



ECONOMIC
LAWS
PRACTICE
ADVOCATES & SOLICITORS



UNION BUDGET 2019
AN ANALYSIS

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Preface

Dear Reader

In the first budget, post the thumping victory in the elections, the Finance Minister has been rich on intent and has something to offer every constituency – from startups to NBFCs and everyone in between.

There are full marks for the path ahead – reform in FDI, ‘ease of living’ through ‘less government and maximum governance’, infusion of capital in the PSU banks, government guarantees for lending to NBFCs, strategic disinvestment and promise of several other reforms.

Even in the taxation realm, while there are increase in tax surcharges for those earning above 2 crores per year (clearly not welcomed by those already paying high taxes), 99.3% of corporates will see tax rates remain the same or reduced. The administration of tax is also reformed – most notably with a plan to reduce legacy litigation in indirect taxes breaking free from years of prolonged litigation and uncertainty. Specifically, on the direct tax front, the automated assessment process is notable in as much as interface with the administration is a huge point of pain for assesseees. Hopefully, the use of technology here will only increase.

So, what is the biggest take away from this budget – *it is not what it has delivered but what it promises to deliver!* It is rich on intent, identifies sufficient strategic points to jump start growth and has big bang impact opportunities which will drive the economy – start-up ecosystem, borrowing in global markets, FDI reform, tweaking customs duty to benefit industries of the future such as electric vehicles and solar energy to ‘Make in India’, deep reform in education policy and labour laws, further investment in ‘Bharat mala’ (highways), ‘Sagar mala’ and ‘Jal marg vikas’ (waterways – coastal and inland), the building of ‘one nation-one grid’. The agenda for the future is firmly in sight.

From a beneficiary perspective, we have been here before. The real impact will come from the implementation of the intent. The Modi government came back into power in the belief that they are the right government to deliver results. Even though the markets have fallen 400 points in the immediate aftermath of the budget – voters have to wait 5 years to deliver their verdict. Hopefully, in the interim the government delivers on their promise. India needs it.

As always, we hope you enjoy the analysis.

Till then, your feedback and suggestions are most welcome!

Best,



Suhail Nathani
Managing Partner
On behalf of Team ELP



Budget Highlights

Key Highlights (Direct Taxes)

- Corporates with turnover less than INR 400 crores in FY 2017-18 will be taxed at concessional rate of 25%.
- Surcharge increased for high income earning individuals having taxable income above INR 2 crores leading to effective tax rate increase for individuals having taxable income between INR 2 crores to INR 5 crores to 39% and individuals having taxable income above INR 5 crores increased to 42.74%.
- Gift by resident to non-residents will be income deemed to accrue or arise in India.
- Buy-back tax introduced on listed companies.
- Start-ups and investors not to be subjected to scrutiny in respect of valuation of share premiums.
- Losses of Category I and II AIF, other than business loss and other than to unit holders holding units for less than 12 months, allowed to be pass-through to the investors.
- Exemptions to certain transactions from applicability of Section 50CA and Section 56(2)(x) to be prescribed.
- Additional deduction of INR 1.5 lakh on interest paid on the loans taken for purchasing electric vehicles.
- Tax incentive to home buyers for affordable housing in the form of deduction of interest up to INR 1.5 lakh on loans taken for purchasing house of value not exceeding INR 45 lakhs.
- TDS of 2% to be made on cash withdrawal from a bank account exceeding INR 1 crore in a year to encourage digital payments.
- Additional incentives granted to IFSC as a step towards world class infrastructure.
- In case of demerger, Ind-AS compliant companies are exempted from the requirement of recording assets at book value to avail tax-neutrality

Key Highlights (Indirect Taxes)

- A dispute resolution-cum-amnesty scheme, called “The Sabka Vishwas Legacy Dispute Resolution Scheme, 2019” proposed with a view to reduce huge pending litigations in relation to pre-GST regime. The relief under the scheme varies from 40 percent to 70 percent of the tax dues. The scheme also provides relief from payment of interest, penalty and prosecution.
- Customs duty rationalized with the objective of incentivizing domestic value addition - Make in India, providing level playing field to domestic industry and to address the problem of duty inversion in certain sectors.
- Balance in electronic cash ledger now made transferable from one head to another head.
- Interest on delayed payment of GST to be charged only on cash component of the liability.
- National Appellate Authority for Advance Ruling proposed for deciding conflicting decisions of the Advance Ruling Authorities.

GST legislative changes

Central Goods and Services Tax Act, 2017

The following changes shall come into effect from a date to be notified

Composition Levy

- A new sub-section (2A) is proposed to be inserted in Section 10 of the CGST Act to bring in an alternative composition scheme for supplier of services or mixed supplies (not eligible for the earlier composition scheme) having an annual turnover in preceding FY of up to INR 50 lakhs. The composition rate will be as prescribed, but not exceeding 3% of the turnover in the State or turnover in Union Territory.
- Sub-section (2) to Section 10 is proposed to be amended in order to restrict casual taxable person and a non-resident taxable person from opting for the composition scheme.
- For the purpose of composition levy, services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover.
- For the purpose of computing the “aggregate turnover” to determine eligibility for the composition scheme, the value of supplies made by such person from the 1st April of a FY up to the date when he becomes liable for registration under the CGST Act has to be taken into account.
- Further, for determining the value of “turnover in a State or Union territory” to calculate tax payable, value of the supplies from 1st of April of a FY till the date when the taxpayer becomes liable for registration shall not be taken into account.

Registration related provisions

- A proviso and an explanation are proposed to be inserted in Section 22 of the CGST Act so as to provide powers to the Central Government at the request of the State and on the recommendations of the Council to increase the threshold exemption limit from INR 20 lakhs to such amount not exceeding INR 40 lakhs in case of a supplier who is engaged in exclusive supply of goods.
- Further, a person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.
- New sub-sections are proposed to be inserted in Section 25 of the CGST Act to make Aadhaar authentication mandatory for specified class of new taxpayers and to prescribe the manner in which certain class of registered taxpayers are required to undergo Aadhaar authentication.
- In case where Aadhaar number is not assigned, the Government would offer alternate and viable means of identification.
- Failure to undergo authorization will render the allotted registration invalid.

Furnishing returns, monthly and annual statement

- Section 39 of the CGST Act is proposed to be amended so as to allow the composition taxpayers to furnish annual return along with quarterly payment of taxes and other specified taxpayers may be given the option for quarterly or monthly furnishing of returns and payment of taxes under the proposed new return system.
- New provisos are proposed to be inserted in sub-section (1) of Section 44 of the CGST Act so as to empower the Commissioner to extend the due date for furnishing the annual return.
- New provisos are proposed to be inserted in sub-sections (4) and (5) of Section 52 of the CGST Act so as to empower the Commissioner to extend the due date for furnishing of monthly and annual statement by the person collecting tax at source.

Transfer of Input Tax Credit

- New sub-sections (10) and (11) are proposed to be inserted to Section 49 of the CGST Act to allow a registered person to transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the CGST Act to the electronic cash ledger for IGST, CGST, SGST, UTGST or cess, subject to prescribed conditions.
- Such transfer shall be deemed to be a refund from the electronic cash ledger under the CGST Act. Further, where any amount has been transferred to the electronic cash ledger under the CGST Act, the same shall be deemed to be deposited in the said ledger as provided in sub-section (1) to Section 49.
- A new Section 53A is being inserted in the CGST Act so as to provide for transfer of amount between Centre and State Government consequential to amendment in Section 49 of the CGST Act allowing transfer of an amount from one head to another head in the electronic cash ledger of the registered person.

ELP COMMENTS

The aforesaid amendment would enhance ease of doing business as the registered taxpayers would now be able to do away with the tedious process of claiming refund/ prolong utilization of the excess balance in electronic cash ledger. An assessee can transfer the excess balance to the electronic cash ledger of IGST, CGST, SGST, UTGST or cess.

Interest on delayed payment of tax

- New proviso is proposed to be inserted in sub-section (1) of Section 50 of the CGST Act so as to provide for charging interest only on the net cash tax liability, except in those cases where returns are filed subsequent to initiation of any proceedings under Section 73 or 74 of the CGST Act.

ELP COMMENTS

This will put to rest the ambiguity which exists as regards applicability of interest in case where there is sufficient credit balance, but the payment of tax is delayed. The Telangana High Court in the case of M/s Megha Engineering & Infrastructures Ltd. [TS-248-HC-2019(TEL and AP)-NT] had held that interest on delayed payment of tax was payable on gross tax liability including input tax credit.

Constitution of National Appellate Authority for Advance Ruling

- The National Appellate Authority for Advance Ruling is proposed to be constituted for hearing appeals against conflicting advance rulings pronounced on the same question by the Appellate Authorities of two or more States or Union territories. The authority shall be constituted on the recommendations of the Council, by way of a notification with effect from such date as may be specified therein.
- New Sections 101A, 101B and 101C are proposed to be inserted so as to provide for constitution, qualification, appointment, tenure, conditions of services of the National Appellate Authority for advance ruling.
- The composition of National Appellate Authority for Advance Ruling would be as under:
 - the President
 - a Technical Member (Centre)
 - a Technical Member (State)
- The National Appellate Authority shall pass an order (as far as possible) within a period of ninety days from the date of filing of the appeal.
- Applicants are required to file an appeal with the Authority within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the applicants, concerned officers and jurisdictional officers. The said time limit may be extended by thirty days. However, officers authorized by the Commissioner may file appeal within a period of ninety days from the date on which the ruling sought to be appealed against is communicated to the concerned officer or the jurisdictional officer. It is clarified that the

period of thirty days or ninety days shall be counted from the date of communication of the last of the conflicting rulings sought to be appealed against.

- Consequent to introduction of the National Appellate Authority, amendments have been proposed in the various provisions from Section 102 to 106 of the CGST Act so as to extend the applicability of the said provisions (regarding rectification of orders, powers and procedures of the Advance Ruling Authority and Appellate Authority, etc) to the National Appellate Authority.

ELP COMMENTS

This is a welcome move specifically in light of the numerous conflicting advance rulings passed by the Advance Ruling Authority of different States. This amendment will specifically resolve the dilemma of taxpayers as regards the uniformity of the tax position to be adopted qua similar operations across different States.

Anti-profiteering measure

- A new sub-section (3A) is proposed to be introduced to Section 171 of CGST Act in terms of which any person who is held to be guilty, shall be liable to a penalty equivalent to 10 % of the amount so profiteered if such amount is not deposited within thirty days of the date of passing of the order by the National Anti-Profiteering Authority.
- The expression “profiteered” is defined to mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both.

ELP COMMENTS

The GST Council in its 35th meeting held at New Delhi on June 21, 2019 extended the tenure of the National Anti – Profiteering Authority by two years. The aforesaid amendment further strengthens the Government objective to keep a check and curb the unfair profit-making activities by the businesses and ensures that the benefits of reduction or lower rates of taxes under the GST regime are passed on to the end consumers. From a Company’s standpoint, it is essential to have adequate documentation in place to substantiate compliance with the anti-profiteering provisions.

Other Amendments

- Notification No. 2/2017-Central Tax (Rate) dated the June 28, 2017 is being amended retrospectively so as to exempt “Uranium Ore Concentrate” from the levy of CGST w.e.f. July 1, 2017 to November 14, 2017. However, no refund shall be made if such tax has already been collected.
- As a measure of promoting less cash economy, a new Section 31A is proposed to be inserted in the CGST Act which will require specified class of registered persons to provide prescribed modes of electronic payment to the recipient of supply of goods or services or both made by such prescribed class and give option to such recipient to make payment accordingly.
- Section 54(8A) is proposed to be added to the CGST Act to specify that the Central Government may disburse the refund to the taxpayer in respect of the SGST as well.

Integrated Goods and Services Tax Act, 2017

- A new Section 17A is proposed to be inserted under the IGST Act, which will prescribe the manner and the time limit as per which the Government will transfer an amount, equal to the amount transferred to the electronic cash ledger of the State or Union territory, to the State tax account or Union territory tax account. This amendment is being made consequential to the amendment in Section 49 of the CGST Act allowing transfer of an amount from one head to another head in the electronic cash ledger of the registered person.
- Notification No. 2/2017-Integrated Tax (Rate) dated the June 28, 2017, is being amended retrospectively so as to exempt “Uranium Ore Concentrate” from the levy of IGST from w.e.f. July 1, 2017 to November 14, 2017.

Customs

Legislative changes

The proposed amendments shall come into force from the date on which the Finance Bill receives assent from the President of India

- Section 41 is proposed to be amended to include any person specified by Central Government, in addition to a person in charge of a conveyance, to be empowered to furnish the departure manifest (for vessel), export manifest (for aircraft) or export report (for vehicle), as the case may be
- New Chapter XIIB is proposed to be inserted to provide for mechanism of verification of any person to secure interest of revenue and to avoid incidences of smuggling
 - Identification to be linked with 'Aadhaar', or any other prescribed document/information.
 - Failure to comply with requirement of identification may result in suspension of
 - Clearance of imported/exported goods
 - Sanction of refund, drawback
 - Exemption from duty
 - Grant of license, registration
 - Any other benefit in relation to import or export, monetary or otherwise,
 - Section 157 is proposed to be amended to empower Central Government and Board to make rules in this regard
- The amendment proposed in Section 103 empowers a proper officer to screen or scan any person if he believes that goods liable for confiscation are secreted inside the body of such person
 - Prior approval of Assistant Commissioner/Deputy Commissioner of customs is necessary
 - Such screening/scanning can be conducted subject to such person's rights under any other law, including the necessity of obtaining his consent
 - A report needs to be forwarded to nearest magistrate if goods appear to be secreted inside the body
- In Section 104, the restriction on power of proper officer to arrest an offender only in India or within Indian Customs water are proposed to be done away with, this would empower the officer to arrest an offender even on the foreign soil
- Section 104 is also proposed to be amended to treat the following offences as cognizable and non-bailable:
 - Offences relating to fraudulently availing or attempting to avail the drawback benefit above INR 50 lakhs
 - Fraudulently obtaining and utilising an instrument for the purpose of Customs Act or FTP, where duty relatable to such utilisation of instrument exceeds INR 50 lakhs
- Amendment in Section 110 is proposed to prescribe following alternative to seizure, removal, transportation, storage of goods, documents and things, where the same is practically not possible
 - Release the goods based on undertaking that such goods, documents and things can only be dealt with prior permission of such officer
- Section 110 is also proposed to empower the proper officer, with the approval of the Commissioner of Customs, to freeze the bank account for a period of six months, which can further be extended by another six months by Principal Commissioner/Commissioner of Customs for reasons to be recorded in writing
- Section 110A is proposed to be amended to provisionally release bank account, pending adjudication, subject to furnishing bond and security as the adjudicating authority may require
- Insertion of Section 114AB proposes to impose penalty not exceeding face value of an instrument entailing FTP benefit which is obtained by fraud, collusion, wilful misstatement, or suppression of facts and utilised under the Customs Act:
 - For such wrongful utilisation of instrument exceeding INR 50 lakhs, a punishment of imprisonment of seven years with fine is also proposed under Section 135
- Penalty for contravention of any provisions for which no penalty is prescribed, proposed to be increased from maximum of INR 1 lakh to maximum of INR 4 lakhs
- Option to pay fine in lieu of confiscation as per Section 125, is made unavailable if proceedings under the Customs Act have already been concluded

- In Section 149, the discretionary powers of proper officer to amend a document presented in customs house (shipping bill, bill of entry, etc.), are subjected to form, manner, time limit and conditions to be prescribed
- Penalty leviable under sub-section 2 of Section 158 for contraventions of rules or regulations which the Central Government or Board is empowered to make, is proposed to be increased from maximum of INR fifty thousand to maximum of INR 2 lakhs
- Amendment in the relevant Notifications to carry out rationalisation of tariff entry i.e., “3823 11 00” in line with World Customs Organisation, retrospectively from July 1, 2017
- Amendment in Notification No. 86/2018-Customs dated December 31, 2018 to provide retrospective effect to the exemption of IGST and Compensation Cess on temporary imports of private road vehicles, with effect from July 1, 2017
- New sub-section (1A) is proposed to be inserted in Section 9 of CTA to authorise the Government, after due inquiry, to levy countervailing duty on such other articles which are imported by altering description or name or composition or country of origin or any other manner, of the article on which countervailing duty has been imposed originally
- Sub-section (1) of Section 9C of CTA is proposed to be substituted to allow filing an appeal to CESTAT for determination or review of effect of import of any article into India in such increased quantities and under such condition so as to cause or threatening to cause injury to domestic industry requiring imposition of safeguard duty

Tariff changes

Chapter wise changes in Basic Customs Duty, effective from July 06, 2019

Sr. No.	CTH	Description of Goods	Existing Rate	Revised Rate
1.	2612 1000	Uranium Ores for generation of nuclear power	2.5%	Nil
2.	2709 0000	Petroleum crude	Nil	INR 1 per tonne
3.	2710	Naphtha	5%	4%
4.	2804	Refrigerated Helium liquid used for manufacture of Preform of Silica	5%	Nil
5.	2812 and 7002	Germanium Tetra Chloride and Silica Tetra Chloride; Silica Tube and Silica Rods used for manufacture of Preform of Silica	10%	Nil
6.	2844 2000	Uranium and its compounds [except Sintered natural uranium dioxide, Sintered uranium dioxide pellets (U-235)] for generation of nuclear power	7.5%	Nil
7.	2903 1500	Ethylene dichloride (EDC)	2%	Nil
8.	2910 2000	Methyloxirane (propylenre oxide)	10%/7.5%	5%
9.	2915 70	All goods for use in the manufacture of soaps and oleochemicals	Nil	10%
10.	3822 0090	All goods other than diagnostic regents	20%	10%
11.	3824 9900	All goods other than binders for foundry moulds	17.5%	7.5%
12.	3823 1100 3823 1200 3823 1300 3823 1900	All goods for use in the manufacture of soaps and oleochemicals	Nil	30%
13.	3904	Polymers of vinyl chloride	7.5%	10%
14.	3918	Floor coverings of plastics, in rolls or in form of tiles; wall or ceilings of plastics	10%	15%
15.	3926 9091	All goods other than PU case, Sealing Gasket of cellular mobile phones	10%	15%
16.	3926 9099	All goods other than the following parts or sub-parts or accessories of cellular mobile phones, namely :- (i) Sealing Gaskets/Cases from PE, PP, EPS, PC and all other individual polymers or	10%	15%

Sr. No.	CTH	Description of Goods	Existing Rate	Revised Rate
		combination/combination of polymers (ii) SIM Socket/Other Mechanical items (Plastic) (iii) Conductive Cloth (iv) LCD Conductive Foam (v) LCD Foam (vi) BT Foam		
17.	4002 3100	Isobutene-isoprene (butyl) rubber (IIR)	5%	10%
18.	4002 3900	Chlorobutyl Rubber or bromobutyl Rubber	5%	10%
19.	56	Water blocking tape used for manufacture of telecommunication grade optical fiber cable or optical fiber cables	Nil	10%
20.	6802 1000, 6802 2110, 6802 2120, 6802 2190, 6802 9100, 6802 9200 2515 1220	Marble slabs	20%	40%
21.	6813	Friction material and articles thereof, not mounted, for brakes, for clutches or the like, with a basis of asbestos, of other mineral substances or of cellulose	10%	15%
22.	6905	Roofing tiles, chimney-pots, cowls, chimney liners, architectural ornaments and other ceramic constructional goods	10%	15%
23.	6907	Ceramic flags and paving, hearth or wall tiles; ceramic mosaic cubes and the like; finishing ceramics	10%	15%
24.	71	Gold dore bar, having gold content not exceeding 95%	9.35%	11.85%
25.	71	Silver dore bar having silver content not exceeding 95%	8.5%	11%
26.	71 or 98	(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger where the quantity does not exceed 1 Kg (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls	10%	12.5%
27.	71 or 98	Silver, in any form including ornaments, but excluding ornaments studded with stones or pearls, imported by the eligible passenger where the quantity does not exceed 10 Kg	10%	12.5%
28.	7106	Silver (including silver plated with gold or platinum), unwrought or in semi-manufactured forms, or in powder form	10%	12.5%
29.	7107 0000	Base metals clad with silver, not further - worked than semi-manufactured	10%	12.5%
30.	7108	Gold (including gold plated with platinum) unwrought or in semi-manufactured forms, or in powder form	10%	12.5%
31.	7109 0000	Base metals or silver, clad with gold, not further worked than semi-manufactured	10%	12.5%
32.	7110 11 or 7110 1900	Platinum	10%	12.5%

Sr. No.	CTH	Description of Goods	Existing Rate	Revised Rate
33.	7111 0000	Base metals, silver or gold, clad with - platinum, not further worked than semi manufactured	10%	12.5%
34.	7112	Waste and scrap of precious metal or of metal clad with precious metal	10%	12.5%
35.	7218 7224	Stainless steel in ignots or other alloy steel or other primary forms	5%	7.5%
36.	7225 1990	Magnesium Oxide (MgO) coated cold rolled steel coils for use in manufacture of cold rolled grain-oriented steel (CRGO) falling under 7225 1100	5%	2.5%
37.	7225	Following goods used for the manufacture of cold rolled grain-oriented steel (CRGO) steel falling under tariff item 7225 11 00: (i) hot rolled coils; (ii) cold-rolled Magnesium Oxide (MgO) coated and annealed steel; (iii) hot rolled annealed and pickled coils (iv) cold rolled full hard	5%	2.5%
38.	7226 9930	Amorphous alloy ribbon	10%	5%
39.	7229	Wires other than INVAR	5%	7.5%
40.	8105 2010	Cobalt mattes and other intermediary products of cobalt metallurgy	5%	2.5%
41.	8301 2000	Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, used for motor vehicles	10%	15%
42.	8302	Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat-racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal	10%	15%
43.	84, 85 or 90	Products mentioned in List 20 of the Notification No. 50/2017 – Customs dated June 30, 2017 such as Ferrite parts, microwave passive parts, fibre optics, special purpose optical fibres, plastic fibres etc.	Nil	Applicable Rate
44.	8415 9000	Indoor or outdoor units of split system air conditioner	10%	20%
45.	8421 8421 2300, 31 00, 39 20, 39 90	Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases -Oil or petrol-filters for internal combustion- engines, Intake air filters for internal combustion engines, Air purifiers or cleaners, Others	7.5%	10%
46.	8421 3920, 8421 3990	Catalytic converters	5%	10%
47.	8474 2010	Stone crushing plant required for construction of roads	Nil	Applicable tariff rate
48.	8504	Charger or adapter of Digital Video Recorder (DVR), Network Video Recorder (NVR), CCTV Camera, IP camera , Cellular Mobile Phones	10%	15%
49.	8512 8512 1000	Electrical lighting or signalling equipment (excluding articles of heading 8539), windscreen wipers, defrosters and demisters, of a kind used for cycles or motor vehicles -Lighting or visual signalling equipment of a kind used on bicycles	10%	15%

Sr. No.	CTH	Description of Goods	Existing Rate	Revised Rate
	8512 2010	-Head lamps, tail lamps, stop lamps, side lamps and blinkers	10%	15%
	8512 2020	-Other automobile lighting equipment	10%	15%
	8512 2090	-Other	7.5%	15%
	8512 3010	-Horns	10%	15%
	8512 3090	-Other	7.5%	15%
	8512 4000	-Windscreen wipers, defrosters and demisters	10%	15%
	8512 9000	-Parts	7.5%	10%
50.	8518	Microphones and stands therefor: loudspeakers, headphones and earphones, and sets consisting of a microphone and one or more loudspeakers: audio-frequency electric amplifiers: electric sound amplifier sets		
	8518 2100	-Single loudspeakers, mounted in their enclosures	10%	15%
	8518 2200	-Multiple loudspeakers, mounted in the same enclosure	10%	15%
51.	8518 3000`	Parts of line telephone handsets	15%	Nil
52.	8517 7090	Connectors for use in manufacture of cellular mobile phones	Nil	10%
53.	8521 9090	Other Video recording or reproducing apparatus, whether or not incorporating a video tuner	15%	20%
54.	8525 8010	-Television Cameras	15%	20%
	8525 8020	-Digital cameras	15%	20%
	8525 8030	-video camera recorders	15%	20%
	8525 8090	-Other	15%	20%
55.	8539 1000	-Sealed beam lamp units	10%	15%
	8539 2120	-Other for automobiles	10%	15%
	8539 2940	-Other for automobile lamps	10%	15%
56.	8702 8704	Import of Completely Built Unit of Motor Vehicles	25%	30%
57.	8706	Chassis fitted with engines, for the motor vehicles of Chapter Heading 8701 to 8705	10%	15%
58.	8707	Bodies (including cabs), for the motor vehicles of Chapter Heading 8701 to 8705	10%	15%
59.	9001 1000	Optical fibres and optical fibre bundles; Optical fibre cables other than those of heading 8544; sheets and plates of polarising material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked Optical fibres, optical fibres bundles and cables	10%	15%
60.	Any Chapter	Microphones, receivers, speakers, sim sockets for use in manufacture of printed circuit board assembly of cellular mobile phone	Nil	15%
61.	Any Chapter	E-Drive Assembly, On board charger, E compressor and Charging gun imported for manufacture of Electrically Operated Vehicles	Applicable Rate	Nil

- Specified defence equipment and their parts imported by the Ministry of Defence, Government of India or the defence forces are exempt from BCD up to June 30, 2024
- Exemption from payment of BCD on capital goods required for manufacture of following items has been withdrawn:
 - CDT/Cathode Ray Tubes, glass shells/parts of cathode ray tubes/CDT, CD/CD-R/DVD/DVD-R
 - Ferrites

- Deflection components, CRT monitors/CTV's, Cathode ray tubes, parts of cathode ray tubes
- Plasma display panel
- Exemption has been extended to specified capital goods imported for manufacture of following goods:
 - Flexible printed circuit board assembly
 - Lithium Ion Cell for use in manufacture of Battery of Mobile handsets, Speaker and receivers of mobile handsets
 - Data cables, Optical Fiber/ Optical Fiber Cables
 - Printed Circuit Boards, Printed Circuit Board Assembly
 - Charger/adaptor, LCD module, Camera module of mobile handsets
 - Telecom equipment falling under Chapter Heading 8517
 - Set top boxes
 - Wound components
 - Compact camera module, Display module

Changes in Road and Infrastructure Cess on imported goods

Sr. No.	CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)
1.	2710	Motor Spirit commonly known as petrol	INR 8/- per liter	INR 9/- per litre
2.	2710	High speed diesel oil	INR 8/- per liter	INR 9/- per litre

Other amendments

- The importer claiming exemption from payment of BCD on import of specified goods required for manufacture of Hybrid Motor Vehicles needs to follow the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.
- Specific capital goods imported for manufacture of semi-conductors were exempt from BCD as per the Notification No. 25/1998 – Customs dated June 2, 1998. However, Chapter Heading 8486 also deals with capital goods required for manufacture of semi-conductor products wherein BCD was 7.5%. By amending this Notification, they have clarified that the said Chapter Heading [i.e. 8486] is also exempt from BCD. This amendment is clarificatory in nature.

Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019

General

- Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (**Amnesty Scheme**) for faster resolution of pre-GST regime litigation, has been announced
- The Amnesty Scheme covers in its scope matters pertaining to central excise duty and service tax along with (26) other enactments which have been merged into GST
- The proposal also empowers the Government to notify additional enactments for coverage under the Amnesty Scheme

ELP COMMENTS

The validity of Amnesty Schemes has been challenged in the past on the ground that the same are detrimental to and against the interest of the honest taxpayer, vis-a-vis the assesseees who have evaded payment of tax. The Supreme Court in the case of All India Federation of Tax Practitioners and Another vs. Union of India and Others [1998 (231) ITR (24)] had dismissed the said challenge.

An interesting facet, however, is the size of relief in the present Amnesty Scheme. It outshines almost all the previous schemes and hence, a reconsideration of the legal validity of Amnesty Scheme by the Supreme Court cannot be ruled out.

Relief under the Amnesty Scheme

- The relief available under the Amnesty Scheme shall be computed based on the amount of 'tax dues' determined as per the table below:

Stage of Dispute	Tax Dues (i.e. Amount for resolution)
Appeal(s) arising out of an order (out of adjudication and/or appellate proceedings)	Total Tax being disputed in all appeal(s) put together (whether by the taxpayer or Revenue) against a given order
SCN received	Tax stated to be payable as per the notice
Enquiry or Investigation or Audit	Tax quantified in such enquiry or investigation or audit
Arrears, defined as liabilities admitted in return but unpaid or confirmed in appellate proceedings, which cannot be appealed against due to time limitation	Tax in arrears

**It may be noted, in this context, that the relevant stage of dispute or pendency thereof would be examined as of June 30, 2019 for eligibility under the Amnesty Scheme.*

ELP COMMENTS

It appears that the intent of the Amnesty Scheme, unless clarified otherwise, is not to allow foreclosure of any eligible proceedings partially.

There may be instances of demand in an order being set aside partially by lower appellate authorities/forums. Subsequently both, the assessee as well as the tax department may have pursued appeals to serve their respective interests. A bare reading and persual of the Amnesty Scheme suggests that to seek relief thereunder, the assessee will have to consider both/all appeals so filed (including that by the department), which concerns an issue already held in its favour by the lower level appellate authority. Further, in case of a SCN with multiple issues (say few issues are covered by favourable rulings and others are having high risk exposure); ambiguities loom on the issue of whether the assessee can avail the Amnesty Scheme partially only in respect of part of the SCN having high risk exposure.

▪ Determination of Tax relief granted under the Amnesty Scheme

Where Tax Dues Relatable to	Size of Tax Dues	Tax Relief*
A SCN or one or more appeals arising out of such notice	More than INR 0.50 crore	50% of the Tax Dues
	INR 0.50 crore or less	70% of the Tax Dues
SCN for late fee or penalty only with underlying tax/duty demand either being fully paid already or being NIL	Any	Entire amount of late fee and/or penalty, as the case may be
Arrears (as reported in the return)	More than INR 0.50 crore	40% of the Tax Dues
	INR 0.50 crore or less	60% of the Tax Dues
Arrears – others	More than INR 0.50 crore	40% of the Tax Dues
	INR 0.50 crore or less	60% of the Tax Dues
Enquiry or Investigation or Audit	More than INR 0.50 crore	50% of the Tax Dues
	INR 0.50 crore or less	70% of the Tax Dues

**Any amount already paid by the declarant as deposit or pre-deposit in appellate proceedings or in course of enquiry/investigation or audit would be adjustable towards sums payable by the declarant. However, where such previously paid amounts exceed the amount payable after considering the tax relief, no refund of such amount would be allowed.*

ELP COMMENTS

There may be instances, where personal penalties have been imposed on the personnel/people concerning matters of tax demands. Whether such proceedings would be eligible under the Amnesty Scheme is unclear; and if at all eligible, how would the scheme position itself vis-à-vis the principal tax dues, remains to be seen.

Eligibility Criterion

- All persons are eligible except:
- Whose appeal or proceedings against a SCN have been heard finally on or before June 30, 2019
 - Who have been subjected to any enquiry/investigation/audit but the disputed amount, in such proceedings, has not been quantified on or before June 30, 2019
 - Who have been convicted for any offence punishable under the provisions of the enactment concerning the matter for which amnesty/relief is intended
 - Who have been issued a SCN for a refund or an erroneous refund
 - Who have filed an application for settlement of case before the settlement commission under the concerned enactment
 - Persons seeking to make declarations in relation to excisable products of tobacco or tobacco substitutes set forth in Fourth Schedule to Central Excise Act, 1944

ELP COMMENTS

It is noticed that the matters finally heard by adjudication or appellate authorities/forum have been excluded from purview of the Amnesty Scheme. This tantamount to professed hardship and disadvantage to relevant matters owing to their staging in the appellate proceedings.

Procedural Aspects

- Declaration for seeking relief shall be made electronically in the prescribed manner
- All declarations shall be examined by a designated committee, to be constituted, for the purpose of finalizing the amounts payable by the declarant to avail the relief under the Amnesty Scheme
- Where the designated committee's estimates of the amount payable exceeds the estimates made by the declarant, then the declarant would be given an opportunity of being heard before the amount payable is finalized
- The designated committee, upon finalizing the amounts payable by the declarant, would issue a statement in this regard
- Adjudication/appellate proceedings concerning the matters covered by the declaration up to the Tribunal stage would be deemed withdrawn; while proceedings pending before the High Court and Supreme Court will have to be withdrawn through a written application in this regard
- The relief under Amnesty Scheme would be confirmed by way issuance of a discharge certificate once the declarant evidences (a) payment of amount as per designated committee's statement and (b) withdrawal of proceedings before the High Court and the Supreme Court
- Timelines for all actionable items qua designated committee and/or the declarant have also been laid down
- Any amount paid under the Amnesty Scheme will neither be refunded, nor can be recovered in the form of input tax credit or in any manner
- The tax dues cannot be paid through utilization of input tax credit
- Other administrative and procedural contours of the Amnesty Scheme including without limitation start and end date of the scheme, manner of declaration and verification, constitution and functioning of the designated committee, etc would be prescribed in due course

ELP COMMENTS

On some aspects of the Amnesty Scheme, due to absence of the appellate remedy, the assessee may have to seek intervention of the jurisdictional High Courts by way of a writ petition.

Effect of Issuance of the Discharge Certificate

- No further payment of any amount by way of tax/duty, interest and penalty
- No further proceedings and prosecution
- No re-opening of the matter, in any manner
- However, the above consequences would be limited cumulatively to matters and time period covered by the declaration under the Amnesty Scheme

Miscellaneous

- The scheme also discusses scenarios of voluntary disclosures. However, the scope of the scheme qua voluntary disclosures and its overlap over other items need to be re-looked due to ambiguity and uncertainty. Sans this aspect, at an in-principle level, for voluntary disclosures there would not be any tax relief but other benefits under the Amnesty Scheme may be available. Also, a person making a voluntary disclosure would not be eligible for Amnesty Scheme:
 - after being subjected to any enquiry, investigation or audit or
 - having indicated the amount under a filed return but has not paid it

ELP COMMENTS

The overall paraphrasing of the Amnesty Scheme currently indicates few potential loose ends that need to be stitched together. This may hopefully be addressed during passage of proposals in the Finance Bill, 2019 as per the constitutional process.

Central Excise

Tariff changes

- The BED on Crude Petroleum has been increased from 'NIL' to 'INR 1 per tonne'. However, crude petroleum oil produced in the specified oil fields under production sharing contracts or in the exploration blocks offered under the NELP through international competitive bidding has been exempted [vide Notification No.6/2019-CE, dated July 6, 2019].
- Vide Notification Nos. 2/2019-CE and 3/2019-CE dated July 7, 2019 the Excise duty on the following tobacco products has been amended:

Sr. No.	CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)
1	2402 20 10, 20, 30, 40 and 50	Filter cigarettes of different lengths	Nil	INR 5 per thousand
2	2402 20 90	Other	Nil	INR 10 per thousand
3	2402 90 10	Cigarettes of tobacco substitutes	Nil	INR 5 per thousand
4	2403 11 10	Hookah or gudaku tobacco	Nil	0.5%
5	2403 19 10	Smoking mixtures for pipes and cigarettes	Nil	1%
6	2403 19 21	Other than paper rolled biris, manufactured without the aid of machine	Nil	5 paisa per thousand
7	2403 19 29	Other	Nil	10 paisa per thousand
8	2403 19 90	Other	Nil	0.5%
9	2403 91 00, 10, 20, 30, 40, 50, 60 and 90	Other tobacco preparation	Nil	0.5%

- Amendments have been made to the **SAED** and **RIC** applicable on motor spirit [petrol] and high speed diesel oil falling under Chapter 27 (vide Notification Nos. 4/2019-CE and 5/2019-CE, dated July 6, 2019). Accordingly, the effective rate of duty on these products is as under:

Description of goods	Duty rates up to 05.07.2019 (INR per litre)				Duty rates w.e.f. 06.07.2019 (INR per litre)			
	BED	SAED	RIC	Total	BED	SAED	RIC	Total
Petrol (unbranded)	2.98	7	8	17.98	2.98	8	9	19.98
Petrol (branded)	4.16	7	8	19.16	4.16	8	9	21.16
Diesel (unbranded)	4.83	1	8	13.83	4.83	2	9	15.83
Diesel (branded)	7.19	1	8	16.19	7.19	2	9	18.19

Service tax

Retrospective exemption to services by way of grant of liquor license

- Exemption from service tax is proposed to be granted to services provided or agreed to be provided by State Government(s) by way of grant of liquor license for consideration in the form of license fee or application fee. The exemption is proposed retrospectively for the period commencing from April 1, 2016 upto June 30, 2017.
- A refund of service tax already paid for the said period is proposed to be permitted provided that the application for such refund is made within six months from the date on which the Finance Bill receives Presidential assent.

ELP COMMENTS

This is a welcome move to address long-standing request from the alcoholic beverages industry.

The alcohol trade currently pays multiple levies, fees and charges that may differ from State to State. Irrespective of the name given to them by respective States, in essence, these levies are in the nature of taxes and intended to regulate the alcohol sector. When services by G2B were brought under the purview of service tax w.e.f. April 1, 2016, the Department had raised tax demands in relation to various fees paid to State Government.

It is however noteworthy that the proposed retrospective exemption and refund is only for services by way of grant of liquor licence. Given the language employed, demands on other fees (example: label fees, etc.) may still be sustained.

Retrospective exemption from service tax to long-term courses provided by Indian Institute of Management

- Following specified educational programmes (excluding Executive Development Programme) provided by IIMs to the students are proposed to be exempted from service tax for the period July 1, 2003 to March 31, 2016:
 - 2-year full time Post Graduate Diploma in Management, to which admissions are made on the basis of CAT
 - Fellow programme in Management
 - 5-year integrated programme in Management
- A refund of service tax already paid for the said period is proposed to be permitted provided that the application for such refund is made within six months from the date on which the Finance Bill receives Presidential assent.

ELP COMMENTS

Prior to exemption being granted *vide* Notification 9/2016-S.T. dated March 1, 2016, the taxability of long-term courses offered by IIMs has been contentious issue and several service tax demands in this regard have been raised for the earlier period.

The Hon'ble Ahmedabad Tribunal in *M/s Indian Institute of Management Vs C.S.T.-Service Tax (CESTAT Ahmedabad) [Appeal No. ST/10334-10335/2018-DB]* had recently quashed the service tax demands on long term courses of IIM under the category of commercial training and coaching service for the period 2009-10 to 2014-15.

The issue is sought to be put to rest by the Government *vide* the proposal retrospective exemption from service tax.

Retrospective exemption from service tax to long term lease of plots for infrastructure development for financial business

- A retrospective exemption from service tax is proposed to be granted to upfront amount (*called as premium, salami, cost, price, development charges or by any other name*) paid for grant of long-term lease of plots (thirty years or more) for development of infrastructure for financial business.

- The exemption is proposed to be granted to services provided by the State Government or Industrial Development Corporations or Undertakings or by any other entity having 50% or more ownership of the Central or State Government or Union territory, directly or through an entity which is wholly owned by such Governments, to the developers in the industrial or financial business area.
- The exemption is proposed for the period from October 1, 2013 to June 30, 2017.
- A refund of service tax already paid for the said period is proposed to be permitted provided that the application for such refund is made within six months from the date on which the Finance Bill receives Presidential assent.

ELP COMMENTS

The proposed amendment seeking to exempt long term lease of plots for development of infrastructure for financial business appears to be focused on IFSC.

Earlier, *vide* Notification No. 41/2016-S.T., dated September 9, 2016, exemption from service tax was granted to long term lease of industrial plots to Industrial Units.

It is also noteworthy that the taxability of long-term lease of property has been a matter of litigation in the recent past. The Hon'ble Allahabad High Court in *Greater Noida Industrial Dev. Authority Vs. Commr. Of Cus., C. EX. 2015 (40) S.T.R. 95 (All.)* had held that long-term leases of industrial plots are liable to service tax.

Direct tax

Income tax rates

For individuals

No changes have been proposed in the rate of tax. Accordingly, the rate of tax as applicable for AY 2020-21 are as under:

Income (INR)	Existing and Proposed Rates (%)		
	Individuals (Age less than 60 years)	Senior Citizens (Age more than 60 years but less than 80 years)	Super Senior Citizen (Age more than 80 years)
0 - 2,50,000	NIL	NIL	NIL
2,50,001 - 3,00,000	5	NIL	NIL
3,00,001 - 5,00,000	5	5	NIL
5,00,001 - 10,00,000	20	20	20
10,00,001 and above	30	30	30

Rebate, Surcharge & Cess

Sr. No.	Particulars	Existing	Proposed
1	Rebate	<ul style="list-style-type: none"> INR 12,500 – If total income does not exceed INR 5 lakhs 	
2	Surcharge	<ul style="list-style-type: none"> 10% - If total income > INR 50 lakh, but ≤ INR 1 crore 15% - If total income > INR 1 crore 	<ul style="list-style-type: none"> 10% - If total income > INR 50 lakh, but ≤ INR 1 crore 15% - If total income > INR 1 crore, but ≤ INR 2 crore 25% - If total income > INR 2 crore, but ≤ INR 5 crore 37% - If total income > INR 5 crore
3	Cess - Health and Education cess	<ul style="list-style-type: none"> 4% 	<ul style="list-style-type: none"> 4%
4	AMT (including surcharge and cess)	<ul style="list-style-type: none"> 19.24% - If adjusted total income > INR 20 lakh, but ≤ INR 50 lakh 21.16% - If adjusted total income > INR 50 lakh, but ≤ INR 1 crore 22.13% - If adjusted total income > INR 1 crore 	<ul style="list-style-type: none"> 19.24% - If adjusted total income > INR 20 lakh, but ≤ INR 50 lakh 21.16% - If adjusted total income > INR 50 lakh, but ≤ INR 1 crore 22.13% - If adjusted total income > INR 1 crore, but ≤ INR 2 crore 24.05% - If adjusted total income > INR 2 crore, but ≤ INR 5 crore 26.36% - If adjusted total income > INR 5 crore

In view of the proposed amendment, below is a comparative summary of the effective tax rate applicable in case of an individual under the following scenarios:

Particulars	Existing	Proposed		
	Total Income > INR 1 crore	Total Income > INR 1 crore, but ≤ INR 2 crore	Total Income > INR 2 crore, but ≤ INR 5 crore	Total Income > INR 5 crore
Basic tax rate	30	30	30	30
Add: Surcharge	4.5 (i.e. 15%)	4.5 (i.e. 15%)	7.5 (i.e. 25%)	11.1 (i.e. 37%)
Add: Health & Education Cess (@4%)	1.38	1.38	1.5	1.64
Effective rate of tax	35.88%	35.88%	39.00%	42.74%

Further, below is the comparative chart summarizing the tax liability in case of an individual under the following scenarios:

Particulars	Existing	Proposed	Existing	Proposed	Existing	Proposed
	Total Income > INR 1 crore, but ≤ INR 2 crore	Total Income > INR 1 crore, but ≤ INR 2 crore	Total Income > INR 2 crore, but ≤ INR 5 crore	Total Income > INR 2 crore, but ≤ INR 5 crore	Total Income > INR 5 crore	Total Income > INR 5 crore
Total Income (assumed)	2,00,00,000	2,00,00,000	4,00,00,000	4,00,00,000	6,00,00,000	6,00,00,000
Total Tax payable (as per slab rates)	58,12,500	58,12,500	1,18,12,500	1,18,12,500	1,78,12,500	1,78,12,500
Add: Surcharge	8,71,875	8,71,875	17,71,875	29,53,125	26,71,875	65,90,625
Add: Health & Education Cess (@4%)	2,67,375	2,67,375	5,43,375	5,90,625	8,19,375	9,76,125
Total tax payable	69,51,750	69,51,750	1,41,27,750	1,53,56,250	2,13,03,750	2,53,79,250
Effective tax rate (i.e. total tax payable/ total income)	34.76%	34.76%	35.32%	38.39%	35.51%	42.30%

ELP COMMENTS

Government had a reduced fiscal space mainly due to its objective to support social welfare schemes as well as lower than expected revenue mop-up (especially, on the front of indirect taxes). To increase the tax collection, the Government had various options such as introducing inheritance tax, increasing cess on higher income levels, increasing capital gains tax rate etc.

In her maiden budget, the Finance Minister increased the surcharge for the individual taxpayers earning income more than INR 2 crore. Increase in surcharge have been commonly been resorted to in past as well by the former Finance Minister's to raise the revenue collection. Generally, increase in surcharge is termed as a better measure, as it quickly raises the revenue without inviting public ire.

However, as witnessed in the past, having very high levels of taxation proves to be counter-intuitive and reduces incentive for earning higher income.

For Companies, Firms, LLP

Sr. No.	Description	Existing rates (%) (Including surcharge & Cess)			Proposed rates (%) (Including surcharge & Cess)		
		Net income ≤ INR 1 crore	Net Income > INR 1 crore, but ≤ INR 10 crore	Net income > INR 10 crore	Net income ≤ INR 1 crore	Net Income > INR 1 crore, but ≤ INR 10 crore	Net income > INR 10 crore
1	Turnover or gross receipts in previous year ≤ INR 250 crore	26.00	27.82	29.12	26.00	27.82	29.12
	Turnover or gross receipts in previous year > INR 250 crore, but ≤ INR 400 crore	31.20	33.38	34.94	26.00	27.82	29.12
	Turnover or gross receipts in previous year > INR 400 crore	31.20	33.38	34.94	31.20	33.38	34.94
2	Covered under Section 115BA	26.00	27.82	29.12	26.00	27.82	29.12
3	MAT under Section 115JB (Rate to be applied on book profits)	19.24	20.59	21.55	19.24	20.59	21.55

4	BBT under Section 115QA	23.296			23.296		
5	DDT under Section 115-O (without grossing up)	17.472			17.472		
(B)	Foreign Companies	Net income ≤ INR 1 crore	Net Income > INR 1 crore, but ≤ INR 10 crore	Net income > INR 10 crore	Net income ≤ INR 1 crore	Net Income > INR 1 crore, but ≤ INR 10 crore	Net income > INR 10 crore
1	Regular tax	41.60	42.43	43.68	41.60	42.43	43.68
(C)	Firms and LLP	Net income ≤ INR 1 crore		Net income > INR 1 crore	Net income ≤ INR 1 crore		Net income > INR 1 crore
1	Regular tax	31.2		34.944	31.2		34.944
		Adjusted total income ≤ INR 1 crore		Adjusted total income > INR 1 crore	Adjusted total income ≤ INR 1 crore		Adjusted total income > INR 1 crore
2	AMT	19.24		21.55	19.24		21.55

Surcharge and Cess

Particulars	Existing & Proposed
For Domestic companies	<ul style="list-style-type: none"> ▪ NIL - If total income ≤ INR 1 crore ▪ 7% - If total income > INR 1 crore, but ≤ INR 10 crore ▪ 12% - If total income > INR 10 crore
For Foreign companies	<ul style="list-style-type: none"> ▪ NIL - If total income ≤ INR 1 crore ▪ 2% - If total income > INR 1 crore, but ≤ INR 10 crore ▪ 5% - If total income > INR 10 crore
For Firms and LLP	<ul style="list-style-type: none"> ▪ 12% - If total income > INR 1 crore
Cess - Health and Education cess	<ul style="list-style-type: none"> ▪ 4%

ELP COMMENTS

In stark contrast to expectations of India Inc. to extend the concessional tax rate of 25% to all, the proposal merely raised the turnover threshold from INR 250 crore to INR 400 crore. With this the benefit shall now be transmitted to approx 99.3% of the corporate tax-payers.

No further rate rationalization, for remaining corporates, is currently in sight leaving India's corporate tax rate much higher in comparison to that of developed economies like Singapore, UK and USA.

Capital assets & capital gains**Amendment to Section 50CA**

As per Section 50CA, where the consideration received or accruing as a result of the transfer of a capital asset, being share of a company other than a quoted share, is less than the FMV of such share determined in the prescribed manner, the value so determined shall, for the purposes of computing capital gains, be deemed to be the full value of consideration received or accruing as a result of such transfer.

It is proposed to insert a proviso stating that the provisions of Section 50CA shall not apply to transfers by such class of persons and subject to such conditions as may be prescribed.

The above amendment will take effect, from April 1, 2020 and will apply from AY 2020-21 onwards.

ELP COMMENTS

The provisions of Section 50CA of the IT Act, introduced vide Finance Act, 2017, deemed the FMV of the unquoted shares, as the full value of the consideration. The insertion of the above section caused issues and hardships in genuine cases, wherein the sale consideration was less than FMV of the shares.

Further, the above section caused double whammy, since as per Section 56(2)(x) of the IT Act, any shares received below the FMV is taxable in the hands of the buyer.

The proposal to carve out exceptions from applicability of the said mechanism shall accord relief in certain cases. These exceptions, however, have not yet been unveiled.

Amendment to Section 54GB

Section 54GB of the IT Act provides for roll over benefit in respect of capital gains arising from the transfer of a long-term capital asset, being a residential property owned by an eligible assessee, subject to certain restrictions. In order to incentivise investment in eligible start-ups, it is proposed that:

- Sunset period for transfer of residential property for investment in eligible start-ups is being extended from March 31, 2019 to March 31, 2021
- Minimum shareholding or voting rights requirement reduced from 50% to 25%
- Period of restriction on transfer of new asset, being computer or computer software, reduced from five years to three years

This amendment will take effect, from April 1, 2020 and will apply from AY 2020-21 onwards.

ELP COMMENTS

Union Government has been promoting start-ups and have launched various programmes such as Start-up India, Digital India amongst others. Through such initiatives, more than 19,000 start-ups have been registered with Start-up India programme.

As a part of the above initiative, the benefit of exemption under Section 54GB of the IT Act was introduced for the start-ups up to March 31, 2019 vide Finance Act, 2017. Extending the sunset period and relaxing other related conditions shall aid greater transmission of the exemption benefit. This reinforces Government's commitment to promote interest of start-ups.

Income from other sources

Deemed accrual of gift made to a person outside India

Section 9 of the IT Act is proposed to be amended to provide that income as referred to in Section 2(24)(xviii) of the IT Act i.e. any sum of money or value of any property situated in India as referred to in Section 56(2)(x) of the IT Act transferred on or after July 5, 2019 by a person resident in India to a person non-resident in India shall be deemed to accrue or arise in India to such non-resident.

This amendment will take effect from April 1, 2020 and will apply from AY 2020-21 onwards.

ELP COMMENTS

Currently, receipt of money or property either without consideration or for a consideration which is less than FMV is taxable in the hands of the recipient under Section 56(2)(x) of the IT Act.

In order for a non-resident to be taxable in India, income should either be received or deemed to be received or accrued or arising or deemed to accrue or arise in India.

Considering that income arising from such receipt of money or property was not covered within ambit of the existing provisions and therefore, an issue had arisen on the taxability of such income in the hands of the non-resident. With this proposal, transfer of money or property by a resident to a non-resident as a gift or for a consideration which is less than FMV shall be income deemed to accrue or arise in India and accordingly taxable in the hands of the non-resident.

The proposed amendment restricts its applicability to only receipts from residents and not from non-residents, potentially indicating that any gift of any property situated in India between two non-residents may not be liable to tax in India.

The taxability of such non-residents is subject to the applicable DTAA i.e. Article pertaining to "other income" will have to be referred to determine the taxability.

Amendment to Section 56(2)(viib)

The existing provisions of Section 56 of the IT Act provide that where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares exceeding the FMV of the shares shall be charged to tax.

However, exemption from this provision has been provided for the consideration received by a venture capital undertaking from a venture capital company or a venture capital fund for issue of shares.

Currently the benefit of exemption is available to Category I AIF. With a view to facilitate venture capital undertakings to receive funds from Category II AIF, it has been proposed to amend the said section to extend this exemption to fund received by venture capital undertakings from Category II AIF as well.

ELP COMMENTS

Over the past few years, income-tax authorities have challenged the high valuation of the start-ups and have tried to tax the share premium received on issue of shares. Such action had witnessed several concerns being raised from the start-ups and accordingly, various representations were made (against the same) to the Government.

Taking the representations into consideration, the Government had widened the definition of start-ups and eased the process as well as conditions for obtaining exemption from angel tax. As a result, more than 650 start-ups have availed exemption from angel tax. In continuation with the intent of the Government to promote the start-ups, the Finance Minister has proposed to exempt the investments by Category II AIF from the purview of angel tax.

Further, the Finance Minister has assured that the funds raised by the start-ups will not be subject to "scrutiny" by the income-tax authorities. Additionally, a separate mechanism is proposed to be set-up for e-verification of the investor and source of funds. Accordingly, the income-tax authorities can no longer challenge or reject the valuation of the share premium arrived by the start-ups.

Amendment to Section 56(2)(x)

The existing provisions of the Section 56(2)(x) of the IT Act provide for chargeability of income in cases of receipt of money or specified property for no or inadequate consideration.

A new clause (XI) is proposed to be inserted in the proviso to Section 56(2)(x), to provide that any sum of money or any property received from such class of persons and subject to such conditions, as may be provided by rules shall not be the income of such persons.

This amendment will take effect, from April 1, 2020 and will apply from AY 2020-21 onwards.

Income not forming part of total income

Amendment to Section 10

Interest income earned, by non-resident or foreign company, on money borrowed from outside India

Clause 4C has been inserted, whereby interest income payable to non-resident or foreign company by any Indian company or business trust in respect of money borrowed from a source outside India by way of issuance of rupee denominated bonds (referred under clause (ia) of 194LC(2) of IT Act), during the period beginning from September 17, 2018 upto March 31, 2019, has been exempted.

This amendment will take effect from April 1, 2019 and will apply from AY 2019-20 onwards.

ELP COMMENTS

The aforesaid amendment is with a view to incentivise low cost foreign borrowings through off-shore rupee denominated bond

The existing provisions of Section 194LC of the IT Act provide that the interest income payable to a non-resident by a specified company on borrowings made by it in foreign currency from sources outside India under a loan agreement or by way of issue of any long-term bond including long-term infrastructure bond, or rupee denominated bond shall be eligible for TDS at a concessional rate of five per cent

However, the press release dated September 17, 2018 inter-alia announced that interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of rupee denominated bonds issued outside India during the period from September 17, 2018 to March 31, 2019 shall be exempt from tax. Consequently, no tax was required to be deducted on the payment of interest in respect of the said bond

The exemption announced through the said press release is now proposed to be incorporated in the law by amending Section 10 of the IT Act

Withdrawal from National Pension System Trust

Clause 12A has been amended to state that, any payment from National Pension System Trust to an employee, on closure of his account or opting out of scheme referred under Section 80CCD, to the extent it does not exceed 60% of total amount payable, shall be exempted.

This amendment will take effect from April 1, 2020 and will apply from AY 2020-21 onwards.

ELP COMMENTS

With a view to enable the pensioner to have more disposable funds, it is proposed to amend the said section to increase the exemption from 40% to 60% of the total amount payable to the person at the time of closure or his opting out of the scheme.

Deductions

Amendment to Section 80C of the IT Act

It is proposed to amend Section 80C to include contributions made by employees of Central Government to a specific account of pension scheme upon fulfilment of the following conditions:

- The contribution should be for a fixed period of not less than three years; and
- The scheme should be in accordance with the notification issued by the Central Government in this regard

The specified account of pension scheme has been defined to mean an additional account referred to in sub-section (3) of Section 20 of the Pension Fund Regulatory and Development Authority Act, 2013 (i.e. Tier-II account of the pension scheme); and

This amendment will take effect from April 1, 2020 and will apply from AY 2020-21 onwards.

Amendment to Section 80CCD

It has been proposed that the employees of the Central Government be allowed to claim a deduction upto 14% of their salary in respect of any contribution made by the Central Government to the pension scheme.

Other employees (i.e. apart from the Central Government employees) shall continue to be eligible to claim deduction of only 10% of their salary in the previous year towards the employer contribution to the pension scheme.

This amendment will take effect from April 1, 2020 and will apply from AY 2020-21 onwards.

Deduction in respect of interest on loan taken for residential house property

It is proposed to introduce a new Section 80EEA under IT Act which will enable an individual assessee to claim a deduction of interest upto INR 1.50 lakhs on loan taken from any financial institution for the purchase of a residential house property, subject to fulfilment of the following conditions:

- Loan is sanctioned between April 1, 2019 to March 31, 2020
- Loan is availed for purchase of a residential house property only
- Stamp duty value of the residential house property should not exceed INR 45 lakhs
- The assessee does not own any other residential house property on the date of sanction of the loan
- No other deduction is claimed in respect of such interest under any other section of the IT Act

This amendment will take effect from April 1, 2020 and will apply from AY 2020-21 onwards

ELP COMMENTS

The above benefit aims to provide an impetus to the 'Housing for All' initiative of the Government. Such deduction will reduce the effective cost of financing for a home buyer in the affordable regime.

Deduction in respect of interest on loan taken for purchase of electric vehicle

The Government has proposed to introduce a new Section 80EEB under IT Act which will enable an individual assessee to claim deduction of interest upto INR 1.50 lakhs on loan taken from a financial institution for acquiring an electric vehicle, subject to fulfilment of the following conditions:

- The Loan has been sanctioned by the financial institution between April 1, 2019 to March 31, 2020
- The assessee does not own any other electronic vehicle as on the date of sanction of loan

No other deduction is claimed in respect of such interest under any other section of the IT Act.

This amendment will take effect from April 1, 2020 and will apply from AY 2020-21 onwards.

ELP COMMENTS

The proposed insertion of Section 80EEB is pursuant to the Government's goal to produce and sell only electric vehicles in India by 2030, aiming at reducing its petroleum imports as well as the carbon footprint. The proposal

incentivizes the tax-payers to use electric vehicles which will further facilitate in pursuing the Government's agenda.

Deductions in respect of profits and gains from housing projects [Section 80-IBA]

Under the existing provisions, 100% deduction is available in respect of the profits and gains derived from the business of developing and building housing projects, subject to such conditions.

The following eligibility conditions have been proposed (in addition to the other existing conditions) for housing projects approved on or after September 1, 2019

- The project should be on a land measuring not less than 1000 square metres, where project is located within the metro cities and 2000 square metres where such project is located in any other place
- The carpet area of the residential unit comprised in the project does not exceed 60 square metres, where such project is located within the metro cities and 90 square metres, where such project is located in any other place
- The stamp duty value of a residential unit should not exceed INR 45 lakhs
- The project utilises not less than 90% of the permissible floor area ratio where the project is located within metro cities and not less than 80% where the project is located in any other place

This amendment is proposed to come into effect from April 1, 2020, and accordingly would apply from AY 2020-21 onwards

Set off or carry forwards and set off

Amendment to Section 79

The existing provisions of Section 79 of the IT Act provides for conditions for carry forward and set off of losses in case of a company, not being a company in which the public are substantially interested. Companies other than eligible start-up as referred to in Section 80-IAC are eligible to carry-forward and set-off losses where 51% or more of the voting power beneficially held by persons in the year in which loss was incurred continue to beneficially hold the voting power in the year in which such loss is set-off.

Further, in case of eligible start-up as referred to in Section 80-IAC, the losses incurred in any previous year shall be carried forward and set off against the income of the current year, if all the shareholders of such company on the last day of the year in which losses were incurred continue to hold the shares as on the last day of the current year in which such loss is set-off and such loss has been incurred within a period of seven years from the date of incorporation.

It is proposed to amend Section 79 so as to provide that loss incurred in any year prior to the previous year, in case of a closely held eligible start-up, shall be allowed to be carried forward and set off against the income of the previous year on satisfaction of either of the two provisions stipulated above.

Further, the existing provisions of Section 79 are not applicable to a company where any change in shareholding takes place in a previous year pursuant to a resolution plan approved under the IBC.

It is proposed to amend that the provisions of Section 79 shall not apply to certain companies, and their subsidiary and the subsidiary of such subsidiary, where-

- Board of Directors are suspended by the NCLT on the application moved by the Central Government under Section 241 of the Companies Act, 2013; and
- A change in shareholding of such company, and its subsidiaries and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by NCLT under Section 242 of the Companies Act, 2013

This amendment is proposed to come into effect from April 1, 2020, and accordingly would apply from AY 2020-21 onwards.

Special provisions

Demerger of Ind-AS compliant companies

The existing provisions of Section 2(19AA) of IT Act, provides that for any demerger to be tax neutral, certain conditions need to be satisfied. One such condition is that the property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at book value immediately before the demerger.

In order to adapt to the era of financial inclusion and a competitive global market, India Inc., is adopting principles of IFRS in the form of the Ind-AS. In view of the above, in case of demerger, Ind-AS 103 "Business Combination" shall apply. Ind-AS 103 requires that in case of a demerger, identifiable assets acquired, liabilities assumed, non-controlling interests in an acquiree, previously held interest in an acquiree and contingent consideration to be recognised at their acquisition date fair values.

Thus, there arose a conflict in case of a demerger between the accounting recognition requirements in case of Ind AS compliant companies and the provisions of Section 2(19AA) of IT Act. It was interpreted that in case of Ind AS compliant companies, conditions for tax neutral demerger under Section 2(19AA) of the IT Act are not complied with; hence, the demerger is not tax neutral.

In view of the above background, it is proposed to insert a proviso to Section 2(19AA) of the IT Act which provides that the requirement of recording property and liabilities at book value by the resulting company shall not be applicable in a case, where the property and liabilities of the undertakings received by it are recorded at a value different from that appearing in the books of account of the demerged company immediately before the demerger in compliance to the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015.

This amendment is proposed to come into effect from April 1, 2020 and will apply from AY 2020-21 onwards.

ELP COMMENTS

The above proviso is proposed to be effective from AY 2020-21. However, IND AS became applicable in a phased manner from FY 2016-17. Accordingly, in case of Ind-AS compliant companies, it will be interesting to see the position adopted by the tax authorities in relation to demergers undertaken during the intervening period.

Buy-back tax on listed companies

Currently, as per the provisions of Section 115QA of the IT Act, BBT is levied at the rate of 20% of the distributed income on account of buy-back of unlisted shares by the company. Further, as BBT has been levied at the level of company, the consequential income arising in the hands of shareholders has been exempted under Section 10(34A) of the IT Act. It is proposed to extend the applicability of BBT to listed companies as well.

This amendment is proposed to come into effect from July 5, 2019.

ELP COMMENTS

The above section was introduced as an anti-abuse provision to check the practice of unlisted companies resorting to buy-back of shares instead of payment of dividends. In order to curb such tax avoidance practice adopted by the listed companies, it is proposed to extend BBT to listed companies as well.

As a result, any buy back of shares from a shareholder by a company listed on recognised stock exchange, on or after July 5, 2019, shall also be covered by BBT. Accordingly, it is further proposed to extend exemption under Section 10(34A) of the IT Act to shareholders of the listed company on account of buy-back of shares on which BBT has been paid by the company.

Currently, the shareholder of the listed company is taxed at the rate of 10% (plus applicable surcharge and cess) on the long-term capital gains earned on account of buy-back of the shares by a listed company. On the other hand, in case of distribution of dividend by a listed company is subject to DDT at the rate of 15% (plus applicable surcharge and cess) as well as 10% additional tax in the hands of non-corporate shareholder. Accordingly, buy-back of shares vis-à-vis distribution of dividend provides significant tax arbitrage to the listed companies. We have illustratively tabulated below a comparative analysis of the taxation of DDT, BBT and long-term capital gains:

Particulars		Dividend distribution	Buy-Back of shares liable to BBT	Buy-Back of shares liable to Long-Term Capital Gains
Amount of distribution	(a)	100	100	100
DDT levied on the company	(b) = (a) * 20.56%	20.56	N.A	N.A
BBT levied on the company	(c) = (a) * 23.3%	N.A	23.3	N.A
Net amount distributed to the shareholders	(d) = (a) – (b) / (c)	79.44	76.70	100
Tax on the above amount in the hands of the shareholders	(e) = (d) * 11.96%	9.5	N.A	11.96
Net amount available in the hands of the shareholders	(f) = (d) – (e)	69.94	76.70	88.04

Relaxation in conditions of special taxation regime for offshore funds

Section 9A of the IT Act is proposed to be amended to relax certain conditions applicable to a fund.

It has been proposed that the corpus of the fund shall not be less than INR 100 crore at the end of a period of six months from the end of the month of its establishment or incorporation or at the end of the previous year, whichever is later and the remuneration paid by the fund to the fund manager is not less than the amount calculated in such manner as may be prescribed.

This amendment is proposed to come into effect retrospectively from April 1, 2019 and will be applicable from AY 2019-20 onwards.

Amendment to Section 115UB- Pass through of losses of Category I and Category II AIF

Section 115UB(2)(i) of the IT Act provides for pass through status to Category I and II AIF. Pursuant to such pass-through status, investors are liable to tax on the income earned by the AIF (other than business income). However, the losses incurred at the AIF level are retained by the AIF, without there being any pass through of losses. Section 115UB has been proposed to be amended to provide the following:

- The loss arising to the investment fund as a result of the computation under the head "Profit and gains of business or profession", shall be, allowed to be carried forward and set off in accordance with the provisions of the IT Act and shall not be passed to the unit holder
- Any other loss, shall not be passed to the unit holder, if such loss has arisen in respect of a unit which has not been held by the unit holder for a period of at least twelve months
- The loss other than business loss, accumulated at the level of investment fund as on the 31st day of March, 2019, shall be deemed to be the loss of a unit holder who held the unit on that day in respect of the investments made by him in the investment fund and be allowed carry forward and set off for the remaining period calculated from the year in which it had occurred for the first time taking that year as the first year in accordance with the provisions of Chapter VI and that thereafter said loss shall not be available to the investment fund.

The above amendment is proposed to take effect, from April 1, 2020 and will apply from AY 2020-21 onwards.

ELP COMMENTS

Section 115UB was introduced to grant pass-through status to category I and II AIF in relation to profits other than business profits. The intend to allow the pass-through status was to simply the taxation of AIF and at the same time

also allowing investors to take benefit of the lower rate of taxation applicable to them, with an intention to increase investments in AIF. A drawback of the entire scheme of pass-through status was that it did not allow pass-through of losses, which could arise at the AIF level. This hindered set off losses. This amendment is a welcome move and will enable investors to set off their losses incurred at the AIF level.

Incentives to Non-Banking Finance Companies

Section 43D of IT Act, inter-alia provides that interest income received by certain institutions, banks, corporations or companies in relation to certain categories of bad or doubtful debts, is chargeable to tax accrual or receipt, whichever is earlier. This provision is an exception to the general accrual system of accounting regularly followed for computing the total income. Presently public financial institutions, scheduled banks, cooperative banks, State financial corporations, State industrial investment corporations and public companies like housing finance companies are covered by this Section.

It is proposed to extend the benefit of this Section to certain categories of NBFCs i.e. deposit-taking NBFCs and systemically important non deposit-taking NBFCs. The objective of such proposal is to provide a level playing field to such NBFCs who are adequately regulated.

A concomitant change is also proposed to be made in Section 43B to provide that any sum payable by the assessee as interest on any loan or advances from a deposit-taking NBFCs and systemically important non deposit-taking NBFCs shall be allowed as deduction if it is actually paid on or before the due date of furnishing the return of income of the relevant previous year.

The above amendment is proposed to take effect, from April 1, 2020 and will apply from AY 2020-21 onwards.

International Financial Services Centre

Incentives to IFSC

- Various amendments have been proposed to further incentivize IFSC:
 - Section 10(15) of the IT Act is proposed to be amended to insert clause (ix) to provide that any income by way of interest payable to a non-resident by a unit located in IFSC in respect of the monies borrowed by it or on after September 1, 2019 shall be exempt
 - This amendment is proposed to come into effect from April 1, 2020 and will be applicable from AY 2020-21 onwards.
- Section 47(viiab) of the IT Act provides that any transfer of a capital asset, being bonds or global depository receipts or rupee denominated bonds of an Indian company or derivative, made by a non-resident through a recognized stock exchange located in any IFSC and where the consideration for such transaction is paid or payable in foreign currency shall not be regarded as a transfer
 - It is proposed to amend this provision to provide tax neutral transfer of certain securities by Category III AIF located in IFSC, whereby any transfer of a capital asset as specified in Section 47(viiab) by such AIF of which all the unit holders are non-residents, shall not be regarded as a transfer
 - This amendment is proposed to come into effect from April 1, 2020 and will be applicable from AY 2020-21 onwards
- Section 115-O(8) of the IT Act provides that DDT shall not be applicable to a unit of an IFSC, deriving income solely in convertible foreign exchange, for any amount declared, distributed or paid by such company out of its current profits either in the hands of the company or the person receiving the dividend
 - It is proposed to extend the applicability of this exemption to dividends declared, distributed or paid out of accumulated profits as well on or after April 1, 2017
 - This amendment is proposed to come into effect from September 1, 2019
- Section 115-R is proposed to be amended to provide that no additional income-tax shall be chargeable in respect of any amount of income distributed on or after September 1, 2019 by a Mutual Fund of which all the unit holders are non-residents, out of its income derived from transactions made on a recognized stock exchange located in IFSC
- This amendment is proposed to come into effect from September 1, 2019

- Section 80LA of the IT Act provided profit linked deduction of 100% for the first five consecutive AYs and 50% for the next five consecutive AYs to units of an IFSC.

It is proposed that deduction of 100% shall be claimed for any ten consecutive years. Such deduction, at the option of the assessee, may be claimed for any ten consecutive AYs out of fifteen years beginning with the year in which the necessary provision was obtained under the relevant law.

Corresponding amendment has been proposed in Section 115A to ensure that units located in IFSC claim full deduction and accordingly, it has been proposed that Section 115A shall not be applicable to the deduction claimed under Section 80LA by a unit of an IFSC.

This amendment is proposed to come into effect from April 1, 2020 and will be applicable from AY 2020-21 onwards.

ELP COMMENTS

Financial Infrastructure has been the focus of this year's budget, which was evident not only with the measures announced but also with the various tax incentives which have been granted/extended to IFSC in order to take another step towards world class infrastructure.

Exempting transactions from capital gains, interest exemption, extending DDT exemption, no distribution tax on Mutual Funds, extending the profit linked deduction strongly pins Government's message to promote infrastructure.

Procedural aspects

Scope of persons required to furnish return of income expanded under Section 139

Presently, persons claiming rollover benefit of exemption from capital gains tax on investment in specified assets like house, bonds etc. (under 54, 54B, 54D, 54EC, 54F, 54G, 54GA and 54GB of the IT Act), are not required to furnish a return of income, if after claiming such rollover benefits, their total income does not exceed the maximum amount not chargeable to tax. It is now proposed that returns would have to be compulsorily furnished if before claiming of the rollover benefits, the total income is more than the maximum amount not chargeable to tax.

Presently, a person other than a company or a firm is required to furnish a return only if his total income exceeds the maximum amount which is not chargeable to tax, subject to certain exceptions. To ensure that persons who enter into certain high value transactions furnish their return of income, it is proposed to amend Section 139 to provide that a person shall be mandatorily required to file his return of income, if, during the previous year, he:

- has deposited an amount or aggregate of the amounts exceeding INR 1 crore in one or more current accounts maintained with a banking company or a co-operative bank; or
- has incurred expenditure of an amount or aggregate of the amounts exceeding INR 2 lakh 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 INR 1 lakh towards consumption of electricity; or
- fulfils such other conditions as may be prescribed

This amendment is proposed to come into effect from April 1, 2020, and accordingly would apply in relation to AY 2020-21 and thereafter

ELP COMMENTS

For individuals and HUF, return of income is required to be filed only when the income exceeds the maximum amount which is not chargeable to tax. Even though the machinery provisions were not to apply to certain assesseees, the amendment proposed will make it mandatory for them to file the return of income, ensuring disclosure of transactions.

Inter-changeability of PAN & Aadhaar and mandatory quoting in prescribed transactions (Section 139A)

With a view to broaden the tax base and keep an audit trail of high value transactions entered into by persons without a PAN, Section 139A is proposed to be amended to provide that every person, who intends to enter into certain prescribed transactions and has not been allotted a PAN, shall apply for allotment of a PAN.

For ease of compliance it is proposed to provide for inter-changeability of PAN and Aadhaar to this affect Section 139A is proposed to be amended to enable furnishing of Aadhaar in lieu of PAN and obtaining a PAN based on the Aadhaar held by such person.

Sub-sections 6A and 6B are proposed to be inserted to ensure quoting of authenticated PAN or Aadhaar for entering into prescribed transactions and for authentication thereof in the prescribed manner by the person entering into such transaction and person receiving any documents relating to such transaction.

In order to ensure proper compliance of provisions relating to quoting and authentication of PAN or Aadhaar, penalty provisions under Section 272B is proposed to be amended to provide for imposition of penalty in case of incorrect / false reporting of Aadhaar.

This amendment is proposed to come into effect from September 1, 2019.

Consequence of not linking PAN with Aadhaar

Presently, if a person fails to intimate the Aadhaar, on or before the notified date, the PAN allotted to such person is deemed to be invalid. To protect the validity of transactions previously carried out through such PAN, it is proposed to amend Section 139AA of the IT Act to provide in such cases, the PAN allotted shall only be made inoperative in the prescribed manner (rather than invalid).

This amendment is proposed to come into effect from September 1, 2019.

ELP COMMENTS

Inter-changeability of PAN with Aadhaar has been introduced to ensure that due compliance could be undertaken in the absence of PAN. However, it would be important to understand how this will be implemented administratively given that, at present, PAN is the basis for logging on the e-filing portal, generation of form 26AS, claim of TDS credit, amongst others.

Statement of Financial Transactions

Section 285BA of the IT Act mandates furnishing SFT by a specified list of persons responsible for registering or maintaining books of account or document containing a record of any SFT or prescribed reportable account. In this regard, the said section is proposed to be amended as follows:

- The SFT requirement has been extended to persons other than those specified in clauses (a) to (k) under Section 285BA(1) as may be prescribed
- The current threshold of INR 50,000 on aggregate value of transactions during a FY for furnishing SFT has been done away with
- If a person, despite being given an opportunity to rectify any defect in the statement furnished fails to rectify such defect, such person shall be treated as having furnished inaccurate information in the statement. Prior to the amendment, such person was treated as having not furnished the statement
- In order to ensure correct filing of information in SFT, penalty provision under Section 271FAA is proposed to be amended and widen the scope of penalty to cover all reporting entities falling under Section 285BA of the IT Act

This amendment is proposed to come into effect from September 1, 2019.

ELP COMMENTS

The SFT provisions have been extended to enable pre-filing of return of income by mandating furnishing of statement by persons other than those, who are currently furnishing the same. By removing the threshold of aggregate value of transactions for furnishing SFT, the amendment ensures pre-filing of information relating to small amount of transactions as well. The penal consequences for incorrect filing or failing to rectify inaccurate filings have also been tightened.

Amendment to Section 12AA

Cancellation of registration of Trust or Institution

- In order to ensure that the trust or institution do not deviate from their objects and rightfully claims exemption, it is proposed to amend Section 12AA of the IT Act, to provide that:
 - at the time of granting the registration to a trust or institution, the Principal Commissioner or the Commissioner shall, *inter alia*, also satisfy himself about the compliance of the trust or institution to requirements of any other law which is material for the purpose of achieving its objects
 - where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under Section 12A and subsequently it is noticed that the trust or institution has violated requirements of any other law which was material for the purpose of achieving its objects, and the order, direction or decree, by whatever name called, holding that such violation has occurred, has either not been disputed or has attained finality, the Principal Commissioner or Commissioner may, by an order in writing, cancel the registration of such trust or institution after affording a reasonable opportunity of being heard

These amendments shall be effective from September 1, 2019.

TDS provisions

Payments by Life Insurance Companies: Rationalisation

Under the present provisions of the IT Act, the insurance companies are required to deduct tax at source at the rate of 1% on the gross amount paid where such amount is not exempt under Section 10(10D) of the IT Act. Presently, payees are facing difficulties inasmuch as though on one hand they are required to disclose net income and accordingly pay tax thereon in their returns, on the other hand the insurance companies deduct tax on gross amount basis, resulting in higher amount being deducted.

Considering the said anomaly and the fact that the insurance companies have complete visibility as to the amount of net income which is disclosed by the payees in its return of income, an amendment has been proposed in Section 194DA to provide for tax deduction at source at the rate of 5% on income component of the sum paid by the insurance companies.

The amendment will take effect from September 1, 2019.

Payment on transfer on immovable property

The present provisions of IT Act provide for levy of TDS at the rate of 1% on the amount of consideration which is paid for the transfer of Immovable property. Presently, the expression used in Section 194IA, 'consideration for transfer of any Immovable property' has not been defined leading to confusion as to the inclusion of utility and other charges - which are nevertheless part of the sale agreement, though not directly forming part of the sale price.

It is now proposed to define the expression 'consideration for Immovable property' to include all charges which are incidental to the transfer of the immovable property. Such incidental charges have been illustrated to include membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature.

It is interesting to note that the newly defined expression is 'consideration for Immovable property', however, the expression used in the provision is 'consideration for transfer of any immovable property'.

The amendment will take effect from September 1, 2019.

Payments by individuals/HUFs to contractors and professionals

At present there is no liability on an individual or HUF to deduct tax at source on any payment made to a resident contractor or professional when it is for personal use. Further, if the individual or HUF is carrying on business or profession which is not subjected to audit, there is no obligation to deduct tax at source on such payment to a resident, even if the payment is for the purpose of business or profession.

Owing to this exemption, substantial amount by way of payments made by individuals or HUFs in respect of contractual work or for professional service is escaping the measure of TDS, leaving a loophole for possible tax evasion. To plug this loophole, it is proposed to insert Section 194M in the IT Act to provide for deduction at source at the rate

of 5% on the sum, or the aggregate of sums, paid or credited in a year on account of contractual work or professional fees by an individual or a Hindu undivided family, not required to deduct tax at source under Section 194C and 194J of the IT Act, if such sum, or aggregate of such sums, exceeds INR 50 Lakhs in a year. However, in order to reduce the compliance burden, it is proposed that such individuals or HUFs shall be able to deposit the tax deducted using their PAN and shall not be required to obtain TAN.

This amendment will take effect from September 1, 2019.

Measures to reduce Cash withdrawal

In order to further discourage cash transactions and move towards less cash economy, it is proposed to insert a new Section 194N in the IT Act to provide for levy of TDS at the rate of 2% on cash payments in excess of INR 1 crore in aggregate made during the year, by a banking company or cooperative bank or post office, to any person from an account maintained by the recipient.

It is proposed to exempt payment made to certain recipients, such as the Government, banking company, cooperative society engaged in carrying on the business of banking, post office, banking correspondents and white label ATM operators, who are involved in the handling of substantial amounts of cash as a part of their business operation, from the application of this provision. It is proposed to empower the Central Government to exempt other recipients, through a notification in the official Gazette in consultation with the Reserve Bank of India.

This amendment will take effect from September 1, 2019.

ELP COMMENTS

The Government is committed to discourage the cash transaction and promote the digital mode of payments/ cash less economy. With this intention, it is proposed to introduce TDS at the rate of 2 percent on cash payments in excess of INR 1 Crore in aggregate made during the year.

Given that the proposed provision uses the expression 'from an account maintained by the recipient', the prescribed limit appears to be qua 'an account' and not qua 'the recipient' – this may lead to the inference that if the recipient holds multiple accounts with the bank etc., the limit ought to apply to each such account maintained by the recipient.

Digitizing order/certificate of lower/nil deduction in case of Non-residents

Section 195 of the IT Act provides for the deduction of tax at source on any sum (other than salary) which is payable to a non-resident. There is a facility provided to obtain an order/certificate for lower/nil deduction of tax at source in cases where the payer considers that the whole of such sum would not be income chargeable to tax.

Presently, the procedure for obtaining such certificate is manual which not only involves frequent visits to the tax department by the payer, but also it is cumbersome and time taking. Considering that the focus of the present Government is on digitization, an amendment is proposed in Section 195 to allow the Central Government to prescribe for 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.

The amendment shall be applicable from November 1, 2019.

Relaxation for deductors for payment to Non-residents

Section 201 provides that in cases where the person who is required to deduct tax on any sum paid, fails to deduct such tax or doesn't deposit it with the exchequer after making such deduction, then the payer shall be deemed as assessee-in-default and the consequential penalties shall follow.

In the year 2012, a proviso had been added to the section whereby a relaxation was provided to the payer from being considered as assessee-in-default in cases where the recipients being resident has considered such income while filing their return under Section 139 and had also paid tax thereon. This relaxation was presently meant only for payments made to residents.

It is proposed to amend the section to extend this benefit (of not being considered as assessee-in-default) in respect of payments made to the non-residents by substituting the expression 'resident' with 'payee' and thereby widening its meaning to include both residents and non-resident recipients. The consequential amendment has also been proposed in Section 201 to limit the application of interest for not depositing TDS till the date of filing of return by the Non-resident.

This amendment shall take effect from September 1, 2019.

Furnishing of quarterly returns in respect of payment of interest to residents without deduction of tax

Section 206A provides for filing of quarterly statement by a banking company or co-operative society and a public company into specified banking business for furnishing details with respect to payment of interest to residents without deducting TDS. Presently, such statement is filed via a floppy, diskette, magnetic tape, CD-ROM, or any other computer readable media.

To enable online filing of such statements, it is proposed to substitute this Section so as to provide for filing of statement in prescribed form and manner. It is further proposed to extend filing of such statements by other persons (apart from banking sector companies) who is making payment to a resident without deducting TDS of such nature of income which is liable for deduction of tax.

It is also proposed to provide for correction of such statements for rectification of any mistake or to add, delete or update the information furnished earlier. This would enable the assessee to modify the incorrect details inadvertently filed earlier as opposed to the present practice.

This amendment will take effect from September 1, 2019.

Interest for default in furnishing of return of income and payment of advance tax

For computing the interest under the existing provisions of Section 234A, 234B and 234C of the IT Act, it is now proposed that relief under Section 89 (i.e. relief when salary is paid in arrears or in advance) will be allowed to be deducted from the amount of total tax on which interest is to be computed.

In terms of the existing provisions, reduction from tax is allowed for advance taxes, prepaid taxes, relief on account of double taxation under Section 90 etc. However, non-deduction of relief under Section 89 was causing genuine hardship to the taxpayers.

The amendment will take effect retrospectively from April 1, 2007 and will, accordingly apply in relation to AY 2007-08 and the subsequent AYs. The amendment appears to be effectuated retrospectively for the reason that the other reliefs in the nature of double taxation were permitted to be deducted with effect from the said date. Notably, prior to April 1, 2007 only advance taxes or prepaid taxes (TDS or TCS) were deductible from tax for computation of interest under these sections.

Recovery of tax in pursuance of agreements with foreign countries

In pursuance to an agreement of the Central Government with the Government of any foreign country, the existing provisions of Section 228A of the IT Act provide for recovery of tax payable by a person under any foreign laws, by a Tax Recovery Officer in India within whose jurisdiction property of such person is situated.

In order to provide assistance in recovery of tax as per such treaty obligations, it is proposed to amend the said section so as to provide for tax recovery where details of property of the persons are not available, but the said person is a resident in India. Thus, the proposed provision provides for recovery of tax from a resident in India by the Tax Recovery Officer having jurisdiction over the resident.

This amendment will take effect from September 1, 2019.

Penalties

Amendment to Section 270A of the IT Act

Under/misreporting of income for first time

- Section 270A contains provisions relating to penalty for under-reporting and misreporting of income. The existing provisions provide for various situations for the purposes of levy of penalty under this section. However, these provisions do not contain the mechanism for determining under-reporting of income and quantum of penalty to be levied in the case where the person has under-reported income and furnished the return of income for the first time under Section 148 of the IT Act
 - Section 148 provides for filing of the return pursuant to the assessment notice issued by the assessing officer

- Amendments have been made to Section 270A to provide for manner of computing the quantum of penalty in a case where the person has under-reported income and furnished his return for the first time under Section 148

These amendments have been made applicable retrospectively from April 1, 2017.

Insertion of Section 271DB: Penalty for failure to comply with provisions of Section 269SU

Mandating acceptance of payment through electronic mode

- Pursuant to insertion of Section 269SU which mandates businesses (having total sales turnover or gross receipts exceeding INR 50 crores in the previous financial year) to accept payments through the prescribed electronic modes, Section 271DB has been inserted to provide for penalty of INR 5,000 per day if such business does not provide facility for electronic modes of payment. This penalty shall be imposed by the Joint Commissioner
- The imposition of penalty can be contested if the said person proves that there were good and sufficient reasons for such failure

This provision will come into effect from November 1, 2019.

Amendment to Section 276CC

Section 276CC of the IT Act provide for proceedings for failure to furnish returns of income.

Proviso to said section provides that prosecution proceedings for failure to furnish return of income shall not be initiated in case tax payable does not exceed INR 3000. The proposed amendment intends to include tax deducted at source and self-assessed tax, while computing the tax payable.

Further, the threshold of INR 3,000 has been increased to INR 10,000.

The amendment will be effective from April 1, 2020 and accordingly would apply from AY 2020-21 and thereafter.

Transfer pricing

Power of Assessing Officer in respect of modified return of income filed in pursuance to signing APA

In terms of Section 92CC of the IT Act, CBDT, with the approval of the Central Government, is empowered to enter into an APA, with any person for determining the ALP or to specify the manner in which an ALP is to be determined in relation to an international transaction to be entered into by that person. The validity for APA does not exceed five previous years. The rollback of APA can be done for four years.

For giving effect to Section 92CCC, Section 92CD provides a mechanism for filing of modified return of income by the taxpayer as also manner of completion of assessments by the AO as per the terms given under APA. Further, sub-section (3) of Section 92CD provides for the situation wherein assessment or re-assessment has already been completed before the filing of the modified return.

In light of the words, “assess or reassess or recompute”, the AO may initiate a fresh assessment or reassessment for already completed assessment or reassessment in case of the assessee having modified their returns as per APA, thereby overlooking the intent of the legislature for AO to merely modify the total income consequent to the modification of return of income in accordance with APA.

Therefore, a clarification in the said section is proposed to provide that in cases where assessment or reassessment has already been concluded and modified return of income has been filed by the tax payer, the AO shall merely pass an order modifying the total income of the relevant AY for the said assessment or reassessment, in terms of APA.

ELP COMMENTS

While in terms of the Memorandum to the Finance Bill, 2019, this amendment is proposed to be clarificatory, the amendment is effective from September 1, 2019. Accordingly, the impact of this amendment on pending proceedings will have to be evaluated

Rationalization of provisions in relation to secondary adjustment

The existing provisions of Section 92CE of the IT Act provides that where as a result of primary adjustment to transfer price in certain cases, there is an increase in the total income or reduction in the loss of the taxpayer, the excess money which is available with its AE, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the taxpayer to such AE and the interest on such advance, shall be computed as the income of the taxpayer.

As per the proviso to the Section 92CE, the provisions of secondary adjustment do not apply in the following cases:

- the amount of primary adjustment made in any previous year does not exceed INR 1 crore; and
- the primary adjustment is made in respect of an AY commencing on or before April 1, 2016

In respect of the above provisions, there were certain ambiguities/ concerns raised by the industry. In light of the said concerns Finance Bill, 2019 has proposed to bring clarificatory amendments to the provisions of Section 92CE of the IT Act (effective from AY 2018-19 and onwards) as under:

Sr. No.	Ambiguities/concerns or existing provisions	Proposed amendment/ clarification
1	<p>Proviso to Section 92CE provided that Secondary adjustment does not apply in the following cases:</p> <ul style="list-style-type: none"> - the amount of primary adjustment made in any previous year does not exceed INR 1 crore; and - the primary adjustment is made in respect of an AY commencing on or before April 1, 2016. <p>Whether the above conditions are to be satisfied alternatively or cumulatively?</p>	<p>The said conditions are to be considered as alternative (and not cumulative) from April 1, 2018 itself. Hence is proposed that the conjunction “and” be replaced by “or.”</p>
2	<p>The excess money with the AE which is not repatriated to India within the prescribed time would be treated as advance and interest needs to be computed on such the excess money.</p> <p>In view of the above, taxpayers started making part repatriation of money to do away with the above provisions.</p>	<p>The words “excess money and even any part thereof” are to be substituted instead of “excess money”</p>
3	<p>Secondary adjustment applied in cases of primary adjustment made on account of APA entered into under Section 92CC of the IT Act</p>	<p>In case of APAs, the secondary adjustment provisions shall apply only to the APAs signed on or after April 1, 2017. However, no refund of the taxes already paid till date under the pre amended section would be allowed.</p>

In addition to the above clarifications/amendments, an explanation to Section 92CE is proposed to be inserted stating that the excess money may be repatriated from any of the non-resident AEs of the assessee. The said provisions are applicable from AY 2018-19 and onwards.

Further, it is proposed to insert a sub-section (2A) to Section 92CE of IT Act effective from September 1, 2019 to provide that in a case where the excess money or part thereof has not been repatriated in time, the assessee will have the option as under:

- Pay additional income-tax at the rate of 18% with surcharge of 12% on such excess money or part thereof in addition to the existing requirement of calculation of interest till the date of payment of this additional tax
- Such tax shall be the final payment of tax and no credit shall be allowed in respect of the amount of tax so paid

- The deduction in respect of the amount on which such tax has been paid, shall not be allowed under any other provision of the IT Act
- If the assessee pays the additional income-tax, he will not be required to make secondary adjustment or compute interest from the date of payment of such tax.

ELP COMMENTS

The usage of the conjunction “and” in the proviso had led to an interpretational issue, as to whether the same could be interpreted as ‘or’ given its context. The proposed amendment seeks to clarify the said position i.e. the conditions therein have to be read as alternative to each other.

The amendment as regards allowing the excess money of primary adjustment to be repatriated by any AE which is resident outside India, is a welcome move for allowing adjustments within the group. However, the accounting and corresponding exchange control regulatory implications would also require greater evaluation/attention

The current secondary adjustment provisions do not provide for any remedy or consequence where the amount of secondary adjustment is not repatriated to India. The proposed insertion of sub-section (2A) of Section 92CE provides an option of paying an upfront tax of 18% on such secondary adjustment. The effective tax rate works out to be 20.96% vis-à-vis a DDT of 20.56%. Taxpayers may evaluate paying additional tax under Section 92(2A) after considering the charges for transmitting funds into India and repatriating them back i.e. exchange rate fluctuations, bank charges, etc.

Requirement of “international transaction” done away with for constituent entity of international group under Section 92D

Under Section 92D, there is, at present, a requirement for maintenance of prescribed information and document relating to the international transaction and specified domestic transaction.

Action Plan 13 (Action 13) of the BEPS Project of the OECD provides for revised standards for transfer pricing documentation and a template for CbCR.

In India, in order to implement Action 13, a specific reporting regime in respect of CbCR and the Master File was introduced vide the Finance Act, 2016.

The requirement to maintain Master File was introduced by way of a proviso to Section 92D(1) and to furnish the same was contained in Section 92D(4). While the said proviso covered “constituent entity of an international group”, the main sub-Section (1) of Section 92D applied to “every person who has entered into an international transaction or specified domestic transaction”.

Section 92D has been proposed to be substituted to provide for the requirement to maintain Master File by way of clause (ii) of sub-Section (1) of 92D (instead of the earlier proviso). Thus, clause (i) would separately cover person who has entered into an international transaction or specified domestic transaction”, clause (ii) would only apply to a “constituent entity of an international group”.

This amendment will take effect from April 1, 2020 and will, accordingly, apply from the AY 2020-21 and subsequent AYS.

ELP COMMENTS

Under the existing provisions, the reporting requirement stems from the proviso, which is to be read sub-servient to the main sub-section (1) of Section 92D containing the condition of an international transaction. On this basis, a view can be taken that this requirement would only apply to constituent entity, which has entered into an international transaction.

The intention of the proposed amendment is to provide that such requirement will fall on the constituent entity, even when there is no international transaction undertaken by it.

Since, the amendment will take effect prospectively i.e. from April 1, 2020 and there is no indication that this is a clarificatory amendment, it remains to be seen whether the amendment can, be seen to endorse the view that, at present, only constituent entities who have entered into international transactions will be subjected to the reporting requirements under Section 92D.

Available jurisprudence holds that in the absence of any income chargeable to tax, the machinery provisions of Chapter X does not apply. On this basis, it will have to be seen whether a constituent entity which does not have any income chargeable to tax, will still be required to comply with the reporting requirements even after the amendment.

Retrospective amendment of definition of 'accounting year' under Section 286

Section 286 of the IT Act contains provisions relating to CbCR in respect of international groups. It provides that every parent entity or ARE, resident in India, shall, for every reporting accounting year, in respect of the international group of which it is a constituent, furnish a report, to the prescribed authority within a period of twelve months from the end of the said reporting accounting year, in the form and manner as may be prescribed.

Section 286 is proposed to be amended to provide that the accounting year in case of an ARE of an international group, resident in India, the parent entity of which is not resident in India, the reporting accounting year shall be the one applicable to such parent entity.

The amendment is clarificatory in nature and is proposed to take effect retrospectively from April 1, 2017; hence, applicable in respect of AY 2017-18 and thereafter.

ELP COMMENTS

This proposed amendment addresses the concerns that in case of an ARE resident, in India, whose ultimate parent entity is not resident in India, the accounting year would always be the accounting year applicable in the country where such ultimate parent entity is resident and cannot be the previous year of the entity resident in India. Therefore, it appears that the anomaly regarding what constitutes 'accounting year' in case of AREs, will be removed.

Digital Payment**Measures for Promoting Less Cash Economy*****Prescription of electronic mode of payments***

- Following Sections presently contain provisions which prohibit cash transactions and allow/encourage payment or receipt only through account payee cheque, account payee draft or electronic clearing system through a bank account. In order to encourage other electronic modes of payment, it is proposed to amend these Sections so as to include such other electronic mode as may be prescribed:
 - Section 13A (special provision relating to incomes of political parties)
 - Section 35D (dealing with deduction in respect of capital expenditure in specified investments)
 - Section 40A (expenses or payments not deductible)
 - Section 43 (definitions of certain terms relevant to income from profits and gains of business or profession in Sections 28 to 41)
 - Section 43CA (special provisions for full value of consideration for transfer of assets other than capital assets in certain cases)
 - Section 44AD (special provision for computing profits and gains of business on presumptive basis)

- Section 50C (special provision for full value of consideration for transfer of share other than quoted share)
- Section 56 (income from other sources)
- Section 80JJAA (deduction in respect of employment of new employees)
- These amendments will take effect from April 1, 2020 and will, accordingly apply in relation to AY 2020-2021 and subsequent AYs
- Similar amendments have been proposed to the following Sections so as to include such other electronic mode of payment as may be prescribed in addition to already allowed mode of payments:
 - Section 269SS (mode of taking or accepting certain loans, deposits and specified sum)
 - Section 269ST (mode of undertaking transactions)
 - Section 269T (mode of payment of certain loans and deposits)
 - The amendments under these Sections will take effect from September 1, 2019

Acceptance and repayment of loans and deposits

- It is proposed to insert a new Section 269SU w.e.f November 1, 2019, so as to provide that every person, carrying on business, shall, provide facility for accepting payment through the prescribed electronic modes, if his total sales, turnover or gross receipts in business exceeds INR 500 million during the immediately preceding previous year

ELP COMMENTS

The amendments proposed above seek to harmonize the mission of the Government in transitioning towards a cash less economy and reduce the generation and circulation of black money, all of which intends to promote a digital economy.

Amendments to Corporate Laws

Amendments to the Securities Contracts (Regulation) Act, 1956

- Section 23A: Pursuant to the amendment to Section 23A of SCRA, the SEBI has now been empowered to penalize non-compliant companies who fail to furnish information, returns, etc.

Amendments to the SEBI Act, 1992

- Section 14: The use of the funds under the SEBI general fund, as provided under Section 14 of the SEBI Act has been expanded to include capital expenditure, as per annual capital expenditure plan approved by SEBI and the Central Government. Further, SEBI will constitute a reserve fund, and 25% of the annual surplus of the general fund in any year will be credited to such reserve fund which shall not exceed the total of the annual expenditure of the preceding 2 FYs. After incurring all the expenses referred in Section 14(2) of the SEBI Act and transfer to reserve fund, the surplus of the general fund will be transferred to the consolidated fund of India.
- Section 15C: The Section has been amended to recognise communication in electronic form by SEBI to award penalties.
- Section 15F: The maximum penalty for default by stock brokers for failure to issue contract notes in the form and manner specified by the stock exchanges has been limited up to INR 1 crore.
- Section 15HAA: A new penal provision has been added whereunder, any person who knowingly alters, destroys, conceals or makes a false entry in any of the records or fails to protect the electronic database of SEBI is punishable with a fine of INR 10 thousand up to INR 10 crores or 3 times the amount of profit made, whichever is higher

Proposals

- Public Shareholding in listed companies: Central Government will request SEBI to consider raising minimum public shareholding from 25% to 35%
- Foreign Direct Investment (FDI): Central Government is considering the following:
 - increasing FDI limit in aviation, media (animation, AVGC) and insurance sector
 - 100% FDI for insurance intermediaries
 - easing of local sourcing norms for single-brand retail sector
- Foreign Portfolio Investors (FPI): Central Government may amend the relevant laws:
 - To enable FPIs to subscribe to listed debt securities issued by InvITs and REITs
 - To make the KYC norms for FPIs more investor friendly
 - Central Government has also proposed to increase the statutory limit for FPI in a company from 24% to sectoral foreign investment limit with an option to the concerned corporate to limit it to a lower threshold

Banking and Finance

Digital Payments and Micro Small and Medium Enterprises

With an intent to boost digital payments the finance minister introduced a step to levy TDS of 2% on cash withdrawal exceeding 1 crore in a year from a bank account. The finance minister proposed, that business establishments with an annual turnover of over INR 50 crores, should offer low cost digital modes of payment such as BHIM UPI, UPI-QR Code, Aadhaar Pay, certain Debit cards, NEFT, RTGS etc. to their customers with no charges or merchant discount rate being imposed on customers or merchants. The finance minister also stated that about INR 350 crores is being allocated for the 2% interest subvention scheme for all GST registered MSMEs on fresh or incremental loans for FY 2019-20. Further, it was announced that loans upto INR 1 crore will be provided within 59 minutes through a dedicated online portal. It was also announced that for all payments to MSMEs from the Government, a payment platform shall be created for MSMEs to enable filing of bills and payment thereof on the platform itself.

ELP COMMENTS

The aforesaid steps will ensure a boost to the digital payments and fintech companies in India and strengthen the banking system and the economy as a whole. Timely online payments by the Government to the MSMEs would help them in realizing the proper value of money and save cost of interest on borrowed funds which in turn would boost the performance, financial status and rating of the MSMEs.

The above-mentioned reforms introduced by the Government for MSMEs are in line with its effort taken in the past. Under IBC, Section 29A was inserted as an amendment with a view to keep out wilful defaulters. However, under Section 240A, certain provisions of the Section 29A were diluted for benefit of the MSMEs. This allowed the promoters of the MSMEs to buy back their assets if they were not wilful defaulters.

Powers to Reserve Bank of India

The finance minister in the budget speech proposed strengthening the regulatory authority of the RBI over NBFCs and the finance bill proposes the following:

- Enhancement of the existing amount of the net owned fund of NBFC under Section 45-IA of the RBI Act and also the enhancement in the penalty under Sections 58B and 58G of the RBI Act.
- Introduction of following new Sections in the RBI Act:
 - Section 45-ID and Section 45-IE - to enable RBI to remove directors of NBFCs (other than Government Company) and to supersede the board of directors of NBFCs on certain grounds
 - Section 45MAA to provide powers to RBI to take actions against the auditors of NBFCs, if the auditor fails to comply with the directions or orders provided by RBI pursuant to Section 45MA of the RBI Act
 - Section 45MBA to provide for resolution of a NBFC
 - Section 45MBA relating to powers of RBI in respect of group company

The finance minister in the budget speech also spoke of removing conflict of NHB where it acted as lender and regulator to HFCs and mentioned that RBI shall be the new regulator to HFCs in India.

ELP COMMENTS

The aforesaid seems to be a step forward by the Government in light of the recent NBFC crisis which affected companies including IL&FS, DHFL etc. and to ensure that there is better regulation and more responsibility on the NBFCs to take care of the investments and deposits made by public in such NBFCs. Such steps would boost the sentiments and the confidence of public and offshore investors in the NBFCs in India.

Given that NHB is a subsidiary of RBI, most regulations governing NBFCs and HFCs are not poles apart and it may not have a major impact on the day to day regulatory aspects of the HFCs. However, it would be interesting to see if RBI comes up with a separate set of regulations for HFCs including in relation to the affordable housing segment.

Reforms in the Banking Sector

Non-Performing Assets

The Finance Minister in her speech highlighted that the measures undertaken to clean the banking system of the country are now showing positive outcomes. She noted that, the NPAs of the commercial banks have reduced by over INR 1 lakh crores over the last year and there has been a record recovery of over INR 4 lakh crores in past four years due to the introduction of various measures, the most important one being the IBC. She also claimed that the domestic credit growth has risen to 13.8%.

ELP COMMENTS

Though IBC continues to face extended teething challenges including pending applications in NCLTs, the process introduced thereby has helped various stakeholders in recovering their dues to some extent with an effort to protect underlying businesses and jobs.

Consolidation of Banks

The Finance Minister in her speech has stated that the Government has been successful in carrying out the consolidation of the public sector banks thereby reducing its number to 8.

Recapitalization of Public Sector Banks

In continuation with the Government's previous effort to restore the financial health of the public sector banks, the Government has now proposed to further provide INR 70,000 crores for recapitalization.

Digitalization

In order to enhance digitalization and promote technology, the government has proposed to introduce reforms for enabling the customers of one public sector bank to access services across all public sector banks. Schemes and reforms have been proposed for offering public sector banks online personal loans and doorstep banking.

ELP COMMENTS

In view of enhancing its focus on digitalization and promotion of technology, the Government has proposed offering online personal loans and doorstep banking and enabling customers of one Public Sector Bank to access services across all Public Sector Banks. The mode of stamping of the relevant digital documents is unclear. The Government's push for digitalization will be well absorbed by the banking sector if the Government brings in exemption in payment of stamp duty to such digital documents, especially in the retail banking sector.

Change in the regulatory authority of Housing Finance Companies

Another major banking sector reform which the Finance Minister mentioned during her speech was the change in the regulatory authority of the housing finance companies. Previously, National Housing Board acted as the regulator and refiner of HFCs. However, now HFCs will come under the regulatory ambit of the Reserve Bank of India and NHB will only function as refiner.

ELP COMMENTS

The Reserve Bank of India has now become the regulatory authority vested with regulatory powers previously wielded by the National Housing Board. This move has limited the role of the National Housing Bank to serve as a refiner to the Housing Companies such as DFHL, Indiabulls Home Loans etc.

International Trade perspective

Changes in Countervailing/Anti-subsidy and Safeguard Law

Finance Bill has made/proposed certain amendments to the CTA. Some of these amendments have a direct bearing on trade remedy investigations (particularly anti-subsidy and safeguard) conducted in India. A brief summary of the changes is provided below:

- Insertion of sub-clause (1A) after clause (1) of Section 9 of the Act: The Central Government has been given the power to levy countervailing duty on an article if such article circumvents an article on which countervailing duty is already in place.

ELP COMMENTS

India has been proactively taking measures to counter circumvention of anti-dumping duties, with several measures enacted in the past two years. Given that India has also started levying anti-subsidy / countervailing duties in recent years, it is a logical step to also introduce anti-circumvention measures for anti-subsidy.

- Section 9C has been amended to provide a recourse to an appeal against a safeguard determination.

ELP COMMENTS

The CTA provides appellate options for both anti-dumping and anti-subsidy investigations. The same has now also been incorporated for Safeguard Investigations, which have recently been moved under the aegis of the Directorate General of Trade Remedies (which also conducts anti-dumping and anti-subsidy investigations).

- Validation of modification in classification of certain goods leviable to anti-dumping duty with retrospective effect: The Finance Bill validated and gave retrospective effect to two new customs notifications which narrowed the scope of products that were subject to anti-dumping duty under original customs notifications.

Changes to BCD which could have WTO implications

India, as a signatory to the Information Technology Agreement under the WTO, has made commitments to reduce BCD on various electronic products. Through the following notifications, certain products have been exempted from BCD or excluded from BCD exemption.

- Notification No. 23/2019 – Customs dated 6 July 2019 exempts parts of line telephone handsets from BCD.

ELP COMMENTS

Through this amendment, India has aligned its exemption list with its commitments with the ITA, where line telephone handsets and their parts are covered.

- Notification No. 24/2019 – Customs dated 6 July 2019 excludes connectors, microphone, receiver, speaker and SIM socket from 6A of Notification No. 57/2017 read with its amendments.

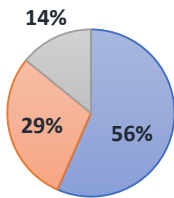
ELP COMMENTS

Notification No. 57/2017 creates certain duty exemptions on products pertaining to cellular products and certain parts thereof. The explicit exclusion of connectors, microphone, receiver, speaker and SIM sockets pertains to inputs or parts for use in manufacture of printed circuit board assembly. As a general rule, many of these components are already exempted from BCD under other notifications. India is already facing a challenge under the WTO on certain other products which are covered under the ITA.

ELP Pre-budget survey: Results

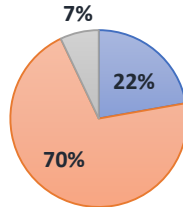
ELP conducted a pre-budget survey amongst our client base to get a pulse of what India Inc expected. Given below is a snapshot of the survey results.

Will the government increase the basic exemption limit on tax?



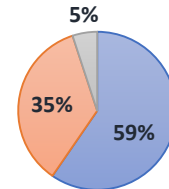
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Should the "Inheritance Tax" be introduced?



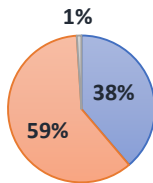
■ Yes ■ No ■ Not Sure

Should the long term capital gains tax be removed and exemption on sale of listed securities be restored?



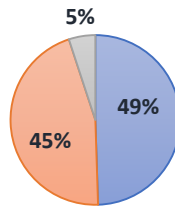
■ Yes ■ No ■ Not Sure

Should there be a uniform corporate tax for all corporates irrespective of their turnover or sector?



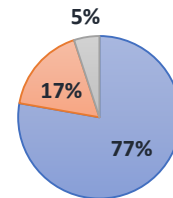
■ Yes ■ No ■ Not Sure

Should Dividend Distribution Tax be scrapped and let the shareholders take the burden of tax?



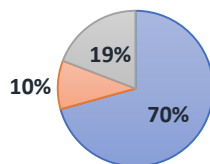
■ Yes ■ No ■ Not Sure

Should minimum alternate tax be scrapped or levied at a reduced rate, given that most of the tax holidays will lapse in coming years?



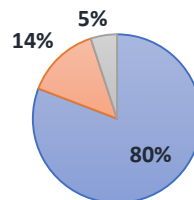
■ Yes ■ No ■ Not Sure

Does India Inc need a direct tax code?



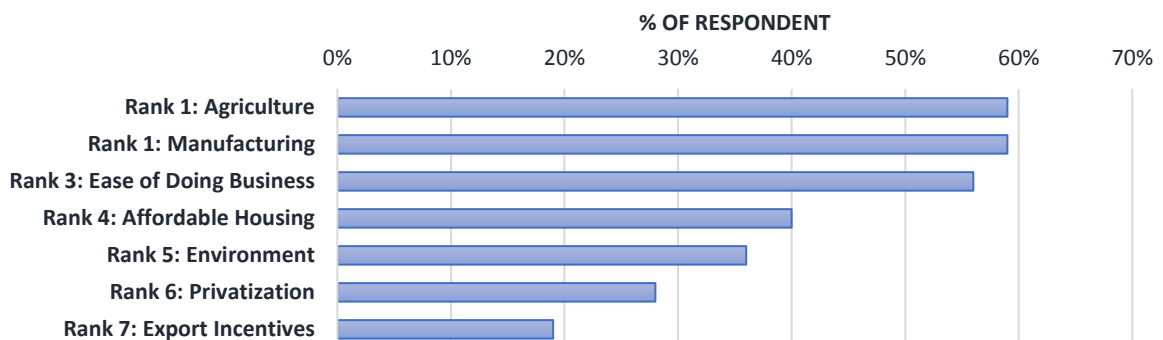
■ Yes ■ No ■ Not Sure

Should the number of slabs in the GST be reduced?



■ Yes ■ No ■ Not Sure

What should be the focus areas for the budget?



Glossary of Terms

Abbreviation	Meaning
AE	Associated enterprise
AIF	Alternative investment fund
ALP	Arm's length price
Amnesty Scheme	Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019
AMT	Alternate minimum tax
AO	Assessing officer
AOP	Association of persons
APA	Advanced pricing agreement
ARE	Alternate reporting entity
AVGC	Animation, Visual effects, Gaming and Comics
AY	Assessment year
BBT	Buy-back tax
BCD	Basic Customs Duty
BED	Basic Excise Duty
BEPS	Base erosion and profit shifting project
Bill	Finance (No. 2) Bill 2019
BOI	Body of individuals
CAT	Common aptitude test
CBCR	Country by country reporting
CBDT	Central Board of Direct Taxes
CGST Act	Central Goods and Services Tax Act, 2017
CVD	Countervailing Duty
DDT	Dividend Distribution Tax
DTAA	Double Taxation Avoidance Agreement entered into by India
FAME	Faster Adoption and Manufacture of Hybrid and Electric Vehicles
FDI	Foreign Direct Investment
FM	Finance Minister
FMV	Fair market value
FPI	Foreign Portfolio Investors
FTP	Foreign trade policy
G2B	Government to Business
GST	Goods and Services Tax
HFC	Housing Finance Company
HNI	High net worth individual
HUF	Hindu Undivided Family
IBC	Insolvency and Bankruptcy Code, 2016
IFSC	International Financial Services Centre
IGST	Integrated Goods and Services Tax
IGST Act	Integrated Goods and Services Tax Act, 2017
IIM	Indian Institute of Management
Ind AS	Indian Accounting Standards
INR	Indian Rupees
InvITs	Infrastructure Investment Trusts
IT Act	The Income-tax Act, 1961
KYC	Know Your Customers
LLP	Limited Liability Partnership
MAT	Minimum Alternate Tax
MoF	Ministry of Finance
MSME	Micro Small and Medium Enterprises

NBFC	Non-Banking Finance Company
NCCD	National Calamity Contingent duty
NCLT	National Company Law Tribunal
NEFT	National Electronic Funds Transfer
NELP	New Exploration Licensing Policy
NHB	National Housing Bank
NPA	Non-performing assets
OECD	Organization for Economic Co-operation and Development
PAN	Permanent Account Number
PSU	Public sector undertaking
RBI	Reserve Bank of India
RBI Act	Reserve Bank of India, Act, 1934
REITs	Real Estate Investment Trusts
RIC	Road and Infrastructure Cess
RTGS	Real Time Gross Settlement
SAD	Special Additional Duty
SAED	Special Additional Excise Duty
SCN	Show Cause Notice
SCRA	Securities Contracts (Regulation) Act, 1956
SEBI	Securities and Exchange Board of India
SEBI Act	Securities Exchange Board of India Act, 1992
SFT	Statement of financial transaction
TCS	Tax Collected at Source
TDS	Taxes Deducted at Source
UK	United Kingdom
USA	United States of America
WTO	World trade organisation



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