

VJA

Business Consultancy, Legal Advisory & Compliances

Union Budget 2019-2020

**Analysis by
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Message

The Union Finance Minister Nirmala Sitharaman presented her maiden budget on July 5, 2019, focusing on Investment, consumption, demand, creating infrastructure to support the targeted \$ 5 trillion economy by 2024 and an enabling environment for business. The budget provided a macro vision of Modi 2.0 Government. Various schemes were announced to give the desired thrust to sustainable and inclusive growth process.

In this document, we have endeavored to present an analysis of the planned initiatives for various thrust sectors, the salient features of the Finance No. (2) Bill including direct and indirect taxes, and a ready reckoner for the income tax.

While the budget is another step to speed up the growth process and have announced several measures in that direction, we need a continuous dialogue among various stakeholders to keep a constant watch on the evolving trends and take remedial measures, whenever needed.

The intent is clearly indicated; the will is there; what we need is the implementation to translate the vision into reality.

We hope you will find this a useful read.

A handwritten signature in black ink, appearing to read 'Ved Jain'.

Ved Jain

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ECONOMIC ANALYSIS

The Union budget for 2019-20, presented to the Parliament on July 5, is focused on realizing the Government's 'Vision of the Decade' of making India a \$5 trillion economy in 5 years from the present \$2.7 trillion. To achieve this objective, the economy needs to grow at 8% plus against the current GDP growth of 7% in 2018-19. The economic growth infact had declined to 5.8% in Q4 of the last financial year.

The budget, therefore, needed to encompass measures that will spur growth to the required level. The focus had to be on increasing investments and capacity creation, boosting demand, increasing labour productivity and more jobs.

The interesting aspect is the Government's commitment to controlling the **fiscal deficit**. The Finance Minister has targeted a fiscal deficit of 3.3% this year and has avoided the temptation to increase public spending to spur growth. Successively for the last few years, the Government has been able to keep this number in control which may be slightly painful in the short term but will reap great dividends for all times to come.

**Target 3.3%
of GDP in
2019-20 to be
reduced to 3%
next year.**

The sector-wise allocations provided in the Budget clearly indicates other focus areas in the years ahead.

The budget has provided for various measures to kickstart the growth process with focus on investments, especially foreign investment to supplement domestic resources. The budget has rightly announced the intent to open more sectors as also relaxing norms for **single brand retail**.

Infrastructure will remain the key to any growth process and the Budget rightly provides for an investment of \$1 trillion in the next five years. Major projects announced in sectors

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such as roads and highways (Bharatmala Phase II), water connectivity (Sagarmala), non-metros, railways, dedicated freight corridors and airports which are already underway and to be further strengthened, will create new jobs as also provide demand push for sectors such as steel, cement, capital goods etc. Accordingly, increased outlay for roads, highways and railways has been provided in the budget.

Going forward, **private investment** needs to be encouraged. Currently, tight liquidity, high cost of doing business and weak demand have impacted the performance of industry and its appetite for undertaking new investments. The budget announcement of additional recapitalization of public sector banks (Rs 70000 crores), undertaking financial sector reforms, relief in the calculation of securities transaction tax on derivatives, the exemption from income tax scrutiny of investments received by start-ups from Category II alternative investment funds, the slew of incentives announced for businesses carried on from international financial services centre, plans to raise foreign direct investment limits in several sectors, plans to finance infrastructure through capital markets (and by facilitating instruments like credit default swaps) rather than through revival of term-lending financial institutions, and the plan to issue foreign currency sovereign debt fit into a pattern of encouraging foreign financial flows into the economy.

While these are welcome initiatives, focus has to be on creating enough liquidity in the system, tackling the twin balance sheet problem and making credit available to industry at competitive rates to spur growth.

Agriculture is the primary source of livelihood for about 58 per cent of India's population. The budget outlay has gone up by 83% vis a vis the previous year. To provide the requisite support to farmers, Government is going to promote innovative zero Budget farming, set up 80 Livelihood Business Incubators (LBIs) and 20 Technology Business Incubators (TBIs)

Focus has to be on increasing productivity, decreasing dependence on monsoons, land reforms, connecting farmers to markets, rationalise food and fertiliser subsidies, amending, if not dismantling, the Essential Commodities Act and increasing the allocation for agricultural R&D.

to develop 75,000 skilled entrepreneurs in agro-rural industry sectors, increased fertilizer Subsidy allocation for 2019-20 to Rs 79,996 cr and Pradhan Mantri Matsya Sampada Yojana to establish robust fisheries management.

But focus has to be on increasing productivity, decreasing dependence on monsoons, land reforms, connecting farmers to markets, rationalise the food and fertiliser subsidies, amending, if not dismantling, the Essential Commodities Act and increasing the allocation for agricultural R&D.

India comprises 4% of the total **water resources** in the world. However, various regions in the country are facing acute water scarcity. The Ministry of Jal Shakti has been set up for merging the ministry of water resources, river development and Ganga rejuvenation as well as the sanitation. The outlay for the National Hydrology Project has gone up 212%

from the previous year. The Government has launched Vision for India 2030 which focuses on drinking water to all Indians. This will rejuvenate the riverine ecosystem, reduce the dependency on groundwater resources and contribute towards water security.

The Government has identified 1592 Blocks which are critical and over exploited, spread across 256 District for the Jal Shakti Abhiyan.

India's **power sector** comprises of various sources of generation ranging from conventional sources such as coal, lignite, natural gas, oil, hydro and nuclear power to viable non-conventional sources such as wind, solar, and agricultural and domestic waste. Electricity demand in the country has increased rapidly and in order to meet the increasing demand, Government is looking to strengthen One Grid One Nation mission

which will lead to synchronisation of all regional grids for optimal utilization of scarce natural resources. The idea of power for every household of 2022 is a step towards reforming the lives of millions of people deprived of basic necessities.

Some of the demands such as bringing electricity and Natural Gas under the ambit of GST and extension of tax holiday to Power Companies have not been met in this year's budget.

In line with government's commitment to provide 24*7 power by FY19, the mission of One Grid One Nation will pave the way for efficiency in the power market through flexible operations. The step will also help in bringing uniformity in power tariff. The plan to revive stressed gas based power plants in a welcome step. The gas based plants will play an important role as balancing agent by making the grid stable from variability created by RE sources. The plan to remove the barrier to open access will help in creating much needed competition in the market.

The Indian **renewable energy** sector is the fourth most attractive market in the world. The FY20 budget will provide additional thrust and widen the base for solar cell manufacturing in the country, given the small number of players in this segment while the additional provisions for the biomass sector (an increase of over 56% over the last financial year) will provide increased thrust for this sector. The waste-to-energy

Increased outlays for wind sector would have been positive especially when we are still short of the targets.

from sewage could also get a boost given the Government of India's emphasis. However, increased outlays for wind sector would have been positive especially when we are still short of the targets.

The Electric Vehicles (EV) revolution is all set to sweep India. Indian government's policy initiative to push for an all-electric car fleet by 2030 is a major driver of this trend. The budget outlay has increased by 31% from last year as also the allocation for the FAME Scheme in 2019-20 is being increased by 245%. To further incentivize e-mobility, customs duty is being exempted on certain parts of electric vehicles and hence will promote domestic manufacturing of EVs on a faster scale. This is in line with the Government's objective of moving faster towards e-vehicles for cleaner environment.

Measures like Battery Swapping will supplement the efforts to adopt the usage of EV, a considerable allocation should also be made for providing infrastructure for the same.

However, for the **automobile industry**, the decision to increase the custom duty on automotive parts was not expected and it is

The increase in custom duty, coupled with increased input costs due to fuel price hike, could further dampen the growth prospects of this sector.

not going to help create demand in the industry which already is facing continued strong macro-economic headwinds, resulting in subdued consumer interest. The increase in custom duty, coupled with increased input costs due to fuel price hike, could further dampen the growth prospects of this sector.

The **Digital India** program has spurred technology adoption among Indian consumers. The government has made credible progress in the areas of e-governance, e-Kranti, public internet access programme, universal access to mobile connectivity, Bharat-Net is targeting internet connectivity in local bodies in every Panchayat in the country, and optical fibre cable-based network focuses on expanding the digital infrastructure. The push for digital payments and waiver of all merchant fee is a good move in line with the focus on transparency and reducing the cost of doing business.

The budget has given due importance to **skilling and education** which is a welcome move in today's skill-driven industry. The expansion of Skill India to include AI, IoT, and other futuristic technologies hits the nail on the head and the establishment of the **National Research Foundation** is a major boost towards building India's technical competence. Additional allocation of budget to Bharatnet will also have a deep impact on skilling rural India as it has the potential to open up online learning to students and professionals from distant areas. The focus should continue to be on vocational programmes to create a work force in line with the requirements of industry and increasing job opportunities.

Establishment of National Research Foundation to promote research in India is a great move to strengthen overall research ecosystem in the country.

Public health spend as percentage of GDP has increased from 1.2 percent in 2014-15 to 1.5 percent in 2018-19. The budget outlay for the healthcare sector has increased by 15% from the last fiscal. The Government has launched major initiatives for the healthcare sector in India, majorly the Ayushman Bharat scheme for which Rs. 249.96 crore has been

The ambitious AB-PMJAY scheme holds a lot of promise and has the right intent, but requires much larger budgetary allocations, a new collaborative approach and a conducive ecosystem to ensure viability and long term stability.

allocated. 1.5 lakh sub-centres and primary health centres will be transformed as health and wellness centres by 2022 which will be equipped to provide treatment for diseases such as blood pressure, diabetes, cancer and old age-related illness. The ambitious AB-PMJAY scheme holds a lot of promise and has the right intent, but requires much larger budgetary allocations, a new collaborative approach and a conducive eco system to ensure viability and long term stability.

The budget outlay for the **real estate** sector has increased by 12% from the previous year. By 2025, it will contribute 13 per cent of the country's GDP. The announcements include allowing an additional deduction of up to Rs 1, 50,000 on interest paid on home loans borrowed up to March 31, 2020 for purchase of an affordable house valued up to Rs 45 lakh, for realisation of the goal of 'Housing for All' and affordable housing, tax holiday on profits earned by developers of affordable housing, and Model tenancy law to replace archaic rental laws etc.

The decision to allow foreign institutional investors to subscribe to REITs and INVITs is a welcome move.

To facilitate the orderly growth of this liquidity crunched sector, the government can consider measures which can open up a window for capital investments. Initiatives required to re-categorise the sector from 'high risk' to probably 'medium risk' by the financial institutions will help. Nationalised banks willing to lend structured capital to the developers should be incentivised. The developers who have reasonably good debt-servicing track record can be easily identified and the interests of the lending institution can be protected by tweaking the provisions of the RERA. The private land pooling should be encouraged across the country.

Start-ups will be the backbone of New India. The Union Budget 2019-20 has announced measures to provide a supportive policy environment to these enterprises including easing of Angel tax and relaxation in conditions for carry forward and set off of losses in the case of start-ups.

The Budget along with solving the Angel Tax problem has also relaxed norms for start-ups to carry forward losses from previous years, to offset tax liabilities once the start-up begins to make profits.

Conclusion

The economy is going through a difficult phase though we are still the fastest growing economy. We need to continue aggressively with the reforms agenda and take all necessary steps to make industry competitive. Exports have to grow at a faster rate and all efforts must be made to create space for our products available because of US - China trade dispute.

Tax rate need to come down, infrastructures needs to strengthened, Innovation needs to encouraged, skill development has to be the focus, unemployment needs to be tackled, and private investment has to grow. These are all essential for a sustained and inclusive growth.

The intent is there as reflected in the budget announcement. The key will be the implementation and continuous dialogue amongst all stakeholders.”

DIRECT TAXES

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INTRODUCTION

The Hon'ble Finance Minister, Mrs. Nirmala Sitharaman presented her 1st Budget which was also the first budget post-election of Modi 2.0 Government. The Hon'ble Prime Minister has set the agenda of the economic growth by setting target of taking Indian economy to 5 trillion US dollars by 2024 as against present 2.70 trillion US dollars and to 10 trillion US dollars by 2030. In this back drop there were high expectations that this budget will give a big boost to the economy by encouraging and giving incentive to investment in India. At the same time there were apprehensions about the fiscal deficit considering the short fall in revenue collection both in direct and indirect taxes as compared to the target set in the revised budget estimates while presenting interim budget in February 2019. The Finance Minister has adhered to the fiscal discipline as the fiscal deficit has been kept to 3.3% by keeping an aggressive growth in tax revenue and also non-tax receipts from disinvestment. However, issue of impetus to the economy doesn't seem to be addressed so aggressively. For economy to grow fast it is incumbent there should be buoyancy in exports, saving and investments. The past data of exports of last few years indicate that there has not been much growth in exports. Growth in exports can come when India is more competitive as compared to other countries. For this there has to be a focused approach so as to reduce the cost of inputs, labour, capital, electricity, freight and taxes. Countries in the region such as Vietnam, Indonesia, and Thailand are showing good growth in exports and in its GDP. Apparently, growth in these countries is because these countries have been able to reduce cost and tax rates so as to attract foreign investment and manufacturing. China is the manufacturing capital of the World. However, recent development suggest that relationship between China and USA on trade issues is not comfortable and many US companies are looking forward to shift their manufacturing base from China. Thus, there is an opportunity for India to replace China as manufacturing capital of the world. India can take advantage of the Global trade issues and promote itself as manufacturing capital of the World by offering

various incentives which includes reduced tax rates so as to become more competitive as compared to other countries particularly in South East Asia. The growth in economy and the employment that new industries setup in India will be far more beneficial as compare to any loss of revenue, if any.

Though this budget has tried to give a push to the rural infrastructure but still the question is whether this will truly transform the Indian economy. The super-rich class probably has been hit hard by this budget with heavy increase in surcharge. The budget has tried to address the political agenda of promising more for farmers and the poor people which are obviously more in numbers. However, in the process the question is whether we have hit hard those taxpayers which are driving the Indian economy and contributing both by way of direct and indirect taxes not what they pay individually but through corporates which they are managing.

Pro poor and rich bashing apparently a good populist measure in short term but is really counterproductive for poor itself in long term. Subsidy by way of direct transfer may be good when it is received but it does not help in creating the earning capacity of the recipient. The focus should be to make people employable and earn more so as they become self-sufficient. Thus, the need of the hour is to take bold initiative by deploying resources which increases earning capacity of such persons so that they need not depend on subsidy and make India a manufacturing hub which in turn would generate huge employment so that poor are able to earn more.

As usual, the budget through Finance (No.2) Bill, 2019 has proposed many amendments to the Income Tax Act despite the fact that Direct Tax Code is in the offing. This Finance (No. 2) Bill, 2019 has 68 clauses proposing amendments to the various provisions of the Income Tax Act besides many clauses proposing amendments to the Income Disclosure Scheme 2016, Black Money (Undisclosed Foreign Income and Assets) Act, Prohibition of Benami Property Transactions Act, 1988 ("PBPT"). The proposed amendments in the Finance (No. 2) Bill, 2019 relating to direct taxes are analysed below. Unless otherwise stated, all these amendments are to be effective from April 1, 2020 i.e. assessment year 2020-21 relating to income earned in the financial year 2019-20 i.e. starting from 1st April, 2019.

A. TAX RATES

1. No change in tax slab, no change in threshold limit.

The Finance Minister has not proposed any change in the threshold limit as well as tax slabs in this budget. It may be relevant to point out that in the interim budget presented on 01.02.2019, the threshold limit of Rs.2.50 lakhs was not increased. However, by increasing the tax rebate from Rs.2,500/- to Rs.12,500/-for taxpayers whose total income does not exceed Rs.5,00,000/-, the tax incidence of such taxpayers was reduced to nil with obligation to file the return for claiming such rebate. It is to be noted that this rebate of Rs.12,500/- under section 87A is not available to those taxpayers whose income exceed Rs.5 lakhs. Thus the moment income exceeds Rs.5,00,000/-, this rebate of Rs.12,500/- is not allowed. Further, there is no marginal relief in respect of such taxpayer whose income just exceeds Rs.5 lakhs. In view of this, the taxpayers having income between Rs.5,00,000/- and Rs.5,15,600/- will in fact be paying income tax more than the income in excess of Rs.5,00,000. Thus, the tax liability of taxpayers in this bracket income will be more than 100% of the income in excess of Rs.5,00,000. A person having income say Rs.5,01,000/- will be liable to pay tax of Rs.13,208/- as against nil tax payable by a person having income of Rs.5,00,000/-. Similarly, a person having income say Rs.5,10,000/- will be liable to pay tax Rs.15,080/- despite the fact income exceeding Rs.5,00,000/- is only Rs.10,000/-.

However, it is to be noted that it is taxable income upto Rs.5,00,000/- which is eligible for claiming rebate of Rs.12,500/- under section 87A. The total income thus to be computed is the income after taking into account the various exemptions and deductions allowed under the Act. In fact a person having an income up to Rs. 12.85 lakhs may end up with paying no taxes as can be seen from the following table:-

| Particulars | Amount |
|--|-----------------|
| Gross Total Income | 12,85,000 |
| Less: | |
| Standard Deduction under section 16 (applicable for salaried taxpayers only) | 50,000 |
| Interest on housing loan under section 24 | 2,00,000 |
| 80C (Eligible Investment) | 1,50,000 |
| 80CCD(2) (National Pension Scheme) | 50,000 |
| 80D (Medical Insurance) | 25,000 |
| 80TTA (Bank Interest) | 10,000 |
| Interest on loan taken for purchase of affordable house under section 80EEA | 1,50,000 |
| Interest on loan taken for purchase of electric vehicles under section 80EEB | 1,50,000 |
| Total Deductions | 7,85,000 |
| Net Taxable Income | 5,00,000 |
| Applicable Tax | Nil |

Apart from the above deductions, a person may also avail deduction under section 80G on contributions made to certain prescribed funds and charitable institutions.

It is to be noted that an individual taxpayer earning long term capital gains on listed securities will not be eligible for this rebate as Section 112A(6) of the Act expressly excludes income taxable under Section 112A of the Act from calculating rebate under Section 87A of the Act. Thus, in such cases, the liability to pay tax will exist even if the total income is less than Rs. 5,00,000 but more than the maximum amount not chargeable to tax.

It is to be further noted that this rebate of Rs.12, 500/- under section 87A is allowed only to individuals and that too who are resident in India. Accordingly, for HUF, association of persons, body of individual and every juridical person and non-resident individual, the threshold limit will continue to be Rs.2.50 lakhs and these taxpayers

need to pay tax at the rate of 5% in respect of income falling between Rs.2.50 lakhs to Rs.5.00 lakhs even if the total income does not exceed Rs.5.00 lakhs.

In the case of senior citizen (of 60 years or more but less than 80 years of age), the threshold limit continues to be Rs.3,00,000. Accordingly, such Senior Citizen in case their income exceeds Rs.5,00,000/- need to compute tax at the rate of 5% in respect of income falling between Rs.3,00,000/- to Rs.5,00,000/-.

There is also no change in the threshold limit of Rs. 5, 00,000/- in the case of very senior citizen i.e. above 80 years of age. Accordingly, there is no additional benefit arising to such very senior citizen on account of increased rebate under section 87A by the interim budget as such senior citizen were otherwise not liable to pay tax in respect of income up to Rs.5,00,000/-.

2. **Surcharge on income exceeding Rs.2 crore and exceeding Rs.5 Crore increased substantially.**

Surcharge on Individuals, Hindu Undivided Families, Association of Persons, Body of Individuals and every Artificial Juridical Person has been proposed to be increased substantially from 15% to 25% in case where the total income exceeds Rs.2 Crore and from 15% to 37% in case where the total income exceeds Rs.5 Crore. In view of these changes, the effective tax rates applicable to an individual, HUF, association of persons, body of individual and every juridical person shall be as under:-

| Income in Rs. | Tax rate % | Surcharge | Health and Education cess | Effective tax rate |
|----------------------------|------------|-----------|---------------------------|--------------------|
| Upto 2,50,000 | NIL | NIL | NIL | NIL |
| 2,50,000 to 5,00,000 | 5% | NIL | 4% | 5.20% |
| 5,00,001 to 10,00,000 | 20% | NIL | 4% | 20.80% |
| 10,00,000 to 50,00,000 | 30% | NIL | 4% | 31.20% |
| 50,00,000 to 1,00,00,000 | 30% | 10% | 4% | 34.32% |
| 1,00,00,000 to 2,00,00,000 | 30% | 15% | 4% | 35.88% |
| 2,00,00,000 to 5,00,00,000 | 30% | 25% | 4% | 39.00% |
| 5,00,00,000 and above | 30% | 37% | 4% | 42.744% |

The implications on the taxpayer on account of surcharge being levied will be far reaching as the taxpayer may have to pay the entire income earned in excess of the threshold where rate of surcharge increases as taxes as can be seen from the following table :-

| Total Income | Total tax liability (Tax plus applicable surcharge and Health and Education cess) | Additional tax liability | Additional tax liability restricted on account marginal relief |
|--------------|---|--------------------------|--|
| 50,00,000 | 13,65,000 | 13,65,000 | |
| 52,00,000 | 15,70,120 | 2,05,120 | 2,00,000 |
| 1,00,00,000 | 32,17,500 | | |
| 1,02,00,000 | 34,35,510 | 2,18,010 | 2,00,000 |
| 2,00,00,000 | 69,51,750 | | |
| 2,09,90,000 | 79,42,350 | 9,90,600 | 9,90,000 |
| 5,00,00,000 | 1,92,56,250 | | |
| 5,32,00,000 | 2,24,72,658 | 32,16,408 | 32,00,000 |

The above table shows that a taxpayer having income between Rs.5.00 crore to Rs.5.32 crore need to pay the entire income in excess of Rs.5.00 crore as tax which virtually means tax rate of 100% on income between Rs.5.00 crore to Rs.5.32 crore. Similarly, a taxpayer having income between Rs.2.00 crore to Rs.2.099 crore need to pay the entire income in excess of Rs.2.00 crore as tax resulting into tax rate of 100% on income between Rs.2.00 crore to Rs.2.099 crore. This tax rate of 100% slowly tapers down to 42.788% only at income above Rs.100 Crore as can be seen from the following table.

| Total Income | Tax liability | Tax liability on income in excess of Rs.5.00 Crore | Effective tax rate on income in excess of Rs.5.00 crore |
|---------------|---------------|--|---|
| 5,00,00,000 | 1,92,56,250 | 1,92,56,250 | - |
| 5,32,00,000 | 2,24,72,658 | 32,00,000 | 100% |
| 5,50,00,000 | 2,32,42,050 | 39,85,800 | 79.71% |
| 6,00,00,000 | 2,53,79,250 | 61,23,000 | 61.23% |
| 7,50,00,000 | 3,17,90,850 | 1,25,34,600 | 50.13% |
| 10,00,00,000 | 4,24,76,850 | 2,32,20,600 | 46.44% |
| 25,00,00,000 | 10,65,92,850 | 8,73,36,600 | 43.66% |
| 50,00,00,000 | 21,34,52,850 | 19,41,96,600 | 43.15% |
| 75,00,00,000 | 32,03,12,850 | 30,10,56,600 | 43.00% |
| 100,00,00,000 | 42,71,72,850 | 40,79,16,600 | 42.93% |

Accordingly, there will be no incentive for taxpayer to earn such income. On the contrary any taxpayer earning such income say from salaries, may be inclined to surrender such salary to the employer by foregoing increment or any other perquisite liable for taxation

Further, the impact in absolute amount of tax of the above increase in surcharge can be understood with the following table:-

| Income | Existing tax liability | Proposed tax liability | Net increase |
|--------------|------------------------|------------------------|--------------|
| 50,00,000 | 13,65,000 | 13,65,000 | NIL |
| 1,00,00,000 | 32,17,500 | 32,17,500 | NIL |
| 2,00,00,000 | 69,51,750 | 69,51,750 | NIL |
| 3,00,00,000 | 1,05,39,750 | 1,14,56,250 | 9,16,500 |
| 5,00,00,000 | 1,77,15,750 | 1,92,56,250 | 15,40,500 |
| 6,00,00,000 | 2,13,03,750 | 2,53,79,250 | 40,75,500 |
| 10,00,00,000 | 3,56,55,750 | 4,24,76,850 | 68,21,100 |

Ongoing through the above table it can be seen that in case of a taxpayer whose income is Rs.6,00,00,000/-, it has to bear an additional tax liability of Rs. 40,75,500/- besides the existing tax liability of Rs.35,88,000/- on this income between Rs.5 Crore to Rs.6 Crore making the effective tax rate as approximately 76%.

It may also be relevant to point out that the surcharge applicable in respect of partnership firm and LLP continues to be 12% where income of the partnership firm of the LLP exceed Rs.1 Crore. Accordingly, the partners of a firm or LLP falling in higher tax bracket and being liable for higher surcharge may amend the partnership deed to have income from such partnership firm as share of profit rather than drawing higher remuneration as working partner. Similarly, the taxpayer carrying on business or profession as sole proprietor may convert such sole proprietor business or profession into a firm or LLP considering the wide gap in the rate of surcharge applicable to an individual and to a partnership firm/LLP.

The increase in effective tax rate may also lead to a rejig of the investment in tax free bonds/securities. The effective post tax return in case of fixed deposit with banks, taxable bonds or securities in case of high income earner will get further reduced with the increased tax rates as compared to the return on tax free bonds, securities, mutual funds etc.

It may also be relevant to point out that the surcharge is applicable on total income which will include income from capital gain both short term and long term, as well as income from dividend exceeding Rs.10 lakhs in aggregate. Thus, it will have impact on income which is chargeable at a concessional rate as can be seen from the following table:

| Nature of Income | Basic Tax rate | Total Income up to Rs.50 lacs | Total Income between Rs.50 lacs to Rs.1 crore | Total Income between Rs.1 crore to Rs.2 crore | Total income between Rs.2 Crore to Rs.5 Crore | Total income above Rs.5 Crore |
|---|----------------|-------------------------------|---|---|---|-------------------------------|
| Dividend income exceeding Rs.10 lacs under section 115BBDA | 10% | 10.40 | 11.44% | 11.96% | 13.00% | 14.25% |
| Tax on short term capital gain on listed shares/unit section 111A | 15% | 15.60% | 17.16% | 17.94% | 19.50% | 21.37% |
| Tax on long term capital gain under section 112 | 20% | 20.80% | 22.88% | 23.92% | 26.00% | 28.50% |
| Tax on long term capital gain of listed equity-Section 112A | 10% | 10.40 | 11.44% | 11.96% | 13.00% | 14.25% |

It is also important to point out that this increased surcharge shall be applicable on Association of person also. Thus the impact of this will also be on trust as trust are assessed as AOP. Thus Private trust, foreign portfolio investors which are doing investment as trust shall also be liable for this increased surcharge. For charitable trust, in case exemption under section 11 is denied for one or the other reason or where income after exemption under section 11 is subjected to tax, the increased surcharge will be applicable as charitable trust are also assessed as AOP.

3. Concessional rate of 25 % tax in case of certain companies.

The then Finance Minister Mr Arun Jaitley in his budget speech of 2015 has proposed to reduce corporate tax from 30% to 25% over the next four years. A small beginning was made in the budget for the year 2016 by reducing the tax rate from 30% to 29%

in the case of a domestic companies whose total turnover or gross receipt in the financial year 2014-15 does not exceed Rs.5 crore. In the budget 2017, the tax rate was further reduced to 25% in the case of domestic companies whose total turnover or the gross receipt in the financial year 2015-16 does not exceed Rs.50 Crore. This was further increased in the case of domestic companies to Rs.250 crore in the budget 2018. The Finance Minister in this budget 2019 has further increased this amount to Rs.400 crores. Accordingly, the tax rate, in the case of domestic companies whose total turnover or the gross receipt in the financial year 2017-18 does not exceed Rs.400 Crore, will be 25% for Financial Year 2019-20 i.e. Assessment Year 2020-21. It is to be noted that the criteria of turnover is that of financial year 2017-18 irrespective of the turnover of the relevant year i.e. F.Y. 2019-20. The Finance Minister in her budget speech has stated that this concession rate of 25% will now be applicable to 99.3% of the total companies and only 0.7% will be outside this concession. However, it is important to point out that these 0.7% companies are paying tax of approximately Rs. 6,50,000/- crores out of the total tax of Rs. 7,66,000/- crores being paid by the companies. Accordingly, the benefit of this reduced corporate tax rate is in respect of companies which are contributing just 15% of the total tax collected from companies and as such it does not mitigate the issue that corporate tax rates in India are very high. These 0.7% companies are paying approximately 85% of the total corporates tax and reduction in tax rates is relevant and important for these companies. It may also be relevant to point out that the effective tax rate on corporate including the dividend distribution tax and tax on dividend income in the hands of the shareholders is 53.72% in the case of company liable to pay tax at rate of 30% and 49.58% in the case of company liable to pay tax at rate of 25% as can be seen from the following table:-

| Particulars | Company whose turnover does not exceed Rs.400 crore in F.Y. 2017-18 | Company whose turnover exceed Rs.400 Crore in F.Y. 2017-18 |
|---|---|--|
| Tax rate | 25% | 30% |
| Surcharge on income exceeding Rs.10 Crore at the rate of 12% | 12% | 12% |
| Tax and Surcharge | 28% | 33.6% |
| Health and Education cess at the rate of 4% of tax and surcharge | 1.12% | 1.34% |
| Total tax | 29.12% | 34.94% |
| Balance income [100 -total tax] | 70.88% | 65.06% |
| Dividend to be distributed to the shareholder along with DDT to be deducted on same | 70.88 | 65.06 |
| Dividend distribution tax @ 20.56% of net income in hands of shareholder | 12.08 | 11.09 |
| Balance Income in the hands of shareholder | 58.80 | 53.97 |
| Tax @10% plus surcharge @37% and cess @ 4% in the hands of the shareholder on dividend received exceeding Rs.10 lakhs | 8.38 | 7.69 |
| Balance Income in the hands of the shareholder | 50.42 | 46.28 |
| Effective Tax Rate | 49.58% | 53.72% |

Further, a company as on date is desired to spend 2% of its profit towards corporate social responsibility (CSR) in case profit is more than Rs.5 crore or more as per the provision of section 135 of Companies Act, 2013. This provision is now proposed to be made mandatory. As per the proposal, a company shall be required to spend the CSR amount i.e. 2% of average net profit of last 3 years within the financial year and in case it is not spent the same will be required to be transferred to a National CSR fund. However, in case CSR fund is required to be spent for an ongoing project, that

requires funding in stages, then in that case the unspent amount shall be required to be deposited in an escrow account to be opened for this purpose. In case of default in complying with above requirement, penalty is also being proposed. It is also important to note that no deduction of this CSR expenditure is allowed while computing business income. Thus, the CSR obligation of 2% shall be now like an additional tax or cess and hence the net income in the hands of the shareholder will get further reduced to that extent.

4. No change in tax rate for other tax payers.

The Finance Bill (No.2), 2019 has not proposed any other change in the tax rates applicable to partnership firms and companies, both domestic as well as foreign companies. The tax rates applicable in the case of a partnership firm which includes LLP will be 30%. There is no increase in surcharge. Surcharge at the rate of 12% shall continue to be applicable in case total income exceeds Rs.1 Crore. The tax rate in the case of domestic companies shall be 30% with surcharge at the rate of 7% where the total income of the domestic company exceeds Rs.1 Crore but does not exceed Rs.10 Crore and surcharge at the rate of 12% where the total income of the domestic company exceeds Rs.10 Crore. The tax rate in respect of companies other than domestic companies shall be 40% with surcharge of 2% where the total income exceeds Rs.1 Crore but does not exceed Rs.10 Crore and surcharge at the rate of 5% where the total income of such company exceed Rs.10 Crore.

5. Listed company also to pay distribution tax of 20% on buy back of shares.

The Finance Act, 2013 has introduced section 115-QA to levy dividend distribution tax on an Indian company on buy back of its shares not listed in any recognized stock exchange. The tax payable as per this section is at the rate of 20% on the distributed income i.e. the consideration paid by the company on buy back of shares as reduced by the amount which was received by the company for issue of such shares. The Finance Bill (No.2), 2019 has proposed to extent the scope of this distribution tax to

listed companies also. As per the proposal, the listed companies shall be required to pay tax at the rate of 20% of the distributed income with effect from 05.07.2019. This amendment is being proposed considering the fact that many listed companies instead of paying dividend on which dividend distribution tax is payable, were buying back the shares and thus there was tax avoidance.

It is to be noted that this tax is payable on the distributed income computed as per Rule 40BB i.e. difference between the consideration paid by the company for buy back of shares and the amount received by the company for issue of such shares irrespective of the fact whether the company has accumulated profit or not. As the company has paid tax on the distributed income consequent to the buyback of shares, the income arising to a shareholder on buyback of such shares is exempt under clause (34A) of section 10 of the Act. This clause (34A) is also proposed to be amended to exempt distributed income received by the shareholder from a listed company. With this proposed amendment there will be no tax liability in the hands of the shareholders on buy back of shares by listed companies as well.

It may be relevant to point out that considering the fact that on dividend distribution, the company has to pay dividend distribution tax at an effective tax rate of 20.56% and further shareholder has to pay tax at the tax rate of 10% plus applicable surcharge and cess under section 115BBDA of Act as against tax at the time of buyback at the rate of 20% plus applicable surcharge and cess, buy back may still be more tax efficient in terms of total tax outflow.

This amendment is being made effective from immediate effect i.e. 5th July, 2019 and accordingly any buy back of shares by listed companies on or after 5th July, 2019 shall be liable for payment of distribution tax at the rate of 20% plus applicable surcharge under section 115QA of the Act.

B. EXEMPTIONS/DEDUCTIONS

1. Deduction of interest of Rs.1,50,000/- on acquiring first home by an individual.

The Finance (No.2) Bill, 2019 proposes to introduce a new Section 80EEA to provide deduction up to Rs.1,50,000/- in respect of the interest payable on loan taken by an individual from a financial institution i.e. a bank or a housing finance company for the purpose of acquisition of a residential house property. This deduction is in respect of the housing loan sanctioned from 1st April, 2019 to 31st March, 2020. This deduction is over and above the yearly deduction of interest of Rs.1.5 Lakhs which is available under Section 24(a) in respect of self-occupied property. However, it may be noted that where a deduction of interest is claimed under this section, then interest to that extent shall not be eligible for deduction under any other section. Thus, it cannot happen that a person can claim such deduction under section 24(a) and under this proposed section 80EEA. It is to be further noted that for claiming this new deduction, the stamp duty value of the residential house property should not exceed Rs.45 Lakhs. Further the assessee should not have any residential house property on the date of the sanction of the loan. It is to be further noted that the date of sanction of loan is sacrosanct for this deduction. The benefit is available only in respect of the loan sanctioned between 1st April, 2019 and 31st March, 2020. Any loan sanctioned before 1st April, 2019 will not be eligible loan. However, loan sanctioned before 1st April, 2020 will be eligible though the house may be acquired after 1st April, 2020. This deduction shall be available to an individual including non-resident individual as no restriction has been placed on residential status. However, any other entity such as HUF, AOP etc. shall not be eligible from claiming this deduction. Further, this deduction shall not be available to those individual who are eligible to claim deduction under earlier similar section 80EE of the Act. It may be noted that Finance Act, 2013 has introduced a similar deduction of Rs.1,00,000/- by inserting section 80EE of the Act in respect of loan up to Rs.25,00,000/- sanctioned during first day of April, 2013 to 31st March, 2014 for acquisition of a residential house property of value up to Rs.40,00,000/- which was further amended by the Finance Act, 2016

allowing deduction of Rs.50,000/- in respect of loan up to Rs.35,00,000/- sanctioned for acquisition of residential house property of value up to Rs.50,00,000/- during the period from 01.04.2016 to 31.03.2017. Thus, those who have been eligible to claim benefit under this section 80EE shall not be eligible to claim deduction under this proposed section 80EEA of the Act. In the proposed section 80EEA, though there is a condition that value of the residential property should not exceed Rs.45, 00,000/-, but there is no condition of the amount of the loan sanctioned.

2. Exemption of interest of Rs.1,50,000/- on loan for purchase of an electric vehicle.

The Finance (No.2) Bill, 2019 in order to promote purchase of electric vehicle so as to reduce pollution, proposes to introduce a new section 80EEB allowing to an individual a deduction up to Rs.1, 50,000/- in respect of interest payable on loan taken by such individual from a financial institution i.e. a bank or a deposit taking or systematically important non deposit taking NBFC for purchase of an electric vehicle. This deduction is subject to the condition that the loan for purchase of such vehicle has been sanctioned during the period from 1st April, 2019 to 31st March, 2023. Any loan sanctioned before 1st April, 2019 will not be eligible loan. However, loan sanctioned before 1st April, 2023 will be eligible though the electric vehicle may be acquired after 1st April, 2023. Electric vehicle for this deduction has been defined to mean a vehicle which is powered exclusively by an electric motor whose traction energy is supplied exclusively by traction battery installed in the vehicle and has such electric regenerative braking system, which during braking provides for the conversion of vehicle kinetic energy into electric energy. The deduction under this section shall be available to all such electrical vehicle including scooters, E-rickshaw, motor car etc. which meet the above requirement. In the memorandum explaining the provisions relating to the direct taxes, one additional condition has been stated that such individual should not own any other electric vehicle on the date of sanction of loan for purchase of an electric vehicle. This condition is not there in the proposed Finance (No.2) Bill, 2019.

This deduction shall be available to an individual including non-resident individual as no restriction has been placed on residential status. However, any other entity such as HUF, AOP, firm, company etc. shall not be eligible from claiming this deduction. The above deduction under proposed section 80EEB is independent of deduction of interest otherwise allowable under section 36(1)(iii) while computing income of business or profession. Under this section, interest paid on loan borrowed for the purpose of carrying on business is an allowable expenditure. As such, any assessee whether it is an individual or an HUF or a firm or a company carrying on business or profession can claim deduction of the interest paid on the loan taken for purchase of electric vehicle if such vehicle has been put to use for to purpose of the business or profession. This section 80EEB has been introduced so as to encourage those individual taxpayer who are not carrying on business or profession or otherwise not eligible to claim deduction of interest on purchase of vehicle etc. to purchase electric vehicle. Thus, those taxpayer who are having income from salary or those person who are having income from house property or interest etc. shall be eligible to claim deduction of interest on loan taken for purchase of electric vehicle. However, it may be noted that where a deduction of interest is claimed under this section, then interest to that extent shall not be eligible for deduction under any other section. Thus, it cannot happen that a person carrying on business or profession can claim such deduction under section 36(1)(iii) and under this proposed section 80EEB.

3. Exemption of Payment from National Pension System Trust increased from 40% to 60%.

The Finance Act, 2016 has introduced clause (12A) in Section 10 providing exemption up to 40% in respect of any payment from the National Pension System Trust to an employee on closure of his account or on his opting out of the Pension Scheme. The Finance (No.2) Bill, 2019 has proposed to increase the exemption from 40% to 60%. With this amendment, now only balance 40% amount shall be chargeable to tax. It is to be noted that contribution to NPS is eligible for deduction under section 80CCD of the Act. However, such contribution under section 80CCD(1) is subject to overall deduction of Rs.1,50,000/-as per provision of section 80CCE of the Act which includes

deduction upto Rs.1,50,000/- under section 80C of the Act. The amount received back in respect of investment on maturity under section 80C is not liable for tax as most of the scheme under section 80C are covered under the exempt, exempt, exempt model. As against this, contribution towards NPS under section 80CCD do not follow exempt, exempt, exempt model. Consequently, this scheme will still be not so beneficial as compared to scheme for which deduction is available under section 80C where full exemption is being retained. However, it may be noted that contribution upto Rs.50,000/- is additionally exempt under section 80CCD(1B) which is not part of the overall ceiling of Rs.1,50,000/- under section 80CCE.

4. Exemption of contribution by the Central Government to National Pension Scheme (NPS) on behalf of its employees increased to 14% of the salary.

Presently under section 80CCD (2), the contribution made by the Central Government or any other employer is allowed as a deduction to the extent of 10% of the salary only. However, considering the fact that the central government is contributing more to the account of its employees under this scheme, The Finance (No.2) Bill, 2019 has proposed to increase the exemption in respect of contribution by the Central Government from 10% to 14% of the salary. It is to be noted that this increase is in respect of contribution by Central Government only. In the case of other employer which will include State Government also, the exemption is of 10% of the salary only. This amendment will be effective from Financial Year 2019-20 and accordingly contribution, if any, made in excess of 10% in the preceding years will be chargeable to tax.

5. Investment under NPS Tier –II by Central Government Employees to be eligible for deduction under section 80C.

The Finance (No.2) Bill, 2019 proposes to widen the scope of section 80C by inserting a new clause (xxv) allowing contribution to a specific account of the pension scheme by employees of the central government with a condition that such contribution shall be for a fixed period of not less than 3 years. The specified account is an additional account considered to be Tier-II account of the pension scheme. It is to be noted that

the contribution to this scheme shall be eligible for deduction only for employees of Central Government and not for other taxpayer.

C. CHARITABLE TRUST

1. Compliance of other laws by Trust to be a condition precedent for registration/ continuation of registration under Section 12AA.

The Finance (No. 2) Bill, 2019 has proposed an amendment to section 12AA to put a condition that while granting registration, the Pr. Commissioner or the Commissioner of Income Tax also need to satisfy himself about the compliance by the Trust or Institution of such requirement of any other law for time being in force as are material for the purpose of achieving its object by such trust or institution.

It has been further proposed that if after the grant of registration, it is noticed that the trust or institution has not complied with the requirement of any other law for the time being in force as are material for the purpose of achieving its objects, and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, either has not been disputed or has attained finality, then the Pr. Commissioner or the Commissioner can cancel the registration of such trust or institution. With the proposed amendment the violation of any provision of any other law will also be subject matter of examination by the Pr. Commissioner or the Commissioner as the case may be. This amendment may lead to unnecessary hardship to various charitable trust and institutions which by and large are managed by part time honorary office bearers. At field level, it will be difficult to distinguish what is material or non-material non-compliance. It will be a subjective judgment and will lead to further litigation. It is the respective law which has to ensure its compliance and take punitive action under that law. In case it is considered that the said law is not so effective so as to achieve its compliance, it would have been much better to amend that law providing stringent penalty so as to ensure its compliance rather than shifting the power of compliance of that law under Income Tax Act. It may be important to point out that the cancellation of registration of a trust or institution have far reaching implications in view of the very

stringent provision of section 115TD of the Act whereby on cancellation of registration under section 12AA, the trust or institution has to pay tax on the total fair market value of its assets as on the date of the cancellation of registration. So long the trust or institution is carrying on its activities which fall within the meaning of charitable purpose, there is no reason that income of such trust or institution be taxed. The only purpose of registration under section 12AA is that such trust or institution becomes eligible for claiming exemption. However, such exemption is granted by the assessing officer on year to year basis only after being satisfied that the activities carried out by such trust or institution during the year was charitable. The above amendment shall be effective from 01st September, 2019.

D. SALARIES

1. Interest not to be levied in respect of credit of tax relief allowed in respect of arrears of salaries received under section 89.

The Finance (No.2) Bill, 2019 proposes to remove an anomaly regarding levy of interest in respect of credit of tax relief allowed under section 89 on account of arrears of salary received during the year. As per the provisions of section 89, where a taxpayer receives salary in arrears or in advance in any one financial year due to which his income is assessed at a rate higher than that it would otherwise have been assessed, then such assessee is entitled to relief under Rule 21A. As per this Rule 21A, the arrears or advance so received is spread over to the respective year and tax is recomputed for each year after inclusion of such arrears/advance. The difference in the total tax liability arising during the year after inclusion of such arrears/advance and the tax recomputed is allowed as a relief under this section in the year in which such arrears or advance is received. Consequent to this relief, the tax payable get reduced. However, while computing the interest/tax liability under section 234A, 234B, 234C, 140A and section 143(1), credit of relief under section 89 was not taken into account in view of the language of these sections. Thus, there was an anomaly as taxpayer was being required to pay interest on an amount which was otherwise not payable. This Finance (No.2) Bill, 2019 has proposed to remove

this anomaly by amending these section so as to specifically provide that interest or the tax payable under the said provisions will be computed after giving relief of tax claimed under section 89 of the Act. Since, this is an anomaly which was unintended, the amendment is being made with retrospective effect i.e. from 1st April, 2007 and will be applicable from Assessment Year 2007-08 onwards.

2. Increase in Standard Deduction from 40,000 to 50,000.

The Finance (No.2) Bill, 2019 has not proposed any other change under the head salaries. However, it may be relevant to point out that the interim budget by the Finance Act, 2019 has increased the standard deduction, reintroduced by the Finance Act, 2018, under section 16 while computing salary income from Rs.40,000/- to Rs.50,000/-. It is to be noted that the effective saving to individuals falling in the highest tax slab rate of 30% and the tax slab of 20% would be Rs. 2,080 and Rs. 3,120 respectively as can be seen from the following table:

| Individuals falling in highest slab rate of 30% | FY 2018-19 | FY 2019-20 |
|---|------------|------------|
| Net taxable income before standard deduction under section 16 | 1,200,000 | 1,200,000 |
| Standard deduction under section 16 | 40,000 | 50,000 |
| Net taxable income after standard deduction under section 16 | 1,160,000 | 1,150,000 |
| Income tax liability | 166,920 | 163,800 |
| Net Savings due to increase in standard deduction | | 3,120 |
| Net taxable income before standard deduction under section 16 | 800,000 | 800,000 |
| Standard deduction under section 16 | 40,000 | 50,000 |
| Net taxable income after standard deduction under section 16 | 760,000 | 750,000 |
| Income tax liability | 67,080 | 65,000 |
| Net Savings due to increase in standard deduction | | 2,080 |

It is also to be noted that this standard deduction is available to all while computing income under the head salaries. As per section 17(1), salary includes pension also. Accordingly, this standard deduction shall also be available in respect of income from pension.

E. INCOME FROM HOUSE PROPERTY

1. Exemption of notional rent increased from one self-occupied to two houses.

The Finance (No.2) Bill, 2019 has not proposed any change under the head Income from House Property. However, it may be relevant to point out that the interim budget by the Finance Act, 2019 has amended section 23(4) to allow exemption for two houses in respect of annual value as against existing exemption in respect of one house. As per section 23(2), where a house which is in the occupation of the owner, or, which could not be occupied by reason of employment etc., the annual value of such house is considered as nil. Now, with the amendment made by the Finance Act, 2019, the annual value of two houses will be taken as nil. It is to be noted that as per provision of section 23(1), the annual value of any house if it is vacant throughout the year is chargeable to tax irrespective of the fact that no actual income or rent has been received in respect of such house. Thus, under section 23(1) the annual value of any house beyond the two houses, if it is vacant throughout the year, will have to be included in the total income and thus will be chargeable to tax.

2. Period of Exemption of property held as stock in trade extended from one year to two years.

As per provision of section 24(5) of the Income Tax Act, inserted by the Finance Act, 2017, where a property is held as a stock in trade and the same is not let out during the whole or any part of the year, the annual value of such property is not chargeable to tax up to a period of 1 year from the end of the financial year in which certificate of a completion of construction is obtained from the competent authority. The implication of this amendment was that after a period of one year, tax is to be

paid on the annual value of such property even if the same is not let out during the whole or part of the year. The interim budget has extended this exemption to not to charge tax up to a period of two years from the end of the financial year in which certificate of completion of construction is obtained from the competent authority. Now, the tax will be required to be paid after a period of two years. This extension of period of two years may lessen the hardship to the real estate developers. However, this will not remove the hardship as these developers will still be required to pay tax on notional income i.e. on the income which in fact has not been earned on the unsold inventory after a period of two years.

F. BUSINESS

1. Facilitating payment by other electronic mode.

The Finance (No.2) Bill, 2019 proposes to amend the following provisions of the Income Tax Act to allow payment through other electronic mode in addition to the existing requirement of making payment for claiming deduction by account payee cheques/bank draft or the electronic clearance system through a bank account. This amendment is being made apparently to address the issue whereby payment through e-wallet was not being considered as payment through an electronic clearance system through a bank account. This amendment is being proposed from 01.09.2019 despite the fact that this is a clarificatory amendment. This may lead to a litigation in respect of the payment made through e-wallet before 01.09.2019. The taxpayer all along have understood that payment through e-wallet is permissible and covered within the meaning of the electronic clearing system stated in the various provision of the Income Tax Act.

| Section | Particulars |
|---|---|
| 13A Proviso (d) | Donation exceeding Rs.2,000/- for the purpose of claiming exemption in respect of such donations |
| 35AD(8)(f) | Capital expenditure exceeding Rs.10,000/- for the purpose of claiming deduction under this section |
| 40A(3) and 40A(4) | Expenditure exceeding Rs.10,000/- for claiming deduction while computing income of business or profession. |
| 43(1) second proviso | Expenditure for acquisition of an asset exceeding Rs.10,000/- for claiming depreciation. |
| 43CA(4) | Consideration received on transfer of land or building under an agreement for transfer of an asset for the purpose of availing benefit of the stamp duty rate applicable on the date of such agreement as against on the date of sale deed. |
| 44AD(1) Proviso | For payment received in respect of total turnover or gross receipt for applying presumptive rate of 6% of the total turnover or gross receipts as against 8%. |
| 50C | Consideration received on transfer of land or building held as capital asset under an agreement for transfer of an asset for the purpose of availing benefit of the stamp duty rate applicable on the date of such agreement as against on the date of sale deed. |
| 80JJAA Explanation clause (i) clause (b) | Emoluments paid to employees for claiming deduction in respect of new employees. |
| 269SS | Acceptance of loan of Rs.20,000/- or more |
| 269ST | Receiving of payment from a person in a day or in respect of single transaction or in respect of transaction relating to one event or occasion from a person. |
| 269T | Repayment of loan of Rs.20,000/- or more. |

2. Definition of 'Affordable Housing' for Section 80-IBA deductions aligned with GST Act.

The Finance Act, 2016 has inserted section 80-IBA to give exemption in respect of income derived from the business of developing and building affordable housing

project which is approved by the competent authority between 1st day of June, 2016 to 31st day of March, 2019 and such project is completed within a period of three years from the date of the first approval by the competent authority.

The applicability of the above section was extended by the interim budget of 2019 in respect of projects which is approved by the competent authority up to 31.03.2020.

The Finance (No.2) Bill, 2019 now proposes to amend the definition of the affordable housing so as to align it with a definition of affordable housing under the GST Act. As per amendment proposed, the assessee shall be eligible for claiming deduction in respect of housing project approved on or after 1st September, 2019, if a residential unit in the housing project have carpet area not exceeding 60 square meter in metropolitan cities as against 30 square meter at present or 90 square meter in cities other than metropolitan cities as against 60 square meter at present. Further, the scope of metropolitan cities has been widened to now include Bengaluru, Noida, Greater Noida, Ghaziabad, Gurugram, Faridabad, Hyderabad and whole of Mumbai metropolitan region also besides the cities of Chennai, Delhi, Kolkata and Mumbai. Further, an additional condition is being put that the stamp duty value of such residential unit should not exceed Rs.45 lakhs. This condition of Rs.45 lakhs is applicable for residential unit for both in metropolitan cities and other than metropolitan cities. The above changes are applicable in respect of projects approved on or after 1st September, 2019. Accordingly, in respect of the projects approved before 1st September, 2019, the old condition of carpet area shall be applicable.

It may be further noted that for availing exemption in case of an individual, no other residential unit should be allotted to the individual or the spouse or the minor child of such individual. The assessee is further required to maintain separate books of accounts in respect of the housing project. The benefit of this exemption is not available to an assessee which executes the housing project as a works contract. The benefit will also not be available where the housing project is not completed within a period of three years from first approval from the competent authority. In case any exemption has been claimed in any earlier years and the project does

not get completed within a period of three years, then the exemption so claimed in earlier year shall be deemed to be the income of the year in which the 3 years period of construction expires. Further, the carpet area of the shops and the commercial establishments should not exceed 3% of the aggregate carpet area. Residential units should have an independent housing unit with separate facilities for living, cooking and sanitary requirement. Such units should be distinctly separated from other residential units within the building which are directly accessible from an outer door or through an interior door for a shared hall way and not by walking through the living space of another household.

3. Benefit of non-accrual of interest income on bad or doubtful debts being extended to certain Non-Banking Finance Companies (NBFCs.).

As per section 145 of the Income Tax Act, 1961, income chargeable under the head profit and gains of business or profession is to be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Under mercantile system i.e. accrual system of accounting, interest on loans or advances given is to be accounted for as income. However, under section 43D of the Act an exception has been created allowing public financial institution and scheduled bank including cooperative bank to not to accrue income on account of interest in relation to bad or doubtful debts. Under this section interest income on such bad or doubtful debts is chargeable to tax in the year in which such income is credited to the profit and loss account or is actually received whichever is earlier. This concession of not charging interest income on accrual basis in respect of bad or doubtful debts so far was not available to non-banking financial companies. The Finance (No.2) Bill, 2019 has now proposed to extend the benefit of this section to deposit taking NBFCs and systemically important non deposit taking NBFCs. Systemically important non deposit taking NBFCs are those NBFCs which are not accepting or holding public deposits but are having total assets of not less than Rs.500 crore as per last audited balance sheet and are registered with Reserve Bank of India. In the case of these NBFCs, interest income in respect of bad or doubtful debts shall be chargeable to tax in the year in which such income is credited to the profit and loss account or such interest is actually

received, whichever is earlier. It may be noted that this clause is not applicable to all NBFCs. Non deposit taking which are not systemically important NBFCs are outside the scope of this provision.

4. Interest payment to certain NBFCs to be allowed on payment basis under section 43B.

As per existing provision of section 43B, certain payments are allowed as deduction while computing income of business or profession only on actual payment irrespective of the method of accounting being regularly followed by the taxpayer. This include payment of interest on loans or borrowings from financial institutions and banks. However, this section 43B does not apply in respect of interest on loans or borrowings from NBFCs. The Finance (No.2) Bill, 2019 has proposed to widen the scope of section 43B by inserting clause (da) to allow interest on any loan or borrowing from a deposit taking NBFC or systemically important non deposit taking NBFCs companies only in the year in which such payment is made with a proviso that in case such amount is paid on or before the due date applicable for furnishing the return of income under section 139(1) and evidence of such payment is furnished along with the return of income, the same can be claimed in the year to which such interest liability pertains. This will facilitate realization of interest by such NBFCs as the borrower who has taken loan from such NBFCs can claim deduction of interest while computing its income only after making payment of such interest. It may be noted that this clause is not applicable to all NBFCs. Non deposit taking which are not systemically important NBFCs are outside the scope of this provision.

G. CAPITAL GAIN

1. Exemption from Capital Gain arising from sale of residential property on investment in start-up company being extended up to 31.03.2021.

As per the provisions of section 54GB of the Act, introduced by the Finance Act, 2012, capital gain arising from sale of a residential property including a plot of land was

not chargeable to tax if the net consideration is utilized for subscription in the equity share of a company engaged in the business of manufacture of an article or thing or a business carried out by an eligible startup engaged in innovation, development or improvement of products or processes or services or scalable business model with a high potential of employment generation or wealth creation. The benefit of this provision as per this section was available in respect of residential property transferred up to 31.03.2017. The Finance Act, 2016, however, extended the period for transfer of residential property to 31.03.2019 for investment in eligible start-up. Thus, as per the existing provision, capital gain arising from the residential property including a plot of land is not chargeable to tax if the net consideration is utilized for subscription of equity shares of the company engaged in a business carried out by an eligible start-up only with a condition that assessee has more than 50% share capital or more than 50% voting rights in such company and equity shares of the company or the new assets acquired by the company are not sold or otherwise transferred within a period of 5 years from the date of its acquisition.

The Finance (No.2) Bill, 2019 has proposed to extend this period for transfer of residential property up to 31.03.2021. Further, the condition that such person should hold minimum 50% of the share capital or voting right in the new company is being relaxed to minimum 25% of the share capital or voting rights. The condition putting restriction on transfer of new asset acquired by such company out of the proceeds of capital gain invested as share capital, is proposed to be reduced from 5 years to 3 years in respect of new asset being computer or computer software.

2. Empowerment to CBDT to relax fair market value condition on sale of shares under section 50CA.

As per the existing provisions of the section 50CA, capital gain is to be paid on transfer of shares of a company other than a quoted share on the fair market value computed as per the method prescribed i.e. Rule 11UA, in case the consideration for transfer is less than such fair market value. Considering the fact that in certain cases, the value for transfer of shares is approved by certain authorities and such value may

be different than the fair market value computed in accordance with the prescribed method, the Finance (No.2) Bill, 2019 has introduced a proviso that this section 50CA shall not apply in such cases where the consideration is received by such class of persons and subject to such condition as may be prescribed. Thus, CBDT shall be notifying such cases in respect of certain class of persons to whom this condition of computing capital gain as per fair market value shall not be applicable

H. INCOME FROM OTHER SOURCES

1. Empowerment to CBDT to relax fair market value condition on acquisition of shares under section 56(2)(x).

As per clause (x) of section 56(2), in case any shares are acquired at a value less than the fair market value computed in accordance with the method prescribed i.e. Rule 11UA, the difference is considered as income from other sources and is chargeable to tax. Considering the fact that in certain cases, the value for transfer of shares is approved by certain authorities and such value may be different than the fair market value computed in accordance with the prescribed method, the Finance (No.2) Bill, 2019 has introduced a proviso that this clause (x) of section 56(2) shall not apply in such cases where the consideration is received by such class of persons and subject to such condition as may be prescribed. With the proposed amendment, the difference will not be considered as income from other sources in such cases in respect of certain class of persons as may be notified by the Board. This amendment probably may address the hardship arising on transfer of a company consequent to order of NCLT, etc.

I. INTERNATIONAL TAXATION

1. Gift received by a non-resident from a resident person shall be income deemed to accrue or arise in India.

As per the existing clause (x) of section 56(2), any money or property received without consideration or at a value less than the fair market value, then difference in

the fair market value and the consideration paid, is considered as income from other sources and chargeable to tax. There has been an apprehension that such money or property received without consideration or inadequate consideration i.e. gift of such money or property made by resident to persons outside India are not chargeable to tax as such income does not accrue or arise in India considering the fact that such gift/transfer has taken place outside India. The Finance (No.2) Bill, 2019 in order to address the above apprehension has proposed to amend section 9 to create a deeming fiction by inserting clause (viii) under section 9(1) to the effect that any sum of money paid, or any property situated in India transferred on or after 5th July, 2019 by a resident to a person outside India without consideration or for inadequate consideration, then the aggregate fair market value of such property as exceed the consideration paid by the person outside India shall be deemed to accrue or arise in India. The implication of this amendment will be that the non-resident recipient will be liable to pay tax on such income as income which accrue or arise in India is chargeable to tax in India in the case of non-resident also. It may be relevant to point out that exemption prescribed under clause (x) of section 56(2), shall also be available to non-resident. Hence, transfer to the relative by a resident to a non-resident will not be considered as income and hence, not chargeable to tax. It may also be noted that such transfer by resident to non resident and being chargeable to tax, the same shall be liable for deduction of tax at source under section 195 of the Act. Accordingly, while transferring such money or property, the transferor shall be required to deduct tax at source. This amendment has been made effective from the date of the budget itself i.e. 5th July, 2019.

2. Relaxation in conditions to be met by offshore funds for not having business connection in India.

As per provisions of section 9A introduced by Finance Act, 2015, the fund management activity carried out through an eligible fund manager by an eligible investment fund is not considered to constitute business connection in India and hence, income of such fund is not chargeable to tax having not accrued or arisen in India subject to the conditions prescribed therein. The condition prescribed includes that the monthly

average of corpus of the fund shall not be less than Rs.100 crore at the end of the first year and the remuneration paid to the fund manager is not less than the arm's length price. The Finance (No.2) Bill, 2019 has proposed to relax the condition in respect of the period in which the corpus of the fund is to be achieved and also the remuneration paid to fund manager. As per the proposed amendment, the corpus of the fund shall not be less than Rs. 100 Crore at the end of period of 6 months from the end of the month of establishment or incorporation of the fund or the end of previous year in which the fund has been established whichever is later as against the existing condition of period at the end of the previous year in which fund is established. This relaxation will remove the hardship for those funds which are set up in the second half of the year as a period of 6 months will be available as against the last date of the year which in such cases is less than 6 months. Further, the condition that the remuneration paid to the fund manager is not less than the arm's length price is being relaxed to provide that the remuneration paid is not less than the amount calculated in such manner as may be prescribed. The computation of remuneration having been prescribed in the rules it will remove the uncertainty and subjective assessment while determining arm's length price of the remuneration paid to fund manager which in case get disputed, may have led to denial of benefit to such fund of no business connection and consequently the income of the fund being taxed in India. This amendment is being made with retrospective effect i.e. Assessment Year 2019-20.

3. One-time payment option for Secondary Adjustment consequent to Arm's Length Price determined under Transfer Pricing.

As per provision of Chapter X on Transfer Pricing, income from international transaction is to be computed having regard to arm's length price. In case of difference in the arm's length price and the price actually charged/paid, the difference is added as income which is considered a primary adjustment. The Finance Act, 2017 has inserted section 92CE in this Chapter for making secondary adjustment. In this secondary adjustment, the excess money i.e. the difference between the arm's length price determined and the price at which the international transaction has

actually been taken, if not repatriated within the prescribed time, such excess money shall be deemed to be an advance to the associated enterprise and the interest on such advance computed in the prescribed manner is to be added as income of the assessee. The implication of this secondary adjustment was that in case a primary adjustment has been made, then this secondary adjustment on account of interest shall continue to be made year after year till such time the amount on account of primary adjustment is paid by the associated enterprise. In order to simplify this, the Finance (No.2) Bill, 2019 has inserted sub section (2) under section 92CE to give an option that where the excess money or part thereof on account of primary adjustment in arm's length price has not been repatriated within the prescribed time, the assessee may at its option pay additional income tax @ 18% on such excess money and such tax paid shall be treated as a final payment of tax in respect of the excess money. It has been further provided that no deduction of this amount paid as tax shall be allowed and once this tax has been paid, the assessee shall not be required to make secondary adjustment i.e. to compute interest on primary adjustment from the date of payment of such tax. It may be relevant to point out that this section 92CE is not applicable in respect of those tax payers where the adjustment on account of transfer pricing has been made in respect of Assessment Year prior to Assessment Year 2016-17 and where the amount of such adjustment does not exceed Rs. 1 Crore. Thus, where any addition has been made on account of arm's length price in Assessment Year 2016-17 onwards and the addition so made exceeds Rs. 1 Crore, the taxpayer will be required to pay additional tax @ 18% + applicable surcharge of 12% on such addition and 4% Health & Education cess. Otherwise, such taxpayer has to include interest year after year on the addition made on account of arm's length price and pay tax on such interest at the applicable rate of that year. In case the taxpayer does not intend to pay additional tax and also does not intend to make secondary adjustment of interest, then he needs to repatriate the amount of addition. This repatriation need not be from the same associated enterprise in respect of which adjustment has been made. This excess money can be repatriated from any of the associated enterprise of the assessee which is not resident in India. The time period prescribed for repatriation of excess money is 90 days from the due date of filing return where adjustment on account of arm's length price has been made by the

assessee himself in his return of income and from the date of the order of the AO or the Appellate Authority if such adjustment has been determined in such order and has been accepted by the assessee. The rate of interest on excess money where the transaction is denominated in Indian Rupee is one year marginal cost of fund landing rate of SBI as on first day of the relevant previous year + 3.25% and where the transaction is denominated in foreign currency is 6 months LIBOR as on 30th September of the relevant previous year + 3%. It is also important to point out that this amendment is being made w.e.f. 1st September, 2019. Accordingly, in respect of those tax payers where such adjustment has become final, it will be advisable to pay such additional tax of 18% on the primary adjustment to avoid further secondary adjustment.

4. No assessment/re-assessment on filing of modified return consequent to signing of Advance Pricing Agreement.

Section 92CC and 92CD inserted by Finance Act, 2012 provides mechanism for entering into an Advance Pricing Agreement (APA) with the Tax Department. Such agreement entered into for future transactions could also be applied to international transactions undertaken in the previous four year in specific circumstances. Consequent to such agreement, where a taxpayer has opted to apply such agreement to earlier years, it is required to file a modified return within a period of three months from the end of the month in which APA was entered. The existing sub section (3) of section 92CD provides that where assessment or re-assessment proceedings for an Assessment Year to which agreement applies have been completed before the expiry of time period for furnishing of modified return, the AO shall proceed to assess or re-assess or re-compute the total income having regard to and in accordance with the agreement. Considering the usage of the words "assessee or reassess or recompute" in this sub section (3), there was an apprehension that the assessing officer after filing of such modified return consequent to APA may start fresh assessment or reassessment. The Finance (No.2) Bill, 2019 accordingly has proposed to clarify, by amending this sub section (3) of section 92CD, that in cases where assessment or reassessment

has already been completed, the role of assessing officer consequent to filing of modified return of income file pursuant to the APA shall be restricted to passing an order modifying the total income of the relevant Assessment Year and not to assess or re-assess the total income of the assessee. This amendment is being made w.e.f. 1st September, 2019.

5. Maintenance and Information of Documents by Constituent Entity of an International Group.

As per the existing provision of section 92D of the Act, every person who has entered into international transaction is required to maintain such information and document as has been prescribed. The Finance Act, 2016 has inserted a proviso extending the scope of this section of maintaining and keeping information to a constituent entity of an international group. The Finance (No.2) Bill, 2019 has substituted the existing section 92D with the new section 92D so as to clarify that requirement of maintaining and keeping information by a constituent entity of an international group and filing of required form shall be irrespective of the fact whether such constituent entity has entered into an international transaction or not. Accordingly, all constituent entities of the international group shall be required to keep and maintain information and document as prescribed in Rule 10DA and also file information in Form No. 3CEAA every year before the due date for furnishing the return of income under section 139(1) of the Act irrespective of the fact whether such constituent entity has entered into any international transaction or not.

6. Accounting Year in case of Alternate Reporting Entity to be that which is applicable to Parent Entity.

As per provision of section 286 of the Act, every parent entity or the alternate reporting entity which is resident in India shall furnish a report in respect of the international group of which it is a constituent for every reporting accounting year. However, there was confusion about the reporting accounting year where the parent entity is not resident in India and the accounting year followed by such parent entity

is different than the accounting year in India. The Finance (No.2) Bill, 2019 has accordingly proposed amendment in section 286 to clarify that in such cases, the reporting accounting year shall be the one applicable to the parent entity. It has been further clarified that this amendment is clarificatory in nature and hence, will have retrospective effect from Assessment Year 2017-18 i.e. the year from which this section 286 was made applicable.

7. Deductor not to be treated as assessee in default for non-deduction of tax at source on payment to non-residents.

The Finance (No.2) Bill, 2019 has proposed to widen the scope of the first proviso to section 201(1) to not to consider a person who has failed to deduct tax at source in respect of payment made to a non-resident provided such non-resident has filed his return of income under section 139 and disclosed such payment on which tax was required to be deducted for computing his income in its return and paid the tax due on the income declared as per the return along with a certificate from a Chartered Accountant. As per the existing provision, this benefit was available when there was failure to deduct tax in respect of payment made to resident only. Corresponding amendment has also been proposed in section 40(a)(i) that where a person is not treated as assessee in default in view of proviso to section 201(1), no disallowance under this section 40(a)(i) shall be made in respect of payment made to non-resident without deduction of tax at source. As per the provision of section 40(a)(i) on failure to deduct tax on any interest, royalty, fees for technical services or any other sum chargeable to tax under this Act on which tax was deductible at source and such tax has not been deducted or after deduction has not been paid before the due date specified in section 139(1), such amount is not allowed as deduction while computing profit and gains of business or profession. With the proposed amendment in case of failure to deduct tax in respect of payment made to non-resident, firstly the deductor will not be required to pay tax in case the non-resident has filed the return and included the amount in its return of income. Further, the liability to pay interest in respect of the TDS amount shall be limited to the period from the date when tax was to be deducted till the date of filing of return by the non-resident. This amendment

will help many taxpayers as liability to deduct tax in respect of non-resident is on every person irrespective of the fact whether such person is carrying on business or profession or not. Many such taxpayers while entering into transaction with non-resident such as purchase of property are not aware of the residential status of such non-resident and later on are required to pay tax along with interest when it is discovered that the status of such person was that of non-resident. Now in such cases, if the non-resident has filed the return and declared the capital gain on sale of property, the buyer will be required only to pay interest from the date when the tax was to be deducted till the date of filing of return of income by the non-resident. However, it may be important to note that the penalty for non-deduction of tax at source under section 271C may still be leviable on the deductor if he fails to prove that there was reasonable cause for failure to deduct tax at source. The amendment in proviso to section 201(1) is stated to be effective from 1st September, 2019, whereas consequent amendment in section 40(a)(i) is stated to be effective from 1st April, 2020 and accordingly will apply to the Assessment Year 2020-21 onwards. It may be relevant to point out that similar amendments made in the past in section 40(a)(ia), in respect of payment to resident without deduction of tax at source, despite being stated in the relevant Finance Act to be prospective, have been interpreted by the Courts as clarificatory and hence, held to have retrospective effect.

J. TAX DEDUCTION AT SOURCE

1. Individuals and HUFs (not liable for tax audit) need to deduct tax on payment made for personal use to contractors or pro-fessionals.

The Finance (No.2) Bill, 2019 has further widened the scope of deduction of tax at source by inserting a new section 194M, putting an obligation on individual and HUF to deduct tax at source even in respect of payment made for personal use to contractors or professionals in case the amount paid or credited in the aggregate on account of contractual work or professional fees exceeds Rs. 50 Lakhs in a year. The tax is to be deducted at the rate of 5% and the tax so deducted can be deposited using PAN without obtaining tax deduction account no. (TAN). It is to be noted that there will

be no deduction if the aggregate of the amount paid to a contractor or a professional during the year does not exceed Rs.50 Lakhs. However, in case the amount paid to a contractor or a professional exceeds Rs.50 Lakhs then tax is to be deducted at the rate of 5% on the total amount including the first Rs.50 Lakhs. The objective of introducing this provision is apparently to cover personal expenditure on various social functions, marriages where substantial payments are made to event manager, caterers and also to cover payments made to contractors, interior decorators, architects, etc. It is also interesting to note that though under section 194C the tax deduction rate in respect of payment to contractor is 2% whereas under this section the tax rate proposed is 5% for similar nature of payment. On the contrary, the tax deduction rate under section 194J in respect of payment to professionals is 10% whereas under this section the tax withholding rate is 5% for similar nature of payment. Thus, in one case, on contractor payment the rate is more than twice the normal rate whereas in the other case of payment to professionals the tax rate is half of the normal rate.

This provision shall be applicable from 1st September, 2019. Accordingly, all payments made on or after 1st September, 2019 shall be liable for this TDS. It is to be noted that the payment made before 1st September, 2019 may not be liable for this TDS. However, while computing aggregate amount of Rs. 50 Lakhs in a year, the payments made between 1st April, 2019 and 31st August, 2019 are also to be taken into account.

2. Banks to deduct tax at source on withdrawal of cash.

The Finance (No.2) Bill, 2019 has introduced a new section 194N making it obligatory on banks including Cooperative Banks and post offices to deduct tax at source at the rate of 2% on cash payments in excess of Rs.1 Crore in aggregate during a year from an account maintained with it. This amendment is being made to discourage cash transactions. There is no distinction whether such cash is withdrawn from a current account or a savings account. Applicability is on withdrawal from any account maintained by the recipient with the bank which may mean all the branches of such bank. However, this threshold of Rs. 1 Crore for a bank as a whole may be difficult to

implement as it may not be possible for a bank to find out the aggregate withdrawal in cash from all the branches of a bank. In any case this threshold will be per bank and hence, a person having bank accounts with different banks may be able to withdraw cash in excess of Rs.1 Crore without deduction of tax at source. It is to be noted that the deduction under this clause is on amount exceeding Rs.1 Crore. Thus, no deduction of tax at source up to Rs.1 Crore. Thereafter, deduction of tax at source on amount exceeding Rs.1 Crore. Further, this provisional shall not apply in respect of the cash withdrawal made by the Government, by a bank, by a Cooperative Bank, Post Office, Business correspondent of a bank and white label ATM operators. Further, Central Government has been empowered to exempt such other person or class of persons in consultation with the Reserve Bank of India from the applicability of this provision. It is to be noted that this is not a tax on withdrawal of cash. It is a tax deduction at source and the amount so deducted shall be eligible for credit against tax liability in respect of income of the year. This provision shall be effective from 1st September, 2019 and cash withdrawn in excess of Rs.1 Crore will be liable for tax deduction at the rate of 2%. Further, while considering threshold of Rs.1 Crore the cash withdrawn during 1st April, 2019 to 31st August, 2019 will be taken into account. However, in case cash in excess of Rs.1 Crore has been withdrawn before 1st September, 2019 the same will not be liable for deduction of tax at source.

3. TDS from Payment in respect of Life Insurance Policy.

As per the existing provisions of section 10(10D) any amount received under a life insurance policy including bonus on such policy is exempt from Income Tax. However, the sum received under an insurance policy where the premium paid for any of the year exceeds 20% of the sum assured in respect of policy issued after 1st April, 2003 and the premium paid for any of the year exceeds 10% of the sum assured in respect of policy issued after 1st April, 2012 is not exempt. Accordingly, as per the provision of section 194DA, at the time of payment by the insurance company on such policy, the insurance company is required to deduct tax at source at the rate of 1% on the total amount being paid under the policy including bonus. Since this TDS was to be deducted on the total amount which included the cost

by way of premium paid by the policy holder, this resulted in mismatch of amount reported in Form 26AS which is a gross amount vis-à-vis amount reported by a taxpayer in Income Tax Return which is a net of the amount received and the premium paid. In order to mitigate such difficulties, Finance (No.2) Bill, 2019 has proposed an amendment in section 194DA, to provide that the TDS will be deducted only on the income component i.e. net of the amount being paid by the insurance company including bonus if any and the premium paid by the policy holder and not on the gross amount. Further, it has been proposed to increase the rate of TDS from existing rate of 1% to 5%. After the proposed amendment, there will be no difference in the income reported by the taxpayer in the return of income vis-à-vis the amount deducted by deductor reflecting in Form 26AS. This amendment is being made w.e.f. 1st September, 2019. Accordingly, payment made by insurance company on or after 1st September, 2019 will be liable for TDS at the rate of 5% on the net amount. This amendment also clears the confusion prevailing earlier whether the entire amount received under insurance policy is chargeable to tax or the net amount is chargeable to tax.

4. TDS on purchase of property to be deducted on gross amount.

As per section 194IA of the Income Tax Act, the buyer at the time of payment for purchase of immovable property other than agriculture land is required to deduct tax at source at the rate of 1% on the amount of consideration paid or credited for transfer of such property. However, there was no clarity in respect of the consideration regarding rights to amenities which are part of the sale transaction like club membership fee, car parking fee, electricity & water facility fee, maintenance fee, advance fee, etc. The Finance (No.2) Bill, 2019 in order to clarify has amended the explanation to clarify that the consideration shall include all charges including club membership fee, car parking fee, electricity & water facility fee, maintenance fee, advance fee, etc. or any other charges of similar nature which are incidental to transfer of immovable property. Accordingly, TDS needs to be deducted on the gross amount paid to the seller. This amendment is effective from 1st September, 2019.

5. Facility to be provided for filing of on-line application to obtain certificate for lower or nil rate of TDS in case of sum paid to non-resident.

As per the existing sub-section (2) of section 195 of the Act, if a person who is responsible for paying any sum to a non-resident which is chargeable to tax under the Act (other than salary) considers that the whole of such sum would not be income chargeable in the case of the recipient, he can make an application to the Assessing officer to obtain certificate/order for lower or nil withholding-tax. However, this process is currently manual and there is no prescribed form for filing such application. Finance (No.2) Bill, 2019 has proposed an amendment in the provisions of this section to prescribe the form and manner of application to the Assessing Officer and also for the manner of determination of appropriate portion of sum chargeable to tax by the Assessing Officer. Similar provisions are already in existence in case of payment to residents in section 197(2A) of the Act. This change will not only reduce the time for processing of such applications, but shall also help tax administration in monitoring such payments. Similar amendment is also proposed to be made in sub-section (7) of section 195 which are applicable to specified class of persons or cases. The above amendments will take effect from 1st November, 2019.

6. Online filing of quarterly statement of transactions which have not been subject to TDS.

As per the existing provisions of Section 206A read with Rule 31ACA, a banking company, co-operative society and Public Company are required to file quarterly returns in respect of payment of interest on time deposit to residents on which deduction of tax at source was not deducted. Further, central government is empowered to issue notification requiring any person responsible for paying to a resident any income liable for deduction of tax at source to file statement in the prescribed form.

As per section 206A, such statements are to be filed on a floppy, diskette, magnetic tape, CD-ROM, or any other on computer readable media. Now, it is proposed to substitute the existing section to enable online filing of such statements in the prescribed form and in the prescribed manner.

Further, at present there is no procedure of correction of such statements for mistakes in such return forms. It is now proposed to provide for correction of such statements for rectification of any mistake or to add, delete or update the information furnished. This amendment will be effective from 01st September 2019 and will enable the CBDT to upload the data of income so collected to the account of the taxpayers.

K. ASSESSMENT

1. Widening the scope of mandatory filing of return by Individuals, HUF, AOP, etc.

The Finance (No.2) Bill, 2019, proposes to widen the scope of mandatory filing of return by Individual, HUF, AOP, etc. As per the proposed amendment, Individual, HUF, AOP, BOI, artificial juridical person shall also be required to file the return even if their total income is below the maximum amount not chargeable to tax, in case such person has deposited an amount exceeding Rs. 1 crore in one or more current accounts maintained with a bank including co-operative bank or has incurred expenditure exceeding Rs. 2 lakhs for himself or any other person for travel to a foreign country or has incurred expenditure exceeding Rs. 1 lakh towards consumption of electricity. Further, Board has been empowered to prescribe other conditions for mandatory filing of return even if the total income does not exceed the maximum amount not chargeable to tax. Further, those taxpayers as are claiming benefit of exemption of capital gain consequent to investment in residential property, capital gain bonds shall also be required to file return, in case their total income before claiming such benefit of capital gain exemption is more than the maximum amount not chargeable to tax.

It is to be noted that the requirement to file tax return in respect of deposit with bank is with reference to current account only and that too with bank and co-operative bank and not with post office. Hence, deposit in savings account and fixed deposit account with bank and cooperative banks and all deposits with post office are not to be considered. Further, it is to be noted that foreign travel expenditure, in case it is incurred by any other person is not to be considered. On the contrary, foreign travel

expenditure incurred for any other person is to be included while determining the applicability of this condition. This amendment shall be effective from assessment year 2020-21 and hence these conditions of mandatory filing of returns will not be applicable for the current assessment year 2019-20.

2. PAN and AADHAR to be interchangeable for Income-tax purpose and PAN to be inoperative instead of invalid if not linked with Aadhaar.

As per the existing provision of section 139A, a person is required to apply for allotment of PAN who fulfills the criteria prescribed therein. The Finance (No.2) Bill, 2019 proposes to widen the scope by enabling the Board to prescribe such transactions as may be in the interest of Revenue so as to have an audit trail of high value transactions such as purchase of foreign currency or huge withdrawal of cash from banks. Further, amendment has been proposed to provide for interchangeability of PAN with the Aadhaar Number. Accordingly, a person who is required to quote his PAN under this Act and who has not been allotted a PAN but possess the Aadhaar Number, can quote his Aadhaar Number instead of PAN. Such person on the basis of Aadhaar Number quoted shall be allotted PAN. Thus, Aadhaar Number and PAN will get linked automatically. It is to be noted that Aadhaar Number can be quoted only by such person who has not been allotted PAN. In case PAN has already been allotted, then such person is required to quote PAN only. It is only when a person has been allotted a PAN and who has already linked his Aadhaar Number with a PAN that such person can quote Aadhaar Number instead of PAN. Since in this case Aadhaar Number and PAN have been linked, no further PAN will be allotted. In order to ensure that the above requirement is complied with, corresponding amendment is being proposed in section 139AA so as not to invalidate the PAN in the absence of linkage with the Aadhaar Number. Instead of invalidating the PAN in case of failure to link the Aadhaar Number with the PAN, the PAN will be made inoperative after the date to be notified in such manner as may be prescribed. The implication of above amendment is that existing PAN will still be required to be linked with Aadhaar Number. In case of non-linkage, the PAN will become inoperative. Further new PAN will be allotted on the basis of the Aadhaar Number and such new PAN will at the time of allotment itself

get linked. That is why an option is being given to quote either Aadhaar Number or PAN in respect of the transaction prescribed. Thus, it is to be understood that PAN is not being done away. What has been proposed is to allow interchangeability with the result that PAN will get allotted on the basis of Aadhaar Number. It may further be relevant to point out that Rule 114B provide an exhaustive list of transactions where PAN and now Aadhaar Number as well, will be required to be quoted. This include not only opening of bank account, demat account, payment to Hotel, payment for travel exceeding Rs. 50,000, purchase or sale of shares exceeding Rs. 1,00,000 but also sale or purchase of goods or services of any nature exceeding Rs. 2 lakh per transaction. Further an obligation has been cast under section 139A on the person receiving such document of specified transaction which will include seller of goods and services to ensure that the PAN or the Aadhaar Number quoted is correct and authentication thereof be done through the Income tax authority or such other authority or agency as may be prescribed for verification. Thus, the person entering into high value transaction shall quote the Aadhaar Number or PAN. The person with whom such transaction is being entered shall get it authenticated and such transaction thereafter shall be reported by such person in the statement of transactions to be filed under section 285BA. With this process, the tax department will have complete details of all the specified and high value transactions of each of the person. Corresponding amendment has been proposed in section 272B to provide penalty of Rs. 10,000 for quoting a wrong Aadhaar Number also by a person who is required to quote his PAN or Aadhaar Number in any document.

3. Faceless E- Assessment.

The Finance Minister in her budget speech has proposed a scheme of faceless e-assessment which will involve no human interface from this year itself. This faceless e-assessment shall be implemented in a phased manner. In the beginning, the cases selected for limited scrutiny of certain specified transactions or discrepancies will be assessed under this new faceless e-assessment. In such cases, notices shall be issued by the central cell without mentioning the name, designation, location, of the assessing officer and reply to such notices shall be submitted online to central

cell without being addressed to any particular assessing officer. The assessment order accordingly will be received from central cell. It is expected that this faceless e-assessment shall be implemented from current year itself.

L. INTEREST AND PENALTY

1. Income-tax refund to be claimed by filing of Income-tax return only.

As per the existing provisions of section 237, a person is entitled to a refund of tax paid by him for any assessment year where such tax paid exceeds the amount with which such person is liable to pay under the Act. For claiming this refund, section 239 provides that such claim of refund be made in the prescribed form i.e. Form 30 under Rule 41. However, practically this process of claiming refund by filing Form no.30 is not being followed and refund are being claimed on the basis of return of income and are being processed and allowed as well. Considering this, the Finance (No.2) Bill, 2019 has proposed to remove this requirement of filing claim for refund of excess tax paid and such claim for refund of excess tax paid shall be made by furnishing return of income. With this amendment, there will be no need for filing separate form for claiming refund of excess tax paid. The return filed will be treated as a claim for refund of excess tax paid. This amendment made shall be applicable from 1st September, 2019.

2. Penalty for under-reporting of income in case of assessment under section 148 to be same both in cases of non-filing of return and filing of return for first time in re-assessment.

As per existing provisions of section 270A inserted vide Finance Act 2016 applicable from assessment years 2017-18, penalty is leviable for under-reporting and misreporting of income. In the case of non-furnishing of return, the difference between the amount of the income assessed and the maximum amount not chargeable to tax is considered to be income under-reported. The implications of this was that a person who has filed the return for the first time in response to notice under section 148 of the Act,

the income declared in such return has to be reduced from the income assessed for levy of penalty on account of under-reporting of income despite the fact such person has not reported any income before issue of notice under section 148. Accordingly, an amendment has been proposed by Finance (No. 2) Bill, 2019 to plug this gap providing that penalty for under-reporting of income shall be leviable where return has been furnished for the first time under section 148 on the difference between the income assessed and the maximum income not chargeable to tax and hence no credit shall be given of the income declared for the first time in the return filed in response to notice under section 148 while computing amount of income under-reported. This amendment however is more stringent as compared to Explanation 3 to section 271(1)(c) where no penalty was leviable in respect of income declared in the return filed in response to notice under section 148 if such return has been filed before the expiry of the time period for completion of assessment under section 153(1). Now, irrespective of the fact that time period for completion of assessment under section 153(1) has not expired, the income declared in the return filed for the first time in response to notice under section 148 shall be considered and included in the income under-reported for levy of penalty under this new section 270A. Since this is an amendment to rectify the omission, the same is being made with retrospective effect i.e. from assessment year 2017-18, the year from which this section 270A is applicable.

3. Prosecution for failure to furnish return of income not to be initiated if net-tax payable does not exceed Rs. 10,000.

As per the existing provisions of section 276CC, a person can be prosecuted if he willfully fails to file return of income. However, no prosecution can be initiated for failure to file return under section 139(1) if the tax payable on the total income assessed as reduced by the advance tax and TDS is Rs. 3,000 or less. While computing this balance tax payable, at present, only advance tax and TDS are deducted. Self-assessment tax paid and tax collected at source are not deducted. The Finance (No. 2) Bill, 2019 has accordingly proposed an amendment to deduct self-assessment tax paid before the end of relevant assessment year and tax collected at source also

for computing balance tax payable. Further, no prosecution shall be initiated if such balance tax is Rs. 10,000 or less as against present threshold of Rs. 3,000 or less.

M. MISCELLANEOUS

1. Scope of Statement of Financial Transactions being widened.

As per existing provisions of section 285BA of the Act, a statement of financial transaction is required to be filed by various authorities such as sub-registrar, transport authorities, Post Master General, stock exchange, depository, financial institution, etc. in respect of specified financial transactions i.e. purchase and sale of goods, properties, rendering of service, works contract, investment, loan or deposit, etc. where the aggregate value of such transactions is not less than Rs. 50,000. This statement has to be filed in Form 61B for every calendar year (not for every financial year) by 31st May of the following year. The Finance (No. 2) Bill, 2019 has proposed to widen the scope of this statement by requiring such other person also as may be prescribed to file this statement. Also, the threshold of Rs. 50,000 is being deleted with the result that each and every transaction shall now be required to be reported in the statement irrespective of the amount of such transaction. The objective of widening the scope is to obtain more information so as to enable pre-filled return. Further, in order to ensure that such statement is correct, an amendment has been proposed in sub-section (4) of the said section so not to treat the said statement as invalid where defect is not rectified within a period of 30 days from the date on which the income tax authority has intimated the defect, but to treat such return as if the person has furnished inaccurate information in such statement. It may be relevant to point out that under section 271FAA, a penalty of Rs. 50,000 is leviable for furnishing inaccurate information in such statement. This amendment shall be effective from 1st September 2019.

2. Pre-filled tax returns to be made available to the taxpayers.

The Finance Minister in her speech has proposed that pre-filled tax returns will be made available to the taxpayers to ensure accuracy of income reported in the return.

For this purpose, it has been proposed to collect information in respect of income such as salary, capital gains from securities, bank interest, dividend, tax deduction, deduction from various sources which will include banks, stock exchanges, mutual funds, state registration department, etc. Considering this, the scope of statement of financial transactions required to be filed by these institutions under section 285BA as explained hereinabove has considerably being widened. Apparently, the above data shall be available in Form 26AS from where it will get auto-populated to the tax return.

3. Acceptance of payment through electronic mode to be mandatory for certain businesses.

The Finance (No. 2) Bill, 2019 has proposed to introduce a new section 269SU making it mandatory for every person carrying on business whose total sales, turnover or gross receipts exceeds Rs. 50 crores in the preceding financial year to provide facility for accepting payment through the prescribed electronic mode. This amendment has been proposed to promote cashless economy. This requirement is applicable only to person carrying on business and in the absence of specific mention in the proposed amendment, the same will not be applicable to person carrying on profession. This amendment shall be effective from 1st November, 2019 and accordingly all such persons who are carrying on business and whose turnover during the financial year 2018-19 was more than Rs. 50 crores, need to provide this facility of payment through electronic mode from 1st November 2019. In the absence of not providing such facility, this Finance (No. 2) Bill, 2019 has proposed to levy a penalty of Rs. 5,000 per day under section 271DB of the Act.

4. Exemption to non-resident of interest income in respect of Rupee denominated bonds.

The Finance (No. 2) Bill, 2019 has proposed to insert clause (4C) in section 10 so as to exempt income of a non-resident in respect of interest on rupee denominated bond issued during the period from 17th September 2018 to 31st March 2019. This

amendment has been proposed to give statutory recognition to the Press Release dated 17th September 2018 whereby interest payable by an Indian Company or a business trust to a non-resident in respect of rupee denominated bond issued outside India during the period 17th September 2018 to 31st March 2019 was declared to be exempt from tax. This amendment is being made with retrospective effect i.e. assessment year 2019-20.

5. Clarificatory amendment in respect of carry forward of losses of start-ups.

As per clause (a) of section 79, loss incurred in any year is allowed to be set-off in subsequent year only when shares carrying not less than 51 percent of the voting power, are continued to be held in such subsequent year when loss is being set-off, by persons who beneficially held such shares in the year or years when such loss was incurred. The Finance Act 2017, in order to provide relief to eligible start-ups, has inserted another clause (b) allowing set-off of loss in the case of start-ups, on the condition that all the shareholders of such start-up companies who held shares carrying voting power on the last date of the year or years in which the loss was incurred continues to hold shares on the last date of year in which such loss is being set-off. This amendment was made as start-up promoters dilute their shareholding consequent to further issue of capital and percentage of shares held by such promoters goes down below 51% not because of sale of shares by such promoters but by issue of fresh capital to new investors. However, post amendment by the Finance Act 2017, there was a confusion that whether start-up companies need to comply with both the conditions of clause (a) and as well as clause (b). Finance (No. 2) Bill, 2019 proposes to clarify the same by giving an option to start-ups to comply either of the above two conditions to claim benefit of carry forward of losses.

6. Carry forward of losses to be allowed on change of shareholding of company on a petition by the Central Government.

The Finance Act, 2018 has amended provisions of section 79 by inserting a proviso so as to allow the benefit of carry forward of losses to a company where a change

in shareholding has taken place consequent to the resolution plan approved by the NCLT under Insolvency & Bankruptcy Code, 2016 after giving opportunity to the Jurisdictional Commissioner. The benefit of this amendment was not available to such companies where change of shareholding is effected on a petition filed by Central Government under the Companies Act as such petition is not under Insolvency & Bankruptcy Code. The Finance (No. 2) Bill, 2019 has proposed to allow benefit of carry forward of losses to such companies and their subsidiaries and subsidiaries of such subsidiaries, where change in shareholding of such companies and their subsidiaries and subsidiaries of such subsidiaries has taken place pursuant to a resolution plan approved by the NCLT under section 242 of the Companies Act on a petition by the Central Government under section 241 of the Companies Act. This amendment apparently is to address the issue arising in companies like IL&FS where Central Government has moved petition under section 241 of the Companies Act, and NCLT, on such petition, has suspended the Board of Directors of such company and has appointed new Directors.

7. Brought forward of losses and unabsorbed depreciation both to be excluded while computing book profits of Companies referred to NCLT.

The Finance (No. 2) Bill, 2019 has proposed to widen the existing clause (iih) in Explanation 1 to provide that aggregate amount of unabsorbed depreciation and loss brought forward shall be reduced while computing book profits of the companies where on a petition filed by the Central Government under section 241 of the Companies Act, new directors have been appointed by the NCLT. It may be relevant to point out that Finance Act, 2018 has extended the above benefit of reducing the aggregate amount of unabsorbed depreciation and loss brought forward while computing book profit to companies against whom Resolution Process has been admitted by NCLT.

N. BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT

1. Residential status to be applied with reference to the relevant year for applicability of Black Money Provisions.

The provisions of Black Money (Undisclosed Foreign Income and Assets) and imposition of tax Act are applicable to a Resident in India to be determined as per section 6 of the Income Tax Act. Accordingly, Black Money provisions, in respect of bank account or assets outside India, held by any person who has become Non-Resident as on date are not applicable as such persons do not fall within the meaning of the assessee as defined in Section 2 of Black Money (Undisclosed Foreign Income and Assets) and imposition of tax Act. As per this section 2, this Act is applicable when such person is resident of India on the day on which this Act is being applied. In view of this definition of assessee, persons having earned income from source outside India or having acquired assets outside India when they were residents in order to avoid the stringent provision of this Black Money (Undisclosed Foreign Income and Assets) and imposition of tax Act were becoming non-residents.

The Finance (No. 2) Bill, 2019 has accordingly proposed to amend this section 2, to clarify that the assessee under this Black Money (Undisclosed Foreign Income and Assets) and imposition of tax Act shall include a person who was a resident in India in the said year to which the income from a foreign source relates or the said year in which the undisclosed assets located outside India were acquired. With this amendment for applicability of this Black Money (Undisclosed Foreign Income and Assets) and imposition of tax Act, the residential status for the relevant year when income was earned or asset was acquired outside India will be the deciding factor and hence change in residential status to a non-resident later on will not absolve such person from the stringent provisions of Black Money (Undisclosed Foreign Income and Assets) and imposition of tax Act.

Further, a proviso has been inserted so as to exclude the applicability of section 72(c) of this Act which provides that wherein an asset has been acquired prior to commencement of this Act, such asset shall be deemed to have been acquired in the year in which notice is issued by the assessing officer. This is being done as by applying this provision, the relevant assessment year will be the current assessment year when notice is being issued and such asset cannot be charged to tax in the hands of the assessee who has a status of non-resident in this year. However, in case, such presumption of section 72(c) as proposed if excluded, then such asset shall be the income of the year in which such asset was acquired. In case, these assets have been acquired prior to assessment year 2016-17, the same cannot be assessed under this Act as this Act is applicable from A.Y. 2016-17 onwards.

This amendment is proposed to have retrospective effect from 1st July, 2015 i.e., the day Black Money (Undisclosed Foreign Income and Assets) and imposition of tax Act came into force.

It may be still a matter of interpretation and judicial adjudication whether provision of this Act, particularly penal provisions can be applied to transactions which have taken place before the day when the Act came in force. It may also be relevant to point out that as per section 3(1), the basis of charge is for every assessment year commencing on or after 01st April, 2016 i.e., A.Y. 2016-17 and in respect of total undisclosed foreign income and asset of the previous year. To overcome the above applicability from assessment year 2016-17, section 4 has provided that total undisclosed foreign income and asset of any previous year shall include income from a source located outside India which has not been disclosed and the value of undisclosed assets located outside India irrespective of the fact in which such income was earned or assets were acquired. Thus, as per section 3 all undisclosed income and assets has been considered to be the income chargeable under this Act of the year in which such income and assets comes to the notice of assessing officer.

O. Income Disclosure Scheme, 2016

1. Time for payment of tax being extended on payment of interest.

The Finance Act, 2016, has introduced Income Declaration Scheme, 2016 for declaration of undisclosed income and assets on payment of tax at the rate of 30%, penalty at the rate of 7.5% and Krishi Kalyan Cess of 7.5% i.e. 45% of the income disclosed. This tax, penalty and cess was to be deposited in three installments i.e. 25% by 30th September, 2016, 25% by 31st March, 2017 and balance 50% by 30 September 2017. There have been many cases where person having filed the declaration, have forgotten to deposit these installments, consequent to which, the declaration made by such person has become invalid and reassessment proceedings on account of such income escaping assessment have been initiated. The Finance (No. 2) Bill, 2019 in order to address this issue has proposed to amend section 187 of the Finance Act, 2016 to extend the time for payment of tax on income disclosed under the Scheme with interest at the rate of 1% per month commencing from the date when the amount was due till the date when payment is made in respect of class of persons to be notified. Thus, this is an opportunity for those who have made the disclosure under the scheme and for one reason or the other reason have not deposited tax. This may also help those who have made disclosure and there have been delay in depositing installment of taxes. Such person also can avail the benefit by paying interest on such delay.

This amendment is proposed to be retrospective and shall be effective from 1st June, 2016.

2. Refund of excess tax paid, if any, under Income Declaration Scheme, 2016.

As per the provisions of section 191 of the Finance Act, 2016, the tax, surcharge and penalty paid under Income Declaration Scheme was not refundable. The Finance (No. 2) Bill, 2019, however, has proposed to amend this section 191 of the Finance Act, 2016, empowering the Central Government to notify the class of persons who

can claim refund of the excess tax, if any, paid by them under this scheme. From the proposed amendment, it is not clear which class of persons will be eligible for claiming refund. Apparently, those who have paid excess tax by mistake or who have paid taxes but whose declarations were not accepted may be allowed to claim refund and adjust such refund against tax demand created in respect of the same income which was part of declaration and have been assessed later on consequent to non-acceptance of declaration. Further, the proposed amendment is silent on the payment of interest on such refund. There may be cases where demand on the same income be outstanding and hence liable for interest. In all fairness and to be equitable, either interest on such refund of tax paid under the scheme be allowed or interest on the demand outstanding of the same income which was subject matter of disclosure be not charged by adjusting such refund on the date when demand was created. This amendment is also proposed to be retrospective and shall be effective from 1st June, 2016.

P. PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988 ("PBPT")

1. Act being amended to cover up the lapse of prior approval by the Initiating Officer before issue of notice under section 24(1).

As per section of 23 of the Prohibition of Benami Property Transactions Act, 1988 ("PBPT"), the Initiating Officer can conduct an enquiry after obtaining approval of the approving authority i.e. Additional Commissioner or a Joint Commissioner. Under section 24(1), Initiating Officer has to issue a notice after recording reasons on the basis of the material in his possession. Further, under section 24(3), the Initiating Officer can provisionally attach the property on apprehension of alienation of the property with the prior approval of the Approving Authority. Thus, investigation as well as provisional attachment can be done by Initiating Officer only after obtaining the prior approval. In many of the cases, the Initiating Officer has issued notice under section 24(1) without obtaining prior approval of the Approving Authority with the result the proceeding initiated are being challenged as bad in law. In order to address

this issue, the Finance (No. 2) Bill, 2019 has proposed to amend section 23 of the PBPT Act by inserting an explanation that this section 23 shall not apply and shall be deemed to have never applied where a notice under section 24(1) has been issued by the Initiating Officer. It is important to note that section 23 speaks of prior approval for conducting enquiry/investigation and section 24(1) only speaks of issuance of notice. The issuance of notice has to be for the purpose of conducting enquiry/investigation. The implication of this amendment will be that an Initiating Officer can issue a notice without obtaining enquiry/investigation. The purpose of prior approval under section 23 for conducting enquiry/investigation and under section 24(3) for provisional attachment is to put a check on the power of the Initiating Officer. These were lapses on the part of the Initiating Officer where notices have been issued without prior approval. In case, it was because of some wrong understanding of the provisions, then ideally this amendment should be restricted to validate such notices issued till date and not to do away with the requirement of prior approval for all times. Initiating benami proceedings against any person is a serious issue and there has to be proper check and balance by way of prior approval of an higher authority. Since this amendment is to address a lapse, the same is proposed to have effect retrospectively from 1st November, 2016 i.e. the day when the amended PBPT Act came into force.

2. Time period of passing order within 90 days to be reckoned from the end of the month.

The Finance (No. 2) Bill, 2019 proposes to amend section 24(3) of the PBPT Act so as to count the period of 90 days in respect of provisional attachment under section 24(3) and passing of order under section 24(4) from the end of the month in which notice under section 24(1) is issued as against from the date of issuance of notice at present. This amendment is proposed to be effective from 1st September, 2019.

3. Time period during which proceedings are stayed to be excluded.

The Finance (No. 2) Bill, 2019 proposes to insert an explanation so as to exclude the period during which proceedings is stayed by an order or injunction of any

court while computing limitation of a period of 90 days allowed to Initiating Officer to pass order under section 24(4), the period of 15 days allowed to the Initiating Officer under section 24(5) for drawing up a reference of statement of the case and referring it to the adjudicating authority and period of one year allowed to the adjudicating authority under section 26(7) within which it has to pass the order. Further, it has been provided that if the remaining period after exclusion of the aforesaid period available to the Initiating Officer under section 24(4) for passing an order is less than 30 days, then such remaining period shall be deemed to have been extended to 30 days. In case the remaining period after exclusion of the aforesaid period available to the Initiating Officer under section 24(5) for making a reference to Adjudicating Authority is less than 7 days, then such remaining period shall be deemed to have been extended to 7 days. In case the remaining period after exclusion of the aforesaid period available to the Adjudicating Authority for passing an order, on reference received from Initiating Officer, under section 26(7) is less than 60 days, then such remaining period shall be deemed to have been extended to 60 days. This amendment shall be effective from 1st September, 2019.

4. Penalty for non-compliance of summons.

As per provisions of section 19 of the PBPT Act, the authorities under this Act has powers to issue summon. Further, under section 21, the Initiating Officer, Approving Authority and the Adjudicating Authority has power to call for information. However, there is no penal provision in case the notice issued are not complied with. Accordingly, the Finance (No. 2) Bill, 2019 proposes to insert a new section 54A in PBPT Act to provide for penalty of Rs. 25,000 for each failure. However, this penalty cannot be imposed without giving an opportunity of being heard. Further, no penalty shall be imposed if the person proves that there was good and sufficient reasons which prevented him for complying with the summons or furnishing information. This amendment shall be effective from 1st September, 2019.

5. Certified copies of records or documents to be admissible evidence in prosecution proceedings.

The Finance (No. 2) Bill, 2019 proposes to insert a new section 54B in the PBPT Act to provide that entries in the record or other documents in the custody of an authority shall be admissible as evidence in a prosecution proceedings under the PBPT Act. Such entries may be proved, in the prosecution proceedings, either by production in the records or in the custody of the authority containing such entries or the production of the copy of the entries certified by the authority having custody of the record or other documents under its signature stating that it is a true copy of the original entries. This amendment shall be effective from 1st September, 2019.

6. Prosecution to be instituted with the sanction of Commissioner of Income Tax instead of Board.

The Finance (No. 2) Bill, 2019 proposes to amend section 55 of the PBPT Act so as to provide that prosecution shall be instituted against any person with the sanction of the competent authority instead of sanction of the Board at present. Further, explanation is being inserted below section 55 to provide that competent authority shall mean a Commissioner, a Director, a Principal Commissioner of Income-tax or a Principal Director of Income-tax. This amendment shall be effective from 1st September, 2019.

Q. SECURITIES TRANSACTION TAX (STT)

1. STT to be paid on difference between the strike price and the settlement price.

The Finance (No. 2) Bill, 2019 proposes to amend section 99 of the Finance (No. 2) Act, 2004 which has introduced securities transaction tax. As per this section, STT is to be paid on the value of taxable securities transaction i.e. the settlement price

in respect of sale of an option in securities, where option is exercised. As per the proposed amendment, the STT shall be payable not on the settlement price but on the difference between the strike price and the settlement price. This amendment shall be effective from 1st September, 2019.

INDIRECT TAXES

Major Amendments made in Indirect Taxes in Finance No. (2) Bill, 2019

INTRODUCTION

During the presentation of the Union Budget 2019 in the Parliament, the Hon'ble Finance Minister, Mrs. Nirmala Sitharaman, praised the efforts put in by the GST Council in realization of the dream of **one nation, one tax, one market**. The teething problems faced during the execution of GST are considered to be natural in view of the scale of reform. The Finance Minister has brought proposals including the reduction in tax rates of specific sectors/industries considering their importance in the overall economic growth. The proposals also includes making way for the simplification of the GST returns into one single return. Measures have also been proposed to provide subvention of 2% to all the GST registered MSMEs upto loans of Re 1 crore. Some of these had already been introduced by the GST Council through Removal of difficulty orders and by way of notifications, which have now been ratified by incorporating the same in the Act.

The Finance Minister through her budget speech also emphasized on the need of achieving higher domestic value addition, reducing import dependence, protection to MSME sector, through the amendments proposed in the Custom side.

GOODS AND SERVICES TAX

1. Composition Scheme

The Finance (No.2) Bill, 2019 proposes to insert a new sub-section in section 10 of the CGST Act to bring in an alternative composition scheme for supplier of services or mixed suppliers (not eligible for the earlier composition scheme) having an annual turnover in preceding financial year upto Rs. 50 lakhs. These provisions of the new

composition scheme had been introduced vide N/N 02/2019-central tax (rate). GST at the rate of 6% is required to be paid under such scheme by the composition taxable person. This would be a boon for the small businessmen mainly engaged in supply of services which were earlier registered as regular taxpayer and were required to fulfill all the compliances required such as filing GSTR-3B on monthly basis and discharging the GST liability, filing GSTR-1 on quarterly basis, maintaining the accounts with details of input tax credit availed, GSTIN-wise outward supply details etc. The taxpayers opting for the composition scheme would pay GST at the rate of flat 6% on quarterly basis in form GST CMP-08 without worrying about the detailed accounts and records and compliances on monthly basis.

From the day GST has been introduced, the term 'Turnover' has always being surrounded by lot of ambiguity and clarifications through various Notifications, Circulars, and Press Releases etc. have been issued to tone the definition of 'Turnover'. Essentially, the purpose is to make the legislation more transparent and non-litigious.

Further, amendments in composition scheme are being proposed by inserting the explanations in section 10 of CGST Act. For calculation of eligibility as well as for calculation tax payable under composition scheme the turnover shall exclude the value of exempt supplies of extending deposits, loans or advances for which the consideration is received in form of interest or discount. Also, the value of first supplies from 1st April till the date when the taxpayer becomes liable for registration shall also not be taken into account for the purposes of determination of turnover for calculating the tax payable under the composition scheme.

2. Registration

The Finance (No.2) Bill, 2019 proposes to insert a proviso in section 22 of CGST Act so as to enhance the threshold limit for the registration under the GST from Rs. 20 lakhs to Rs. 40 lakhs for the suppliers exclusively engaged in supply of goods. Further, an explanation is also inserted in the section to provide that the person is eligible such higher threshold limit even where he provides the exempt supplies of

extending deposits, loans or advances for which the consideration is received in form of interest or discount.

3. Procedure for Registration

Section 25 of CGST Act has been proposed to be amended by inserting a sub-section (6A) to make the Aadhaar authentication mandatory for GST registration. In case, a registered person is not assigned an Aadhaar number, an alternate and viable means of identification will be provided by the government. The registration shall be deemed to be invalid if authentication is not done. Earlier, the GST Council in its 35th meeting held on 21st June 2019, had approved the use of Aadhaar Card for taking registration on the GST portal by applying online just using the Aadhaar Card number doing away with the requirements of various other documents.

4. Payment of Taxes (inter-head adjustment)

GST deposited in electronic cash ledger under a head could only be used to discharge the liability arising in that specific head only. In an event of excess deposit of GST in the electronic cash ledger, the only option available before to the taxpayers was to claim the refund of such amount of GST deposited in the electronic cash ledger from the GST department. There was no mechanism to transfer the cash amount to other heads. To provide a relief to the taxpayers the Finance Bill has proposed the transferability of the amount deposited in electronic cash ledger a head to other heads.

The Finance (No.2) Bill, 2019 proposes to make such amendment by inserting the sub-sections in section 49 of CGST Act for transfer the amount deposited under CGST head of the electronic cash ledger to electronic cash ledger maintained under SGST/UTGST or IGST Act. The amendment is also proposed to be made in IGST Act by inserting section 17A and section 53A in the CGST Act so as to bring into the Act provisions for transfer of amount between Centre and States consequent to above amendment regarding transfer of amount between one head to another in electronic cash ledger.

For instance, an amount of Rs. 50,000 deposited in electronic cash ledger under CGST head can now be transferred to electronic cash ledger under SGST/UTGST or IGST head and be used to discharge liability of SGST/UTGST or IGST. This facility shall be enabled through form GST PMT-09.

Such measure will provide a big relief to those taxpayers who have an ample amount of cash in their electronic cash ledger but could not use the same where the liability arises in another tax head.

5. Interest on delayed payment of tax

Hon'ble Telangana High Court in the case of Megha Engineering & Infrastructures Ltd. held that a taxpayer needs to pay interest on total liability in case of delay in filing GSTR-3B returns, without giving an adjustment to potential input tax credit adjustment as the same is not recorded in the Credit Ledger unless the return is filed. The Hon'ble Telangana High Court rejected GST Council's recommendation made during its 31st meeting that interest should be calculated only on the net tax liability after adjusting input tax credit. As a result, GST department issued several notices to the taxpayer and led to heavy repercussions in some cases where the interest amount exceeded the tax amount, which did not seem logical. On the Contrary, Hon'ble Delhi High Court, in the case of Landmark Lifestyle vs. Union of India & Ors., had issued notice to Revenue and restricted coercive action against petitioner towards recovery of interest on total tax liability without adjusting input tax credit. The Hon'ble Delhi High Court held that the calculation of interest on total tax liability is unreasonable and erroneous.

Considering the genuine hardship faced by the taxpayers in such a situation, an amendment has been proposed in the Finance (No.2) Bill, 2019 by inserting a new proviso to sub-section (1) of the section 50 of the CGST Act and provide that interest shall be charged only on the amount of tax payable via electronic cash ledger, except where the return is filed subsequent to initiation of proceedings u/s 73 or 74 of the CGST Act in which case interest shall be discharged on the total amount of tax

liability. Such amendment will now put a rest on all such litigations and will provide a big relief to all the assesseees.

6. Refund of tax

Simplification and total automation of the refund process has always been in the mind of the administration. Several measure had been introduced and placed including the electronic refund process, speedy processing, and provisional refund etc. to save the interests of the tax payers.

The Center and States were respectively responsible for the payment of refund of their portions to the tax payers. Therefore, separate refund were credited in the Bank. This often results in the delay of receipt of refund. Thus, in furtherance to the simplification process, a new sub-section (8A) is proposed to be inserted in section 54 of CGST Act to provide that the Central government can disburse the refund to the taxpayers in respect of State tax refunds as well. Such measure will expedite the process of receipt of refund to some extent.

7. Constitution of National Appellate Authority for Advance Ruling

The Finance (No.2) Bill, 2019 proposes to insert section 101A, 101B and 101C in CGST Act to provide for the constitution, qualification, appointment, tenure, conditions of the services of the National Appellate Authority for Advance Ruling (NAAAR), and various other regulations. The amendment provides that a new authority, NAAAR, will be constituted for hearing the appeals against conflicting advance rulings pronounced on the same question by the Appellate Authorities of two or more States or Union territories in case of distinct persons. As proposed, the appeal before NAAAR has to be filed within 30 days from the date of communication of advance ruling and NAAAR shall pass the order within a period of 90 days from the date of filing of the appeal. In case of difference of in opinion on any point between the members, it shall be decided according to the opinion of the majority. Further amendment is proposed in section 103 to provide that the advance ruling pronounced by the NAAAR shall be

binding on the applicants, being the distinct persons, who had sought the ruling, all registered persons having the same PAN and their respective concerned officers and the jurisdictional officers. Consequently, some amendments have also been proposed to be made in various sections of CGST Act to give effect to the provisions related to NAAAR.

8. Anti-profiteering measures

National Anti-profiteering Authority (NAA) was constituted by the central government under section 171 of CGST Act to provide an institutional mechanism under the GST law for checking the unfair profit-making activities by the trading community. NAA consists of a total of five members, headed by a senior officer of the level of Secretary to the Government of India along with four Technical Members from the Centre and/or the States. The tenure of NAA, which was due on November 30, 2019, was extended by two years till November 30, 2021 in 35th GST Council meeting earlier.

The profiteered amount as determined by the NAA is required to be deposited within the period of 30 days of passing the order by the authority. However, in case of delayed deposit of tax there was no remedy available with the GST Authorities for compensation in the delay in payment of the profiteered amount.

The Finance (No.2) Bill, 2019 proposes to amend section 171 of CGST Act to empower the NAA to impose a penalty equivalent to 10% of the profiteered amount, if the said amount is not deposited by the registered person within 30 days of the date of passing of order by the authority.

9. Miscellaneous

Following are some other amendments proposed vide Finance (No.2) Bill, 2019:

- a. Section 31A is proposed to be inserted in CGST Act so that specified suppliers shall have to mandatorily give the option of specified modes of electronic payment to their recipients.

- b. Amendment is proposed to be made in Section 39 of CGST Act to prescribe the new procedure for GST return filing, which shall be effective from October, 2019.
- c. New Provisos are proposed to be inserted in section 44(1) and section 52 of CGST Act so as to empower the Commissioner to extend the due date:
 - for furnishing GSTR-9, GSTR-9A & GSTR-9C, and
 - for furnishing monthly and annual statement by the person collecting tax at source, respectively.
- a. Section 168 is proposed to be amended so that the commissioner or Joint Secretary shall exercise the powers specified in the sections 44 and 52 with the approval of the Board.

CUSTOMS

1. Export Manifest

For every departure of vessel, aircraft or vehicle carrying export goods from customs stations, the person-in-charge of such conveyance is required to furnish export manifest to the Proper Officer of Customs. To facilitate trade, improving compliance and reduce litigation, the Finance Bill proposes that in addition to such person-in-charge, any person other than the person-in-charge of the conveyance can also furnish the export manifest to the Proper Officer. The category of such persons would be notified by the central government.

2. Verification of Identity through Aadhar

To empower the Custom officers and to tighten the security wherever it is deemed proper, in the interest of the revenue or to prevent smuggling, measures are being constantly introduced by the Board.

In furtherance, the Finance Bill seeks to introduce a procedure for verification of identity through Aadhar through amendment in the Customs Act. A new section 99B has been proposed empowering the proper officer of Customs to verify the identity of any person by seeking Aadhar number or such other documents as may be necessary for his authentication. The proposed amendment also provides the consequences in the event of failure to comply with such verification requirements.

The Finance Bill has further empowered the board to make regulations to exempt such persons or class of persons who may not be required to undergo the said verification.

3. Goods secreted inside the body

The Finance bill proposes to substitute the existing sub-section (1) of section 103 to provide that the proper officer can now detain, screen and scan any person who might have secreted inside his body, goods which are liable to confiscation at customs station and furnish report of such screening and scanning to the nearest magistrate or produce him directly to the nearest magistrate. Consequent amendment has been made in sub-section (6) to enable the magistrate to take action on such report. Existing provisions do not provide for screening and scanning authority to the proper officer.

4. Offences committed outside Indian territory

The bill proposes to amend Section 104 by omitting the words "in India or within the Indian customs". This amendment widens the power of an officer of customs to allow him to arrest a person who has committed an offence, even outside India or Indian Customs waters. Under the existing provisions, power to arrest is restricted to a person committing an offence in India or Indian Customs waters.

5. Fraudulent availment and utilisation of drawback or other instruments made cognizable and non-bailable offences:

To strongly discourage the practice of defrauding the government by way of unlawfully availing and utilising drawbacks, exemptions and other instruments under the act, the Finance Bill has proposed to insert provisions to make such offences cognizable and non-bailable where the amount of drawback, exemption or duty relatable to such instrument exceeds fifty lakh rupees.

6. Non-removal of seized goods in certain cases

There were instances with the Customs Authorities where it was not practicable to seize goods and take the physical possession of the goods. In such cases the Custom Authorities had allowed the custody of such goods with the owner/ beneficial owner or any other person who was in the custody of the goods and to remove such goods only with permission from the proper officer.

The Finance Bill proposes amend Section 110 and to introduce a procedure where the Custom Authorities would seek execution of an undertaking that the goods would not be removed as such without the prior permission of the proper officer of the Customs.

7. Power to attach/ release bank account

Newly inserted sub-section (5) of section 110 empowers the proper officer to provisionally attach any bank account for a period not exceeding six months in order to safeguard the interest of revenue and prevention of smuggling. Period of attachment may further be extended up to six months by Principal Commissioner of Customs or Commissioner of Customs. Consequently, the Finance Bill proposes to amend section 110A to empower the proper officer to release such provisionally attached bank account, pending adjudication.

8. Instrument obtained from any authority by fraud etc.

To further tighten the procurement/ use of the instruments such as duty scripts the Finance Bill has proposed the following measures:

Where any instrument has been obtained by fraud, collusion, willful misstatement or suppression of facts, and, where such instrument has been utilized by such person or any other person, such an act is now being proposed to be considered a punishable offence under the provisions of 135, including making such an offence liable for imprisonment for a period of three years with fine. Where the amount procured/ utilised exceeds Rs. 50 lacs the offence has been made liable for imprisonment which may extend to seven years with fine.

The Finance (No.2) Bill, 2019 also proposes to insert a new section 114AB, where, any person who has obtained any instrument from any authority by fraud, etc. and such instrument has been utilized for discharging duty, the person to whom the instrument was issued shall be liable for a penalty not exceeding the face value of such instrument.

9. Penalties for contravention, etc., not expressly mentioned

Where no express penalty is elsewhere provided for contravention of any provision of this Act or abetting any such contravention or failing to comply with any provision of this Act with which it was required to comply; erstwhile maximum limit of penalty of INR 1,00,000 has been increased to 4,00,000.

Existing penalty for any contravention of any rule or regulation or abetting such contravention or failing to comply with any rule or regulation with which it was his duty to comply, of INR 50,000 has been increased to INR 2,00,000.

10. Clarification under section 125 regarding conclusion of proceeding

In respect of goods which are not prohibited or restricted and the same has been confiscated by the Custom authorities, where there is a case of short-levy, non-levy or erroneous refund of duty or interest; if proceedings are deemed to be concluded u/s 28, no fine in lieu of confiscation shall be imposed under section 125 in respect of these goods.

11. Amendment of any document after it has been presented in the custom house

As per the existing provisions, proper officer may, in his discretion, authorise any document, after it has been presented in the custom house to be amended. The Finance (No.2) Bill, 2019 has proposed to empower CBIC under section 149 to make regulations specifying time, form, manner, restrictions and conditions for amendment of any document after it has been presented in the custom house.

12. Increase in residuary power of CBIC to make regulations under section 157

The Finance (No.2) Bill, 2019 has proposed to insert provisions under section 157 to empower the board to make regulations with regards to; the manner of authentication and the time limit for such authentication, the document or information to be furnished and the manner of submitting such documents or information and the time limit for such submission, the form and the manner of furnishing alternative means of identification and the time limit for furnishing such identification, person or class of persons to be exempted and conditions subject to which suspension may be made.

Further by insertion of a new clause (n) to sub-section (2) of section 157 it has proposed to empower the board to make regulations with regard to the form and manner, the time limit and the restrictions and conditions for amendment of any document under section 149.

SABKA VISHWAS LEGACY DISPUTE RESOLUTION SCHEME, 2019

Litigation has always been time consuming and cost ineffective way to comprehend law. With the growing quantum of litigation and the untimely resolution of disputes, the judicial is jammed with the heap of ineffective law suits. Moreover, with more than 17 taxes and 13 cesses being subsumed into GST the resolutions to them have become redundant. Thus there was always a need to bring end to the legacy disputes and move forward.

The scheme aims at providing a huge relief to the industry, however, in days to come the tax payers would have to analyse its benefit to them. What needs to be analysed is what category of tax payers would be benefited from the scheme. In any case it is considered as a win-win situation for both the government and the tax payers. The tax payers can get the forthcoming litigation reduced and move on in their businesses. The Government on the other hand would be an opportunity to manage the huge piled up adjudication and get the some revenue.

The dispute resolution cum amnesty scheme proposed by the Hon'ble Finance Minister is called "the Sabka Vishwas Legacy Dispute Resolution Scheme, 2019" and is for resolution and settlement of legacy cases of Central Excise and Service Tax, etc.

The Scheme proposes to cover past disputes of taxes which have been subsumed in GST. Barring a few exceptions, all persons are eligible to avail the scheme. The relief under the scheme ranges from forty percent to seventy percent of the tax dues for cases other than voluntary disclosure cases, depending on the amount of tax dues involved. The scheme also provides relief from payment of interest and penalty, and prosecution. The Scheme also proposes a method of payment of tax dues, arrears and restrictions regarding the manner of payment etc.

With over Rs 3.75 lakh crore locked up in service tax and excise duty litigation, the scheme would give relief to the taxpayers and the government from such legacy disputes. Briefly the scheme has following features:

Applicability:

The scheme is applicable to disputes pending under 26 laws which includes the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 or Chapter V of the Finance Act, 1994 and the rules made thereunder.

Not covered in the scheme:

The following cases will be outside the purview of this scheme:

1. Where appeal has been heard finally on or before 30th June 2019
2. Matters involving conviction under any provisions of the indirect tax enactments
3. Final hearing of show cause notice has taken place on or before 30th June 2019
4. Matters involving erroneous refund
5. Matters involving enquiry or investigation or audit and the amount of duty has not been quantified on or before the 30th June 2019
6. If application is pending in settlement commission

Relief proposed under the scheme:

| Tax dues relating to | Amount of Duty | Relief available | Amount to be paid |
|---|------------------------|-------------------------|--------------------------|
| Show cause notice or appeals arising out of show cause notice | Rs. 50 lakhs or less | 70% (of tax dues) | 30% |
| | More than Rs. 50 lakhs | 50% | 50% |
| | | | |
| Show cause notice for late fees or penalty where duty amount is nil | Rs. 50 lakhs or less | 60% | 40% |
| | More than Rs. 50 lakhs | 40% | 60% |
| | | | |
| Amount in arrears | Rs. 50 lakhs or less | 60% | 40% |
| | More than Rs. 50 lakhs | 40% | 60% |
| | | | |
| Return filed indicating amount payable but not paid | Rs. 50 lakhs or less | 60% | 40% |
| | More than Rs. 50 lakhs | 40% | 60% |
| | | | |
| Enquiry, investigation or audit against the declarant and the amount quantified on or before the 30th day of June, 2019 | Rs. 50 lakhs or less | 70% | 30% |
| | More than Rs. 50 lakhs | 50% | 50% |
| | | | |
| No relief shall be available where the tax dues are payable on account of a voluntary disclosure | | | |

Procedure for claiming the benefit

An application will be required to be filed in such manner as may be prescribed. The Designated Committee shall verify the correctness of the declaration made by the taxpayer except in case of voluntary disclosure. Thereafter, the Designated Committee shall issue in electronic form, a statement, indicating the amount payable by the declarant, within a specified period from the date of receipt of the said declaration. Sequentially,

1. An eligible person shall file declaration in terms of clause 124(4) electronically.
2. The Designated Committee (DC) shall verify the correctness of said declaration.
3. If declared dues are accepted by DC then "Statement of amount payable" shall be issued electronically within 60 days from the date of such declaration.
4. However, if declared dues are found less than amount payable then DC shall issue "Estimate of amount payable" in electronic form within 30 days from such declaration. In this case declarant shall be granted personal hearing if he desires. After personal hearing a statement indicating the amount payable by declarant shall be issued within 60 days from date of receipt of application.
5. The declarant has to pay amount within 30 days from date of above statement as mentioned in para 3 or 5 as the case may be.

Withdrawal of Appeal and Discharge Certificate:

With the taxpayer opting for the Scheme, the various proceeding before various authorities would stand withdrawn.

1. Before Appellate forum other than High court and Supreme Court:

Where the appeal, reference or reply to show cause notice was pending at appellate forum other than Supreme Court or High Court, then notwithstanding any other

provisions under the erstwhile law, such appeal or reference or reply shall be deemed to be withdrawn.

2. Before High Court or Supreme Court:

Where the writ petition, appeal or reference was pending at Supreme Court or High Court, then the declarant shall have to file an application before the Court for withdrawing of such writ petition, appeal or reference with the leave of court and would have to submit the proof of withdrawal to DC in prescribed manner along with the proof payment of duty.

3. Discharge Certificate:

After payment of the amount indicated in statement issued by DC and upon submitting the proof of withdrawal of appeal/ reference/ writ petition, the DC shall issue a discharge certificate within 30 days of producing proof of payment and such withdrawal.

Acts Covered under this Scheme

1. the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 or Chapter V of the Finance Act, 1994 and the rules made thereunder.
2. the Agricultural Produce Cess Act, 1940
3. the Coffee Act, 1942;
4. the Mica Mines Labour Welfare Fund Act, 1946;
5. the Rubber Act, 1947;
6. the Salt Cess Act, 1953;

7. the Medicinal and Toilet Preparations (Excise Duties) Act, 1955;
8. the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
9. the Mineral Products (Additional Duties of Excise and Customs) Act, 1958;
10. the Sugar (Special Excise Duty) Act, 1959;
11. the Textiles Committee Act, 1963;
12. the Produce Cess Act, 1966;
13. the Limestone and Dolomite Mines Labour Welfare Fund Act, 1972;
14. the Coal Mines (Conservation and Development) Act, 1974;
15. the Oil Industry (Development) Act, 1974;
16. the Tobacco Cess Act, 1975;
17. the Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976;
18. the Bidi Workers Welfare Cess Act, 1976;
19. the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978;
20. the Sugar Cess Act, 1982;
21. the Jute Manufacturers Cess Act, 1983;
22. the Agricultural and Processed Food Products Export Cess Act, 1985;

23. the Spices Cess Act, 1986;
24. the Finance Act, 2004;
25. the Finance Act, 2007;
26. the Finance Act, 2015;
27. the Finance Act, 2016;

ANNEX

Income Tax Rate Reckoner

1. Rates of Income Tax

Individuals/ HUF/ AOP/ BOI/ AJP

| Income Slabs | Senior Citizen (60 to 79) | Very Senior citizen (80 and above) | Rates* |
|---------------------------|------------------------------|---------------------------------------|-----------------------------------|
| Up to Rs. 2.50 Lacs | Up to Rs. 3.00 Lacs | Up to Rs. 5.00 Lacs | Nil |
| Rs. 2.50 - Rs. 5.00 Lacs | Rs. 3.00 - Rs. 5.00 Lacs | - | 5% + 4% (Health & Education Cess) |
| Rs. 5.00 - Rs. 10.00 Lacs | Rs. 5.00 - Rs. 10.00 Lacs | Rs. 5.00 - Rs. 10.00 Lacs | 20% + 4%(Health & Education Cess) |
| Rs. 10.00 Lacs & above | Rs. 10.00 Lacs & above | Rs. 10.00 Lacs & above | 30% + 4%(Health & Education Cess) |

*** For Surcharge Applicability, Refer Table "Applicability of Surcharge".**

Note1: For Individuals having total Income upto Rs. 5 Lacs, the effective tax payable is NIL after considering rebate of section 87A of Income tax Act, 1961

Domestic Companies

| Total income | Income tax | Surcharge | MAT | Surcharge | Cess |
|--------------------------------------|------------|-----------|--------|-----------|--------------------------------|
| Up to Rs. 1 Crore | 30.00% | - | 18.50% | - | 4.00%(Health & Education Cess) |
| > Rs. 1 Crore and up to Rs. 10 Crore | 30.00% | 7.00% | 18.50% | 7.00% | 4.00%(Health & Education Cess) |
| > Rs. 10 Crore | 30.00% | 12.00% | 18.50% | 12.00% | 4.00%(Health & Education Cess) |

Note1: Domestic Companies having turnover ≤ 400 Crore in FY 2017-18 are liable to pay tax @ 25% instead of 30%.

Foreign Companies

| Total income (Other than the royalty Income) | Income tax | Surcharge | MAT | Surcharge | Cess |
|--|------------|-----------|--------|-----------|--------------------------------|
| Up to Rs. 1 Crore | 40.00% | - | 18.50% | - | 4.00%(Health & Education Cess) |
| > Rs. 1 Crore and upto Rs. 10 Crore | 40.00% | 2.00% | 18.50% | 2.00% | 4.00%(Health & Education Cess) |
| > Rs. 10 Crore | 40.00% | 5.00% | 18.50% | 5.00% | 4.00%(Health & Education Cess) |

Note: Rate of Tax shall be 50% on royalty received from Government or an Indian concern in pursuance of an agreement made with the Indian concern after March 31, 1961, but before April 1, 1976, or fees for rendering technical services in pursuance of an agreement made after February 29, 1964 but before April 1, 1976 and where such agreement has been approved by the Central Government.

Alternate Minimum Tax (AMT)

| Assessee | Adjusted Total Income | Income Tax | A.M.T | Surcharge | Cess |
|-----------------------------------|------------------------------|------------|--------|-----------|-------|
| Individual/ HUF/AOP/BOI | Upto Rs. 20.00 Lakh | Slab Rate | N.A. | N.A. | N.A. |
| | > Rs. 20.00 Lakh <50.00 lakh | Slab Rate | 18.50% | N.A. | 4.00% |
| | > Rs. 50.00 Lakh <1 Crore | Slab Rate | 18.50% | 10.00% | 4.00% |
| | > Rs. 1 Crore but < 2 Crore | Slab Rate | 18.50% | 15.00% | 4.00% |
| | > Rs. 2 Crore but < 5 Crore | Slab Rate | 18.50% | 25.00% | 4.00% |
| | > Rs. 5 Crore | Slab Rate | 18.50% | 37.00% | 4.00% |
| Other than above (except Company) | Up to Rs. 1 Crore | 30.00% | 18.50% | N.A. | 4.00% |
| | > Rs. 1 Crore | 30.00% | 18.50% | 12.00% | 4.00% |

Note: AMT Rate of 9% instead of 18.50% shall be applicable to a unit located in an International Financial Services Centre and derives its income solely in convertible foreign exchange.

**Applicability of Surcharge
In case of resident and non-resident**

| Total income | Individual/ HUF/AOP/BOI | Co-operative Societies | Firms | Local Authorities |
|------------------------------|----------------------------|---------------------------|--------|----------------------|
| > Rs. 50 Lakhs but < 1 Crore | 10.00% | N/A | N/A | N/A |
| > Rs. 1 Crore but < 2 Crore | 15.00% | 12.00% | 12.00% | 12.00% |
| > Rs. 2 Crore but < 5 Crore | 25.00% | 12.00% | 12.00% | 12.00% |
| > Rs. 5 Crore | 37.00% | 12.00% | 12.00% | 12.00% |

Limits for Tax Audit

| Source of Income | Turnover |
|------------------|---------------|
| From Business | > Rs. 1 Crore |
| From Profession | > Rs. 50 Lacs |

Note: Threshold limit of Rs. 2 crore shall be applicable for tax audit, if the assessee declares the Income from business under presumptive taxation.

Presumptive taxation

| Source of Income | Turnover | Rate Applicable |
|------------------|-------------------|-----------------|
| From Business | Up to Rs. 2 Crore | 8% / 6% |
| From Profession | Up to Rs. 50 Lacs | 50% |

Note: Threshold limit of Rs. 2 crore shall be applicable for tax audit, if the assessee declares the Income from business under presumptive taxation.

Due dates for filing of Income Tax Returns

| Assessee | Due Date |
|--|----------|
| Persons required to submit Transfer Pricing Audit Report | 30-Nov |
| Companies | 30-Sep |
| Other than above | |
| a) where accounts of the assessee are required to be audited under any law | 30-Sep |
| b) where the assessee is a working partner in a firm whose accounts are required to be audited under any law | 30-Sep |
| c) in any other case | 31-Jul |

2. Payment of Advance Tax**[Payable only where Assessed Tax (AT) > Rs. 10,000]**

| Due Dates | All Assessee |
|---|--------------|
| On or before June 15 of the financial year | 15% of AT |
| On or before September 15 of the financial year | 45% of AT |
| On or before December 15 of the financial year | 75% of AT |
| On or before March 15 of the financial year | 100% of AT |

- Resident Senior citizens, not having any income chargeable under the head Profits & gains of business & profession have been exempted from payment of Advance Tax.
- Assessee covered u/s 44AD & 44ADA are also liable to pay advance tax in single installment on or before 15th March of each financial year.

3. Capital Gains Tax Rates

| Particulars | STCG Rates | LTCG Rates |
|--|------------|---|
| Sale transactions of equity shares/unit of an equity oriented fund which attract STT | 15% | Nil |
| Sale transaction other than mentioned above | | |
| a) Individuals (R and NR) | Slab Rates | 20% with indexation or 10% without indexation |
| b) Firms including LLP(R and NR) | | |
| c) Resident Companies | | |

Note 1: Surcharge and Education Cess will be levied additionally.

Note 2: In case of Unlisted Debentures tax on LTCG will be charged @ 20% without indexation.

Note 3: Option of 10% is not available in case of unlisted shares.

4. Rates of Depreciation (under Section 32)

| Assets | Rate |
|--|------|
| Building | |
| Residential building other than hotels and boarding houses | 5% |
| Office, factory, godown or building | 10% |
| Temporary erections such as wooden structures | 40% |
| Furniture | |
| Any furniture/fittings including electrical fittings | 10% |
| Plant & Machinery | |
| Any plant and machinery not covered under any other block and motor cars | 15% |
| Computers including software | 40% |
| Intangible Assets | |
| Know how, patents, copyrights, trademarks, licenses, franchises and any other rights of similar nature | 25% |

5. Interest Payable –Income Tax Act

| Default | Rate | Period from | Period to | Section |
|--|----------|-------------------------|--|---------|
| Delay in furnishing of returns | 1% p.m. | Due date | Date of return furnished | 234A |
| Not furnishing returns | 1% p.m. | Due date | Date of completion of assessment u/s 144 | 234A |
| Failure to pay advance tax | 1% p.m | 1st Apr of A.Y. | Date of payment of tax | 234B |
| Advance tax paid less than 90% | 1% p.m | 1st Apr of A.Y | Date of payment of tax | 234B |
| Deferring Advance tax | 1% p.m | Due date | Due date of next installment | 234C |
| Failure to deduct TDS | 1% p.m. | Date of payment/ credit | Date of deduction | 201(1A) |
| Failure to deposit tax on time after deduction | 1.5%p.m. | Date of deduction | Date of deposit | 201(1A) |

6. Penalties

| Default | Penalty |
|---|---|
| Failure to get books audited | 0.5% of Turnover, up to maximum Rs. 1.5Lacs |
| Failure to deposit TDS/ TCS | Equal to tax not deposited |
| Failure to furnish TDS/TCS Certificate | Rs. 100 per day, restricted to amount of TDS |
| Delay in filing of TDS/TCS Return | Rs. 200 per day, restricted to amount of TDS |
| Delay in filing of TDS/TCS Return (In addition to said fee of Rs. 200 per day) | Rs. 10,000 to Rs. 1,00,000 |
| Failure to furnish correct information in TDS/TCS Return | Rs. 10,000 to Rs. 1,00,000 |
| Non filing of annual information return | Rs. 500 for every day till the failure continues and Rs. 1,000 after the expiry of period specified in notice |
| Sec 270A:- Under-reporting and misreporting of income. | 50% of the tax payable on under reported income. 200% of the tax payable on misreporting of income |
| Sec 234F:- Fee for delayed filing of return u/s 139(1) | a) Rs. 5,000, if return is filed after due date but on or before 31st December of the Assessment year b) Rs. 10,000, in any other case Maximum Rs. 1,000, if total income doesn't exceed Rs. 5 Lakhs |
| Sec 271J:- Penalty on Professionals for furnishing incorrect information in Statutory Report or certificate | Rs. 10,000 for each such report or certificate |
| Sec 271DA:- Penalty for cash transaction of more than Rs. 200,000 u/s 269ST | Equal to the amount of receipt in contravention of section 269ST |
| Sec 271DB:- Penalty for failure to provide facility for electronic modes of payment prescribed u/s 269SU | Rs.5,000/ for every day during which such failure continues |

7. Time limit for depositing TDS/ TCS

| Nature of Expenditure | Due date for amount deducted between | |
|-----------------------|--|---|
| | April – February | March |
| Salary & Non Salary | By 7th of the next month in which the TDS/ TCS is deducted | TDS- By 30th April TCS- By 7th April |

8. Time limit for filing of TDS returns

| Quarters | Time limit |
|----------|---|
| Q1-Q3 | Within 31 days from the end of each quarter |
| Q4 | Up to 31st May |

9. Time limit for issuance of TDS/ TCS certificates

| Form No. | Periodicity | Due date |
|-------------------------|-------------|---|
| 16 (for Salary) | Annual | By 31st May of the financial year immediately following the financial year in which the income was paid and tax deducted. |
| 16A (other than Salary) | Quarterly | Within 15 days of due date of submission of TDS/ TCS return |

10. TDS/ TCS Rates

| Sec. | Nature of payments | Threshold Limit (Rs.) | Comp/ Firm | Ind./HUF | No / Invalid PAN |
|-------|--|---------------------------------|------------|----------|------------------|
| 192A | Payment of Accumulated Balance due to an Employee | 50,000 | - | 10% | 30% |
| 193 | Interest on Securities | 10,000 | 10% | 10% | 20% |
| 194 | Dividends | 2,500 | 10% | 10% | 20% |
| 194A | Interest other than interest on securities | 40,000 Banking/ 5,000 Others | 10% | 10% | 20% |
| 194B | Winning from lotteries/puzzles | 10,000 | 30% | 30% | 30% |
| 194C | Payment to contractor | 30,000/ 1,00,000 | 2% | 1% | 20% |
| 194BB | Winning from horse races | 10,000 | 30% | 30% | 30% |
| 194D | Insurance Commission | 15,000 | 5% | 5% | 20% |
| 194DA | Amount not exempt u/s 10(10D) for payment received from life insurance policy | 1,00,000 | 5% | 5% | 20% |
| 194EE | Payments in respect of NSS Deposits | 2,500 | 10% | 10% | 20% |
| 194G | Commission-Lottery | 15,000 | 5% | 5% | 20% |
| 194H | Commission on Brokerage | 15,000 | 5% | 5% | 20% |
| 194I | Rent | 2,40,000 | 10% | 10% | 20% |
| 194I | Rent - Plant and machinery | 2,40,000 | 2% | 2% | 20% |
| 194IA | Payment on transfer of certain immovable property other than agricultural land | 50,00,000 | 1% | 1% | 20% |

| Sec. | Nature of payments | Threshold Limit (Rs.) | Comp/ Firm | Ind./HUF | No / Invalid PAN |
|-------|---|-----------------------|------------|----------|------------------|
| 194IB | Payment of rent to a Resident by Individual or HUF not covered u/s 44AB | 50,000 p.m. | 5% | 5% | 20% |
| 194J | Professional Charges (includes Director's remuneration other than Salary) | 30,000 | 10% | 10% | 20% |
| 194LA | Immovable property (Specified Areas/ Others) | 2,50,000 | 10% | 10% | 20% |
| 194M | TDS on Payment made by Individual/HUF to contractors and professionals | 50,00,000 | 5% | 5% | 20% |
| 194N | TDS on cash withdrawal | 1,00,00,000 | 2% | 2% | 20% |
| 206C | Scrap, Alcoholic Liquor, Minerals, being coal or lignite or iron ore | | 1% | 1% | 5% |
| 206C | Parking Lot, Toll Plaza, Mining and Quarrying | | 2% | 2% | 5% |
| 206C | Timber and other forests products | | 2.5% | 2.5% | 5% |
| 206C | Tendu Leaves | | 5% | 5% | 10% |
| 206C | Motor Vehicle | 10,00,000 | 1% | 1% | 5% |

Note 1: Payment made to transporter, TDS is not required if PAN is provided by the transporter.

Note 2: Filing of Form 15G/15H has been enabled for commission payments specified u/s 194D upto Rs. 15000/-.

11. Income Tax Rebate

| Section | Nature | Maximum Allowable Deduction |
|---------|--|--|
| 87A | Individual having Total Income up to Rs. 5,00,000. | Rs.12,500 or 100% of income-tax payable, whichever is lower. |

12. Other Important Amendments

| Section | Amendment |
|---------|---|
| 139 | <p>In order to ensure that the persons who have entered into certain high value transactions do furnish their return of income, Now it is made mandatory to furnish of return of income if a person:</p> <ul style="list-style-type: none"> • has deposited an amount or aggregate of the amounts exceeding one crore rupees in one or more current account maintained with a banking company or a co-operative bank; or • has incurred expenditure of an amount or aggregate of the amounts exceeding two lakh rupees for himself or any other person for travel to a foreign country; or • has incurred expenditure of an amount or aggregate of the amounts exceeding one lakh rupees towards consumption of electricity; or • Is claiming such rollover benefits on investment in a house or a bond or other assets, under sections 54, 54B, 54D, 54EC, 54F, 54G, 54GA and 54GB of the Act, if before claim of the rollover benefits, his total income is more than the maximum amount not chargeable to tax. • Fulfils such other prescribed conditions, as may be prescribed. <p>(This amendment will take effect from 1st April, 2020)</p> |
| 80EEA | <p>A new section 80EEA has been inserted so as to provide that a deduction in respect of interest up to one lakh fifty thousand rupees on loan taken during 1st April 2019 to 31st March 2020 for residential house property from any financial institution provided the stamp duty value does not exceed forty-five lakh rupees and assessee does not own any residential house property on the date of sanction of loan.</p> <p>(This amendment will take effect from 1st April, 2020).</p> |
| 80EEB | <p>A new section 80EEB has been inserted so as to provide that deduction of interest on loan taken for purchase of an electric vehicle from any financial institution up to one lakh fifty thousand rupees if the loan is sanctioned during 1st April, 2019 to 31st March, 2023 and the assessee does not own any other electric vehicle on the date of sanction of loan.</p> <p>(This amendment will take effect from 1st April, 2020)</p> |

| Section | Amendment |
|---------|---|
| 10 | Exemption for payment from NPS trust to a taxpayer has now been increased from existing 40% to 60% of the total amount payable at the time of closure or opting out of the scheme. (This amendment will take effect from 1st April, 2020) |
| 194IA | A new explanation has been inserted to the section 194IA with regard to "consideration for immovable property". Now as per this explanation "consideration for immovable property" shall include all charges of the nature of club membership fee, car parking fee, electricity and water facility fees, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property. (This amendment will take effect from 1st September, 2019) |
| 139A | In order to keep an audit trail of high value transactions and to ensure ease of compliance, Section 139A of the Act has been duly amended so as to provide that <ul style="list-style-type: none"> • Every person who is required to furnish his PAN under the Act, and who, has not been allotted a PAN but possesses the Aadhaar number, may furnish or intimate or quote his Aadhaar number in lieu of PAN • Every person who has been allotted a PAN, and who has linked his Aadhaar number under section 139AA, may furnish or intimate or quote his Aadhaar number in lieu of a PAN. (This amendment will take effect from 1st September, 2019) |
| 269SU | A new section 269SU has been inserted in the act, so as to provide that every person, carrying on business, shall, provide facility for accepting payment through the prescribed electronic modes, in addition to the facility for other electronic modes of payment, if any, being provided by such person, if his total sales, turnover or gross receipts in business exceeds fifty crore rupees during the immediately preceding previous year. (This amendment will take effect from 1st November, 2019) |
| 139AA | Section 139AA of the Act has been amended, so as to provide that if a person fails to intimate his Aadhaar number to the prescribed authority, the PAN allotted to such person shall be made inoperative in the prescribed manner. (This amendment will take effect from 1st September, 2019) |

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TAXATION DEDUCTION & COLLECTION AT SOURCE

Issues, Judgements And Clarifications

VED JAIN

In this book an effort has been made to deal with all the issues involved in the area of tax deduction and collection and it also suggests how procedures could be simplified and nationalized. Important official circulars, clarifications and summaries of relevant judgements have been reproduced. Three appendices at the end give current data relating to rate of tax deduction at source, data schedule for deposit of tax and tax rates as per double taxation avoidance agreement with different countries.

SEARCH, SEIZURE AND SURVEY

Issue, Clarifications and Judgements

VED JAIN

The issues involved in Search, Seizure and Survey have been discussed in detail in the book and references to the relevant circulars have been provided. Summary of relevant judgements have also been reproduced.

TAXATION OF INCOME:

AN INTERNATIONAL COMPARISON

A select Study of

U.S • U.K. • Australia • Malaysia • Pakistan • India

INDU JAIN

Business and investment Operations of individuals and companies are becoming increasingly international in scope in the wake of current wave of globalization and openness sweeping across the countries of the world. Income tax systems of different countries differ in terms of definition of income and expenses, exemptions and concessions, rates and collection procedures. Varying tax practices of different countries complicate decision-making of individuals and cooperates. Hence, the comparative study of income tax becomes relevant in this context.

This book explains and compares the income tax provisions of six countries, three developed countries, viz. the U.K., the U.S., and Australia and three developing countries, namely Malaysia, Pakistan and India.

The book will be useful for a cross-section of readers including researchers, teachers and students of economics, commerce, law and management. The critical analysis of the income tax systems of six countries would also be beneficial for policy makes, corporate executives, legislators and tax consultants.

Indu Jain obtained her Ph.D. Degree from the Department of Commerce, Delhi School of Economics, University of Delhi. She is Reader in the Department of Commerce, Daulat Ram College, University of Delhi. She has teaching experience of more than 25 years. She has published a number of articles in reputed journals including Asia-Pacific Bulletin (Amsterdam), Taxman, The Chartered Accountants and others.