J.B.Nagar CPE Study Circle

CA Jhankhana Thakkar

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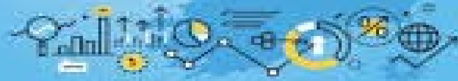
Budget 2018

What it means for you



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Individual Taxation

Tax rates for individuals

1. The education cess of 3% proposed to be replaced by a “Health and education cess” of 4%
2. No change in tax rates and surcharge
3. No change in tax slabs for individuals
4. The maximum marginal rate of tax to rise to 35.88% from 35.535%

Standard deduction on salary income reintroduced

Insertion of section 16(ia)

Clause (ia) has been inserted in section 16 which provides for a standard deduction as follows:

Amount of salary	Deduction Amount
Less than or equal to INR 40,000	Entire salary
More than INR 40,000	INR 40,000

Existing exemptions withdrawn

Following exemptions have been withdrawn consequent to reinstatement of the standard deduction:

- Transport allowance of INR 1,600 per month (The exemption for differently abled persons will continue)
- Exemption of INR 15,000 for reimbursement of medical expenses by the employer.

Net Benefit by introducing standard deduction

Particulars	Amount (INR)
Standard deduction	40,000
Withdrawal of transport allowance and medical reimbursement exemption	34,200 (19,200 + 15,000)
Net benefit to salaried individual	5,800

Rationalization of section 54EC

Long Term capital Asset

Existing:

Exemption from long term capital gain available in case of transfer of any long term capital asset.

Proposed:

Exemption from long term capital gain available only in case of transfer of land and building.

Long Term Specified Asset

Existing:

National Highways Authority of India (NHAI) or Rural Electrification Corporation Limited (REC) bonds issued on or after 1 April 2007 and redeemable after 3 years

Proposed:

- NHAI or REC or any bond notified bond by Central Government issued between 1 April 2007 to 31 March 2018 which are redeemable after 3 years
- NHAI or REC or any bond notified by Central Government issued on or after 1 April 2018 and redeemable after 5 years

Deduction for medical expenditure

Section 80D

Enhanced deduction for senior citizens
Under the existing provisions, a maximum deduction of INR 30,000 is allowed to an individual or HUF for payment towards health insurance premium and preventive health check-up for resident senior citizens and medical expenses relating to very senior citizens where there is no insurance.
It is now proposed to enhance the maximum deduction in respect of the above to INR 50,000. The deduction for medical expenditure is now extended to expenses relating to senior citizens also.

Single premium policies
Deduction for premium paid for single policy covering multiple financial years shall be allowed in the respective financial years on a proportionate basis, subject to monetary limit specified under this section.

Section 80DDB

Existing provision
A deduction of INR 60,000 and INR 80,000 is allowed in respect of expenditure incurred by an Individual or HUF on medical treatment of specified disease for senior citizens and very senior citizens respectively

Proposed provision
The monetary limit for the deduction is proposed to be enhanced to INR 100,000 for both senior citizens and very senior citizens

Deduction for interest for Senior Citizens

Existing Provision

- **Section 80TTA**

Deduction of up to INR 10,000 for interest on savings accounts with following :
- Bank
- Co-operative Bank
- Post office

Proposed Provision

- **Section 80TTA**

Not applicable to senior citizens

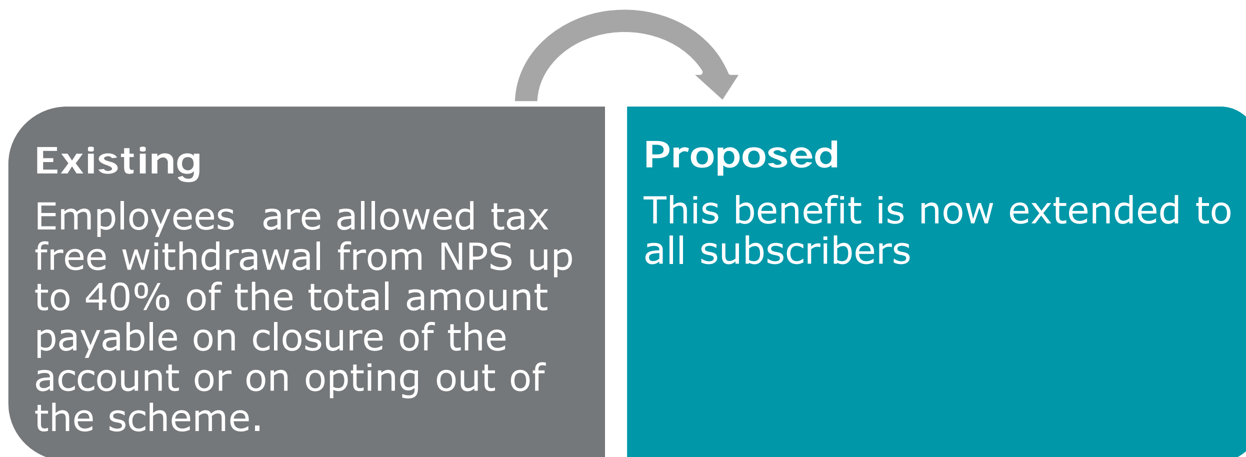
- **Section 80TTB**

New section for senior citizens

Deduction of up to INR 50,000 for interest income from all deposits from the following:
- Bank
- Co-operative Bank
- Post office

Other personal tax provisions

Extending the benefit of tax free withdrawal from NPS to all subscribers



Payment for termination/modification in terms of employment

It is proposed to insert new clause (xi) under sub section 2 of section 56 to include any compensation/payment which is due or received by any person on account of termination or modification in terms of his employment. In other words these payments would be considered as income irrespective of whether it is capital or revenue in nature.

Corporate Tax Rate Card

Corporate tax rate card

Proposed to be reduced to 25% for domestic company whose total turnover or gross receipts does not exceed INR 2,500 million during FY 2016-17

Tax rate remains unchanged for other domestic companies (including manufacturing companies satisfying prescribed conditions), LLPs and foreign companies

Effective rate of DDT increased to 20.56% on account of change in additional surcharge (i.e. Health and Education Cess). However, DDT introduced on deemed dividend under section 2(22)(e) resulting in effective tax rate of 34.94%

Corporate tax rate card

Types of companies	Income up to INR 10 million		Above INR 10 million up to INR 100 million		Above INR 100 million	
	Surcharge rate	Effective tax rate	Surcharge rate	Effective tax rate	Surcharge rate	Effective tax rate
Domestic with turnover not exceeding INR 2,500 million in FY 2016-17	Nil (Nil)	26.00% (30.90%)	7% (7%)	27.82% (33.06%)	12% (12%)	29.12% (34.61%)
New domestic manufacturing (set up and registered on or after 1 March 2016)*	Nil (Nil)	26.00% (25.75%)	7% (7%)	27.82% (27.55%)	12% (12%)	29.12% (28.84%)
Other domestic	Nil (Nil)	31.20% (30.90%)	7% (7%)	33.38% (33.06%)	12% (12%)	34.94% (34.61%)
Foreign	Nil (Nil)	41.60% (41.20%)	2% (2%)	42.43% (42.02%)	5% (5%)	43.68% (43.26%)

*Compliant with prescribed conditions under section 115BA

Note:

- Health and Education Cess of 4% has been considered for determining the tax rates above
- Figures in bracket represent existing tax rates

Minimum alternate tax

No changes in basic MAT rate

Types of companies	Income up to INR 10 million		Above INR 10 million up to INR 100 million		Above INR 100 million	
	Surcharge rate	Effective tax rate	Surcharge rate	Effective tax rate	Surcharge rate	Effective tax rate
Domestic	Nil (Nil)	19.24% (19.06%)	7% (7%)	20.59% (20.39%)	12% (12%)	21.55% (21.34%)
Foreign	Nil (Nil)	19.24% (19.06%)	2% (2%)	19.62% (19.44%)	5% (5%)	20.20% (20.01%)
IFSC	Nil (Nil)	9.36% (9.27%)	7% (7%)	10.02% (9.92%)	12% (12%)	10.48% (10.38%)

Note:
- Health and Education Cess of 4% has been considered for determining the tax rates above
- Figures in bracket represent existing tax rates

Corporate Taxation

Tax rate card – Income > INR 100 million

Particulars	Company with turnover not exceeding INR 2500 million in FY 2016-17	Company with turnover exceeding INR 2500 million in FY 2016-17	LLP
	Income > INR 100 million	Income > INR 100 million	Income > INR 100 million
Income	100	100	100
Less: tax	29.12	34.94	34.94
Net distributable income	70.88	65.06	65.06
Less: DDT at the rate of 20.56%	12.09	11.10	-
Net amounts distributed to shareholder/ partner	58.79	53.96	65.06
Effective tax rate	41.21%	46.04%	34.94%

Note:

- Health and Education Cess of 4% has been considered for determining the tax rates above

LLP Taxation Rate Card

LLP Taxation
Tax rate card

Income up to INR 10 million		Above INR 10 million	
Surcharge rate	Effective tax rate	Surcharge rate	Effective tax rate
Nil (Nil)	31.20% (30.90%)	12% (12%)	34.94% (34.61%)

AMT

Location of LLP	Income up to INR 10 million		Above INR 10 million	
	Surcharge rate	Effective tax rate	Surcharge rate	Effective tax rate
Other than in IFSC	Nil (Nil)	19.24% (19.05%)	12% (12%)	21.55% (21.34%)
In IFSC	Nil (Nil)	9.36% (19.05%)	12% (12%)	10.48% (21.34%)

Note:
- Health and Education Cess of 4% has been considered for determining the tax rates above
- Figures in bracket represent existing tax rates

ICDS

Taxability of certain income

Rationale

- Currently, as per provisions section 145A(1b) of the Act, notwithstanding the method of accounting followed by the assessee, interest received by an assessee on compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the year in which it is received
- The Delhi High Court held that para 5 of ICDS IV that provides for recognition of income from export incentive in the year of making of the claim if there is 'reasonable certainty' of its ultimate collection is ultra vires the Act. Accordingly, para 5 of ICDS IV was struck down
- The Delhi High Court held that ICDS VII that requires that amount of subsidy/ grant has to be taxed in the year of receipt is contrary to and in conflict with the accrual system of accounting

Proposed amendment – overriding Delhi High Court decision

- It is proposed to insert a new section 145B to include the above provisions of clause (b) of section 145A of the Act and further provide that:
  - The claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved
  - Income referred to in section 2(24)(xviii) shall be deemed to be the income of the previous year in which it is received, if not charged to income tax for any earlier previous year
- As per provisions of section 2(24)(xviii) income includes assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee
- The proposed new section 145B shall be applicable retrospectively from assessment year 2017-18 and onwards

Aforesaid amendment in line with para 4(2) of ICDS VII – government grants and para 5 of ICDS IV – revenue recognition

Valuation of inventory in accordance with ICDS

Rationale

- Currently, section 145A of the Act provides for valuation of inventory for the purpose of determining income chargeable under the head profits and gains of business or profession in accordance with the method of accounting regularly employed by the assessee
- The Delhi High Court in the case of Chamber of Tax Consultants held that where assessee regularly follows a certain method of valuation of goods then will be governed by section 145A irrespective of the ICDS

Proposed amendment - overriding above Delhi High Court decision

- Section 145A is proposed to be amended to provide that, for the purpose of determining the income chargeable under the head profits and gains of business or profession:
  a) the valuation of inventory shall be made at lower of actual cost or net realizable value computed in the manner provided in ICDS
  b) the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation
  c) inventory being securities not listed, or listed but not quoted, on a recognised stock exchange, shall be valued at actual cost initially recognised in the manner provided in ICDS
  d) inventory being listed securities, shall be valued at lower of actual cost or net realisable value in the manner provided in ICDS and for this purpose the comparison of actual cost and net realisable value shall be done category-wise
- The term recognized stock exchange shall have the same meaning assigned to it in clause (ii) of Explanation 1 to section 43(5)
- The substituted new section 145A would be applicable retrospectively from assessment year 2017-18 and onwards

Deductibility of MTM loss or other expected loss and taxability of foreign currency fluctuation gain/loss

Rationale

The Delhi High Court held that ICDS-VI is not in consonance with the ratio laid down by the Supreme Court in Sutlej Cotton Mills Limited v. CIT [1979] (116 ITR 1) in the context of exchange gain/loss on loan for capital items and MTM loss arising out of forward exchange contracts held for trading or speculation

Proposed amendment

- To overrule the above and bring certainty to ICDS, it is proposed to -
  - Introduce new sections 36(1)(xviii) and 40A(13) to allow MTM losses or other expected loss only in accordance with the provisions of ICDS
  - Introduce new section 43AA for taxation of foreign exchange fluctuation gain or loss in accordance with the ICDS

Retrospective amendment - proposed to be effective from AY 2017-18

- **Implications on assesses who have placed reliance on the Delhi High Court ruling – Need to revise return?**
- **Implications on foreign exchange gain/loss on revaluation of loan pertaining to an Indian asset?**
- **Taxability of MTM gains ?**

Computation of income from construction and service contracts

Rationale

- The Delhi High Court in the context of ICDS III held that completed contract method and percentage completion method, both are accepted method of accounting. Considering ICDS provides for only one method, it was struck down to that extent

Proposed amendment – overriding Delhi High Court decision

- It is proposed to insert a new section 43CB in relation to computation of income from construction and service contracts
- The new section 43CB proposes to provide that profits and gains of a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method in accordance with the ICDS
- However, in the case of a contract for providing services with duration less than ninety days, it is proposed that the profits and gains shall be determined on the basis of project completion method
- Further, for contract for provision of services involving indeterminate number of acts over a specific period of time, the profits and gains arising from such contract are proposed to be determined on the basis of straight line method
- The contract revenue shall include retention money and the contract costs shall not be reduced by any incidental income in the nature of interest, dividends or capital gains
- The proposed new section 43CB of the Act shall be retrospectively applicable from assessment year 2017-18 and onwards

Assessees who have filed the tax return on the basis of the Delhi High Court decision need to revise their tax returns

Widening Scope of Business Connection

Aligning the scope of “business connection” with modified PE rule as per MLI – Section 9(1)(i) - Rationale for the change

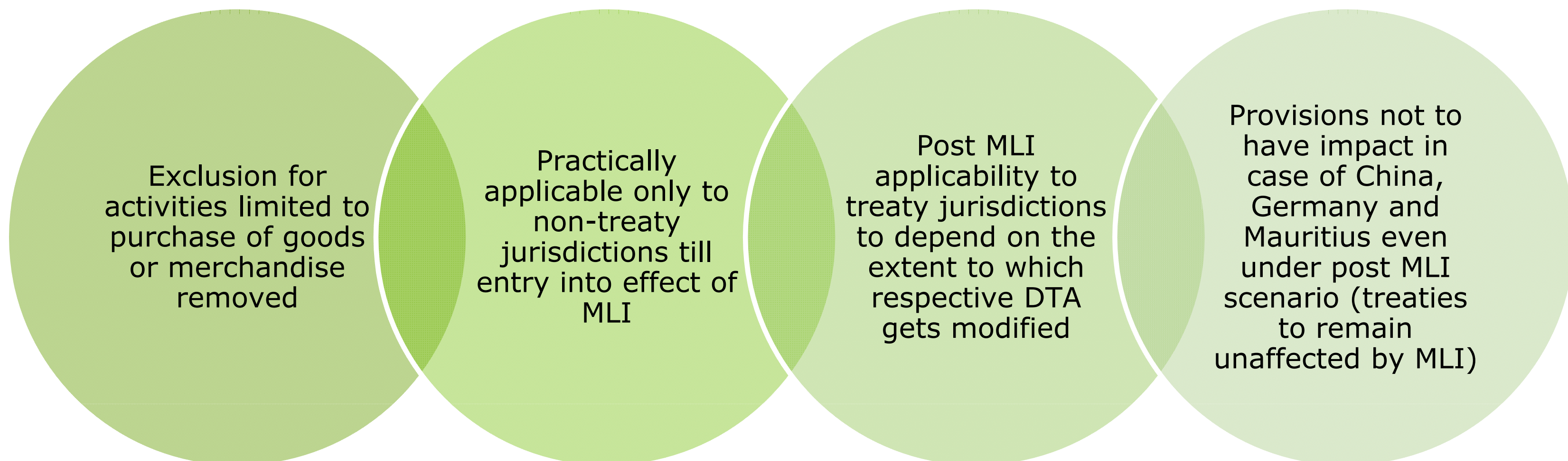
- Under the existing provisions of section 9(1)(i) of the Act, “business connection” includes business activities carried on by non-resident through dependent agents
  - The scope is in line with DAPE under India’s DTAs
- BEPS Action Plan 7 reviewed the definition of PE with a view to prevent avoidance of payment of tax by circumventing the existing PE definition by way of commissionaire arrangements or fragmentation of business activities
  - Recommended, *inter alia,* modifications to provide that an agent would also include a person who habitually plays a principal role leading to the conclusion of contracts
- BEPS recommendations now included in MLI (to which India is a signatory)
  - MLI provisions will, as a result, automatically modify India’s DTAs covered by MLI (provided the treaty partner has also opted for the same)
- Therefore, DAPE provisions under India’s DTAs, as modified by MLI, would have become wider than section 9(1)(i) of the Act
- However, the modified DTA provisions could have been ineffective in view of section 90(2) of the Act
  - The Act or the DTA whichever is more beneficial to apply
- In view of above, it is proposed to amend the provisions of section 9(1)(i) of the Act to bring in line with MLI provisions

Aligning the scope of "business connection" with modified PE rule as per MLI – Section 9(1)(i) - Proposed amendment

"Business connection" to now also include any business activities carried through a person who, acting on behalf of the non-resident, habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by the non-resident and the contracts are –

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

Key considerations



“Business connection” to include “significant economic presence”- Section 9(1)(i) - Rationale for the change

- As per existing DTAs, business profit of an enterprise is taxable in the country in which the taxpayer is a resident unless the enterprise carries on its business in another country through a PE
- PE defined as a ‘fixed place of business’ through which the business of an enterprise is wholly or partly carried out subject to certain exceptions
- Nexus rule based on physical presence used as against regular economic connection to determine existence of a PE
- New business models of operating remotely through digital medium have emerged with the advancement in information and communication technology in the last few decades
  - Non-resident enterprises interact with customers in another country without having any physical presence in that country
  - Results in avoidance of taxation in the source country
- Right of the source country to tax business profits that are derived from its economy is unfairly and unreasonably eroded
- OECD under its BEPS Action Plan 1 addressed the tax challenges in a digital economy
  - Several options discussed to tackle the direct tax challenges arising in digital businesses
  - One such option is “significant economic presence”
- The scope of existing provisions of section 9(1)(i) restrictive - essentially provides for physical presence based nexus rule
- In view of above, it is proposed to amend the provisions of section 9(1)(i) of the Act to introduce the concept of “significant economic presence”

"Business connection" to include "significant economic presence"- Section 9(1)(i) - Proposed amendment

- It is proposed to insert a new explanation [Explanation 2A] to section 9(1)(i) of the Act to clarify that the significant economic presence of a non-resident shall constitute "business connection" in India
- "Significant economic presence" defined to mean –
  - transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India provided the revenue therefrom exceeds monetary threshold as may be prescribed; or
  - systematic and continuous soliciting of business activities or engaging in interaction with users (exceeding the number as may be prescribed) in India through digital means.
- Whether or not the non-resident has a residence or place of business in India or renders services in India not relevant
- Only so much of income as is attributable to the specified transactions or activities to be deemed to accrue or arise in India
- The proposed amendment in line with recommendations under BEPS Action Plan 1 on addressing tax challenges of the digital economy

Key considerations

Threshold of "revenue" and "users" to be decided after consultation with stakeholders

India to re-negotiate existing DTAs for inclusion of the new nexus rule

Cross border business profits to continue to be taxed as per existing treaty rules till the DTAs are modified

Non-treaty jurisdictions to be impacted by the proposed amendment

Taxing the untaxed – Conversion of stock in trade into Capital Asset

Scope of income under business or profession widened

- It is proposed to amend section 28 to include the following incomes under "profits and gains of business or profession":
  - Any compensation or other payment due to or received by any person in connection with the termination or the modification of the terms and conditions, of any contract relating to his business
  - Conversion or treatment of stock in trade into capital asset ~ FMV of inventory as on the date of conversion into capital asset (to determined in the prescribed manner)
    - Section 2(42A) proposed to be amended to provide that period of holding of such capital asset shall be reckoned from the date of its conversion/ treatment
    - Section 49(9) inserted to provide that cost of acquisition of such capital asset shall be deemed to be the FMV considered on conversion
- Definition of "income" under section 2(24) proposed to be amended to include the above incomes

Controversy surrounding non-taxability of receipts on termination of business contracts and conversion of stock in trade to capital assets now put to rest

Example - Conversion of stock in trade into capital asset

Particulars	Date	Amount (INR)
Cost of stock in trade	December 2017	100
Fair market value on date of conversion	December 2018	110
Sales consideration	February 2020	150

Taxable event	Taxable in which year	Taxable income
On conversion	FY2018-19	Business income = 10
On eventual sale	FY2019-20	*Capital gains = 40

* Period of holding from December 2018

Tax outflow without any real income generation on conversion

MAT & AMT

Provisions not to apply to certain foreign companies offering income on a presumptive basis - section 115JB of the Act

Rationale

- There is an ambiguity under current provisions, whether MAT applies to foreign companies offering income under presumptive tax regime

Proposed amendment

- A clarificatory amendment is proposed in section 115JB to provide that the provisions of section 115JB of the Act shall not be applicable and shall be deemed never to have been applicable to an assessee, being a foreign company, if its total income comprises solely of profits and gains from business referred to in the following sections and such income has been offered to tax at the rates specified in the said sections:
  - Section 44B of the Act (profits and gains of shipping business);
  - Section 44BB of the Act (profits and gains in connection with the business of exploration, etc. of mineral oils);
  - Section 44BBA of the Act (profits and gains of business of operation of aircraft); and
  - Section 44BBB of the Act (profits and gains of foreign companies engaged in the business of civil construction, etc. in certain turnkey power projects)
- Proposed explanation 4A to be inserted to section 115JB retrospectively from assessment year 2001-02 and subsequent years

This will provide clarity and reduce litigation for foreign companies offering income under presumptive taxation provisions

Reduction in AMT for unit in IFSC

Rationale

- A unit located in an IFSC, being a company, is subject to lower MAT at the rate of 9% instead of 18.5% as per provisions of section 115JB of the Act
- Currently, the above concessional rate of AMT is not available to a unit of a non-corporate person located in IFSC

Proposed amendment

- In order to promote the development of world class financial infrastructure in India, it is now proposed to amend section 115JC, to provide that in case of a unit of a non-corporate person located in an IFSC, the AMT shall be charged at the rate of 9%, provided it derives its income solely in convertible foreign exchange

Proposed amendment brings the rate of AMT under section 115JC for non-corporate units located in IFSC at par with the rate of MAT under section 115JB for corporate units located in IFSC

Relaxation for companies under Insolvency resolution process

Amendments facilitating insolvency resolution

Section 115JB

- Deduction is available in respect of the amount of brought forward loss or unabsorbed depreciation, whichever is less, as per the books of accounts, to compute book profit for section 115JB of the Act
- In case brought forward loss or unabsorbed depreciation is nil, no deduction is allowed. This acts as a barrier to rehabilitating companies seeking insolvency resolution
- Proposed amendment –to be effective from assessment year 2018-19: In view of the above, it is now proposed that in case of company whose application for corporate insolvency resolution process under the IBC, 2016 has been admitted by Adjudicating Authority, the aggregate amount of unabsorbed depreciation and brought forward loss (excluding unabsorbed deprecation) shall be allowed to be reduced in computing the book profit under section 115JB of the Act

Section 79

- Section 79 of the Act provides that carry forward and set off of losses in a closely held company shall be allowed only if there is a continuity in the beneficial owner of the shares carrying not less than 51% of the voting power, on the last day of the year or years in which the loss was incurred
- A company seeking insolvency resolution under IBC, 2016 involves change in the beneficial owners of shares beyond the permissible limit under section 79
- Proposed amendment - proposed to be effective from assessment year 2018-19
  - It is proposed that conditions in section 79 shall not be applicable to companies whose resolution plan has been approved under the IBC, 2016, and reasonable opportunity of being heard, to the jurisdictional Principal Commissioner or Commissioner, is given
  - During the resolution process under the IBC, 2016, the return of income of such companies shall be verified by an insolvency professional appointed by the Adjudicating Authority as per such code

Dividend Distribution Tax – Section 115-O and Section 115R

Corporate Taxation

DDT on deemed dividend and equity oriented funds

DDT to deemed dividend under section 2(22)(e) - effective tax rate of 34.94%

- Currently, advance or loan to certain shareholders by privately held company is taxed in the hands of the recipient as a deemed dividend under section 2(22)(e)
- It is proposed to levy DDT at the rate of 30% (without grossing up) under section 115-O on such deemed dividend to bring certainty and prevent camouflaging of dividend by way of loans and advances
- Currently the term "accumulated profit" for the purpose of dividend under section 2(22) means profit of the company up to the date of distribution or payment or liquidation, subject to certain conditions
- The above definition is expanded vide an Explanation 2A, to include in case of amalgamation, the accumulated profits, whether capitalized or not of the amalgamating company on the date of amalgamation

DDT on distribution of income by equity oriented fund

- Currently, any income distributed to a unit holder of equity oriented funds is exempted from DDT under section 115R
- It is proposed to withdraw the exemption and levy DDT at the rate of 10% on any income distributed by an equity oriented fund to bring parity with non-growth schemes and new regime on taxation of long term capital gains

- **Deemed dividend post 1 April 2018 relating to past amalgamations also covered**
- **Accumulated loss of amalgamating company to be included?**

Start-ups

Measures for promotion of start-ups

Currently, eligible start ups can claim 100% deduction of profits and gain for eligible business for 3 consecutive assessment years out of 7 years at the option of the assessee subject to certain conditions

It is proposed to extend the benefit to start ups and expand definition of eligible business as under:

Current provisions	Proposed provisions
Eligible startup is in incorporated on or after the 1 April 2016 but before the 1 April 2019	Benefit also available to Eligible startup incorporated on or after the 1 April 2019 but before the 1 April 2021
The total turnover of its business does not exceed INR 250 million in any of the 5 previous years beginning on or after the 1 April 2016 and ending on the 31 March 2021	The total turnover of its business does not exceed INR 250 million in any of the 7 previous years commencing from the date of incorporation
Eligible business means a business which involves innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property	Eligible business means a business carried out by an eligible start up engaged in innovation, development or improvement of products or processes or services, or a scalable business model with a high potential of employment generation or wealth creation

This amendment is proposed to be effective from assessment year 2018-19 onwards

- **Meaning of scalable business model, high potential of employment generation or wealth creation is subject to interpretation**
- **Definition of “eligible businesses” expanded to cover start-ups in addition to those engaged in technology and intellectual property.**
- **Reversal of exemption if the turnover condition is not complied with for 7 years?**

Taxation of newly set up domestic companies

Rationalization of provision of section 115BA of the Act

- The tax rate of 25% in case of newly set up domestic companies shall apply only on income earned from the business of manufacture, production, research or distribution
- Income other than above and taxable at special rates shall be taxed at the rates applicable to them
- The same shall be applicable retrospectively from 1 April 2017

Employment Generation

Extending the incentive for employment generation

- Currently, section 80JJAA provides additional deduction of 30% of emoluments paid to a new employee for 3 years
- One of the conditions to claim the deduction is that, the new employee should be employed for more than 240 days in the year of employment or 150 days in the case of assessee engaged in the business of manufacturing of apparel
- It is proposed to lower the existing threshold limit of 240 days to 150 days also for assessees engaged in footwear and leather industry
- It is further proposed that where a new employee is employed during the previous year for a period of less than 240 days or 150 days, as the case may be, however, such employee is employed for 240 / 150 days in the immediately succeeding year, he shall be deemed to have been employed in the succeeding year and the deduction shall be available in the immediately succeeding year in respect of such employees
- Illustration (threshold – 240 days employment)

FY	Scenario 1	Scenario 2	Scenario 3
2018-19	130 days	90 days	240 days
2019-20	110 days	240 days	240 days
2020-21	Resigned	More than 240 days	More than 240 days
FY in which deduction under section 80JJAA can be claimed	None	FY 2019-20 onwards	FY 2018-19 onwards

Immovable Property transactions

Rationalization of provisions relating income arising out of transactions in immovable property – sections 43CA, 50C and 56

- At present, for taxation of income from capital gains, business profits and other sources arising out of transactions in immovable property, the sale consideration or stamp duty value, whichever is higher is adopted
  - Difference taxed in the hands of the purchaser as well as the seller
- It is proposed to provide that no adjustment shall be made in a case where the variation is not more than 5% of the sale consideration

Illustration

Particulars	Existing	Proposed
Sale consideration	100	100
Stamp duty value	120 / 105 / 100	120 / 105 / 100
Deemed sale consideration in hands of purchase and seller	120 / 105 / 100	120 / **100** / 100

Farm Producer Companies

Farm Producer Companies

In order to encourage professionalism in post harvest value addition in agriculture, **100% profit linked deduction** to be allowed to registered Farmer Producer Companies subject to below conditions

- Any assessee being a **Producer Company** as defined under the Companies Act
- Total **turnover should be less than INR 100 crore** in relevant previous year
- Deduction of 100% profits attributable to “**eligible business**” i.e.
  - the marketing of agricultural produce grown by the members; or
  - the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to the members; or
  - the processing of the agricultural produce of the members
- Benefit available for 5 years from AY 2019-20 to FY 2024-25

Tax neutral transfers

Tax neutral transfers – section 56(2)(x)

- Transfer of a capital asset by a holding company to its wholly owned Indian subsidiary company and by a wholly owned subsidiary company to its Indian holding company not regarded as a taxable transfer in the hands of transferor
- Such transfer is, however, taxable in the hands of transferee if the transfer is for a consideration less than the stamp duty value or fair market value, as the case may be, by more than INR 50,000
  - No specific exemption under section 56 of the Act for such transfers
- It is proposed to amend section 56 of the Act to exclude the above transactions from its scope

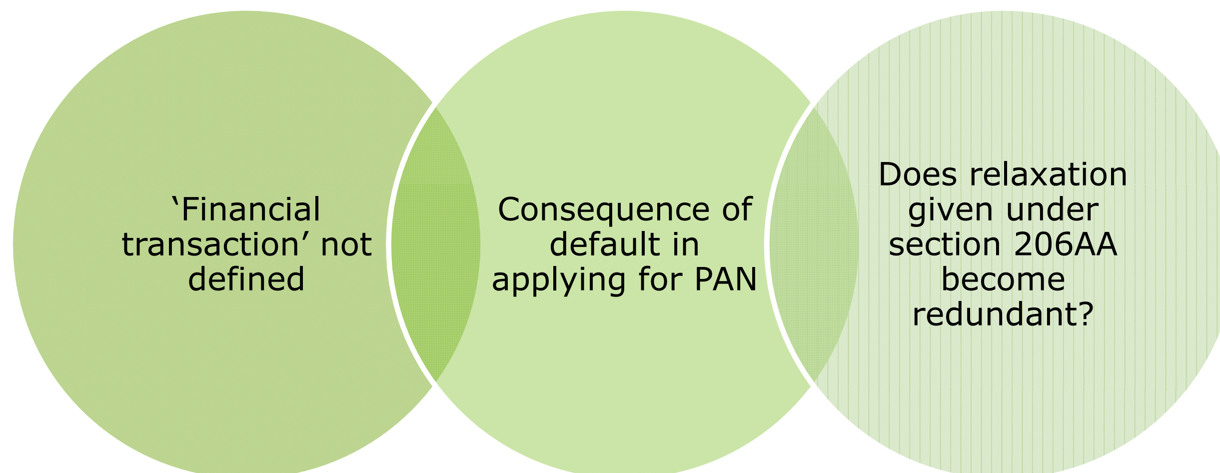
Transactions between a wholly owned subsidiary company and its holding company not regarded as transfer under section 47 now exempt from applicability of section 56 – not taxable in the hands of transferee

PAN application

PAN to be applied in certain cases – section 139A

- With a view to use PAN as Unique Entity Number (UEN), it is proposed to expand the list of cases requiring application for PAN
- A person, not being an individual, which enters into a financial transaction of an amount aggregating to INR 0.25 million or more in a financial year to be required to apply for PAN
- Managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer or any person competent to act on behalf of such entities to also apply for PAN
  - Objective to link financial transactions with natural persons
- Amendment to be effective from assessment year 2018-19

Key considerations



Assessment, Appeals, Penalty etc.

Amendments relating to scrutiny assessment – section 143

Rationalisation of prima-facie adjustments during processing of return

- Currently, while processing the return of income, the total income or loss is to be computed *inter alia* after adding income appearing in Form 26AS / 16A / 16 which has not been included in the return
- It is proposed to insert a new proviso to provide that such adjustment shall not be made under this section in respect of any return furnished on or after assessment year 2018-19
- The amendment to be effective from assessment year 2018-19

New scheme for scrutiny assessment

- It is proposed to provide that the Central Government may make a scheme, by notification in the Official Gazette, for the purpose of making assessment of total income or loss of the assessee so as to impart greater efficiency, transparency and accountability by –
  - eliminating the interface between the AO and the assessee in the course of proceedings to the extent technologically feasible;
  - optimizing utilization of resources through economies of scale and functional specialization;
  - introducing a team-based assessment with dynamic jurisdiction.
- The Central Government to be also authorized to direct suitable amendments in other provisions as well
- Every notification to be laid before each House of Parliament

Prosecution for not filing return of income in case of companies

- The provisions of section 276CC provide for prosecution in case of willfull failure to furnish return of income in due time
- Immunity from prosecution is granted *inter alia* in case where the tax payable on the total income determined on regular assessment, as reduced by the advance tax, if any paid, and any withholding tax does not exceed INR 3,000
- It is proposed to exclude companies from the above immunity in order to prevent abuse by shell companies or companies holding Benami properties

Although the proposed amendment is to target shell companies or companies holding Benami properties, all companies not filing return on the ground that taxes are already withheld, will have to comply

Filing of tax return before due date to claim several deductions

Rationale

- Currently, as per provisions of section 80AC of the Act, no deduction would be admissible under sections 80-IA, 80-IB, 80-IC, 80-ID and 80-IE, unless the return of income by the assessee is furnished on or before the due date specified under section 139(1) of the Act

Proposed amendment

- In order to align the provisions, deduction under any of the provisions mentioned under the heading "C-Deduction in respect of certain incomes" in Chapter VIA shall not be allowed unless the return of income is filed by the due date
- Deduction under section 80H to 80RRB proposed to be covered under the aforesaid amendment
- The aforesaid amendment is proposed to be applicable retrospectively from assessment year 2018-19 and onwards

Other provisions

Change in constitution of the AAR

- The Finance Act, 2017 merged the AAR for income-tax, central excise, customs duty and service tax
- In view of the proposed constitution of new Customs Authority for Advance Ruling, it is proposed that such authority shall cease to act as AAR and shall act as an appellate authority for the purpose of the Customs Act
- It is further proposed that such authority shall not admit any appeal against any ruling passed by it in the capacity of AAR

Penalty order on accountants/ merchant bankers, etc. by CIT(A) appealable before the Tribunal

- It is proposed to allow filing of an appeal before the ITAT against an order passed by the CIT(A) under section 271J levying penalty on an accountant or a merchant banker or a registered valuer for furnishing incorrect information in any report or certificate

Increase in penalty for failure to furnish statement of financial transactions or reportable account

- It is proposed to enhance the penalty for delay in furnishing of the statement of financial transaction or reportable account as required under section 285BA to ensure greater compliance -
  - From INR 100 to INR 500 ~ for delay in furnishing within the due date prescribed
  - From INR 500 to INR 1,000 ~ for failure to furnish in pursuance of notice issued by tax authority

Capital Gains

Taxation of long term capital gains on sale of equity shares etc.

Insertion of Section 112A

- Currently, long term capital gains (‘LTCG’) on transfer of listed equity shares in a company or a unit of equity oriented fund or a unit of a business trust (‘specified securities’) is exempt on fulfillment of certain conditions
- Exemption to be withdrawn from 1 April 2018 and 10% tax to apply
- Benefit of cost step up based on fair value as on 31 January 2018 is available subject to conditions
- No benefit of inflation indexation on cost of acquisition / improvement and computation in foreign currency
- Slab rate benefit to be given to individuals
- Benefits under Chapter VI-A and rebate under section 87A cannot be availed
- Following conditions apply for qualifying for the beneficial rate of 10%:
  - STT has been paid on:

    (a) acquisition and transfer of capital asset being transferred;

    (b) Transfer of unit of equity oriented fund or a unit of a business trust
- Condition of payment of STT not to apply to-
  - Transfers undertaken on recognized stock exchange located in International Financial Services Centre and where sales consideration is received in foreign currency
  - Acquisitions to be specified by Central Government

Taxation of long term capital gains on sale of equity shares etc.
Insertion of Section 112A

An illustrative example for computing tax payable is given below:

Other than Individual / HUF

Particulars	Amount in INR
Total Income (A)	1,400,000
Long Term Capital Gains (B)	400,000
Balance Income (A) – (B)	1,000,000
Tax payable shall be computed as follows:	
On LTCG under section 112A	
LTCG – (B)	400,000
Less: Basic limit under 112A	100,000
LTCG taxable under 112A	300,000 @ 10%*
On Balance Income	As per standard tax rates
Total	**Xx**

Individual / HUF

Particulars	Amount in INR
Total Income (A)	510,000
Long Term Capital Gains (B)	400,000
Balance Income (C)=(A) – (B)	110,000
Maximum Amount not chargeable to tax (D)	250,000
Unabsorbed non-chargeable limit (E)=(D) – (C)	140,000
Tax payable shall be computed as follows:	
On LTCG under section 112A	
LTCG – (B)	400,000
Less: (E)	140,000
Less: Basic limit under 112A	100,000
LTCG taxable under 112A	160,000 @ 10%*
On Balance Income	As per standard tax rates
Total	**Xx**

* Excluding surcharge and education cess

Taxation of long term capital gains on sale of equity shares etc.

Insertion of Section 112A

- In case of specified securities acquired before 1 February 2018, cost of acquisition for computing LTCG under 112A shall be higher of:
  - Actual cost of acquisition of asset; and
  - Lower of – (a) fair market value of such asset; and

    (b) full value of consideration received or accruing on transfer of capital asset

  where, fair market value shall be as under:

Category of asset	Meaning of 'fair value'
Capital asset listed on stock exchange traded on 31 January 2018	Highest price of the capital asset quoted on stock exchange on 31 January 2018
Capital asset listed on stock exchange not traded on 31 January 2018	Highest price of the capital asset quoted on stock exchange on a date immediately preceding 31 January 2018 when such asset was traded on stock exchange
Capital asset is a unit and is not listed on stock exchange	Net asset value of such asset on 31 January 2018

Taxation of long term capital gains on sale of equity shares etc.

Insertion of Section 112A

Illustrative examples for computation of cost of acquisition is as shown below:

Particulars	Scenario I	Scenario II	Scenario III	Scenario IV
Actual cost of acquisition (A) – 1 Jan 2017	100	100	100	100
Fair Market Value (B) – 31 Jan 2018	200	200	50	200
Full value of consideration received on transfer (C) – 1 April 2018	250	150	150	50
(D) = Lower of (B) or (C)	200	150	50	50
Cost of acquisition = Higher of (A) or (D) – (E)	200	150	100	100
Capital Gains/(Loss) (C – E)	**50**	**NIL**	**50**	**(50)**

Taxation of long term capital gains on sale of equity shares etc.

Definition of equity oriented fund for Section 112A

Definition of equity oriented fund has been inserted under Section 112A which is slightly different from the definition under Section 10(38) which provided exemption on sale of long term units of equity oriented fund. The comparative of definition under both the sections is as given below:

Section 10(38)	Section 112A
Fund set up under a scheme of Mutual Fund specified in section 10(23D)	Equity oriented fund means a fund set up under a scheme of mutual fund specified in section 10(23D) and -
-	***In case where the fund invests in the units of another fund which is traded on recognized stock exchange:*** ***(i) Investment of minimum of 90% of total proceeds of the fund should be invested in units of such other fund, and*** ***(ii) Such other fund also invests a minimum of 90% of its total proceeds in equity shares of the domestic companies listed on recognized stock exchange***
Investment of more than 65% of its **investable funds** in equity shares of the domestic companies Provided that the percentage of equity shareholding of the fund shall be computed with reference to the annual average of the monthly averages of opening and closing figures	In any other case, Investment of minimum 65% of its **total proceeds** in equity shares of the domestic companies **listed on recognized stock exchange** Provided that the percentage of equity shareholding or ***unit held in respect*** of the fund, as the case may be, shall be computed with reference to the annual average of the monthly averages of opening and closing figures

Taxation of long term capital gains on sale of equity shares etc.

Capital gain in the hands of Foreign Institutional Investors (FII)

- Long term capital gains under Section 112A shall be taxable in the hands of FII as well
- Gains in excess of INR 1,00,000 shall be taxable at rate of 10%
- Benefit of enhanced cost as on 31 January 2018 not specified

Transactions not regarded as transfer
Transfer of certain capital assets by a non-resident

- Currently transfer of certain capital assets being bonds, Global Depository Receipts and rupee denominated bonds issued by an Indian company, by a non-resident to another non-resident is exempt under section 47(viia) and section 47(viiaa)
- Exemption to include transfer of derivatives by a non-resident vide insertion of section 47(viiab)
  - The transferee in each case need not be a non-resident
- Following conditions to be fulfilled:
  - Transfer on a recognized stock exchange located in International Finance Service Centre
  - Consideration in foreign currency

Other Amendments

Application of income by certain exempt entities

- Currently, exemption is provided in respect of income of approved funds and institutions under section 10(23C) and trusts registered under section 12AA where such income is applied or accumulated for application for certain specified purposes
- At present, there are no restrictions on cash payments made by such entities and also no checks on whether they follow the withholding tax provisions
- Provisions of section 40(a)(ia) relating to disallowance for not complying with the withholding tax provisions and section 40A(3) and section 40A(3A) in respect of cash payments are already in place and applicable to entities engaged in business or profession
- In order to encourage a less cash economy and to reduce black money, it is proposed to provide that for the purpose of determining the amount of application by such trusts or institutions, the above provisions shall apply

Other provisions

Trading in agricultural commodity derivatives to be treated as non-speculative transaction

- Currently, section 43(5) provides that trading in commodity derivatives carried out in recognized stock exchange, which is chargeable to CTT is a non-speculative transaction
- Agricultural commodity derivatives are exempt from CTT and hence, the benefit of the said proviso is not available (i.e. trading in Agricultural commodity derivatives are treated as speculative transaction)
- In order to encourage trading of agricultural commodity derivatives, it is proposed to specifically provide that such transactions will be treated as non-speculative transactions, despite being exempt from CTT

Withholding tax

- It is proposed to include new 7.75% Savings (Taxable) Bonds, 2018 for withholding tax under section 193
- It is proposed to amend section 194A to raise the threshold for withholding tax on interest income for senior citizens from INR 10,000 to INR 50,000 ~ this is to complement the additional deduction granted to senior citizens under section 80TTB

Income of a foreign company from sale of leftover stock of crude oil on termination of agreement - to be exempt

Rationale

- Currently, income of a foreign company on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India is exempt from tax subject to the following conditions:
  - storage and sale is pursuant to an agreement or an arrangement entered into or approved, by the Central Government; and
  - having regard to the national interest, the foreign company and the agreement or arrangement are notified by the Central Government
- Further income arising to such foreign company on account of sale of leftover stock of crude oil after the expiry of the agreement or arrangement is also exempt, subject to such conditions as may be notified by the Central Government
- The above tax exemption is not available to the income arising on account of sale of the leftover stock of crude in case of premature termination of the said agreement or the arrangement

Proposed amendment

- It is proposed to exempt aforesaid income of a foreign company if the agreement or arrangement is prematurely terminated in accordance with the terms mentioned therein and subject to such conditions as may be notified by the Central Government

Move to augment India's strategic petroleum reserves

Questions

The only place where success comes before work is in the dictionary.