K C Mehta & Co.
Chartered Accountants

Deciphering . . .

India Budget 2017

Deciphering...

India Budget 2017

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The provisions contained in the Finance Bill, 2017 ("the Bill") are proposals and are likely to undergo amendments while passing through Houses of Parliament before being enacted.

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“Were not cutting the budget simply for the sake of sounder financial management. This is only a first step toward returning power to the states and communities, only a first step toward reordering the relationship between citizen and government.”

- Ronald Reagan

Reflections

The year 2016 would go down in the economic history of India as a significant year. While we had big jolts in the form of "Demonetisation" of 86 % of the currency, we had major break-through achieved in the form of road blocks getting cleared in implementation of "Goods and Service Tax" (GST). The year continued to show a good economic growth with the fiscal figures well in control and the monsoon consistently good. However, the economy was not free from its own troubles like less than expected growth in the employment, performance of Rupee vis-à-vis US Dollars not so well, though performing better as compared to other currencies, and consistently lower ratings from the international rating agencies.

The impact of the above can be easily seen on the budget document and the fiscal measures being taken. Some major steps are proposed in the Finance Bill, 2017 (the Bill) for giving a fillip to the digital economy, discouraging and penalizing cash transactions, enabling investigation leading to detection of black money and we are confident that these measures will certainly change the perception of people and their mindset.

It must be kept in mind that while no mention has been made thereof in the budget speech or in the Bill, the provisions of the General Anti Avoidance Rules (GAAR) kick in with effect from AY 2018-19 and the provisions relating to the Place of Effective Management (POEM) will kick in from AY 2017-18 and expected postponement of these provisions has not been made.

The Government had promised earlier that it would reduce the corporate tax rate to 25 % in 4 years. The Government decided to do it sector-wise and accordingly, last year, they reduced the rate for new manufacturing companies and this year they have proposed reduced rate of 25% for domestic companies having turnover or gross receipts below Rs. 50 crores. However, the issue of triple taxation (i.e. corporate tax, dividend distribution tax and tax on the dividend income in the hands of the shareholder) still continues.

In case of Capital Gains a path breaking decision has been taken for exempting the capital gains for all appreciation till 1st April, 2001 and only gains after that date will be taxable. This is a remarkable step. Further, the provisions for carrying out cumbersome transfer pricing documentation for the domestic related party transactions have been given a go by, a major relief to business entities.

Overall, the Government does not appear to be deterred by the naysayers about the doom the demonatisation is going to bring about, and has continued with its pre-decided path. Certainly shows a clarity of purpose and strong decisiveness. It is now left to the corporates and businesses to make their contribution to growth.

Milin Mehta

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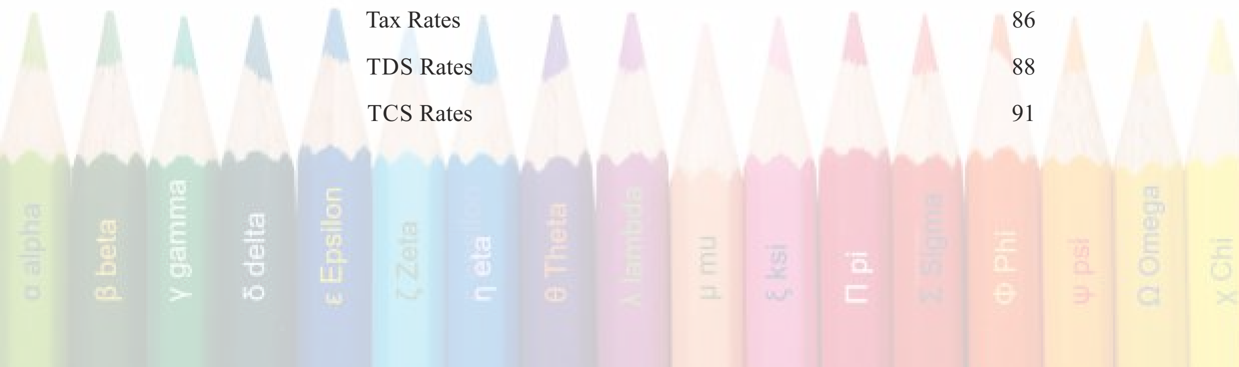


Demystifying
State of Economy

Economic Survey

Highlights

Economic Surveys released in the past have always been about reviewing the developments in the Indian economy over the previous 12 months, summarizing the performance of major development programs, and highlighting the policy initiatives of the government and the prospects of the economy in the short to medium term.

The Economic Survey for 2016-17 includes not only statistics but goes much beyond that, to analyse various subtleties of the Indian sub-continent. Another divergence in the Survey this year is that it appears in only one volume. The detailed review of the year gone by shall be released later in the year as a standalone document.

The Economic Survey of 2016-17 for the first time has used “Big Data”. The survey has analysed the flow of goods and people across India by data provided by the Goods and Service Tax Network (GSTN). The Survey has further addressed key macro issues facing the nation and some of the key tenets taken as gospel truth have been shot down.

Some of the eye-opening details provided in this year's Survey are enumerated below;

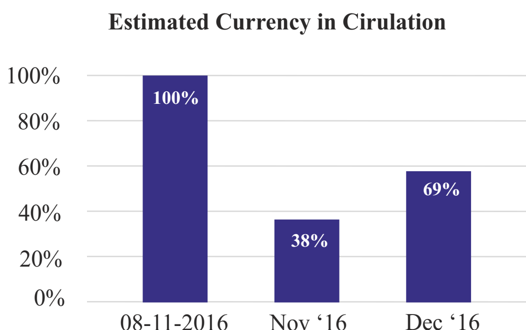
- New estimates based on railway passenger traffic data reveal an annual work-related migration of about 9 million people, which is practically double of the 2011 Census. The three major states of out migrations, not surprisingly are UP, Bihar and Jharkhand with the leading recipients of these migrations being Delhi (more than half of the total migrations for 2015-16) and Maharashtra.
- China's credit rating was upgraded from A+ to AA- in December 2010 while India's has remained unchanged at BBB-. During the period 2009 to 2015, China's credit-to-GDP soared from about 142 percent to 205 percent and its growth decelerated. This shows an inherent bias against India by the international community.

- Welfare spending suffers from immense misallocation. The districts accounting for 40 percent of the poorest account for only 29 percent of the total funding.
- We as Indians take pride in being a democratic country. However, when it comes to fiscal democracy, it is observed that we have only 7 tax payers for every 100 voters, which though comparable with Mexico, Malaysia and Russia is a far cry from countries like Norway, Sweden and Canada which have more than 90 tax payers for every 100 voters.
- From 2011, India's openness - measured as the ratio of trade in goods and services to GDP has

- far overtaken China's. Interestingly, India's internal trade to GDP is also comparable to that of other large countries as against the much publicized barrier ridden economy touted everywhere.
  - Spatial dispersion in income is still rising in India even in the last decade (2004-14), unlike the rest of the world, including China. Despite more porous borders within India and the huge levels of migration as revealed above, the forces of "convergence" of incomes across the country is still elusive.
  - Evidence from satellite data suggests that Bengaluru and Jaipur collect only about 5 percent to 20 percent of their potential property taxes. This implies that the growth in urban areas is not being reflected in the property tax collections of Urban Local Bodies (ULBs).

Major Financial Events of 2016-17

The period between the release of last economic survey in 2016 and the current one has been both eventful and tumultuous. Some of the events and actions that have transpired during the past eleven months are going to have a significant bearing on the Indian Economy and chart an altogether new course for India and the aspirations of millions of its inhabitants.



- By far the most important of these events has been the "**Demonetization**" announcement by our Prime Minister, Mr. Narendra Modi on November 8, 2016 to **withdraw Rs. 500 and Rs. 1,000 bank notes** in a bid to

crack down on black money. This has in one master stroke changed the perception of how Indians view cash and the transactions pertaining to it. The Government since then has issued new **Rs. 500** note and introduced **Rs. 2,000** note as replacement. Government foresees that though short term set-backs to the economy will occur, the long-term benefits shall far outweigh the initial setbacks.

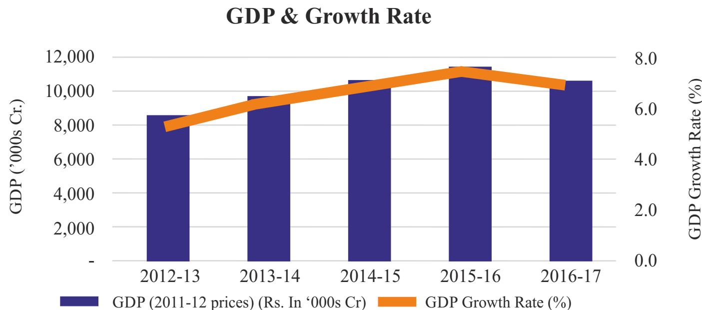
- The second most important event, with ramifications to change the economic dynamics, has been the passing of the **GST Bill**. The Bill was passed in a unanimous decision on August 4, 2016 in the Rajya Sabha, through approval of the crucial 122nd Constitutional amendment to turn the Goods and Services Tax Bill into a law.
- Another important action taken by the Government was to set up a **Monetary Policy Committee (MPC)**, a 6-member panel, to objective of which is to raise transparency in rate-setting decisions of the Central Bank. The decision originated from the fact that RBI had to consider multiple factors such as inflation, growth, employment, banking stability and exchange rate stability to make a rate decision.
- RBI has decided to clean up (with the deadline of March 2017) the Banks' balance sheets ridden by huge **Non Performing Assets (NPAs)**, which the Indian Banking Sector has been plagued with through indiscriminate lending. The objective has been to not only deal firmly with errant bankers but to balance the economic growth as well so that the economy does not face lack of credit to support growth.
- The last but not the least was the Government's decision that the **Union Budget** will be presented on the first working day of February instead of the colonial practice of being presented on the last working day of February. Additionally, the Government also decided to do away with a separate **Railway Budget** but merge it in the Main Budget itself, ending a 92-year-old British-era practice.

Key Takeaways

- The growth rate of gross value added (GVA) at constant basic prices for 2016-17 is 7.0 per cent, as against 7.2 per cent in 2015-16. The second half is expected to be lower at 6.7 percent thereby giving an overall growth rate of ~7.0 percent for the full year.
- Agriculture, forestry and mining have shown a substantial jump with a growth rate of 4.1 percent in 2016-17 against 1.2 percent in 2015-16.
- Industrial Sector has seen a decline from 7.4 percent in 2015-16 to 5.2 percent in 2016-17, primarily on account of mining which showed a negative growth of 1.8 percent in current fiscal against a positive figure of 7.4 percent last year.

Construction and Manufacturing also have seen declines in the range of 1-2 percent from the last financial year.

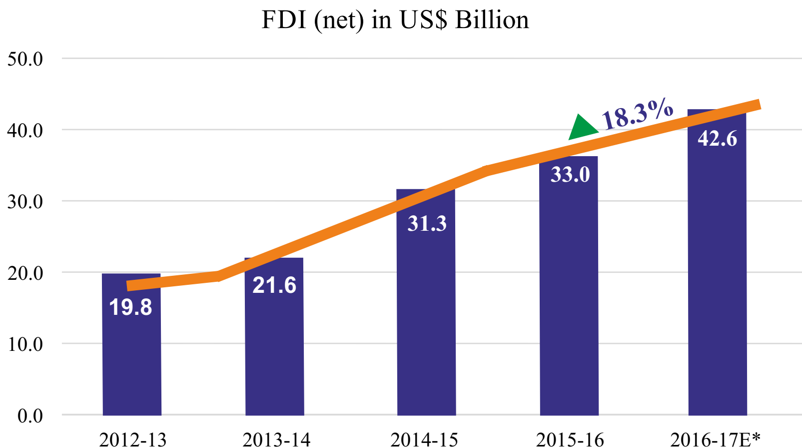
- Services Sector has seen a moderate fall in 2016-17, showing a growth rate of 8.8 percent against 8.9 percent in 2015-16.



- Fixed Investment (gross fixed capital formation (GFCF)) to GDP ratio (at current prices) is expected to be 26.6 percent in 2016-17 as against 29.3 percent in 2015-16. Fixed investment rate has been on a declining trend since 2011-12, which needs to be reversed for medium and long term growth prospects.
- The realizations of the gross tax revenue during the period April-November 2016 as a ratio of Budget estimates for 2016-17 have been much higher than corresponding figures last year, especially on account of higher collections from union excise duties and service tax.
- The growth in revenue expenditure has been prima facie high for the period April-November 2016, primarily on account of meeting the commitments under the Seventh Pay Commission.
- The headline inflation measured in terms of Consumer Price Index (CPI) has shown a decline for the third successive financial year. The CPI which had declined to 4.9 percent in 2015-16 from 5.9 percent in 2014-15 has further fallen to 4.8 percent during April-December 2016.
- The average price index based on Wholesale Price Index (WPI) which had declined to (-) 2.5 percent in 2015-16 from 2.0 percent in 2014-15 has shown a reversal in 2016-17, partly on account of higher global commodity and energy prices and the low base effect of last year kicking in.
- As per the revised Monetary Policy, the Government has fixed an inflation target of 4 percent +/- 2 percent for the period beginning from 5th August 2016 to 31st March 2021.
- The performance of banking sector, primarily Public Sector Banks (PSBs) has been below par. The Gross non-performing assets of Scheduled Commercial Banks

(SCBs) increased to 9.1 percent between April to September 2016 vis-a-vis 7.8 percent for the corresponding period last year.

- The net Foreign Portfolio Investments (FPI) have seen an outflow to the tune of ~ Rs. 23,000 crores, primarily on account of debt investments, the first negative year since 2010. This trend was not only India specific but across Emerging Market Economies (EMEs), with funds chasing higher returns in developed economies.
- Indian Exports which had seen a decline of 1.3 percent and 15.5 percent in 2014-15 and 2015-16 have seen a marginal increase of 0.7 percent to US$ 198.8 billion in 2016-17 (April-December).
- Value of Imports declined from US$ 448 billion in 2014-15 to US$ 381 billion in 2015-16. This decline was carried over during 2016-17 (April-December) with imports declining by 7.4 percent to US$ 275.4 billion over the corresponding period last year.
- Current Account Deficit (CAD) has been progressively contracting from US$ 88.2 billion (4.8 percent of GDP) in 2012-13 to US$ 22.2 billion (1.1 percent of GDP), and has further narrowed to 0.3 percent of GDP in 2016-17 (H1).
- The net Foreign Direct Investments (FDI) have recorded a flow of US$ 42.6 billion, an 18.3% percent increase over the corresponding period last year.



*2016-17 H1 actual data annualised by multiplying it with 2

- Foreign Exchange Reserves increased by US$ 15.5 billion on Balance of Payments (BoP) basis (excluding valuation effects) while in nominal terms (including valuation effects), the increase was US$ 11.8 billion. The difference between the two is primarily on account of the appreciation of US dollar against all the major currencies.
- Rupee - Dollar rates have held in a narrow band on account of positive Foreign

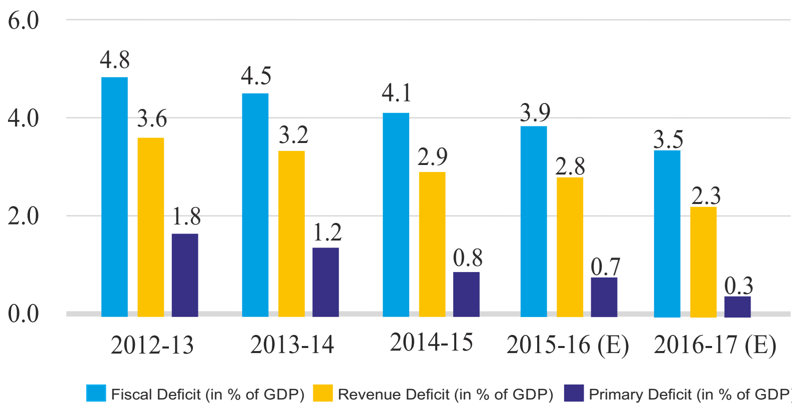
Institutional Investors (FIIs) flows and the narrowing of the Current Account Deficit (CAD). The depreciation in rupee to the tune of 3.4 percent has been primarily on the back of strengthening US dollar, much lower than 14.4 percent for the Mexican peso and 8.6 percent for the South African rand.

Key Economic Indicators

Fiscal Policy

Since the incumbent Government came to power, the primary aim was towards fiscal consolidation, which could be seen from a steady decline in fiscal deficit from 4.5 percent of GDP in 2013-14 to 3.9 percent in 2015-16 and currently at 3.5 percent for 2016-17. India's fiscal policy stance has an in-built bias towards higher deficits, because spending rises pro-cyclically during growth surges, while revenues and spending are deployed counter-cyclically during slowdowns. The fiscal outlook for the next year shall be determined by three factors;

- Firstly, increase in the tax to GDP ratio of about 0.5 percentage points in the last two years on account of the lower crude prices shall disappear.
- Secondly, on the flipside, there shall be a fiscal windfall both from high denomination currency notes not being returned to RBI and higher tax collections from increased disclosures under Pradhan Mantri Garib Kalyan Yojana (PMGKY). However, both these will impact only marginally in the short term as they are of a one off nature.
- Third and probably the most significant factor would be the implementation of GST. The transition to GST is complicated both from the administrative and technology perspective and the revenue collection shall take some time to reach full potential. Furthermore, the commitment of Centre to compensate the States for any shortfall in their own GST collections shall further put pressure on collections.



Commodity Prices and Agriculture

Headline inflation has dropped sharply in the recent months, though the Consumer Price Index (CPI) based core inflation (exclusive of food and fuel group) has remained sticky so far during this fiscal year. Some highlights are

- Price of crude oil (Indian basket) has increased from $39.9 in April 2016 to $52.7 in December 2016.
- The CPI food inflation (CFPI) has dipped to a two-year low of 1.4 percent in December 2016. The inflation for pulses & products dipped to negative 1.6 percent in December 2016, and the vegetables inflation remained negative since September 2016.
- The average inflation based on the wholesale price index (WPI) declined to (-) 2.5 percent in 2015-16 from 2.0 percent in 2014-15. The downward trend reversed in current financial year due to the impact of rise in global commodity prices and adverse base effect.
- The global commodity and energy prices have increased by 18 percent and 23 percent respectively in the first eleven months of 2016 as per IMF price indices. The WPI inflation stood at 3.4 percent in December 2016 and the average inflation was 2.9 percent during April- December 2016

Industrial, Corporate and Infrastructure Sectors

Many policy measures have been taken by the Government over the past year to facilitate investment and for ease of doing business in the country such as Make-in-India, Invest India, Start Up India and e-biz Mission Mode Project under the National e-Governance Plan ,online application for Industrial License and Industrial Entrepreneur Memorandum through the eBiz website 24x7 for entrepreneurs; simplification of application forms for Industrial Licence and Industrial Entrepreneur Memorandum; limiting documents required for export

and import to three by Directorate General of Foreign Trade; and setting up of Investor Facilitation Cell under Invest India to guide, assist and handhold investors during the entire life-cycle of the business.

- As per Central Statistics Office (CSO), the advance estimated growth rate of the industrial sector comprising mining & quarrying, manufacturing, electricity and construction is projected to decline from 7.4 percent in 2015-16 to 5.2 percent in 2016-17. However, during April-November 2016-17, a modest growth of 0.4 percent has been observed in the Index of Industrial Production (IIP), which belies the negative growth expectations of CSO.
- As per Index of Industrial Production (IIP), a cumulative growth of 4.9 percent during April-November, 2016-17 as compared to 2.5 percent during April-November, 2015-16 was observed in the eight core infrastructure supportive industries, viz. coal, crude oil, natural gas, refinery products, fertilizers, steel, cement and electricity that have a total weight of nearly 38 percent in the IIP.
- As per RBI data, January 2017, in corporate sector the growth rate in sales was 1.9 percent in Q2 of 2016-17 as compared to 0.1 percent in Q1 of 2016-17, in operating profits it decelerated to 5.5 percent in Q2 of 2016-17 from 9.6 percent in the previous quarter. The Y-o-Y growth in interest expenses remained flat at 5.8 percent in Q2 of 2016-17 as that of the previous quarter. The net profits registered a remarkable growth of 16.0 percent in Q2 of 2016-17, as compared to 11.2 percent in Q1 of 2016-17.
- Due to liberalization of FDI policy in defence, railway infrastructure, construction and pharmaceuticals, etc. the FDI equity inflows have increased to US$ 21.7 billion in April- September 2016-17, as compared to total FDI inflows of US$ 16.6 billion during April-September 2015-16 showing 30.7 percent increase.

Services Sector

- As per World Trade Organization (WTO) data, India's commercial services exports increased from US$ 51.9 billion in 2005 to US$ 155.3 billion in 2015. The share of India's commercial services to global services exports increased to 3.3 per cent in 2015 from 3.1 percent in 2014. As per RBI's BoP data, India's services exports declined by 2.4 percent in 2015-16 as a result of slowdown in global output and trade.
- India's tourism sector has a growth of 4.5 percent in terms of foreign tourist arrivals (FTAs) with 8.2 million arrivals in 2015, and a growth of 4.1 percent in foreign exchange earnings (FEEs) of US$ 21.1 billion. In 2016 (Jan. to Dec.), FTAs were 8.9 million with growth of 10.7 percent and FEE (US$ terms) were at US$ 23.1 billion with a growth of 9.8 percent

Social Infrastructure, Employment and Human Development

The government has initiated various schemes for the economic and social empowerment of people belonging to the minority communities such as 'Nai roshni' scheme for leadership development of minority women,'Padho Pardesh', a scheme of interest subsidy on educational loans for overseas studies for the students belonging to the minority communities, 'Seekho Aur Kamao' (Learn & Earn), Upgrading Skill and Training in Traditional Arts / Crafts for Development (USTTAD) and 'Nai Manzil'- a scheme to provide education and skill training to the youth from minority communities.

- As per the RBI data, expenditure on social services by Centre and States as a proportion of GDP was 7.0 percent during 2016-17 (BE), with education and health sectors accounting for 2.9 percent and 1.4 percent respectively.
- The Labour Force Participation Rate (LFPR) at the all India level based on usual principal status approach was estimated at 50.3 percent comprising of male participation of 75 percent and female participation of 23.7 percent.

At present, there are 39 Central labour laws which have been broadly proposed to be grouped into four or five Labour Codes on functional basis with the enactment of special laws for small manufacturing units.

Impact of Demonetization

On November 8, 2016, government has announced demonetisation of high value notes of Rs 500 and Rs 1,000 with an aim to curb corruption, counterfeiting, the use of high denomination notes for terrorist activities, and especially the accumulation of “black money”, generated by income that has not been declared to the tax authorities. This followed the earlier events and efforts of the government like Special Investigation Team (SIT) in the 2014 budget, the Black Money Act, 2015; the Benami Transactions Act of 2016; the information exchange agreement with Switzerland, changes in the tax treaties with Mauritius and Cyprus, and the Income Disclosure Scheme.

The short term and the long term impacts of the historic bold step of the government are as follows

Sector	Impact	
	Short Term	Long Term
Interest Rates	Interest rates on deposits, loans, and government securities declined; implicit rate on cash has increased.	Loan rates could fall further, if much of the deposit increase proves durable.
Financial System Savings	Increased	Increase, to the extent that the cash deposit ratio falls permanently.
Corruption	Initial decline on account of fear and loss of liquidity	Could decline, if incentives for compliance improve.
Unaccounted income / black money	Stock of black money fell, as some holders came into the tax net.	Formalization of policies should reduce the flow of unaccounted income.
Private Wealth	Private sector wealth declined, since some high denomination notes were not returned and real estate prices fell.	Wealth could fall further, if real estate prices continue to decline.
Public Sector Wealth	No impact	Government/RBI's wealth will increase when unreturned cash is extinguished, reducing liabilities.
Digitalization	Digital transactions amongst new users (RuPay/ AEPS) increased sharply; existing users' transactions increased in line with historical trend.	Some return to cash as supply normalizes, but the now-launched digital revolution will continue.
Real Estate	Prices declined, as wealth fell while cash shortages impeded transactions.	Prices could fall further as investing undeclared income in real estate becomes more difficult; but tax component could rise, especially if GST imposed on real estate.

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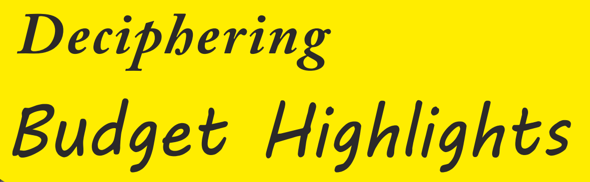
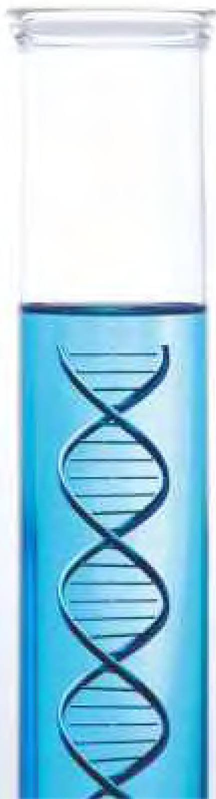
	Short Term	Long Term
Real Estate	Prices declined, as wealth fell while cash shortages impeded transactions.	Prices could fall further as investing undeclared income in real estate becomes more difficult; but tax component could rise, especially if GST imposed on real estate.
Broader Economy	Job losses, decline in farm incomes, social disruption, especially in cash-intensive sectors.	Should gradually stabilize as the economy is remonetized.
GDP	Growth slowed, as demonetization reduced demand (cash, private wealth), supply (reduced liquidity and working capital, and disrupted supply chains), and increased uncertainty. Cash-intensive sectors (agriculture, real estate, jewelry) were affected more.	Could be beneficial in the long run if formalization increases and corruption falls


Deciphering
Budget Highlights

Direct Tax

Business Taxation

- Corporate tax rate reduced to 25% for Domestic Company with turnover or gross receipts up to Rs. 50 Crores in FY 2015-16. No change in surcharge and educational cess.
- Framework for computing Book Profits in case of adoption of Ind-AS has been prescribed.
- Thin Capitalization rules introduced whereby deduction in respect of interest payment to non-resident Associated Enterprise shall be restricted to 30% of EBIDTA
- Income from sale of carbon credit is taxable at the concessional rate of 10% on gross basis. However, the issue of chargeability of carbon credit is still debatable.



- Payment of more than Rs. 10,000 would liable to be disallowed section 40A(3) / 35AD / 32 r.w.s. 43(1).
- Eligible start-ups can now claim profit linked deduction of 100% for 3 consecutive assessment years out of 7 years period from the date of incorporation. Relaxation of condition for carry forward of loss in case of change in shareholding in Start-ups.
- Monies, immovable properties, shares and securities and other prescribed movable properties received without or adequate consideration would be chargeable to tax even in case of companies, firms, AOPs, BOI, etc.
- MAT Credit can be carried forward for 15 years as against present time limit of 10 years

International Taxation

- Transactions with related parties covered by Section 40A(2)(b) excluded from the purview of Domestic Transfer Pricing
- Secondary adjustment in respect of Transfer Pricing introduced requiring the assessee to account for the ALP in books and also to repatriate the equivalent funds from AE, failing which imputed interest shall be charged thereon.
- Where terms are not defined in DTAA but defined or explained in the Income Tax Act, 1961 ("the Act"), the meaning under the Act shall be used to interpret DTAA

- No deferral of provisions relating to General Anti Avoidance Rules and hence it is effective from AY 2018-19
- No deferral of provisions relating to Place of Effective Management and hence it is effective from AY 2017-18

Personal Taxation

- Basic exemption limit remains unchanged, however, rate of tax for slab of Rs. 2,50,000 to Rs. 5,00,000 reduced to 5% from 10%.
- 10% surcharge imposed in case of persons having total income more than Rs. 50,00,000 but up to Rs. 1,00,00,000.
- Rate of presumptive taxation under section 44AD has been reduced to 6% from 8% in respect of gross receipt received through banking channels.
- Loss from house property that can be set-off against any other head of income shall be restricted to Rs. 2,00,000 for any assessment year.
- Partial withdrawal not exceeding 25% of the contribution made by an employee from the National Pension Scheme ("NPS") to be tax exempt.

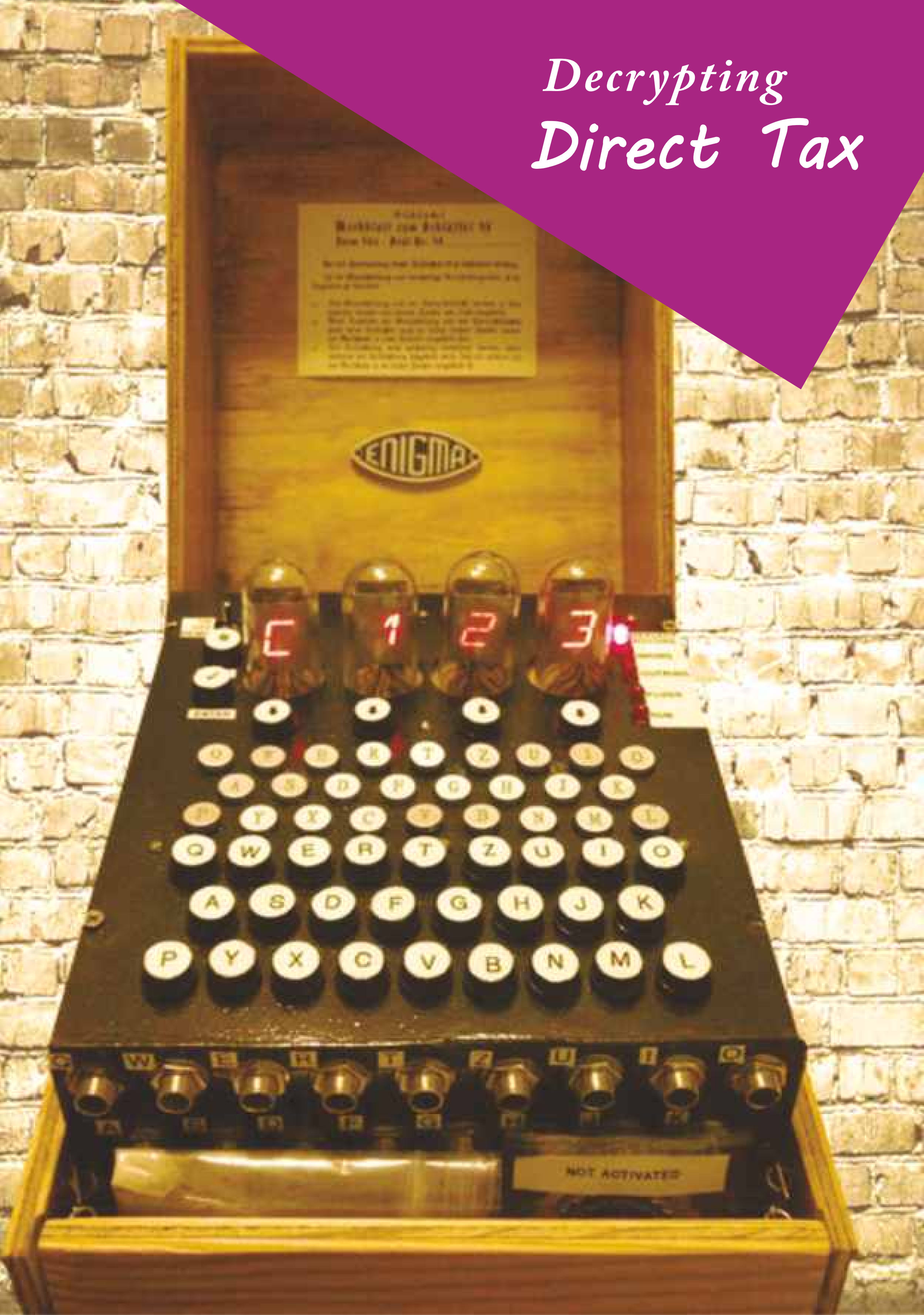
Other Direct Tax amendments

- Tax at the rate of 10% on Dividend income exceeding Rs. 10 lakhs from domestic companies is proposed to be extended to all tax payers except domestic companies and certain funds, trusts, institutions etc
- Period of holding of immovable property reduced to 2 years to regard it as long term capital asset
- Exemption u/s. 10(38) in respect of long term capital gains would be available only if acquisition of such shares post October 1, 2004 was chargeable to Securities Transaction Tax with certain exceptions
- Base year for cost inflation index shifted from 1981 to 2001
- For computation of capital gain arising on sale of unquoted shares of a company, the sales consideration would be its fair market value or actual sales consideration, whichever is higher.
- Prohibition on receipt of cash in excess of Rs. 3 Lacs by any person (i) in a single day; or (ii) in respect of single transaction; or (iii) in relation to single event / occasion. Contravention would entail penalty of amount equivalent to transaction.
- Taxation of joint development agreement where sales consideration of transfer of immovable property to a developer is represented by way of shares of the transferor in developed property, capital gain shall be chargeable to tax in the year of insurance of completion certificate.

Indirect Tax

Key Highlights

- No change is proposed in the bill in existing rate of Service Tax
- Service of Job work is shifted from negative list of services to exempted services
- Exclude value of land/ undivided share thereof in service portion in construction of Works contract
- Repeal of Research & Development Cess Act, 1986
- Exempt one-time upfront amount charge for grant of long term lease for thirty years or more period (retrospective amendment)
- GST would be rolled out from 1 July, 2017.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Corporate Tax

25% Tax Rate for Companies with Turnover up to Rs. 50 crores

Corporate Income Tax of Domestic Companies having turnover of less than 50 Crores in FY 2015-16 is proposed to be reduced from 30% to 25%. This is in line with the promise made earlier by the Government to gradually reduce the Corporate Income Tax Rate to 25%.

It may be mentioned that last year, keeping the headline rate of tax at 30%, the Finance Minister had reduced the rate of corporate tax for small companies (with turnover up to Rs. 5 crores) to 29%. Similarly, for new manufacturing companies set up, rate was reduced to 25% provided they do not claim any of the prescribed benefits. However, from Assessment Year ('AY') 2018-19 onwards, the reduced rate of corporate tax of 25% would be available to companies having turnover up to Rs. 50 crores in FY 2015-16 and that too without any condition / restriction. This provision will incentivise non-corporate entities like sole proprietors, firms, etc. to opt for corporate entity.

Particulars	Company	LLP
Earnings before Tax	100.00	100.00
Tax (at 0% surcharge)	-25.75	-30.90
Earnings after	**74.25**	**69.10**
Dividend Dist. Tax	-12.85	0.00
Dividend	**61.40**	**69.10**
Tax on Receipt*	-6.32	0.00
Net Dividend	**55.08**	**69.10**

*if applicable

In absence of any relief under Minimum Alternate Tax (MAT), it is important to consider these provisions since the gap between the normal income tax at 25% and MAT at 18.5% on book profits is at the lowest level.

There is no reduction in tax liability of other entities like firms or Limited Liability Partnerships (LLP). This may prompt firms or LLPs to opt for conversion into company, which is exempt from tax. However, it is to be noted that in view of lack of relief for dividend distribution tax and tax on receipt of dividend, companies will effectively suffer a higher tax burden on repatriated income as compared to LLPs, which is provided in the above-mentioned table.

On a separate note, this will significantly reduce the scope of Section 115BA introduced last year providing an incentive income tax rate of 25% to newly incorporated manufacturing companies not claiming certain exemptions.

Personal Tax

Reduction in Tax Rates (for income between 2.5 lacs to 5 lacs)

Personal Tax rates for the first slab post basic exemption limit, i.e. from 2,50,000 to 5,00,000 has been proposed to be reduced from 10% to 5%. This will result in maximum savings of approximately 12,875 (including education cess but excluding surcharge).

Reduction in Rebate

The threshold for granting rebate for Individual Residents has been reduced from income of 5 lacs to 3.5 lacs and the amount has been reduced from 5,000 to 2,500. Coupled with reduction in rate, the effective basic exemption limit remains unchanged at 3,00,000 (2,50,000 + 2,500/5%).

Increase in Surcharge (for income between 50 lacs to 1 Crore)

Surcharge for Individuals, HUF, AOP, BOI and Artificial Juridical Person earning income above 50 lacs but less than 1 Crore is now 10% which was earlier absent. Surcharge for the highest tax bracket remains same at 15%. Similarly, there is no change in tax rates for co-operative societies, firms and LLPs.

Tax Rate Table is provided in Appendix.

Business Tax

Business Income

Taxation of Carbon Credit Receipts

Carbon credits is an incentive given to an industrial undertaking for reduction of the emission of GHGs (Green House gases), including carbon dioxide which is done through several ways such as by switching over to wind and solar energy, forest regeneration, installation of energy-efficient machinery, landfill methane capture, etc. Such framework of incentives linked to Carbon Credit is governed by regulations of KYOTO Protocol.

KYOTO Protocol is legal framework under United Nations Frame Work Convention on Climate Change (UNFCCC) to which several developed countries are participant. It is a framework where participant countries had set binding targets for reducing Green House Gases (GHGs) which is binding commitment to the UNFCCC. To calculate the compliance of environmental target fixed for participating countries a measure for calculation is adopted in the form of Certified Emissions Reduction (CER).

Entities which are in countries (like India) to which said protocol does not apply, is also entitled to trade in CER earned from reduction in GHGs with entities which are participants of KYOTO Protocol subject to

certain approvals. CER Credit earned through reduction in GHGs can be traded for a price arrived through set mechanism.

Taxability of receipt on transfer of CER has been subject matter of significant debate in the past wherein the assessee has claimed that the same is capital receipt as it is fund provided for protection of the environment whereas the tax authorities have claimed CERs are linked with business and hence it should be taxed as ordinary business profits.

The Bill proposes to insert new Section 115BBG from AY 2018-19 which provides that Income by way of transfer of carbon credits is subject to tax at the rate of 10%. It may be mentioned that tax of 10% is on gross receipts from transfer of CERs and no deduction of any expenditure or allowance shall be allowed to the assessee against said income.

In this regard, it is important to note that while the government has introduced concessional rate of 10% of gross receipts, no amendment has been carried out in Section 2(24) to treat such item as income liable to be taxed under the Act. In absence of such amendment, the primary issue of such receipt being capital receipt is still open and only courts will decide the fate of chargeability of receipts on transfer of CERs.

Interest on certain bad or doubtful receivables of co-operative banks taxable upon receipt

The existing provisions of section 43D of the Act, *inter-alia*, provides that interest income in relation to certain categories of bad or doubtful debts received by certain institutions or banks or corporations or companies, shall be chargeable to tax in the previous year in which it is credited to its profit and loss account for that year or actually received, whichever is earlier. This provision is an exception to the accrual system of accounting which is regularly followed by such assessees for computation of total income, however, it follows the real income principle adopted under the Act.

The benefit of this provision is presently available to scheduled banks, public financial institutions, State financial corporations, State industrial investment corporations and certain public companies like Housing Finance companies. With a view to provide a level playing field to co-operative banks vis-à-vis scheduled banks, it is proposed to amend section 43D of the Act so as to enable co-operative banks (other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank) also to offer interest income on such debts only upon receipt or credit in books of account.

Taxation of Gifts as 'Deemed' Income

Existing provisions of section 56(2)(vii) provides for sum of money or any property which is received without consideration or for inadequate consideration (in excess of the specified limit of Rs. 50,000) by an individual or Hindu undivided family is chargeable to income-tax in the hands of the resident under the head "Income from other sources" subject to certain exceptions provided in said Section. Similarly, where a company or firm receives shares of company in which the public are not substantially interested or received by company or firm without consideration or for inadequate consideration, the same is

also chargeable to income tax as per section 56(2)(viia).

While gifts to Individual or HUF were covered comprehensively, companies and firms were taxed only in respect of gift of shares of certain companies, other taxable entities like trusts (including private trusts), AOP, etc. were not subjected to tax on such gifts. In case of company or firm, instruments or securities like convertible debentures, bonds, etc. received without consideration or for inadequate consideration were not covered by the said provision.

In order to prevent misuse of the exceptions (or carve outs), the provisions have been rationalized and are now applicable to all the assessees in respect of all the properties (cash, immovable properties, shares and securities and other specified movable properties) received without consideration or for inadequate consideration. The provisions shall be effective from AY 2018-19 i.e. for receipt of property on or after April 1, 2017.

It may however be mentioned that corresponding amendment in Section 2(24) to treat such items as income has not been made, which appears to be drafting error and should be rectified before the Bill is enacted as law.

Taxation of Dividend Income

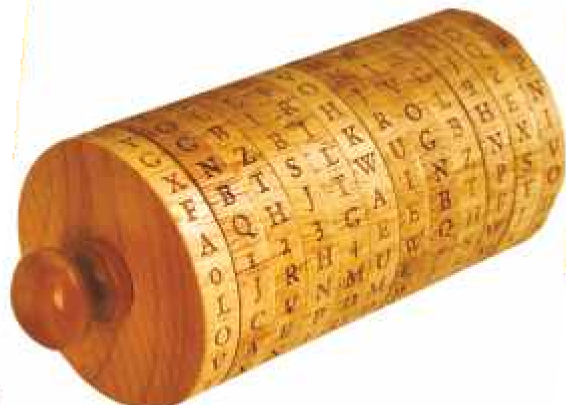
As per the existing provisions of section 115BBDA, the dividend income exceeding Rs. 10 lacs, received by resident Individual, HUF or a firm, from a domestic company or companies, is chargeable to tax at the rate of 10%. The proposed amendment, intends to widen the scope of section 115BBDA and proposes to apply the provision of such section to every person, except those specifically excluded, who is resident in India. The proposed amendment shall be made applicable from AY 2018-19.

Accordingly, dividend exceeding Rs. 10 Lacs received by resident Individuals, HUF, Firm, LLP, AOP, BOI, Artificial Juridical Persons and Local Authority, private trustees, from a domestic company or companies, shall be chargeable to tax at 10%.

However following persons are excluded from the scope of section 115BBDA:

- A domestic company
- Persons being trust, educational universities, hospitals claiming exemption under Section 10(23C)(v) or 10(23C)(vi) or 10(23C)(via)
- A trust or institution registered under section 12AA

It was contended in some quarters that if the dividend was received by a discretionary trust, then the dividend would be construed to have been received by an AOP and therefore not by an Individua, HUF or a firm. In such a situation, whether such dividend would be chargeable to tax u/s. 115 BBDA was under doubt. The amendment removes the said anomaly and now it is beyond doubt that such dividend will also be chargeable to tax.



Since it is impossible to quantify the amount of such divided to be received in a year, the tax levied under section 115BBDA has been excluded from the scope of levying of interest u/s 234C.

Notional Income - Relief for house property held as stock in trade

Section 23 of the Act provides the mannerism of deriving annual value of the property consisting of any buildings or lands appurtenant thereto for the purpose of calculation of income under the head income form house property. In case of real estate developers, the Department used to compute notional income under head house property being annual letting value of the units remaining unsold lying in stock in trade. This used to create unnecessary tax burden on the real estate developers despite the fact that actually no income accrued on account of development of property.

A new sub section has been proposed to be inserted u/s. 23 providing that where the property consisting of any building or land appurtenant thereto is held as stock-in-trade and the property or any part of the property is not let out during the whole or any part of the previous year, the annual value of such property or part of the property shall be taken as nil for the period up to one year from the end of the FY in which the certificate of completion of construction of the property is obtained from the competent authority.

The new sub section has been introduced with a view to provide relief to the real estate developers. The amendment will provide tax break to the real estate developers for one year post receipt of the completion certificate for the unsold stock of house property.

Presumptive Taxation

Presumption of reduced profit in cashless transactions

As per the existing provisions of Section 44AD, it allows assessee's with total turnover or gross receipts up to Rs. 2 crore to declare business profits or gains at a rate of 8 percent or higher. It reduces the compliance procedures of getting the books of accounts audited for small tax payers. In order to widen the tax base and to promote cashless economy (economy with transaction trail), it has been proposed to reduce the presumptive rate of profit for such eligible businesses from the existing 8 percent to 6 percent.

The benefit of the reduced rate of 6 percent shall be applicable to turnover or the gross receipts received by received by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year. In cases where the turnover or the gross receipts include both cash and bank in such cases the reduced rate of profit shall be applicable only on the amount of turnover or gross receipts received through banking channels and the rate of profit for the balance

turnover or gross receipts shall be at the existing rate of 8 percent.

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

Business Deductions

Deduction under section 10AA restricted to Total Income

The Supreme Court in the case of Yokogawa India Limited (2017) 77 taxmann.com 41 held that section 10A/10B, post amendment by Finance Act, 2000 w.e.f. April 1, 2001, is a 'deduction provision' and not an 'exemption provision' despite it appears in Chapter III dealing with income not forming part of total income. The Supreme Court observed that though section 10A/10B provisions are deduction provisions, the deduction u/s 10A/10B are qua the undertaking without reference to other eligible / non-eligible units. The stage of deduction of the profits and gains of the business of an eligible undertaking has to be made independently and immediately after the stage of determination of its profits and gains and therefore provisions of set off and carry forward of losses (section 70, 72 and 74) would be premature for application. The Supreme Court concluded that section 10A/10B are provisions of deduction and the stage of deduction is while computing gross total income of eligible undertaking under Chapter IV of the Income-tax Act and not at the stage of computation of total income under Chapter VI.

The Legislature feared that similar stand is being taken by assessees claiming deduction u/s. 10AA being profits and gains of Units operating in Special Economic Zones ("SEZ"). In order to allay such fear the Legislature has proposed to insert an Explanation in section 10AA(1) to provide that the amount of deduction referred to in section 10AA shall be allowed from the total income of the Assessee computed in accordance with the provisions of the Act before giving effect to the provisions of the section 10AA and the deduction under section 10AA in no case shall exceed the said total income.

The proposed amendment in other words allows the deduction u/s. 10AA after setting off the losses of the eligible / non-eligible units of the Assessee. In other words, the decision of the Supreme Court in the case of Yokogawa *supra* is proposed to be nullified with the above amendment.

Disallowance of cash expenditure in excess of Rs. 10,000

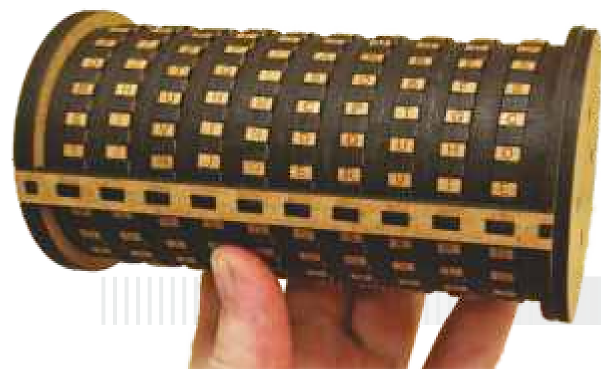
In order to discourage cash transactions in business dealings, following amendments are proposed:

- Under the existing provisions of section 40A(3) the eligible modes of payment were defined to be account payee cheque or account payee bank draft for amounts in excess of Rs. 20,000. The mode of eligible payment now use of electronic clearing system through a bank account.
- Under the existing provision of Section 40A(3), where the expenditure was paid in mode other than eligible payment modes (primarily cash) in excess of Rs. 20,000, the same was not eligible as business deduction. The said limit is now reduced to Rs. 10,000 and hence any payment in excess of Rs. 10,000 by cash or through bearer cheque would now not be eligible for deduction.
- Similar amendments have also been

made in case where the expenditure is incurred in a particular year but the payment is made in any subsequent year.

- Section 40A(3) does not apply to capital expenditure. There was no provision under the Act to control cash transactions on transactions which were capital in nature. In order to discourage use of cash on capital account transactions, it has been proposed to amend section 43 so as to provide that where an Assessee incurs any expenditure for acquisition of any asset in respect which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account, exceeds ten thousand rupees, such expenditure shall be ignored for the purposes of determination of actual cost of such asset. A person would not be able to claim depreciation u/s. 32 on actual cost, which has been discharged by paying cash in excess of Rs. 10,000.

- Section 35AD of the Act, provides for investment linked deduction on the amount capital expenditure incurred, wholly or exclusively for the purposes of business, during the previous year for a specified business. It is proposed to amend section 35AD of the Act to provide that any expenditure in respect of which payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account, exceeds ten thousand rupees, no deduction shall be allowed in respect of such expenditure.



Interest to Co-operative banks also brought within ambit of Section 43B

As per clause (e) of section 43B the deduction of interest for any loan taken from a scheduled bank is only allowed after such amount of interest is actually paid. The provision was enacted to ensure recovery of loans given by the banks to business units and to curb the expenses claimed by such units without actual payment of interest. The scope of the section is proposed to be widened so as to include loans taken from Co-Operative Banks also. However, the loans taken from primary agriculture credit society or a primary co-operative agricultural and rural development bank have been excluded.

Deduction in respect of provision for Bad and Doubtful Debts for Banks

The existing provisions of Section 36(1)(viia) allows deduction for the provision for bad and doubtful debts of Scheduled Banks, non-scheduled banks and co-operative banks (other than primary agriculture credit society or primary co-operative agricultural and rural development bank) an amount not in higher of 7½ percent of total income and 10 percent of the average advances made by the rural branches of the bank as a deduction.

It is proposed to amend the said sub-clause to enhance the present limit from seven and

one-half per cent. to eight and one-half per cent of the amount of the total income (computed before making any deduction under that clause and Chapter VIA). With the surge in NPAs, provisioning is likely to be increased and this will help concerned Banks to claim benefit of such higher provisioning, subject to the ceiling mentioned above, for the tax purpose as well.

Definition of Actual Cost in Section 35AD Business

The existing provisions of Section 35AD of the Act, provides for investment linked deduction on amount of capital expenditure incurred, wholly or exclusively, for the purposes of business, during the previous year for a specified business excluding capital expenditure incurred for acquisition of any land or goodwill or financial instrument. Further, sub-section (7B) of Section 35AD provides that where any asset on which benefit of section 35AD is claimed and allowed, is used for a purpose other than specified business, the benefit of deduction already granted under section 35AD shall be deemed to be the income of the Assessee. However, it further provides that the deemed income shall be net of normal depreciation as would be entitled.

Clause (1) of section 43 defines "actual cost" for the purposes of claiming depreciation under section 32 of the Act in certain situations. However, there is no clarity on determination of actual cost for the purposes of allowance of depreciation of such assets in respect of which the deduction which is already allowed in a previous year under section 35AD of the Act, is withdrawn in terms of sub-section (7B) of the said section.

It is proposed to amend the provisions of the section 43 of the Act, to provide that where any capital asset in respect of which deduction allowed under section 35AD is deemed to be the income of the assessee in accordance with the provisions of sub-section (7B) of the said section, the actual cost to the assessee shall be the actual cost to the assessee, as reduced by an amount equal to the amount of depreciation calculated at the rate in force that would have been allowable had the asset been used for the purposes of business since the date of its acquisition.

Relaxation of provision for Affordable Housing Projects

In order to encourage affordable housing projects, the Finance Act 2016 introduced Section 80-IBA. The section provides for 100% deduction on profits from business of developing and building housing projects subject to fulfilment of certain conditions. To further promote the development of Affordable Housing Projects, the Bill proposes to relax certain conditions for claiming such deduction as under:

- The limit of completion of housing project has been increased from 3 to 5 years
- Size of eligible residential unit (30 sq. mtrs. in Metros/ 60 sq.mtrs in Non-Metros) shall be measured based upon concept of "carpet area" instead of "built-up area". The Act now uses the definition of "carpet area" given under the Real Estate (Regulation and Development) Act, 2016 which define "carpet area" as "the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment." The basic difference between built-up area

and carpet area is that while built-up area is inclusive of projections & balconies and the thickness of the outer walls, the carpet area is exclusive of this area. This could effectively increase eligible size of residential unit by more than 30%.

- The restriction of 30 sq. mtrs of residential unit on the size of residential unit shall not apply to the place located outside the municipal limit of four Metros.

Disallowance of expenditure u/s. 58 on account of non-deduction of tax at source.

The Section 58 provides for certain specified amounts as non-deductible expenditure while computing income under the head 'Income from Other Source'. Existing provision of sub-section (1A) of section 58 provides that interest or salary expenditure payable outside India (in relation to income chargeable to tax under the head 'Income from Other Source') is allowed as deduction only when tax is deducted at source and paid as per provisions of Chapter XVII-B. However, deduction in respect of other type of expenditure governed by provision of Chapter XVII-B are not made subject to such compliance under Chapter XVII-B

Accordingly, with a view to improve compliance of provision relating to tax deduction at source (TDS), the scope of sub-section (1A) of section 58 has been proposed to expand to cover payments to resident governed by Chapter XVII-B. It has been proposed to allow deduction of expenditure governed by provisions of Chapter XVII-B in similar line to provisions of Section 40(a)(ia) of the Act. In other words, claim of deduction of any expenditure u/s 57 is also now subject to compliance with provisions of Chapter XVII-B, otherwise same would attract disallowance at 30% of expenditure claimed. The proposed amendment is to bring provisions of section 56 & 57 in line with provisions of section 40(a) of the Act and is applicable from AY 2018-19.

Specific Anti-Avoidance Rules

Thin Capitalization – Limitation on Interest Deduction

A company is considered as thinly capitalised when its leverage is very high. High debt – equity ratio generally raises concerns of excessive interest claims from tax perspective. Interest, as against dividends, are tax deductible. This gives MNCs an opportunity to reduce their tax base in high tax jurisdictions by way of interest payments. In light of the same, OECD suggests anti-avoidance measures in Action Plan 4 of its Base Erosion and Profit Shifting ("BEPS") project. Many countries have introduced thin capitalisation rules as anti-avoidance measure, providing maximum permissible debt-equity ratio or limiting interest deductions, etc.

The Bill proposes to introduce thin capitalisation rules for limiting deductibility of interest expenses arising on debts from associated enterprises ("AEs"). The provisions are proposed to be applicable on debts from non-resident AEs as well as debts from unrelated parties wherein AE has provided implicit or explicit guarantee or made corresponding deposits with the lender for provision of loan to the assessee, where amount of interest or similar consideration exceeds one crore rupees.

As per the proposed amendment, interest claimed as deduction in computation of profits and gains of business or profession of the assessee, being an Indian company or a permanent establishment of a foreign company on debts from above-mentioned parties shall be allowed only to the extent of lower of –

- 30% of Earnings Before Interest, Taxes, Depreciation and Amortisation ("EBITDA") of the borrower and
- Interest paid or payable to AEs / other lenders where AE have provided guarantee or corresponding deposit.

In other words, the proposed amendment suggests a fixed ratio rule, whereby, amount of interest in excess of above limits is proposed to be disallowed in computation of income from business or profession for the year. Further, the amount so disallowed can be carried forward and claimed as deduction in subsequent years within the limits mentioned above, for a maximum period of eight AYs.

Debt has been defined by the proposed provisions in a wide manner to include loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts or other finance charges. Implicit guarantee by AE should cover cases where the AE has issued letter of comfort, etc. and guarantee fees paid to AE would also be covered by the limitation proposed herein.

The above provisions would not be applicable in case of banking and insurance companies.

It may be noted that, generally where fixed ratio rule is applied, the same is complemented by exception rule in the form of debt-equity ratio whereby if the company is adequately capitalized (i.e. its debt-equity ratio is lower than prescribed limit), limitation of interest deduction should not apply. Since this is introduced as anti-avoidance measure, exceptions with regard to adequately capitalized entities must be made. However, the current proposal as contained in the Bill, does not provide this exception. This would have major impact on loss making companies which have obtained external commercial borrowings from AEs or on the basis of guarantees provided by AEs.

Minimum Alternate Tax

Adoption of Companies Act, 2013 and Indian Accounting Standards in Section 115JB

Under the existing provisions of section 115JB, tax is levied on companies based on the book profit which is determined after making certain adjustments to the net profit disclosed in the profit and loss account prepared in accordance with the provisions of the Companies Act, 1956.

Vide Notification dated 16th February, 2015 Companies (Accounting Standards) Rules, 2015 were notified with definite plan for convergence to the emerging Indian

Accounting Standards ("Ind AS"). On introduction of the Ind AS, some of the companies were required to prepare their financial statements as per the Ind As. In view of significant differences in the Ind AS, not only the basis of determining the book profits would be different but on convergence, carrying values of several assets and liabilities would undergo changes with resultant effect in the retained earnings. To address the treatment of these issues under the MAT, The CBDT constituted a Committee to suggest the framework for computation of book profits for the purpose of levy of MAT for Ind AS compliant companies in the year of adoption and thereafter. The amendments have been made accepting the recommendation of the committee in toto.

The adoption of Ind AS has impacted the computation of book profits under section 115JB since the very base for computing book profits is the net profit as per the books of accounts. An Ind AS compliant company is required to prepare the profit and loss account in two parts:

Part I- Net profit or loss for the year

Part II- Net other comprehensive income (comprising of (i) items to be reclassified in subsequent periods to profit or loss; and (ii) items not to be reclassified in subsequent periods to profit or loss)

It may be noted that the net other comprehensive items include notional and unrealized gains, which are to be ignored for the computing distributable profits. Further Income Computation and Disclosure Standards (ICDS) also does not recognise such type of adjustment while computing normal taxable income under the Act.

The CBDT committee noted that considering the implicit relation between the distributable profit and the tax base for levying MAT, notional and unrealized gain are to be ignored for computation of book profits u/s 115JB. Since unrealized or notional gain did not form part of the computation for net profit or loss, no adjustments, in that aspect, was required in the computation of book profits u/s 115JB.

However, the committee made certain recommendations as under:

1) The notional or unrealized gains forming part of the net other comprehensive income shall be adjusted in the book profit in the year in which the gain is realized

2) All adjustments in the net other comprehensive income, which are not to be reclassified to profit or loss in the subsequent years should be adjusted in the book profits.

3) All adjustments made in the retained earnings, which would never be reclassified in the subsequent years shall be adjusted in the book profits of the first year of adoption of Ind AS.

The amendments made in Section 115 JB can be broadly divided into two parts. One part deals with the determination of income of the Ind AS compliant companies on an annual basis. The Second part deals with the manner in which the amount which is transferred to the retained earnings on the convergence date is to be treated.

In pursuance to the above recommendations, the Bill has proposed to insert sub-section (2A) to section 115JB which provides for revised computation of book profits for companies which have prepared the financial statements in compliance with the Ind AS.

The first and foremost, the Bill provides that the starting point for computing the book profit for MAT will be net profit and not total comprehensive income. Thereafter, in addition to the adjustments required to be made under existing provisions of section 115JB(2), the Bill, vide section 115JB(2A) provides for further other adjustments to the books profits in case of Ind As compliant companies. The same is summarised in the following table:

Book profit to be Increased by	Book profit to be Decreased by
Other Comprehensive Income ("OCI") credited to Statement of Profit and Loss ("SPL") which will not be re-classified to profit or loss in subsequent years*	OCI debited to SPL which will not be re-classified to profit or loss in subsequent years*
Amount debited in SPL on distribution of non-cash asset on demerger in accordance with Ind AS-10	Amount credited in SPL on distribution of non-cash asset on demerger in accordance with Ind AS-10
1/5th of transition amount#, where added to other equity (The same shall be adjusted in the year of convergence and subsequent 4 years)	1/5th of transition amount# , where reduced from other equity(The same shall be adjusted in the year of convergence and the subsequent 4 years)

*OCI shall exclude revaluation surplus for assets as mentioned in Ind AS 38 and Ind AS 16. OCI shall also exclude gains or losses from investments in equity instruments, designated fair market value, as per Ind AS 109.

However, if the above-mentioned assets or investment are transferred during the concerned year, the revaluation surplus or the gains or loss from investments, as mentioned in the above para and excluded while computing book profit as per the above provision in earlier years, shall be adjusted for in the book profits at time of actual realisation of gain/loss. This is in pursuance to the recommendation of the CBDT committee to adjust the unrealized or notional gain in the book profits in the year when the same are reclassified to the profit or loss.

[#] The Transition amount shall mean as under:

The amount of adjustments made to other equity (not being equity component of compound financial instruments, capital reserve and securities premium reserve) on the first date of the first Ind AS reporting period. The adjustments on convergence date shall not include the following:

- OCI which will be classified to profit or loss in subsequent years
- Revaluation surplus for assets as mentioned in Ind AS 38 and Ind AS 16
- Gains or losses from investments in equity instruments, designated fair market value, as per Ind AS 109.
- Adjustments pertaining to property, plant and equipment and intangible assets recorded at fair market value as deemed cost, in accordance with Ind AS 101
- Adjustments pertaining to investment in subsidiaries, joint ventures and associates recorded at fair market value as deemed cost, in accordance with Ind AS 101
- Adjustments pertaining to cumulative translation difference of foreign operations in accordance with Ind AS 101

However, if the assets or investments, mentioned in 2 to 5 above, are transferred in the concerned year, the book profits shall be adjusted by the amount of adjustments mentioned in 2) to 5) above.

Further, if foreign operations referred to in 6) above are transferred or disposed off, the book profits shall be adjusted by the amount of adjustment mentioned in 6) above.

Accordingly, the amount transferred to the OCI on convergence date (barring the amounts stated above) will be chargeable to the MAT over a period of 5 years beginning with the year of convergence and in each year $1/5^{th}$ of the said amount will be added to the book profits.

For the purpose of making applicable adjustment to book profit under this section, in case of demerger, the difference in the book value, of the property and liability, recorded in the books of the demerged company and the resulting company, shall be ignored.

Extension of Period for Carry Forward of MAT / AMT

The existing provisions of section 115JAA allows carry forward of MAT credit for 10 years from the end of the AY in which such MAT credit becomes allowable. The proposed amendment intends to extend the time period, for carry forward of MAT credit, from 10 years to 15 years. Similar

amendment has also been made under section 115JD in respect of Alternative Minimum Tax Credit.

Foreign Tax Credit

MAT Credit in case of claim of Foreign Tax Credit

As per the existing provisions of section 115JAA, the MAT credit is computed by taking the difference of the tax payable as per section 115JB and the tax payable as per normal provisions of the Act. The impact of foreign tax credit had been ignored for the purpose of computing the MAT credit u/s 115JAA.

The Central Board for Direct Taxes ("CBDT") vide Notification No. SO 2213(E) [NO.54/2016 (F.NO.142/24/2015-TPL)] dated 27-06-2016 inserted Rule 128, wherein it was notified that where the foreign tax credit u/s 90, 90A or 91 computed on the tax payable u/s 115JB, is more than that computed on the tax payable under the normal provisions of the Act, the excess foreign tax credit shall be ignored for the purpose of computation of MAT credit u/s 115JAA. Hence, the excess amount of foreign tax credit shall be deducted from the MAT credit computed under the provisions of section 115JAA. An illustration of the Rule 128 is given in the following table:

Particulars	Normal Provisions of the Act	Section 115JB
Income/Book Profits	0	100
Tax	0	20
Foreign Tax Credit available	0	5
Excess Foreign Credit	-	5 (5-0)
MAT credit u/s 115JAA (Before Rule 128)	-	20 (20-0)
MAT credit available for carry forward (The excess amount of foreign tax credit shall be reduced from the MAT credit computed)	-	15 (20-5)

From the above, it can be noticed that before insertion of Rule 128, the MAT credit allowed to be carried forward was Rs. 20 and the foreign tax credit available for set off was Rs. 5. After the insertion of Rule 128, the amount of MAT credit is restricted to Rs. 15 and the foreign tax credit available for set off remained Rs. 5. Hence the cumulative benefit available to the taxpayer is Rs. 20 as against Rs. 25 available before the insertion of Rule 128. Accordingly, with the insertion of Rule 128, the double benefit of Rs. 5 available to the taxpayer has been eliminated.

The proposed amendment to section 115JAA intends to incorporate the above Rule 128 in

the provisions of section 115JAA. Similar amendment has also been made under section 115JD in respect of Alternative Minimum Tax Credit.

Credit for 'disputed' foreign taxes

Section 155 has been proposed to be amended to provide mechanism for grant of foreign tax credit in case of an assessment or intimation / deemed intimation under Section 143(1) in which credit for income tax paid in any country or specified territory outside India referred to in Section 90, 90A or 91 has not been given on the grounds that such payment is under dispute and such dispute is settled subsequently.

In such a case, if the assessee furnishes to the Assessing Officer, the evidence of settlement of dispute along with the evidence of payment of tax (with an undertaking that no credit of such tax has been directly or indirectly claimed or shall be claimed in any other AY) within six months from the end of the month in which the dispute is settled then, the AO shall grant such credit by amending the Assessment Order or intimation/ deemed intimation under Section 143(1) and the same shall be treated as Rectification under Section 154 of the Act. The said amendment has been proposed in line with Rule 128(4) of the Income Tax Rules, 1962.

The said credit shall be allowed only in the AY in which the said income is offered to tax or is assessed to tax in India. The said provision will provide relief from double taxation in cases where the income has become doubly- taxed due to disputes relating to the said tax payment in the country or specified territory outside India.

Start Up

Relaxation to Eligible Start-ups from erosion of Tax Losses in case of change in Shareholding

The existing Section 79 of the Act 'restricts' carry forward and set-off of losses of a closely held company in case where there is a change in shareholding beyond 50 % of the shareholding of the year in which the subject loss was incurred. . The proposed Section 79 intents to liberalise such restrictions in case of Eligible Start-ups by proving that there would be no restriction to carry forward or set off losses, even in case of substantial change in shareholding. The only condition is that all the shareholders holding voting shares as on the last date of the year of occurrence of loss, continue to be hold those voting shares on the last date of the year of intended set-off of such loss. This benefit is available for losses that have occurred within 7 years from the year of incorporation. Hence, as a likely unintended consequence, although there would be no implication u/s 79 in case of

substantial change in shareholding, it may be triggered even when a single shareholder (howsoever nominal) transfers even 1 share in the company.

Further, there seems to be a drafting error which may lead to unintended consequence. Section 79 'restricts' loss in certain cases – hence, it is a restrictive provision. The wordings of Section 79(b), which is applicable to the eligible start-ups, are not restrictive, but rather it is positive in nature (i.e. an enabling provision). Apart from that, it is a non-obstante provision. The consequence is that rather than imposing restrictions, Section 79(b) 'enables' carry forward and set off of losses, even when they may not be available under other provisions of the Act that deal with carry forward and set off. For example, it would become possible to claim losses that are wiped off due to belated filing of return, losses expired due to lapse of time, loss that cannot be set off against a particular head of income, etc.

Increase Extension of period of start-ups

In order to provide a conducive environment for technology-based start-up ventures, the Finance Act, 2016 introduced section 80-IAC which allows a profit-linked deduction of 100% to eligible start-up companies / LLP for 3 consecutive years out of the first 5 years upon incorporation of the start-up, subject to fulfilment of certain conditions.

As new start-up would generally have lower profit or loss in initial years, it may not be possible for such start-up to take full benefit of such deductions in initial years. Accordingly, the Bill proposes to amend this section whereby now the start-up can opt to claim such deduction for 3 consecutive AYs out of 7 years period from the date of incorporation.

Accounts & Audit

Revision in threshold for maintenance of books of accounts

As per the existing provisions of Section 44AA of the Act every assessee except person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette is required to maintain the books of accounts where income from business or profession in case of existing business unit exceeds Rs. 1,20,000 or the turnover or receipt exceed Rs. 10,00,000 in any one of the three immediately preceding FYs. Further in case of newly setup business entity it is required to maintain books of accounts where the income is likely to exceed Rs. 1,20,000 or the turnover or gross receipts are likely to exceed Rs. 10,00,000.

In case of taxpayer being individual or HUF, the above thresholds are proposed to be revised to Rs. 2,50,000 and Rs. 25,00,000 respectively instead of Rs. 1,20,000 and Rs. 10,00,000. The same shall be effective from FY 2017-18.

Rationalization of Audit requirement

The existing provision of section 44AB of the Act, provides that every person carrying on the business is required to get his accounts audited if the total sales, turnover or gross receipts in the previous year exceeds one crore rupees. The threshold limit for applicability of presumptive taxation in case of eligible business carried on by an eligible person under section 44AD was increased to two crore rupees from one crore rupees with effect from Assessment year 2017-18 by Finance Act, 2016. While the persons

governed by presumptive taxation were not required to maintain books of accounts but corresponding amendments in the mandatory audit requirements were not carried out.

Accordingly, vide press release dated 20th June, 2016, it was clarified that if an eligible person opts for presumptive taxation scheme as per section 44AD(1) of the Act, he shall not be required to get his accounts audited if the total turnover or gross receipts of the relevant previous year does not exceed two crore rupees.

The said clarification has now been brought to the statute book to provide that the eligible person, who declares profits for the previous year in accordance with the provisions of sub-section (1) of section 44AD and his total sales, total turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year, it would be excluded from requirement of audit under section 44AB.

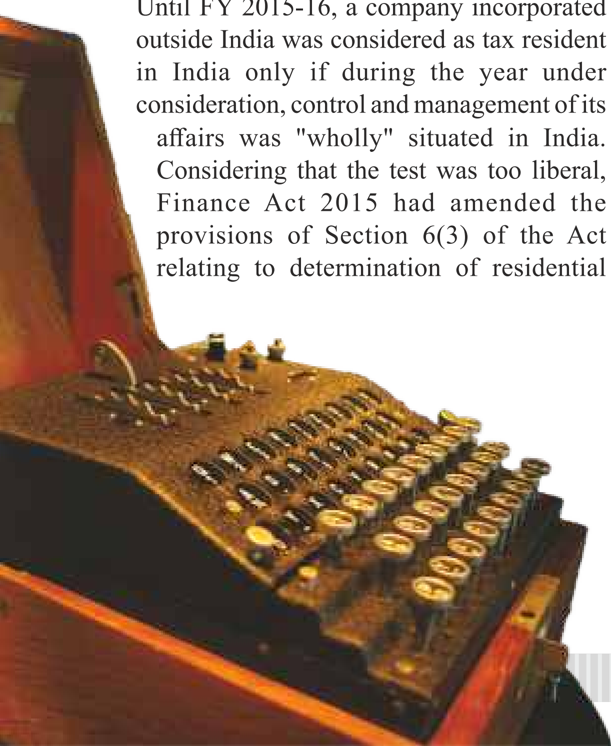
This amendment will apply in relation to the AY 2017-18 and subsequent years.

Non-Resident Taxation

Residential Status of Foreign Companies

Guiding Principles on determination of Place of Effective Management

Until FY 2015-16, a company incorporated outside India was considered as tax resident in India only if during the year under consideration, control and management of its affairs was "wholly" situated in India. Considering that the test was too liberal, Finance Act 2015 had amended the provisions of Section 6(3) of the Act relating to determination of residential status of Companies, which would be effective from AY 2017-18 (FY 2016-17). As per the said amendment, a company is to be considered as resident if (i) it is an Indian Company or (ii) its place of effective management, during the year, is in India.



Place of Effective Management (POEM) has been defined as a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance, made. With a view to provide more clarity, CBDT has issued guiding principles for determination of POEM on January 24, 2017.

No amendments are proposed in the Bill effectively triggers POEM from FY 2016-17 (which the business community at large was

expecting to be deferred). With guidance on POEM provided very recently, we have included our comments on this concept covering the latest guidance by CBDT.

It may further be mentioned that with the amendment proposed in Section 90 / 90A and since in most Indian treaties the term 'Place of Effective Management' is not defined, the definition given in the Act and explanation on such definition provided by CBDT in the Circular would also be taken into account for determination of POEM under Indian treaties. Thus, in most cases where under the Act, the company is determined to have POEM in India, it would also qualify as having POEM in India under tax treaties.

The guiding principles clarify that determination of POEM is a factual exercise and POEM should be determined based on facts and circumstances considering the principle of 'substance over form'. For determination of POEM, companies are broadly categorised into companies engaged in active business outside India and companies not engaged in active business outside India. The broad idea is that companies engaged in active business outside India should generally be considered as resident outside India and be subject to liberal tests, whereas companies not engaged in active business outside India should be subject to detailed examination and stringent tests for determination of their POEM.

POEM of companies having active business outside India would thus be presumed to be outside India if majority of the Board of Directors ("BoD") meetings are held outside India. In other words, if total number of BOD meetings held outside India exceed the number of meetings held in India, POEM shall be presumed to be outside India. However, considering that POEM is to be determined in light of the principle of substance over form, the guiding principles provides that if the powers of BoD are exercised by other persons, POEM shall be determined taking into consideration the residence of such other persons and not merely based on the place of BoD meetings.

A company shall be considered as company engaged in active business outside India if based on average data for the previous year and two preceding years (or tax accounting years of the company ending in the respective previous years, if tax accounting years in its country of incorporation differ from April to March), its –

- Passive income does not exceed 50% of its total income;
- Assets situated in India constitute less than 50% of its total assets;
- Number of employees situated in / resident of India is less than 50% of total number of employees of the Company; and
- Payroll expenses on employees situated in / resident of India is less than 50% of total payroll expenditure incurred by the Company.

Passive income is defined as aggregate of royalty, dividend, capital gains, interest (except in case of banks and public financial institutions), rental income and income from transactions where both purchase and sale of goods is from / to Associated Enterprises.

Determination of POEM of companies not meeting the test of active business outside India shall involve identification of "persons" actually making key decisions and determination of "place" where such

- Location of head office of the company i.e. its senior management personnel such as MD, CEO, CFO, COO, heads of various other departments, etc. and their support staff
- In case where head office is decentralised / located at multiple places, where do senior management persons normally return to following travel to other locations or meet when formulating or deciding key strategies and policies for the company as a whole

To summarize, in line with the definition of POEM, the guiding principles lay emphasis on place where

- key management and commercial decisions
- necessary for the conduct of the business of an entity as a whole
- are, in substance, made

The key management and commercial decision are concerned with broader strategic and policy decision whereas and operational decisions relate to the oversight of the day-to-day business operations and activities of a company. Accordingly, place where key management and commercial decisions are taken is more important than place of implementation of these decisions and place of operational level decisions. In light of the same, location of BoD, executive committees, head office, etc. would be relevant whereas location of operational level management would not be much relevant. Similarly, the location of day-to-day operations of the Company would not be much relevant in determination of POEM.

In line with the intention to cover shell companies under this provision, the guiding principles emphasize that POEM would be determined based on the principle of "Substance over form". Accordingly, it may be possible that if the board meetings are conducted in and minutes are signed in Country X, but decisions are in substance taken in Country Y, Country Y be considered as POEM.

Considering that determination of POEM is a factual exercise, it is provided that in case Assessing Officer ("AO") proposes to initiate proceedings for treating a foreign company as resident of India based on its POEM, AO shall require prior approval from Principle Commissioner / Commissioner. Similarly, prior approval of a collegium of three members consisting of the Principal Commissioners or the Commissioners will be required before the AO proposes to hold that a foreign company has POEM in India and is thus resident of India.

The concept of POEM is internationally recognised and used in most Indian DTAAs as tie breaker rule. Further, the amendment was proposed with a view to align provisions of the Act with DTAAs and other international standards. However, it may also be noted that the phrase has different interpretations world-wide. Also, the interpretation in Indian context would slightly vary from OECD's commentary on Article 4 of the Model Tax Convention on Income and Capital, which, apart from location of BoD meeting and location of CEO and senior executives also considers place where the senior day-to-day management of the company is usually carried on as a relevant factor for determination of POEM.

Determination of POEM would be a fact driven exercise and hence cannot be

completely free from subjectivity, however, the guiding principles try to provide detailed guidance and give more clarity on the approach in determination thereof.

Capital Gains

Long Term Capital Gains on Unlisted Securities

Finance Act 2012 had amended Section 112 of the Act reducing rate of tax on long term capital gains arising to non-residents on sale of unlisted securities from 20% to 10% with effect from AY 2013-14. Further, for the meaning of the expression 'securities', the Act referred to the definition of securities as provided under Securities Contract (Regulation) Act, 1956.

Since Securities Contract (Regulation) Act is not applicable to private limited companies, there was ambiguity as to whether or not 'unlisted securities' referred to in Section 112 could cover shares of private limited company. Accordingly, there were views that non-residents should be liable to tax on long term capital gain on sale of shares at the rate of 20% and that the concessional rate of 10% may not be available to them. To remove the ambiguity, Finance Act 2016 amended the provisions of Section 112 to provide that non-resident will be liable to tax at the rate of 10% on long term capital gains arising on transfer of unlisted securities and or shares of a company not being a company in which the public are substantially interested. However, since these provisions were effective from April 1, 2017, the uncertainty for the period between AY 2013-14 to AY 2016-17 continued. Accordingly, the Bill proposes to make the amendment introduced by Finance Act 2016 retrospectively from the AY 2013-14 itself and thus, the benefit of concessional tax rate of 10% would be available to the non-resident from the AY 2013-14 without any ambiguity.

Indirect Transfer

A person is taxable in India in respect of income which accrues or arises to him in India or income which is deemed to accrue or arise to him in India or an income which is received or deemed to be received by him in India. Sub-section (1) of Section 9 deems specified income to accrue or arise in India and includes income arising from assets located in India. Finance Act, 2012 provided a deeming fiction to treat shares, held in overseas entities that derives its value substantially from assets located in India, to be located in India with retrospective effect. Subsequently, Finance Act, 2015 prescribed certain monetary thresholds to determine the cases in which the share or interest is deemed to derive its value substantially from the assets located in India. By virtue of this, if there is a transfer of such shares by any person, capital gains derived from such transfer would be taxable in India since the 'assets (i.e. the shares) are deemed to be located in India.

Such an amendment has significantly increased the scope of taxation of share transfers arising outside India in the hands of every Non-Resident taxpayers having shares or interest in a company which derives its value substantially from the assets located in India. Explanation 7 provides exception to a small investor having less than 5% of the total voting power or total share capital in a company

and not holding any right of management or control in a company (which derives its value from assets located in India with certain conditions prescribed therein).

The existing provisions covers in its ambit, the investors selling shares or interest in a fund set up outside India to carry out portfolio or investment activities in India by way of pooling monies from various investors despite the fund is registered as FPI under SEBI regulations and pays taxes as per the provisions of section 115AD of the Act or applicable tax treaty rates and thereby it results into multiple taxation subject to relaxation provided under the provisions of Explanation 7. The CBDT circular No. 41 of 2016 also clarifies the same principles. This has caused undue hardship to the investor who had invested in the funds like FII which itself is liable to tax in India under the provisions of section 115AD.

Therefore, an amendment is proposed in Section 9 to provide that 'Indirect Transfer' provisions shall not apply to an asset or capital asset held by a non-resident as an investment in a Foreign Institutional Investor ('FII'), as referred to in clause (a) of the Explanation to section 115AD and registered as Category – I or Category – II foreign portfolio investor ('FPI') under the SEBI (FPI) Regulations, 2014.

Owing to the proposed amendment, the income in the hands of a non-resident, from the transfer of shares or interest held as an investment in a FII, referred to in section 115AD which is registered as Category – I or Category – II FPI under the SEBI (FPI) Regulations, 2014 is not considered to be deemed to accrue or arise in India.

Foreign Institutional Investments

Mere presence of Fund Managers not to constitute Business Connection

Finance Act 2015 had introduced Section 9A, removing the ambiguity on a long-debated matter and clarifying that the offshore funds will not be considered (i) to be resident in India or (ii) to be having business connection in India, merely due to presence of fund manager in India, subject to fulfilment of various conditions by the offshore funds and the fund managers.

One of the conditions applicable to the funds to be considered as eligible investment fund for Section 9A is that the monthly average of the corpus of the fund should be equal to or more than one hundred crore rupees. Considering that funds may face difficulty in fulfilling this condition in the year of winding up, the Bill provides that this condition will not be applicable in case of a fund which is wound

up during the year. The amendment is proposed to be with retrospective from AY 2016-17 i.e. the year of introduction of Section 9A.

Terms not defined in DTAA

Definition as per Act, when not defined in the Agreement

Section 90 of the Act provides relief in respect of double taxation, avoidance of double taxation, exchange of information and recovery of income tax based on agreement entered into by the Central Government with Government of any country outside India or specified territory outside India.

Section 90A of the Act provides relief in respect of double taxation, avoidance of double taxation, exchange of information and recovery of income tax based on agreement entered into by any specified association in India with any specified association in specified territory outside India.

Sub-Section 3 of the said Section(s) provides that in case a 'term' is not defined in the Act or in such Agreement, then the said term will have the same meaning as assigned to it in the notification issued by the Central Government in this behalf. The same stands true unless the same is inconsistent with the provisions of the Act or context requires otherwise.

The Bill proposes to insert Explanation which provides that in case where the term is defined in the Agreement then it shall have the same meaning as assigned to it in the Agreement. However, where the term is not defined in the Agreement, but defined in the Act, the same shall have the same meaning as assigned to it in the Act and explanation given to it by the Central Government.

While Article 3(2) of OECD Model Tax Convention provides for similar aid for interpretation of tax treaties (and majority of Indian treaties include such provision), the requirement of contextual definition is not found in the proposed Explanation. For interpretation of any Agreement, contextual meaning or definition is a pre-requisite even if not mentioned in the law. This could lead to some amount of litigation in this regard.

This amendment could have a major impact on interpreting various terms used in the Agreement but not defined there e.g. place of effective management. The said amendment shall take effect from AY 2018-19.

Exemption

Exemption of income of Foreign Company from sale of leftover stock of crude oil

Section 10(48A) was introduced by the Finance Act, 2016 to provide for exemption of any income accruing or arising to a foreign company on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India, if the said storage and sale is pursuant to an agreement or an arrangement entered into by the Central Government; and having regard to the national interest, said foreign company and the said agreement or arrangement are notified by the Central Government in that behalf.

Given the strategic nature of the project benefitting India to augment its strategic petroleum reserves, it is proposed to insert a new clause (48B) in section 10 so as to provide that any income accruing or arising to a foreign company on account of sale of

company on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India, if the said storage and sale is pursuant to an agreement or an arrangement entered into by the Central Government; and having regard to the national interest, said foreign company and the said agreement or arrangement are notified by the Central Government in that behalf.

Given the strategic nature of the project benefitting India to augment its strategic petroleum reserves, it is proposed to insert a new clause (48B) in section 10 so as to provide that any income accruing or arising to a foreign company on account of sale of leftover stock of crude oil, if any, from a facility in India after the expiry of an agreement or an arrangement referred to in clause (48A) of section 10 of the Act shall also be exempt subject to such conditions as may be notified by the Central Government in this behalf.

Transfer Pricing

Domestic Transfer Pricing

Rationalization of Domestic Transfer Pricing Provisions

The provisions of Specified Domestic Transactions ('SDT') are contained in section 92BA. In the case before Supreme Court ('SC') with respect to dispute pertaining to determination of profits of a unit eligible for incentive, the SC faced the issue of determining the price at which the transactions were carried out by such unit with another ineligible unit. Treating SC's observation in case of GlaxoSmithkline as a guidance, the Government introduced SDT effective from AY 2013-14 albeit with expanded scope to include transactions covered by Section 40A(2)(b). Section 40A(2)(b) covers the transaction of expenditure in respect of which payment has been made by the assessee to certain specified persons.

As a matter of compliance and reporting, every person who has entered into SDT shall prepare contemporaneous Documentation covering detailed requirements of Rule 10D and obtain a report in Form 3CEB from a Chartered Accountant by providing details such as list of related parties, nature and value of SDT, method used to determine the arm's length price ('ALP') and positions taken with regard to certain transactions not considered as SDT. However, a monetary threshold has been prescribed wherein, if aggregate of all such transactions do not exceed Rs. 20 Crores, the transactions are not regarded as SDT. Regardless of the monetary threshold, the introduction of SDT has considerably increased the compliance burden on the many taxpayers.

As a matter of fact, the transactions covered by Section 40A(2)(b) in most cases were tax neutral as most of the business enterprises were subjected to similar level of headline rate of tax (subject to some variation in surcharge). Thus, it did not provide for any tax arbitrage possibilities and thus it had little to do as an anti-tax avoidance means. In this

context, it was more of a huge compliance exercise (coupled with unnecessary litigation time and cost involvement by the assessee as well as the revenue) with almost negligible revenue generation due to tax neutrality.

Therefore, to reduce the compliance burden on the taxpayer, the Bill has proposed to amend the section 92BA so as to exclude the transactions of expenditure in respect of which payment has been made to a party referred to in section 40A(2)(b) from the ambit of SDT. Thus, the only transactions that are now covered in the ambit of SDT are pertaining to the transactions undertaken by the units claiming profit-linked tax holidays. Effectively, the scope of SDT now actually focuses to target tax arbitrage possibility and thus is now being viewed in proper perspective.

It may not be out of place to mention that the proposed amendment will over the years gradually phase out the SDT itself from the transfer pricing regulations once profit-linked tax holidays comes to an end.

The amendment will take effect from April 1, 2017 and will accordingly, apply in relation to the AY 2017-18 and subsequent years.

Secondary Adjustment on Primary Adjustment to Transfer Price

As per Section 92 of the Act, income arising from an international transaction / specified domestic transaction ("SDT") is to be computed having regard to the arm's length price. Accordingly, where such transactions are not entered at arm's length price as defined in Section 92C of the Act, a transfer pricing adjustment is made to the income of the tax payer ("assesse"), unless the adjustment leads to decrease in taxable income or increase in losses. Such transfer pricing adjustment is called 'Primary Adjustment' to transfer price of the international transaction / SDT.

The Bill proposes that in certain specified cases of such primary adjustment, the transfer price should be adjusted not only for tax purpose but also commercially. Accordingly, it is proposed that when a primary adjustment is made to taxable income of the assesse, a corresponding secondary adjustment should also be made between the assesse and its Associated Enterprise ("AE") in their books of accounts to ensure that books of accounts reflect arm's length price as the transaction value or transfer price.

The provisions relating to secondary adjustment are proposed to be applied in cases where the primary adjustment is –

- made *suo moto* by the assessee in his return of income; or
- made by the Assessing Officer and accepted by the assese; or
- determined by an advance pricing agreement entered into by the assese; or
- made as per the safe harbour rules; or
- arising as a result of mutual agreement

- procedure under a double taxation avoidance agreement.

Further, the Bill proposes that where a primary adjustment is made to transfer prices, the assessee should recover the amount of difference between arm's length price and original transfer price i.e. the amount of primary adjustment from AE. Such amount of adjustment should be recovered from the AE and repatriated to India within prescribed timeframe, failing which, it will be deemed as if the assesse has provided advance to its AE and accordingly imputed arm's length interest at prescribed rate on such advance would be considered as income of the assessee.

For example, Assessee Company A has sold goods to its AE Company B for Rs. 100 crores and Arm's length price of the goods sold to AE is determined to be Rs. 150 crores. In such case, a primary transfer pricing adjustment of Rs. 50 crores will be made and taxable income of Company A will be increased by Rs. 50 crores. Further, Company A will be required to charge to and recover Rs. 50 crores from Company B within prescribed time. In case Company A does not recover balance sales value of Rs. 50 crores, the same will be deemed as advance provided by Company A to Company B and a notional interest (at prescribed rate) will be computed on such advance and added to taxable income of Company A.

While the requirement of secondary adjustment in books of accounts is proposed only in specified cases, where the primary adjustment may not be much disputed, the requirement of repatriation of amount of primary adjustment within prescribed time limit appears to be applicable to all cases of transfer pricing adjustments.

It may not be out of context to mention that restating the books as per arm's length result would increase the accumulated profit for the purpose of dividend u/s. 2(22) of the Act and hence would also impact Dividend Distribution Tax as and when the dividends are declared out of such profits. Restatement of profits in books of account and deemed grant of advance to the AE on a combined reading could also trigger implication of 'deemed dividend' u/s. 2(22)(e) depending upon facts of the case.

These provisions are proposed to be applicable in cases of primary transfer pricing adjustments in respect of AY 2017-18 or subsequent years. These provisions would be applicable in case of international transactions wherein amount of primary adjustments exceed one crore rupees and should not affect adjustments in case of SDT. The timeframe for recovery of adjustment to transfer price and interest rate on failure to do so is yet to be prescribed.

The concept of secondary adjustment is internationally recognised by various countries. Organisation for Economic Co-operation and Development also recognises and discusses the concept of secondary adjustments in detail at Para C.5 of its Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

Legislative History

Tax Avoidance is the legal utilisation of the tax regime to one's own advantage, to reduce the amount of tax that is payable by means that are within the law. Tax evasion on the other hand is a situation where efforts are made to evade taxes by illegal means. The pretended reality of a transaction may be different from its legal and economic reality. This situation is a borderline between tax avoidance and tax evasion. Both tax avoidance and tax evasion represent tax non-compliance and activities which are unfavourable to a country's tax system.

"Every man is entitled, if he can, to order his affairs, so that the tax attaching under the appropriate Act is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow tax gatherers may be of his ingenuity, he cannot be compelled to pay an increased tax." Lord Tomlin observed in IRC v. Duke of West Minister on Tax Avoidance.

The Act contain several specific anti-avoidance regulations (SAAR) e.g. Transfer pricing, Safe Harbour, Bonus / Dividend striping, Thin Capitalization, etc. to deal with situation of tax avoidance and to some extent tax evasion. SAAR identify a specific potential misuse or unintended use and provide for rules restricting the benefits or denying the availability of benefits of certain provisions in certain cases. However, it does not give power to tax authority to ascertain the intent of the parties behind any taxable transaction and merely seeks to lay down specific conditions subject to which benefits may be allowed or not allowed.

The emphasis of GAAR as contrast to SAAR is to test business and commercial substance of a transaction for taxing the economic reality of the transaction by way of look through approach. As India, did not have a codified GAAR, most anti-avoidance principles were based on judicial precedents. To address aggressive tax planning and tax avoidance, GAAR provisions were originally first proposed to be introduced as part of the Direct Tax Code (DTC).

However, the Finance Act, 2012 enacted GAAR provisions under the Act even prior to implementation of DTC, much to the anguish of various stakeholders, to be effective from AY 2014-15 onwards.

The then Finance Minister, Hon'ble Pranab Mukharji, therefore, constituted an Expert Committee under the chairmanship of Dr. Parthasarathi Shome known as Shome Committee. The Shome Committee submitted its recommendations on GAAR provisions. Consequently, GAAR provisions were amended by Finance Act, 2013 to reflect some of the recommendation of Shome Committee. Significantly, its application was restricted to the arrangements which have the main purpose (as opposed to one of the main purposes, as provided for in 2012 provisions) of tax benefit and its applicability was deferred to AY 2016-17.

Thereafter, the implantation of GAAR was further reviewed at the time of enactment of Finance Act, 2015. It was decided to defer the applicability of GAAR provision for further two years. Accordingly, GAAR provisions are now applicable from AY 2018-19 onwards. Rules for this purpose are also notified. While there were expectations of

further deferral, absence of any changes in GAAR provisions effectively kicks that in a silent mode.

Applicability

The substantive provisions relating to GAAR are contained in Chapter-X-A (consisting of section 95 to 102) of the Act. The procedural provisions relating to mechanism for invocation of GAAR and passing of the assessment order in consequence thereof are contained in section 144BA. Further, Rules (10U to 10UC) were also notified by the CBDT on applicability of GAAR provisions.

GAAR provision empowers the tax authority to declare any arrangement entered into by him to be an *impermissible avoidance arrangement* and the consequences in relation to tax arising therefrom shall be subject to provision of Chapter X-A.

Impermissible avoidance arrangements

an arrangement would be treated as impermissible avoidance arrangement ("IAA") if it fulfils following conditions:

1. Main purpose of such arrangement is to obtain a tax benefit **and**

2. such arrangement falls within any of the following situations;

   a) arrangement has created rights and obligations which are not ordinarily created between the parties dealing at arm's length,

   b) the arrangement results in misuse or abuse of provisions of the Act,

   c) the arrangement lacks commercial substance or is deemed to have lacked commercial substance in whole or in part;

   d) is entered into in a manner which are not ordinarily employed for bona fide purposes.

Tax benefit includes;

(a) a reduction or avoidance or deferral of tax or other amount payable under this Act

(b) an increase in a refund of tax or other amount under this Act

(c) (a) & (b) above as a result of applicability of tax treaty

(d) a reduction in total income

(e) an increase in loss

in the relevant previous year or any other previous year.

The primary onus is on the tax-department to prove that the arrangements is IAA.

However, if the main purpose of a step in, or a part of, the arrangement is to obtain a tax benefit, then notwithstanding the fact that the main purpose of the whole arrangement is not to obtain a tax benefit, an arrangement shall be presumed to have been entered into, or carried out, for the main purpose of obtaining a tax benefit. In such situation, the assessee is required to prove that the main purpose of the whole arraignment is not to obtain tax benefit.

It is worth noting that in a case where the entire arrangement may not satisfy any of the conditions above, one of the steps in or part of the arrangement may fall within the above mischief. In such an event that part or step in the arrangement may be treated as IAA and the consequences in relation to tax shall be determined with reference to such part of arrangement only.

Therefore, if there is a genuine investment flowing into a country, but if a person has used an investment vehicle for obtaining tax benefit, the action of choosing the investment vehicle can be treated as IAA. This can cause serious difficulties in many cases.

Lacking Commercial Substance

As per section 97(1) of the Act, an arrangement or any part thereof may be considered to be lacking commercial substance if it falls within any of the followings situations;

- The substance of the arrangement, as a whole, contrasts its form.
- It involves "Round Trip Financing", "an Accommodating Party", elements that have effect of offsetting each other, or any transaction which disguises the main subject matter, such as, its value, location, source, ownership, control, etc.
- The residence / location of the party / transaction / asset is such which has been chosen specifically for obtaining tax benefits and not commercial benefits.
- It does not have a significant effect upon the business risks or net cash flows of any party to the arrangement apart from any effect attributable to the tax benefit

While determining whether a transaction lacks commercial substance or not, following may be relevant but shall not be sufficient factors

- The period or time of the arrangement,
- tax payments under the arrangement;
- the provisions for exit routes under the arrangement

Accommodating Party means a party whose main purpose of direct or indirect participation is to obtain a tax benefit for the assesse. An Accommodating Party need not be a related party.

Exception

GAAR provisions shall not apply in following cases -

1. Any income accruing or arising to any person from transfer of investment made up to 31 March 2017. However, other

investment income (other than income by way of transfer of such investment) arising on such investment shall be subject to GAAR provisions.
2. An arrangement where the tax benefit in the relevant AYs arising to all the parties taken together does not exceed Rs.3 Crores.
3. FII, being an assessee under the Act, who has not taken any tax treaty benefit and has invested in listed securities, or unlisted securities with the permission of the competent authority in accordance with SEBI regulations/such other regulations as may be applicable to such investment.

4. Non-Resident person in relation to investment in offshore derivative instruments or otherwise in FII.

Treaty Override

Section 90 / 90A specifically provides that GAAR provisions shall override all the provisions of the Act and may be applied even where the same is not beneficial to the assessee. Thus, the explicit intention of the Government is to apply GAAR provisions ignoring treaty benefits available to the assessee. The power of Central Government to unilaterally amend domestic law providing for treaty override is a question that would surely come up for consideration in the courts. This will also have to be seen in context as to genesis to treaty benefits i.e. whether it flows from the Constitution of India or from Section 90 / 90A of the Act.

Consequences

If any arrangement is considered as IAA, it can have either of the following consequences.

- The whole of the IAA or any part therein can be disregarded / re-characterized / combined.
- Treating the IAA as if it had not been entered into or carried out.
- Considering substance over form in case of related persons / disregarding accommodating parties or by treating the persons as one and the same.
- Reallocation and re-characterization of revenue or capital accruals / receipts / expenses / deductions / reliefs or rebates.
- Relocation of the place of residence / situs of asset or transaction at a place / location other than that provided under the IAA
- Lifting the corporate veil by application of the "Look Through" approach to the IAA.
- Re-characterization of equity and debt
- Where part of an arrangement is declared to be an IAA, the aforesaid consequences in relation to tax shall be determined with reference to such part only and not for the whole arrangement.

Assessment Procedure

Reference to Commissioner

Procedure for declaring any arrangement of the assessee as IAA and process of tax assessment is summarized as under:

- If, on the basis of material or information available with the AO, at the time of making an assessment / re-assessment, the AO is of the view that the provisions of GAAR are applicable, then a reference is required to be made to the Commissioner by the AO.
- Before making the reference, the AO shall issue a notice in writing to the assessee seeking objections, if any, to the applicability of GAAR provisions.
- If Commissioner, after considering the reference from the AO, is satisfied that GAAR provisions are not

required to be invoked, he shall issue directions to the AO within one month from end of the month in which reference is received by him.

- However, if Commissioner is of the view that provisions of GAAR are attracted then the Commissioner is required to issue a notice to the assessee stating reasons and basis for such an opinion, giving time, not exceeding 60 days to the assessee to file its objections.
- If the assessee fails to file its objections, then the Commissioner himself can treat the arrangement as IAA and is required issue direction to the AO within one month from the end of the month in which the notice of the Commissioner requires compliance on the part of the assessee. The AO, thereafter, is required to complete the assessment, in pursuance of such direction of the Commissioner.
- If the assessee files objections, then the Commissioner is required to give an opportunity of being heard to the assessee. Upon hearing the assessee, the Commissioner may drop the proceedings if he is satisfied about the explanation given by the assesse, by issuing directions in this regard within a period of two months from the end of the month in which final submission of the assessee has been received by the Commissioner. He shall also communicate the same to the assessee.
- However, if the Commissioner is of the view that GAAR provisions shall be invoked, then he shall make reference to the Approving Panel within two months from the end of the month in which final submission of the assessee has been received by the Commissioner.
- Time commencing from the date on which the AO makes a reference to the Commissioner, up to the date on which opinion is received from either Commissioner or the Approving Panel, as the case may be, is excluded for computing the period of limitation for completing assessment.

Reference to Approving Panel

The Central Government is empowered to constitute one or more Approving Panels. Each Panel consists of (a) Chairperson who is or has been a judge of a High Court (b) One member being an IRS not below the rank of Chief Commissioner of Income Tax; and (c) One member being an academic or scholar having special knowledge in direct taxes, business accounts and international trade practices.

The Approving Panel on being referred the matter, after examining all the records and information relevant in the matter, shall issue directions for either declaring the arrangement as IAA or otherwise as it deems fit.

The Approving Panel is empowered to collect evidence, conduct enquiries including requiring the income tax authority to make further enquiry. The Approving Panel is required to provide reasonable opportunity of being heard to the assessee and to the AO if the proposed direction is prejudicial to the interest of the assessee or the revenue, as the case may be.

Upon such reference, after giving opportunity of being heard to the assessee & the AO, the Approving Panel is required to give its opinion, within a period of 6 months from end of the month in which reference is made to the Panel.

In case of difference of opinion on any point, the view of the majority of the members of the Approving Panel shall prevail.

The directions of the Approving Panel shall be binding on assessee, the Commissioner as well as the income tax authorities subordinate to him. No appeal under the Act shall lie against such directions.

Upon receipt of the order of the AO in accordance with the directions of Approving Panel, the assessee may file an appeal directly before the Income Tax Appellate

Tribunal U/s. 253 of the Act.

CBDT Clarifications on GAAR

Considering the nature of such harsh provisions, stake and industry association expressed various concerns over the invocation of GAAR provisions and how to deal with GAAR in certain situations. In response thereof, CBDT formed a Working Group in June 2016.

CBDT, after considering the comments of the Working Group, has given certain clarifications in question-answer form on GAAR provision vide its Circular No.7/2007 dated 27 January 2017. CBDT has clarified that;

- Provision of GAAR and SAAR can co-exist and are applicable, as may be necessary, in the facts and circumstances of the case. There is no express clarification by CBDT that when SAAR is applicable, GAAR shall not be invoked.
- If the anti-abuse provision in tax treaty sufficiently deals with the situation of tax avoidance, GAAR shall not be invoked in such case
- GAAR shall not apply to any arrangement held as permissible by Authority for Advance Ruling
- GAAR shall not apply to an arrangement where tax implication thereof has been explicitly and adequately considered by the Court while sanctioning such arrangement.
- If the location of the SPV or FPI is finalised based on non-tax commercial considerations and the main purpose of the arrangement is not to obtain tax benefit, GAAR shall not apply. GAAR shall not be invoked merely on the ground that the entity is located in a tax efficient jurisdiction.
- GAAR will not take away the right of the taxpayer to decide or choose method of implementation a transaction.
- Grandfathering (Non-applicability of GAAR provision) in respect of income arising from transfer of investment made before April 1, 2017 shall also applicable in respect of shares brought into existence by way of split or consolidation of holdings or by bonus issues in respect of shares acquired prior to April 1, 2017 in the hands of same investor

- Benefit of grandfathering is restricted to only "investment" i.e. assets held for earning dividend, interest, rentals and for capital application. Lease contracts and loan arrangement are therefore not subject to benefit of grandfathering.
- Assessee is free to decide to claim tax benefit either under tax treaty or under domestic law whichever is beneficial to him on year on year basis. GAAR provision shall not be invoked to challenge the same.
- Being anti-avoidance provisions, if any tax consequences has been determined under GAAR in the hands of one assessee, no corresponding adjustment shall be allowed in the hands of other assessee.
- For invocation of GAAR, tax benefit enjoyed by all parties in Indian Jurisdiction for each AY due to IAA shall be aggregated to compute threshold limit of Rs.3 Cr.
- If an arrangement is held as permissible in one year, GAAR shall not be invoked for that arrangement in subsequent year provided facts and circumstances remain same.

Further it is interesting to see as how the tax authority deals the situation where there is a transfer of some assets, risks and function in tax favourable jurisdiction to a company having substance of doing business and the transactions satisfy the test of "transfer pricing" under the Act though such business restructuring was only motivated towards getting tax benefit. Ideally, GAAR should not apply in such circumstance, where the entire structure has substance; and is backed by arm's length pricing of transactions, as also accepted by OECD's TP guidelines. This could be an area of stiff litigation, which the CBDT should clarify at the earliest.

Conclusion

GAAR enables wide powers in the hands of tax department to disregard any business arrangement of taxpayers if it lacks commercial substance & the main motive of such arrangement is to obtain tax benefit. The very 'generality' of GAAR to see substance over a form makes it grey and uncertain. The onus of proving that the transaction is not entered into primarily for tax benefit would be on the taxpayer. This would put enormous burden on the taxpayers.

India is now one of the fastest growing market where every part of the world would like to have its shares. In such a situation though GAAR provisions are essential to deal with the situation of aggressive/abusive tax planning and tax avoidance scheme, the fear of taxpayer lies in invocation of GAAR by tax authority in cases of genuine tax planning as available under the Act. Coming time will decide how the tax authority and judicial system will further draw a line between a tax planning and tax avoidance and to decide the level of substance to treat an arrangement as permissible tax planning under the Act.

Base year for Computation of Capital Gain

As per the Act, while computing capital gain arising on transfer of long term capital asset, the benefit of indexation is to be given while computing the cost of acquisition of capital asset. The base year for computing of such capital gain is 1st April 1981. The Act further provides that for computing capital gains in respect of an asset acquired before 1st April 1981, the assessee has been allowed an option of either to take the fair market value of the asset as on 1st April 1981 or the actual cost of the asset as cost of acquisition at his option.

The base year of computing of capital gain has become more than 30 years old. The assessee faces genuine hardship in computing the capital gains in respect of capital assets mainly immovable property acquired before 1st April 1981 in view of insufficient of relevant information & comparable instances prevailing at that point in time to compute the fair market value.

Accordingly, the Bill proposes to amend section 55 by shifting the base year for calculation of indexation from 1st April 1981 to 1st April 2001. Accordingly, for the purpose of computing the indexed cost of acquisition of property acquired before 1st April 2001, the assessee can take either its actual cost or its fair market value as on 1st April 2001. Further for computing the indexed cost of improvement of such asset, any cost of improvement incurred by the assessee before 1 April 2001 shall be ignored.

The index of FY 2001-02 is 4.26 times as comparted to index of base year 1980-81. Accordingly, the aforesaid amendment would be beneficial to an assessee where fair market value of its property as on 1 April 2001 is more than 4.26 times as compared to its cost/fair market value as on 1 April 1981. Effectively any appreciation in value of capital asset up to 1st April 2001 is out of the purview of capital gain tax.

Holding period in case of Immovable Property

Long term capital gains carry concessional treatment like indexation, lower rate of tax, etc. as oppose to short term capital gains. Currently, for capital gains to be treated as long term, immovable properties have to be held for period of 3 years, whereas the said requirement is 2 years in case of unlisted shares and securities (and 1 year in case of listed shares and securities).

It is proposed to reduce requirement of holding period of immovable property to 2 years to be regarded as long term capital asset. Therefore, capital gains on Land and Building held for more than 2 years will be considered as long-term capital gains.

Deemed Consideration in case of Transfer of Unquoted Shares

It is proposed that the Fair Market Value [FMV] of unquoted shares of an Indian company will be deemed to be the full value of consideration received on its transfer if actual consideration is less than the Fair Market Value [Section 50CA]. Computation of FMV is yet to be prescribed.

Interestingly, there is no consequential amendment proposed u/s 49 for deeming the FMV as the cost of acquisition in the hands of the acquirer. This might lead to an

unintended consequence of lack of increase in cost of acquisition even after payment of tax on such increased gains.

This proposal is applicable in the case of transfer of unquoted equity as well as preference shares and transfer by any assessee (whether individual or firm or company or trust). It also includes quoted shares in certain circumstances. This provision is not applicable to instruments like Convertible Debentures.

Currently, the case of inadequate consideration received on transfer of shares is dealt with by Section 56(2)(viia) of the Act which is likely to be replaced with the proposed amendment u/s 56(2)(x). Section 50CA deals with gains to the seller and 56(2)(x) deals with gains (in the form of gift) in the hands of the purchaser. In absence of a consequential amendment u/s 49, this would lead to taxation of the same gain 3 times and hence computation of a fair price satisfying both provisions becomes crucial.

Restriction on Exemption of long term capital gains tax u/s 10(38)

Section 10(38) provides for exemption from tax in respect of income arising out of transfer of long term capital asset being equity shares or units of equity oriented mutual fund if such transfer is subject to Securities Transaction Tax (STT) under Chapter VII of the Finance (No.2) Act, 2004.

Existing provision of section 10(38) does not provide any condition that STT should have been paid at the time of acquisition of shares transferred in order to claim exemption at the time of sale of such shares subsequently.

In cases where no STT is paid at the time of acquisition of shares, long term capital gain on transfer of such shares is exempt u/s 10(38) where STT is paid on such transfer at the time of sale. However, proposed insertion of new proviso to section 10(38) provides that long term capital gain on transfer of equity shares will not be eligible for exemption u/s 10(38) when no STT is paid at the time of acquisition of shares.

In order to avoid misuse of provision of section 10(38) by certain persons for declaring their unaccounted income as exempt long term capital gain, proposed amendment has mandated applicability of section 10(38) only in case where STT is paid at the time of acquisition of such shares. This provision will take effect from AY 2018-19 onwards.

Accordingly, long term shares acquired in off-market and its sells over recognized stock exchange (where STT is paid on transfer) is subject to tax and provision of section 10(38) cannot be applied.

However, to protect the exemption for genuine cases where the Securities Transactions Tax could not have been paid like acquisition of share in IPO, FPO, bonus or right issue by a listed company, acquisition by non-resident in accordance with FDI policy of the Government etc., it is also proposed to notify transfers for which the condition of chargeability to Securities Transactions Tax on acquisition shall not be applicable.

Immovable Property for Development

As per the existing provisions of section 45(1) of the Act, gains rising from transfer of capital assets shall be chargeable to tax in the year in which transfer took place irrespective of the year in which consideration thereof has been received by the transferor.

In case of development of real estate project, the owner at times, allows possession of the property to a developer for construction of real estate project and in consideration thereof the owner gets share in the newly constructed property. Sometime the development agreement may provide the developer to pay certain consideration in cash and balance by way of share in new constructed property. In such type of an agreement, to decide the year of transfer of property and manner of computation of full value of the consideration received in the hands of the owner is litigative.

The tax department in many cases has taken a view that the year of taxability of capital gain in such transaction should be the year in which the owner hands over the property to the developer and effectively transfers the ownership thereof. This creates a genuine hardship on the part of the assessee to discharge the tax liability even where no consideration in cash or in kind is received from the developer in the year of transfer.

To bring about clarity in respect of the taxation and also remove hardship to the seller for discharging his tax liabilities, the Bill proposed to provide that in case of transfer of land or building under a specified agreement by an individual or HUF, the capital gain arising on transfer of such land or building shall be chargeable to tax in the year in which the competent authority issues completion certificate of whole or part of the project.

For the purpose of computation of capital gain in the hands of the transferor, the stamp duty value in respect of share of the transferor in a newly constructed property on the date of issuance of such completion certificate shall deemed to be full value of consideration in addition to the consideration, if any, received in cash.

With this amendment the controversy with respect to the year of taxability and computation of the full value of consideration received as a result of transfer both are sought to be put at rest.

However, if the owner of the land or buildings transfer his shares in such project on or before the issue of completion certificate, the capital gain arising to the owner (as computed without applying the proposed provision) shall be chargeable to tax in the year in which the owner transfer his share in the project.

Rupee Denominated Bonds

Last year Reserve Bank of India permitted Indian Corporates to issue rupee denominated bonds outside India (also known as Masala Bonds) as a measure to enable the Indian Corporates to raise funds from outside India. In order to encourage the non-residents to invest in Rupee Denominated Bonds, Finance Act 2016 came up with amendment in section 48 providing for exemption on capital gains to the extent it is on account of

appreciation of rupee against the foreign currency at the time of redemption. The benefit was earlier restricted to those cases where the bonds are initially subscribed and redeemed vis-à-vis bonds that are transferred and then redeemed by the transferee. It is proposed to broaden the scope of beneficial provision to transferees i.e. those who are not initial subscribers.

Further, transfer of such bonds between two non-residents outside India shall not be considered as 'transfer' and thus will not trigger any tax implication.

Tax Neutrality of Conversion of Preference Shares into Equity Shares

Conversion of bond or debentures into shares (equity or preference) is exempt from capital gains tax. However, currently, there is no similar provision exempting conversion of preference shares into equity shares. Hence, Conversion of Preference Shares into Equity is considered to be a taxable event. This was a subject matter of litigation in cases like HC's decision in 'Trustees of H.E.H. The Nizam's Second Supplementary Family Trust' [102 ITR 248] where it was held that such conversion is an 'exchange' and hence, it constitutes a 'transfer'. Further, there are transfer pricing cases where there are disputes relating to the determination of arm's length price in case of conversion.

It is proposed to provide an exemption in case of such conversion of preference shares into equity shares [Section 47(xb)]. Consequential amendments are proposed in Section 49 and Section 2(42A) - holding period at the time of transfer of such equity shares will include the holding period of the original preference shares and the cost of acquisition of such preference shares will be deemed to be the cost of acquisition of such converted equity shares.

This is a welcome proposal which would remove ambiguity and the consequent litigations in case of optionally and compulsorily convertible preference shares

Consolidating Plan of a Mutual Fund Scheme

Clause (xix) of Section 47 was inserted by Finance Act 2016 for providing an exemption to a unit holder in case of transfer due to the merger of different plans of mutual fund within a scheme.

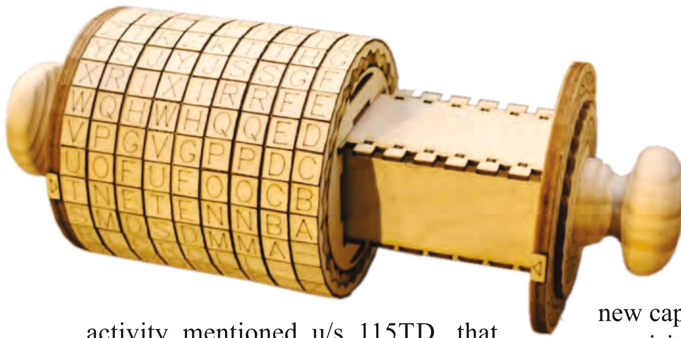
The current Bill has proposed consequential amendments in Section 49 and Section 2(42A) - holding period at the time of transfer of the units of the merged plan will include the holding period of the units in the pre-merged plan and the cost of acquisition of the pre-merged plan's units will be deemed to be the cost of acquisition of the merged plan's units.

Cost of Acquisition in case of Demerger of Foreign Company

Section 47(vic) provides exemption in case transfer of Indian company's shares as a consequence of demerger of a foreign company to another foreign company. While Section 47 provided tax neutrality, no corresponding provision in Section 49 was made to consider cost of original assets as the cost basis for the new assets. This has been rationalized now by an amendment in Section 49 to provide that the cost of acquisition of the shares post such demerger will be the same as its pre-demerger cost.

Cost of Acquisition in case of Accredited Income of Trust

An amendment has been proposed in relation to a trust or an institution undertaking an



activity mentioned u/s 115TD, that results in taxation of accredited income of such trust/institution. It is proposed that in such situation, the cost of acquisition will be the fair market value of such trust/institution's assets.

Companies eligible to issue bonds u/s. 54EC

Under the existing provision of section 54EC, an exemption from tax to the extent Rs.50 Lakhs in respect of capital gains arising from the transfer of a long-term capital asset is provided to the extent of the gains invested in a long-term specified asset. Currently long-term specified asset includes bonds issued by the National Highways Authority of India (NHAI) and the Rural Electrification Corporation Limited (REC).

In order to expand the scope of raising funds for other important sectors in addition to power sector, the Bill proposes to amend section 54EC by including any other bond as may be notified by the central government for the purpose of making investment to claim exemption under section 54EC. Such bond has been redeemable only after three years.

Tax incentive for the development of capital of Andhra Pradesh

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

With a view to providing relief to an individual or Hindu undivided family who was the owner of such land as on 2nd June, 2014, and has transferred such land under the land pooling scheme notified under the provisions of Andhra Pradesh Capital Region Development Authority Act, 2014, it is proposed to insert a new clause (37A) in section 10 to provide that in respect of said persons, capital gains arising from following transfer shall not be chargeable to tax under the Act:

(i) Transfer of capital asset being land or building or both, under land pooling scheme.

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

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

This amendment will take effect retrospectively, from April 1, 2015 and will, accordingly, apply in relation to the AY 2015-16 and subsequent years.

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

Personal Taxation

Set-off of Loss from House Property

Section 71 of the Act contains the provisions with respect to set-off of loss from one head against income from another head. As per the existing provisions of section 71, the loss from the House Property can be set off against income from any other head without any restrictions. However, this provision was misused to reduce taxable income by declaring losses under the head 'Income from House Property' claiming deduction in respect of interest paid on borrowings of such property but showing lower or nominal rentals. Therefore, the amendment proposes to restrict allowance of loss under the head 'Income from House Property' to Rs. 200,000 (i.e. loss allowable in respect of single self-occupied property).

Deduction for Contribution to NPS for self-employed

The existing provisions of section 80CCD provides that employee or other individuals shall be allowed a deduction for amount deposited in National Pension System trusts (NPS) upto10% of salary in case of employee and the contribution made by his employer is also allowed up to 10% of the salary thus taking total contribution up to 20% of the salary. While as in case of Self-employed individual the deduction is allowed only up to 10% of its gross total income.

To bring the parity between the self-employed and employed individual the upper limit is increased to 20 % of gross total income in case on self-employed individual.

Tax exemption to partial withdrawal from National Pension Scheme

As per existing provision of section 10(12A), payment received by an employee from National Pension System (NPS) trust on closure of his account or opting out shall be exempt up to 40% of total amount payable to him.

It is proposed to insert new provision to grant further relief to provide exemption on partial withdrawal not exceeding 25% of the contribution made by an employee. However, the exemption would be available only if such partial withdrawal is in accordance with the terms and conditions specified under Pension Fund Regulatory and Development Authority Act, 2013 and regulations made there under.

Sunset Clause for Rajiv Gandhi Equity Savings Scheme

Under existing provision of Section 80CCG, deduction up to Rs. 25,000 is allowed for three consecutive years for investment made in listed equity shares or listed units of an equity oriented fund by a resident individual. Currently, Rajiv Gandhi Equity Savings Scheme has been notified for the said purpose. The sunset clause has been introduced in Section 80CCG whereby deduction would be available only in respect of investment made on or before March 31, 2017.

Deduction u/s. 80G on Cash Donations

Under current provision of section 80G deduction was not allowed in respect of donation paid through cash more than Rs. 10,000. In order to demotivate donation in cash, deduction will not be allowed if it is paid through cash exceeding Rs. 2,000.

Compliance and Procedures

Search & Seizure

Validity of authorization of Search u/s 132

The provisions of section 132(1) contemplates the existence of the circumstances mentioned in clauses (a) to (c) of sub-section (1) of section 132 and in the event, the competent authority mentioned in clauses (a) and (b) of sub-section (1) of section 132 get authorization to exercise action to conduct the search. Thus, existence of reason u/s 132(1) is condition precedent before exercising valid search. If the existence of reason to believe in consequence of the information in possession of the Department about existence of the reason to believe is not satisfied, the said search u/s. 132 cannot be said to be valid search.

It has been witnessed in various judicial pronouncements that the Assessee has been challenging the validity of the assessment proceeding initiated in pursuance of search u/s 132 before the Appellate authority mainly on the premise that since authorization to conduct search based on reason to believe u/s. 132(1) does not exist, search becomes invalid. The Appellate authority have gone into the root of the mater in all such cases to decide the issue of validity of the search. The moot question therefore needs to be addressed in such scenario is whether the Assessing Authority making the Assessment of total income in accordance with the provision of the Act in pursuance of notice issued u/s 153A or 153C can have jurisdiction to decide the validity of search or not.

As per the existing provision of the Income Tax Act 1961, the Appellate authority is vested with the power to make the Assessment. The power although are vast, yet, the initiation of search by issue of warrant of authorization is not a subject matter of the assessment. The assessing authority cannot go into such questions and, consequently, the appellate authority which has to look into the validity of the assessment order, cannot question the validity of the search. The aggrieved person has a remedy to

approach the High Court for any action which is either based on no material or insufficient material.

In order to clarify this proposition, an amendment is proposed in section 132 whereby it has been clarified that the reason to believe, as recorded before authorizing search u/s132(1) shall not be required to be disclosed to any person, or any authority or Appellate Tribunal. It is important to note that the amendment has been made with retrospective effect from 1st Day of April, 1962. Though the present government is affirmed on their promise of not to bring any retrospective amendment in the Act yet it can be regarded as administrative move. In view of the above amendment, the issue of validity of search on the ground of lack of reason to believe pending before any appellate authority will stand nullified.

Similarly, amendment is also moved by way of Explanation in sub section (1A) to restrain the prescribed Income Tax Authority from disclosing reasons to suspect based on which jurisdiction was exercised to take action in accordance with the 132 of the Act to any person, any authority or Appellate tribunal.

Similar amendment is also made in the provision of 132A dealing with the requisition of Assets wherein also the prescribed Income Tax Authority is now not required to disclose reasons to any person, authority or Appellate Tribunal.

The position of law that the High Court can go into the question of validity of search and can call for the reasons to believe / reasons to suspect remains unaltered even after the proposed amendment.

Provisional attachment of property during Search

Under the existing regime of section 132, unless and until the case is centralised and transferred to jurisdictional Assessing Officer to make the Assessment, the Income Tax Authority exercising jurisdiction u/s 132 has no power to pass any order to provisionally attach property of the searched person despite unaccounted income is unearthed during search operation.

As per the existing provision of section 281B, only the Assessing office has power to pass order u/s 281B of the Income Tax Act 1961 to provisionally attach property. Accordingly, amendment to section 132 is made and new sub-sections (9B) to (9D) are introduced. In view of this amendment, the authorized person defined u/s 132 after recording reason and with previous approval can pass order to provisionally attach the property belonging to the Assessee. The provisional attachment of property can be done in the following manner;

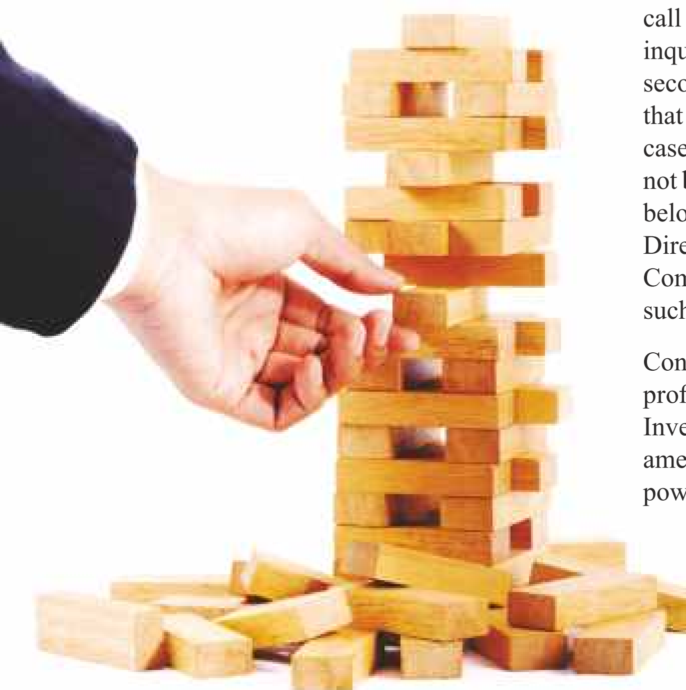
- The authorized office is required to record reason in writing before exercising power u/s 132(9B). The authorized office is also required to take prior approval of the Pr. Director or Director General before passing such order.
- Every attachment made u/s 132(9B) is valid till 6 months.
- In order to determine the fair value of the property, the authorized officer can refer the valuation to the valuation officer in accordance with the provision of 142A.

Powers for Information Collection

Scope of Survey u/s. 133A expanded

As per the existing provision of section 133A, Survey can be conducted only at the place from which the business or profession is carried on.

The amendment proposes to enlarge the scope of Survey and include in its ambit the activities carried out by Trusts which are charitable in nature. The proviso to section 2(15) of the Act states that the object of advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity.



Over the last few years, there have been cases where the Trusts are carrying on business activities under the garb of charitable activities. In order to enlarge the scope of Survey to evaluate in substance the real nature of activities undertaken by the Trust, the proposed amendment to section 133A provides that a survey can be conducted at the place from where charitable activities are being carried out.

Power to call for information u/s. 133

The existing provisions of section 133 empower certain income-tax authorities to call for information for the purpose of any inquiry or proceeding under the Act. The second proviso to the said section provides that the power in respect of an inquiry, in a case where no proceeding is pending, shall not be exercised by any income-tax authority below the rank of the Principal Director or Director or the Principal Commissioner or Commissioner without the prior approval of such authorities.

Considering the requirement of the work profile of the authorities working in the Investigation Directorate, it is proposed to amend the said section and provide that the power in respect of inquiry or proceeding

under the Act, as referred to in clause (6) of the said section, may also be exercised by the Joint Director, the Deputy Director and the Assistant Director without seeking prior approval of higher authorities.

Centralized issue of notice

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

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

This amendment is proposed keeping in mind the proposal to large scale of issue of notices post demonetisation for the large cash depositors in the bank accounts.

Return of Income

Mandatory Return of Income

The Bill proposes to amend sub-section (4C) of section 139 of the Act which require following entities to file return of income if the total income chargeable to tax without allowing exemption u/s 10 exceeds maximum amount not chargeable to tax,

- Any person referred to in section 10(23AAA)
- Investor Protection Fund referred to in section 10(23EC) or 10(23ED)
- Core Settlement Guarantee Fund referred to in section 10(23EE)
- Board or Authority referred to in section 10(29A)

Reduced Time Limit for Revising Return

The Bill proposes to amend sub-section (5) of the said section to provide that the time for furnishing of revised return is reduced to the end of the relevant AY or before the completion of assessment, whichever is earlier. This amendment is in consonance with the reduction in the time limits for completing the assessments.

Delay in Filing of Return

Presently in case of failure to furnish tax return before the end of the relevant AY, the AO can levy penalty of Rs.5,000 under section 271F of the Act. Such levy of penalty is discretionary and further the same cannot be levied in case the assessee proves that there was reasonable cause for the said failure.

In order to ensure that return is filed within due date, it is proposed to insert a new section 234F in the Act to provide that a mandatory fee for delay in furnishing of return shall be levied for AY 2018-19 and onwards in a case where the return is not filed within the due dates specified for filing of return under sub-section (1) of section 139. The proposed fee structure is as under:

a) a fee of Rs. 5,000 shall be payable, if the return is furnished after the due date but on or before the 31st day of December of the AY;

b) a fee of Rs. 10,000 shall be payable in any other case.

c) in a case where the total income does not exceed five lakh rupees, it is proposed that the fee amount shall not exceed Rs. 1,000.

In view of above, it is proposed to make consequential amendment in section 140A to include that in case of delay in furnishing of return of income, along with the tax and interest payable, fee for delay in furnishing of return of income shall also be payable.

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

The provisions of section 271F in respect of penalty for failure to furnish return of income shall not apply in respect of AY 2018-19 and onwards.

Assessment

Search Assessments

Under the existing scheme of search assessments, an Assessing Officer is required to issue notice u/s. 153A in respect of each AY falling within six AYs immediately preceding the AY relevant to the previous year in which such search is conducted or requisition is made. Generally during the course of search some unaccounted income in the form of investment in land, immovable property, jewellery, money, bullion is unearthed. In most of the cases it was pleaded that since the asset found during the course of search was acquired prior to the 6 years period, the same cannot be made a subject matter of search assessment.

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

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

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

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

It may be noted that the conditions stated above are cumulative in nature. In case any one of the condition is not satisfied the extraordinary jurisdiction of reopening of the case beyond the period of 6 years cannot be exercised. Further, it is the onus of the AO to prove with tangible evidence that it is required to reopen a case beyond the period of 6 years. The notice u/s. 153A cannot be issued based on assumptions and presumptions.

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

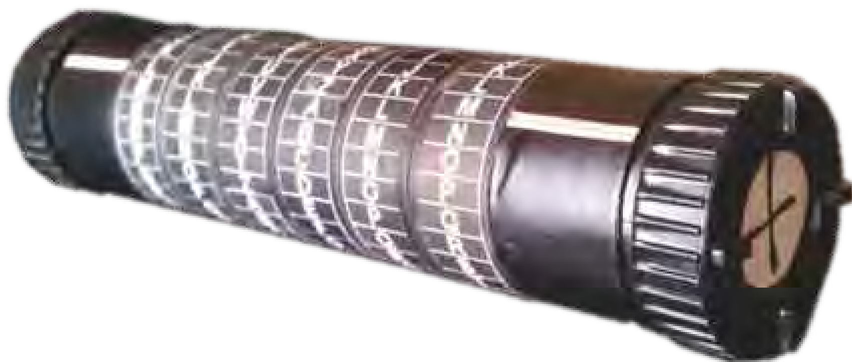
It is also proposed to consequentially amend section 153C to provide a reference to

therelevant AY or years as referred to in section 153A. These amendments will take effect from lst April, 2017.

Time limit for completion of Search Assessments

The Bill proposes to amend the time limit for framing assessments u/s. 143(3), 147 etc. by making an amendment in section 153A of the Act. On similar lines the time limit for search assessments is also rationalised and consequentially amendments are proposed in section 153B of the Act. The existing time limit as prescribed u/s. 153B and the amended time limits are as under:

Nature of Assessment	Existing Time Limit	Revised Time Limit	Remarks
Cases of assessments u/s. 153A	21 months from the end of the FY in which last authorisation for search u/s. 132 or requisition u/s. 132A was executed	18 months from the end of the FY in which last authorisation for search u/s. 132 or requisition u/s. 132A was executed	For AY 2018-19
		12 months from the end of the FY in which last authorisation for search u/s. 132 or requisition u/s. 132A was executed	For AY 2019-20 Onwards
Cases of assessments u/s. 153C	21 months from the end of the FY in which last authorisation for search u/s. 132 or requisition u/s. 132A was executed Or 9 month from the end of FY in which books of accounts or documents or assets seized or requisition are handed over to AO whichever is later	18 months from the end of the FY in which last authorisation for search u/s. 132 or requisition u/s. 132A was executed Or 12 month from the end of FY in which books of accounts or documents or assets seized or requisition are handed over to AO whichever is later	For AY 2018-19
		12 months from the end of the FY in which last authorisation for search u/s. 132 or requisition u/s. 132A was executed Or 12 month from the end of FY in which books of accounts or documents or assets seized or requisition are handed over to AO whichever is later	For AY 2019-20 Onwards



Time Limit of passing Assessment / Re-assessment

Under the Act, sections 153 provide different time limits for completion of different types of assessments viz. regular assessment, reassessment, etc. and also in cases where reference to the Transfer Pricing Officer is made.

As per the existing provisions all the time barring assessments were getting completed on 31st December each year which was amended by Finance Act, 2016. The existing time limits and the proposed time limits are as under.

<table>
<tr><th>Nature of Assessment</th><th>Existing Time Limit</th><th>Revised Time Limit</th><th>Remarks</th></tr>
<tr><td rowspan="2">U/s 143(3), 144</td><td rowspan="2">21 months from the end of the AY</td><td>18 months</td><td>For AY 2018-19</td></tr>
<tr><td>12 months</td><td>For AY 2019-20 Onwards</td></tr>
<tr><td rowspan="2">Cases of assessments u/s. 143(3) where reference is made u/s. 92CA</td><td rowspan="2">33 months from the end of the AY</td><td>30 months</td><td>For AY 2018-19</td></tr>
<tr><td>24 months</td><td>For AY 2019-20 Onwards
For AY 2018-19</td></tr>
<tr><td>U/s 147</td><td>9 months from the end of the FY in which notice for reassessment is served</td><td>12 months</td><td>For notice served on or after 01-04-2019</td></tr>
<tr><td>Cases of re-assessment where reference is made u/s. 92CA</td><td>21 months from the end of the FY in which notice for re-assessment is served.</td><td>24 months</td><td>For notice served on or after 01-04-2019</td></tr>
<tr><td>Fresh Assessment in pursuance of order u/s 254 (ITAT), section 263 (Revision) or section 264 (Revision by Assessee)</td><td>9 months from the end of the FY in which respective order is received / passed.</td><td>12 months</td><td>For an order passed or received on or after 01-04-2019</td></tr>
<tr><td>Order giving effect to order u/s 250, 254, 260, 262, 263 or 264</td><td>3 Months from the end of the month in which order is received / passed.
In circumstances beyond control of AO and on request of AO, the period can be extended up to further period of 6 months.</td><td>Not changed</td><td>None</td></tr>
<tr><td>Order giving effect to order u/s 250, 254, 260, 262, 263 or 264 which requires verification of any issue by way of submission of document by the Assessee or any other person or where an opportunity of being heard is to be provided</td><td>-</td><td>12 months</td><td>For an order passed or received on or after 01-04-2019
(This amendment is proposed to be inserted w.e.f. 1-4-2016)</td></tr>
</table>

Further, the Bill has proposed to amend sub-section (9) of the section 153 as under:

In a case where notice u/s 142(1) or 143(2) or 148 has been issued prior to 01-06-2016 and the assessment or reassessment has not been completed by 01-06-2016 due to exclusion of time referred to in Explanation 1, such assessment or reassessment shall be completed in accordance with the provisions of section 153 as it stood immediately before its substitution by the Finance Act, 2016. The amendment is retrospective with effect from 01-06-2016.

Notice for Assessment of 'Income Escaping Assessment'

Finance Act 2016 had introduced 'Income Declaration Scheme 2016 ("IDS")' with effect from 1st June, 2016, as a single compliance window to enable persons with undisclosed income and assets to make voluntary disclosure and become compliant.

Under the scheme, assessees were required to declare any undisclosed income that accrues, arises or is received by the assesse or where any asset is acquired out of such undisclosed income prior to the commencement of IDS 2016 i.e. prior to 1st June, 2016. The Act provides time limit for issuance of notices and completion of assessments and reassessments. Income that has escaped assessment can be subject to tax under the provisions of the Act only within such period of limitations.

In order to enable tax authorities to assess undisclosed income that has escaped assessments but relates to years beyond the period of limitation, Section 197(c) of Finance Act 2016 provided that where such undisclosed income / asset is not declared by the assesse under IDS 2016, such income shall be deemed to accrue / arise / be received or such asset shall be deemed to be acquired by the assessee in the year in which Assessing Officer issues notice under Section 142(1), 143(2), 148, 153A or 153C to the assessee. The same was also addressed by the CBDT vide its Circulars (Circular No. 24 of 2016 dated June 27, 2016 and Circular 27 of 2016 dated July 14, 2016), clarifying that while this provision contradicts period of limitations provided in the Act, it should prevail as the law introduced latter in time should prevail.

Another ambiguity arising out of this provision was that if the income is deemed to accrue / arise, say for example, in the FY (previous year) in which notice under Section 148 is issued by the Assessing Officer, assessee cannot be considered as non-compliant as due date for filing the return of income would fall in the subsequent FY (i.e. AY) and the whole proceedings would be invalidated.

Considering that these provisions of Finance Act 2016 contradict with the provisions of the Act and also lead to unintended ambiguity, the provisions of Section 197(c) are proposed to be deleted with retrospective effect from 1st June, 2016, when the same was introduced.

Refunds

Empowering withholding of refund claimed in tax return

Under the Act once an assessee files tax return, the same is processed under section 143(1) within one year from the end of the FY in which such return has been filed. Any refund arising from such processing is required to be issued to the assessee. The Finance Act, 2016 has inserted section

143(1D) wherein it has been provided that such processing of return is not compulsory where such tax return has been selected for regular assessment. However, there was no express power with the AO to withhold such refund till the completion of tax assessment.

Therefore, to empower the tax department to withhold the refund due to an assessee as claimed in return of income, the Bill proposed to new section 241A.

As per the proposed section where the AO is of the opinion that the grant of such refund before completion of scrutiny assessment is likely to adversely affect the revenue, he may for reasons to be recorded in writing and after getting approval of the Commissioner of Income Tax, withhold the refund claimed by the assessee in his tax return till the completion of assessment in respect of such tax return.

Interest on refund of TDS

Under the Act an assessee is required to deduct tax at source in accordance with various provisions contained under the Act. Sometimes there is excess deduction of TDS and in payment as in view of interpretation issues or otherwise. In such situation, the deductor can claim refund of such excess TDS while filing TDS returns in accordance with provisions of section 200A of the Act. Currently, the Act provides interest on refund of tax under section 244A of the Act. However, there is no enabling provision under the Act to grant interest on refund of TDS.

The Bill proposes to amend section 244A of the Act to grant interest on refund of TDS. As per the amended provision the deductor of tax shall be entitled to receive simple interest @ 0.5% p.m. from the date of claim of such refund in the prescribed form or from the date when tax is paid when refund is arising on account of giving effect to appellate order till date on which the refund is granted.

Tax Deducted / Collected at Source

Amendments in TDS / TCS Provisions

The Bill proposes to make several changes including insertion of new provision in relation to tax deduction/collection at source. The same is summarized as under:

Currently provision of withholding of tax on rent is not applicable to Individual or HUF

(not covered within the preview of tax audit). The Bill proposes to insert section 194-IB wherein now every individual or HUF (not subject to applicability of section 194-I) making payment of rent exceeding Rs. 50,000 per month shall require to deduct and pay tax at source @ 5% on payment of rent (20% if the payee does not have PAN) with effect from 1st June 2017.

In such case the tax in respect of each month can be deducted in the last month of the previous year or the last month of tenancy. Income tax rules will be amended to provide the time limit to deposit such tax deducted at source. The requirement of obtaining TAN is not applicable to the deductor.

Section 194-IC has been inserted to provide for deduction of tax at source @10% on the monies payable to the owner of the property in respect of redevelopment of property as covered by section 45(5A) with effect from 1 April 2017.

Payment of fees and professional services to a person engaged only in business of operation of call center is subject to lower withholding of tax @ 2% instead of 10% under section 194J of the Act. The amendment however does not define the meaning of call Centre.

Payment of compensation on acquisition of certain immovable property is subject to TDS under section 194LA of the Act. The Bill proposed to amend the said provision to provide that the said provision may not be applicable where compensation is received under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Benefit of lower withholding of tax @5% under section 194LC on specified foreign currency borrowing shall be extended to borrowing made by the Indian Company on or before 1st July, 2020. Further such provision is now also applicable in respect of money borrowed by Indian Company from a source outside India by way of issue of Rupee denominated bonds issued before 1st July, 2020. Similar amendment has been proposed in section 194LD in respect of money borrowed from FII/QFS.

In case of non-availability of PAN of receiver of income, the rate of collection of tax source shall be increased to twice the rate applicable under section 206C or at the rate of 5 percent whichever is higher as per proposed insertion of new section 206CC.

Section 206C(1F) in respect of collection of tax at source on sale of motor vehicles shall not apply if the purchaser thereof is a Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; local authority or a public-sector company which is engaged in the business of carrying passengers.

Cash sale of jewellery in excess of Rs.5,00,000 is subject to TCS. Since the Bill proposes to restrict the receipt of money in cash in excess of Rs.3,00,000, such provision becomes redundant and therefore this omitted by the Bill. The Bill however amends section 206C(1D) whereby sale of jewellery in cash in excess of Rs.2,00,000 shall be subject to provision of TCS.

The benefit of no deduction of tax at source on issuance of Form No.15G/15H shall be extended to receipt of commission income subject to provision of section 194D of the Act.

Advance Tax

Advance Tax on Presumptive Income

Under current provision of section 211 it is provided that the assessee conducting the eligible business as specified under section 44AD is liable to pay the advance tax in one single installment before 15th March of every FY.

Now the professionals who declare profits and gains in accordance with presumptive taxation regime under section 44ADA are also eligible to pay the advance tax in only one single installment before 15th March of every FY. Corresponding amendment is also made in Section 234C to levy interest only if the tax on returned income is not paid by 15th March.

Interest for Deferment of Advance Tax

Under the existing provisions tax is levied under section 115BBDA on the dividends received from the domestic companies exceeding Rs. 10,00,000. Amendment is proposed to provide that in case the shortfall in advance tax, due to under estimation or failure of estimation of dividend income, as mentioned above, then no interest under section 234C will be charged.

Penalty & Prosecution

Penalty for dealing in Cash

One of the measure recommended by Special Investigation Team formed by the Government of India on black money is to discourage generation of cash transaction. Further it is also the intention of the present government to encourage banking and digital transaction. Accordingly, the Bill proposes to insert a section 269ST prohibiting a person to receive an amount in cash.

As per the proposed section, a person shall be prohibited to receive an amount of Rs.3,00,000 or more in cash either (i) in aggregate from a person in a day or (ii) in respect of single transaction or (iii) in respect of transactions relating to one event or occasion from a person. The receipt can be done through account payee cheque, account payee bank draft or electronic clearing system, routed through bank account.

The provision of this section is however not applicable to recipient of money being a government, banking company, post office saving banks, co-operative banks or any person as specified by the central government.

In case of violation of the above provision, the Bill proposes to insert section 271DA to levy penalty equivalent to the amount of receipt of sum received in cash. It has also been provided that no such penalty can be levied if such person proves that there was a good and sufficient reasons for contravention of the above provision.

Further the acceptance of loan or deposit in excess of Rs. 20,000 in cash as well as receipt of money (including advance) in relation to transfer of immovable property in excess of Rs. 20,000 in cash is already prohibited and penalised under the Act as provided under section 269SS and 271F. Accordingly, the same has been excluded from the applicability of the aforesaid provisions.

Proposal for relaxation of penal provisions u/s 271C and 271CA.

Section 271C and Section 271CA provides for levy of penalty in case where any person fails to deduct tax at source or collect tax at

source respectively under provisions of Chapter XVII-B. In order to reduce the genuine hardship which may be faced by a person responsible for deduction and collection of tax at source, due to levy of penalty under section 271C or 271CA, it is proposed to insert reference of sections 271C and 271CA in clause (a) of sub-section (2) of Section 119 of the Act, so as to empower the CBDT to issue directions or instructions to tax department in respect of the said sections for non-levy of penalty in certain genuine cases.

Proposes to impose penalty on furnishing incorrect information

Under the Act, assessee is required to submit certificate / report of an accountants, qualified valuers or merchant bankers as provided under application provisions of the Act. e.g. Tax Audit Report, 3CEB-Report, Report of claim of profit linked deduction, valuation reports etc. The Act contains various provision to penalise the assessee for giving any incorrect information of its claim.

However, currently there is no provision for levy of penalty on the person who certifies incorrect information.

The Bill proposed to insert section 271J whereby the power has been given to Assessing Officer / Commissioner (Appeals) to levy penalty on accountants, registered valuer or merchant banker for giving any 'incorrect information' in their report or certificate issued by them. The amount of penalty is Rs. 10,000 per report/certificate.

The provision is ambiguous since it doesn't define what incorrect information refers to. For example, in case of valuation, a lot of estimates are required to be made. It is a very broad provision which doesn't differentiate facts v. estimates, negligence v. wilful misconduct and material v. immaterial incorrectness.

It is likely that there won't be any penalty on mere interpretation of law or on making estimates. Corresponding amendment proposed u/s 273B provides inapplicability of penalty if the person involved proves that there was a reasonable cause for such failure.

Taxation of Charitable Trust

Compulsory Registration in case of change / modification in objects of the Trusts

As per the current system of taxation of charitable organisations, an Assessee proposing to claim exemption u/s. 11 and 12 of the Act is required to apply for registration u/s. 12AA to the Principal Commissioner or Commissioner before the expiry of a period of one year from the date of the creation of the Trust. The registration once granted u/s. 12AA was permanent and there was no provision under the Act to apply for fresh

registration in case there was change / modification in the objects of the Trust.

Section 115TD was inserted by the Finance Act, 2016 w.e.f. 1-6-2016 to provide for taxation of accreted income of the charitable organization. One of the conditions for application of section 115TD was modification of objects which do not confirm to the conditions of registration and the organization has not applied for fresh registration u/s. 12AA in the previous year in which the modification was adopted.

Since there was no provisions under the existing system of taxation of charitable organizations to apply for fresh registration in event of adopting modification of the objects after registration is granted u/s. 12AA, the legislature by way of proposed amendment has provided that where a charitable organization has been granted registration under section 12AA or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996] and, subsequently, it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, it shall be required to obtain fresh registration by making an application within a period of thirty days from the date of such adoption or modifications of the objects in the prescribed form and manner.

Mandatory Return of Income to claim exemption under section 11 and 12

As per the existing provisions, the organizations registered u/s. 12AA are required to file return of income under sub-section (4A) of section 139, if the total

income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. There is no clarity as to whether the said return of income is to be filed within time allowed u/s 139 of the Act or otherwise.

In order to provide clarity in this regard, it is proposed to further amend section 12A so as to provide for further condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Act.

Restriction for claiming exemption in case of corpus donation to other Trust

As per the existing provisions of the Act, donations made by a trust to any other trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, except those made out of accumulated income, is considered as application of income for the purposes of its objects.

Similarly, donations made by entities exempted under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 to any trust or institution registered under section 12AA of the act, except those made out of accumulated income, is also considered as application of income for the purposes of its objects.

However, donation given by these exempt entities to another exempt entity, with specific direction that it shall form part of corpus, is though considered application of income in the hands of donor trust but is not considered as income of the recipient trust. Trusts thus, engage in giving corpus donations without actual applications.

Therefore, it is proposed to insert a new Explanation to section 11 of the Act to provide that any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1) of section 11, being contributions with specific direction shall form part of the corpus of the trust or institution, shall not be treated as application of income.

It is also proposed to insert a proviso in clause (23C) of section 10 so as to provide similar restriction as above on the entities exempt under sub-clauses (iv), (v), (vi) or (via) of said clause in respect of any amount credited or paid out of their income.

Widened scope of order passed under Section 10(23C) for Appeal to Tribunal

The existing provisions of sub-clause (f) of sub-section (1) of section 253 provide that an order passed by the prescribed authority under sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 shall be appealable before the Appellate Tribunal.

It is proposed to expand the scope of the said section to provide that the orders passed by the prescribed authority under sub-clauses (iv) and (v) of sub-section (23C) of section 10 shall also be appealable before the Appellate Tribunal.

Taxation of Political Party

Amendment in provision relating to incomes of Political Parties

As per existing provision of section 13A of the Act, any income of political parties

registered with Election Commission of India are exempt from income tax subject to condition as specified. To ensure greater transparency in political funding, following amendment has been proposed:

- Political parties cannot accept voluntary contribution more than Rs. 2,000 otherwise than by an account payee cheque or bank draft or electronic clearing system or through electoral bonds.
- Political parties shall not be required to furnish the name and address of the donors who contribute by way of electoral bond,
- Political parties are required to furnish a return of income on or before the due date as per section 139(1) of the Act in accordance with the provisions of section 139(4B) of the Act.

Pradhan Mantri Garib Kalyan Yojana

Introduction

On 8th November, 2016, the Government of India, demonetized Rs. 1000 and Rs. 500 denomination rupee notes. This move was aimed at curbing the menace of black money and combating circulation of counterfeit notes. In order to leverage the effect of demonetization and to bring to tax the undisclosed cash and undisclosed income, the government introduced Pradhan Mantri Garib Kalyan Yojana ('PMGKY') with effect from 17th December, 2016. The Scheme is available up to 31st March, 2017.

The PMGKY intends to identify and tax the undisclosed income at 49.9%, which includes tax at 30%, surcharge of 33% on such tax and penalty of 10% on the undisclosed income. It further requires the person holding the undisclosed income to deposit a sum of 25% of the undisclosed income with a bank. The Lock-in period of such deposit shall be 4 years from the date of deposit. The said deposit shall not bear any interest.

Declaration of Undisclosed Income

The Finance Act, 2016 was amended to introduce the PMGKY. Section 199A to Section 199R were inserted in the Finance Act, 2016 which encompasses the entire scheme of PMGKY.

Section 199C provides for the person, holding undisclosed income to make a declaration of cash or deposit held by such person with any bank, post office or other specified persons. Undisclosed income under the Scheme shall mean cash or deposits in bank account and it shall not include land, jewellery etc.

No deduction of expenses or set off of losses shall be allowed against such declared income. The declaration shall be made any on or after 17th December but on or before 31st March, 2017. The declaration shall be made either electronically or manually.

Unlike the Income Disclosure Scheme, 2016, the tax at 49.9% shall be paid and the deposit of 25% of the undisclosed income shall be made before filing of declaration. The proof of payment of tax and deposit of money shall be attached along with the declaration. The tax and penalty paid shall not be refundable.

The income declared in the Scheme shall not form part of the total income of any AYs. It shall not be included in the return of income of any AY. Further, a declarant under the Scheme shall not be eligible to reopen any assessment under the Income Tax Act, 1961 or claim any set off or relief in any appeal, reference or other proceedings.

Exclusions

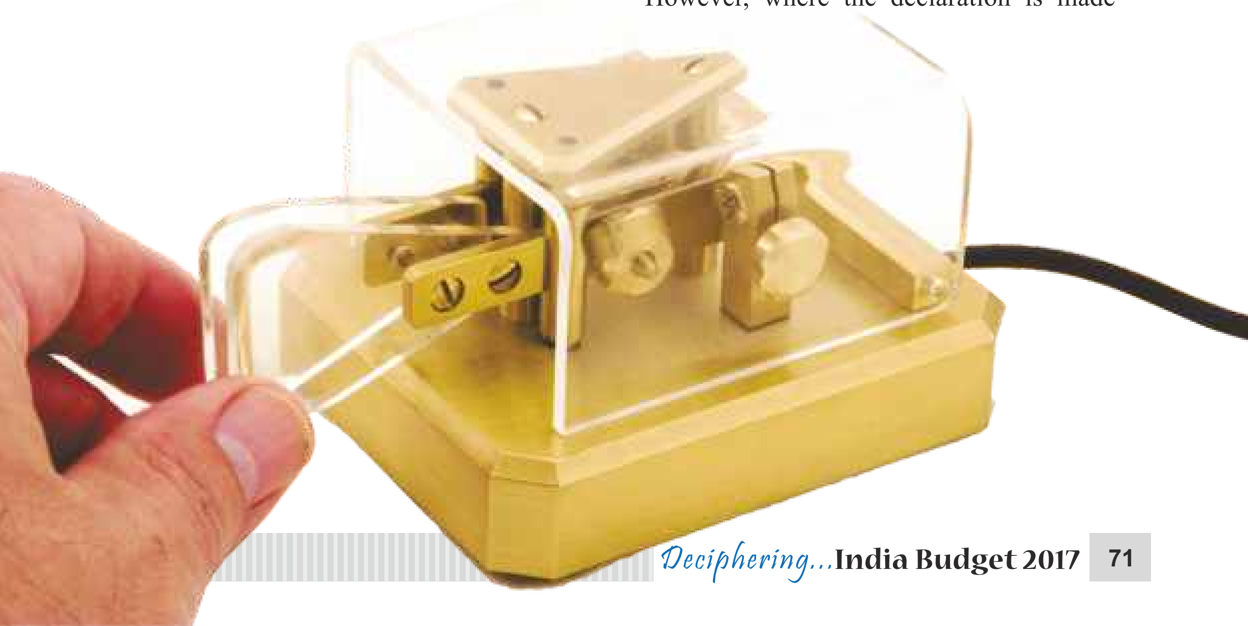
Following class of persons are excluded from making the declaration:

- Any person in respect of whom an order of detention has been made under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 subject to certain condition.
- In relation to prosecution for any offence punishable under chapter IX or XVII of the IPC, the Narcotic Drugs and Psychotropic Substance Act, 1985 and the Unlawful Activities (Prevention) Act, 1967 and the Prevention of Corruption Act 1988, Prohibition of Benami Property Transaction Act, 1988, Prevention of Money Laundering Act, 2002
- To any person notified u/s 2 of the Special Court (Trial of Offence Relating to Transaction in Securities) Act, 1992
- In relation to Undisclosed Foreign Income and Asset which is chargeable to tax under the Black Money Act, 2015

Immunity

Where a declaration is made under the Scheme, the declarant shall get an immunity from the prosecution proceedings under any Act, except the Acts mentioned in Section 199-O.

However, where the declaration is made



byway of misrepresentation or suppression of facts or without payment of tax or penalty or without depositing of 25% of the undisclosed income, such declaration shall be treated as void and shall be deemed to have never been made. Consequently, no immunity will be granted from the proceedings under other Acts.

Non-declaration of Undisclosed Deposits in the Scheme

Where any person having undisclosed income does not declare the same under the Scheme and declares such undisclosed income as part of the return of income, the undisclosed income declared in the return of income shall be chargeable to tax at 77.25% of the undisclosed income.

If the undisclosed income is not declared even in the return of the income, tax at the rate of 77.25% and penalty at 10% of such tax shall be levied. Further, penalty at the rate of 200% of the tax shall be levied u/s 270A of the Income Tax Act, 1961. Prosecution proceedings shall also be initiated in such cases.

Delineating Indirect Tax

Major Announcement

The existing rate of Service Tax remains unchanged.

Amendments

Removal from Negative List

Following services are removed from the list of Negative list (section 66D).

Services to carry out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption. as same is included/covered in mega exemption notification No. 25/2012. This amendment is in view of impending GST implementation.

Amendment in Exemption Notification 25/2012

Job work service is substituted and now defined in exemption notification to carry out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption. Therefore, the job-worker shall liable to register under the Service Tax authority. This amendment is in view of impending GST implementation.

Amendment in Finance Act, 1994

Benefit of exemption notification No. 41/2016 – ST dated 22.09.2016 is being extended retrospectively w.e.f.1st June, 2007 and ending with 21 September 2016 in case of service tax payment made for one time upfront amount (called as premium, salami, cost, price, development charges or by whatever name called) for grant of long term lease of industrial plot "30 year or more" by state Government Industrial Development undertaking to Industrial units from Service Tax. Industrial plot holders with a lease of 30 years or more can apply for refund of Service Tax, if any already paid (to GIDC/ MIDC/such other Government Industrial Development undertaking) within a period of six months from the date on which the Bill receives assent of the President.

Service tax is now proposed to be exempt for taxable services provided by the Army, Naval and Air Force Group Insurance Funds by way of life insurance to its members. Amendment is made retrospectively as a rectification. (Clause 127 of the Bill). Application for refund of service tax if paid, shall be made within six months from the date on which the Bill receives assent of the President.

Amendment in Valuation Rules

Consequent upon Delhi high court judgement regarding inclusion of value of land in service portion in construction works contract for charging service tax, this amendment proposes to exclude value of the property in land/ undivided share thereof. (w.e.f. 7 July, 2010).

Other amendment

In view of proposed repeal of Research and Development Cess Act, 1986 with effect from April 2017, exemption from service tax under notification No. 14/2012- ST would not be available to a taxable service involve in import of technology on which R & D cess is not payable.

Excise

Amendment in Central Excise Act, 1944

Advance Ruling

The amendments propose substitution of present advance ruling authority under Indirect Taxation to be merged with that under Income Tax Act, 1961. Therefore, there is now a common advance ruling authority once the finance bill is enacted.

Section 23 A - Substitute meaning of Authority. Authority means advance ruling as constituted as under Section 245-O of the Income Tax Act, 1961.

Section 23 B - Vacancies not to invalidate proceeding is being omitted

Section 23 C(3) – Application fees increased to ten thousand rupees

Section 23 D(6) –Time limit to pronounce the application is increased to six months from ninety days

Section 23 I inserted - Provides the transfer of the pending applications before the Authority for Advance Rulings (Central Excise, Customs and Service Tax) to the Authority constituted under Section 245-O of the Income Tax Act

Similar amendments are made in Customs & Service Tax Laws

Amendment in Central Excise Rule, 2002

Excise authority will decide remission of duty within three months from the date of receipt of the application. Earlier there was no prescribed time limit to decide it.

Amendment in CENVAT Credit Rules, 2004

Rule 6 – Amended to exclude banks and financial institutions including non-banking financial companies engaged the services by way of extending deposits, loans, or advances from reversal of Cenvat Credit of common Input services under this rule.

Rule 10 – Amendment proposes to limit the time for transferring the Input credit from one location to another location to three months. Earlier no time limit was prescribed. Consequently, on and from 2 February, 2017 all credit pending to be transferred to other locations of an assesse will have to be transferred before the expiry of the three months from that date.

Amendment in Customs Act, 1962

Section 7 - Empowered the Board to notify Foreign Post Offices and International Courier Terminals.

Section 17 is amended to do away with submission of following documents for assessment of bill of entry:

- Contract
- Broker's note
- Insurance policy
- Catalogue
- Other documents

The rationalization after amendment will require submission of invoice of import of goods and/or any other documents whereby customs duty can be ascertained.

Section 27- To keep outside ambit of unjust enrichment, the refund of duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made, where-

(I such excess payment is evident in the case of self-assessed bill of entry or

(ii) the duty actually payable is reflected in the reassessed bill of entry

Section 30A inserted – New procedure for arrival of passenger vessel & air craft is described in detail. Consequential amendment is proposed in Section 157

Section 41A inserted – New procedure for departure of passenger vessel & air craft is described in detail. Consequential amendment is proposed in Section 157.

Section 46(3) – Proposes to impose charges on delayed presentation of bill of entry for home consumption or warehousing.

Section 47(2) – Prescribes new method for payment of duty and interest in the case of self-assessed bills of entry or assessed, reassessed or provisionally assessed bills of entry

Simplification of processes in warehousing of imported goods, clearance of warehoused goods when exported, labelling or declaration of accompanying imported goods are proposed by amendment to Section 49, 69 & 82.

Section 127B - Enables any person, other than applicant, to make an application to the Settlement Commission. Consequential amendments are proposed in section 127C.

GST Roadmap

- There has been substantial progress towards ushering in GST, by far, the biggest tax reform since independence. Government on its part has promptly given effect to various provisions of the Constitutional Amendment Act, including constitution of the GST Council. The GST Council held 9 meetings to discuss various issues relating to GST like:
  - GST rate structure
  - threshold exemption and parameters for composition scheme
  - details for compensation to States through Compensation Law
  - examination of draft model CGST and SGST law
  - draft IGST law
  - administrative mechanism for GST
- The preparation of IT system for GST is also on schedule.

Customs Tariff

Increase in Basic Custom Duty

Sr. No.	Chapter	Commodity	Rate of Duty	
			Existing	Proposed
1	98	All parts for use in the manufacture of LED lights or fixtures, including LED lamps, subject to actual user condition	Applicable	5%
2	98	All inputs for use in the manufacture of LED Driver and MCPCB for LED lights or fixtures, including LED lamps, subject to actual user condition	Applicable	5%
3	72	Co-polymer coated MS tapes / stainless steel tapes for manufacture of specified telecommunication grade optical fibers or optical fiber cables, subject to actual user condition	Nil	10%
4	20	Cashew nut, roasted, salted or roasted and salted	30%	45%
5	84 & 85	RO membrane element for household type filters	7.50%	10%

Increase in Countervailing Duty (CVD)

Sr. No.	Chapter	Commodity	Rate of Duty	
			Existing	Proposed
1	98	All parts for use in the manufacture of LED lights or fixtures, including LED lamps, subject to actual user condition	Nil	6%
2	71	Silver medallion, silver coins, having silver content not below 99.9%, semi- manufactured form of silver and articles of silver	Nil	12.50%

Increase In Special Additional Duty (SAD)

Sr. No.	Chapter	Commodity	Rate of Duty	
			Existing	Proposed
1	84 & 85	Populated Printed Circuit Boards (PCBs) for use in the manufacture of mobile phones, subject to actual user condition	Nil	2%

Increase in limit of Duty free Import

Sr. No.	Chapter	Commodity	Rate of Duty	
			Existing	Proposed
1	98	De-minimis customs duties exemption limit for goods imported through parcels, packets and letters	Duty payable not exceeding Rs. 100 per consignment	CIF Value not exceeding Rs. 1000 per consignment
2	98	Limit of duty free import of eligible item for manufacture of leather footwear or synthetic footwear or other leather products use in the manufacture of said goods for export	3% of FOB value of said goods exported during the preceding FY	5% of FOB Value of said goods exported during the preceding FY

Increase of Export Duty

Sr. No.	Chapter	Commodity	Rate of Duty	
			Existing	Proposed
1	26	Other aluminum ores, including laterite	Nil	15%

Decrease in Basic Custom Duty

Sr. No.	Chapter	Commodity	Rate of Duty	
			Existing	Proposed
1	27	Liquefied Natural Gas	5%	2.50%
2	29	Medium Quality Terephthalic Acid (MTA) & Qualified Terephthalic Acid (QTA)	7.50%	5%
3	75	Nickel	2.50%	Nil
4	32	Vegetable tanning extracts, namely, Wattle extract and Myrobalan fruit extract	7.50%	2.50%
5	84 & 85	Ball screws, linear motion guides and CNC systems for use in the manufacture of CNC machine tools, subject to actual user condition	For others 7.5% For CNC System 10%	2.50%
6	98	All items of machinery required for fuel cell based power generating systems to be setup in the country or for demonstration purposes, subject to certain specified conditions	10% /7.5%	5%
7	98	All items of machinery required for balance of systems operating on biogas/ bio- methane/ by-product hydrogen, subject to certain specified conditions	10% /7.5%	5%
8	29	o-Xylene	2.50%	Nil
9	29	2-Ethyl Anthraquinone for use in manufacture of hydrogen peroxide, subject to actual user condition	7.50%	2.50%
10	34	Vinyl Polyethylene Glycol (VPEG) for use in manufacture of Poly Carboxylate Ether, subject to actual user condition	10%	7.50%
11	54	Nylon mono filament yarn for use in monofilament long line system for Tuna fishing, subject to certain specified conditions	7.50%	5%

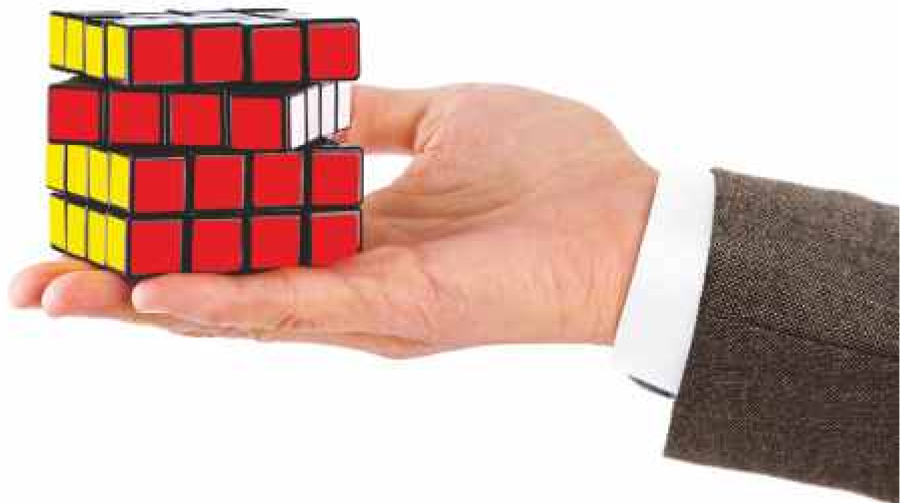
Sr. No.	Chapter	Commodity	Rate of Duty	
			Existing	Proposed
12	72	MgO coated cold rolled steel coils [7225 19 90] for use in the manufacture of CRGO steel, subject to actual user condition	10%	5%
13	72	Hot Rolled Coils [7208] for use in the manufacture of welded tubes and pipes falling under heading 7305 or 7306, subject to actual user condition	12.50%	10%
14	28	Clay 2 Powder (Alumax) for use in ceramic substrate for catalytic convertors, subject to actual user condition	7.50%	5%
15	70	Solar tempered glass for use in the manufacture of solar cells/panels/modules	5%	Nil
16	38 & 39	Resin and catalyst for use in the manufacture of cast components for Wind Operated Energy Generators [WOEG], subject to actual user condition	7.50%	5%
17	84 & 85	▪ Miniaturized POS card reader for m-POS (not including mobile phones or tablet computer), ▪ Micro ATM as per standards version 1.5.1, ▪ Finger Print Reader / Scanner, and ▪ Iris Scanner	Applicable	Nil
18	84 & 85	Parts and components for manufacture of: ▪ miniaturized POS card reader for m-POS (not including mobile phones or tablet computer), ▪ micro ATM as per standards version 1.5.1, ▪ Finger Print Reader / Scanner, and ▪ Iris Scanner	Applicable	Nil

Decrease in Countervailing Duty (CVD) :

Sr. No.	Chapter	Commodity	Rate of Duty	
			Existing	Proposed
1	98	All items of machinery required for fuel cell based power generating systems to be setup in the country or for demonstration purposes, subject to certain specified conditions	12.50%	6%
2	98	All items of machinery required for balance of systems operating on biogas/ bio- methane/ by-product hydrogen, subject to certain specified conditions	12.50%	6%
3	70	Parts/raw materials for use in the manufacture of solar tempered glass for use in solar photovoltaic cells/modules, solar power generating equipment or systems, flat plate solar collector, solar photovoltaic module and panel for water pumping and other applications, subject to actual user condition	12.50%	6%
4	38 & 39	Resin and catalyst for use in the manufacture of cast components for Wind Operated Energy Generators [WOEG], subject to actual user condition	12.50%	NIL
5	38 & 39	Membrane Sheet and Tricot / Spacer for use in the manufacture of RO membrane element for household type filters, subject to actual user condition	12.50%	6%
6	84 & 85	▪ miniaturized POS card reader for m-POS (not including mobile phones or tablet computer), ▪ Micro ATM as per standards version 1.5.1, ▪ Finger Print Reader / Scanner, and ▪ Iris Scanner	Applicable	NIL
7	84 & 85	Parts and components for manufacture of: ▪ miniaturized POS card reader for m-POS (not including mobile phones or tablet computer), ▪ micro ATM as per standards version 1.5.1, ▪ Finger Print Reader / Scanner, and ▪ Iris Scanner	Applicable	NIL

Decrease In Special Additional Duty (SAD)

Sr. No.	Chapter	Commodity	Rate of Duty	
			Existing	Proposed
1	38 & 39	Resin and catalyst for use in the manufacture of cast components for Wind Operated Energy Generators [WOEG], subject to actual user condition	4%	NIL
2	84 & 85	▪ miniaturized POS card reader for m-POS (not including mobile phones or tablet computer), ▪ Micro ATM as per standards version 1.5.1, ▪ Finger Print Reader / Scanner, and ▪ Iris Scanner	Applicable	NIL
3	84 & 85	Parts and components for manufacture of: ▪ miniaturized POS card reader for m-POS (not including mobile phones or tablet computer), ▪ micro ATM as per standards version 1.5.1, ▪ Finger Print Reader / Scanner, and ▪ Iris Scanner	Applicable	NIL



Excise Tariff

Sr. No.	Item Description	Rates	
		Existing	Proposed
Tobacco and Tobacco Products			
1	Cigar and cheroots	12.5% or Rs.3755 per thousand, whichever is higher	12.5% or Rs.4006 per thousand, whichever is higher
2	Cigarillos	12.5% or Rs.3755 per thousand, whichever is higher	12.5% or Rs.4006 per thousand, whichever is higher
3	Cigarettes of tobacco substitutes	Rs.3755 per thousand	Rs.4006 per thousand
4	Cigarillos of tobacco substitutes	12.5% or Rs.3755 per thousand, whichever is higher	12.5% or Rs.4006 per thousand, whichever is higher
5	Others of tobacco substitutes	12.5% or Rs.3755 per thousand, whichever is higher	12.5% or Rs.4006 per thousand, whichever is higher
6	Paper rolled biri – handmade	Rs.21 per thousand	Rs.28 per thousand
7	Paper rolled biri – Machine made	Rs.21 per thousand	Rs.78 per thousand
Miscellaneous			
1	All parts for use in the manufacture of LED lights, and lamps.	Nil	6%
2	▪ Waste and scrap of precious metals or metals clad with precious metals arising in course of manufacture of goods failing in Chapter 71 foils of silver ▪ Articles of silver jewellery, other than those studded with diamond, ruby, emerald or sapphire ▪ Silver coin of purity 99.9% and above, bearing a brand name when manufactured from silver on which appropriate duty of customs or excise has been paid	Nil	Nil subject to the condition that no credit of duty paid on inputs or input services or capital goods has been availed by manufacturer of such goods

<table>
<tr><th rowspan="2">Sr No</th><th rowspan="2">Item Description</th><th colspan="2">Rates</th></tr>
<tr><th>Existing</th><th>Proposed</th></tr>
<tr><td colspan="4"><u>Renewable Energy</u></td></tr>
<tr><td>1</td><td>All items of machinery required for balance of systems operating on biogas/ bio-methane/ by-product hydrogen</td><td>12.50%</td><td>6%</td></tr>
<tr><td colspan="4"><u>Miscellaneous</u></td></tr>
<tr><td>1</td><td>Membrane Sheet and Tricot/Spacer for use in the manufacture of RO membrane element for household type filters, subject to actual user condition</td><td>12.50%</td><td>6%</td></tr>
<tr><td>2</td><td>▪ Miniaturized POS card reader for m-POS (not including mobile phones or tablet computers),
▪ micro ATM as per standards version 1.5.1,
▪ Finger Print Reader / Scanner, and
▪ Iris Scanner</td><td>Applicable duty</td><td>Nil</td></tr>
<tr><td>3</td><td>Parts and components for manufacture of:
▪ Miniaturized POS card reader for m-POS (not including mobile phones or tablet computers),
▪ Micro ATM as per standards version 1.5.1,
▪ Finger Print Reader / Scanner, and
▪ Iris Scanner</td><td>Applicable duty</td><td>Nil</td></tr>
</table>

Decoding References

Tax Rates*

***[To be increased by applicable surcharge and education cess (see Notes)]**

Individual, HUF, AOP & BOI

Taxable Income	All Individual, HUF, AOP & BOI	Resident Individual of 60 years or more age	Resident Individual of 80 years or more age
Upto Rs. 2,50,000	Nil	Nil	Nil
Rs. 2,50,001 to Rs. 3,00,000	5%	Nil	Nil
Rs. 3,00,001 to Rs. 5,00,000	5%	5%	Nil
Rs. 5,00,001 to Rs. 10,00,000	20%	20%	20%
Rs. 10,00,000 and above	30%	30%	30%

Partnership Firm, LLP & Companies

Particulars	General Tax Rate
Partnership Firm & LLP	30%
New Domestic Company [Section 115BA] [Irrespective of value of Turnover / Gross Receipts] [Subject to fulfilment of certain conditions]	25%
Domestic Company with Turnover / Gross Receipts up to Rs. 50 Crores in FY 2015-16	25%
Other Domestic Company	30%
Foreign Company	40%

Co-operative Society

Total Income	General Tax Rate
Upto Rs. 10,000	10%
Rs. 10,001 to 20,000	20%
Rs. 20,001 and above	30%

Special Rates of Tax (applicable to all assessees)

Nature of Income	Rate of Tax
Minimum Alternate Tax (Section 115JB) / Alternate Minimum Tax (Section 115JC)	18.5%
STCG on listed securities (Section 111A)	15%
LTCG on listed securities (Section 10(38))	Nil
LTCG on unlisted securities or shares of a company in which the public are not substantially interested derived by **Non Resident** (Section 112)	10%
LTCG on assets other than listed securities and zero coupon bonds (Section 112)	20%
Royalty & Fees for Technical Services derived by **Non Resident** (Section 115A)	10%
Dividend Distribution Tax payable by Domestic Company (Section 115O)	15%
Tax payable by Domestic Company on Buy-back of Shares (Section 115QA)	20%
Tax payable by **Resident** assessees (except domestic company and certain funds, trust institutions) on receipt of Dividend from all Domestic Company together exceeding Rs. 10 Lacs (Section 115BBDA) (w.e.f 01.04.2017)	10%
Income by way of Royalty in respect of a patent developed and registered in India derived by **Resident** (Section 115BBF)	10%
Dividend Income received from Certain Specified Foreign Companies (Section 115BBD)	15%

Note 1: Surcharge on Income Tax

Total Income	Up to Rs. 50 Lacs	Rs. 50 Lacs to Rs. 1 Crore	Rs. 1 Crore to Rs. 10 Crore	Above Rs. 10 Crore
Individual / HUF	Nil	10%	15%	15%
AOP / BOI	Nil	10%	15%	15%
Co-operative Society / Local Authority	Nil	Nil	12%	12%
Partnership Firm / LLP	Nil	Nil	12%	12%
Domestic Company	Nil	Nil	7%	12%
Foreign Company	Nil	Nil	2%	5%

Note 2: Education Cess: 3% of Income Tax & Surcharge [Applicable to all assessees]

TDS Rates

Rates of Tax Deducted at Source (See Notes)

Section	Nature of Payment	Threshold Limit	Rate
192	Salary	As per Slab	As per Slab
192A	Premature Withdrawal of Provident Fund	50,000	10%
193	Interest on Securities		
	(1) Interest on Debentures or Securities (Listed/Unlisted)	5,000**	10%
	(2) Interest on 8% Savings (Taxable) Bonds, 2003	10,000	10%
	(3) Any Other Interest on Securities (Unlisted)	0	10%
194	Dividend other than dividend covered by Section 115-O	2,500*	10%
194A	(1) Interest paid by Banking Company, Co-operative Society/Banks engaged in banking business, Post Office under a deposit scheme framed by Central Government	10,000	10%
	(2) Interest other than Interest on Securities (Other than above)	5,000	10%
194B	Winning from Lotteries	10,000	30%
194BB	Winnings from Horse Races	10,000	30%
194C	Payments to Contractors		
	(1) Payment to Transporter covered by Section 44AE [2]	NA	NIL[2]
	(2) Payment to Individual / HUF (other than above)	30,000[2a]	1%
	(3) Payment to Others (other than above)	30,000[2a]	2%
194D	Insurance Commission	15,000	5%
194DA	LIC payment which are not covered u/s 10(10D)	1,00,000	1%
194E	Non-Resident Sportsman /Sports Association / Entertainer	0	20%[1]
194EE	Deposits under NSS to Resident / Non-Resident	2,500	10% [1]
194F	Repurchase of units of Mutual Fund /UTI from Resident / Non-Resident	0	20%[1]
194G	Commission on Sale of lottery tickets to Resident / Non-Resident	15,000	5%[1]

Rates of Tax Deducted at Source (See Notes)

Section	Nature of Payment	Threshold Limit	Rate
194H	Commission or Brokerage to Resident	15,000	5%
194I	Rent to Resident		
	(a) Rent for machinery / plant / equipment	1,80,000	2%
	(b) Rent for other than in (a)	1,80,000	10%
194-IA	Payment on transfer or certain immovable properties (Other than agricultural land)	50,00,000	1%
194-IB	Payment of Rent by certain Individuals or HUF (other than those who are covered u/s 194I) to a resident (w.e.f. 01-06-2017)	50,000 p.m.	5%
194-IC	Payment under specified agreement (in case of joint development agreement excluding payment in kind) (w.e.f. 01-04-2017)	0	10%
194J	Fees payable to a resident assessee for professional / technical services (other than assessee engaged in the business of call centre)	30,000	10%
	Fees payable to a resident assessee engaged in the business of call centre for professional / technical services (w.e.f. 01-06-2017)	30,000	2%
	Remuneration, fees, commission paid to Director which is not in the nature of Salary	0	10%
194LA	Compensation to a resident on acquisition of immovable property (excluding compensation received under RFCTLAAR Act, 2013 w.e.f. 01-04-2017)	2,50,000	10%
194LB	Interest paid to a Non-Resident by the Notified Infrastructure Debt	0	5%[1]
194LBA	Payment to a resident Unit Holder specified in Section 115UA	0	10%
	Payment to a non- resident Unit Holder specified in Section 115UA	0	5%[1]
194LBB	Income in respect of units of investment fund under Section 115UB		
	(1) In case of Payee being Resident	0	10%
	(2) In case of Payee being Non-Resident	0	Rate in Force [1]

Rates of Tax Deducted at Source (See Notes)

Section	Nature of Payment	Threshold Limit	Rate
194LBC	Income distribution to an investor by Securitisation Trust in respect of Section 115TCA		
	(1) In case of Payee being Resident Ind/HUF	NA	25%
	(2) In case of Payee being Resident any other person	NA	30%
	(3) In case of Payee being Non-Resident	NA	Rate in Force[1]
194LC	Interest paid by Specified Company to a Non-Resident on ECB	0	5%[1]
	Interest paid by Specified Company to a Non-Resident on Rupee Denominated Bonds (w.r.e.f AY 2016-17)	0	5%[1]
195	Payment of other sums to Non-Resident (Other than those specified in Section 194LB)	Rates specified under Part II of First Schedule of Bill, including applicable surcharge and education cess subject to rate specified under applicable DTAA	
196B	Income from units (including long term capital gain on transfer of such units) to an offshore fund	0	10%[1]
196C	Income from foreign currency bonds or GDR of Indian Company	0	10%[1]
196D	Income of FII from securities not being dividend, long term and short term capital gain	0	20%[1]
Equilisation Levy	Equalisation Levy in respect of online advertisement payment made to Non-Resident (not having PE in India)	0	6%

(* in case of Resident Individual only)
(** in case of Resident Individual / HUF only)

[1] All rates of TDS for Non-Resident Assessee shall be increased by applicable Surcharge, Education Cess and Secondary and Higher Education Cess.
[2] Transporter means persons engaged in plying, hiring and leasing of Goods Carriages having Income u/s. 44AE and not owning more than 10 goods carriage. Nil rates will be applicable if the transporter quotes his PAN and furnishes prescribed declaration.
[2a] This limit is for individual transaction. However, if aggregate payment to contractors during the year exceeds Rs.1,00,000 then tax will have required to be deducted even where individual transaction is less than the threshold limit of Rs. 30,000.

Note:

- In order to strengthen the PAN Mechanism, any person whose receipts are subject to deduction of tax at source i.e. the deductee, shall mandatorily furnish his PAN to the deductor failing which the deductor shall deduct tax at source at higher of the following rates:
  - (i) prescribed in the Act;
  - (ii) at the rate in force i.e. the rate mentioned in the Finance Act; Or
  - (iii)20%

TCS Rates

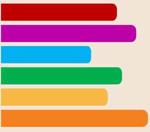
Rates of Tax Collected at Source

Section	Nature of Payment	Threshold Limit	Rate
206C	Alcoholic Liquor for human consumption & Indian made foreign Liquor	0	1%
206C	Timber obtained by any mode and any other forest produce	0	2.5%
206C	Scrap	0	1%
206C	Parking Lot/ Toll plaza/Mining and Quarrying	0	2%
206C	Tendu Leaves	0	5%
206C	Minerals, being coal or lignite or iron ore	0	1%
206C(1D)	Cash sale of bullion	2,00,000	1%
206C(1D)	Cash sale of goods (other than bullion) or providing any service*	2,00,000	1%
206C(1F)	Sale of Motor Car	10,00,000	1%

*No TCS will be applicable in case where the buyer already deducts TDS.

Note

- In order to strengthen the PAN Mechanism, any person who makes above payment are subject to collection of tax at source with information of PAN of collectee i.e. the collectee, shall mandatorily furnish his PAN to the collector failing which the collector shall collect tax at source at higher of the following rates:
  - (i) at twice the rate specified in the section, or
  - (ii) at the rate of 5%



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