MOHINDER PURI & CO.
CHARTERED ACCOUNTANTS

UNION BUDGET

2019-2020

An Analysis

July 2019

FOREWORD

Dear Reader,

The eagerly awaited union budget was tabled in the Indian Parliament on July 5, 2019 by the Central Government, which had recently assumed charge for their second consecutive term. In her maiden budget speech, the Finance Minister, Ms. Nirmala Sitharaman laid down the road map for the next decade, with a target to become a US$ 5 trillion economy in the next few years. The ten-point vision iterated in the budget speech focusses on key concern areas, such as infrastructure, health, pollution water management, apart from other areas of development such as digital economy, space programs etc.

The Government has announced various plans for development of rural and industrial infrastructure to facilitate trade as well as ease of transport. Various measures have also been proposed for the housing sector, such as relooking at tenancy laws, tax incentives etc.

On the regulatory front, the Government has also announced relaxing Foreign Direct Investment Regulations in aviation, insurance intermediaries and single brand retail.

On the direct tax front, the Government has announced various sops for promotion of International Financial Service Centres, Start Ups etc. Furthermore, the concessional tax rate of 25% has also been extended to domestic companies having turnover not more than INR 4 Billion in a Financial Year. With a view to bring more transparency, the Government has promised to roll out a scheme for faceless assessments, which will reduce human interface between taxpayers and tax authorities.

On the indirect tax front, the Government has introduced a Dispute Resolution Scheme with respect to the disputes pertaining to erstwhile laws subsumed in GST, such as Central Excise, Service Tax etc., aimed at settlement of legacy cases under such laws. Furthermore, under the GST regime, the Government shall introduce an electronic invoice system in lieu of the e-way bill system. Moreover, custom duty rates have been rationalized to promote the 'Make in India' initiative, whilst offering exemptions to certain defense equipment which aren't manufactured in India.

The Finance Bill (No.2), 2019 has been passed by both houses of the Indian Parliament, with certain amendments. The Bill shall be enacted upon receiving the assent of the President of India. Such amendments have also been considered in this analysis.

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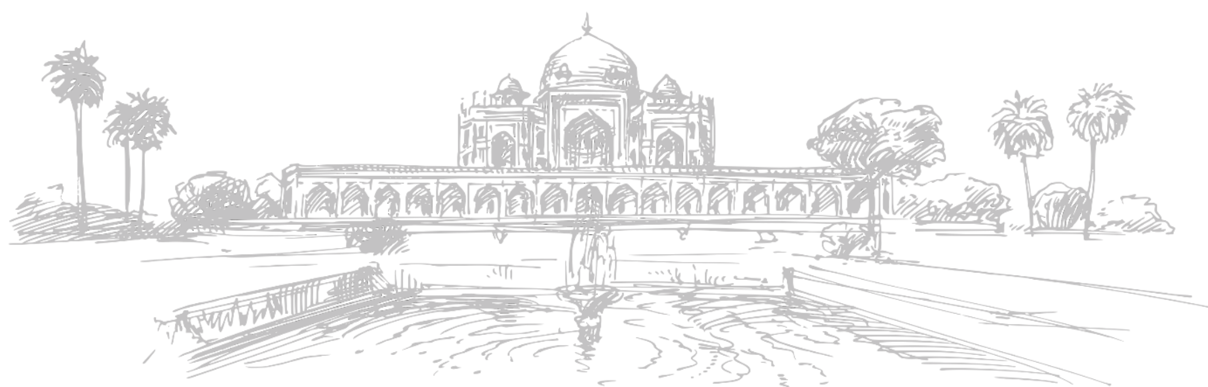


DIRECT TAX AMENDMENTS

Snapshot of Tax Rates

- No changes announced in the tax slab rates for Individuals and other artificial juridical persons for the Assessment Year 2020-21, i.e. Financial Year 2019-20.

- In case of Individuals, new slab for Surcharge rate has been provided i.e. 25% where total income is between INR 20 Million and INR 50 Million; and 37% where total income exceeds INR 50 Million.

- In respect of domestic companies, the reduced tax rate of 25% (plus applicable surcharge and cess) is currently applicable where the total turnover or gross receipts in the financial year 2016-17 does not exceed INR 2.5 Billion. The applicability of such rate has now been widened to include companies with turnover or gross receipts upto INR 4 Billion in the financial year 2017-18. As per the statement of the Finance Minister, this will cover 99.2% of the domestic companies. As regards remaining corporate taxpayers, the government has announced that tax rates shall be reduced soon.

- A table depicting changes in effective rates of tax for individuals and companies for the Assessment Year 2020-21 as compared to Assessment Year 2019-20 has been provided in **Appendix A**.

International Taxation

Taxation of gifts made to non residents

Under the provisions of Section 56(2)(x) of the Income-tax Act, inter alia, gifts in the form of money or specified property is taxed in the hands of the recipient. In certain cases, gifts made by residents to a person outside India were claimed to be non-taxable on the premise that such income does not accrue or arise in India.

The Finance Act has amended provisions dealing with deemed accrual of income. In terms of clause (viii) inserted in section 9(1), money paid by an Indian resident to a non-resident or a foreign company on or after 5th July 2019 shall be deemed to accrue or arise in India.

This amendment shall be effective from Assessment Year 2020-21 onwards.

The exemptions provided under the provision of section 56(2)(x) shall continue to apply. Furthermore, in certain bilateral treaties entered by India (such as Mauritius), the right to tax 'Other Income' lies exclusively with the country of residence (barring certain exceptions). Where such treaties are applicable, the non-resident recipient shall not be liable to tax in India.

Relaxation of conditions of Offshore Funds

Prior to Finance Act, 2015, various fund managers managing offshore funds were located outside India, with a view to avoid constitution of a Business Connection / Permanent Establishment in India. In order to promote such fund managers to relocate to India, Section 9A was introduced to provide that an overseas eligible investment fund which is managed through a fund manager located in India shall not, by itself constitute business connection in India of the said fund.

Moreover, it was provided that an eligible investment fund shall not be regarded as a resident of India merely because the eligible fund manager carrying out fund management activities on the fund's behalf is located in India.

The benefit under section 9A is available subject to certain conditions, which inter-alia, are related to residence of fund, corpus, size, investment diversification, and payment of remuneration to fund manager at an arm's length. Certain

conditions mentioned therein have been rationalized by the Finance (No. 2) Act, 2019, by providing that:

- the corpus of the fund shall not be less than INR 1 billion at the end of a period of six months from the end of the month of its establishment or incorporation or at the end of such previous year, whichever is later; and
- the remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf is not less than the prescribed amount.

Such provision shall be applicable retrospectively from Assessment Year 2019-20.

Capital Gains

Encouraging equity investment of sale proceeds of residential property in eligible start ups

Under Section 54GB of the Income-tax Act, a benefit is available in respect of capital gain arising from the transfer of a long-term capital asset, being a residential property owned by an eligible assessee, if the net consideration is invested in the equity shares of eligible start-up companies, subject to certain conditions.

In order to incentivize investment in eligible start-ups, such conditions have been further relaxed as under:

- the benefit of investment in the equity shares of eligible start-ups is now extended upto 31st March 2021;
- the condition of minimum shareholding of 50% of share capital or voting rights held by taxpayers in eligible start-ups shall be reduced to 25%.
- the condition restricting transfer of new asset being computer or computer software, is reduced from the current 5 years to 3 years.

This amendment shall be applicable from Assessment Year 2020-21 onwards.

Income From Other Sources and Special Income

Listed companies to be taxed on buy back of shares

Section 115QA was introduced as an anti-abuse provision to check the practice of unlisted companies resorting to buy back of shares instead of payment of dividends. As per this section, additional income-tax at the rate of 20% (plus applicable surcharge and cess) of the distributed income is levied on buy back of shares of an unlisted company. As additional income-tax is levied on companies, consequential income arising in the hands of shareholders is exempt under section 10(34A) of the Income-tax Act.

Listed companies which were earlier excluded from the applicability of Section 115QA have now been included. Accordingly, on buy-back of shares of a listed company, additional income tax at the rate of 20% (plus applicable surcharge and cess) will be payable by the company.

Consequential amendments have been made to extend the exemption available to shareholders from gains on such buy-back of listed shares.

This amendment will be effective from 5th July 2019.

Government assures relief to Start Ups if relevant details furnished

Angel Tax, as it commonly known, has recently been a bone of contention between start ups and the Government.

Under the present law {Section 56(2)(viib)}, where a closely held company receives consideration for issue of shares from an Indian resident, the excess of consideration price over the fair market value ("**FMV**") of such shares is taxable in the hands of the issuing company. In other words, the aforesaid provision seeks to tax excess share premium received at the time of infusion of capital. This provision is regarded as burdensome on start-ups, which have few assets in their balance sheets and rely primarily on future projections for determining FMV. As such, the FMV of shares of such start-ups are generally questioned by tax authorities, leading to detailed scrutiny as well as tax demands.

In order to alleviate concerns of start-ups, it was earlier provided that exemption from the applicability of these provisions would be available to Department for Promotion of Industry and Internal Trade ("DPIIT") approved start-ups whose turnover is less than INR 250 million, subject to certain conditions. The provisions of Section 56(2)(viib) have now been amended to lay the necessary framework to regulate the exemption from such provisions.

With the objective of further incentivizing start-ups, the Finance Minister had announced that tax returns of start-ups and their investors would not be scrutinized if they file requisite declarations and information as required by the tax authorities.

If a company has availed exemption under this provision, and thereafter, fails to fulfil the prescribed conditions, the exemption will be withdrawn and the company shall be required to pay tax upon the difference between the consideration and FMV in the year in which the failure has taken place. Moreover, it shall be deemed that such company has misreported its income, which may lead to initiation of penalty proceedings.

This amendment shall apply from Assessment Year 2020-21 onwards.

Exemption from Section 56(2)(viib) also extended to Category II AIFs

Under the existing provisions of section 56(2)(viib), consideration for shares issued by a venture capital undertaking to a Venture Capital Fund or Venture Capital Company is exempt. It is now been provided that this exemption will extend to funds received by Venture Capital Undertakings from Category I and Category II Alternative Investment Funds ('AIF') as well. This amendment will apply from Assessment Year 2020-21 onwards.

Tax exemption on interest income of non-resident on rupee denominated bonds

At present, interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of monies borrowed by, inter alia, issuing rupee denominated bonds outside India before 1 July 2020 is liable to concessional tax of 5 percent. Taxes are required to be withheld on such interest income at 5 percent.

To contain current account deficit and augment foreign exchange flow, CBDT through a press release dated 17 September 2018 had announced that such interest payable on rupee denominated bonds issued outside India during the period from 17 September 2018 to 31 March 2019 shall be exempt from tax in the hands of the recipient. The aforesaid exemption has now been provided under section 10(4C) of the Income-tax Act. This provision will apply from Assessment Year 2019-20 onwards.

Rationalization of provisions dealing with losses in case of pass through Investment Funds

In terms of Section 115UB, income of Category I and Category II AIFs are passed

through to investors (except business income). However, the benefit of pass through of losses are not provided to individual investors. Such losses are retained at AIF level to be carried forward and set off as per Chapter VI provisions.

It is now been provided that pass through of losses would be allowed to individual investors in the following manner:

- Business losses of the AIF will not be carried forward by the unit holders and will continue to be carried forward by the AIF;

- Losses other than the business losses shall be available to unit holders only if such units are held for at least 12 months.

Moreover, transitional provisions have also been introduced to deal with losses accumulated by the AIF as on 31st March 2019. Such loss shall be deemed to be the loss of the unit holders who held the unit on 31st March 2019 and allowed to be carried forward by the unit holder for the remaining period.

This amendment will be applicable from Assessment Year 2020-21 onwards.

Business Income

Prescription of other electronic modes of payment

In recent times, various measures have been adopted by the Government to curb the flow of unaccounted money. In the sphere of income tax, several provisions have already been introduced in the Indian tax law, promoting the use of alternate channels of payment other than cash such as banking network.

These provisions have provided the much-needed impetus to electronic payment channels. With the rapid advancement of e-commerce, various other modes of electronic payment systems have been conceived, in addition to the conventional electronic payment modes, such as e-wallets UPI etc

In order to align the provisions of the income tax law with such new payment mechanism, necessary amendments have been made in certain provisions of the Indian Income-tax Act, whereby, such new payment methods would also be accepted in compliance of such provisions.

Withholding Tax Provisions

Withholding tax on payment to Contractors for personal purposes

Under the existing provisions, there is no obligation upon individuals and HUF to withhold tax on payments made to contractors or professionals if:

- the payment is made exclusively for personal purposes; or
- the payment is made by an individual or HUF, which is not subject to Tax Audit, for business and professional purposes.

The above-mentioned exemption had the potential of promoting suppression of income by the recipient of such sum, the payment for which was made without any deduction of tax at source.

In order to widen the tax base, a new section 194M has been introduced which provides for the liability to withhold tax on individual and HUF while making payment to contractors, professionals or payments in the nature of commission and brokerage, exceeding in the aggregate, INR 5 Million in a financial year.

However, the requirement of TAN has not been imposed, in order to avoid any additional compliance burden. Instead, the Individual and HUF assesses shall be able to deposit the TDS using their Permanent Account Number (PAN).

Consequential amendment is also made in section 197, so as to provide that the tax-deductible sums under new section 194M shall also be eligible for obtaining lower tax

deduction certificate.

The new section will be effective from 1st September 2019.

Widening of definition of consideration for immovable property for withholding tax Purpose

Under the existing provision of section 194-IA, the transferee is required to withhold tax at the rate of one percent on 'consideration for immovable property' (other than agricultural land), payable to the transferor.

Presently, "consideration for immovable property" is not defined under the Income-tax Act. In certain cases, transfer of immovable property involves certain contractual payments (such as club membership fee, car parking fee, maintenance fee etc.) besides the sale consideration.

In order to bring clarity, explanation to section 194-IA has been amended to define "consideration for immovable property" which shall include charges of the nature of club membership fees, car parking fees, electricity or water facility fees, maintenance fee etc. which are incidental to transfer of immovable property.

In view of this amendment, any payment for the aforesaid incidental charges shall also be liable for withholding of tax at the rate of one percent.

The amendment will be effective from 1st September 2019.

Withholding tax in respect of large cash withdrawals

In order to discourage the use of cash, a new section 194N has been introduced, in terms of which, cash withdrawals from one or more accounts maintained with banks, co-operative society or post office, exceeding an amount of INR 10 Million in a year, shall be subject to tax deduction at source at the rate of two percent.

Certain categories of persons are exempted from the levy of such tax such as the Government, Banking Company, Post Offices, ATM Operators etc.

It has also been clarified that tax so withheld shall not be regarded as the income of the taxpayer.

This section will be effective from 1st September 2019.

Relaxation of provisions of withholding tax provisions that treat an assessee in default

Where a person who is required to comply with withholding tax provisions, fails to deduct tax on a payment or fails to deposit tax after deducting the same, such person is regarded as an assessee in default.

A relaxation is provided in a case where the payer fails to deduct tax and the corresponding income is disclosed by the payee in its return of income and paid tax thereon, provided the necessary conditions are fulfilled. However, such dispensation is applicable only if the payee is a resident.

This provision has been rationalized and as such, extended to a case where the payee is a non-resident.

This amendment will be effective from 1st September 2019.

Withholding tax on life insurance pay out on net basis

Presently, Section 194DA provides for levy of withholding tax at the rate of one percent on the gross sum payable by way of redemption of a Life Insurance Policy {excluding the amount exempted under section 10(10D)}.

The abovementioned provision poses several challenges for taxpayers who are otherwise liable to pay tax only on the income component. Also, deduction on gross amount does also lead to administrative difficulties.

In view of the above, Section 194DA has been rationalized and as such, withholding

tax shall apply only on the income component (amount paid over and above the insurance premium) instead of gross sum. However, the withholding tax rate has been increased from one percent (on gross sum) to five percent upon such income component.

This amendment will be effective from 1st September 2019.

Tax Incentives and Deductions

Incentives for promoting International Financial Services Centre

The Government has strived to develop world class international financial services centres ("**IFSC**") in India. Various steps have been taken to incentivize IFSCs in India, which include providing tax incentives to IFSCs.

In pursuit of this objective, certain benefits have been rolled out for IFSCs such as:

- Exemption available to non-residents from capital gains on transfer of bonds, Global Depository Receipts, rupee denominated bonds and derivatives through an IFSC has been extended to Category III Alternative Investment Fund. Such exemption shall be subject to certain prescribed conditions. This exemption is applicable from Assessment Year 2020-21 onwards. Such income, to the extent received in respect of units of such funds, shall also be exempt.

- Duration of 100% profit linked deduction already available to IFSCs under Section 80LA shall be extended from five years to ten consecutive years (out of a block of fifteen years).

  This deduction shall also be available from dividends, royalties, fee for technical services and interest which may be chargeable on gross basis in the hands of the IFSC.

- Exemption from interest received by a non-resident on monies lent on or after 1st September 2019 to a unit located in an IFSC. This exemption is applicable from Assessment Year 2020-21 onwards.

- Exemption from Dividend Distribution Tax presently available to IFSCs out of current income, now extended to dividends from accumulated income as well. This exemption is applicable from 1st September 2019.

Tax deduction for interest paid for purchase of electric vehicle

With a view to reduce vehicular pollution, the Government shall promote the use of electric vehicles. In this regard, a new Section 80EEB has been inserted, wherein, individual taxpayers can claim deduction up to INR 150,000 for interest paid towards loan for purchase of an electric vehicle. The said loan could be availed from 1st April 2019 till 31st March 2023. Such deduction is allowed for only 1 electric vehicle owned on the date of sanction of loan.

Such deduction shall be applicable only if the vehicle falls within the comprehensive definition of an electric vehicle provided under such new provision, which is indicative that the vehicle should be powered entirely by electricity.

This amendment will apply in relation to Assessment Years 2020-21 onwards.

Tax relief for affordable housing

The provisions related to tax relief in case of affordable housing are dealt with in Section 80EE of the Income-tax Act, wherein, home buyers can claim deduction for interest on home loan up to INR 50,000, subject to fulfilment of certain conditions.

In order to provide impetus to the 'Housing for all' objective of the Government, a new Section 80EEA has been introduced, wherein, home buyers can claim deduction for interest on home loan up to INR 150,000, subject to fulfilment of prescribed conditions as follows:

- Loan must be sanctioned during the period from 1st April 2019 to 31st March 2020;
- Stamp duty value of residential house property must not exceed INR 4.5 Million;
- Assessee must not own any residential house property on the date of sanction of loan.

This amendment will be applicable in relation to Assessment Years 2020-21 onwards.

Encouraging subscription to National Pension Scheme (NPS)

In order to provide incentives to NPS subscribers, the Government has adopted the following measures, which shall be applicable from Assessment Year 2020-21 onwards:

- To enable the Central Government employees to have more options of tax saving investments under National Pension Scheme, Section 80C has been amended to provide that any amount paid or deposited by a Central Government employee as his own contribution to the Tier-II account of the pension scheme, to be notified by the Central Government, shall be eligible for deduction under Section 80C of the Income-tax Act.
- Currently, contribution by Central Government to National Pension Scheme for its employees under section 80CCD(2) is eligible for deduction up to 10 percent of their salary. This limit of 10 percent has now been increased to 14 percent of contribution made by the Central Government to the account of its employee. This deduction is over and above the limit of INR 150,000 as prescribed under section 80C.
- Under the existing provisions of section 10, an assessee contributing to the National Pension Scheme Trust is allowed a tax exemption of 40 percent of the total amount payable to him at the time of closure of his or her account or on opting out of the scheme. With a view to enable the pensioner to have more disposable funds, the said tax exemption threshold stands increased to 60 percent.

Transfer Pricing Provisions

Assessment proceedings after entering Into Advance Pricing Agreement (APA)

APA is an agreement entered between the Central Board of Direct Taxes and the taxpayer for determining the Arm's Length Price ('ALP') or the manner in which the ALP is to be determined for an international transaction undertaken or proposed to be undertaken by the taxpayer with its AEs. An APA could be entered for maximum of 9 years, out of which 4 years are roll-back years.

In order to give effect to the APA, the taxpayer furnishes a modified return of income in line with the APA under section 92CD(1) of the Income-tax Act. The current provisions of Section 92CD(3) of the Income-tax Act empowers an Assessing Officer to assess or reassess or re-compute the total income, where assessment or reassessment has already

been completed before filing of the modified return of income in accordance with the concluded APA.

In order to clarify the scope of the provisions of section 92CD(3), the same has been amended to provide that in cases where assessment or reassessment has already been completed and modified return of income has been filed by the tax payer under section 92CD(1), the Assessing Officer shall pass an order modifying the total income of the relevant assessment year determined in such assessment or reassessment, having regard to and in accordance with the APA.

The amendment shall be effective from 1st September 2019.

One time tax Payment scheme under Secondary Adjustment provisions

The provisions of section 92CE require the AE of the taxpayer to repatriate the amount of excess money arising as a result of the primary adjustment within the stipulated time period. In case, the amount of excess money is not repatriated within the prescribed time period, taxpayer is required to make a secondary adjustment in its books of accounts to reflect actual allocation of profits between the AEs to be consistent with the transfer prices determined post primary adjustment.

Several concerns were raised with respect to effective implementation of such provisions and hence, Section 92CE has been amended to provide that:

a) Excess money or part thereof, outstanding as a result of primary adjustment, could be repatriated from any AE of the taxpayer which is not resident in India;

b) If the excess money is not repatriated by the AE within the prescribed time, the taxpayer has an option to pay a one-time tax at the rate of 18% plus 12% surcharge (i.e. effective tax rate being 20.16%) on such excess money or part thereof in addition to payment of interest till date of payment of such tax,

c) No credits shall be allowed in respect of the tax so paid and no deduction of the excess amount on which tax has been paid will be allowed;

d) If such option of one-time payment of tax is availed, then no further secondary adjustment or interest needs to computed from the date of payment of such tax;

The amendment in point (a) above shall have retrospective effect from 1st April 2018. The remaining amendments shall be effective from 1st September 2019.

It may be noted that an anomaly existed in the provisions that were introduced in 2017. In the amendments made in 2017, it was provided that the secondary adjustment would not be applicable if the following conditions are fulfilled:

- Amount of primary adjustment is less than INR 10 Million; and

- The primary adjustment is made in respect of the assessment year commencing on or before 1st April 2016;

Thus, the literal interpretation suggested that if the primary adjustment pertains to an Assessment Year 2017-18 or thereafter, the secondary adjustment will be required even if the quantum of primary adjustment is less than INR 10 Million. Also, if the primary adjustment of more than INR 10 Million for a period prior to Assessment Year 2016-17, the same would be sustainable. However, this was never the legislative intent, wherein it was suggested that the provisions of secondary adjustment are not applicable in cases where primary adjustment is INR 10 Million or less (giving relief to the small taxpayers) or if it pertains to the period earlier than Assessment Year 2017-18.

This anomaly has now been resolved by making the above two conditions alternate

(replacing 'and' with 'or') to qualify for relief from secondary adjustment. The change is made as a clarificatory one and is applicable retrospectively from 1st April 2018 and therefore applies to Assessment Year 2017-18 onwards.

Requirement to file Master File irrespective of any international transaction under section 92D

Section 92D provides for maintenance of specified documents, by every person who has entered into an international transaction or a specified domestic transaction. It also provides for filing of a Master File in the prescribed manner, by an Indian Constituent Entity (as defined under Section 286). However, such requirement was construed as applicable only where the assessee had entered into international transactions.

In order to clarify the intent, an amendment has been made to substitute this Section, to provide that every constituent entity of an international group will be required to file a Master File, whether or not, it has entered into any international transaction.

This shall apply in relation to Assessment Year 2020-21 onwards.

Accounting year to be followed by the Indian designated Alternate Reporting Entity ('ARE')

Section 286 provides for filing of Country by Country Report ("**CbCR**") containing jurisdiction-wise relevant information of the entire multinational group, which can be exchanged between countries.

Although CbCR is to be filed by the parent entity of an international group, it is open to the parent entity to designate another entity of the group to comply with such CbCR requirement. Such a designated entity is called as an Alternate Reporting Entity ('ARE'). As such, an Indian entity would be responsible to file a CbCR only if it is the parent of the group or if it is designated as an ARE.

The timeline for filing of CbCR is within twelve months from the end of the 'accounting year'. This 'accounting year' is defined as the twelve months period from April to March, in the scenario where the parent entity of the international group or ARE is a resident in India.

Apprehensions were raised for accounting year defined in respect of Indian designated ARE as it is the parent entity which would enable collation of complete and consolidated details of all entities belonging to the group. Therefore, the definition of the expression 'accounting year' has been rationalized, to provide that the accounting year of the ultimate overseas parent entity shall be regarded as the accounting year for the purpose of ascertaining the timeline for CbCR compliance in case of an Indian designated ARE.

This amendment being clarificatory in nature, would apply retrospectively from 1st April 2017 and will accordingly apply in relation to Assessment Year 2017-18 onwards.

Administrative and Procedural Provisions

Faceless assessments

Under existing provisions of the Income-tax law, tax scrutiny proceeds require detailed personal interaction with income tax officials, which has led to adoption of undesirable practices by tax officials. In line with the vision of the Government to ensure transparency, the Finance Ministry has announced that a scheme of faceless assessment shall be launched in a phased manner, with an objective to reduce human interface. Moreover, a single point of contact, being a Central Cell, shall be introduced, while not disclosing the details of the particular tax official carrying out the tax scrutiny.

Mandatory furnishing of return of income by certain persons

As per existing provision of section 139, every person (other than company and

firm) is required to file return of income only if total income exceeds maximum amount not chargeable to tax. Consequently, person entering into high value transactions is not necessarily required to file tax return where his income does not exceed the threshold.

Section 139 has now been amended to provide that a person shall file return of income if he has entered into certain high value transactions, such as deposits (exceeding INR 10 Million), foreign travel expenditure (exceeding INR 200,000) and electricity expenditure (exceeding INR 100,000).

Interchangeability of Permanent Account Number (PAN) and Aadhaar

In order to keep a vigil on high value transactions which often escape the tax net, it has been provided that any person who intends to enter into such transactions ought to apply for a PAN (i.e. a unique Indian tax registration number).

Furthermore, to ease out compliance burden, Section 139A has been amended to provide for inter-hangeability of PAN and Aadhaar Number. In terms of such amendment:

- Every person who is required to quote PAN, and who has not been allotted PAN but in possession of Aadhaar number may quote his Aadhaar number in lieu of PAN, and such person will be allotted a PAN in the prescribed manner.

- Further, every person who has been allotted a PAN, and who has linked his Aadhaar number with PAN under section 139AA, may disclose his Aadhaar number in lieu of PAN.

This amendment also includes a mechanism for authentication of PAN / Aadhaar, where such PAN / Aadhaar is required to be quoted on any transaction documents.

Also, as per existing provision of section 139AA, if a person fails to link his Aadhaar number with PAN, then the PAN allotted to such person is deemed as invalid. It has now been provided that upon failure to link Aadhaar with PAN, the PAN shall be made inoperative in prescribed manner, instead of being made invalid.

Consequential amendments have been made in relation to penal provisions dealing with failure to comply with Section 139A.

These amendments will be effective from 1st September 2019.

Widening the scope of Statement of Financial Transactions ('SFT')

Section 285BA of the Income-tax Act requires certain person to furnish statement of certain financial transactions in Form 61A. In order to enable pre-filling of return of income relating to small amount of transactions and to ensure appropriate compliance with the filing of SFT, Section 285BA has been amended to provide as under:

- Reporting requirements to be extended to certain prescribed persons other than those who are currently furnishing SFT;

- The provision for prescribing a minimum threshold of INR 50,000 for reporting transactions has been done away with;

- If the defect in the SFT is not rectified within the specified time limit, the provisions of the Income-tax Act will apply as if such person had furnished inaccurate information in the statement and consequently, the penal provision presently applicable to furnishing of inaccurate information shall get attracted.

Relevant penalty provisions contained in section 271FAA have been amended so as to ensure correct furnishing of information in SFT and widen the scope of penalty to cover all the reporting entities under section 285BA.

The above amendment shall be effective from 1st September 2019.

Facility for electronic filing of NIL/ lower withholding tax order

A person responsible for making payment to a non-resident may apply to the tax authorities under Section 195(2) of the Income-tax Act, to seek a lower or nil withholding tax order. Such process is currently manual, i.e. a paper application is required to be filed with the jurisdictional officer.

A similar mechanism does exist under the Income tax law (Section 197), wherein, the recipient of any sum may apply for a lower withholding tax certificate to the tax authorities. Recently, a mechanism for filing an online application for obtaining such certificate was rolled out.

The facility for online application shall be extended for an application under Section 195(2) as well, which may be filed by the payer. This amendment shall take effect from November 1, 2019.

Recovery of tax in pursuance of agreements with foreign countries

Section 228A contains provisions relating to assistance for recovery of tax, under the Income-tax Act or under corresponding foreign law from person having property outside India or in India, respectively, where agreement exists between the Central Government and Government of foreign country.

The scope of this provision has been expanded to provide assistance for tax recovery where the person is resident in India (irrespective of whether details of property are available). Similarly, an amendment has been made for the tax recovery from non-resident, where the person is resident of foreign country (irrespective of whether details of property in a foreign country are available).

The above amendments will take effect from 1st September 2019.

Businessmen mandatorily required to maintain facility for electronic payment

Post demonetization, the country has witnessed a rise in awareness as well as effective use of electronic modes of payment by the payer. However, a significant volume of transactions is still outside the sphere of digital payment mode. To further discourage cash transactions, a new Section 269SU has been introduced in terms of which, it would be mandatory to provide a facility for acceptance of digital payments via prescribed electronic modes in addition to the facilities for other electronic mode of payments. This provision would be applicable to all such persons, carrying on business, if their total sales/ gross receipts exceed INR 500 Million during the immediately preceding previous year.

Further, a new section 271DB has been inserted for providing a penalty of INR 5,000 per day for non-compliance of the above provisions.

It has also been provided that banks / system providers shall not impose any charge, either on the payer or receiver, for using such electronic modes of payment.

Such amendments will take effect from November 1, 2019.

Penalties And Prosecution

Penalty relating to under reporting or misreporting income in case of income escaping assessment

Section 270A provides for penalty for under-reporting or misreporting of income. The said section, as it exists, does not contain a mechanism for determining penalty in case of under-reporting of income where tax return is furnished for the first time in pursuance of a notice under the Income Escaping Assessment Provisions under Section 148 of the Income-tax Act. This anomaly has been removed and hence, Section 270A shall also include in its ambit the case of under-reporting of income where the return is filed for the first

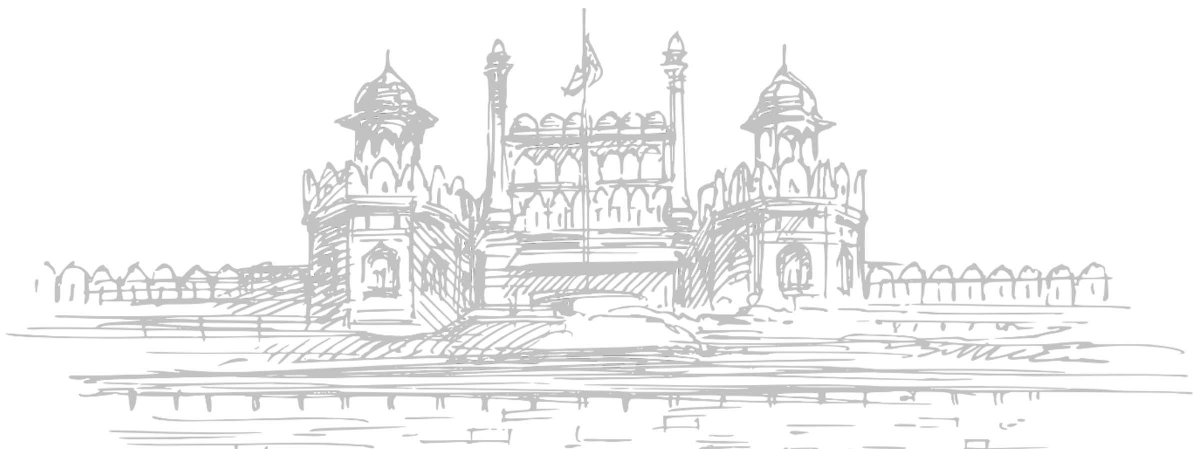
time under Section 148. This amendment will be effective retrospectively from 1st April 2017 and will accordingly apply from Assessment Year 2017-2018 onwards.

Rationalization of the provisions for prosecution for wilful failure to file tax return

Under the existing provisions, as per section 276CC, prosecution proceedings are not pursued against a person other than company in case of failure to furnish return of income, if the tax payable by such person on total income determined on regular assessment as reduced by advance tax/TDS does not exceed INR 3,000.

This provision has now been amended to provide that for the purpose of computing tax payable for determining the threshold for the application of this provision, self-assessment tax paid before the expiry of assessment year and the tax collected at source shall also be reduced. Furthermore, the threshold of INR 3,000 stands increased to INR 10,000.

This amendment will be effective from Assessment Year 2020-21 onwards.



INDIRECT TAX AMENDMENTS

Amendments in Customs Law

The following amendments have been made in the Customs law that shall be applicable from the date of enactment of Finance (No. 2) Act, 2019:

- Penalty leviable under section 117 of the Customs Act, 1962 has been increased from INR 100,000 to INR 400,000 for contravention of any provision of this Act or abetting any such contravention or failing to comply with any provision of this Act with which it was duty of person to comply;

- Scope of prosecution under Customs is enlarged to include:

  - Fraudulently availing drawback of an amount exceeding INR 5 Million.
  - Fraudulently obtaining and utilizing instrument, where duty relatable to such utilization of instruments exceeds INR 5 Million.

- Customs duty on certain items such as Tiles, CCTV, Cameras, auto parts is increased to rationalize the same with goods manufactured in India.

- Customs Duty rationalization for certain products including parts of electric vehicles/ defence equipment not manufactured in India

- A new Section 114AB has been inserted to provide for levy of penalty for an amount not exceeding the face value of the instrument for fraudulently obtaining and utilizing of an instrument. The penalty shall be levied on the person to whom the instrument was issued.

- A new Chapter XIIB has been inserted to provide for Verification of Identity and Compliance of the provisions of Customs Law and if a person has failed to comply with the requirements of the chapter then the proper officer can suspend-

  - Clearance of imported goods or export goods;
  - Sanction of refund;
  - Sanction of drawback;
  - Exemption of duty;
  - License or registration granted under this Act etc.

Amendments in Central Goods and Service Tax Law

The following amendments have been made in the Central Goods and Service Tax Act, 2017, pursuant to the recommendations of the GST Council, which shall be applicable from a date to be notified:

- Relief has been provided to the taxpayer by proposing to transfer balance in Electronic Cash Ledger from one head to another, such as from CGST to SGST or IGST or vice-versa;

- It has been provided that interest should be charged on the Net Amount of Cash Liability only. For example, if the resultant cash liability of an assessee is INR 100,000/- and an Input Tax Credit of INR 50,000/- is available, the interest shall be payable on INR 50,000/- only.

- The Central Government shall now be empowered to grant refund in respect of State Taxes as single disbursement amount.

Introduction of Sabka Vishwas (Legacy Dispute Resolution Scheme), 2019

A new scheme has been introduced by the Finance Ministry by the name of Sabka Vishwas (Legacy Dispute Resolution Scheme), 2019, which shall be effective from a date to be notified.

Such scheme is a dispute resolution and amnesty scheme for resolution and settlement of legacy cases. The said scheme covers past dispute of taxes pertaining to various law subsumed in GST namely Central Excise, Service Tax, cess, etc.

Relief available

- Relief from payment of tax dues to the extent of 50% to 70% of the tax dues depending upon the amount and nature of tax dues involved;
- Relief from payment of interest and penalty;
- Person discharged not be liable for prosecution.

A detailed chart explaining the relief available under this scheme is provided in **Appendix B**. It may be mentioned that such scheme is available to all persons, except the following:

- Where appeal is filed, and final hearing has taken place on or before 30th June 2019;
- Where a show cause notice has been issued and final hearing has taken place on or before 30th June 2019;
- Who have been convicted for an offence for which he intends to file declaration;
- Who have been subjected to any enquiry or investigation or audit and amount of duty involved has not been quantified on or before 30th June 2019;
- Who have been issued a show cause notice for an erroneous refund or refund;
- Who have filed an application with the Settlement Commission.

Furthermore, the definition of tax dues for the purpose of such scheme is as under:

- Where a single appeal arising out of order is pending as on 30th June 2019, the total amount of duty which is disputed;
- Where more than one appeal arising out of an order, one by the taxpayer and other a departmental appeal and such appeal has not been finally heard on or before 30th June 2019, the sum total of amount disputed by both taxpayer and department;
- Where a show cause notice has been received on or before 30th June 2019, the amount of duty payable as per show cause notice;
- Where enquiry or investigation or audit is pending, the amount of duty payable which has been quantified on or before 30th June 2019.

AMENDMENTS MADE IN ALLIED LAWS

Amendments in Prevention of Money-Laundering Act, 2002

The Prevention of Money-Laundering Act, 2002 ("**PMLA**"), has been amended by the Finance (No. 2) Act, 2019, wherein, the following significant changes have been made:

- A new section 12AA has been introduced to enhance the due diligence by the reporting entity in respect of specified transactions. The reporting entity has been defined to mean a banking company, financial institution, intermediary or a person carrying on a designated business or profession. Section 12AA provides that:

  - Every reporting entity shall prior to the commencement of each specified transactions will verify the identity of the clients undertaking specified transactions under the Aadhaar (Targeted Delivery of Financial and Others Subsidies, Benefits and Services) Act, 2016 or in any other prescribed manner, examine the sources of funds, purpose of the transaction and nature of relationship between the parties in such manner as may be prescribed. Such information is required to be maintained for a period of 5 years from the date of transactions.

  - In case of failure to fulfil the prescribed conditions, the reporting entity shall not allow the specified transactions to be carried out.

  - In case the specified transactions undertaken by the clients are considered suspicious, the reporting entity shall implement such method as may be prescribed to increase the scrutiny of future transactions.

  - Specified transactions have been defined to mean; (a) any withdrawal or deposit of cash exceeding prescribed limits, (b) any transactions in foreign exchange exceeding prescribed limits or (c) any transaction in high value imports or (d) remittances or any other transactions or class of transactions as may be prescribed.

- Consequent to introduction of section 12AA, section 72 (power to make rules) has been suitably amended to empower the Central Government to make rules in respect of transactions specified in section 12AA.

- A new section 72A has been introduced enabling the Central Government to constitute an Inter-ministerial Co-ordination Committee for inter-departmental and inter-agency coordination on development and implementation of policies relating to anti-money laundering laws and regulations, countering the financing of terrorism laws etc.

- The scope of the term 'proceeds of crime' has been widened, with effect from 1st August, 2019 by way of introduction of an explanation which clarifies that 'proceeds of crime' include property not only derived or obtained from the scheduled offence but also any property which may directly or

indirectly be derived or obtained as a result of criminal activity relatable to the scheduled offence. An amendment has also been made under section 3 of the PMLA, in terms of which, a person shall be guilty of an offence of money laundering if such person knowingly assists or is a party or is actually involved in concealment, possession, acquisition, use, or projecting or claiming as untainted property connected with the proceeds of crime in any manner.

- The definition of offence of money laundering under section 3 of the PMLA has been widened (with effect from 1st August, 2019) by way of introduction of an explanation which clarifies that:

    - A person shall be guilty of offence of money laundering if such person is found to have involved directly or indirectly with the activities or processes like concealment, possession, acquisition, use, projecting or claiming as untainted property connected with the proceeds of crime in any manner,

    - The activities or processes connected with the proceeds of crime will continue till such time a person enjoys the proceeds of crime in any manner.

- Under the existing provisions of section 17 (search and seizure) and section 18 (search of persons), the authorized officer is required to forward a complaint/report to a Magistrate under section 157 of the Code of Civil Procedure, 1973 or any other Court before the search is conducted on the premises of the accused or the accused himself.

  These sections have been amended, with effect from 1st August, 2019, to provide that an authorized officer can search the premises of an accused or the accused himself without any report/complaint being forwarded to a Magistrate under section 157 of the Code of Civil Procedure, 1973 or any other Court.

- Furthermore, it has been clarified that all offences under this Act shall be cognizable and non bailable, and the officers authorized under this Act are empowered to arrest the accused without warrant, subject to the fulfillment of the prescribed conditions.

Amendments in Black Money Law

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of tax Act, 2015 was enacted in the year 2015, primarily to curb the flow of unaccounted money.

In terms of the provisions of section 2(2) of such Act, the ‘assessee’ means a person who is a resident in India within the meaning of section 6 of the Income-tax Act.

In order to clarify the legislative intent of taxing foreign assets and income which were not charged to tax in India, the definition of ‘assessee’ has been expanded retrospectively from 1st July 2015, to include:

- A person being a resident in India within the meaning of section 6 of the Income-tax Act, in the previous year; or

- A person being a non-resident or not ordinarily resident in India within the meaning of section 6(6) of the Income-tax Act, in the previous year, who was resident in India either in the previous year to which the undisclosed foreign income relates to or in the previous year in which the undisclosed asset located outside India is acquired.

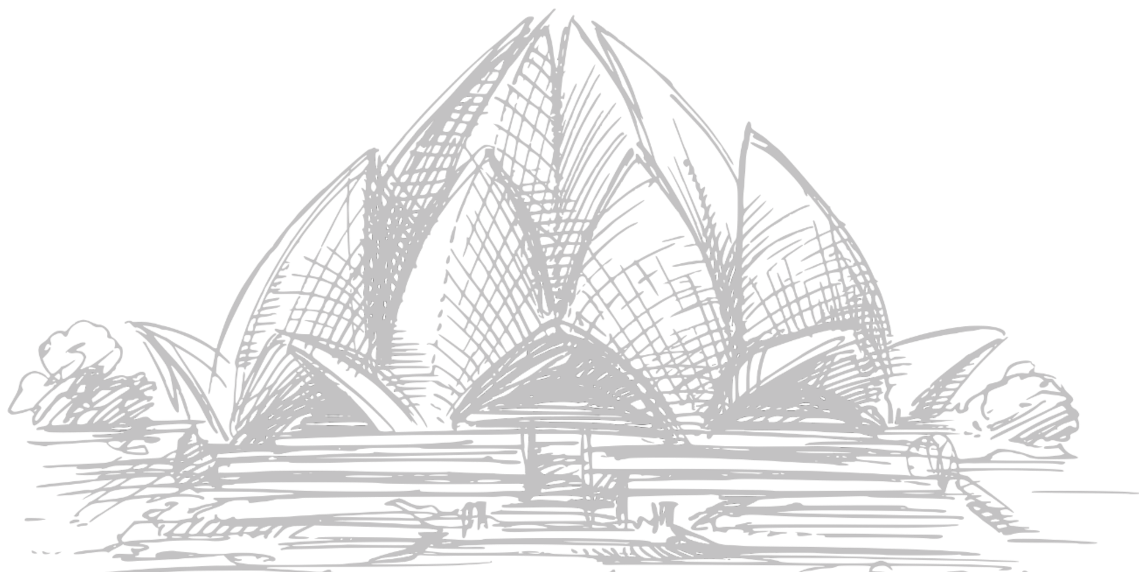
Furthermore, the power of Commissioner (Appeals) has been expanded to enhance or reduce the penalty while disposing off the appeal against an order imposing a penalty. This amendment will take effect from 1st September 2019.

Amendments in Benami Law

Under the provisions of the Prohibition of Benami Property Transactions Act, 1988, prosecution could hitherto be initiated only with the sanction of the Central Board of Direct Taxes.

The said provision has been amended by the Finance Act, in terms of which, prosecution under this law can now be sanctioned by a tax official of the rank of Commissioner, Director, Principal Commissioner or Principal Director.

This amendment shall be applicable from 1st September 2019.



Appendix A

Comparison of Effective Tax Rates for Individuals (Based on Highest Tax Slab Rate)

Taxable income level (in INR)	Assessment AY 2019-20*	Assessment AY 2020-21*	Change in tax rates
Up to 250 Thousand	Nil	Nil	
250 Thousand up to 500 Thousand	5.2%	5.2%	(No Surcharge and rebate u/s 87A available)
Above 500 Thousand up to 1 Million	20.80%	20.80%	(No Surcharge)
Above 1 Million up to 5 Million	31.20%	31.20%	(No Surcharge)
Above 5 Million up to 10 Million	34.32%	34.32%	(Surcharge at 10%)
Above 10 Million up to 20 Million	35.88%	35.88%	(Surcharge at 15%)
Above 20 Million up to 50 Million	35.88%	39%	(Surcharge increased from 15% to 25%)
Above 50 Million	35.88%	42.74%	(Surcharge increased from 15% to 37%)

Comparison of Effective Tax Rates for Corporates

Taxable income level (in INR)	Assessment AY 2019-20*	Assessment AY 2020-21*	Change in tax rates
Domestic Companies			
Up to 10 Million	26%	26%	(No Surcharge)
Above 10 Million up to 100 Million	27.82%	27.82%	(Surcharge at 7%)
Above 100 Million up to 2.5 Billion	29.12%	29.12%	(Surcharge at 12%)
Above 2. 5 Billion up to 4 Billion	34.94%	29.12%	(Tax Rate reduced from 30% to 25%, while surcharge remains at 12%)
Above 4 Billion	34.94%	34.94%	(Surcharge at 12%)
Foreign Companies			
Up to 10 Million	41.6%	41.6%	(No Surcharge)
Above 10 Million up to 100 Million	42.43%	42.43%	(Surcharge at 2%)
Above 100 Million	43.68%	43.68%	(Surcharge at 5%)

** Tax rates hereinabove are inclusive of a 'Health & Education Cess' chargeable at 4%*

Appendix B

Relief Under the Sabka Vishwas (Legacy Dispute Resolution Scheme), 2019

Nature of Tax Due	Tax Due Amount	Relief Amount
Tax Dues relatable to show cause notice or Appeal which is pending as on 30.06.2019	Less than INR 5 Million	70% of Tax Dues
	More than INR 5 Million	50% of Tax Dues
Tax Dues relatable to show cause notice for late fee or penalty only and amount of duty is Nil		Entire amount of late fee or penalty
Tax Dues relatable to amount in Arrears (Payable but not paid)	Less than INR 5 Million	60% of Tax Dues
	More than INR 5 Million	40% of Tax Dues
Tax Dues linked to Enquiry, Investigation or audit and amount quantified on or before 30th June, 2019	Less than INR 5 Million	70% of Tax Dues
	More than INR 5 Million	50% of Tax Dues
Tax Dues on account of voluntary disclosure		No Relief

ABOUT US

Mohinder Puri & Co. is a leading firm of Chartered Accountants established in 1954. Led by eminent and highly experienced partners and complemented by a team of multi-disciplinary professionals, we offer a diverse range of professional services to our clients, besides our core competencies of audit and taxation.

With over 65 years of experience, we have been providing advice and support to domestic and international clients in diverse sectors on audit, accounting, taxation and regulatory matters. Built on a strong commitment to client service, our firm acts as a one stop advisor offering expertise and hands-on support. We pride ourselves on our quality and integrity to drive the growth of our clients.

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