



Budget Analysis - 2017



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Direct Taxes

Rate of Taxes

i. For Individuals below the age of 60 years, Hindu Undivided Families, Association of Persons, Body of Individuals and Artificial Judicial Person:

| Existing | | Proposed | |
|----------------------|------|----------------------|------|
| Income (₹) | Rate | Income (₹) | Rate |
| 0-2,50,000 | NIL | 0-2,50,000 | NIL |
| 2,50,001 – 5,00,000 | 10% | 2,50,001 – 5,00,000 | 5 % |
| 5,00,001 – 10,00,000 | 20% | 5,00,001 – 10,00,000 | 20% |
| Above 10,00,001 | 30%# | Above 10,00,001 | 30%# |

ii. For Resident Individuals who is of the age of 60 years or more but less than 80 years:

| Total Income (₹) | Rate |
|----------------------|------|
| 0 - 3,00,000 | Nil |
| 3,00,001 - 5,00,000 | 5% |
| 5,00,001 - 10,00,000 | 20% |
| Above 10,00,000 | 30%# |

iii. For Resident Individuals who is of the age of 80 years or more:

| Total Income (₹) | Rate |
|-----------------------|------|
| 0 - 5,00,000 | Nil |
| 5,00,001 to 10,00,000 | 20% |
| Above 10,00,000 | 30%# |

Surcharge:

The amount of income tax calculated as per above would be increased by a surcharge – which would be, in the case of an Individual Assessee having taxable income of between ₹50 lacs and ₹1 crore rate of surcharge payable would be 10%. An Individual Assessee having taxable income of more than ₹1 crore is liable to pay his tax along with 15% surcharge.

Rebate u/s 87A of the Income-tax Act, 1961 – Applicable for Resident Individual

| Existing | | Proposed | |
|-----------------|----------------|-----------------|----------------|
| Total Income | Rebate u/s 87A | Total Income | Rebate u/s 87A |
| Up to ₹5,00,000 | 5,000* | Up to ₹3,50,000 | 2,500# |

* Rebate of Up to ₹5,000 or tax liability whichever is lower

Rebate of Up to ₹2,500 or tax liability whichever is lower

Our Comments

There were very high expectations from the budget with respect to increasing the non-taxable slab to ₹4,00,000. However, instead of increasing the non-taxable slab limit, the Hon'ble finance minister chose to keep the tax slabs unchanged and reduce the tax rate in the basic slab of ₹2,50,001 – ₹5,00,000 from 10% to 5%.

For Other Assessees

| Description | Existing Rate (%) | | | Proposed Rate (%) | | |
|----------------------------------------------------------|----------------------------------|------------------------------------------|------------------------------------|----------------------------------|------------------------------------------|------------------------------------|
| | Having Income less than ₹1 crore | Having Income from ₹1 crore to 10 crores | Having Income more than ₹10 crores | Having Income less than ₹1 crore | Having Income from ₹1 crore to 10 crores | Having Income more than ₹10 crores |
| A) Domestic company | | | | | | |
| Regular tax (Turnover < ₹5 crore) | 30.9 | 31.9609 | 33.4544 | 25.75 | 27.5525 | 28.84 |
| Regular tax (Turnover < ₹5 crore < ₹50 crore) | 30.9 | 33.063 | 34.608 | 25.75 | 27.5525 | 28.84 |
| Regular tax (Turnover > ₹50 crores) | 30.9 | 33.063 | 34.608 | 30.9 | 33.063 | 34.608 |
| MAT (Calculated on Book Profits) | 19.055 | 20.389 | 21.34 | 19.055 | 20.389 | 21.34 |
| DDT | 17.304 | 17.304 | 17.304 | 17.304 | 17.304 | 17.304 |
| Dividend Received from Foreign subsidiary company | 17.304 | 17.304 | 17.304 | 17.304 | 17.304 | 17.304 |
| B) Foreign company | | | | | | |
| Regular tax | 41.2 | 42.024 | 43.26 | 41.2 | 42.024 | 43.26 |
| C) Firm and LLP | | | | | | |
| Regular tax | 30.9 | 34.608 | | 30.9 | 33.063 | |
| Alternate Minimum Tax (AMT) (Calculated on Book Profits) | 19.055 | 20.389 | | 19.055 | 20.389 | |

Above rates are inclusive of surcharge and education cess as applicable.

Our Comments:

It's a bit of a surprise that the Hon'ble Finance Ministry has reduced the rate of taxes only for MSME companies to 25%. Further, there is no corresponding reduction in rate of Minimum Alternate Taxes. Thus, if MAT provisions are applicable, a company is required to pay MAT at the existing rate of 18.5% plus applicable education cess and surcharge.

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Amendment in Provisions of House Property

Real Estate Developer (Section 23)

In case of real estate developers holding house property as stock-in-trade but not let-out during the previous year, no notional rent is includible in the total income up to the period of one year from the end of the financial year in which certificate of completion of the property is obtained from competent authority

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19)

Our Comments:

Prior to this amendment, the house property held by the real estate developer as stock-in-trade but not let-out; notional rent on such property was taxed under the head Income from House Property. This amendment will give a relief to the real estate developers who are unable to liquidate their stock-in-trade / unable to let-out the property up to a period of one year from the date on which completion certificate is obtained.

Restriction on set-off of losses from House Property (Section 71)

Set-off of loss under the head income from house property against any other head of income shall be restricted to ₹2,00,000/- for any assessment year. However, the unabsorbed loss shall be allowed to be carried forward for set-off in subsequent assessment years against income from house property only as per the existing provisions of the Income-tax Act, 1961.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19)

Our Comments:

The amendment will hit the taxpayer who invest in house properties by taking loan against such house properties for mitigating their overall tax liabilities. While demonetization has impacted the real estate sector, the proposed amendment will further impact the taxpayers engaged in the business of real estate development for the purpose of earning rental income. Further, since losses from house property can be set-off only against income from house property in subsequent years, the taxpayers might face the situation that such carried forward loss may not be set-off at all in the time frame of eight years and such carried forward losses lapses forever.

Amendment in Provisions of Income from Business and Profession

Restrictions on Cash Transactions (Section 269ST)

No person shall receive an amount of ₹3,00,000/- or more in aggregate from a person in a day; or in respect of single transaction; or in respect of transactions relating to an event or occasion from one person.

The said provisions shall not apply to any receipt by Government, banking company, post-office savings bank or co-operative bank; any transaction referred in Section 269SS; and any other class of persons or receipts as may be notified by Central Government.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19)

Penalty for contravention of Section 269ST (Section 271DA)

On contravention of provisions of Section 269ST, a person shall be liable to pay a penalty equivalent to the amount of such receipts unless the person proves that there were good and sufficient reasons for such contravention.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19)

Disallowance of Depreciation (Section 32)

Where a tax payer incurs a capital expenditure for acquisition of asset by way of payment or aggregate of payments in a day, by way of cash payments in excess of ₹10,000/-, such expenditure shall be ignored for the purpose of computation of actual cost of an asset.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19)

Disallowance of Capital Expenditure in relation to Specified Business (Section 35AD)

Where a tax payer incurs a capital expenditure for a specified business by way of payment or aggregate of payments in a day, by way of cash payments in excess of ₹10,000/-, such expenditure shall not be allowed as deduction for computation of Income from Business and Profession.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19)

Disallowance of Expenses made in cash [Section 40A(3)]

Where a tax payer incurs any expenditure for a business by way of payment or aggregate of payments in a day, by way of cash payments in excess of ₹10,000/-, such expenditure shall not be allowed as deduction for computation of Income from Business and Profession.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19)

Our Comments:

Prior to the amendment, the limit for incurring cash expenditure u/s 40A(3) was ₹20,000. The Finance Bill further clarifies that payments made through electronic clearing system will be treated at par with payments by way of account payee cheque. The amendment is one of the bold steps by the Finance Ministry to boost cashless / digital economy.

Enhanced Threshold Limit for Maintenance of Books of Accounts (Section 44AA)

| Existing – Books of Accounts to be maintained if either | | Proposed - Books of Accounts to be maintained if either | |
|---------------------------------------------------------|-----------------------------------------|---------------------------------------------------------|-----------------------------------------|
| Total revenue from Business & Profession | Total income from Business & Profession | Total revenue from Business & Profession | Total income from Business & Profession |
| Exceeds ₹10,00,000 | Exceeds ₹1,20,000 | Exceeds ₹25,00,000 | Exceeds ₹2,50,000 |

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19)

Reduction in Rate of Taxes for Presumptive Taxation (Section 44AD)

| Existing Provisions | | Proposed Provisions | |
|---------------------|----------------------|---------------------|----------------------|
| Presumptive income | 8% of gross receipts | Presumptive income | 6% of gross receipts |

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19)

Our Comments:

The Finance Ministry is endorsing the Government's view of ease of doing business in India and providing relief to small businessman from compliance burden by increasing the limits to maintain books of accounts. Further, the reduction in presumptive rate of taxation will encourage more tax payers to declare income at presumptive rates and part away with compliance burden of tax-audit. The amendment is one step of the Finance Ministry to increase the tax-base of the country.

Manner of Computation of Deduction of Profit and Gains u/s 10AA – applicable to SEZ

It has been clarified that amount of deduction u/s 10AA shall be allowed from the total income of the taxpayer which is computed in accordance with the provisions of the act before giving effect to the provisions of Section 10AA and the deduction in no circumstances shall exceed the income so computed.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19) onwards

Our Comments:

The amendment is in contradiction to Supreme Court Ruling in case of CIT & Anr Vs. M/s Yokogawa India Limited (Civil Appeal No 8498 of 2013) pertaining to Provisions of Section 10A wherein the Hon'ble Supreme Court has held Section 10A is a provision for deduction. The computation of deduction would be while computing the gross total income of eligible undertaking under Chapter IV and not at the time of computation of total income under Chapter VI.

Profit based deductions for Start-ups [Section 80-IAC]

Since start-ups may take time to earn profits out of their start-up business, the scope of claiming deduction by an eligible start-up has been expanded to claim deduction for any three consecutive assessment years out of seven years (as against current five years) beginning in the year in which such start-up is incorporated.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19) onwards

Carry Forward and set-off of losses in case of Start-ups (Section 79)

Section 79 of the Act relating to carry forward and set-off of losses has been amended to provide benefit to start-up companies in India providing that where a change in shareholding has taken place in a previous year in the case of a company, not being a company in which the public are substantially interested and being an eligible start-up as referred to in section 80 -IAC of this Act, loss shall be carried forward and set off against the income of the previous year, if all the shareholders of such company which held shares carrying voting power on the last day of the year or years in which the loss was incurred, being the loss incurred during the period of seven years beginning from the year in which such company is incorporated, continue to hold those shares on the last day of such previous year.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19) onwards

Amendment in Provisions of Income from Capital Gains

Limiting the scope of LTCG Exemption on Sale of Equity Shares [Section 10(38)]

LTCG exemption for income arising on transfer of Equity Shares acquired on or after 01.10.2004 shall be provided only if the acquisition of shares is chargeable to Security Transaction Tax under Chapter VII of the Finance (No.2) Act, 2004.

Detailed Guidelines covering genuine transactions like IPO, FPO, bonus or rights issue of shares, acquisition by non-resident in accordance with the FDI Policy of the Government shall be issued by the Finance Ministry in due course.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19) onwards

Our Comments:

This amendment is brought in to ward off the misuse of the benefit by certain persons by declaring unaccounted income as exempt long-term capital gains by entering into sham transactions.

Conversion of Preference Shares to Equity Shares not to be regarded as transfer

Conversion of Preference Shares to Equity Shares shall not be regarded as transfer [Section 47(xb)].

The period of holding of equity shares will be reckoned from the date of acquisition of converted preference shares [Section 2(42A)]

The cost of acquisition of equity shares shall be deemed to be cost of acquisition of converted preference shares. [Section 49(2AE)]

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19) onwards

Period of Holding in case of Immovable Property [Section 2(42A)]

The period of holding in case of immovable property, being land or building or both is reduced from the existing period of 36 month to 24 month to qualify as long term capital asset.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19) onwards

Our Comments:

Land/ building on being qualified as 'Long term capital asset' is eligible for indexation benefit, which can save substantial amount of capital gain taxes on transfer of the said asset. This is a welcome amendment which substantially reduces the lock-in period of investment to encourage investment real estate sector which is presently hit hard by demonetization

Development of Affordable Housing (Section 80-IBA)

It is proposed to amend section 80-IBA to provide following relaxations:

- The size of the residential unit shall be measured by considering carpet area as defined in Real Estate (Regulations and Development) Act, 2016 as against existing criteria of Built-Up Area.
- The restriction on size of the residential units shall not apply to places located within a distance of 25 kms from the municipal limits of four metropolitan cities i.e. Chennai, Delhi, Kolkata or Mumbai
- The time frame for completion of the project for claiming deduction has been increased to five years as against the existing time frame of three years.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19) onwards

Expanding the scope of long term bonds under 54EC

The existing provision of section 54EC provides that capital gain to the extent of ₹50 lakhs arising from the transfer of a long-term capital asset shall be exempt if the taxpayer invests the whole or any part of capital gains in certain specified bonds, within the specified time. Currently, investment in bond issued by the National Highways Authority of India or by the Rural Electrification Corporation Limited is eligible for exemption under this section. In order to widen the scope of the section for sectors which may raise fund by issue of bonds eligible for exemption under section 54EC, it is proposed to amend section 54EC so as to provide that investment in any bond redeemable after three years which has been notified by the Central Government in this behalf shall also be eligible for exemption.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19) onwards

Joint Development Agreement – [Section 45(5A)]

In case of transfer of land or building pursuant to the Joint Development Agreement, the capital gains shall arise in the previous year in which the certificate of completion of the project is issued by the competent authority. Further, consideration for the purpose of computation of Capital Gains shall be the stamp duty value of the property (plus cash consideration, if any) on the date of issue of completion certificate.

TDS Liability on Monetary Consideration under Joint Development Agreement (Section 194-IC)

In case any monetary consideration is payable under the Joint Development Agreement, tax at rate of 10 percent shall be deductible from such consideration.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19) onwards

Our Comments:

The above proposition will put to rest the controversies surrounding the timing and quantification of gains arising on transfer of land or building for the purpose of joint development of the project under the joint development agreement.

Mode of Computation of Capital Gains (Section 48)

The cost of acquisition of an asset prior to 01.04.2001 shall (at the option of the taxpayer) be allowed to be taken as fair market value as on 01.04.2001 and the cost of improvement shall include only those capital expenses which are incurred after 01.04.2001.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19) onwards

Our Comments:

The above proposition will help the taxpayers in reducing their tax outflow w.r.t the capital gains earned by them by adopting fair market value of the assets acquired prior to 01.04.2001. We expect the Government to come up with new set of CII index numbers starting from FY 2001-02.

Fair Market Value to be full value of Consideration for Unquoted Shares (Section 50CA)

In case of transfer of unquoted shares of the company, the fair market value of shares determined in the prescribed manner shall be the full value of consideration for the purpose of computation of income chargeable to tax as capital gains.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19) onwards

Our Comments:

This amendment is another anti-abuse provision wherein the Government is discouraging transfer of shares at below their fair market value. This amendment forces the taxpayers to evaluate at FMV before sale, thus Compliance burden on taxpayers is increased

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Amendment in Provisions of Taxation of Non-Residents

Double Taxation Avoidance Agreement (Sec 90 and 90A)

A non-resident is entitled to claim any relief under a Double Taxation Avoidance Agreement ('DTAA') that India has entered into with a country or specified territory of which he is a resident, provided he obtains a tax residency certificate (TRC) from the Government of that country or specified territory

For removal of doubts 'any term' used in any DTAA that India has entered into with a country or specified territory; or in any agreement that any specified association in India has entered into with any specified association in the specified territory outside India, the meaning of the 'term' shall be:

- If the term is used and defined in an agreement entered into, then the said term shall have the same meaning as assigned to it in the agreement; and
- If the term is not defined in the said agreement, but is defined in the Act, then it shall have the same meaning as assigned to it in the said Act and any explanation to it by the Central Government

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19) onwards

Our Comments:

Prior to the proposed amendment, where any term used in the DTAA was not defined under the DTAA or the agreement entered by India or the Income-tax Act, it was assigned meaning by way of notification issued u/s 90(3) / 90A(3) of the Income-tax Act and such assigned meaning was deemed to have effect from the date on which the DTAA came into force. The proposed amendment is in line with the decision of Hon'ble Supreme Court in case of *Kulandangan Chettiar* [(267 ITR 654(SC))] and puts all controversies surrounding any term not defined under the DTAA or Act to rest.

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Indirect Transfer of Assets [Sec 9(1)(i)]

The capital assets, being shares and interest in a non-resident company, is deemed to be situated in India if such shares or interest derives its value substantially from the assets located in India as per Explanation 5 to section 9(1)(i) of the Act. Thereby capital gains on transfer of shares were sought to be taxed in India. It is proposed to amend the said section so as to clarify that the Explanation 5 shall not apply to any asset or capital asset mentioned therein being investment held by non-resident, directly or indirectly, in a Foreign Institutional Investor, as referred to in clause (a) of the Explanation to section 115AD, and registered as Category-I or Category II Foreign Portfolio Investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 made under the Securities and Exchange Board of India Act, 1992, as these entities are regulated and broad based. The proposed amendment is clarificatory in nature.

The amendment will take effect retrospectively from 01.04.2012 (applicable for AY 2012-13 onwards)

Our Comments:

The non-resident investors investing through FIIs/ FPIs are now outside the ambit of taxation of capital gains arising on indirect transfers of shares.

Concessional Rate of taxation for long-term capital gains arising from the transfer of unlisted securities in case of non-resident [Section 112(1)(c)(iii)]

There was an uncertainty as to whether the provision of section 112(1)(c)(iii) is applicable to the transfer of share of a private company. Finance Act, 2016 amended section 112(1)(c) to clarify that the share of company in which public are not substantially interested shall also be chargeable to tax at the rate of ten per cent with effect from 01.04.2017. As the concessional rate was provided with effect from 01.04.2013, there was uncertainty about the applicability of the amendment to the intervening period. With a view to clarify that the amendment made by Finance Act, 2016 shall also apply to the period from 01.04.2013 to 31.03.2017, it is proposed to amend section 50 of the Income-tax Act so as to provide that the effective date of amendment made to section 112(1)(c)(iii) vide Finance Act, 2016 shall be 01.04.2013 instead of 01.04.2017.

The amendment will take effect retrospectively from 01.04.2013 (applicable for AY 2013-14 onwards)

Amendment in Provisions of Transfer Pricing Regulations

Limiting the Scope of Specified Domestic Transactions (Section 92BA)

The scope of transfer pricing regulations which were extended to the transactions entered into by domestic related parties or by resident sister undertakings for the purposes of section 40A(2)(b) of the Act are excluded from scope of Section 92BA with effect from 01.04.2017

The amendment is applicable w.e.f. 01.04.2017 (applicable for AY 2017-18 onwards)

Our Comments:

The proposed amendment is in line with Hon'ble Supreme Court ruling in case of CIT v. Glaxo Smithkline Asia (P.) Ltd. [2010] 195 Taxmann 35 which stated the need to extend existing transfer pricing provisions to domestic transactions. Finance Act 2012 introduced transfer pricing provisions to specified domestic transactions wherein transactions for expenditure incurred under section 40A(2)(b) of the Act got covered. This increased the burden on the taxpayer even in cases where transactions were entered by domestic related parties or by resident sister undertakings who did not enjoy any profit based tax incentives. The proposed amendment is welcomed as it will reduce compliance burden for those entities who had transactions with domestic related parties or by resident sister undertakings exceeding the prescribed monetary limits but did not enjoy any profit based tax incentives.

Introduction of Secondary Adjustments in Transfer Pricing Regulations (Section 92CE)

New section has been proposed to be inserted where an assessee is required to carry out secondary adjustments, that is, where the primary adjustment to the transfer price:

- has been made Suo moto by the assessee in his return of income or,
- is made by the Assessing Officer and the assessee has accepted the adjustment or,
- is determined by an advance pricing agreement entered into by the assessee under section 92CC of the Act or,
- is made as per the safe harbour rules framed under section 92CB or,
- arises as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered under section 90 or 90A of the Act

Further, as a result of the primary adjustment to the transfer price, if there is an increase in the total income or reduction in the loss of the assessee, then the 'excess money' (difference between the arm's length price determined in primary adjustment and the price at which the international transaction has actually been undertaken) which is available with its associated enterprise (AE), has to be repatriated to India within the time as may be prescribed

The excess money which is available with its AE, if not repatriated to India within the time as may be prescribed, then the same shall be deemed to be an advance made by the assessee to such AE and the interest on such advance, shall be computed as the income of the assessee, in the manner which may be prescribed

The assessee shall not carry out secondary adjustment, if:

- the amount of primary adjustment made in any previous year does not exceed ₹1 crore, and
- the primary adjustment is made in respect of an assessment year commencing on or before 01.04.2016

The meaning of the terms 'associated enterprise' and 'arm's length price' shall have the same meaning as defined under section 92A(1) and section 92A(2) and section 92F(ii) of the Act respectively

The term 'primary adjustment' to a transfer price means the determination of transfer price in accordance with the arm's length principle resulting in an increase in the total income or reduction in the loss, as the case may be, of the assessee

The term 'secondary adjustment' means an adjustment in the books of account of the assessee and its AE, to reflect that the actual allocation of profits between them, and are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19) onwards

Our Comments:

India is not a member country of the Organization for Economic Cooperation and Development ('OECD'). However, India enjoys the status of an observer in OECD. The proposed amendment is to align Indian Transfer Pricing provisions in line with OECD Transfer Pricing Guidelines and international best practices. The proposed amendment seeks to tax notional income and thus its constitutional validity may be challenged in the courts of law.

Limitation of Interest Deduction in Certain Cases (Section 94B) – loans from non-resident associated enterprises

New section proposed to be inserted in the Act which is applicable to

- an Indian company
- a permanent establishment of a foreign company

being the borrower who pays interest in respect of any form of debt issued to a non-resident, who is an 'associated enterprise' (as defined u/s 92A(1) & 92A(2)) of the borrower. Further, such interest is allowed as a deduction in computing income chargeable under the head 'Profits and gains of business or profession'. It provides that where the above-mentioned entities pay interest or similar consideration exceeding INR one crores and where the said amount is deductible while computing income chargeable under the head 'Profits and gains of business or profession', interest shall not be deductible in computation of income under the said head to the extent that it arises from the excess interest.

The term 'excess interest' shall mean an amount of total interest paid or payable:

- in excess of 30 per cent of its earnings before interest, taxes, depreciation and amortization (EBITDA) of the borrower, or
- interest paid or payable to an AE, whichever is less

Further, the provision provides a deeming fiction, that is, where the debt is issued by a lender who is not associated but an associated enterprise as defined u/s 92A(1) and 92A(2) of the Income-tax Act provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with such lender, then such debt shall be deemed to have been issued by an associated enterprise. The term 'debt' has been defined to mean any loan, financial instrument, finance lease, finance derivative, or any arrangement that gives rise to interest, discounts or other finance charges that are tax deductible under the head Profits and Gains of Business or Profession.

The provisions shall allow for carry forward of disallowed interest expense to eight assessment years immediately succeeding the assessment year for which the disallowance was first made and deduction against the income computed under the head 'Profits and gains of business or profession' to the extent of maximum allowable interest expenditure. However, the said provision shall not apply to any entities engaged in the business of banking or insurance.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19) onwards

Our Comments:

In line with Base Erosion and Profit Shifting (BEPS) report of the OECD along with G20 countries, India has initiated steps in implementing Action Plan 4 whereby various measures have been addressed in relation to the issues of excess interest deductions made by the multinational enterprises, to counter cross border shifting through excessive interest payments and aim to protect India's tax base. This section is not in line with India's consistent stand of substance over form as it disregards the nature of guarantee and treat it equivalent to actual lending whereas in real sense, the lending is done by a third party. extremely stringent in the sense that as it tends to equate an implicit guarantee/assurance to actual lending when the lending in its true economic substance is done by a third party. Since the proposed amendment tends to disregard the real character of the transaction and tax it notionally, its constitutional validity may be challenged in the courts of law.

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Other Amendments

Rationalization of Provisions of Section 115JB in line with Indian Accounting Standards

Since, the Government has notified Ind AS for certain companies, the book profit of such companies as per Ind AS financial statement shall be different from the book profit as per existing Indian GAAP. Thus, the CBDT constituted a committee for suggesting the framework for computation of MAT liability under section 115JB for Ind AS compliant companies in the year of adoption and thereafter.

In line with the recommendation received from the committee, it is proposed to amend section 115JB for companies preparing financial statements in accordance with the provisions of Ind AS and to update the provisions of Companies Act 1956 referred in said section in accordance with provisions on new Companies Act 2013. Detailed methodology for computation of book profits for companies preparing financial statements in accordance with the provisions of Ind AS has been provided.

The amendment is applicable w.e.f. 01.04.2017 (applicable for AY 2017-18 onwards)

Foreign tax credit in respect of disputed tax paid in foreign country (Section 90, 90A, 91)

FTC rules provide that in cases where foreign taxes are under dispute in the foreign country, credit of such taxes will be available in India in the year in which the dispute is settled. The taxpayer is required to furnish evidence for dispute settlement and discharge of tax liability within six months of settlement of dispute. The tax authorities to revise their assessment orders giving effect to the claim of the taxpayer.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19 onwards)

Availability of Foreign Tax Credit on MAT / AMT (Section 115JAA and Section 115JD) - Period for which MAT credit can be carried forward extended

Where the foreign tax credit (FTC) available under section 90 or 90A or 91 of the Act, allowed against the tax payable under the provisions of MAT / Alternate Minimum Tax (AMT), exceeds the amount of such FTC admissible against the tax payable under the normal provision of the Act, then such excess FTC shall be ignored, while computing tax credit allowed under section 115JAA and 115JD of the Act.

In order to provide relief to tax payer, carried forward of tax credit available under MAT / AMT is proposed to be extended to fifteen assessment years as against the existing timeframe of ten assessment years.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19) onwards

Taxes on Dividend - few more taxpayers covered (Section 115BBDA)

Under the existing provisions of section 115BBDA, income by way of dividend in excess of ₹10,00,000/- is chargeable to tax at the rate of 10% on gross basis in case of a resident individual, Hindu undivided family or firm.

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

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19 onwards)

Withholding on rent to be made by Individuals and HUF not subjected to tax audit in certain cases (Section 194-IB)

New section 194-IB is proposed to be inserted mandating individuals and HUF not subjected to tax audit to deduct taxes at 5% on rental payments if such payments per month or part thereof exceeds ₹50,000/-.

Tax shall be deducted on such income at the time of credit of rent, for the last month of the previous year or the last month of tenancy if the property is vacated during the year, as the case may be, to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

However, the said deductors need not apply for TAN. Further, provisions of Section 206AA relating to higher rate of withholding to apply in case, the landlord does not have PAN.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19 onwards)

Our Comments:

As evident from the data provided by the Hon'ble finance minister in his budget speech, the number of tax-return filers is very low compared to the income-earning population. This proposal is clear indication of intent of the Finance Ministry to expand the tax base and expected to pump up the revenue collection. The above proposition will surely increase compliance burden on Individuals/ HUF (even salaried employees are required to make TDS) who make payment of rent in excess of prescribed limit. However, considering the fact that the withholding to be done only once in a year the compliance burden is somewhat reduced. Implementation of the proposal may be challenging for the department.

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Concessional rate of withholding on interest on external commercial borrowings / Rupee denominated bonds (Section 194-LC)

The present scheme of taxation of interest at a concessional rate of tax of 5% and application of tax withholding on interest at the same rate is extended to loans/ borrowings denominated in foreign currency (subject to certain conditions) borrowed till 01.07.2017. The proposed amendment seeks to extend the concessional tax rate was applicable only for loans borrowed till 01.07.2020.

Further, the budget proposes to extend similar benefit to the rupee denominated bonds from a source outside India.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19 onwards)

Reduction in Rate of TDS u/s 194J in certain cases

The existing provisions of sub-section (1) of section 194J of the Act, inter-alia provides that a specified person is required to deduct an amount equal to ten per cent of any sum payable or paid (whichever is earlier) to a resident by way of fees for professional services or fees for technical services provided such sum paid/payable or aggregate of sum paid/payable exceeds thirty thousand rupees to a person in a financial year.

It is proposed to amend section 194J to reduce the rate of deduction of tax at source to two per cent. from ten per cent. In case of payments received or credited to a payee, being a person engaged only in the business of operation of call center.

This amendment will take effect from the 01.06.2017.

Widening the Scope of Income from Other Sources [Section 56(2)(x)]

The existing provisions (Which cover only individuals and HUF) have been expanded to include all categories of assessee, such that any receipt of a sum of money or the property by any person without consideration or for inadequate consideration in excess of ₹50,000 shall be chargeable to tax in the hands of the recipient under the head income from other sources.

These anti-abuse provisions are currently applicable only in case of individual or HUF and firm or company in certain cases

The amendment is applicable w.e.f. 01.04.2017 (applicable for AY 2017-18 onwards)

Disallowance of non-deduction of tax at source extended for expenses claimed against Income from Other Sources (Section 58)

The provisions of section 40(a)(ia) shall also apply in computing income chargeable under the head income from other sources, as they apply in computing income chargeable under the head profit and gains of business or profession.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19 onwards)

Time Limit for Revising Return of Income [Section 139(5)]

Time limit of filing of revised return under section 139(5) is restricted to the end of assessment year.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19 onwards)

Fees for delay in Furnishing Return of Income

Currently, a penalty of ₹5,000 is leviable for failure to furnish return before one year from end of relevant year

With a view to ensure better compliance, instead of penalty, additional fees shall become payable for failure to furnish tax return within its due date as per Table below:

| Particulars | Late Fees |
|-------------------------------------------------------------------------|-----------|
| Income up to ₹5,00,000 | ₹ 1,000 |
| In other cases- | |
| a. Return filed before 31 st December of the assessment year | ₹ 5,000 |
| b. Return filed after 31 st December of the assessment year | ₹ 10,000 |

Consequential amendment to 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.

Further - 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.

Consequentially, proposed that the provisions of section 271F in respect of penalty for failure to furnish return of income shall not apply in respect of financial year 2017-18 and onwards.

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19 onwards)

Time Limit for Completion of Assessments

Section 153 of the Income-tax Act provides for time limit for completion of assessment, reassessment. It has been proposed to revise the time limit for completion of assessment as under:

| Assessment Year | Present | Proposed |
|-----------------|-----------|-----------|
| 2018-19 | 21 Months | 18 months |
| 2019-20 | 18 Months | 12 months |

In case of reassessment proceedings u/s 147 of the Income-tax Act, where the notice is served under section 148 on or after 01.04.2019, the time limit for completion of the proceedings is proposed to be 12 months from the end of financial year in which the notice is served.

The amendment is applicable for relevant assessment year mentioned in the table above

Donations in Cash (Section 80G)

No deduction shall be allowed as deduction from taxable income in respect of cash donations in excess of ₹2,000/- (earlier, this threshold was ₹10,000/-)

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19 onwards)

Donations to Political Parties (Section 13A)

In order to discourage the cash transactions and to bring transparency in the source of funding to political parties, it is proposed to amend the provisions of section 13A of the Income-tax Act to provide that:

No donations of ₹2,000 or more shall be received 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 or through electoral bonds,

Political party must furnish a return of income for the previous year on or before the due date under section 139 the Income-tax Act.

Further, it is also provided the political parties shall not be required to furnish the name and address of the donors who contribute by way of electoral bond

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19 onwards)

Penalty on accountant, merchant banker and registered valuer (Section 271J)

If the Assessing Officer (AO) or the Commissioner (Appeals), in the course of any proceedings under the Act, finds that an accountant or a merchant banker or a registered valuer has furnished incorrect information in any report or certificate furnished under any provision of the Act, then, the AO or the Commissioner (Appeals) may direct such accountant or merchant banker or registered valuer to pay a penalty of ten thousand rupees for each such report or certificate.

For the purpose of this section:

- Accountant means an accountant referred to in the Explanation below sub-section (2) of section 288
- Merchant banker means Category I merchant banker registered with the SEBI and
- Registered valuer means a person defined in clause (oaa) of section 2 of the Wealth-tax Act, 1957

The amendment is applicable w.e.f. 01.04.2018 (applicable for AY 2018-19 onwards)

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Indirect Taxes

From indirect tax perspective, no major changes were made, which further reconfirms the Finance Ministry's commitment to Roll-out Goods and Service Tax (GST) w.e.f. 01.07.2017.

Amendments in Provisions of Customs Act

Passenger and Crew Manifest (Section 30A & 41A)

Every person in charge of a conveyance that enters India from a place outside India, or any other person as may be specified by the Central Government shall deliver information in the prescribed format to the proper officer

- details of passenger and crew arrival manifest before arrival in case of aircraft or a vessel and upon arrival in case of a vehicle; and
- details of passenger name record information of arriving passengers.

Every person in charge of a conveyance that departs from India to a place outside India, or any other person as may be specified by the Central Government shall deliver information in the prescribed format to the proper officer

- details of passenger and crew departure manifest; and
- details of passenger name record information of departing passengers

In the event of failure of furnishing of the above information within the stipulated time as may be prescribed, penalty of amount not exceeding Fifty thousand may be levied for delay without sufficient cause by proper officer.

Our Comments:

This amendment would increase the compliance burden of the vessels, aircrafts or vehicles arriving in India or departing from India as details of all passengers and crew to mandatorily required to be submitted to the Customs department.

Time Limit for Submission of Bill of Entry [Section 46(3)]

It is proposed to make it mandatory for an importer to present Bill of entry before the end of the day following the day on which aircraft or vessel or vehicle carrying goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing. (Excluding Holidays). An importer may submit the bill of entry in advance if the conveyance is expected to arrive within thirty days.

In the event of failure to comply with the above provisions, the proper officer may levy penalty charges as may be prescribed for such violation.

Our Comments:

Prior to this amendment there was no time limit prescribed for presentation of Bill of entry, however, if the goods were not cleared within thirty days, the proper officer had power to sell the impugned goods. The above proposition will enforce the importer to furnish the bill of entry and clear the goods within the prescribed time limits. In the event of failure to furnish the bill of entry and clear the goods within the prescribed time limits, the proper officer shall levy the penalty as may be prescribed and sell the goods as per the existing provisions of the Customs Act.

Time Limit for Payment of Import Duty [Section 47(2)]

| Existing- Time Limit | Proposed – Time Limit |
|---------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Within 2 days (excluding holidays) from the date on which the bill of entry is returned to him for payment of duty. | <ul style="list-style-type: none">In case of Self-Assessment – On date of presentation of Bill of entryIn case of assessment or reassessment or provisional assessment – within one day from date of return of Bill of entry for payment. |

In the event of failure to pay the duty within the stipulated time, interest shall be levied from the date as proposed by the Finance Bill 2017 till the date of payment at the interest rate fixed by the Central Government in this regard.

Amendment in Provisions of Service Tax

Retrospective amendment to Valuation Rules for construction works contract

It is proposed to retrospectively amend the Service Tax (Determination of Value) Rules, 2006 w.e.f. 01.07.2010 to provide that under Rule 2A(i) value of land or undivided share of land shall be excluded and in respect of Rule 2A(ii) if the amount charged includes value of land or undivided share of land, the value of taxable service shall be same as a percentage of total amount charged specified under abetment Notification no.26/2012-ST from time to time or earlier law.

Earlier Rule 2A(i) provided for determination of value by splitting the contract between goods and service component. It provided that the value of service shall be total value of contract less the value of transfer of property in goods involved in the execution of the said works contract. As per explanation (c) value adopted for the purposes of payment of value added tax, shall be taken as the value of transfer of property in goods involved in the execution of the said works contract for determining the value of works contract service.

Rule 2A (ii) provided for a composition scheme. If the value could not be determined by splitting the contract, tax shall be payable on 40% value of gross amount charged in case of original works and at 70% value in case of other works contract. It may be noted that Notification 26/2012-ST also provided for payment of tax on 30% value in case of construction of complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate provided value of land is included in the amount charged. Hon. Delhi High Court in the case of Suresh Kumar Bansal v. Union of India (supra) without even referring to Notification 26/2012-ST held that service tax shall not be payable if the contract includes value of land as Rule 2A does not specifically provide for its deduction

It has now been proposed that if the amount charged includes value of land or undivided share of land, the value of taxable service shall be same as a percentage of total amount charged specified under abetment Notification no. 26/2012-ST from time to time or earlier law. Thus, currently if the value of such construction contract includes value of land, service tax shall be payable on 30% value of total amount charged including the value of land.

Our Comments:

The proposed amendment seeks to negate the Ruling given by Hon. Delhi High Court in case of Suresh Kumar Bansal v. Union of India [2016] 70 taxmann.com 55 (Delhi) dated 03.06.2016 wherein it was held that Rule 2A of Service Tax (Determination of Value) Rules, 2006 shall not apply when the consideration for a composite works contract includes the value of land and hence such contracts shall not be liable to service tax. Hon. High Court had reasoned that service tax is on value of service and as Rule 2A(i) as well as 2A(ii) does not provide for exclusion of value of land, the mechanism for deriving the value of service fails and hence no service tax shall be payable when the contract includes value of land. The proposed amendment is retrospective w.e.f. 01.07.2010 and will put to rest all litigations and controversies surrounding valuation and taxability of Construction Works Contract consisting of composite consideration for value of land or undivided share of land and services.

Exemption of Service Tax towards long term lease of Industrial Plots (Section 104)

No service Tax shall be leviable on one time upfront amount (premium, salami, cost, price, development charge or by whatever name called) in respect of taxable service provided or agreed to be provided by a State Government industrial development corporation or undertaking to industrial units by way of grant of long term lease of thirty years or more of industrial plots from 01.06.2007 to 21.09.2016.

Refund of entire amount collected for the above period would be allowed if application for refund is made within six months from the date on which Finance Bill, 2017 receives the assent of President.

Our Comments:

Notification 41/2016 Service Tax dt. 22.09.2016 exempted levy of service tax on long term lease of Industrial Plots. However, the notification was prospective w.e.f. 22.09.2016. The proposed amendment has extended the benefit of such exemption to transaction undertaken between the period 01.06.2007 and 21.09.2016.

Exemption to Insurance Services provided to members of Armed Forces of Union from Service Tax (Section 105)

No service tax shall be levied or collected in respect of taxable services provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds by way of life insurance to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government, during the period commencing from the 10th day of September, 2004 and ending with the 01.02.2016.

Refund of entire amount collected for the above period would be allowed if application for refund is made within Six months from the date on which Finance Bill, 2017 receives the assent of President.

A new exemption has been inserted to provide exemption to above mentioned service from 01.02.2017. (Notification 7/2017 dated 02.02.2017)

Our Comments:

The proposed amendment will reduce the burden on armed forces. However, the amendment has not provided any clarity in respect of refund of service tax levied or collected on services provided between 02.02.2016 and 01.02.2017.

Service Tax Exemption on Viability Gap Funding (Notification 7/2017 dated 02.02.2017)

Services provided to Government by way of transport of passengers, with or without accompanied belongings, by air, embarking from or terminating at a Regional Connectivity Scheme Airport, against consideration in the form of Viability Gap Funding (VGF) will be included in the mega exemption notification 25/2012-ST (effective from 02.02.2017) and hence same shall be exempt from tax. Exemption shall not apply on or after the expiry of a period of one year from the date of commencement of operations of the Regional Connectivity Scheme Airport as notified by the Ministry of Civil Aviation.

Service Tax on Import of Technology

Research and development Cess Act, 1986 is proposed to be repealed from 1st April 2017. Consequently, it will reduce the compliance burden on the taxpayers to pay R&D Cess for import of technology and claim the exemption for the same under the service tax return.

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Amendment in Provisions of Customs, Excise & Service Tax (Combined)

Amendment in Advance Ruling provisions:

Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961 shall be the Authority for giving advance rulings for the purposes of Customs, Excise & Service Tax. Member from the Indian Revenue Service (Customs and Central Excise), who is qualified to be a Member of the Board, shall be the revenue Member of the Authority. Pending application on the date of assent of Finance Bill, 2017 to be transferred to the new authority

Time limit for adjudication of the application has been increased to six months from existing time limit of 90 days.

Application Fee for Advance Ruling increased to ₹10,000 from existing ₹2,500;

Shield for ruling passed by Advance authority against any vacancy or defect in constitution of the authority is proposed to be removed.

Amendment in Settlement Commission Provisions:

As per Sec. 32E of Central Excise Act, 1944, an assessee may, in respect of a case relating to him, make an application, before adjudication, to the Settlement Commission to have the case settled.

It may be noted that 'assessee' has not been defined under Central Excise Act, 1944. As per Rule 2(c) of Central Excise Rules, 2002 an assessee means any person who is liable for payment of duty assessed or a producer or manufacturer of excisable goods or a registered person of a private warehouse in which excisable goods are stored and includes an authorized agent of such person. Hence a person who is not liable for payment of duty but is liable for payment of penalty (e.g. person who abets (assists) in evading duty) was not regarded as assessee and hence may not be permitted to approach settlement commission. Said lacuna has been proposed to be removed.

It has been proposed that even any other person other than an assessee may also make an application to the Settlement Commission in respect of a show cause notice issued to him in a case relating to the assessee which has been settled or is pending before the Settlement Commission and such notice is pending before an adjudicating authority, in such manner and subject to such conditions, as may be prescribed. It is also proposed that The Settlement Commission may, at any time within three months from the date of passing of the order under sub-section (5), amend such order to rectify any error apparent on the face of record, either Suo moto or when such error is brought to its notice by the jurisdictional Principal Commissioner of Central Excise or Commissioner of Central Excise or Principal Additional Director General of Central Excise Intelligence or Additional Director General of Central Excise Intelligence or the applicant. However reasonable opportunity of being heard must be granted before enhancing the liability.

Disclaimer

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Thank you



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