

THE UNION BUDGET 2018-19

Select Direct Tax Proposals



By

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1. PREFACE

This note highlights select budget proposals related to direct taxes put forth by the Finance Minister while presenting Budget 2018 on 01st February, 2018. This note summarizes only issues considered of importance to our clients and associates.

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This note contains proposals which may be modified before they are enacted. The provisions are applicable for A.Y.: 2019-2020 unless otherwise stated.

This note is prepared on the basis of material available in public domain such as budget documents extracted from the website of Finance Ministry. Even though every care is exercised to present this note in an error-free manner, we assume no responsibility for any errors/ omissions or otherwise for any loss which may be sustained by anyone by relying upon the same.

Mumbai
02nd February, 2018

2. ECONOMIC INDICATORS AND KEY FOCUS AREAS

(as extracted from Economic Survey tabled in the parliament on 29th January,2018)

- i. India's Gross Domestic Product (GDP) growth for 2018-19 is projected at 7-7.5 %. Series of major reforms which were undertaken over the past will allow real GDP growth to reach 6.75% in 2017-2018.
- ii. Retail inflation averaged 3.3% in 2017-18, lowest in last 6 fiscal years.
- iii. Post the introduction of Goods and Services Tax (GST), there has been 50 % increase in the number of indirect taxpayers . Further, there has been an addition of about 18 lakh individual income tax filers since November 2016.
- iv. Demonetization has helped share of financial savings to rise. . The ratio of domestic saving to GDP reached 29.2 percent in 2013 to a peak of 38.3 percent in 2007, before falling back to 29 percent in 2016.
- v. Swachh Bharat initiative improved sanitation coverage in rural areas from 39% in 2014 to 76% in January 2018. 296 districts and 307,349 villages all over India have been declared Open Defecation Free (ODF).
- vi. The foreign exchange reserves grew by 14.1 percent on a year-on-year basis from end of Dec 2016 to end of Dec 2017. The forex reserves as per 2016-17 were estimated at USD 370 billion. It grew to USD 409.4 billion in 2017-18. (ANI)
- vii. The data highlighted that Indian society exhibits a strong desire for a male child. It pointed out that most parents continue to have children until they get the desired number of sons.
- viii. Policy vigilance required next fiscal if high oil prices persist or stock prices correct sharply.
- ix. Policy agenda for next year support agriculture, stabilize GST, privatize Air India and finish bank recapitalization.
- x. India needs to address issues of pendency, delays and backlogs in the appellate and judicial arenas towards Ease of doing business. Tax departments have a large number of cases filed and poor success rate.

3. PROPOSALS RELATING TO DIRECT TAX**(I) RATES OF TAX****(A) Individuals, HUFs, Association of persons, Body of Individuals and Artificial Juridical person.**

- The rates of income tax slab in the case every individual (other than those mentioned in (ii) and (iii) or Hindu undivided family or every association of persons or body of individuals, whether incorporated or not or every artificial juridical person :-

Income Slab	Rate of Tax
Upto Rs.2,50,000	Nil
Rs.2,50,000 to Rs.5,00,000	5%
Rs.5,00,000 to Rs.10,00,000	20%
Above Rs.10,00,000	30%

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

Income Slab	Rate of Tax
Upto Rs.3,00,000	Nil
Rs.3,00,000 to Rs.5,00,000	5%
Rs.5,00,000 to Rs.10,00,000	20%
Above Rs.10,00,000	30%

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

Income Slab	Rate of Tax
Upto Rs.5,00,000	Nil
Rs.5,00,000 to Rs.10,00,000	20%
Above Rs.10,00,000	30%

Surcharge shall continue to be levied @ 10% of such income; if the income exceeds Rs. 50 lakhs but does not exceed Rs. 1 crore & it shall be levied @ 15% of such income if the income exceeds Rs. 1 crore.

(B) Discontinuation of Education cess & Secondary Higher Education cess

- 'Education cess' charged @ 2% & 'Secondary Higher Education cess' charged @ 1% shall be discontinued & a new cess by the name 'Health & Education cess' shall be charged @ 4% on income tax & surcharge payable.

(C) Changes in Corporate Tax Rates

- In case of domestic company, the rate of corporate tax shall be 25% plus surcharge and cess if the total turnover or gross receipts in the financial year ending March,2017 does not exceed Rs. 250 crores. In all other cases the rate of 30% has remained unchanged.

II. EXEMPTIONS RELATING TO SECTION 10, 11, 12 & 13

(A) Tax deduction at source and manner of payment in respect of certain exempt entities

- At present, there are no restrictions on payments made in cash by charitable or religious trusts or institutions. It is proposed to insert a new explanation to Section 11 to provide that cash payments exceeding Rs. 10,000/- in a day will be disallowed.
- In case where interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident on which tax is deductible at source and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in section 139(1), 30% of such amount shall not be considered as application of Income

(B) Tax Exemption for withdrawal from NPS to non-employee subscribers

- Under the existing provisions of the of section 10(12A) of the Act, an employee contributing to the NPS is allowed an exemption in respect of 40% of the total amount payable to him on closure of his account or on his opting out. This exemption currently is not available to non-employee subscribers.

It is proposed to amend section 10(12A) of the Act to extend the said benefit to all subscribers whether employed or not.

III. INCOME FROM SALARY

- A standard deduction will be allowed up to Rs. 40,000/- or the amount of salary received whichever is less, in substitution of Transport Allowance (except in case of differently abled persons) and reimbursement of medical expenses amounting to Rs 19,200/- and Rs 15,000/- p.a. respectively .

This standard deduction will be also allowed to the employees who receive pension from their former employer and which is assessed under the head Salary.

IV. PROFITS & GAINS FROM BUSINESS & PROFESSION

(A) Taxability of compensation in connection to business or employment.

- It is proposed to amend Section 28 of the Income Tax Act,1961 to provide that any compensation received/receivable , whether revenue or capital , in connection with the termination or modification of any contract relating to its business shall be taxable a Business Income. Similar amendment is made in respect compensation received from employer which is covered under the head Income from other Sources in this note.

(B) Tax treatment of transactions in respect of trading in agricultural commodity derivatives.

- In order to encourage participation in trading of agricultural commodity derivatives, it is proposed to amend the provisions of section 43(5) to provide that a transaction in respect of trading of agricultural commodity derivatives, which is not chargeable to Commodity transaction tax in a registered stock exchange or registered association, will be treated as non-speculative transaction.
- Presently in absence of CTT, it was considered as Speculative Transaction

(C) Rationalization of the provisions relating to Commodity Transaction Tax.

- In order to align the definition of “taxable commodities transaction” with instruments allowed for transaction in commodity derivatives, it is proposed to amend Section 116(7) of Finance Act 2013 so as to include “options in commodity futures” in the definitions of “taxable commodities transactions”.
- The rates of Commodity Transaction Tax in respect of taxable commodities transaction (other than agricultural commodities) are as under:-

Taxable Commodities Transaction	Rate	Payable
Sale of Commodity Derivative	0.01%	Seller
Sale of Option on Commodity Derivative	0.05%	Seller
Sale of Option on commodity derivative where option is exercised	0.0001%	Purchaser

The value of commodities transaction is to be ascertained as follows:-

- In case of taxable commodity transaction relating to a commodity derivative shall be price at which the commodity derivative is traded.
- In case of taxable commodity transaction relating to an option on commodity derivative shall be -
 - ❖ The option premium, in case of sale of an option
 - ❖ The settlement price, in case where option is exercised

(D) Presumptive income under section 44AE in case of goods carriage

- It is proposed to amend Section 44AE of the Act to provide that, in the case of heavy goods vehicle (more than 12MT gross vehicle weight), the income would be deemed to be an amount equal to Rs.1,000/- per ton of gross vehicle weight or unladed weight, as the case may be, **per month or part of a month** for each goods vehicle or the amount claimed to be actually earned by the assessee, whichever is higher.

The vehicles other than heavy goods vehicle will continue to be taxed as per the existing rates.

The definition of “*heavy goods vehicle*” in *Income Tax Act, 1961* is the same as defined in *Motor Vehicle Act, 1988*.

(E) Rationalisation of section 43CA and section 50C

- The following proviso shall be inserted in sub –section (1) of Section 43CA and after the second proviso of Section 50C.

“Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall be considered for the purposes of section 48, as full value of the consideration”.

This amendment is in line with few tribunal decisions which have taken a view that marginal differences up to 10% should be ignored.

(Hyderabad Bench in the case of ACIT vs S.Suvarna Rekha in ITA No.743/Hyd/2009dated 29.10.2010)

V. CAPITAL GAINS

(A) New regime for taxation of long-term capital gains on sale of equity shares etc.

- New Section 112A is proposed to be introduced in respect of Capital Gains arising on transfer of Long Term Capital Asset which shall be taxed at 10% of such capital gains exceeding Rs. 1 lakh if:
 - ❖ **STT** has been paid **BOTH** on acquisition and transfer of **equity shares** of a company (Except in the circumstances notified)
 - ❖ **STT** has been paid on **transfer** of units of an equity oriented fund **OR** a units of a business trust

Long term capital gains will be computed **without indexation** and the benefit of computation of capital gains in foreign currency in the case of a non-resident will not be allowed.

The condition shall not apply to a transfer undertaken on a recognized stock exchange located in any International Financial Services Centre and where the consideration for such transfer is received or receivable in foreign currency.

- Cost of acquisitions in respect of the long term capital asset acquired by the assessee before the 1st day of February, 2018 , shall be deemed to be the higher of :-

- the actual cost of acquisition of such asset; and,
- the lower of –

- ❖ the fair market value of such asset; and,
- ❖ the full value of consideration received or accruing as a result of the transfer of the capital asset.

- Fair Market Value of capital asset which is Shares listed on any recognized stock exchange shall be the highest price of the capital asset quoted on such exchange on the 31st day of January, 2018. However, where there is no trading in such asset on such exchange on the 31st day of January, 2018, the highest price of such asset on such exchange on a date immediately preceding the 31st day of January, 2018 when such asset was traded on such exchange shall be the fair market value.
- The tax payable by the assessee on the total income shall be the aggregate of— (i) the amount of income-tax calculated on such long-term capital gains exceeding one lakh rupees at the rate of ten per cent.; and (ii) the amount of income-tax payable on the balance amount of the total income as if such balance amount were the total income of the assessee: Provided that in the case of an individual or a Hindu undivided family, being a resident, where the total income as reduced by such long-term capital gains is below the maximum amount which is not chargeable to income-tax, then, the long-term capital gains, shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax.
- The deduction under Chapter VI-A shall be allowed from the gross total income as reduced by such capital gains.
- The rebate under section 87A shall be allowed from the income-tax on the total income as reduced by tax payable on such capital gains.
- For the purpose of computing capital gains in respect of long term capital asset acquired before February 1, 2018, the cost of acquisition to be computed in a manner illustrated below:

Higher of :

- A. Actual cost of acquisition : Rs. 90
- B. Lower of:

- (i) FMV as on 31.01.2018 : Rs. 100
- (ii) Full Value of Consideration : Rs. 120

C.O.A. for the purpose of computing Capital Gains : Rs. 100

Capital Gains : Rs. 20 [Rs. 120 - Rs. 100]

Note :

- LTCG in the normal course will be exempt if invested in 54EC . However amendment now made, does not permit exemption except in the case of Land or Building or both. Thus this avenue of planning is also plugged.
- However Exemption under section 54F will continue as before.
- It is unfortunate that LTCG will be taxable as well STT also will be paid.

(B) Taxation of long-term capital gains in the case of Foreign Institutional Investor – Section 115AD

- Where the total income of a Foreign Institutional Investor (FII) includes income by way of long-term capital gains arising from the transfer of certain securities, such capital gains shall be chargeable to tax at the rate of ten per cent. However, long term capital gains arising from transfer of long term capital asset being equity shares of a company or a unit of equity oriented fund or a unit of business trusts will also be liable to tax on such long term capital gains only in respect of amount of such gains exceeding one lakh rupees.

(C) Rationalization of provisions of Section 54EC

- Existing provisions permitted investment under Section 54EC in respect of LTCG arising from transfer of any Long Term Asset . Henceforth only Capital Gain arising from the transfer of a long-term capital asset, being land or building or both, invested in the long-term specified asset at any time within a period of six months after the date of such transfer, shall not be charged to tax subject to certain conditions.
- The long-term specified asset, for making any investment under the section on or after 1st day of April, 2018, shall mean any bond, redeemable after **five years** and issued on or after 1st day of April, 2018 by the National Highways Authority of India or by the Rural Electrification Corporation Limited or any other bond notified by the Central Government in this behalf.

(D) Section 45 - Conversion of stock-in-trade into Capital Asset to be taxable

- Capital gains arising from a conversion of capital asset into stock-in-trade shall be chargeable to tax. However, in cases where the stock in trade is converted into, or treated as, capital asset, the existing law does not provide for its taxability. Existing provisions only covered conversion of Capital asset into Stock in Trade

It is proposed to amend the provisions of —

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

(E) Tax neutral transfers

- Transaction of money or property between a wholly owned subsidiary company and its holding company will be regarded as tax neutral transfers and section 56 (x) is also amended because of the amendment in section 47(iv) and (v).

VI. INCOME FROM OTHER SOURCES

(A) Taxability of compensation in connection to employment

- It is further proposed that any compensation received or receivable, whether in the nature of revenue or capital, in connection with the termination or the modification of the terms and conditions of any contract relating to its employment shall be taxable under section 56 of the Act.

(B) Amendment in Section 56 of the Act.

- The following item shall be substituted in sub section (2) in clause(x) in sub clause (b) for item B namely:-

Income shall be taxable to income tax under Income from other sources where any person receives in any previous year from any person or persons any immovable property for a consideration, the stamp duty value of such property as exceeds such consideration if the amount of such excess is more than the higher of the following amounts, namely:-

- ❖ Amount of Rs.50,000/- and
- ❖ Amount equal to 5% of the consideration

VII. TAXATION OF DIVIDEND

(A) Widening of scope of Accumulated profits for the purposes of Dividend

- It is proposed to insert a new explanation 2A in Section 2(22) to widen the scope of the term “accumulated profits” so as to provide that in the case of an amalgamated company, accumulated profits, whether capitalized or not, or losses as the case may be shall be increased by the accumulated profits whether capitalized or not of the amalgamating company on the date of amalgamation.

Applicable w.e.f A.Y.2018-2019 (FY 2017-2018)

(B) Application of Dividend Distribution Tax to Deemed Dividend

- Dividend distributed by a domestic company is subject to dividend distribution tax payable by such company. However, deemed dividend under section 2(22)(e) is taxed in the hands of the recipient at the applicable marginal rate.
- It is proposed to bring deemed dividends also under the scope of dividend distribution tax under section 115-O. Further, such deemed dividend is proposed

to be taxed at the rate of 30 per cent. (Without grossing up) for transactions undertaken on or after 1st April, 2018.

Tax on distributed profits of Indian companies - Dividend		
Particulars	DDT u/s 115-O [other than deemed dividend u/s 2(22)(e)] Current Scenario	DDT u/s 115-O [for deemed dividend u/s 2(22)(e)]
Rate of tax	15%	30%
Surcharge thereon	12%	12%
Health and Education cess	4%	4%
Effective tax rate	17.472%	34.944%

VIII. TAXATION OF UNEXPLAINED CREDITS

(A) Rationalisation of the provisions of section 115BBE

- Section 115BBE provides for tax on income referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D at a higher rate of 60%.
- In order to rationalize the provisions of section 115BBE, no deduction of any expenditure or allowance or set off of any loss will be allowed in respect of income determined by the Assessing Officer.

Applicable w.e.f A.Y. 2017-2018 (FY 2016-2017)

IX. CARRY FORWARD AND SET OFF OF LOSSES

(A) Benefit of carry forward and set off of losses

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

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

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

X. DEDUCTIONS

(A) Deductions in respect of certain incomes not to be allowed unless return is filed by the due date

- It is proposed to extend the scope of section 80AC to provide that the benefit of deduction under the entire class of deductions under the heading “C.—Deductions in respect of certain incomes” in Chapter VIA shall not be allowed unless the return of income is filed by the due date. *This does not affect payments of Insurance etc which are covered under heading B Deductions in respect of certain expenses*

Applicable w.e.f A.Y. 2018-2019 (FY 2017-2018)

(B) Deductions available to senior citizens in respect of health insurance premium and medical treatment

- Section 80D allows deduction to an individual or Hindu undivided family in respect of payments towards annual premium on health insurance policy, or preventive health check-up of a senior citizen or medical expenditure in respect of very senior citizen. It is proposed to amend section 80D so as to raise this monetary limit of deduction from Rs 30,000/- to Rs 50,000/-.
- In case of single premium health insurance policies having cover of more than one year, it is proposed that the deduction shall be allowed on proportionate basis for the number of years for which health insurance cover is provided, subject to the specified monetary limit.

(C) Enhanced deduction to senior citizens for medical treatment of specified diseases

- Section 80DDB provides deduction is available to an individual and Hindu undivided family with regard to amount paid for medical treatment of specified diseases such as cancer, full blown AIDS, Thalassemia, Haemophilia etc.

Senior Citizen upto Rs.60,000/-

Very Senior Citizen upto Rs.80,000/-

- It is proposed to amend the provisions of section 80DDB of the Act so as to raise this monetary limit of deduction to Rs 1,00,000/- for both senior citizens and very senior citizens.

(D) Incentive for employment generation

- Section 80JJAA benefit regarding the relaxed number of days of 150 days to be extended to assessee engaged in the business of footwear and leather products.
- It is also proposed to rationalize the deduction of 30% by allowing the benefit for a new employee who is employed for less than the minimum period during the first year but continues to remain employed for the minimum period in subsequent year.

(E) Deduction in respect of interest income to senior citizen

- It is proposed to insert a new section 80TTB so as to allow a deduction upto Rs 50,000/- in respect of interest income from deposits held by senior citizens.

Applicable w.e.f A.Y. 2018-2019 (FY 2017-2018)

(F) Deduction in respect of income of Farm Producer Companies

- It is proposed to extend the benefit of deduction under Section 80P of 100% deduction to Farm Producer Companies (FPC) as defined under section 581A of the Companies Act,1956 having a total turnover upto Rs.100 crore in any previous year on certain incomes for a period of 5 years from the financial year 2018-19.

(G) Measures to promote start-ups

- Section 80-IAC provides that deduction under this section shall be available to an eligible start-up for three consecutive assessment years out of seven years at the option of the assessee subject to conditions mentioned therein.
- In order to improve the effectiveness of the scheme for promoting start ups in India, it is proposed to make changes in the taxation regime of the start ups as per the conditions mentioned in the Budget document.

XI. MINIMUM ALTERNATE TAXATION

- Section 115JB has been amended which provides that the aggregate amount of unabsorbed depreciation and brought forward loss (excluding unabsorbed depreciation) shall be allowed to be reduced from the book profit, if a company's application for corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 has been admitted by the Adjudicating Authority. This was previously covered by a Press Release dated 06-01-2018.
- Consequently, a company whose application has been admitted shall be allowed to reduce aggregate amount of unabsorbed depreciation and brought forward loss (excluding unabsorbed depreciation) for the purpose of computing book profits under section 115JB.

XII. TAX DEDUCTED AT SOURCE

(A) Section 193 – TDS on 7.75% GOI Savings (Taxable) Bonds, 2018

- The interest received from 7.75% GOI Savings (Taxable) Bonds, 2018 will be subject to tax deduction at source if the amount of interest at the time of making payment of interest on such bonds to residents exceeds Rs. 10,000/- during the financial year.

However no TDS will be deducted if the amount of interest from such bonds is less than or equal to Rs. 10,000/- during the financial year

Applicable w.e.f A.Y. 2018-2019 (FY 2017-2018)

(B) Section 194A – Deduction in respect of Interest Income from Fixed Deposit/Recurring Deposit/Post Office Interest in case of Senior Citizens

- Threshold limit for deduction of tax at source in case of interest income from Fixed Deposit/Recurring Deposit/Post Office Interest **for senior citizens** has been increased from Rs. 10,000/- to Rs. 50,000/-

Applicable w.e.f A.Y. 2018-2019 (FY 2017-2018)

XIII. RETURN OF INCOME

(A) Rationalisation of prima-facie adjustments during processing of return of income

- Section 143(1) provides for processing of return of income made under section 139 or in response to Notice under section 142(1).

Clause (a) of the said sub-section provides that at the time of processing of return income will be computed after making adjustments specified in sub-clause (i) or (vi).

Sub clause (vi) provides for adjustment in respect of addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return.

- It is proposed to insert a new proviso to the said clause to provide that no adjustment under sub-clause (vi) of the said clause shall be made in respect of any return furnished on or after the assessment year commencing on the first day of April, 2018.

Applicable w.e.f. A.Y. 2018-2019 (FY 2017-2018)

XIV. ASSESSMENT/APPELLATE PROCEEDINGS/PENALTY

(A) Improving effectiveness of Tax Administration

- A new scheme for the purpose of making assessments is introduced so as to impart greater transparency and accountability, by:

Eliminating the interface between the Assessing Officer and the assessee,
Optimal utilization of the resources, and
Introduction of team-based assessment.

- **Section 143(3A)** - The Central Government to prescribe the aforementioned new scheme for scrutiny assessments, by way of notification in the Official Gazette.
- **Section 143(3B)** - The Central Government to direct, by notification in the Official Gazette, that any of the provisions of this Act relating to assessment shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified therein. However, no such direction shall be issued after the 31st March 2020.

- **Section 143(3C)** - Every notification issued under the sub-section (3A) and sub-section (3B), shall be laid before each House of Parliament, as soon as may be.
 - *It will be interesting to observe whether such assessments are carried out electronically in letter and spirit rather than communicating on email and then submitting documents physically.*
- (B) Penalty for failure to furnish statement of financial transaction or reportable account - Section 271FA
- If a person who is required to furnish the statement of financial transaction or reportable account under section 285BA(1), he shall be liable to pay penalty increased as under:

Nature of failure	Up-to 31 st March, 2018	On or after 1 st April, 2018
Failure to furnish such statement within the prescribed time	Rs. 100 for every day of default	Rs. 500 for every day of default
Failure to furnish the statement of financial transaction or reportable account within the period specified in the notice issued under section 285BA(5)	Rs. 500 for every day of default	Rs. 1000 for every day of default

(C) Appeal against penalty imposed by Commissioner (Appeals) under section 271J

- Section 253 of the Act is amended to provide that any assessee aggrieved by any of the orders passed by CIT (Appeals) in respect of furnishing incorrect information will be appealable to the Appellate Tribunal.

(D) Authority for Advance Rulings

- Authority for Advance Rulings and constitution of its benches, for giving advance rulings shall cease to act as an Authority for Advance Rulings, and shall act as an Appellate Authority from the date of appointment of Customs Authority for Advance Rulings under section 28EA of the Customs Act, 1962. Such Authority shall not admit any appeal against any ruling or order passed earlier by it in the capacity of Authority for Advance ruling after the date of appointment of Customs Authority for Advance Rulings under section 28EA of the Customs Act, 1962.
- Where the Authority is dealing with an application seeking advance ruling in the matters of the Act, the Revenue Member shall be the Members.

(E) Rationalisation of section 276CC relating to prosecution for failure to furnish return.

- Section 276CC of the Act provides that if a person willfully fails to furnish in due time the return of income which he is required to furnish, he shall be punishable with imprisonment for a term, as specified therein, with fine. A person shall not be proceeded against under the said section for failure to furnish return for any assessment year commencing on or after the 1st day of April, 1975, if the tax payable by him on the total income determined on regular assessment as reduced by the advance tax, if any, paid and any tax deducted at source, does not exceed three thousand rupees.

This section was in the opinion of Ministry misused by Shell Companies by not filing returns. Henceforth the said sub-clause shall not apply in respect of a company.

Applicable w.e.f A.Y. 2018-2019 (FY 2017-2018)

XV. INTERNATIONAL TAXATION

(A) Aligning the scope of “business connection” with modified PE Rule as per MLI

- Section 9(1)(i) Explanation 2, defines business connection to include activities carried on by non-resident through dependent agent. This is similar to the DAPE (Dependent Agent Permanent Establishment) definition in the Double Tax Avoidance Agreements.
- There will be no PE in case of the person who acts on behalf of the non-resident and negotiates the contract but does not conclude the contract.
- The OECD under BEPS Action Plan 7 reviewed the definition of 'PE' with a view to preventing avoidance of payment of tax by circumventing the existing PE definition by way of commissionaire arrangements or fragmentation of business activities.
- In order to tackle this, Article 5(5) is amended to provide that an agent would include not only a person who habitually concludes contracts on behalf of the non-resident, but also a person who habitually plays a principal role leading to the conclusion of contracts.
- In order to prevent Base erosion profit shifting, BEPS Action Plan 7 has been now included in Article 12 of the MLI to implement tax treaty related measures; this will automatically modify India's bilateral tax treaties covered by MLI; making provisions of DTAA wider than provisions of domestic law in India.

- Section 90(2) of the Indian Income Tax Act, 1961 provides that the provisions of the domestic law would prevail over corresponding provisions in the DTAA's, to the extent they are beneficial. This narrowness will make the DTAA provisions ineffective.
- In order to give effect the MLI modifications, Section 9(1)(i) is proposed to be amended to provide: habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by the non-resident . It is further proposed that the contracts should be-

in the name of the non-resident; or
for the transfer of the ownership of, or
for the granting of the right to use, property owned by that non-resident or
that the non-resident has the right to use for the provision of services by that non-resident.
- This amendment will take effect from 1st April, 2019 and will, accordingly, apply in relation to assessment year 2019-20 and subsequent assessment years.

(B) “Business Connection” to include “Significant Economic presence”.

- Article 7 of DTAA's, business profit of an enterprise is taxable in the country in which the taxpayer is a resident. If an enterprise carries on its business in another country through a 'Permanent Establishment' situated therein, other country may also tax the business profits attributable to the PE.
- For this purpose, Permanent Establishment' means a 'fixed place of business' through which the business of an enterprise is wholly or partly carried out provided that the business activities are not of preparatory or auxiliary in nature and such business activities are not carried out by a dependent agent.
- OECD under its BEPS Action Plan 1 addressed the tax challenges in a digital economy wherein it has discussed several options to tackle the direct tax challenges arising in digital businesses. As per the Action Plan 1 Report, a non-resident enterprise would create a taxable presence in a country if it has a significance economic presence in that country on the basis of factors that have a purposeful and sustained interaction with the economy by the aid of technology and other automated tools.
- The existing provisions of Section 9(1)(i) is narrow in restrictive as it provides physical presence based nexus rule for taxation of business income of the non-resident in India. Emerging business models such as digitized businesses, which do not require physical presence of itself or any agent in India, is not covered within the scope of clause (i) of sub-section (1) of section 9 of the Act.

- Section 9(1)(i) is amended to provide that significant economic presence in India will constitute business connection.

For the purpose of business connection:-

- any transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India if the aggregate of payments arising from such transaction or transactions during the previous year exceeds the amount as may be prescribed; or
- systematic and continuous soliciting of its business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means.
- It is further proposed to provide that only so much of income as is attributable to such transactions or activities shall be deemed to accrue or arise in India.
- It is further proposed to provide that the transactions or activities shall constitute significant economic presence in India, whether or not the non-resident has a residence or place of business in India or renders services in India.
- The threshold for “revenue” and “users” in India will be decided after consultation with the stakeholders.

(C) Rationalisation of provisions relating to Country-by-Country Report

- Section 286 of the Act contains provisions relating to specific reporting regime in the form of Country-by-Country Report (CbCR) in respect of an international group. Based on model legislation of Action Plan 13 of Base Erosion and Profit Shifting (BEPS) of the Organisation for Economic Co-operation and Development (OECD) and others, following amendments are proposed to be made retrospectively so as to improve the effectiveness and reduce the compliance burden of such reporting:—

Who	What	When
CE resident in India, of an international group, whose parent is a non-resident	Form 3CEAC – S.286(1) - Rule 10DB Intimation by a constituent entity, resident in India, of an international group, the parent entity of which is not resident in India, for the purposes of sub-section (1) of section 286 of the Income-tax Act, 1961	12 months from the end of reporting accounting year
Parent entity, or alternate reporting entity, which is: - resident in India; and - part of an international group, the consolidated group revenue of which exceeds INR 55 billion	FORM 3CEAD – S.286(1) - Rule 10DB COUNTRY-BY-COUNTRY REPORT Report by a parent entity or an alternate reporting entity or any other constituent entity, resident in India, for the purposes of sub-section (2) or sub-section (4) of section 286 of the Income-tax Act, 1961	12 months from the end of reporting accounting year
CE resident in India, of an international group, whose parent is non-resident [and if conditions of section 286(4) of the Act are satisfied]	FORM 3CEAD – S.286(1) - Rule 10DB COUNTRY-BY-COUNTRY REPORT Report by a parent entity or an alternate reporting entity or any other constituent entity, resident in India, for the purposes of sub-section (2) or sub-section (4) of section 286 of the Income-tax Act, 1961	due date specified by that country or territory
The designated entity, where there are multiple CEs resident in India of an international group, whose parent is nonresident [and if conditions of section 286(4) of the Act are satisfied]	Form No. 3CEAE (Intimation)	Not specified, as the filing date will be contingent to the provisions of section 286(4) of the Act

(D) Income Computation and Disclosure Scheme (ICDS)

- The following sections are amended/inserted to give certainty in the wake of judicial pronouncements on the issue of applicability of ICDS, these will be effective retrospectively from 1st April, 2017 (AY 2017-18) and subsequent assessment years:-

Amendment (A)/ Insertion (I)	Particulars
S. 36 (A)	Marked to market loss or other expected loss as computed according to ICDS notified under section. 145(2) shall be allowed as a deduction
S. 40A (A)	The deductions are allowed except those mentioned in Section 36(2)(xviii).
S. 43AA (I)	Any gain or loss arising on account of effects of changes in foreign exchange rates in respect of specified foreign currency transactions shall be treated as income or loss computed in the manner provided in ICDS notified u/s. 145(2), subject to S.43A.
S.43CB (I)	Profits arising from the construction/service contract shall be determined on the basis of & of completion method with a few exceptions of service contracts. Contract revenue will include retention money, Contract cost shall exclude incidental interest, dividend and capital gains.
S.145A (A)	In order to compute the income chargeable under Profits and gains from Business or Profession:- a. Valuation of inventory shall be made at lower of actual cost or net realizable value as computed as per ICDS notified by Section 145(2) b. Valuation of purchase and sale of goods or services of inventory shall be adjusted to include the amount of tax, cess, duty or fee actually paid or incurred by the assessee to bring goods or services to the place of its location and condition as on the date of valuation. c. Inventory which are unlisted or unquoted but listed, on a recognized stock exchange shall be valued at actual cost initially recognized as per ICDS notified by Section 145(2) d. Inventory which is listed securities shall be valued at lower of actual cost or NRV; this shall be done category wise.
S. 145B (I)	The following shall be deemed to be the income of the year in which:- a. Interest is received by an assessee on compensation or enhanced compensation. b. Claim for escalation of price in a contract or export incentives c. Income referred under section 2(24)(xviii) received, if not charged to income tax for any earlier previous year.

XVI. OTHER PROVISIONS

A) Rationalization of provision of section 115BA relating to certain domestic companies

- The total income of a newly set up domestic company engaged in business of manufacture or production of any article or thing and research in relation thereto, or distribution of such article or thing manufactured or produced by it, shall, at its option, be taxed at the rate of 25 % subject to conditions specified therein. This benefit is available from assessment year 2017-18.
- The provisions of section 115BA are restricted to the income from the business of manufacturing, production, research or distribution referred to therein; and incomes which are at present taxed at different rates will continue to be so taxed at applicable rates. .