2017
Analysis of select Tax Proposals

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PART A
DIRECT TAXES

Private circulation only

INCOME TAX ACT, 1961

Individuals and HUF

Except where specifically stated, all amendments will be effective for the financial year 2017-18

1. Individuals and Hindu Undivided Family (HUF):

✓ Rate of Tax:

a. The proposed slabs of income and rates of taxes thereon as applicable to individuals and HUFs other than senior citizens will be as under:-

EXISTING INCOME SLABS (Rs.)	RATE	PROPOSED INCOME SLABS (Rs.)	RATE
0 - 250,000*	NIL	0 - 250,000*	**NIL**
250,001 - 500,000	10%	250,001 - 500,000	**5%**
500,001 – 1,000,000	20%	500,001 – 1,000,000	**20%**
1,000,001 and above	**30%**	**1,000,001 and above**	**30%**

∗ Rs. 300,000/- in case of resident tax payers, who are senior citizens above the age of 60 but below the age of 80 years.

∗ Rs.500,000/- in the case of resident tax payers who are senior citizens of the age of 80 years and above.

b. Surcharge on income tax on individuals, HUFs, AOPs, BOIs, artificial juridical persons having total income exceeding Rs. 50 lakhs to 1 crore is proposed at 10% (currently there is no surcharge payable by such persons, if their total income was below Rs. 1 crore). If their total income exceed Rs. 1 crore, the rate of surcharge continues unchanged at 15%.

c. Secondary and higher education cess @ 3% have been retained.

✓ Relief u/s 87A:

Relief under section 87A available to resident individual up to Rs.2,500 in case total income is below Rs. 350,000/-

INCOME TAX ACT, 1961

Applicable to Individuals and HUF's

1.2 Special provisions for computation of capital gains in case of joint development agreement (JDA) – Section 45:

2. Under the existing provisions of section 45, capital gain is chargeable to tax in the year in which transfer takes place except in certain specified cases. Under section 2(47)(v), 'transfer', includes any arrangement or any transaction involving allowing of possession of property to be taken over or retained in part-performance of a contract of the nature referred to in section 53A of the Transfer of Property Act. Section 53A requires following conditions to be fulfilled:

(a) there should be a contract for consideration pertaining to transfer of immovable property;

(b) it should be in writing

(c) the transferee should have taken possession of the property;

(d) the transferee should be ready and willing to perform his part of the contract.

In terms of certain judicial pronouncements, execution of JDA between the owner of immovable property and the developer triggered capital gains tax liability in the hands of the owner in the year in which the possession of immovable property was handed over to the developer for development of property.

In order to mitigate difficulties, it is proposed to insert a new sub-section (5A) in section 45 to provide that in case of an assessee being individual or hindu undivided family (please note that in respect of other categories of tax payers, existing provisions will continue to apply), who enter into a specified agreement for development of a project, capital gains shall be chargeable to tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority. It is further proposed to provide that the stamp duty value of his share, being land or building or both, in the project on the date of issuing of said certificate of completion as increased by any monetary consideration received, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

The benefits of this proposed regime shall not apply to an assessee who transfers his share in the project to another person on or before the date of issue of said certificate of completion. In such a situation, it is proposed that capital gains as determined under general provisions of the Act shall be deemed to be the income of the

INCOME TAX ACT, 1961

Applicable to Individuals and HUF's

previous year in which such transfer took place and shall be computed as per provisions of the Act without taking into account this proposed provisions.

3. It is also proposed to insert a new section 194-IC in the Act so as to provide that in case any monetary consideration is payable under the specified agreement, tax at the rate of ten per cent shall be deductible from such payment.
This amendment will take effect from 1st April, 2017.

1.3 Deduction in respect of investment made under an Equity Savings Scheme Rescinded – Section 80CCG(5):

It is proposed to phase out this deduction by providing that no deduction under section 80CCG shall be allowed from assessment year 2018-19. However, an assessee who has claimed deduction under this section for assessment year 2017-18 and earlier assessment years shall be allowed deduction under this section till the assessment year 2019-20 if he is otherwise eligible to claim the deduction as per the provisions of this section.

1.4 Partial withdrawal (up to 25% of contribution) from National Pension System Trust not taxable – Section 10(12B):

It is proposed to insert section 10(12B) to provide that withdrawal from the National Pension System Trust (NPS Trust) under a pension scheme referred under section 80CCD, to an extent of 25% of the contribution made by an employee shall not form part of his total income and thus would not be taxable. The proposed benefit is in addition to existing exemption up to 40% of the total amount payable at the time of closure or opting out of the NPS trust by employee as provided by Section 10(12A).

1.5 Increase in deduction on account of contribution to pension scheme of Central Government – Section 80CCD:

It is proposed to increase the deduction allowed to assessees other than employees from 10% to 20% of their gross total income, on account of any amount contributed to his pension account, under a pension scheme notified by the Central Government, subject to satisfaction of all conditions and limits specified. The deduction for such contribution in case of assessee being employee continues to be 10% of his salary.

INCOME TAX ACT, 1961

Partnership Firms (Including Limited Liability Partnerships)

2. Partnership Firms (including LLP) - Rate of tax:

a. No change in rates of tax for the assessment year 2018-19. The basic rate has been retained at 30% and surcharge @ 12% in case total income exceeds Rs. 1 crore. Secondary and higher education cess @ 3% of income tax and surcharge has been retained. Effective works out as under:

Particulars	Effective tax rate
Income below Rs 1 crore	30.90 %
Income above Rs 1 crores	34.61 %

b. Tax rates of alternate minimum tax (AMT) remains unchanged at 18.5% (plus applicable surcharge and education cess).

Particulars	Effective tax rate
Income below Rs 1 crore	19.06 %
Income above Rs 1 crores	21.34 %

INCOME TAX ACT, 1961

Provisions applicable to Corporates

3. Rate of Tax:

a. No change in rates for the assessment year 2018-19 other than for small and medium enterprises. The basic rates have been retained at 30 % in case of domestic companies and 40% in case of foreign companies.

b. Rate of tax for small and medium enterprises (corporate assesse only) has been reduced from 30% to 25% in case its total turnover or gross receipts did not exceed fifty crore rupees for the previous year 2015-16.

c. Surcharge on income tax @ 7% for domestic companies having income exceeding Rs.1 crore and up to Rs.10 crores and surcharge on income tax @ 12% if income exceeds Rs.10 crores has been retained.

d. There is no change in the rates of surcharge payable by foreign companies. The existing rates of 2% on income tax (if the income exceeds Rs. 1 crore and is up to Rs.10 crores) and 5% (if the income exceeds Rs.10 crores) will continue.

e. Effective tax rate works out under normal provisions of the Act:

Effective tax rate			
Type of company	**Income below Rs 1 crore**	**Income above Rs 1 crore but below Rs 10 crores**	**Income above Rs 10 crores**
Domestic company	30.90%	33.06%	34.61%
Domestic company (turnover < Rs 50 crores in the previous year 2015-16)	25.75%	27.55%	28.84%
Foreign companies	41.20%	42.02%	43.26%

INCOME TAX ACT, 1961

Provisions applicable to Corporates

f. Tax rates of minimum alternate tax (MAT) remains unchanged at 18.5%. Effective tax rate works out under MAT provisions are as under:-

Effective tax rate			
Type of company	**Income below Rs 1 crore**	**Income above Rs 1 crore but below Rs 10 crores**	**Income above Rs 10 crores**
All domestic companies irrespective of turnover	19.06%	20.39%	21.34%

g. The base rate of dividend distribution tax (DDT) also remains unchanged at 15% plus applicable surcharge of 12% and education cess @ 3% (suitably grossed up in terms of section 115O). Effective rate 20.358%.

4. Rationalization of provisions of section 115JB in line with Indian Accounting Standard (Ind AS):

As you may be aware, the Central Government notified Indian Accounting Standards (IndAS) which are converged with International Financial Reporting Standards (IFRS) and prescribed the Companies (Indian Accounting Standards) Rules, 2015 which laid down a roadmap for implementation of these IndAS. For ensuring horizontal equity across companies irrespective of whether they follow IndAS or existing Indian GAAP, the Central Government has issued Income Computation and Disclosure Standards (ICDS) for computation of taxable income for specified heads of income.

As the book profits based on IndAS compliant financial statements are likely to be different from book profits based on existing Indian GAAP, it is proposed to amend section 115JB so as to provide the framework for computation of book profit for IndAS compliant companies in the year of adoption and thereafter. The main features of this proposed framework are as under:

A. MAT on IndAS compliant financial statement

(i) No further adjustments to the net profits before other comprehensive income of IndAS compliant companies, other than those already specified under section 115JB of the Act shall be made.

INCOME TAX ACT, 1961

Provisions applicable to Corporates

(ii) Other comprehensive income includes certain items that will permanently be recorded in reserves and hence never be reclassified to the statement of profit and loss included in the computation of book profits. These items shall be included in book profits for MAT purposes at the point of time specified below—

Items	Point of time
Changes in revaluation surplus of Property, Plant or Equipment (PPE) and Intangible assets (IndAS 16 and IndAS 38)	To be included in the book profits at the time of realization / disposal / retirement or otherwise transferred
Gains and losses from investments in equity instruments designated at fair value through other comprehensive income (IndAS 109)	To be included in the book profits at the time of realization / disposal / retirement or otherwise transferred
Re-measurement of defined benefit plans (IndAS 19)	To be included in the book profits every year as the re measurements gains and losses arise
Any other item	To be included in the book profits every year as the gains and losses arise.

(iii) Appendix A of IndAS 10 provides that any distribution of non-cash assets to shareholders (for example, in a demerger) shall be accounted for at fair value. The difference between the carrying value of the assets and the fair value is recorded in the profit and loss account. Correspondingly, the reserves are debited at fair value to record the distribution as a 'deemed dividend' to the shareholders. As there is a corresponding adjustment in retained earnings, this difference arising on demerger shall be excluded from the book profits. However, in the case of a resulting company, where the property and liabilities of the undertaking (s) being received by it are recorded at values different from values appearing in the books of account of the demerged company immediately before the demerger, any change in such value shall be ignored for the purpose of computing book profit of the resulting company.

B. MAT on first time adoption

(i) The adjustments arising on account of transition to IndAS from existing Indian GAAP is required to be recorded directly in 'Other Equity' at the date of transition to IndAS. Several of these items would subsequently never be reclassified to the statement of profit and loss / included in the computation of book profits. Accordingly, the following treatment is proposed:

INCOME TAX ACT, 1961

Provisions applicable to Corporates

(I) Those adjustments recorded in other comprehensive income and which would subsequently be reclassified to the profit and loss, shall be included in book profits in the year in which these are reclassified to the profit and loss;

(II) Those adjustments recorded in other comprehensive income and which would never be subsequently reclassified to the profit and loss shall be included in book profits as specified hereunder-

Items	Point of time
Changes in revaluation surplus of PPE and Intangible assets (IndAS 16 and IndAS 38)	To be included in the book profits at the time of realization / disposal /retirement or otherwise transferred
Gains and losses from investments in equity instruments designated at fair value through other comprehensive income (IndAS 109)	To be included in the book profits at the time of realization / disposal /retirement or otherwise transferred
Re-measurements of defined benefit plans (IndAS 19)	To be included in the book profits equally over a period of five years starting from the year of first time adoption of IndAS
Any other item	To be included in the book profits equally over a period of five years starting from the year of first time adoption of IndAS

(III) All other adjustments recorded in 'reserves and surplus' (excluding capital reserve and securities premium reserve) as referred to in division II of schedule III of Companies Act, 2013 and which would otherwise never subsequently be reclassified to the profit and loss account, shall be included in the book profits, equally over a period of five years starting from the year of first time adoption of IndAS subject to the following—

a] PPE and intangible assets at fair value as deemed cost

An entity may use fair value in its opening IndAS balance sheet as deemed cost for an item of PPE or an intangible asset as mentioned in paragraphs D5 and D7 of IndAS 101. In such cases, the treatment shall be as under—

• The existing provisions for computation of book profits under section 115JB of the Act provide that in case of revaluation of assets,

INCOME TAX ACT, 1961

Provisions applicable to Corporates

any impact on account of such revaluation shall be ignored for the purposes of computation of book profits. Further, the adjustments in retained earnings on first time adoption with respect to items of PPE and intangible assets shall be ignored for the purposes of computation of book profits.

• Depreciation shall be computed ignoring the amount of aforesaid retained earnings adjustment.

• Similarly, gain/loss on realization/ disposal/ retirement of such assets shall be computed ignoring the aforesaid retained earnings adjustment.

b] Investments in subsidiaries, joint ventures and associates at fair value as deemed cost

An entity may use fair value in its opening IndAS balance sheet as deemed cost for investment in a subsidiary, joint venture or associate in its separate financial statements as mentioned in paragraph D15 of IndAS 101. In such cases, retained earnings adjustment shall be included in the book profit at the time of realization of such investment.

c] Cumulative translation differences

• An entity may elect a choice whereby the cumulative translation differences for all foreign operations are deemed to be zero at the date of transition to IndAS. Further, the gain or loss on a subsequent disposal of any foreign operation shall exclude translation differences that arose before the date of transition to IndAS and shall include only the translation differences after the date of transition.

• In such cases, to ensure that such cumulative translation differences on the date

of transition which have been transferred to retained earnings, are taken into account, these shall be included in the book profits at the time of disposal of foreign operations as mentioned in paragraph 48 of IndAS 21.

(ii) All other adjustments to retained earnings at the time of transition (including for example, decommissioning liability, asset retirement obligations, foreign exchange capitalization/ de-capitalization, borrowing costs adjustments etc.) shall be included in book profits, equally over a period of five years starting from the year of first time adoption of IndAS.

(iii) Section 115JB of the Act already provides for adjustments on account of deferred tax and its provision. Any deferred tax

adjustments recorded in Reserves and Surplus on account of transition to IndAS shall also be ignored.

C. Reference year for first time adoption adjustments

In the first year of adoption of IndAS, companies would prepare IndAS financial statement for the reporting year with comparative financial statements for immediately preceding year. As per IndAS 101, a company would make all IndAS adjustments on the opening date of the comparative financial year. The entity is also required to present an equity reconciliation between previous Indian GAAP and IndAS amounts, both on the opening date of preceding year as well as on the closing date of the preceding year. It is proposed that for the purposes of computation of book profits of the year of adoption and the proposed adjustments, the amounts adjusted as of the opening date of the first year of adoption shall be considered. For example, companies which adopt IndAS with effect from 1 April 2016 are required prepare their financial statements for the year 2016-17 as per requirements of IndAS. Such companies are also required to prepare an opening balance sheet as of 1 April 2015 and restate the financial statements for the comparative period 2015-16. In such a case, the first time adoption adjustments as of 31 March 2016 shall be considered for computation of MAT liability for previous year 2016-17 (Assessment year 2017- 18) and thereafter. Further, in this case, the period of five years proposed above shall be previous years 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21.

As the IndAS is required to be adopted by certain companies for financial year 2016-17 mandatorily, these amendments will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years.

INCOME TAX ACT, 1961

Applicable to all Assessees'

5. Concessions to assessees engaged in the business of developing and building housing projects –section 80-IBA:

It is proposed to amend the said section to provide the following relaxations:—

(i) The size of residential unit shall be measured by taking into account the 'carpet area' as defined in Real Estate (Regulation and Development) Act, 2016 and not the 'built-up area'.

(ii) The restriction of 30 square meters on the size of residential units shall not apply to a place located within a distance of 25 kms from the municipal limits of the Chennai, Delhi, Kolkata or Mumbai.

(iii) The condition of period of completion of project for claiming deduction under this section shall be increased from existing three years to five years.

6. Tax incentive for development of capital of Andhra Pradesh:

It is proposed to insert a new clause (37A) in section 10 to provide that in respect of individuals and HUFs, capital gains arising from following transfer shall not be chargeable to tax under the Act:

(i) Transfer of capital asset being land or building or both, under land pooling scheme (LPOCs) notified under the provisions of Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015 owned by the assesse on June 2, 2014.

(ii) Sale of LPOCs issued the scheme to the assesse in respect of land or buildings or both referred to in (i) above.

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

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

INCOME TAX ACT, 1961

Applicable to all Assessees'

7. Rationalization measure – Deduction under section 10AA:

Under the existing provisions of section 10AA, deduction is allowed from the total income of an assessee, in respect of profits and gains derived by an undertaking operating in SEZ, subject to fulfilment of certain conditions. To overcome certain judicial pronouncements, an explanation is proposed to be inserted after subsection (1) of section 10AA as follows— "Explanation. — For the removal of doubts, it is hereby declared that the amount of deduction under this section shall be allowed from the total income of the assessee computed in accordance with the provisions of this Act, before giving effect to the provisions of this section and the deduction under this section shall not exceed such total income of the assessee."

8. Benefits for start-ups:

a. The current provisions under section 80IAC allow eligible start-ups to claim deduction for any 3 consecutive years out of 5 years commencing from beginning of the year in which the start-up was incorporated It is proposed to extend the period for claiming deduction by start-ups for any three consecutive assessment years out of seven years beginning from the year in which such eligible start-up is incorporated.

b. Section 79 deals with situations in which carry forward and set-off of losses will not be allowed to companies in which public are not substantially interested. It is proposed to substitute a new section for section 79.

While the proposed clause (a) is similar to the existing 79, a new clause (b) is proposed to be inserted to provide relief to eligible start-ups. It is proposed that in the case of an eligible start up (referred to in section 80-IAC), a loss incurred in any earlier year shall be carried forward and set off in a subsequent previous year, if all the shareholders thereof, who held shares carrying voting power on the last day of the year/s in which loss was incurred, continue to hold those shares on the last day of such previous year and such loss has been incurred during the period of seven years beginning from the year in which such company was incorporated.

The two existing provisos providing for exceptions in case of transfers occasioned by death, gift, amalgamation or demerger of foreign company are retained.

INCOME TAX ACT, 1961

Applicable to all Assessees'

Accordingly, the eligible start up would be free to issue fresh capital and introduce new shareholders so long as the original shareholders continue to hold those shares at the end of the previous year under consideration.

9. No notional income for house property held as stock-in-trade- section 23(5):

Where the house property consisting of any building and land appurtenant thereto is held as stock-in-trade and the property or any part thereof is not let during the whole or any part of the previous year, the annual value of such property or part thereof, for a period up to one year from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be nil.

10. Restriction on set-off of loss from house property- section 71(3A):

Section 71 of the Act relates to set-off of loss from one head against income from another. It is proposed to insert sub-section (3A) in the said section to provide that set-off of loss under the head "Income from house property" against any other head of income shall be restricted to Rs.2 lakh for any assessment year. However, the unabsorbed loss shall be allowed to be carried forward for set-off in subsequent years in accordance with the existing provisions of the Act.

11. Increase in deduction in respect of provisions for bad and doubtful debts:

In case of specified banks, it is proposed to increase the deduction limit in respect of provision for bad and doubtful debts from existing rate of 7.5% to proposed rate of 8.5 % of total income before making any deduction under that clause and chapter VIA

INCOME TAX ACT, 1961

Applicable to all Assessees'

12. Promotion of digital payments in case of small unorganized businesses:

In terms of section 44AD(1) of the Act, there is a scheme of presumptive income-tax for certain small and medium tax payers whose turnover is up to Rs 2 crores @ 8% of their business turnover (excluding business of operating goods carriages). It is proposed to lower the presumptive income to 6% in respect of turnover received by account payee cheques/drafts/use of electronic clearing systems on or before the due date specified in section 139(1) of the Act. It is also provided that such tax payers are not required to get their books of account audited by an accountant. This amendment will take effect from 1 April 2017 and will accordingly apply in relation to assessment year 2017-18 and subsequent assessment years.

13. Increase in threshold limit for maintenance of books of account under section 44AA:

Every businessman or professional (other than those notified such as CAs, advocates, doctors, engineers and so on) are required to maintain specified books of account in case income exceeds Rs.1,20,000 or total sales, turnover or gross receipts exceed Rs.10,00,000. With an intent to reduce the compliance burden for individuals and HUFs, the existing thresholds are proposed to be enhanced - aforesaid documentation to be maintained if income exceeds Rs.2,50,000 or total sales, turnover or gross receipts exceed Rs.25,00,000.

14. Clarification in respect of actual cost of asset in case of withdrawal of deduction in terms of sub-section (7B) of section 35AD:

Section 35AD of the Act provides for deduction for capital expenditure incurred for specified businesses, provided the prescribed stipulations are complied with. In case such conditions are violated, the deduction provided earlier stands withdrawn and becomes taxable as income net of normal depreciation allowable under section 32 calculated on a notional basis. Clause (1) of section 43 defines 'actual cost' for the purposes of claiming depreciation under section 32 of the Act in certain situations. It is now expressly provided that in a situation where the deduction under section 35AD stands withdrawn, the actual cost to the assessee shall be the actual cost as reduced by the amount of depreciation calculated at the rate

INCOME TAX ACT, 1961

Applicable to all Assessees'

in force that would have been allowable had the asset been used for the purposes of business since the date of its acquisition. Further, with a view to discourage cash transactions, it is proposed that deduction under section 35AD shall be allowed only if capital expenditure beyond Rs. 10,000 is made through non-cash means (through banking channels).

15. Amendment of provisions relating to minimum alternate tax and alternate minimum tax under sections 115JAA and 115JD:

It is proposed to amend sections 115JAA/115JD to provide carry forward and set of tax credit up to 15 assessment years from the existing 10 years, immediately succeeding the assessment years in which such tax credit becomes allowable.

16. Taxability of transfer of 'certified emission reduction' units or carbon credits – section 115BBG:

To limit concentration of greenhouse gases (GHGs) in the atmosphere, for addressing the problem of global warming, United Nations Framework Convention on Climate Change was adopted in 1992. Subsequently, to supplement the Convention, Kyoto Protocol came in force in February 2005, which sets limits to the maximum amount of emission of GHGs by countries. The Kyoto Protocol provides for a market based mechanism called 'Clean development Mechanism' (CDM) to achieve the desired reduction in emission reduction targets. In case of CDM, entities in developing/least developed countries could set up a GHG reduction project, get it approved by UNFCCC and earn carbon credits. Such carbon credits generated could be bought by entities of developed countries with emission reduction targets. The unit associated with CDM is Certified Emission Reduction (CER) where one CER is equal to one metric ton of carbon dioxide equivalent. In India, the taxability of the income by way of transfer of carbon credit remained a vexed issue and there are contrary judicial pronouncements.

This Finance Bill seeks to put an end to this controversy by inserting a new section 115BBG to provide that where the total income of an assessee includes any income from transfer of carbon credit, such income shall be taxable at a concessional rate of 10% (plus applicable surcharge and cess) on the gross amount of such income. No

INCOME TAX ACT, 1961

Applicable to all Assessees’

expenditure or allowance in respect of such income shall be allowed under the Act.

17. Period of holding of land or buildings or both to qualify as long term capital gains:

It is proposed to amend section 2 (42A) of the Act to reduce the period of holding from the existing 36 months to 24 months in case of immovable property, being land or building or both, to qualify as a long term capital asset.

18. Shift of base year for indexation of fair value for determining long term capital gains section 55:

The existing provisions of section 55 provide that for computation of capital gains, an assessee shall be allowed deduction for cost of acquisition of an asset and cost of improvement, if any. However, for computing capital gains in respect of an asset acquired before 1 April 1981, an assessee is allowed an option of either taking the fair market value of an asset as on 1 April 1981 or its actual cost and suitably inflation index it. The base year for indexation is proposed to be shifted from April 1, 1981 to April 1, 2001 for all classes of assets including immovable property, wherever applicable.

19. Categories of permissible investments in section 54EC enlarged:

It is proposed to amend section 54EC so as to provide that investment in any bonds redeemable after three years which has been notified by the Central Government in this behalf shall be eligible for exemption. Currently, investments in bonds issued by the National Highways Authority of India or the Rural Electrification Corporation Limited are eligible for exemption under this section.

20. Amendment with respect to period of holding – section 2(42A):

The Finance Act 2016 had amended section 47 of the Act to provide tax neutrality to the transfer of units in a consolidating plan of mutual fund scheme made in consideration of the allotment of units in the consolidated plan of that mutual fund scheme. The proposed sub

INCOME TAX ACT, 1961

Applicable to all Assessees’

clause (hg) is sought to be inserted in section 2(42A) to provide that the period of holding in case of units of mutual fund of a consolidated plan would include the period of holding of units in consolidating plan.

21. Tax neutral conversion of preference shares to equity shares – section 47:

Under the existing provisions of the Act, conversion of security from one form to another is regarded as a transfer for the purpose of levy of capital gains tax. In order to provide tax neutrality to the conversion of a preference share of a company into its equity share, it is proposed to insert new clause (lb) in section 47 to provide that conversion of a preference share of a company into its equity share shall not be regarded as transfer. Consequential amendments are also proposed in sections 49 and 2(42A) in respect of cost of acquisition and period of holding. It is also proposed to insert a new clause (viiaa) in section 47 to provide that any transfer of capital asset, being rupee denominated bond of Indian company issued outside India, by a non- resident to another non- resident shall not be regarded as a transfer.

22. Extension of capital gain exemption to rupee denominated bonds- section 48:

The Reserve Bank of India had permitted issue of rupee denominated bonds outside India to enable Indian corporates to raise funds outside India. The Finance Act, 2016 had amended section 48 of the Act to provide that gains arising on account of appreciation of rupee against foreign currency at the time of redemption of rupee denominated bond of an Indian company subscribed by him, would be ignored for the purpose of computation of full value of consideration. In order to provide relief for gains arising on account of appreciation of rupee against foreign currency at the time of redemption of rupee denominated bonds of an Indian company to secondary holders, it is proposed to amend section 48 providing that the said appreciation of rupee shall be ignored for the purposes of computation of full value of consideration.

23. Long term capital gain on transfer of equity share in a company taxable in certain cases – Section 10(38):

It is proposed to amend section 10(38) to provide that long term capital gains arising on sale of equity share in a company shall be taxable if the acquisition was made after 1 October 2004 and securities transaction tax (STT) was not chargeable on such

INCOME TAX ACT, 1961

Applicable to all Assessees'

acquisition. However, to protect exemption in genuine cases where the STT could not have been paid, it is proposed to notify such transfers for which the condition of chargeability to STT on acquisition shall not be applicable.

24. Fair market value as full value of consideration in case of transfer of shares not quoted – Section 50CA:

In order to rationalize the deeming provisions relating to full value of consideration for computation of income under the head "capital gains", it is proposed to insert a new section 50CA to provide that where consideration for transfer of a share of a company (other than a quoted share) is less than the fair market value (FMV) of such share determined in accordance with the prescribed manner, the FMV shall be deemed to be the full value of consideration for the purposes of computing income under the head "Capital gains". It is also proposed to bring in definition of the term 'quoted share'.

25. Cost of acquisition of capital assets of entities in case of levy of tax on accreted income under section 115TD:

It is proposed to amend said section so as to provide that where the capital gains arises from the transfer of an asset, being the asset held by a trust or an institution in respect of which accreted income has been computed, and tax has been paid thereon in accordance with the provisions of chapter XII-EB, the cost of acquisition of such asset shall be deemed to be the fair market value of the asset which has been taken into account for computation of accreted income as on the specified date referred to in sub-section (2) of section 115TD.

26. Taxability of assets or sum received for no or inadequate consideration – Section 56:

Under the existing provisions of section 56 (2) (vii) of the Act, any sum of money or any property received without consideration or for inadequate consideration (in excess of Rs 50,000) by an individual or HUF is chargeable to income-tax in the hands of the resident under the head "Income from other sources". Further, receipt of certain shares, by a firm or a company in which the public are not substantially interested, without consideration or for inadequate consideration is also chargeable to income-tax under section 56 (2)

INCOME TAX ACT, 1961

Applicable to all Assessees'

(viia). The Finance Bill, 2017 proposes to expand the scope of the provisions of the said section to all categories of assessees so that assets received without or inadequate consideration may be brought to tax by introducing clause (x) to section 56 (2) to provide that receipt of money or property by any person without consideration or for inadequate consideration in excess of Rs. 50,000 shall be chargeable to tax in the hands of the recipient under the head 'Income from other sources'. Existing sub-clauses (vii) and (viia) will consequently not be applicable for receipt **after 1 April 2017.**

27. Expenses to be disallowed for non-compliance of TDS while computing income under the head 'Income from other sources' – Section 58:

It is proposed to amend the said section to provide that provisions of section 40(a) (ia) shall, to the extent applicable, apply in computing income chargeable under the head 'income from other sources' as they apply in computing income chargeable under the head 'Profits and gains of business or profession'. Where there is non-compliance with TDS provisions, the same would trigger disallowance at 30% of expense under the head 'Income from other sources'.

28. Restriction on exemption in case of corpus donation by exempt entities to other exempt entities:

Under the existing provisions of the Act, donation given by an exempt entity viz.

Charitable / religious trust/institution/university or educational institution to another such exempt entity, with a specific direction that the donation shall form part of corpus, though considered application of income in the hands of donor is not considered as income in the hands of the recipient trust. In order to ensure actual application of income on the avowed objects, it is proposed to insert a new explanation to section 11 of the Act to provide that any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1) of section 11, being contributions with specific direction that they shall form part of the corpus of the trust or institution, shall not be treated as application of income. It is also proposed to insert a proviso in clause (23C) of section 10 so as to provide similar restriction as above on the entities exempt under sub-clauses (iv), (v), (vi) or (via) of the said clauses in respect of any amount credited or paid out of their income.

INCOME TAX ACT, 1961

Applicable to all Assessees'

29. Restrictions on cash payments and transparency in election funding:

✓ It is proposed that no deduction shall be allowed under section 80G in respect of donation of any sum exceeding Rs. 2,000/- paid by cash from the existing limit of Rs. 20,000/-

✓ It is proposed to exclude from the cost of the relevant block of assets under section 32, any capital expenditure incurred otherwise than by an account payee cheque /draft or use of electronic clearing system through a bank account, exceeding Rs. 10,000/- to a person per day.

✓ It is proposed to reduce the current limit of cash expenditure to a person in a day from Rs. 20,000/- to Rs. 10,000/- in terms of section 40A (3) of the Act.

29.1 It is proposed to insert new section 269ST in the Act to provide that no person shall receive an amount of Rs. 3 lakh or more,—

(a) in aggregate from a person in a day;

(b) in respect of a single transaction; or

(c) in respect of transactions relating to one event or occasion from a person,

Otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account.

The provisions of this section shall not apply to:

1. Receipts by Government, any banking company, post office savings bank or co-operative bank.
2. Transactions referred to in section 269SS
3. Such other class of persons/receipts which the Central Government may notify.

29.2. It is also proposed to insert new section 271DA in the Act to provide for levy of penalty on a person who receives a sum in contravention of the provisions of the proposed section 269ST equal to the amount of cash receipt.

29.3. It is also proposed to consequentially amend the provisions of section 206C to omit the provision relating to tax collection at source at the rate of 1% of sale consideration on cash sale of jewelry exceeding Rs. 5 lakhs. These amendments will take effect from 1st April, 2017.

INCOME TAX ACT, 1961

Applicable to all Assessees'

29.4. It is proposed to amend the provisions of section 13A to provide for additional conditions for availing the benefit of the said section which are as under:

(i) No donations of Rs.2,000/- or more is 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,

(ii) Political party furnishes a return of income for the previous year in accordance with the provisions of sub-section (4B) of section 139 on or before the due date under section 139.

30. Clarity relating to indirect transfer provisions :

Existing section 9(1) (i) of the Act provides that all income accruing or arising, whether directly or indirectly, from the transfer of a capital asset situated in India shall be deemed to accrue or arise in India and taxable in India. Explanation 5 to section 9 (1) (i) clarifies that an asset or a capital asset, being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be situated in India, if the share or interest directly or indirectly derives its value substantially from the assets located in India. Explanation 6 to section 9(1) (i) provides that explanation 5 will be applicable if on the specified date the value of such assets in India exceeds the amount of Rs 10 crores and represents at least 50% of the value of all the assets owned by the company/entity.

It is proposed to insert explanation 5A to section 9(1) (i) to clarify that indirect transfer provisions shall not be applicable to non-resident investors in FIIs/FPIs, where such FIIs/FPIs are registered with SEBI as category I or category II foreign portfolio investor under SEBI (Foreign Portfolio Investors) Regulation, 2014.

This amendment is proposed to be effective retrospectively from 1 April 2012 and would be applicable to assessment year 2012-13 & subsequent assessment years.

31. Rationalization of taxation of income by way of dividends – Section 115BBDA:

Under the existing provisions of section 115BBDA, income by way of dividends from domestic companies in excess of Rs. 10 lakhs is chargeable to tax at the rate of 10% on gross basis in case of a

INCOME TAX ACT, 1961

Applicable to all Assessees'

resident individuals, HUFs or firms. This section is proposed to be amended to provide that **all resident assessees** receiving dividends in excess of Rs 10 lakhs would be subject to tax, except domestic company and certain funds, trusts, institutions etc.

32. Extension of eligible period of concessional tax rate of 5 % under section 194LC and 194LD:

✓ It is proposed to provide for extension of eligible period of concessional tax rate of 5% under section 194LC on interest payable in specified cases of external commercial borrowings made before July 1, 20120 as well as extension of benefit to monies borrowed from a source outside India by way of rupee denominated bonds, made before the July 1, 2020.

✓ It is proposed to provide for the extension of eligible period of concessional tax rate of 5 % under section 194LD on interest payable to FIIs and QFIs on their investments in government securities and rupee denominated corporate bonds made before the July 1, 2020.

33. Deduction of tax at source:

✓ A new section 194-IB is proposed to provide that individuals or HUFs (other than those covered under 44AB of the Act, where existing provisions of section 194I applies), responsible for paying to a resident any income by way of rent exceeding Rs. 50,000/-per month shall deduct tax @ 5% of such income (in the event the payee has no permanent account number, tax rate to be enhanced to 20% in terms of section 206AA). In order to reduce compliance burden, it is further proposed that the deductor shall not be required to obtain tax deduction account number (TAN) as per section 203A of the Act. It is also proposed that the deductor shall be liable to deduct tax only once in a previous year (last month of the year or last month of tenancy). This amendment will take **effect from 1st June, 2017**.

✓ It is proposed to enable filing of forms 15G/15H for commission payments specified under section 194D. This amendment will take **effect from 1st June, 2017**.

INCOME TAX ACT, 1961

Applicable to all Assessees'

34. No TDS required to be deducted in case of certain compulsory land acquisitions by Government – Section 194-LA:

The existing provision of section 194LA provides for deduction of tax at source in case of payment for compensation or enhanced compensation for compulsory acquisition of certain immovable property other than agricultural land. It is proposed to provide that no tax shall be deducted on the compensation paid for land acquisition by the Government which are exempted from income tax under section 96 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. These amendments will take **effect from 1 April 2017**.

35. Exemption from tax collection at source under sub-section (1F) of section 206C in case of certain specified buyers:

It is proposed to provide exemption from tax collection at source under sub-section (1F) of section 206C towards consideration for sale of a motor vehicle exceeding ten lakh rupees in case of buyers such as the Central Government, a State Government, an embassy, a high commission, legation, commission, consulate and the trade representation of a foreign State, local authority as defined in explanation to clause (20) of Section 10 and a public sector company engaged in the business of carrying passengers. This amendment will take **effect from 1st April, 2017**.

36. Simplification of the provisions of tax deduction at source in case Fees for professional or technical services under Section 194J:

It is proposed to amend section 194J to reduce the rate of deduction of tax at source to 2% from 10% 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 1st day of June, 2017**

INCOME TAX ACT, 1961

Applicable to all Assessees’

37. Scope of applicability of transfer pricing provisions to specified domestic transaction curtailed:

The existing provisions of section 92BA of the Act defines the term ‘specified domestic transaction’. As per the said section, any expenditure in respect of which payment has been made by the assessee to certain “specified persons” referred to in section 40A(2)(b) falls within the ambit of ‘specified domestic transactions’. Accordingly, assessees entering into such transactions with specified persons were subject to certain compliances as well as reporting requirements, including obtaining Chartered Accountant’s certificate in Form 3CEB. The amendment proposes to exclude the above referred payments made to the “specified persons” from the definition of “specified domestic transaction”, whereby the assessee would not be subject to compliance and reporting requirement in respect of such transactions. What remains now is transfer of goods or services between undertakings/ businesses enjoying deduction under sections 80-IA, 10AA, deductions under chapter VIA, etc. Of course provisions of section 40A (2) (b) still empowers the Assessing Officer to disallow excessive payments to related parties. This amendment is proposed to be **effective 1 April 2017 and would be applicable to assessment year 2017- 18** and subsequent assessment years.

38. Secondary adjustment to be carried out in cases where there is primary adjustment to transfer price:

There is a concept of a secondary adjustment envisaged by OECD’s Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, in the form of constructive dividends, constructive equity contributions, or constructive loans. The Indian Transfer Pricing regulation currently have no specific provisions permitting such secondary adjustments. A new section 92CE is proposed to be inserted to provide that an assessee shall be required to carry out secondary adjustment, where there is primary adjustment to transfer price —

i. Suomoto made by the assessee in his return of income, or

ii. Made by the AO and accepted by the assessee, or

iii. Determined by an advance pricing agreement entered into by the assessee, or

iv. Made as per the safe harbor rules, or

INCOME TAX ACT, 1961

Applicable to all Assessees'

v. Is arising as a result of resolution of an assessment by way of the mutual agreement procedure.

As per proposed section 92CE, an assessee would be required to make secondary adjustment where excess money arising as a result of primary adjustment to the transfer price with its AE is not repatriated to India within the time prescribed. Such excess money when not brought into India shall be deemed as an advance made by the assessee to such AE and interest on such advance shall be computed as the income of the assessee, in the manner as may be prescribed. The terms "excess money", "primary adjustment" and "Secondary adjustment" have been specifically defined in section 92CE(3). The term "Secondary adjustment" has been defined to mean an adjustment in the books of account of the assessee and its AEs to reflect that the actual allocation of profits between the assessee and its AEs are consistent with transfer price determined as a result of primary adjustment. It is proposed to provide that such secondary adjustments shall not be carried out if the amount of primary adjustments made in the case of an assessee in any previous year does not exceed Rs. 1 crore and the primary adjustment is made in respect of an assessment year commencing on or before 1 April 2016. There will be no automatic secondary adjustment where the primary adjustment is contested by the assessee. The point of time when there is acceptance of primary adjustment made by an Assessing Officer attracting secondary adjustment is open to debate.

39. Power given to Assessing Officer to withhold refund due to assessees – section 241A:

It is proposed that where any refund is due to an assessee under section 143(1) but a notice has been issued to him under section 143(2) and the Assessing Officer feels that granting the refund may be detrimental to the interest of the revenue, he after recording reasons in writing and taking prior approval from the Principal Commissioner or Commissioner, may withhold the refund up to the date on which the assessment is made. It is proposed that this provision shall apply to every assessment year starting on or after 1 April 2017.

INCOME TAX ACT, 1961

Applicable to all Assessees'

40. Benefits of one-time payment of advance instalment before 15 March extended to the assessee' s declaring presumptive income from profession – Section 211:

The existing provisions of section 211(1) provides that an assessee opting for presumptive taxation under section 44AD can make payment of advance tax on or before 15 March of each financial year instead of making advance tax payments in four instalments. It is now proposed to extend such benefit even to an assessee who declares profits and gains in accordance with section 44ADA i.e. profits and gains of profession on presumptive basis. This amendment will take **effect from 1 April 2017**.

41. Interest under section 234C:

It is proposed to amend section 234C so as to include assessees referred to in section 44ADA (taxation of income from profession on presumptive basis) under the purview of section 234C of the Act. In case the advance tax paid by the assessee referred to in section 44ADA on or before 15 March is less than the tax due on the returned income, interest under Section 234C of the Act will be levied. It is further proposed that if shortfall in payment of advance tax is on account of under-estimation or failure in estimation of dividend income under section 115BBDA (tax on dividend in excess of Rs.10 lakhs in certain cases), the interest under section 234C will not be levied subject to fulfilment of conditions specified therein (advance tax being paid on balance subsequent instalments by 31 March). These amendments will take **effect from 1 April, 2017**.

42. Deductor of tax entitled to receive interest on refund due:

It is proposed to amend section 244A through the insertion of sub-section 1(B) to provide that where refund of any amount becomes due to the deductor for any amount paid to the credit of Central Government under chapter XVII-B, such person shall be entitled to receive, in addition to the refund, interest on such refund calculated at 0.5% for every month or part of a month comprised in the period, from the date on which claim for refund is made in the prescribed form or, where refund arises as a result of an appellate order passed under sections 250 or 254 or 260 or 262 from the date on which the tax is paid, to the date on which refund is granted. It is further proposed to provide that the interest shall not be allowed for the

INCOME TAX ACT, 1961

Applicable to all Assessees'

period for which the delay in the proceedings resulting in the refund is attributable to the deductor. This amendment will take **effect from 1st April, 2017**.

43. Amendment of section 155:

It is proposed to insert sub-section (14A) in section 155 to provide that where credit for foreign income tax paid in any country outside India or a specified territory outside India, referred to in sections 90, 90A or 91, has not been given for the relevant assessment year on the grounds that the payment of such foreign tax was in dispute, the Assessing Officer shall rectify the assessment order or an intimation under sub-section (1) of section 143, if the assessee, within six months from the end of the month in which the dispute is settled, furnishes proof of settlement of such dispute, submits evidence before the Assessing Officer that the foreign tax liability has been discharged and furnishes an undertaking that credit of such amount of foreign tax paid has not been directly or indirectly claimed or shall not be claimed for any other assessment year.

44. Appeals to Tribunal under section 253:

It is proposed to amend section 253 of the Act relating to appeals to the Appellate Tribunal. It is proposed to insert sub-clause (iv) and sub-clause (v) to clause (23C) of the aforesaid section, so as to make orders passed by the prescribed authority under the said sub-clauses also appealable before the Appellate Tribunal. This amendment will take **effect from 1 April 2017**.

45. Amendment of section 119:

Penal provisions under section 271C and 271CA are proposed to be included in section 119, so as to empower the CBDT to issue directions or instructions in respect of the aforesaid provisions. This amendment will take **effect from 1 April 2017**.

INCOME TAX ACT, 1961

Applicable to all Assessees'

46. Time limits for completion of assessment, reassessment and re-computation and reducing the time for filing revised return:

For the assessment year 2018-19	Time limit for making an assessment order under sections 143 or 144 shall be reduced from existing 21 months to 18 months from the end of the assessment year
For the assessment year 2019-20 onwards	Time limit shall be 12 months from the end of the assessment year in which the income was first assessable.
Time limit for making an order of assessment, reassessment or re-computation under section 147, in respect of notices served under section 148 on or after the 1st day of April, 2019	12 months from the end of the financial year in which notice under section 148 is served.
Time limit for making an order of fresh assessment in pursuance of an order passed or received in the financial year 2019-20 and onwards under sections 254 or 263 or 264	12 months from the end of the financial year in which order under section 254 is received or order under section 263 or 264 is passed by the authority referred therein.
where an order under section 250 or 254 or 260 or 262 or 263 or 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the time limit relating to fresh assessment provided in sub-section (3) shall apply to the order giving effect to such order.	12 months from the end of the financial year in which order under section 254 is received or order under section 263 or 264 is passed by the authority referred therein
where a notice under sub-section (1) of section 142 or sub-section (2) of section 143 or under section 148 has been issued prior to the 1st day of June, 2016 and the assessment or reassessment has not been completed by such date due to exclusion of time referred to in Explanation 1,	Such assessment or reassessment shall be completed in accordance with the provisions of section 153 as it stood immediately before its substitution by the Finance Act, 2016.

INCOME TAX ACT, 1961

Applicable to all Assessees'

provisions of sub-section (5) of section 139 to provide that the time for furnishing of revised return	shall be available up to the end of the relevant assessment year or before the completion of assessment, whichever is earlier
search and seizure cases conducted in the financial year 2018-19, the time limit for making an assessment order under section 153A	Shall be reduced from existing 21 months to 18 months from the end of the financial year in which the last of the authorizations for search under section 132 or for requisition under section 132A was executed.
search and seizure cases conducted in the financial year 2019-20 and onwards,	Shall be further reduced to 12 months from the end of the financial year in which the last of the authorizations for search under section 132 or for requisition under section 132A was executed.
Period of limitation for making the assessment or reassessment in case of other person referred to in section 153C,	Shall be the period available to make assessment or reassessment in case of person on whom search is conducted or 12 months from the end of the financial year in which books of accounts or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other persons, whichever is later.
Proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section for assessment or reassessment shall after the exclusion of the period under sub-section (4) of section 245HA	Shall not be less than one year and where such period of limitation is less than one year, it shall be deemed to have been extended to one year.
Notice under section 153A or section 153C has been issued prior to 1st day of June, 2016 and the assessment has not been completed by such date due to exclusion of time referred to in the Explanation,	Such assessment shall be completed in accordance with the provisions of this section as it stood immediately before its substitution by the Finance Act, 2016.

These amendments will take effect from 1st April, 2017.

INCOME TAX ACT, 1961

Applicable to all Assessees'

47. Limitation on interest deduction in case of payment to AE – Section 94B:

It is proposed to insert a new section 94B to provide that interest paid by an entity to its AEs shall be restricted to 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA). The entity for the purpose of section 94B shall be an Indian company or a permanent establishment (PE) of a foreign company paying interest on debt to a nonresident or to a PE of a non-resident and who is an AE of the borrower. Where the debt is issued by a third party lender but an AE either provides an implicit or explicit guarantee to such lender or deposits, a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an AE for the purpose of section 94B. If interest expense is disallowed in any assessment year because of restriction placed by the section, the disallowed portion of interest can be carried forward and adjusted against the business profit for 8 assessment years immediately, succeeding the assessment year for which the disallowance was first made, to the extent of maximum allowable interest expenditure as per the proposed section 94B (2). Section 94B would not be applicable where interest expenditure does not exceed Rs.1 crore or interest payment made by banks and insurance companies.

48. Fee for delay in furnishing of return of income:

It is proposed to insert a new section 234F in the Act to provide that a fee for delay in furnishing of return shall be levied for assessment year 2018-19 and onwards in a case where the return is not filed within the due dates specified for filing of return under sub-section (1) of section 139.

The proposed fee structure is as follows:—

(i) a fee of Rs.5000/- shall be payable, if the return is furnished after the due date but on or before the 31st day of December of the assessment year;

(ii) a fee of Rs.10,000/-shall be payable in any other case.

However, in a case where the total income does not exceed five lakh rupees, it is proposed that the fee amount shall not exceed Rs.1000/-.

INCOME TAX ACT, 1961

Applicable to all Assessees'

49. Penalty on professionals for furnishing incorrect information in statutory reports or certificates – Section 271J:

The Finance Bill proposes to introduce provisions for levy of penalty for furnishing incorrect information by specified professionals who are responsible for certifying a report or issuing certificates as required under the Act. These professionals could be a Chartered accountant, category I Merchant Banker registered with SEBI or a registered valuer under the erstwhile Wealth tax Act, 1957. He may be directed pay a sum of Rs.10,000 for each applicable report or certificate by way of penalty. This amendment will take effect from 1 April 2017.

50. Amendments to Finance Act 2016- clarification regarding the applicability of concessional rate of taxation under section 112:

The Finance Act, 2016 had amended section 112 to extend the benefit of ten percent tax payable by a non-resident or a foreign company, on long term capital gains arising on transfer of a capital asset being shares of a company not being a company in which public are substantially interested. While the Act had made this amendment effective from 1 April 2017 it is now proposed to make it effective retrospectively from 1 April 2013. Section 197 of the Finance Act 2016 contained a very draconian provision in the form of clause (c) which empowered the tax department to bring to tax any income or value of any asset acquired out of such income, where such income has accrued or arisen prior to the commencement of the Income Disclosure Scheme 2016, in the year in which a notice under specified sections is issued by the Assessing Officer. It is proposed to omit this clause with retrospective effect from the date of its insertion viz. 1 June 2016. However in order to protect the interest of revenue, some amendments are proposed in sections 153A and 153C which have been analyzed separately.

51. Definition of 'person responsible for paying' in case of payments covered under sub-section (6) of section 195:

The existing provisions of section 204 of Act, has defined the meaning of 'person responsible for paying' to include employer, company or its principal officer or the payer. Further clause (iii) of

INCOME TAX ACT, 1961

Applicable to all Assessees'

section 204 of the Act, inter-alia, provides that in the case of credit or payment of any sum chargeable under the provisions of this Act, the 'person responsible for paying' shall be the payer himself, or, if the payer is a company, the company itself including the principal officer thereof. However, the said section does not cover in respect of payment of any sum as per sub-section (6) of section 195 which mandates the 'person responsible for paying' to furnish information relating to payment of any sum, whether chargeable to tax or not. In order to bring clarity to the meaning of 'person responsible for paying' in case of payment by a resident to a non-resident in accordance with section 195(6) of the Act, clause 70 proposes to amend the said section of the Act to provide that in the case of furnishing of information relating to payment to a non-resident, not being a company, or to a foreign company, of any sum, whether or not chargeable under the provisions of this Act, 'person responsible for paying' shall be the payer himself, or, if the payer is a company, the company itself including the principal officer thereof. This amendment will take effect from 1 April 2017.

52. Interpretation of the tax treaties – Clarity to avoid future litigation – Sections 90 & 90A:

The Central Government had constituted a high powered committee with one of the broad objectives to study and identify the provisions/phrases in the Act which had given rise to litigation on account of interpretative differences. The said committee in its final report suggested amendment in the Act to bring in clarity on interpretation of 'terms' used in the Tax Treaties. In the light of said recommendation, it is proposed to insert explanation to sections 90 and 90A of the Act. The said explanation provides that where any 'term' used in an tax treaties entered into by India under sections 90(1) or 90A of the Act, is defined under the said tax treaty itself, the said term shall be assigned the meaning as provided in the same. Where the term has not been defined in the tax treaty, it shall be assigned the meaning as per definition in the Act or any explanation issued by the Central Government.

INCOME TAX ACT, 1961

Applicable to all Assessees’

53. Clarity of procedure in respect of change or modifications of object and filing of return of income in case of entities exempt under sections 11 and 12:

The provisions of section 12AA of the Act provide for registration of the trust/ institution which entitles them to the benefit of sections 11 and 12. The registration can be cancelled if the Principal Commissioner/Commissioner is not satisfied of the genuineness of the activities and/the carrying of activities in accordance with the avowed objects, post registration. However, at present there is no explicit provision in the Act which mandates said trust or institution to approach for fresh registration in the event the objects are modified post registration. It is proposed to amend section 12A to provide that where a trust or an institution has been granted registration under section 12AA or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996] and, subsequently, it has adopted or undertaken modifications of its objects which do not conform to the conditions of registration, it shall be required to obtain fresh registration by making an application within a period of 30 days from the date of such adoption or modifications of the objects. Further, as per the existing provisions of the said section, entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139, if their total income without giving effect to the provisions of sections 11 and 12 exceed the maximum amount which is not chargeable to income-tax. It is proposed to insert new clause (c) in subsection 1 of section 12A to provide for a further condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Act. These amendments are clarificatory in nature. Amendment is also proposed to be made to sub-sections 1 and 2 of section 12AA to align procedures relating to registration on aforesaid basis.

54. Strengthening of Permanent Account Number (PAN) quoting mechanism in the TCS regime:

In order to strengthen the PAN mechanism, it is proposed to insert a new section 206CC to provide the following:

I. Any person paying any sum or amount, on which tax is collectable at source under chapter XVII BB (hereafter referred to as collectee) shall furnish his PAN to the person responsible for collecting such tax (hereafter referred to as collector), failing which

INCOME TAX ACT, 1961

Applicable to all Assessees’

tax shall be collected at twice the rate mentioned in the relevant section under chapter XVII BB or at the rate of five per cent, whichever is higher.

II. The declaration filed under section 206C (1A) shall not be valid unless the person filing the declaration furnishes his PAN in the same.

III. In case any declaration becomes invalid under sub-section (2), the collector shall collect the tax at source in accordance with the provisions of sub-section (1).

IV. No certificate under sub section (9) of section 206C shall be granted unless it contains the PAN of the applicant.

V. The proposed amendments shall not apply to a non-resident who does not have permanent establishment in India.

This amendment will take effect from 1st April, 2017.

55. Amendment of section 132 in respect power of provisional attachment and make reference to Valuation Officer to Authorized Officer - search and seizure:

The proposed amendment (explanation after the fourth proviso to the aforesaid provision) provides that ‘reasons to believe’ recorded by the prescribed income-tax authority shall not be disclosed to any person or authority including the Appellate Tribunal. This amendment is proposed to take effect retrospectively from 1 April 1962. Similarly, under section 132(1A), if the prescribed authority, based on the information in his possession, has reason to suspect the existence of certain circumstances, he may authorize an authority indicated in this provision to carry out search and seizure. It is now proposed to insert an explanation to the aforesaid provision. This stipulates that the ‘reasons to suspect’ recorded by the specified income-tax authority shall not be disclosed to any person or authority including the Appellate Tribunal. This amendment is proposed to take effect retrospectively from 1 October 1975. It is also proposed to insert sub-section 9B in section 132. Under this provision, in a search case, the authorized officer may, by an written order, attach provisionally, any property belonging to the assessee, with the prior approval of Principal Director General or Director General or Principal Director or Director, if he is satisfied that it is necessary for him to do so for the purpose of protecting the interests of revenue. This action can be taken within a period of sixty days from the last executed authorization to search. Reasons for such attachment must be recorded in the order.

INCOME TAX ACT, 1961

Applicable to all Assessees'

Section 132(9C) which is now sought to be inserted, to provide such provisional attachment shall cease to have effect after the expiry of six months from the date of order of attachment.

Section 132(9D), which is again sought to be introduced as a new provision, provides that in a search case, the authorized officer may make a reference to a Valuation Officer referred to in section 142A, for estimation of fair market value of a property. The Valuation Officer shall be required to furnish the valuation report within sixty days of receipt of such reference.

Explanation 1 to section 132 is sought to be amended so as to provide that for the purposes of section 132(9A), (9B) and (9D), with respect to "execution of an authorization for search" the provisions of sub-section (2) of section 153B relating to execution of authorization shall apply.

These amendments will take effect from 1 April 2017.

56. Amendment of section 132A:

Clause 51 of the Bill seeks to amend section 132A of the Act relating to power to requisition books of account, etc. It is proposed to insert an explanation in the said section, so as to declare that the reason to believe for making the requisition as recorded by the income-tax authority shall not be disclosed to any person or authority including the Appellate Tribunal. This amendment will come into effect retrospectively from 1 October 1975.

57. Amendment of section 133C:

The bill proposes to amend section 133C of the Act relating to power to call for information by the prescribed income-tax authority. Section 133C(3) is now proposed to be inserted so as to enable the Central Board of Direct Taxes to make a scheme for the centralized issuance of notice, processing of information or documents and for making available the outcome of the said processing to the Assessing Officer.

This amendment will take effect from 1 April 2017.

INCOME TAX ACT, 1961

Applicable to all Assessees'

58. Amendment for assessment in case of search or requisition – section 153A:

Clause 59 of the Bill seeks to amend section 153A of the Act relating to assessment in case of search or requisition. It is proposed that issuance of notice and assessment or reassessment under section 153A can also be made for an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not beyond ten assessment years from the assessment year relevant to the previous year in which search is conducted or requisition is made, provided that—

i. The Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income which has escaped assessment amounts to or is likely to amount to Rs.50 lakhs or more in one year or in aggregate in the relevant assessment years;

ii. Such income escaping assessment is represented in the form of asset which shall include immovable property being land or building or both, shares and securities, deposits in bank account, loans and advances;

iii. The income escaping assessment or part thereof relates to such year or years; and

iv. Search under section 132 is initiated or requisition under section 132A is made on or after 1 April 2017.

It is further proposed to make consequential amendment to the provisos of the said subsection.

It is also proposed to define the expression "relevant assessment year" and "asset" in the form of an explanation.

These amendments will take effect from 1 April 2017.

59. Amendment of section 140A:

It is proposed to amend section 140A to include that in case of delay in furnishing of the return of income, along with the tax and interest payable, fee for delay in furnishing of return of income shall also be payable. The proposed amendment is consequential to the insertion of a new section 234F which provides for fee for delay in furnishing of return of income

PART B

CENTRAL EXCISE AND SERVICE TAX

CENTRAL EXCISE ACT, 1944

Advance Ruling

Settlement of cases

1. Amendments to Chapter-IIIA - Advance Rulings:

a. Amendment to Section 23A(e):

The definition of "Authority" has been amended to mean the Authority for Advance Ruling as constituted under section 245-O of the Income-tax Act, 1961.

b. Amendment to Section 23B:

Provisions relating to vacancies of the "Advance Ruling Authority" not to invalidate proceedings is being omitted.

c. Amendment to Section 23C(3):

Application fee for seeking advance ruling is increased from Rs.2,500/- to Rs.10,000/-

d. Amendment to Section 23D(6):

Time limit for pronouncement of advance ruling, in writing, is extended from 90 days to 6 months from the date of application.

e. Amendment to Section 23-I: Insertion of new section – Transitional provision:

All the pending applications and proceedings before the erstwhile Authority for Advance Rulings (Central Excise, Customs and Service Tax) to be transferred to Authority constituted under section 245-O of the Income-Tax Act 1961, from the stage at which such proceedings stood as on the date on which the Finance Bill, 2017 receives the assent of the President.

Above amendments in Advance Ruling provisions has also been carried out in Chapter V of Finance Act dealing with Service Tax.

2. Amendments to provisions of Settlement of cases:

a. Amendment to Section 32E(5):

An application to the Settlement Commission can also be made by any person other than an assessee, 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. (Conditions and manner is yet to be prescribed.

CENTRAL EXCISE ACT, 1944

Central Excise Rules, 2002

b. Amendment to Section 32F(5A):

Rectification of settlement commission orders permitted within 3 months from the date of passing such order to rectify any error apparent on the face of the record either on own motion or by prescribed officer/applicant.

If such rectification has the effect of enhancing the liability of the applicant, then reasonable opportunity of being heard shall be provided to the applicant before such rectification.

3. Amendments to Central Excise Rules, 2002:

a. Amendment to Rule 21(2):

Time limit of 3 months has been prescribed for the purpose of passing decision in case of remission of duty on account of goods being lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal. This can be extended for a further period of 6 months by an authority next higher than the authority before whom the application for remission of duty is pending. There was no time limit hitherto prescribed for Principal Commissioner or Commissioner to pass the decision order.

CENVAT CREDIT RULES, 2004

4. Amendments to Cenvat Credit Rules, 2004:

a. Explanation-I (e) applicable to sub-rule 3 and 3A of Rule 6:

Banking companies and financial institutions including non-banking financial companies are required to include value of services by way of extending deposits, loans or advances for computation of ineligible CENVAT credit under Rule 6 of CCR, 2004 if they choose to arrive at the amount of reversal under sub rules 1, 2 or 3. This amendment has no relevance if such taxable persons reverse 50% of the input services as per Rule 6(3B).

(Effective from February 2, 2017)

b. Amendment to Rule 10(4): Insertion of New Sub Rule:

Time limit of 3 months (further extension of additional 6 months), from the date of receipt of application, has been prescribed to allow transfer of credits on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture by the Jurisdictional Dy./Assistant Commissioner of Central Excise, subject to the fulfilment of the conditions prescribed under Rule 10 (3).

(Effective from February 2, 2017)

SERVICE TAX LAW

5. Amendments to Service Tax Law:

a. Explanation-I (e) applicable to sub-rule 3 and 3A of Rule 6:

The changes proposed in the Negative List in Section 66 D are as follows:

Negative List covers "services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption". These services are proposed to be omitted from the negative list and exemption on them is being continued by incorporating them in the general exemption notification 25/2012 ST.

(Effective from the date on which the Finance Bill, 2017 receives assent of the President)

b. Amendment to Section 104: Exemption to one time upfront amount relating to long term lease of industrial plots:

Benefit of exemption notification No. 41/2016-ST for services of renting of immovable property extended retrospectively i.e., from June 1, 2007. Notification No. 41/2016-ST, exempts one time upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for grant of long-term lease of industrial plots (30 years or more) by State Government industrial development corporations/ undertakings to industrial units.

Refund of the taxes collected during the above period is provided if application for claim of refund is made within a period of 6 months from the date on which the Finance Bill, 2017 receives the assent of the President.

(Effective retrospectively from June 1, 2007)

c. Amendment to Section 105 and Notification 7/2012: Exemption to life insurance services to members of Armed forces of Union etc.,:

Service tax exemption to taxable services by the Army, Naval and Air Force Group Insurance Funds by way of life insurance to

members of the Army, Navy and Air Force under the Group Insurance Schemes of the Central Government, has been retrospectively made applicable with effective from September 10, 2004, the date from when the services of life insurance became taxable.

Refund of the taxes collected during the above period is provided if application for claim of refund is made within a period of 6 months from the date on which the Finance Bill, 2017 receives the assent of the President.

(Effective retrospectively from September 10, 2004)

d. Amendment to Rule 2(A):

For works contract services:

1. If the value of land or undivided share of land is claimed as deduction from the total contract value, then service tax would be payable at normal rate on such service portion after deduction;

2. If the value of land or undivided share of land is not claimed as deduction, then service tax would be payable at 25%/30% (as per table below) of the total contract value. This is subject to the condition that no Cenvat credit is claimed on inputs, input services and capital goods.

Period	Total carpet area in square feet	Value on which service tax payable
July 1, 2010 to June 30, 2012	In all cases	25%
July 1, 2012 to February 28, 2013	In all cases	25%
March 1, 2013 to May 7, 2013	For residential units upto carpet area of 2,000 square feet **or** where the amount charges per residential unit is less than Rs.1 crore	25%
	Any other case	30%
May 8, 2013 to March 31, 2016	For residential units upto carpet area of 2,000 square feet **and** where the amount charges per residential unit is less than Rs.1 crore	25%
	Any other case	30%

SERVICE TAX LAW

April 1, 2016 onwards	In all cases	30%

(Effective from retrospectively from July 1, 2010)

e. Amendment to Notification 7/2012: Exemption to other than residential course at IIM:

Exemption for services provided by the Indian Institute of Management to their residential students undergoing two year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test, has also been extended to other than residential students.

(Effective from February 2, 2017)

f. Amendment to Notification 7/2012: Exemption to select airline operator:

Exemption from Service Tax is being provided in respect of the amount of viability gap funding payable to the selected airline operator for service of transport of passengers by air, embarking from or terminating in RCS airports. This exemption is for a period of one year from the date of commencement of operations of RCS airports as notified by Ministry of Civil Aviation

(Effective from February 2, 2017)

6. Goods and Service Tax:

GOODS AND SERVICE TAX

Honourable Finance Minister emphasized that:

1. Post the enactment of the Constitution (One Hundred and First Amendment) Act, 2016, the preparatory work for this path-breaking reform has been a top priority for the Government.

2. The GST Council has finalized its recommendations on almost all the issues based on consensus, debate and discussions. The preparation of IT system for GST is also on schedule and extensive reach-out efforts will start from April 1, 2017, to create awareness about the new taxation system (GST) within the trade and industry.

3. Centre, through the Central Board of Excise & Customs, shall continue to strive to achieve the goal of implementation of GST as per schedule without compromising the spirit of co-operative federalism. Implementation of GST is likely to bring more taxes both to Central and State Governments because of widening of tax net. I have preferred not to make many changes in current regime of Excise & Service Tax because the same are to be replaced by GST soon.

NOTE: THE ABOVE AMENDMENTS HAVE BEEN FURNISHED TO OUR CUSTOMERS FOR GENERAL UNDERSTANDING. IN VIEW OF THE INTRICACIES INVOLVED IN THE AMENDMENTS, THEY ARE REQUESTED TO TAKE SPECIFIC PROFESSIONAL ADVICE BEFORE ACTING ON ANY MATTER. WHILE DUE CARE HAS BEEN TAKEN IN PREPARING THIS DOCUMENT, INADVERTENT INACCURACIES CANNOT BE RULED OUT. THIS DOCUMENT IS NOT EXHAUSTIVE. THE CONTENTS OF THIS DOCUMENT IS NOT TO BE CONSIDERED AS LEGAL OR PROFESSIONAL ADVICE.