

Increase in quantum of Penalty for failure to furnish statement of financial transaction or reportable account

In terms of the provisions of Section 285BA of the ITA, certain persons are required to report the prescribed financial transactions (for instance, AIR, FATCA related information).

For failure to furnish such statement, penalty of INR. 100/- per day has been prescribed under Section 271FA. It has been proposed to increase the quantum of such penalty to INR 500 for every day during which such failure continues.

Further, in the case of failure to furnish such statement in response to a notice issued by the concerned tax authority, attracts a larger penalty of INR 500 per day under Section 271FA. It has now been proposed to enhance such penalty to INR 1,000 per day.

These amendments shall take effect from April 1, 2018.

Expansion of Scope of Prosecution for Failure to File Tax Return by Companies

In terms of the existing provisions of Section 276CC of the ITA, wilful failure to furnish a return of income (where such return is required to be filed) is considered as a serious offence, which may lead to prosecution. Under such provision, the defaulting person may be awarded rigorous imprisonment for a term which may extend to seven years along with fine, depending upon the quantum of the tax sought to be evaded.

However, an exception in the form of a proviso has been carved out to Section 276CC, in terms of which, prosecution proceedings shall not be initiated if the tax payable by a person (as determined upon regular assessment and after considering credit of TDS and advance tax) does not exceed INR 3,000.

The Finance Bill, 2018 proposes to restrict the applicability of such exception to persons other than Companies. In other words, if a Company wilfully fails to file a tax return, prosecution proceedings may be launched, even if the tax payable by such company under regular assessment does not exceed INR 3,000.

This amendment will take effect from April 1, 2018.

AMENDMENTS RELATING TO SALARIED INDIVIDUALS AND OTHER MISCELLANEOUS AMENDMENTS

Revival of Standard Deduction and Increase in Cess

It is proposed to reintroduce Standard deduction for the salaried class, which existed in the Indian Income tax law prior to its amendment by the Finance Act 2005. Although a standard deduction of a maximum of Rs. 40,000 per year from salary income has been prescribed, certain existing exemptions, being transport allowance of upto INR 1,600 per month and medical expenses reimbursement of upto INR 15,000 per year, are proposed to be withdrawn.

The proposed amendment would bring relief to pensioners, who although are not normally entitled to transport allowance and medical expenses reimbursement, yet would be eligible for standard deduction.

No change has been proposed to the rates of tax, surcharge or slabs for individual tax payers. However, the existing 2 % Education cess and 1% Secondary & Higher Education Cess are proposed to be replaced with 4% 'Health & Education Cess'.

The proposed amendments shall be effective from April 1, 2019 and shall be applicable for the AY 2019-20 onwards.

Rationalization of provisions of Section 115BA to certain Domestic Companies

Under Section 115BA of the ITA, domestic companies (set up or registered after March 1, 2016) engaged in the business of manufacture and production research are eligible for concessional corporate tax rate of 25%, subject to certain conditions.

Under the ITA, there are various streams of income are chargeable at special rates (other than 25%). However, under Section 115BA of the ITA, only income of the nature of capital gains (chargeable at 10% or 20%) is allowed to be taxed at such rates.

In other words, other streams of income taxable at special rates are not specifically mentioned in the provisions of Section 115BA of the ITA.

It has been proposed to rationalize Section 115BA to specifically include such streams of income, which shall continue to be taxable at the special rates prescribed therein.

These amendments shall take effect retrospectively from AY 2017-18 onwards.

Measures to Discourage Cash Economy and Curb Black Money

Section 10(23C) provides for exemption in respect of income of certain funds, trusts or institutions in a case where such income is applied or accumulated during the financial year for specified purposes in accordance with the relevant provisions. Section 11 of the Act also provides similar exemption in respect of income from property held for charitable or religious purposes.

The aforesaid exemptions are not impacted even where the payments are made in cash or without deduction of tax at source by charitable or religious trusts or institutions.

In order to discourage cash economy and to reduce the generation and circulation of black money, it is proposed that any non-compliance with the provisions of Section 40(a)(ia) [payment without deduction of tax] and Section 40A(3)/(3A) [Payment in cash beyond the prescribed threshold] shall not be deemed as application of income under the aforesaid provisions.

Consequently, where the payments are made in cash above INR 10,000/-, or without deduction of tax beyond the prescribed thresholds, such payments would be considered as taxable income in the hands of charitable or religious trusts or specified funds, trusts or institutions.

These amendments will take effect from April 1, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 onwards.

Deduction in respect of certain income of Farm Producer Companies

A new section 80PA is proposed to be inserted with a view to provide 100% deduction from profits derived from 'eligible business' to Farm Producer Companies having a total turnover up to INR 1 billion. The deduction shall be available for AY 2019-20 to AY 2024-25.

'Eligible business' means:

a) marketing of agricultural produce grown by the members;

b) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to the members;

c) the processing of agricultural produce of the members;

This amendment will be effective from AY 2019-20 onwards.

Trading in Agricultural Commodity Derivatives Not to be Considered as Speculative Transaction Even if No Commodity Transaction Tax (CTT) is Chargeable

Clause 5 of Section 43 defines speculative transaction as a transaction in which a contract for purchase or sale of any commodity is settled otherwise than by actual delivery of the commodity. Certain exceptions to the aforesaid provision are given in the proviso to the said clause. The said proviso, *inter-alia* provides that trading in Commodity derivatives carried out in a recognized Stock Exchange, which is chargeable to Commodity Transaction Tax (CTT), shall be deemed to be a non-speculative transaction.

In the case of Agricultural Commodity Derivatives, CTT is presently exempt. As such, the benefit of the proviso is not available in respect of trading of Agricultural Commodity Derivatives in the absence of CTT chargeability, and hence, such transactions are considered as speculative transactions.

In order to encourage participation in trading of Agricultural Commodity Derivatives, it is proposed to dispense with the condition of chargeability of CTT in the case of trading of Agricultural Commodity Derivatives, to consider such transactions as non-speculative transactions.

This amendment will be effective from AY 2019-20 onwards.

INDIRECT TAX PROPOSALS

PROPOSED AMENDMENTS IN CUSTOMS ACT, 1962

Renaming of Apex Administrative Body

The name of the apex administrative body constituted under the Customs Act, 1962, i.e. Central Board of Excise and Customs is proposed to be renamed as "Central Board of Indirect Taxes and Customs".

Introduction of New Provisions to Exempt Goods Imported for Repair, etc.

A new section 25A and 25B has been proposed to be introduced in the Customs Act, 1962, wherein, Central Government will exempt goods imported for repair, further processing or manufacture and goods re-imported after export for repair, from payment of whole or any part of duty of customs leviable, subject to certain conditions. In this regard, detailed guidelines and rules shall be issued by the Government in due course.

Rationalization of time limits for adjudication of demand notices

Section 28 of the Customs Act, 1962 dealing with recovery of duty has been proposed to be amended as follows:

- Amendment has been made in sub-section (9) to provide a definite time frame of six months or one year for adjudication of demand notices.
- Further, the time period of six months or one year may be extended to a further period of six months or one year.
- It has also been provided that where proper office fails to determine the amount of duty or interest within such extended period, then such proceeding shall be deemed to have been concluded as no notice had been issued.

Amendments Relating to Advance Rulings

The Scope of Advance Ruling has been extended wherein definition of advance ruling has been proposed to be changed by way of amendment in clause (b) of Section 28E. Further, amended definition of advance ruling covers subjects beyond mere determination of duty.

Furthermore, Sub-section (6) of Section 28-I has been proposed to be amended to reduce the time frame from six months to three months for pronouncement of advance ruling by authority.

Changes in Customs Duty Rates

- A Social welfare surcharge at 10% of the aggregate customs duties has been levied on imported goods in place of existing 3% education cess. However, this surcharge will not be chargeable on integrated tax and GST compensation cess on imported goods.

- In order to provide impetus to domestic industry and giving boost to the '*Make in India*' campaign, Customs duty rate has been increased in certain sectors, like food processing, electronics, auto components, footwear, furniture, etc. The changes in rates of custom duty have been depicted in *Appendix B*.

- The rates of Basic Excise Duty on motor spirit have also been amended, effective from February 2, 2018. The amendments in the rates have been tabulated in *Appendix B*.

ALLIED LAWS

STRICTER RULES UNDER PMLA LEGISLATION

Punishment for fraud under Section 447 of the Companies Act considered as Scheduled Offence

Section 447 of the Companies Act, 2013 deals with punishment for fraud. For the purpose of section 447, "fraud" in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.

Under the provisions of the Prevention of Money Laundering Act, 2002 ('**PMLA**'), any person knowingly assists in or involved in activity connected to Scheduled Offence is considered to be guilty of offence of Money-Laundering. The Schedule to PMLA contains fraudulent, criminal activities relating to offence committed under various legislations.

It is now proposed to consider offence under the Companies Act being **punishment for fraud** under section 447 of the Companies Act, 2013 under part A of Schedule to PMLA, so as to deem the person committing such offence as accused of committing money-laundering.

The aforesaid amendment shall be applicable from a date to be notified by the Central Government after enactment of the Finance Bill, 2018.

All Scheduled offences to be now cognizable and non-bailable

Under the extant provisions of PMLA, only the offence committed by a person under Part A of the Schedule, which is punishable for a term of imprisonment of more than 3 years, is non-bailable. It is now proposed to consider all offences under PMLA as non-bailable, irrespective of the term of imprisonment related to such offence.

However, it is also proposed that where the person is accused of money-laundering a sum of less than INR 100 Million, such person may be released on bail as per the direction of the Special Court.

The aforesaid amendment shall be applicable from a date to be notified by the Central Government after enactment of the Finance Bill, 2018.

APPENDIX A

Effective Rates of Tax in Respect of Companies for AY 2019-20

(All figures in INR)

Particulars	*Total Income not exceeding 10 Million*	*Total Income More than 10 Million but not exceeding 100 Million*	*Total Income more than 100 Million*
Domestic Companies having Turnover (in the Financial Year 2016-17) not exceeding INR 2.5 Billion	26%	27.82%	29.12%
Domestic Manufacturing Companies which have opted for special tax regime under Section 115BA (certain deductions / exemptions not available)	26%	27.82%	29.12%
Other Domestic Companies where turnover exceeds INR 2.5 Billion	31.2%	33.38%	34.94%
Foreign Companies	41.6%	42.43%	43.68%

APPENDIX B

Changes in Custom Duty Rates - Snapshot

(All figures in INR)

Goods	*Existing Rate (%)*	*New Rate (%)*
Perfumes and toilet waters	10%	20%
Specified parts or sub-parts or accessories of cellular mobile phones	7.5%/ 10%	15%
Footwear	10%	20%
Imitation Jewellery	15%	20%
Cellular mobile phones	15%	20%
Specified parts and accessories of cellular mobile phones	7.5%/ 10%	15%
Smart watches / wearable devices	10%	20%
LCD/ LED/ OLED panels and other parts of television	7.5%/ 10%	15%
Wrist watches, pocket watches and other watches, including stop watches	10%	20%

Changes in Basic Excise Duty on motor spirit (petrol) and High Speed Diesel Oil (effective from February 2, 2018)

Commodity	*Existing Rate (per litre)*	*Revised Rate (per litre)*
Unbranded Petrol	6.48	4.48
Branded Petrol	7.66	5.66
Unbranded Diesel	8.33	6.33
Branded Diesel	10.69	8.69