

## **Salient features of the Finance Bill, 2018**

[Relating to direct taxes]

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The Finance Bill, 2018 or the Union Budget, 2018-19, was presented in the Parliament on 1.2.2018. As regard the direct taxes, there are in all fifty one (51) amendments / insertions proposed in the Finance Bill, 2018, vide clauses (3) to (53).

Save as otherwise provided in the aforesaid Bill, the insertions / amendments, vide the aforesaid clauses shall be deemed to have come into force on the first day of April, 2018, viz. from financial year (FY) 2018-19, relevant to assessment year (AY) 2019-20. Further, it may also be stated here that there are some amendments which will come into operation from certain specified dates, whereas some others will come into operation with retrospective effect. Therefore, an attempt has been made to provide the date with effect from which the amendment(s), in question, shall come into effect. The term “*Section*”, in this Note shall mean section of the Income-Tax Act, 1961 (the Act).

The abbreviations FY, PY, AY and AO stand for financial year, previous year, assessment year and Assessing Officer, respectively, in this Note.

*In this Note, only the important amendments / insertions have been discussed and the same are as follows : -*

### **1. Rates and slabs of income-tax**

In the Union Budget, 2018-19, the basic exemption limit for Individuals, Hindu Undivided Families (HUFs), Association of Persons (AOPs), Body of Individuals (BOIs) and Artificial Juridical Persons (AJPs), have remained unchanged.

*Paragraph A of Part III of the First Schedule to the Bill, provides the following rates of income-tax :*

- I. In the case of every individual [other than those specifically mentioned in sub-paragraphs (II) and (III)] or Hindu Undivided Family or every Association of Persons or Body of Individuals, whether incorporated or not, or every Artificial Juridical Person referred to in

sub-clause (vii) of clause (31) of section 2 of the Income-Tax Act, not being a case to which any other Paragraph of the aforesaid Part III applies :-

(i) Up to Rs.2,50,000	Nil
(ii) Rs. 2,50,001 to Rs. 5,00,000	5 per cent.
(iii) Rs. 5,00,001 to Rs. 10,00,000	20 per cent.
(iv) Above Rs. 10,00,000	30 per cent.;

II. In the case of every individual, being a resident in India, who is of the age of sixty years or more but less than the age of eighty years at any time during the previous year :-

(i) Up to Rs.3,00,000	Nil
(ii) Rs. 3,00,001 to Rs. 5,00,000	5 per cent.
(iii) Rs. 5,00,001 to Rs. 10,00,000	20 per cent.
(iv) Above Rs. 10,00,000	30 per cent.;

III. In the case of every individual, being a resident in India, who is of the age of eighty years or more at any time during the previous year :-

(i) Up to Rs.5,00,000	Nil
(ii) Rs. 5,00,001 to Rs. 10,00,000	20 per cent.
(iii) Above Rs. 10,00,000	30 per cent.

It may also be stated here that as per section 87A of the Act, a rebate in the tax payable by an individual resident in India, shall be allowed. This rebate will be available in case where total income does not exceed Rs.3,50,000 and the rebate allowable will be 100% of income-tax, payable on total income or an amount of Rs.2,500, whichever is less.

### ***Rates of tax in respect of domestic companies***

The rates of income-tax in respect of companies will be as follows :

- (i) In case of domestic companies, if total turnover or gross receipts do not exceed Rs.250 crores, the rate of tax will be 25%.
- (ii) In case of other companies, the rate of tax will be 30% of the total income.

The rates of tax in respect of a company other than a domestic company, will be as per paragraph E(II) of Part III of the First Schedule to the Bill.

#### **A. Surcharge**

- I. As regard the aforesaid entities**, viz. Individuals, HUFs, AOPs, BOIs, etc. there will be no surcharge in case the taxable income is upto Rs.50 lakhs.

However, in case taxable income exceeds Rs.50 lakhs, but not Rs.1 crore, the surcharge will be levied at the rate of 10% of the amount of income-tax. But in case the income exceeds Rs.1 crore, then surcharge will be 15% of the amount of income-tax.

Marginal relief will be provided in all such cases.

#### **II. Domestic companies**

- (i) There will be no surcharge if total income does not exceed Rs.1 crore
- (ii) Surcharge at the rate of 7% in case income is above Rs.1 crore, but upto Rs.10 crores.
- (iii) Surcharge at the rate of 12% if the total income exceeds Rs.10 crores.

Marginal relief will be provided in all such cases.

#### **III. Foreign companies**

- (i) There will be no surcharge if total income is upto Rs.1 crore
- (ii) Surcharge at the rate of 2% in case total income is above Rs.1 crore, but upto Rs.10 crores.
- (iii) Surcharge at the rate of 5% if the total income exceeds Rs.10 crores.

Marginal relief will be provided in all such cases.

#### **IV. In other cases**

In other cases (including sections 115-O, 115QA, 115R, 115TA or 115TD), the surcharge will be levied at the rate of 12% of the income-tax chargeable.

**B. Health and Education Cess**

“Education Cess on income-tax” and “Secondary and Higher Education Cess on income-tax” shall be discontinued.

However, a new Cess by the name “Health and Education Cess” shall be levied at the rate of four per cent (4%) of income-tax, including surcharge (wherever applicable), in all cases.

No marginal relief shall be available in respect of such Cess.

**2. Amendments of section 2 – Relating to certain definitions**

**I. Clause (22) of section 2 of the Act.**

The existing clause (22) of section 2 defines “Dividend” to include distribution of accumulated profits (whether capitalized or not) to its shareholders by a company. *Explanation 2* to the said clause clarifies the expression “Accumulated profits” for the purposes of this clause.

It was noticed that companies with large accumulated profits, adopt the amalgamation route to reduce capital and circumvent the provisions of sub-clause (d) of clause (22) of section 2 of the Act.

With a view to preventing such abusive arrangements and similar other abusive arrangements, a new *Explanation 2A* is to be inserted in the said clause, so as to provide that in the case of an amalgamated company, accumulated profits or losses in the hands of the amalgamated company, shall be increased by the accumulated profits of the amalgamating company, whether capitalized or not, on the date of amalgamation.

The aforesaid amendment will take effect from 1.4.2018 and will, accordingly, apply in relation to AY 2018-19 and subsequent AYs.

**II. Clause (24) of section 2 which defines the expression “Income”**

A new sub-clause (xiia) is to be inserted in the said clause (24), so as to include the fair market value of inventory referred to in clause (via) of section 28 also, within the definition of income.

Besides, a new sub-clause (xviib) in the said clause (24) is to be inserted, so as to include any compensation or other payment referred to in clause (xi) of sub-section 2 of section 56 also, within the definition of income

The aforesaid amendment will take effect from 1.4.2019 and will, accordingly, apply in relation to AY 2019-20 and subsequent AYs.

***III. Clause (42A) of section 2, which, inter alia, provides for determination of period for which capital asset is held by the assessee.***

A new sub-clause (ba) in clause (i) of *Explanation 1* of the said clause (42A) is to be inserted, so as to provide that in case inventory is converted into or treated as capital asset under the new clause (via) of section 28, the period shall be reckoned from the date of its conversion or the treatment.

The aforesaid amendment will take effect from 1.4.2019 and will, accordingly, apply in relation to AY 2019-20 and subsequent AYs.

**3. Amendment of section 9 of the Act, relating to income deemed to accrue or arise in India**

***I. Aligning the scope of “business connection” with modified PE Rule as per Multilateral Instrument (MLI).***

The provisions of section 9 of the Act are to be amended, so as to align them with the provisions in the Double Taxation Avoidance Agreement (DTAA), as modified by Multilateral Instruments (MLI), so as to make the provisions in the tax treaty effective. Accordingly, clause (i) of sub-section (1) of section 9, is to be amended, so as to provide that “business connection” shall also include any business activities carried through a person who, acting on behalf of the non-resident, habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by the non-resident and the contracts are :

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

The aforesaid amendment will take effect from 1.4.2019 and will, accordingly, apply in relation to AY 2019-20 and subsequent AYs.

## **II. “Business connection” to include “Significant Economic presence”**

Further, a new *Explanation 2A* in clause (i) of sub-section (1) of section 9, is to be inserted, so as to provide that the significant economic presence of a non-resident in India, shall constitute “business connection” of the non-resident in India and the “significant economic presence” for this purpose, shall mean :

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

It is further provided that only so much of income as is attributable to such transactions or activities shall be deemed to accrue or arise in India.

It is also provided that the transactions or activities shall constitute significant economic presence in India, whether or not the non-resident has a residence or place of business in India or renders services in India.

The aforesaid amendment will take effect from 1.4.2019 and will, accordingly, apply in relation to AY 2019-20 and subsequent AYs.

## **4. Amendment of section 10, relating to incomes not included in total income**

### **I. Payments by National Technical Research Organization (NTRO) to a non-resident to be exempt**

A new clause (6D) is to be inserted in section 10, so as to exempt any income arising to a non-resident, by way of royalty from or fees for technical services rendered in or outside India, to the National Technical Research Organization.

The aforesaid amendment will take effect from 1.4.2018 and will, accordingly, apply in relation to AY 2018-19 and subsequent AYs.

## ***II. Extending the benefit of tax-free withdrawal from NPS to non-employee subscribers***

Under the existing provisions of the clause (12A) of section 10 of the Act, an employee contributing to the NPS is allowed an exemption in respect of 40% of the total amount payable to him on closure of his account or on his opting out. This exemption is not available to non-employee subscribers. In order to provide a level playing field, clause (12A) of section 10 of the Act is to be amended, so as to extend the said benefit to all subscribers.

The aforesaid amendment will take effect from 1.4.2019 and will, accordingly, apply in relation to AY 2019-20 and subsequent AYs.

## ***III. Tax deduction at source and manner of payment in respect of certain exempt entities***

The third proviso to clause (23C) of section 10 of the Act provides for exemption in respect of income of the entities referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of said clause in a case where such income is applied or accumulated during the previous year for certain purposes in accordance with the relevant provisions.

In order to encourage a less cash economy and to reduce the generation and circulation of black money, a new proviso, after the twelfth proviso to clause (23C) of section 10, is to be inserted, so as to provide that for the purposes of determining the amount of application under item (a) of the said proviso, the provisions of section 40(a)(ia) and sections 40A(3) and 40A(3A) shall *mutatis mutandis* apply, as they apply in computing the income chargeable under the head “*Profits and gains from business or profession*”.

The aforesaid amendment will take effect from 1.4.2019 and will, accordingly, apply in relation to AY 2019-20 and subsequent AYs.

## ***IV. New regime for taxation of long-term capital gains on sale of equity shares etc.***

Clause (38) of section 10, *inter alia*, provides for exemption from tax on the income arising from the transfer of long-term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust, subject to certain conditions specified therein.

The aforesaid clause (38) is to be amended, so as to provide that the provisions of the said clause shall not apply to any income arising from the transfer of long-term capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust, made on or after the first day of April, 2018.

The aforesaid amendment will take effect from 1.4.2019 and will, accordingly, apply in relation to AY 2019-20 and subsequent AYs.

*[In this regard, it may be noted that a new section 112A is inserted, relating to tax on long-term capital gains]*

## **5. Amendment of section 11 – Income from property held for charitable or religious purposes**

Section 11 provides for exemption in respect of income derived from property held under trust for charitable or religious purposes to the extent to which such income is applied or accumulated during the previous year for certain purposes in accordance with the relevant provisions. A new *Explanation 3* is to be inserted in section 11, so as to provide that for the purposes of determining the amount of application under clauses (a) and (b) of section 11(1), the provisions of section 40(a)(ia) and sub-sections (3) and (3A) of section 40A, shall *mutatis mutandis*, apply as they apply in computing the income chargeable under the head “*Profits and gains of business or profession*”.

It may be stated here that as per section 40(a)(ia) the amounts on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or after deducting has not been paid on or before the due date, shall not be allowed as deduction. In such an event, any expenditure incurred by a charitable institution falling under the provisions of section 40(a)(ia) shall not be treated as application of income towards the objects of the trust.

Similarly, certain expenses or payments are not deductible where the payments are made in violation of the provisions of section 40A(3) and 40A(3A) which broadly relate to payment in cash exceeding Rupees ten thousand (Rs.10,000).

The aforesaid amendments will take effect from 1.4.2019 and will, accordingly, apply to AY 2019-20 and subsequent AYs.

## **6. Standard deduction on salary income under section 16**



Section 16, *inter-alia*, provides for certain deduction in computing the income chargeable under the head “*Salaries*”. A new clause (ia) is to be inserted in section 16, so as to provide for deduction of Rupees forty thousand (Rs.40,000) or the amount of salary, whichever is less, for the purpose of computing the income chargeable under the head “*Salaries*”.

Consequently, the present exemption in respect of Transport Allowance (except in case of differently abled persons) and reimbursement of medical expenses are to be withdrawn.

The aforesaid amendment will take effect from 1.4.2019 and will, accordingly, apply to AY 2019-20 and subsequent AYs.

#### **7. Amendment of section 28 – Taxability of compensation in connection with business**

Under the existing provisions of the Act, certain types of compensation receipts are taxable as business income under section 28. However, the existing provisions of clause (ii) of section 28 is restrictive in its scope as far as taxation of compensation is concerned. A large segment of compensation receipts in connection with business is out of the purview of taxation leading to base erosion and revenue loss.

Therefore, section 28 of the Act is to be amended so as to provide that any compensation received or receivable, whether revenue or capital, in connection with the termination or the modification of the terms and conditions of any contract relating to its business shall be taxable as business income.

The aforesaid amendments will take effect from 1.4.2019 and will, accordingly, apply to AY 2019-20 and subsequent AYs.

#### **8. Amendment of section 36, relating to other deductions**

Section 36(1) provides for certain deductions in computing the income under the head “*Profits and gains of business or profession*”. A new clause (xviii) is to be inserted in section 36(1), so as to provide that the deduction in respect of any **marked to market loss or other expected loss**, shall be allowed, if computed in accordance with the Income Computation and Disclosure Standards (ICDS), notified under section 145(2) of the Act.

A consequential amendment is to be made in section 40A by insertion of a new sub-section (13) therein, so as to provide that no deduction or allowance shall be allowed in

respect of any marked to market loss or other expected loss, except as allowable under section 36(1)(xviii) of the Act.

The aforesaid amendments will take effect retrospectively from 1.4.2017 and will, accordingly, apply in relation to AY 2017-18 and subsequent AYs.

#### **9. Amendment of section 43 – Tax-treatment of transactions in respect of trading in agricultural commodity derivatives**

Clause (5) of section 43 defines speculative transaction. Clause (e) of the proviso to the said clause (5) provides that trading in commodity derivatives carried out in a recognized stock exchange, which is chargeable to commodity transaction tax (CTT) is a non-speculative transaction.

In order to encourage participation in trading of agricultural commodity derivatives, clause (5) of section 43 is to be amended, so as to provide that a transaction in respect of trading of agricultural commodity derivatives, which is not chargeable to CTT, is a registered stock exchange or recognized association, will be treated as non-speculative transaction.

The aforesaid amendment will take effect from 1.4.2019 and will, accordingly, apply to AY 2019-20 and subsequent AYs.

#### **10. New section 43AA, relating to Taxation of Foreign Exchange Fluctuation**

A new section 43AA is to be inserted in the Act which will deal with taxation of foreign exchange fluctuation. The new section 43AA provides that, subject to provision of section 43A, any gain or loss arising on account of any change in foreign exchange rates shall be treated as income or loss, as the case may be and such gain or loss shall be computed in accordance with the Income Computation and Disclosure Standards (ICDS) notified under sub-section (2) of section 145.

It is further provided that gain or loss arising on account of the change in foreign exchange rates shall be in respect of all foreign currency transactions, including those relating to monetary items and non-monetary items or transaction of financial statements of foreign operations or forward exchange contracts or foreign currency translation reserves.

The aforesaid amendment will take effect retrospectively from 1.4.2017 and will, accordingly, apply in relation to AY 2017-18 and subsequent AYs.

## **11. Amendment of section 43CA - Special provision for full value of consideration for transfer of assets other than capital assets in certain cases**

At present, while taxing income from business profits as per section 43CA arising out of transactions in immovable property, the sale consideration or stamp duty value, whichever is higher, is adopted. The difference is taxed as income both in the hands of the purchaser and the seller.

It has been pointed out that the aforesaid variation can occur in respect of similar properties in the same area because of a variety of factors, including shape of the plot or location. In order to minimize hardship in case of genuine transactions in the real estate sector, a proviso is to be inserted in section 43CA, so as to provide that no adjustments shall be made in a case where the variation between the stamp duty value and the sale consideration is not more than five per cent (5%) of sale consideration.

The aforesaid amendment will take effect from 1.4.2019 and will, accordingly, apply to AY 2019-20 and subsequent AYs.

## **12. New section 43CB, relating to computation of income from construction and service contracts**

The newly inserted section 43CB provides that profits and gains of a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method in accordance with the Income Computation and Disclosure Standards (ICDS) notified under section 145(2) of the Act.

It is further provided that in case of a contract for providing services with duration of less than ninety (90) days, the profits and gains shall be determined on the basis of project completion method.

It is also provided that in the case of a contract for provision of services involving indeterminate number of acts over a specific period of time, the profits and gains arising from such contract shall be determined on the basis of a straight line method.

In addition, it is provided that for this purpose, the contract revenue shall include retention money and the contract costs shall not be reduced by any incidental income in the nature of interest, dividends or capital gains.

The aforesaid amendments will take effect retrospectively from 1.4.2017 and will, accordingly, apply in relation to AY 2017-18 and subsequent AYs.

### **13. Rationalization of provision relating to conversion of stock-in-trade into capital asset**

Section 45 of the Act, *inter alia*, provides that capital gains arising from a conversion of capital asset into stock-in-trade shall be chargeable to tax. However, in cases where the stock in trade is converted into, or treated as, capital asset, the existing law does not provide for its taxability.

In order to provide symmetrical treatment and discourage the practice of deferring the tax payment by converting the inventory into capital asset, the provisions of the following sections are to be amended :

- (i) section 28 so as to provide that any profit or gains arising from conversion of inventory into capital asset or its treatment as capital asset shall be charged to tax as business income. It is also proposed to provide that the fair market value of the inventory on the date of conversion or treatment determined in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of such conversion or treatment;
- (ii) clause (24) of section 2 so as to include such fair market value in the definition of income;
- (iii) section 49 so as to provide that for the purposes of computation of capital gains arising on transfer of such capital assets, the fair market value on the date of conversion shall be the cost of acquisition;
- (iv) clause (42A) of section 2 so as to provide that the period of holding of such capital asset shall be reckoned from the date of conversion or treatment.

The aforesaid amendments will take effect from 1.4.2019 and will, accordingly, apply to AY 2019-20 and subsequent AYs.

### **14. Amendment of section 47, relating to transactions not regarded as transfer**

A new clause (viiab) is to be inserted in section 47 so as to provide that any transfer of capital asset, being bond or Global Depository Receipt referred to in section 115AC or rupee denominated bond of an Indian company or derivative, made by a non-resident on a recognized stock exchange located in any International Financial Services Centre (IFSC) and where the

consideration for such transaction is paid or payable in foreign currency, shall not be regarded as transfer.

The aforesaid amendment will take effect from 1.4.2019 and shall, accordingly, apply in relation to the transaction made on or after 1.4.2018.

**15. Amendment of section 50C – Special provision for full value of consideration in certain cases**

At present, as per section 50C of the Act, while taxing income from capital gains arising out of transaction in immovable property, the sale consideration or stamp duty value, whichever is higher, is adopted. The difference is taxed as income both in the hands of the purchaser and the seller.

It has been pointed out that the aforesaid variation can occur in respect of similar properties in the same area because of a variety of factors, including shape of the plot or location. In order to minimize hardship in case of genuine transactions in the real estate sector, a proviso is to be inserted in section 50C (1), so as to provide that no adjustments shall be made in a case where the variation between the stamp duty value and the sale consideration is not more than five per cent (5%) of sale consideration.

The aforesaid amendment will take effect from 1.4.2019 and will, accordingly, apply to AY 2019-20 and subsequent AYs.

**16. Amendment of section 54EC – Capital gain not to be charged on investment in certain bonds**

Section 54EC of the Act provides that capital gain, arising from the transfer of a long-term capital asset, invested in the long-term specified asset at any time within a period of six months after the date of such transfer, shall not be charged to tax subject to certain conditions specified in the said section.

This section also provides that “*long-term specified asset*” for making any investment under the section on or after the 1st day of April, 2007 means any bond, redeemable after three years and issued on or after the 1st day of April, 2007 by the National Highways Authority of India or by the Rural Electrification Corporation Limited; or any other bond notified by the Central Government in this behalf.

In order to rationalize the provisions of section 54EC of the Act and to restrict the scope of the section only to capital gains arising from long-term capital assets, being land or building or both and to make available funds at the disposal of eligible bond issuing company for more than three years, section 54EC is to be amended, so as to provide that capital gain arising from the transfer of a long-term capital asset, being land or building or both, invested in the long-term specified asset at any time within a period of six months after the date of such transfer, the capital gain shall not be charged to tax subject to certain conditions specified in this section.

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

The aforesaid amendments will take effect from 1.4.2019 and will, accordingly, apply to AY 2019-20 and subsequent AYs.

### **17. Amendment of section 56, relating to income from other sources**

Section 56 of the Act, is to be amended, in view of the amendments of sections 43CA and 50C. Besides, section 56 is also to be amended, in view of tax neutral transfers between a wholly owned subsidiary company and its holding company, as laid down under clauses (iv) and (v) of section 47 of the Act.

The aforesaid amendments are discussed as follows :

#### ***I. Consequential amendment of section 56, in view of the amendment of sections 43CA and 50C***

Clause (x) of section 56(2) of the Act, is to be amended, so as to provide that where any person receives any immovable property for a consideration, the stamp duty value of the property as exceeds such consideration, if the amount of such excess is more than fifty thousand rupees or the amount is equal to 5% of the consideration, whichever is higher, shall be charged to tax under the head "*Income from other sources*".

The aforesaid amendment will take effect from 1.4.2019 and will, accordingly, apply in relation to AY 2019-20 and subsequent AYs.

**II. Amendment of section 56, in view of tax neutral transfers under clauses (iv) and (v) of section 47**

The fourth proviso to clause (x) of section 56(2) is to be amended, so as to exclude the transfer of capital asset between holding company and its wholly owned Indian subsidiary company and between subsidiary company and its Indian holding company, which are not regarded as transfer under clause (iv) or (v) of section 47, from the scope of aforesaid clause (x) of section 56(2) of the Act.

The aforesaid amendment will take effect from 1.4.2018 and will, accordingly, apply in relation to AY 2018-19 and subsequent AYs.

**III. Tax-treatment of compensation on termination of employment, etc.**

A new clause (xi) is to be inserted in section 56(2) of the Act, so as to provide that any compensation or other payment due to or received by any person by whatever name called, in connection with the termination of his employment or the modification of the terms and conditions, relating thereto, shall be chargeable to income-tax under the head “*Income from other sources*”.

The aforesaid amendment will take effect from 1.4.2019 and will, accordingly, apply in relation to AY 2019-20 and subsequent AYs.

**18. Amendment of section 79 – Benefit of carry-forward and set-off of losses**

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

In general, the case of a company seeking insolvency resolution under Insolvency and Bankruptcy Code, 2016, involves change in the beneficial owners of shares beyond the permissible limit under section 79. This acts as a hurdle for restructuring and rehabilitation of such companies.

In order to address this problem, the rigours of section 79 are to be relaxed, in case of such companies, whose resolution plan has been approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

The aforesaid amendment will take effect from 1.4.2018 and will, accordingly, apply in relation to AY 2018-19 and subsequent AYs.

**19. Amendment of section 80AC, relating to deduction not to be allowed unless return is furnished.**

Section 80AC provides that where, in computing the total income of an assessee of the previous year relevant to the assessment year commencing on the 1st day of April, 2006 or any subsequent assessment year, any deduction admissible under section 80-IA or section 80-IAB or section 80-IB or section 80-IC or section 80-ID or section 80-IE, shall be allowed to him only if he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139.

The aforesaid section is to be substituted, so as to provide that in computing the total income of an assessee of the previous year relevant to the assessment year commencing on or after the 1st day of April, 2018, deduction under any other provisions of Chapter VIA under the heading "*C.—Deductions in respect of certain incomes*" shall be allowed only if the return is filed within the due date specified under sub-section (1) of section 139.

The aforesaid amendment will take effect from 1.4.2018 and will, accordingly, apply in relation to AY 2018-19 and subsequent AYs.

**20. Amendment of section 80D – Deductions available to senior citizens, in respect of health insurance premium and medical treatment.**

Section 80D, *inter-alia*, provides that a deduction upto Rs 30,000/- shall be allowed to an assessee, being an individual or a Hindu undivided family, in respect of payments towards annual premium on health insurance policy, or preventive health check-up, of a senior citizen, or medical expenditure in respect of very senior citizen.

Section 80D is to be amended, so as to raise this monetary limit of deduction from Rs 30,000/- to Rs 50,000/-.

Further, in case of single premium health insurance policies having cover of more than one year, the deduction shall be allowed on proportionate basis for the number of years for which health insurance cover is provided, subject to the specified monetary limit.



The aforesaid amendments will take effect from 1.4.2019 and will, accordingly, apply in relation to AY 2019-20 and subsequent AYs.

## **21. Amendment of section 80-IAC – Measures to promote start-ups.**

Section 80-IAC of the Act, *inter alia*, provides that deduction under this section shall be available to an eligible start-up for three consecutive assessment years out of seven years at the option of the assessee, if-

- (i) it is incorporated on or after the 1st day of April, 2016 but before the 1st day of April, 2019;
- (ii) the total turnover of its business does not exceed twenty-five crore rupees in any of the previous years beginning on or after the 1st day of April, 2016 and ending on the 31st day of March, 2021; and
- (iii) it is engaged in the eligible business which involves innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.

In order to improve the effectiveness of the scheme for promoting start-ups in India, the following changes in the taxation regime of the start-ups are to be made :

- (i) The benefit would also be available to start-ups incorporated on or after the 1<sup>st</sup> day of April 2019 but before the 1<sup>st</sup> day of April, 2021;
- (ii) The requirement of the turnover not exceeding Rs 25 Crore would apply to seven previous years commencing from the date of incorporation;
- (iii) The definition of eligible business has been expanded to provide that the benefit would be available if it is engaged in innovation, development or improvement of products or processes or services, or a scalable business model with a high potential of employment generation or wealth creation.

The aforesaid amendment will take effect from 1.4.2018 and will, accordingly, apply in relation to AY 2018-19 and subsequent AYs.

## **22. Amendment of section 80JJA – Incentive for employment generation.**

At present, under section 80-JJAA of the Act, a deduction of 30% is allowed in addition to normal deduction of 100% in respect of emoluments paid to eligible new employees who have been employed for a minimum period of 240 days during the year. However, the minimum period of employment is relaxed to 150 days in the case of apparel industry. In order to encourage creation of new employment, this relaxation is to be extended to footwear and leather industry.

It is further provided to rationalize this deduction of 30% by allowing the benefit for a new employee who is employed for less than the minimum period during the first year but continues to remain employed for the minimum period in subsequent year.

The aforesaid amendment will take effect from 1.4.2019 and will, accordingly, apply in relation to AY 2019-20 and subsequent AYs.

## **23. Insertion of new section 80PA – Deduction in respect of income of Farm Producer Companies.**

Section 80P provides for 100 percent deduction in respect of profit of a cooperative society which provides assistance to its members engaged in primary agricultural activities.

Over the last few years, a number of Farmer Producer Companies have been set-up along the lines of co-operative societies, which also provide similar assistance to their members. *These FPCs are promoting post-harvest activities of agriculture.*

In order to provide tax incentives to Farm Producer Companies (FPC), new section 80PA is to be inserted. As per section 80PA, benefit similar to the one under section 80P is to be extended to FPCs having a total turnover upto Rs 100 Crores, whose gross total income includes any income from-

- (i) the marketing of agricultural produce grown by its members, or
- (ii) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or
- (iii) the processing of the agricultural produce of its members

The benefit shall be available for a period of five years from the financial year 2018-19.

The aforesaid amendment will take effect from 1.4.2019 and will, accordingly, apply in relation to AY 2019-20 and subsequent AYs.

**24. Amendment of section 80TTA and insertion of new section 80TTB – Deduction in respect of interest income of senior citizen**

At present, a deduction upto Rs 10,000/- is allowed under section 80TTA to an assessee in respect of interest income from savings account.

A new section 80TTB is to be inserted, so as to allow a deduction upto Rs 50,000/- in respect of interest income from deposits held by senior citizens. However, no deduction under section 80TTA shall be allowed in these cases.

This amendment will take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

**25. Insertion of section 112A – New regime for taxation of long-term capital gains on sale of equity shares, etc.**

Under the existing regime, long term capital gains arising from transfer of long term capital assets, being equity shares of a company or a unit of equity oriented fund or a unit of business trusts, is exempt from income-tax under clause (38) of section 10 of the Act. However, transactions in such long term capital assets carried out on a recognized stock exchange are liable to securities transaction tax (STT). Consequently, this regime is inherently biased against manufacturing and has encouraged diversion of investment in financial assets. It has also led to significant erosion in the tax base resulting in revenue loss. The problem has been further compounded by abusive use of tax arbitrage opportunities created by these exemptions.

In order to minimize economic distortions and curb erosion of tax base exemption under clause (38) is to be withdrawn and a new section 112A is to be inserted, so as to provide that long term capital gains arising from transfer of a long term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust shall be taxed at 10 per cent. of such capital gains exceeding one lakh rupees .

*This concessional rate of 10 per cent. will be applicable to such long term capital gains, if—*

- (i) in a case where long term capital asset is in the nature of an equity share in a company, securities transaction tax has been paid on both acquisition and transfer of such capital asset; and
- (ii) in a case where long term capital asset is in the nature of a unit of an equity oriented fund or a unit of a business trust, securities transaction tax has been paid on transfer of such capital asset.

Further, sub-section (4) of the new section 112A empowers the Central Government to specify by notification the nature of acquisitions in respect of which the requirement of payment of securities transaction tax shall not apply in the case of equity share in a company.

Similarly, the requirement of payment of STT at the time of transfer of long term capital asset, being a unit of equity oriented fund or a unit of business trust, shall not apply if the transfer is undertaken on recognized stock exchange located in any International Financial Services Centre( IFSC) and the consideration of such transfer is received or receivable in foreign currency.

*Besides, the new section 112A also provides the following:—*

- (i) The long term capital gains will be computed without giving effect to the first and second provisos to section 48, i.e. inflation indexation in respect of cost of acquisitions and cost of improvement, if any, and the benefit of computation of capital gains in foreign currency in the case of a non-resident, will not be allowed.
- (ii) The cost of acquisitions in respect of the long term capital asset acquired by the assessee before the 1<sup>st</sup> day of February, 2018 , shall be deemed to be the higher of -
  - (a) the actual cost of acquisition of such asset; and
  - (b) the lower of -
    - (I) the fair market value of such asset; and
    - (II) the full value of consideration received or accruing as a result of the transfer of the capital asset.
- (iii) “equity oriented fund” has been defined to mean a fund set up under a scheme of a mutual fund specified under clause (23D) of section 10 and,—
  - (a) In a case where the fund invests in the units of another fund which is traded on a recognized stock exchange,-

(I) A minimum of 90 per cent. of the total proceeds of such funds is invested in the units of such other fund ; and

(II) such other fund also invests a minimum of 90 per cent. of its total proceeds in the equity shares of domestic companies listed on recognized stock exchange; and

(b) in any other case, a minimum of 65 per cent. of the total proceeds of such fund is invested in the equity shares of domestic companies listed on recognized stock exchange.

(iv) Fair market value has been defined to mean -

(a) in a case where the capital asset is listed on any recognized stock exchange, the highest price of the capital asset quoted on such exchange on the 31<sup>st</sup> day of January, 2018.

However, where there is no trading in such asset on such exchange on the 31<sup>st</sup> day of January, 2018 , the highest price of such asset on such exchange on a date immediately preceding the 31<sup>st</sup> day of January, 2018 when such asset was traded on such exchange shall be the fair market value; and

(b) in a case where the capital asset is a unit and is not listed on recognized stock exchange, the net asset value of such asset as on the 31<sup>st</sup> day of January, 2018.

(v) The benefit of deduction under Chapter VI-A shall be allowed from the gross total income as reduced by such capital gains.

Similarly, the rebate under section 87A shall be allowed from the income tax on the total income as reduced by tax payable on such capital gains.

The aforesaid amendments will take effect from 1.4.2019 and will, accordingly, apply in relation to AY 2019-20 and subsequent AYs.

## **26. Amendment of section 115AD – Taxation of long-term capital gains in the case of Foreign Institutional Investor (FII) .**

The existing provisions of section 115AD of the Act *inter alia*, provide that where the total income of a Foreign Institutional Investor (FII) includes income by way of long-term capital gains arising from the transfer of certain securities, such capital gains shall be chargeable to tax at the rate of ten per cent (10%). However, long term capital gains arising from transfer of long term

capital asset being equity shares of a company or a unit of equity oriented fund or a unit of business trusts, is exempt from income-tax under clause (38) of section 10 of the Act.

Consequent to the withdrawal of exemption under clause (38) of section 10 of the Act, such long term capital gain will become taxable in the hands of FIIs also. As in the case of domestic investors, the FIIs will also be liable to tax on such long term capital gains only in respect of amount of such gains exceeding one lakh rupees. The provisions of section 115AD are to be amended accordingly.

The aforesaid amendment will take effect from 1.4.2019 and will, accordingly, apply in relation to AY 2019-20 and subsequent AYs.

**27. Amendment of section 115-O – Tax on distributed profits of domestic companies.**

A proviso is to be inserted in section 115-O(1), so as to provide the levy of tax at the rate of 30% on distributed profits in the nature of dividend under section 2(22)(e).

Further, a new proviso is to be inserted under section 115-O(1B), so as to exclude the amount of dividend under section 2(22)(e) from the applicability of grossing up provisions of sub-section (1B) of section 115-O.

The aforesaid amendments will take effect from 1.4.2018 and will, accordingly, apply in relation to AY 2018-19 and subsequent AYs.

**28. Amendment of section 115R – Dividend Distribution tax on dividend pay outs to unit holders in an equity oriented fund.**

The existing provisions of section 115R, *inter alia*, provide that any amount of income distributed by the specified company or a Mutual Fund to its unit holders, shall be chargeable to tax and such specified company or Mutual Fund shall be liable to pay additional income-tax on such distributed income at the rate specified in the section. However, any income distributed to a unit holder of equity oriented funds is not chargeable to tax under the said section.

With a view to providing a level playing field between growth oriented funds and dividend paying funds, in the wake of new capital gains tax regime for unit holders of equity oriented funds, section 115R is to be amended, so as to provide that where any income is distributed by a Mutual Fund being, an equity oriented fund, the mutual fund shall be liable to pay additional income-tax at

the rate of ten per cent (10%) on income so distributed.

For this purpose, equity oriented fund will have the same meaning assigned to it in the new section 112A of the Act.

Further, clause (b) of the second proviso to sub-section (2) of section 115R is to be amended, which is consequential in nature.

The aforesaid amendments will take effect from 1.4.2018.

In other words, the Mutual Fund shall be liable to pay additional income-tax at the rate of ten per cent (10%) on income, which is distributed on or after 1.4.2018.

## **29. Amendment of section 139A – Entities to apply for Permanent Account Number (PAN) in certain cases**

Section 139A, *inter-alia*, provides that every person specified therein and who has not been allotted a permanent account number, shall apply to the Assessing Officer for allotment of a Permanent Account Number (PAN).

In order to use PAN as Unique Entity Number (UEN) for non-individual entities, it is to be provided that every person, not being an individual, which enters into a financial transaction of an amount aggregating to two lakhs and fifty thousand rupees (2.5 Lakhs) or more in a financial year, shall be required to apply to the Assessing Officer for allotment of PAN.

Further, in order to link the financial transactions with the natural persons, the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer or any person competent to act on behalf of such entities, shall also apply to the Assessing Officer for allotment of PAN.

The aforesaid amendment will take effect from 1.4.2018.

## **30. Amendment of section 143 – New scheme for scrutiny assessment**

Section 143 of the Act provides for the procedure for assessment. Sub-section (3) of the said section empowers the Assessing Officer to make, by an order in writing, an assessment of total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

A new scheme is to be prescribed for the purpose of making assessments so as to impart greater transparency and accountability, by eliminating the interface between the Assessing Officer and the assessee, optimal utilization of the resources, and introduction of team-based assessment.

Therefore, section 143 is to be amended by inserting a new sub-section (3A), after sub-section (3), enabling the Central Government to prescribe the aforementioned new scheme for scrutiny assessments, by way of notification in the Official Gazette.

Further a new sub-section (3B) is to be inserted in section 143, enabling the Central Government to direct, by notification in the Official Gazette, that any of the provisions of this Act relating to assessment shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified therein. However, no such direction shall be issued after 31.3.2020.

Besides, a new proviso is to be inserted in sub-clause (vi) of clause (a) of sub-section (1) of section 143, so as to provide that no adjustment under the aforesaid sub-clause (vi) shall be made in respect of any return furnished for the assessment year commencing on or after 1.4.2018, viz. for AY 2018-19, onwards.

The aforesaid amendments will take effect from 1.4.2018.

**31. New sections 145A and 145B are substituted for the present section 145A – Amendments in relation to notified Income Computation and Disclosure Standards (ICDS)**

At present, section 145 of the Act empowers the Central government to notify Income Computation and Disclosure Standards (ICDS). In pursuance thereof, the central government has notified ten such standards effective from 1.4.2017 relating to Assessment year 2017-18. These are applicable to all assesses (other than an individual or a Hindu undivided family who are not subject to tax audit under section 44AB of the said Act) for the purposes of computation of income chargeable to income-tax under the head “*Profits and gains of business or profession*” or “*Income from other sources*”.

In order to bring certainty in the wake of recent judicial pronouncements on the issue of applicability of ICDS, present section 145A is substituted by new sections 145A and 145B, so as to provide to —



- (i) amend section 36 of the Act to provide that marked to market loss or other expected loss as computed in the manner provided in ICDS notified under sub-section (2) of section 145, shall be allowed as a deduction.
- (ii) amend 40A of the Act to provide that no deduction or allowance in respect of marked to market loss or other expected loss shall be allowed except as allowable under newly inserted clause (xviii) of sub-section (1) of section 36.
- (iii) insert a new section 43AA in the Act to provide that, subject to the provisions of section 43A, any gain or loss arising on account of effects of changes in foreign exchange rates in respect of specified foreign currency transactions shall be treated as income or loss, which shall be computed in the manner provided in ICDS as notified under sub-section (2) of section 145.
- (iv) insert a new section 43CB in the Act to provide that profits arising from a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method except for certain service contracts, and that the contract revenue shall include retention money, and contract cost shall not be reduced by incidental interest, dividend and capital gains.
- (v) amend section 145A of the Act to provide that, for the purpose of determining the income chargeable under the head "*Profits and gains of business or profession*",—
  - (a) the valuation of inventory shall be made at lower of actual cost or net realizable value computed in the manner provided in income computation and disclosure standards notified under (2) of section 145.
  - (b) the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation.
  - (c) inventory being securities not listed, or listed but not quoted, on a recognized stock exchange, shall be valued at actual cost initially recognized in the manner provided in income computation and disclosure standards notified under (2) of section 145.
  - (d) inventory being listed securities, shall be valued at lower of actual cost or net realizable value in the manner provided in income computation and disclosure standards notified

under (2) of section 145 and for this purpose the comparison of actual cost and net realizable value shall be done category-wise.

(vi) insert a new section 145B in the Act to provide that :

- (a) interest received by an assessee on compensation or on enhanced compensation, shall be deemed to be the income of the year in which it is received.
- (b) the claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realization is achieved.
- (c) income referred to in sub-clause (xviii) of clause (24) of section 2 shall be deemed to be the income of the previous year in which it is received, if not charged to income tax for any earlier previous year.

Recent judicial pronouncements have raised doubts on the legitimacy of the notified ICDS. However, a large number of taxpayers have already complied with the provisions of ICDS for computing income for assessment year 2017-18. In order to regularize the compliance with the notified ICDS by a large number taxpayers so as to prevent any further inconvenience to them, the aforesaid amendments will take effect retrospectively from 1.4.2017 i.e the date on which the ICDS was made effective and will, accordingly, apply in relation to AY 2017-18 and subsequent AYs.

### **32. Amendment of section 194A, relating to interest income of senior citizens**

The threshold for deduction of tax at source on interest income of senior citizens is to be raised from Rs.ten thousand (Rs.10,000 ) to Rs.fifty thousand (Rs.50,000).

The aforesaid amendment will take effect from 1.4.2018.

### **33. Amendment of section 286 – Rationalization of provisions relating to Country-by-Country Report**

Section 286 of the Act contains provisions relating to specific reporting regime in the form of Country-by-Country Report (CbCR) in respect of an international group. Based on model legislation of Action Plan 13 of Base Erosion and Profit Shifting (BEPS) of the Organization for

Economic Co-operation and Development (OECD) and others, following amendments are to be made so as to improve the effectiveness and reduce the compliance burden of such reporting:—

- (i) the time allowed for furnishing the Country-by-Country Report (CbCR), in the case of parent entity or Alternative Reporting Entity (ARE), resident in India, is proposed to be extended to twelve months from the end of reporting accounting year;
- (ii) constituent entity resident in India, having a non-resident parent, shall also furnish CbCR in case its parent entity outside India has no obligation to file the report of the nature referred to in sub-section (2) in the latter's country or territory;
- (iii) the time allowed for furnishing the CbCR, in the case of constituent entity resident in India, having a non-resident parent, shall be twelve months from the end of reporting accounting year;
- (iv) the due date for furnishing of CbCR by the ARE of an international group, the parent entity of which is outside India, with the tax authority of the country or territory of which it is resident, will be the due date specified by that country or territory;
- (v) agreement would mean an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A, and also an agreement for exchange of the report referred to in sub-section (2) and sub-section (4) as may be notified by the Central Government;
- (vi) "*reporting accounting year*" has been defined to mean the accounting year in respect of which the financial and operational results are required to be reflected in the report referred to in sub-section (2) and sub-section (4).

These amendments are clarificatory in nature.

The aforesaid amendments will take effect retrospectively from the 1.4.2017 and will, accordingly, apply in relation to the AY 2017-18 and subsequent AYs.

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