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Government of India  
Ministry of Finance  
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**Dated, 15<sup>th</sup> of February, 2018**

**EXPLANATORY NOTES TO THE  
PROVISIONS OF THE FINANCE ACT,  
2017**

## CIRCULAR

### INCOME-TAX ACT

**Finance Act, 2017 — Explanatory Notes to the Provisions of the Finance Act, 2017**

**CIRCULAR NO. 2/2018, DATED THE 15<sup>th</sup> OF FEBRUARY, 2018**

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## 1. Introduction

**1.1** The Finance Act, 2017 (hereafter referred to as 'the Act') as passed by the Parliament, received the assent of the President on the 31<sup>st</sup> day of March, 2017 and has been enacted as Act No. 7 of 2017. This circular explains the substance of the provisions of the Act relating to direct taxes.

## 2. Changes made by the Act

**2.1** The Act has-

- (i) specified the rates of income-tax for the assessment year 2018-19 and the rates of income-tax on the basis of which tax has to be deducted at source and advance tax has to be paid during financial year 2017-18;
- (ii) amended sections 2, 9, 9A, 10, 10AA, 11, 12A, 12AA, 13A, 23, 35AD, 36, 40A, 43, 43B, 43D, 44AA, 44AB, 44AD, 45, 47, 48, 49, 54EC, 55, 56, 58, 71, 79, 80CCD, 80CCG, 80G, 80-IAC, 80-IBA, 87A, 90, 90A, 92BA, 115BBDA, 115JAA, 115JB, 115JD, 119, 132, 132A, 133, 133A, 133C, 139, 140A, 143, 153, 153A, 153B, 153C, 155, 194J, 194LA, 194LC, 194LD, 197A, 204, 206C, 211, 234C, 244A, 245A, 245N, 245-O, 245Q, 253, 271F and 273B of the Income-tax Act, 1961 ('the Income-tax Act');
- (iii) inserted new sections 50CA, 92CE, 94B, 115BBG, 139AA, 194-IB, 194-IC, 206CC, 234F, 241A, 269ST, 271DA and 271J in the Income-tax Act;
- (v) amended sections 50 and 197 of the Finance Act, 2016.

### 3. Rate structure

#### 3.1 Rates of income-tax in respect of incomes liable to tax for the assessment year 2017-18.

**3.1.1** Part I of the First Schedule to the Act specifies the rates of income-tax in respect of incomes of all categories of assessee liable to tax for the assessment year 2017-18. These rates are the same as those laid down in Part III of the First Schedule to the Finance Act, 2016 as amended by the Taxation Laws (Second Amendment) Act, 2016 (No. 48 of 2016) for the purposes of computation of “advance tax”, deduction of tax at source from “Salaries” and charging of tax payable in certain cases during the financial year 2016-17.

The main features of the rates specified in the said Part I are as follows:

#### 3.1.2 Individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person.

Paragraph A of Part I of the First Schedule specifies the rates of income-tax in the case of every individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person (other than a co-operative society, firm, local authority and company) as under:-

Income chargeable to tax	Rate of income- tax		
	Individual (other than senior and very senior citizen), HUF, association of persons, body of individuals and artificial juridical person.	Individual, resident in India who is of the age of sixty years or more but less than eighty years. (senior citizen)	Individual, resident in India who is of the age of eighty years or more (very senior citizen)
Up to Rs. 2,50,000	Nil		
Rs. 2,50,001 - Rs. 3,00,000	10%	Nil	Nil
Rs. 3,00,001 - Rs. 5,00,000		10%	
Rs. 5,00,001 - Rs. 10,00,000	20%	20%	20%
Exceeding Rs. 10,00,000	30%	30%	30%

The amount of income-tax so computed shall be increased by a surcharge at the rate of fifteen per cent of such income-tax in case of a person having a total income exceeding one crore rupees. However, marginal relief shall be available so the total amount payable as income-tax and surcharge on total income exceeding one crore

rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

For instance, if the income of an individual below sixty years of age is Rs. 1,01,00,000 and income-tax computed is Rs. 28,55,000/-. Surcharge on the income-tax at the rate of fifteen per cent of such tax is Rs. 4,28,250/-. Thus the total income-tax inclusive of surcharge is Rs. 32,83,250/- without providing marginal relief. On providing marginal relief, the income-tax inclusive of surcharge shall be limited to Rs. 29,55,000/-. Then the education cess of two per cent is to be computed on Rs. 29,55,000/- which works out to Rs. 59,100/-. In addition, the amount of tax computed shall also be increased by an additional cess called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax which for the present case of income-tax of Rs. 29,55,000/- works out to be Rs. 29,550/-. Thus, where the amount of tax computed is Rs. 29,55,000/-, the Education Cess of two per cent is Rs. 59,100/-, the Secondary and Higher Education Cess is Rs. 29,550/-. The total cess in this case will amount to Rs. 88,650/-(i.e. Rs. 59,100/- + Rs. 29,550/-). No marginal relief shall be available in respect of such cess.

### 3.1.3 Co-operative Societies.

Paragraph B of Part I of the First Schedule to the Act specifies the rates of income-tax in the case of every co-operative society as under:-

Income chargeable to tax	Rate
Up to Rs. 10,000	10%
Rs. 10,001 -Rs. 20,000	20%
Exceeding Rs. 20,000	30%

The amount of income-tax so computed shall be increased by a surcharge at the rate of twelve per cent of such income-tax in case of a co-operative society having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

#### **3.1.4 Firms.**

Paragraph C of Part I of the First Schedule to the Act specifies the rate of income-tax as thirty per cent in the case of every firm.

The amount of income-tax so computed shall be increased by a surcharge at the rate of twelve per cent of such income-tax in case of a firm having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

#### **3.1.5 Local Authorities.**

Paragraph D of Part I of the First Schedule to the Act specifies the rate of income-tax as thirty per cent in the case of every local authority.

The amount of income-tax so computed shall be increased by a surcharge at the rate of twelve per cent of such income-tax in case of a local authority having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called

Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

### **3.1.6 Companies.**

Paragraph E of Part I of the First Schedule to the Act specifies the rates of income-tax in the case of a company.

In case of a domestic company, the rate of income-tax is—

- a) twenty nine per cent of the total income, if the total turnover or gross receipts of the company in the previous year 2014-15 does not exceed five crore rupees;
- b) twenty-five per cent of the total income at the option of the company, if it satisfies the conditions contained under section 115BA of the Income-tax Act;
- c) thirty per cent of the total income, in all other cases.

The tax computed shall be enhanced by a surcharge of seven per cent where such domestic company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of twelve per cent shall be levied if the total income of the company exceeds ten crore rupees.

In the case of a company other than a domestic company, income from royalties received from Government or an Indian concern, under an approved agreement made after 31.03.1961 but before 01.04.1976, shall be taxed at fifty per cent. Similarly, income from fees for technical services received by such company from Government or an Indian concern, under an approved agreement made after 29.02.1964 but before 01.04.1976, shall be taxed at fifty per cent. On the balance of the total income of such company, the tax rate shall be forty per cent. The tax computed shall be enhanced by a surcharge of two per cent where such company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of five per cent shall be levied if the total income of such company exceeds ten crore rupees.

However, marginal relief shall be allowed in the case of every company to ensure that: (i) the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees, (ii) the total amount payable as income-tax and surcharge on total income exceeding ten crore rupees shall not exceed the total amount payable as income-tax and surcharge on a total income of ten crore rupees, by more than the amount of income that exceeds ten crore rupees.

Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed, inclusive of surcharge in the case of every company. Also, such amount of tax and surcharge shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of the amount of tax computed, inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

### **3.2 Rates for deduction of income-tax at source from certain incomes during the financial year 2017-18.**

**3.2.1** Part II of the First Schedule to the Act specifies the rates for deduction of income-tax at source during the financial year 2017-18 in every case in which tax is to be deducted at the rates in force under the provisions of sections 193, 194, 194A, 194B, 194BB, 194D, 194LBA, 194LBB, 194LBC and 195 of the Income-tax Act. The rates for deduction of income-tax at source during the financial year 2017-18 will continue to be the same as those specified in Part II of the First Schedule to the Finance Act, 2016.

#### **3.2.2 Surcharge.**

The tax deducted at source in the following cases shall be increased by a surcharge, as specified under, for purposes of the Union:

(i) in case of every non-resident individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person, the rate of surcharge is—

(a) ten per cent of such income-tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds fifty lakh rupees but does not exceed one crore rupees;

(b) fifteen per cent of such income-tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees;

(ii) in the case of every non-resident co-operative society or firm, the rate of surcharge is twelve per cent., where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees;

(iii) in case of payments made to foreign companies, the rate of surcharge is—

(a) two per cent of such income-tax where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees but does not exceed ten crore rupees;

(b) five per cent of such income-tax where such income or the aggregate of such incomes paid or likely to be paid to a foreign company and subject to the deduction exceeds ten crore rupees.

(iv) No surcharge on tax deducted at source shall be levied in the case of an individual, Hindu undivided family, association of persons, body of individuals,

artificial juridical person, co-operative society, local authority, firm, being a resident or a domestic company.

### **3.2.3 Education Cess.**

Education Cess on income-tax shall continue to be levied for the purposes of the Union at the rate of two per cent of income-tax and surcharge, if any. For instance, if the amount of income of a foreign company is Rs. 1,20,00,000/- and tax to be deducted from such foreign company is Rs. 12,00,000/- at the rate of 10 per cent., then the surcharge at the rate of two per cent on such tax deducted shall be Rs. 24,000/-. Education cess on such amount of tax deducted and surcharge (i.e. Rs. 12,00,000/- + Rs. 24,000/- = Rs. 12,24,000/-) shall be Rs. 24,480/-.

In addition, the amount of tax deducted and surcharge shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent in all such cases. Thus in the above illustration, where the amount of tax deducted is Rs. 12,00,000/-, the surcharge is Rs. 24,000/-, the said Secondary and Higher Education Cess will be computed at the rate of one per cent on Rs. 12,24,000/- which works out to be Rs. 12,240/-. The total cess in this case will, therefore, amount to Rs. 36,720 (i.e. Rs. 24,480/- + Rs. 12,240/-).

### **3.3 Rates for deduction of income-tax at source from “Salaries”, computation of “advance tax” and charging of income-tax in special cases during the financial year 2017-18.**

**3.3.1** Part III of the First Schedule to the Act specifies the rates for deducting income-tax at source from ‘Salaries’ and computing advance tax during the financial year 2017-18. These rates are also applicable for charging income-tax during the financial year 2017-18 on current incomes in cases where accelerated assessments have to be made, e.g., provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good during that financial year, assessment of persons who are likely to transfer property to avoid tax, assessment of bodies formed for short duration, etc. The rates are as follows:-

#### **3.3.2 Individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person.**

Paragraph A of Part III of the First Schedule specifies the rates of income-tax in the case of every individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person (other than a co-operative society, firm, local authority and company). The basic exemption limits, rates of tax and slabs of income for various categories remain the same as in financial year 2015-16.



The rates of tax during the financial year 2016-17 are as follows:-

Income chargeable to tax	Rate of income- tax		
	Individual (other than senior and very senior citizen), HUF, association of persons, body of individuals and artificial juridical person.	Individual, resident in India who is of the age of sixty years or more but less than eighty years. (senior citizen)	Individual resident in India, who is of the age of eighty years or more. (very senior citizen)
Up to Rs. 2,50,000	<i>Nil</i>		
Rs. 2,50,001 - Rs. 3,00,000	5%	<i>Nil</i>	<i>Nil</i>
Rs. 3,00,001 - Rs. 5,00,000		5%	
Rs. 5,00,001 - Rs. 10,00,000	20%	20%	20%
Exceeding Rs. 10,00,000	30%	30%	30%

The amount of income-tax so computed shall be increased by a surcharge at the rate of ten per cent of such income-tax, in case of a person having a total income exceeding fifty lakh rupees but not exceeding one crore rupees, and fifteen per cent of such income-tax, in case of a person having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding,

- (a) fifty lakh rupees but not exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of fifty lakh rupees by more than the amount of income that exceeds fifty lakh rupees;
- (b) one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

### 3.3.3 Co-operative Societies.

Paragraph B of Part III of the First Schedule to the Act specifies the rates of income-tax in the case of every co-operative society. The rates are as follows:-



<b>Income chargeable to tax</b>	<b>Rate</b>
Up to Rs. 10,000	10%
Rs. 10,001 – Rs. 20,000	20%
Exceeding Rs. 20,000	30%

The amount of income-tax so computed shall continue to be increased by a surcharge at the rate of twelve per cent of such income-tax in case of a co-operative society having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Education Cess on income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of income-tax computed inclusive of surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

#### **3.3.4 Firms.**

Paragraph C of Part III of the First Schedule to the Act specifies the rate of income-tax as thirty per cent in the case of every firm.

The amount of income-tax so computed shall continue to be increased by a surcharge at the rate of twelve per cent of such income-tax in case of a firm having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

#### **3.3.5 Local Authorities.**

Paragraph D of Part III of the First Schedule to the Act specifies the rate of income-tax as thirty per cent in the case of every local authority.

The amount of income-tax so computed shall continue to be increased by a surcharge at the rate of twelve per cent of such income-tax in case of a local authority having a total income exceeding one crore rupees. However, marginal relief shall be

available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Education Cess on income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of income-tax and surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

### **3.3.6 Companies.**

Paragraph E of Part III of the First Schedule to the Act specifies the rate of income-tax in the case of a company.

In case of a domestic company, the rate of income-tax is—

- a) twenty five per cent of the total income, if the total turnover or gross receipts of the company in the previous year 2015-16 does not exceed fifty crore rupees;
- b) twenty-five per cent of the total income, at the option of the company, if it satisfies the conditions contained under section 115BA of the Income-tax Act;;
- c) the rate of income-tax is thirty per cent of the total income, in all other cases.

The tax computed shall continue to be enhanced by a surcharge of seven per cent where such domestic company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of twelve per cent shall continue to be levied if the total income of the company exceeds ten crore rupees.

In the case of a company other than a domestic company, income from royalties received from Government or an Indian concern under an approved agreement, made after 31.03.1961 but before 01.04.1976, shall be taxed at fifty per cent. Similarly, income from fees for technical services received by such company from Government or Indian concern under an approved agreement, made after 29.02.1964 but before 01.04.1976, shall be taxed at fifty per cent. On the balance of the total income of such company, the tax rate shall be forty per cent.

The tax computed shall continue to be enhanced by a surcharge of two per cent where such company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of five per cent shall continue to be levied if the total income of such company exceeds ten crore rupees.

However, marginal relief shall be allowed in the case of every company to ensure that: (i) the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that

exceeds one crore rupees, (ii) the total amount payable as income-tax and surcharge on total income exceeding ten crore rupees shall not exceed the total amount payable as income-tax and surcharge on a total income of ten crore rupees, by more than the amount of income that exceeds ten crore rupees.

Education Cess on Income-tax and Secondary and Higher Education Cess on income-tax shall continue to be levied at the rate of two per cent and one per cent respectively of the amount of income-tax computed including surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

### **3.4 Surcharge on Additional Income-tax.**

Where additional income-tax has to be paid under section 115-O or section 115-QA or sub-section (2) of section 115R or section 115TA or section 115TD of the Income-tax Act, that is to say, on distribution of dividend by domestic companies or distribution of income by a company on buy-back of shares from shareholders or on distribution of income by a mutual fund to its unit holders or on distribution of income by a securitisation trust to its investors or on accreted income of certain trusts and institutions, the additional tax so payable shall be increased by a surcharge of twelve per cent of such income-tax.

#### **4. Consolidation of plans within a scheme of mutual fund.**

**4.1** Section 47 of the Income-tax Act was amended vide Finance Act, 2016 to provide tax neutrality to the transfer of units in a consolidating plan of mutual fund scheme made in consideration of the allotment of units in the consolidated plan of that mutual fund scheme.

**4.2** Clause (42A) of section 2 and section 49 of the Income-tax Act have been amended so as to provide that cost of acquisition of the units in the consolidated plan of mutual fund scheme referred to in section 47(xix) shall be the cost of units in consolidating plan of mutual fund scheme and period of holding of the units of consolidated plan of mutual fund scheme shall include the period for which the units in consolidating plan of mutual fund scheme were held by the assessee.

**4.3** *Applicability:* These amendments take effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

#### **5. Clarity relating to indirect transfer provisions.**

**5.1** Section 9 of the Income-tax Act deals with cases of income which are deemed to accrue or arise in India. Sub-section (1) of the said section creates a legal fiction that certain incomes shall be deemed to accrue or arise in India. Clause (i) of said sub-section (1) provides a set of circumstances in which income accruing or arising, directly or indirectly, is taxable in India. The said clause provides that all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India shall be deemed to accrue or arise in India.

**5.2** Certain clarificatory amendments were inserted in the provisions of section 9 vide Finance Act, 2012. The amendments included inter alia the insertion of Explanation 5 in section 9(1)(i) w.e.f. 1st April, 1962. Explanation 5 clarified that an asset or capital asset, being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

**5.3** In response to various queries raised by stakeholders seeking clarification on the scope of indirect transfer provisions, the CBDT issued Circular No. 41 of 2016. However, concerns have been raised by stakeholders that the provisions result in multiple taxation.

**5.4** In order to address these concerns, section 9 of the Income-tax Act has been amended so as to clarify that Explanation 5 shall not apply to an asset or capital asset, which is held by a non-resident by way of investment, directly or indirectly, in a Foreign Institutional Investor as referred to in clause (a) of the Explanation to section 115AD for an assessment year commencing on or after the 1st April, 2012 but before the 1st April, 2015.

**5.5 *Applicability:*** This amendment takes effect retrospectively from 1st April, 2012 and will, accordingly, apply from assessment year 2012-13 and subsequent assessment years.

**5.6** Section 9 of the Income-tax Act has been further amended so as to clarify that Explanation 5 shall not apply to an asset or capital asset, which is held by a non-resident by way of investment, directly or indirectly, in Category-I or Category-II foreign portfolio investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014, made under the Securities and Exchange Board of India Act, 1992, as these entities are regulated and broad based.

**5.7** This amendment is clarificatory in nature.

**5.8 *Applicability:*** This amendment takes effect retrospectively from 1st April, 2015 and will, accordingly, apply from assessment year 2015-16 and subsequent assessment years.

## **6. Modification in conditions of special taxation regime for off shore funds under section 9A.**

**6.1** Section 9A of the Income-tax Act provides for a special regime in respect of offshore funds. It provides that in the case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund. Further, an eligible investment fund shall not be said to be resident in India merely because the eligible fund manager undertaking fund management activities on its behalf is located in India. The benefit under section 9A is available subject to the conditions provided in sub-sections (3), (4) and (5) of the section.

**6.2** Sub-section (3) of section 9A provides for the conditions for the eligibility of the fund. These conditions, inter alia, are related to residence of fund, corpus, size, investor broad basing, investment diversification and payment of remuneration to fund manager at arm's length. In respect of corpus of the fund, before amendment by the Act, it was provided that the monthly average of the corpus of the fund shall not be less than one hundred crore rupees except where the fund has been established or incorporated in the previous year in which case, the corpus of fund shall not be less than one hundred crore rupees at the end of such previous year.

**6.3** Representations have been received stating that in the year in which the fund is being wound up, it would not be possible to maintain the monthly average of the corpus of the fund to an amount which would not be less than one hundred crore rupees as required.

**6.4** In order to rationalise the regime and to address the concerns of the stakeholders, section 9A of the Income-tax Act has been amended to provide that in the previous year in which the fund is being wound up, the condition that the monthly average of the corpus of the fund shall not be less than one hundred crore rupees, shall not apply.

**6.5 Applicability:** This amendment takes effect retrospectively from 1st April, 2016 and will, accordingly, apply from assessment year 2016-17 and subsequent assessment years.

**7. Correct reference to FEMA instead of FERA.**

**7.1** Sub-clause (ii) of clause 4 of section 10 of the Income-tax Act refers to any income of an individual by way of interest on moneys standing to his credit in a Non-Resident (External) Account in any bank in India in accordance with the Foreign Exchange Management Act, 1999 (42 of 1999), and the rules made thereunder. The proviso to the said sub-clause, before amendment by the Act, referred individual to be a person resident outside India, as defined in clause (q) of section 2 of Act 46 of 1973, i.e., Foreign Exchange Regulation Act, 1973, (FERA) which stands repealed and re-enacted as Act 42 of 1999, i.e., the Foreign Exchange Management Act, 1999 (FEMA). The definition of person outside India is occurring in clause (w) of FEMA.

**7.2** With a view to reflect the correct definition of the expression "*person resident outside India*", the proviso to section 10(4)(ii) of the Income-tax Act has been amended.

**7.3** This amendment is clarificatory in nature.

**7.4 Applicability:** This amendment takes effect retrospectively from 1st April, 2013, and will, accordingly, apply from assessment year 2013-14 and subsequent assessment years.

**8. Tax-exemption to partial withdrawal from National Pension System (NPS).**

**8.1** The provisions of section 10(12A) of the Income-tax Act specify that payment from National Pension System (NPS) trust to an employee on closer of his account or opting out shall be exempt up to 40% of total amount payable to him.

**8.2** In order to provide further relief to an employee subscriber of NPS, clause (12B) has been inserted in section 10 of the Income-tax Act so as to provide exemption to partial withdrawal not exceeding 25% of the contribution made by an employee in accordance with the terms and conditions specified under Pension Fund Regulatory and Development Authority Act, 2013 and regulations made there under.

**8.3 Applicability:** This amendment takes effect from 1st of April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent assessment years.

**9. Exemption of income of Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund.**

**9.1** Section 10(23C) of the Income-tax Act provide exemption in respect of income of certain funds which include inter alia the Prime Minister's National Relief Fund.

**9.2** The Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund, referred to in sub-clause (iiihf) of clause (a) of sub-section (2) of section 80G of the



Income-tax Act, which is of the same nature at the level of state or the Union Territory as is the Prime Minister's National Relief Fund at the national level, is not exempted under section 10(23C). In the absence of such exemption, these funds are required to obtain registration under section 12A of the Income-tax Act in order to avail exemption of its income under section 11 and 12 of the said Act and are also required to fulfil certain conditions.

**9.3** Therefore, clause (23C) of section 10 of the Income-tax Act has been amended to provide the benefit of exemption to the Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund also.

**9.4** *Applicability:* This amendment takes effect retrospectively from the 1st April, 1998, the date on which sub-clause (iihf) of clause (a) of sub-section (2) of section 80G relating to deduction in any sum paid to the Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund came into force, and will, accordingly, apply from assessment year 1998-99 and subsequent assessment years.

## **10. Tax incentive for the development of capital of Andhra Pradesh.**

**10.1** As per section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the specified compensation received by the landowner in lieu of acquisition of land is exempt from income tax. The Land Pooling Scheme is an alternative form of arrangement made by the Government of Andhra Pradesh for formation of new capital city of Amaravati to avoid land-acquisition disputes and lessen the financial burden associated with payment of compensation under that Act. In Land pooling scheme, the compensation in the form of reconstituted plot or land is provided to landowners. However, before amendment by the Act, there were no provisions in the Income-tax Act to provide for exemption from tax on transfer of land under the land pooling scheme as well as on transfer of Land Pooling Ownership Certificates (LPOCs) or reconstituted plot or land.

**10.2** With a view to provide relief to an individual or Hindu undivided family who was the owner of such land as on 2nd June, 2014, and has transferred such land under the land pooling scheme notified under the provisions of Andhra Pradesh Capital Region Development Authority Act, 2014, a new clause (37A) has been inserted in section 10 of the Income-tax Act to provide that in respect of said persons, capital gains arising from following transfer shall not be chargeable to tax under the Income-tax Act:

- (i) Transfer of capital asset being land or building or both, under land pooling scheme.
- (ii) Sale of LPOCs by the said persons received in lieu of land transferred under the scheme.
- (iii) Sale of reconstituted plot or land by said persons within two years from the end of the financial year in which the possession of such plot or land was handed over to the said persons.

**10.3 *Applicability:*** This amendment takes effect retrospectively, from 1st April, 2015 and will, accordingly, apply from assessment year 2015-16 and subsequent years.

**10.4** Further, section 49 of the Income-tax Act has also been amended so as to provide that where reconstituted plot or land, received under land pooling scheme is transferred after the expiry of two years from the end of the financial year in which the possession of such plot or land was handed over to the said assessee, the cost of acquisition of such plot or land shall be deemed to be its stamp duty value on the last day of the second financial year after the end of financial year in which the possession of such asset was handed over to the assessee.

**10.5 *Applicability:*** This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent years.

**11. Exemption of long term capital gains tax under section 10(38) of the Income-tax Act.**

**11.1** Clause (38) of Section 10 of the Income-tax Act, before amendment by the Act, provided that the income arising from a transfer of long term capital asset, being equity share of a company or a unit of an equity oriented fund, shall be exempt from tax if the transaction of sale is undertaken on or after 1st October, 2014 and is chargeable to Securities Transaction Tax under Chapter VII of the Finance (No.2) Act, 2004.

**11.2** With a view to prevent abuse of this exemption by certain persons for declaring their unaccounted income as exempt long-term capital gains by entering into sham transactions, section 10(38) of the Income-tax Act has been amended to provide that exemption under this section for income arising on transfer of equity share acquired or on after 1st day of October, 2004 shall be available only if the acquisition of share is chargeable to Securities Transactions Tax under Chapter VII of the Finance (No. 2) Act, 2004. However, to protect the exemption in genuine cases, it is also provided that the Central Government shall notify transactions of acquisition for which the condition of chargeability to the Securities Transaction Tax on acquisition shall not be applicable.

**11.3 *Applicability:*** This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent years.

**12. Exemption of income of Foreign Company from sale of leftover stock of crude oil from strategic reserves at the expiry of agreement or arrangement.**

**12.1** Clause (48A) of section 10 of the Income-tax Act provide that any income accruing or arising to a foreign company on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India shall be exempt, if the said storage and sale is pursuant to an agreement or an arrangement entered into by the Central Government; and having regard to the national interest, said foreign company and the said agreement or arrangement are



notified by the Central Government in that behalf. Before amendment by the Act, the benefit of exemption was not available to sale out of the leftover stock of crude after the expiry of said agreement or the arrangement.

**12.2** Given the strategic nature of the project benefitting India to augment its strategic petroleum reserves, a new clause (48B) has been inserted in section 10 of the Income-tax Act so as to provide that any income accruing or arising to a foreign company on account of sale of leftover stock of crude oil, if any, from a facility in India after the expiry of an agreement or an arrangement referred to in clause (48A) of section 10 of the Income-tax Act shall also be exempt subject to such conditions as may be notified by the Central Government in this behalf.

**12.3 Applicability:** This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent assessment years.

### **13. Rationalisation of provisions of Section 10AA.**

**13.1** Under section 10AA of the Income-tax Act, deduction is allowed, from the total income of an assessee, in respect of profits and gains from his unit operating in a Special Economic Zone (SEZ), subject to fulfilment of certain conditions.

**13.2** The said section allows deduction in computing the total income of the assessee; hence the deduction is to be allowed from the total income of the assessee as computed in accordance with the provision of the Income-tax Act before giving effect to the provisions of section 10AA. However, courts have taken a view (while deciding the matter pertaining to the section 10A of the Income-tax Act which also contains similar provision) that the deduction is to be allowed from the total income of the undertaking and not from the total income of the assessee.

**13.3** In view of the above, section 10AA of the Income-tax Act has been amended to clarify that the amount of deduction referred to in the said section shall be allowed from the total income of the assessee computed in accordance with the provisions of the Income-tax Act before giving effect to the provisions of the said section and the deduction under the said section in no case shall exceed the said total income.

**13.4 Applicability:** This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent assessment years.

### **14. Restriction on exemption in case of corpus donation by exempt entities to other exempt entities.**

**14.1** Donations made by a trust to any other trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 of the Income-tax Act, except those made out of accumulated income, is considered as application of income for the purposes of its objects.

**14.2** Similarly, donations made by entities exempted under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 to any trust or institution registered under section 12AA, except those made out of accumulated income, is also considered as application of income for the purposes of its objects.

**14.3** However, donation given by these exempt entities to another exempt entity, with specific direction that it shall form part of corpus, was though considered application of income in the hands of donor trust but was not considered as income of the recipient trust. Trusts, thus, engaged in giving corpus donations without actual applications.

**14.4** Therefore, a new Explanation has been inserted to section 11 of the Income-tax Act so as to provide that any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1) of section 11, being contributions with specific direction that they shall form part of the corpus of the trust or institution, shall not be treated as application of income.

**14.5** A proviso has also been inserted in clause (23C) of section 10 of the Income-tax Act so as to provide similar restriction as above on the entities exempt under sub-clauses (iv), (v), (vi) or (via) of said clause in respect of any amount credited or paid out of their income.

**14.6** *Applicability:* These amendments take effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent assessment years.

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

**15.1** The provisions of section 12A of the Income-tax Act provide for conditions for applicability of sections 11 and 12 of the Income-tax Act in relation to the benefit of exemption in respect of income of any trust or institution.

**15.2** Further, the provisions of section 12AA of the Income-tax Act provide for registration of the trust or institution which entitles them to the benefit of sections 11 and 12. Section 12AA also provides the circumstances under which registration can be cancelled, one such circumstance being satisfaction of the Principal Commissioner or Commissioner that its activities are not genuine or are not being carried out in accordance with its objects subsequent to grant of registration. However, before amendment by the Act, there was no explicit provision in the Income-tax Act which mandates said trust or institution to approach for fresh registration in the event of adoption or undertaking modifications of the objects after the registration has been granted.

**15.3** Therefore, section 12A of the Income-tax Act has been amended to provide that where a trust or an institution has been granted registration under section 12AA or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996] and, subsequently, it has adopted or

undertaken modifications of the objects which do not conform to the conditions of registration, it shall be required to obtain fresh registration by making an application within a period of thirty days from the date of such adoption or modifications of the objects in the prescribed form and manner. Consequential amendments to Section 12AA of the Income-tax Act have also been made.

**15.4** Further, as per the provisions of said section, the entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139 of the Income-tax Act, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. However, there was no clarity as to whether the said return of income was to be filed within time allowed under section 139 or otherwise.

**15.5** In order to provide clarity in this regard, further amendment to section 12A of the Income-tax has been made so as to provide for additional condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Income-tax Act.

**15.6** These amendments are clarificatory in nature.

**15.7** *Applicability:* These amendments take effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent assessment years.

## **16. Transparency in electoral funding.**

**16.1** The provisions of section 13A of the Income-tax Act provide inter alia that political parties that are registered with the Election Commission of India are exempt from paying income-tax. To avail the exemption, the political parties are required to submit a report to the Election Commission of India as mandated under sub-section (3) of section 29C of the Representation of the People Act, 1951 (43 of 1951) furnishing the details of contributions received by a political party in excess of Rs. 20,000 from any person. However, before amendment by the Act, there was no restriction of receipt of any amount of donation in cash by a political party.

**16.2** Secondly, a political party is also required to file its return of income under section 139(4B) of the Income-tax Act, if its income exceeds the maximum amount not chargeable to tax (without considering the exemption under section 13A of the Income-tax Act). However, before amendment by the Act, filing of the return was not a condition precedent for availing exemption under the said section.

**16.3** In order to discourage the cash transactions and to bring transparency in the source of funding to political parties, section 13A of the Income-tax Act has been amended so as to provide for additional conditions for availing the benefit of the said section which are as under:

- (i) No donations of Rs.2000/- or more is received otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bonds,

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

**16.4** Further, in order to address the concern of anonymity of the donors, section 13A of the Income-tax Act has been further amended by the Act so as to provide that the political parties shall not be required to furnish the name and address of the donors who contribute by way of electoral bond.

**16.5** *Applicability:* This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent assessment years.

**17. No notional income for house property held as stock-in-trade.**

**17.1** Section 23 of the Income-tax Act provides for the manner of determination of annual value of house property.

**17.2** Considering the business exigencies in case of real estate developers, the said section has been amended to provide that where the house property consisting of any building and land appurtenant thereto is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period up to one year from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be nil.

**17.3** *Applicability:* This amendment takes effect from 1st April, 2018 and will, accordingly apply from assessment year 2018-19 and subsequent years.

**18. Increase in deduction limit in respect of provision for bad and doubtful debts.**

**18.1** Sub-clause (a) of section 36(1)(viia) of the Income-tax Act specify inter alia that a scheduled bank (not being a bank incorporated by or under the laws of a country outside India) or a non-scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, can claim deduction in respect of provision for bad and doubtful debts. Before amendment by the Act, the amount of such deduction was limited to seven and one-half per cent of the total income (computed before making any deduction under that clause and Chapter VIA of the Income-tax Act) and an amount not exceeding ten per cent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner at the end of the previous year.

**18.2** In order to strengthen the financial position of the entities specified in the sub-clause (a) of section 36(1)(viia) of the Income-tax Act, the said section has been amended so as to enhance the present limit from seven and one-half per cent to eight and one-half per cent of the amount of the total income (computed before making any deduction under that clause and Chapter VIA of the Income-tax Act).

**18.3 Applicability:** This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent assessment years.

**19. Measures to discourage cash transactions.**

**19.1** Sub-section (3) of Section 40A of the Income-tax Act, before amendment by the Act, specified that any expenditure in respect of which payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, shall not be allowed as a deduction. Further, sub-section (3A) of section 40A of the Income-tax Act also provided for deeming a payment as profits and gains of business of profession if the expenditure is incurred in a particular year but the payment is made in any subsequent year of a sum exceeding twenty thousand rupees otherwise than by an account payee cheque drawn on a bank or account payee bank draft.

**19.2** In order to disincentivise cash transactions, section 40A of the Income-tax Act has been amended to provide for the following:

- (i) To reduce the threshold of cash payment to a person from twenty thousand rupees to ten thousand rupees in a single day; i.e any payment in cash above ten thousand rupees to a person in a day, shall not be allowed as deduction in computation of Income from "Profits and gains of business or profession";
- (ii) Deeming a payment as profits and gains of business of profession if the expenditure is incurred in a particular year but the cash payment is made in any subsequent year of a sum exceeding ten thousand rupees to a person in a single day; and
- (iii) To expand the specified mode of payment under respective sub-section of section 40A of the Income-tax Act from an account payee cheque drawn on a bank or account payee bank draft to by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account.

**19.3 Applicability:** This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent assessment years.

**20. Disallowance of depreciation under section 32 and capital expenditure under section 35AD on cash payment.**

**20.1** Sub-section (3) of section 40A of the Income-tax Act provides that revenue expenditure incurred in cash exceeding certain monetary threshold is not allowable except in such circumstances as specified under Rule 6DD of the Income-tax Rules, 1962. However, there was no provision to disallow the capital expenditure incurred in cash. Further, section 35AD of the Income-tax Act provides inter alia for investment-linked deduction on the amount capital expenditure incurred, wholly or exclusively for the purposes of business, during the previous year for a specified

business except capital expenditure incurred for acquisition of any land or goodwill or financial instrument.

**20.2** In order to discourage cash transactions even for capital expenditure, section 43 of the Income-tax Act has been amended to provide that where an assessee incurs any expenditure for acquisition of any asset in respect which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account, exceeds ten thousand rupees, such expenditure shall be ignored for the purposes of determination of actual cost of such asset.

**20.3** Section 35AD of the Income-tax Act has also been amended to provide that any expenditure in respect of which payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account, exceeds ten thousand rupees, no deduction shall be allowed in respect of such expenditure.

**20.4** *Applicability:* These amendments take effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent assessment years.

## **21. Extension of scope of section 43D to Co-operative Banks.**

**21.1** Section 43D of the Income-tax Act specifies inter alia that interest income received by certain institutions or banks or corporations or companies in relation to certain categories of bad or doubtful debts shall be chargeable to tax in the previous year in which it is credited to its profit and loss account for that year or actually received, whichever is earlier. This provision is an exception to the accrual system of accounting which is regularly followed by such assesseees for computation of total income.

**21.2** The benefit of this provision, before amendment by the Act, was available to scheduled banks, public financial institutions, state financial corporations, state industrial investment corporations and certain public companies like housing finance companies. With a view to provide a level playing field to co-operative banks vis-à-vis scheduled banks and to rationalise the scope of the section 43D, the said section has been amended so as to include co-operative banks other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank/within its scope.

**21.3** Consequentially, as per matching principle in taxation, if the interest income on bad or doubtful debts is chargeable to tax on receipt basis, the interest payable on such bad or doubtful debts need to be allowed on actual payment. In view of this, section 43B of the Income-tax Act has also been amended to provide that any sum payable by the assessee as interest on any loan or advances from a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank 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.

**21.4 *Applicability:*** This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent assessment years.

## **22. Increasing the threshold limit for maintenance of books of accounts in case of Individuals and Hindu undivided family.**

**22.1** Before amendment by the Act, the provisions of clause (i) and clause (ii) of sub-section (2) of section 44AA of the Income-tax Act casted an obligation on every person carrying on business or profession [other than those mentioned in sub-section (1) such as legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette] to maintain such books of accounts and documents in the previous year to enable the Assessing Officer to compute his total income in accordance with the provisions of the Income-tax Act, provided that the income and total sales or turn over or gross receipts, etc. specified in said clauses exceeds rupees one lakh twenty thousand and rupees ten lakh respectively.

**22.2** In order to reduce the compliance burden, section 44AA of the Income-tax Act has been amended so as to increase monetary limits of income and total sales or turn over or gross receipts, etc. specified in said clauses for maintenance of books of accounts from one lakh twenty thousand rupees to two lakh fifty thousand rupees and from ten lakh rupees to twenty-five lakh rupees respectively in the case of individuals and Hindu undivided family carrying on business or profession.

**22.3 *Applicability:*** This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent assessment years.

## **23. Exclusion of certain specified person from requirement of audit of accounts under section 44AB.**

**23.1** The provisions of section 44AB of the Income-tax Act provide inter alia that every person carrying on the business is required to get his accounts audited if the total sales, turnover or gross receipts in the previous year exceeds one crore rupees. The threshold limit for applicability of presumptive taxation in case of eligible business carried on by eligible person under section 44AD of the Income-tax Act was increased to two crore rupees from one crore rupees with effect from 1st April, 2017 relevant to Assessment year 2017-18 by Finance Act, 2016. Further vide press release dated 20th June, 2016, it was clarified that if an eligible person opts for presumptive taxation scheme as per section 44AD(1) of the Income-tax Act, he shall not be required to get his accounts audited if the total turnover or gross receipts of the relevant previous year does not exceed two crore rupees.

**23.2** In light of the above legislative changes and to reduce the compliance burden of the small tax payers and facilitate the ease of doing business, section 44AB of

Income-tax Act has been amended so as to exclude the eligible person, who declares profits for the previous year in accordance with the provisions of sub-section (1) of section 44AD of the Income-tax Act and his total sales, total turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year, from requirement of audit of books of accounts under section 44AB of the Income-tax Act.

**23.3 *Applicability:*** This amendment takes effect from 1st April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

#### **24. Measures for promoting digital payments in case of small unorganized businesses.**

**24.1** The provisions of section 44AD of the Income-tax Act provide inter alia for a presumptive income scheme in case of eligible assesses carrying out eligible businesses. Before amendment by the Act, under this scheme, in case of an eligible assessee engaged in eligible business having total turnover or gross receipts not exceeding two crore rupees in a previous year, a sum equal to eight per cent of the total turnover or gross receipts, or, as the case may be, a sum higher than the aforesaid sum declared by the assessee in his return of income, was deemed to be the profits and gains of such business chargeable to tax under the head "profits and gains of business or profession".

**24.2** In order to promote digital transactions and to encourage small unorganized business to accept digital payments, section 44AD of the Income-tax Act has been amended to reduce the rate of deemed total income of eight per cent to six per cent in respect of the amount of such total turnover or gross receipts received by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account during the previous year or before the due date specified in sub-section (1) of section 139 of the Income-tax Act in respect of that previous year. However, the rate of deemed profit of 8% referred to in section 44AD of the Income-tax Act shall continue to apply in respect of total turnover or gross receipts received in any other mode.

**24.3 *Applicability:*** This amendment takes effect from 1st April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

#### **25. Special provisions for computation of capital gains in case of joint development agreement.**

**25.1** Under the provisions of section 45 of the Income-tax Act, capital gain is chargeable to tax in the year in which transfer takes place except in certain cases. The definition of 'transfer' includes inter alia any arrangement or transaction where any rights are handed over in execution of part performance of contract, even though the legal title has not been transferred. In such a scenario, execution of Joint Development Agreement between the owner of immovable property and the developer triggers the capital gains tax liability in the hands of the owner in the year



in which the possession of immovable property is handed over to the developer for development of a project.

**25.2** With a view to minimise the genuine hardship which the owner of land may face in paying capital gains tax in the year of transfer, a new sub-section (5A) has been inserted in section 45 of the Income-tax Act to provide that in case of an assessee, being an individual or a Hindu undivided family, who enters into a specified agreement for development of a project, the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority.

**25.3** It has also been provided that the stamp duty value of his share, being land or building or both, in the project on the date of issuing of said certificate of completion as increased by any monetary consideration received, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

**25.4** It is also provided that benefit of this regime shall not apply to an assessee who transfers his share in the project to any other person on or before the date of issue of said certificate of completion. It has also been provided that in such a situation, the capital gains as determined under general provisions of the Income-tax Act shall be deemed to be the income of the previous year in which such transfer took place and shall be computed as per provisions of the Income-tax Act without taking into account these provisions.

**25.5** Consequential amendment to section 49 of the Income-tax Act has also been made to provide that the cost of acquisition of the share in the project being land or building or both, in the hands of the land owner shall be the amount which is deemed as full value of consideration under section 45(5A) of the Income-tax Act.

**25.6** *Applicability:* These amendments will take effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent years.

**25.7** A new section 194-IC has also been inserted in the Income-tax Act so as to provide that in case any monetary consideration is payable under the specified agreement, tax at the rate of ten per cent shall be deductible from such payment.

**25.8** *Applicability:* This amendment will take effect from 1st April, 2017.

## **26. Tax neutral conversion of preference shares to equity shares.**

**26.1** Conversion of security from one form to another is regarded as transfer for the purpose of levy of capital gains tax under the provisions of the Income-tax Act. However, tax neutrality on conversion of bond or debenture of a company to share or debenture of that company is provided under section 47 of the Income-tax Act. Before amendment by the Act, similar tax neutrality has not been provided on conversion of preference share of a company into its equity share.

**26.2** In order to provide tax neutrality to the conversion of preference share of a company into equity share of that company, section 47 of the Income-tax Act has been amended to provide that the conversion of preference share of a company into its equity share shall not be regarded as transfer.

**26.3** Consequently, section 49 and section 2(42A) of the Income-tax Act have also been amended in respect of cost of acquisition and period of holding.

**26.4** *Applicability:* These amendments take effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent years.

**27. Extension of capital gain exemption to Rupee Denominated Bonds.**

**27.1** With a view to provide relief to non-resident investors, in the wake of permission to the Indian corporates by the Reserve Bank of India (the RBI) to issue rupee denominated bonds outside India as a measure to enable the Indian corporates to raise funds from a source outside India, the Finance Act, 2016, inter alia, amended section 48 of the Income-tax Act with effect from the 1st April, 2017 so as to provide that the gains arising on account of appreciation of rupee against a foreign currency at the time of redemption of rupee denominated bond of an Indian company subscribed by him, shall be ignored for the purpose of computation of full value of consideration.

**27.2** Representations were received to allow exemption from capital gain arising to secondary holders as well. Representations were also received to allow exemption in respect of transfer of Rupee Denominated Bonds from non-resident to non-resident for the purpose of increasing acceptability and transferability of such instrument in the foreign market.

**27.3** In order to further provide relief in respect of gains arising on account of appreciation of rupee against a foreign currency at the time of redemption of rupee denominated bond of an Indian company to secondary holders as well, section 48 of the Income-tax Act has been amended so as to provide that the said appreciation of rupee shall be ignored for the purposes of computation of full value of consideration.

**27.4** Further, with a view to facilitate transfer of Rupee Denominated Bonds from non-resident to non-resident, section 47 of the Income-tax Act has been amended so as to provide that any transfer of capital asset, being rupee denominated bond of Indian company issued outside India, by a non-resident to another non-resident shall not be regarded as transfer.

**27.5** *Applicability:* These amendments take effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent years.

**28. Cost of Acquisition of capital assets of entities in case of levy of tax on accreted income under section 115TD.**

**28.1** The provisions of the section 49 of the Income-tax Act provides for computation of cost with reference to certain modes of acquisition of capital asset.

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

**28.3** This amendment is consequential in nature.

**28.4 *Applicability:*** This amendment takes effect retrospectively from 1st June, 2016 and will, accordingly, apply from assessment year 2016-17 and subsequent assessment years.

**29. Cost of acquisition in Tax neutral demerger of a foreign company.**

**29.1** Section 47(vic) of the Income-tax Act provides that the transfer of shares of an Indian company by a demerged foreign company to a resulting foreign company will be not regarded as transfer.

**29.2** Section 49 of the Income-tax Act has been amended to provide that cost of acquisition of the shares of Indian company referred to in section 47(vic) in the hands of the resulting foreign company shall be the same as it was in the hands of demerged foreign company.

**29.3 *Applicability:*** This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent years.

**30. Fair Market Value to be full value of consideration in certain cases.**

**30.1** Under the provisions of the Income-tax Act, income chargeable under the head "Capital gains" is computed by taking into account the amount of full value of consideration received or accrued on transfer of a capital asset. In order to ensure that the full value of consideration is not understated, the Income-tax Act also contains provisions for deeming of full value of consideration in certain cases such as deeming of stamp duty value as full value of consideration for transfer of immovable property in certain cases.

**30.2** In order to rationalise the provisions relating to deeming of full value of consideration for computation of income under the head "capital gains", a new section 50CA has been inserted in the Income-tax Act so as to provide that where consideration for transfer of share of a company (other than quoted share) is less than the Fair Market Value (FMV) of such share determined in accordance with the

prescribed manner, the FMV shall be deemed to be the full value of consideration for the purposes of computing income under the head "Capital gains".

**30.3 *Applicability:*** This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent assessment years.

### **31. Expanding the scope of long term bonds under 54EC.**

**31.1** Section 54EC of the Income-tax Act provides that capital gain to the extent of Rs. 50 lakhs arising from the transfer of a long term capital asset shall be exempt if the assessee invests the whole or any part of capital gains in certain specified bonds, within the specified time. Before amendment by the Act, investment in bonds issued by the National Highways Authority of India or by the Rural Electrification Corporation Limited were eligible for exemption under this section.

**31.2** In order to widen the scope of the section for sectors which may raise fund by issue of bonds eligible for exemption under section 54EC of the Income-tax Act, the said section has been amended so as to provide that investment in any bond redeemable after three years which has been notified by the Central Government in this behalf shall also be eligible for exemption.

**31.3 *Applicability:*** This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent years.

### **32. Shifting base year from 1981 to 2001 for computation of capital gains.**

**32.1** Before amendment by the Act, the provisions of section 55 of the Income-tax Act provided that for computation of capital gains, an assessee shall be allowed deduction for cost of acquisition of the asset and also cost of improvement, if any. However, for computing capital gains in respect of an asset acquired before 01.04.1981, the assessee had been allowed an option of either to take the fair market value of the asset as on 01.04.1981 or the actual cost of the asset as cost of acquisition. The assessee was also allowed to claim deduction for cost of improvement incurred after 01.04.1981, if any.

**32.2** In order to remove the genuine difficulties in computing the capital gains in respect of transfer of a capital asset, especially immovable property acquired before 01.04.1981, due to non-availability of relevant information for computation of fair market value of such asset as on 01.04.1981, section 55 of the Income-tax Act has been amended so as to provide that the cost of acquisition of an asset acquired before 01.04.2001 shall be allowed to be taken as fair market value as on 1st April, 2001 and the cost of improvement shall include only those capital expenses which are incurred after 01.04.2001.

**32.3** Consequently, section 48 of the Income-tax Act has also been amended so as to align the provision relating to cost inflation index to the revised base year.

**32.4 *Applicability:*** These amendments take effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent years.

### **33. Widening scope of Income from other sources.**

**33.1** The provisions of section 56(2)(vii) of the Income-tax Act provided that any sum of money or any property which is received without consideration or for inadequate consideration (in excess of the specified limit of Rs. 50,000) by an individual or Hindu undivided family is chargeable to income-tax in the hands of the resident under the head "Income from other sources" subject to certain exceptions.

**33.2** Further, receipt of certain shares by a firm or a company in which the public are not substantially interested is also chargeable to income-tax in case such receipt is in excess of Rs. 50,000 and is received without consideration or for inadequate consideration.

**33.3** The definition of property for the purpose of this section includes immovable property, jewellery, shares, paintings, etc. These provisions were applicable only in case of individual or HUF and firm or company in certain cases. Therefore, receipt of sum of money or property without consideration or for inadequate consideration did not attract these provisions in cases of other assesseees.

**33.4** In order to prevent the practice of receiving the sum of money or the property without consideration or for inadequate consideration, a new clause (x) has been inserted in sub-section (2) of section 56 of the Income-tax Act so as to provide that receipt of the sum of money or the property by any person without consideration or for inadequate consideration in excess of Rs. 50,000 shall be chargeable to tax in the hands of the recipient under the head "Income from other sources". The scope of exceptions has also been widened by including the receipt by certain trusts or institutions and receipt by way of certain transfers not regarded as transfer under section 47 of the Income-tax Act.

**33.5** Consequential amendments have also been made section 49 of the Income-tax Act for determination of cost of acquisition and section 2(24) of the Income-tax Act to include sum of money or value of property referred to in section 56(2)(x) of the Income-tax Act in the definition of income.

**33.6 *Applicability:*** These amendments take effect from 1st April, 2017 and the said receipt of sum of money or property on or after 1st April, 2017 shall be chargeable to tax in accordance with the provisions of clause (x) of sub-section (2) of section 56 of the Income-tax Act.

### **34. Disallowance for non-deduction of tax from payment to resident.**

**34.1** Section 58 of the Income-tax Act specifies the amounts which are not deductible in computing the income under the head "Income from other sources" which include certain disallowances made in computation of income under the head "Profits and gains of business or profession". These disallowances include disallowances such as disallowance of cash expenditure, disallowance for non-deduction of tax from payment to non-resident, etc.

**34.2** For computing income under the head "Profits and gains of business or profession", a disallowance is made for non-deduction of tax from payment to resident also. With a view to improve compliance of provisions relating to tax deduction at source (TDS), section 58 of the Income-tax Act has been amended so as to provide that the provisions of section 40(a)(ia) of the Income-tax Act shall, so far as they may be, apply in computing income chargeable under the head "Income from other sources" as they apply in computing income chargeable under the head "Profit and gains of business or Profession".

**34.3 *Applicability:*** This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent years.

**35. Restriction on set-off of loss from house property.**

**35.1** Section 71 of the Income-tax Act relates to set-off of loss from one head against income from another.

**35.2** In line with the international best practices, a new sub-section (3A) has been inserted in the said section to provide that set-off of loss under the head "Income from house property" against any other head of income shall be restricted to two lakh rupees for any assessment year. However, the unabsorbed loss shall be allowed to be carried forward for set-off in subsequent years in accordance with the provisions of the Income-tax Act.

**35.3 *Applicability:*** This amendment takes effect from 1st April, 2018 and will, accordingly apply from assessment year 2018-19 and subsequent years.

**36. Carry forward and set off of loss in case of certain companies.**

**36.1** Before amendment by the Act, the provisions of section 79 of the Income-tax Act provided that where a change in shareholding has taken place in a previous year in the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year unless on the last day of the previous year the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by person who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred.

**36.2** In order to facilitate ease of doing business and to promote start up India, section 79 of the Income-tax Act has been amended to provide that where a change in shareholding has taken place in a previous year in the case of a company, not being a company in which the public are substantially interested and being an eligible start-up as referred to in section 80-IAC of Income-tax Act, loss shall be carried forward and set off against the income of the previous year, if all the shareholders of such company which held shares carrying voting power on the last day of the year or years in which the loss was incurred, being the loss incurred



during the period of seven years beginning from the year in which such company is incorporated, continue to hold those shares on the last day of such previous year.

**36.3 *Applicability:*** This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent assessment years.

### **37. Rationalisation of deduction under section 80CCD for self-employed individual.**

**37.1** The provisions of section 80CCD of the Income-tax Act provide that employees or other individuals shall be allowed a deduction for amount deposited in National Pension System trusts (NPS). The deduction under section 80CCD(1) of the Income-tax Act could not exceed 10% of salary in case of an employee or 10% of gross total income in case of other individuals. However, under the provisions of section 80CCD(2) of the Income-tax Act, further deduction to an employee in respect of contribution made by his employer was allowed up to 10% of salary of the employee. Thus, in case of an employee, the deduction allowed under section 80CCD of the Income-tax Act added up to 20% of salary whereas in case of other individuals, the total deduction under section 80CCD was limited to 10% of gross total income.

**37.2** In order to provide parity between an individual who is an employee and an individual who is self-employed, section 80CCD of the Income-tax Act has been amended so as to increase the upper limit of 10% of gross total income to 20% in case of individual other than employee.

**37.3 *Applicability:*** This amendment takes effect from 1st April, 2018 and, will accordingly; apply from assessment year 2018-19 and subsequent years.

### **38. Rationalization of deduction under section 80CCG.**

**38.1** Under the provisions of section 80CCG of the Income-tax Act, deduction for three consecutive assessment years is allowed up to Rs. 25,000 to a resident individual for investment made in listed equity shares or listed units of an equity oriented fund subject to fulfilment of certain conditions.

**38.2** This deduction was introduced vide Finance Act, 2012. Considering the fact that only a limited number of individuals availed this deduction and also to rationalize the multiplicity of deductions available under Chapter VI-A of the Income-tax Act, section 80CCG has been amended to phase out this deduction by providing that no deduction under the said section shall be allowed from assessment year 2018-19. However, an assessee who has claimed deduction under this section for assessment year 2017-18 and earlier assessment years shall be allowed deduction under this section till the assessment year 2019-20 if he is otherwise eligible to claim the deduction as per the provisions of this section.

**38.3 *Applicability:*** This amendment takes effect from the 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent years.

**39. Restricting cash donations.**

**39.1** Before amendment by the Act, section 80G of the Income-tax Act provided that the deduction shall not be allowed in respect of donation made of any sum exceeding Rs.10,000, if the same was not paid by any mode other than cash.

**39.2** In order to provide cash less economy and transparency, section 80G of the Income-tax Act has been amended so as to provide that no deduction shall be allowed under the section 80G in respect of donation of any sum exceeding two thousand rupees unless such sum is paid by any mode other than cash.

**39.3 *Applicability:*** This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent years.

**40. Extending the period for claiming deduction by start-ups.**

**40.1** Before amendment by the Act, the provisions of section 80-IAC of the Income-tax Act provided that an eligible start-up shall be allowed a deduction of an amount equal to 100% of the profits and gains derived from eligible business for three consecutive assessment years out of five years beginning from the year in which such eligible start-up is incorporated.

**40.2** In view of the fact that start-ups may take time to derive profit out of their business, section 80-IAC of the Income-tax Act has been amended to provide that deduction under section 80-IAC can be claimed by an eligible start-up for any three consecutive assessment years out of seven years beginning from the year in which such eligible start-up is incorporated.

**40.3 *Applicability:*** These amendments take effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent years.

**41. Rationalisation of Provisions of Section 80-IBA to promote Affordable Housing.**

**41.1** Section 80-IBA of the Income-tax Act provide for 100% deduction in respect of the profits and gains derived from developing and building certain housing projects subject to specified conditions. Before amendment by the Act, the conditions specified included inter alia the limit of 30 square meters for the built-up area of residential unit in respect of project located in the Chennai, Delhi, Kolkata and Mumbai or within 25 kms from the municipal limits of these four cities. Further, it was also provided that in order to be eligible to claim deductions, the project shall be completed within a period of three years.

**41.2** In order to promote the development of affordable housing sector, section 80-IBA has been amended so as to provide the following relaxations:

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



- (ii) The restriction of 30 square meters on the size of residential units shall not apply to the place located within a distance of 25 kms from the municipal limits of the Chennai, Delhi, Kolkata or Mumbai.
- (iii) The condition of period of completion of project for claiming deduction under this section shall be increased from three years to five years.

**41.3 *Applicability:*** This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent years.

**42. Rationalization of rebate allowable under Section 87A.**

**42.1** Before amendment by the Act, the provisions of section 87A of the Income-tax Act provided for a rebate of up to Rs. 5000 from the income-tax payable to a resident individual if his total income did not exceed Rs. 5,00,000.

**42.2** In view of rationalisation of tax rates for individuals in the income slab of Rs. 2,50,000 to Rs.5,00,000, section 87A of the Income-tax Act has been amended so as to reduce the maximum amount of rebate available under this section from Rs. 5000 to Rs. 2500. It is also provided that this rebate shall be available to only resident individuals whose total income does not exceed Rs. 3,50,000.

**42.3 *Applicability:*** This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent assessment years.

**43. Clarification with regard to interpretation of 'terms' used in an agreement entered into under section 90 and 90A.**

**43.1** Under the provisions of section 90 of the Income-tax Act, power has been conferred upon the Central Government to enter into an agreement with the Government of any country outside India for granting relief in respect of income on which income tax has been paid both under the Income-tax Act and the income tax law in that foreign country, avoidance of double taxation of income, exchange of information for the prevention of evasion or avoidance of income-tax or recovery of income-tax. Similar provisions are provided in section 90A of the Income-tax Act in the case of an agreement entered into by any specified association in India with any specified association in the specified territory outside India.

**43.2** It is further provided in section 90 and 90A that any 'term' used but not defined in this Act or in the agreement referred to in sub-section (1) of respective provisions shall have the meaning assigned to it in the notification issued by the Central Government in the Official Gazette in this behalf, unless the context otherwise requires, provided the same is not inconsistent with the provisions of this Act or the agreement.

**43.3** One of the recommendations of the Income-tax Simplification Committee, in its final report, is bringing in more clarity in the Income-tax Act in respect of interpretation of 'terms' used in an agreement entered under section 90 or 90A for the purposes of its application in order to reduce the avoidable litigation related to taxation of non- residents.

**43.4** In the light of above discussion and to bring in clarity to avoid litigation, a new Explanation 4 has been inserted in sections 90 and 90A respectively of the Income-tax Act so as to provide that where any 'term' used in an agreement entered into under sub-section (1) of Section 90 and 90A of the Income-tax Act is defined under the said agreement, the said term shall be assigned the meaning as provided in the said agreement and where the 'term' is not defined in the agreement, but is defined in the Income-tax Act, it shall be assigned the meaning as provided in the Income-tax Act and explanation, if any, given to it by the Central Government.

**43.5 *Applicability:*** These amendments take effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent years.

#### **44. Scope of section 92BA of the Income-tax Act relating to Specified Domestic Transactions (SDTs).**

**44.1** Before amendment by the Act, the provisions of section 92BA of the Income-tax Act provided inter alia that any expenditure in respect of which payment has been made by the assessee to certain "specified persons" under section 40A(2)(b) of the Income-tax Act were covered within the ambit of SDTs.

**44.2** As a matter of compliance and reporting, taxpayers needed to obtain the chartered accountant's certificate in Form 3CEB providing the details such as list of related parties, nature and value of SDTs, method used to determine the arm's length price for SDTs, positions taken with regard to certain transactions not considered as SDTs, etc. This had considerably increased the compliance burden of the taxpayers.

**44.3** In order to reduce the compliance burden of taxpayers, section 92BA of the Income-tax Act has been amended so as to provide that expenditure in respect of which payment has been made by the assessee to a person referred to in under section 40A(2)(b) are to be excluded from the scope of section 92BA of the Income-tax Act. Consequential amendment has also been made to section 40(A)(2)(a) of the Income-tax Act.

**44.4 *Applicability:*** These amendments take effect from 1st April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

#### **45. Secondary adjustments in certain cases.**

**45.1** "Secondary adjustment" means an adjustment in the books of accounts of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee. As per the Organisation for Economic Cooperation and Development (OECD)'s Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD transfer pricing guidelines), secondary adjustment may take the form of constructive dividends, constructive equity contributions, or constructive loans.

**45.2** The provisions of secondary adjustment are internationally recognised and are already part of the transfer pricing rules of many leading economies in the world. Whilst the approaches to secondary adjustments by individual countries vary, they represent an internationally recognised method to align the economic benefit of the transaction with the arm's length position.

**45.3** In order to align the transfer pricing provisions in line with OECD transfer pricing guidelines and international best practices, a new section 92CE has been inserted in the Income-tax Act so as to provide that the assessee shall be required to carry out secondary adjustment where the primary adjustment to transfer price, has been made suo motu by the assessee in his return of income; or made by the Assessing Officer has been accepted by the assessee; or is determined by an advance pricing agreement entered into by the assessee under section 92CC of the Income-tax Act; or is made as per the safe harbour rules framed under section 92CB of the Income-tax Act; or is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 90 or 90A of the Income-tax Act.

**45.4** It is also provided that where as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed as the income of the assessee, in the manner as may be prescribed.

**45.5** It is also further provided that such secondary adjustment shall not be carried out if, the amount of primary adjustment made in the case of an assessee in any previous year does not exceed one crore rupees or the primary adjustment is made in respect of an assessment year commencing on or before 1st April, 2016.

**45.6 *Applicability:*** This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent years.

#### **46. Limitation of Interest deduction in certain cases.**

**46.1** A company is typically financed or capitalized through a mixture of debt and equity. The way a company is capitalized often has a significant impact on the amount of profit it reports for tax purposes as the tax legislations of countries typically allow a deduction for interest paid or payable in arriving at the profit for tax purposes while the dividend paid on equity contribution is not deductible. Therefore, the higher the level of debt in a company, and thus higher the amount of interest it pays, the lower will be its taxable profit. For this reason, debt is often a more tax efficient method of finance than equity. Multinational Enterprises (MNEs) are often able to structure their financing arrangements to maximize these benefits. For this reason, tax administrations of several countries have introduced rules that place a limit on the amount of interest that can be deducted in computing a

company's profit for tax purposes. Such rules are designed to counter cross-border shifting of profit through excessive interest payments, and thus aim to protect a country's tax base.

**46.2** Under the initiative of the G-20 countries, OECD in its Base Erosion and Profit Shifting (BEPS) project had taken up the issue of base erosion and profit shifting by way of excess interest deductions by the MNEs in Action plan 4 and has recommended several measures in its final report to address this issue.

**46.3** In view of the above, a new section 94B has been inserted in the Income-tax Act so as to provide that interest expenses claimed by an entity to its associated enterprises shall be restricted to 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is less.

**46.4** The provisions of the section 94B of the Income-tax Act shall be applicable to an Indian company, or a permanent establishment of a foreign company being the borrower who pays interest in respect of any form of debt issued to a non-resident or to a permanent establishment of a non-resident and who is an 'associated enterprise' of the borrower. Further, the debt shall be deemed to be treated as issued by an associated enterprise where it provides an implicit or explicit guarantee to the lender or deposits a corresponding and matching amount of funds with the lender.

**46.5** The provisions of the said section allow for carry forward of disallowed interest expense to eight assessment years immediately succeeding the assessment year for which the disallowance was first made and also allow deduction against the income computed under the head "Profits and gains of business or profession" to the extent of maximum allowable interest expenditure.

**46.6** In order to target only large interest payments, the said section also provides for a threshold limit of interest expenditure of one crore rupees exceeding which the provision would be applicable.

**46.7** Further, banks and insurance business have also been excluded from the ambit of the said provisions keeping in view of special nature of these businesses.

**46.8** *Applicability:* This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent years.

#### **47. Rationalization of taxation of income by way of dividend.**

**47.1** Before amendment by the Act, the provisions contained in section 115BBDA of the Income-tax Act specified that income by way of dividend in excess of Rs. 10 lakh shall be chargeable to tax at the rate of 10% on gross basis in case of a resident individual, Hindu undivided family or firm.

**47.2** With a view to ensure horizontal equity among all categories of tax payers deriving income from dividend, section 115BBDA has been amended so as to specify

that the provisions of said section shall be applicable to all resident assessee except domestic company and certain funds, trusts, institutions, etc.

**47.3 *Applicability:*** This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent years.

#### **48. Income from transfer of carbon credits.**

**48.1** A carbon credit is an incentive given to an industrial undertaking for reduction of the emission of Green House Gases (GHGs) including carbon dioxide. There are several ways of reducing GHGs emissions such as switching over to wind and solar energy, forest regeneration, installation of energy-efficient machinery, landfill methane capture, etc. The Kyoto Protocol commits certain developed countries to reduce their GHG emissions, for which they will be given carbon credits. A reduction in emissions entitles the entity to a credit in the form of a Certified Emission Reduction (CER) certificate. The CER certificate is tradable and its holder can transfer it to an entity which needs carbon credits to overcome an unfavourable position on GHGs reduction.

**48.2** The Income-tax Department has been treating the income on transfer of carbon credits as business income which is subject to tax at the rate of 30%. However, divergent decisions have been given by the courts on the issue as to whether the income received or receivable on transfer of carbon credits is a revenue receipt or capital receipt.

**48.3** In order to bring clarity on the issue of taxation of income from transfer of carbon credits and to encourage measures to protect the environment, a new section 115BBG has been inserted in the Income-tax Act so as to provide that where the total income of the assessee includes any income from transfer of carbon credit, such income shall be taxable at the concessional rate of ten per cent (plus applicable surcharge and cess) on the gross amount of such income. No expenditure or allowance in respect of such income shall be allowed under the Income-tax Act.

**48.4 *Applicability:*** This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent years.

#### **49. Rationalisation of Provisions relating to tax credit for Minimum Alternate Tax (MAT) and Alternate Minimum Tax (AMT).**

**49.1** Section 115JAA of the Income-tax Act contains provisions regarding carrying forward and set off of tax credit in respect of MAT paid by companies under section 115JB of the Income-tax Act. Before amendment by the Act, the provisions specified that the tax credit can be carried forward for up to ten assessment years.

**49.2** With a view to provide relief to the assessee paying MAT, section 115JAA of the Income-tax Act has been amended to provide that the tax credit determined under this section can be carried forward for up to fifteen assessment years immediately succeeding the assessment year in which such tax credit becomes allowable.



**49.3** Similarly, section 115JD of the Income-tax Act has also been amended so as to allow carry forward of AMT paid under section 115JC of the Income-tax Act for up to fifteen assessment years in case of non-corporate assessees.

**49.4** Sections 115JAA and 115JD of the Income-tax Act have also been amended so as to provide that the amount of tax credit in respect of MAT/AMT shall not be allowed to be carried forward to subsequent year to the extent such credit relates to the difference between the amount of foreign tax credit (FTC) allowed against MAT/AMT and FTC allowable against the tax computed under regular provisions of Act other than the provisions relating to MAT/AMT.

**49.5** *Applicability:* These amendments take effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent years.

## **50. Rationalisation of provisions of section 115JB in line with Indian Accounting Standards (Ind AS).**

**50.1** The Central Government notified the Indian Accounting Standards (Ind AS) which are converged with International Financial Reporting Standards (IFRS) and prescribed the Companies (Indian Accounting Standards) Rules, 2015 which laid down a roadmap for implementation of Ind AS.

**50.2** Globally, different approaches have been adopted to deal with the tax issues arising from adoption of IFRS. For ensuring horizontal equity across the companies irrespective of the fact that whether they follow Ind AS or the Indian Generally Accepted Accounting Principles (GAAP), the Central Government has issued Income Computation and Disclosure Standards (ICDS) for computation of taxable income for specified heads of income.

**50.3** As the book profit based on Ind AS compliant financial statement is likely to be different from the book profit based on Indian GAAP, the Central Board of Direct Taxes (CBDT) constituted a committee in June 2015 for suggesting the framework for computation of MAT liability under section 115JB for Ind AS compliant companies in the year of adoption and thereafter.

**50.4** The Committee submitted first interim report on 18th March, 2016 which was placed in public domain by the CBDT for wider public consultations. The Committee submitted the second interim report on 5th August, 2016 which was also placed in public domain. The comments/suggestions received in respect of the first and second interim reports were examined by the Committee. After taking into account all the suggestions/comments received, the Committee submitted its final report on 22nd December, 2016.

**50.5** In view of the above, Section 115JB of the Income-tax Act has been amended so as to provide the framework for computation of book profit for Ind AS compliant companies in the year of adoption and thereafter. The main features of this framework for computation of book profit for Ind AS compliant companies in the year of adoption and thereafter are as under:

**A. MAT on Ind AS compliant financial statement**

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

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

Sl. No.	Items	Point of time
1	Changes in revaluation surplus of Property, Plant or Equipment (PPE) and Intangible assets (Ind AS 16 and Ind AS 38)	To be included in book profits at the time of realisation/disposal/retirement or otherwise transferred
2	Gains and losses from investments in equity instruments designated at fair value through other comprehensive income (Ind AS 109)	To be included in book profits at the time of realisation/disposal/retirement or otherwise transferred
3	Re-measurements of defined benefit plans (Ind AS 19)	To be included in book profits every year as the re-measurements gains and losses arise
4	Any other item	To be included in book profits every year as the gains and losses arise

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

**B. MAT on first time adoption**

(i) The adjustments arising on account of transition to Ind AS from Indian GAAP is required to be recorded directly in Other Equity at the date of transition to Ind AS. Several of these items would subsequently never be reclassified to the



statement of profit and loss/included in the computation of book profits. Accordingly, the following treatment is provided:—

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

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

Sl. No.	Items	Point of time
1	Changes in revaluation surplus of PPE and Intangible assets (Ind AS 16 and Ind AS 38)	To be included in book profits at the time of realisation/disposal/retirement or otherwise transferred
2	Gains and losses from investments in equity instruments designated at fair value through other comprehensive income (Ind AS 109)	To be included in book profits at the time of realisation/disposal/retirement or otherwise transferred
3	Re-measurements of defined benefit plans (Ind AS 19)	To be included in book profits equally over a period of five years starting from the year of first time adoption of Ind AS
4	Any other item	To be included in book profits equally over a period of five years starting from the year of first time adoption of Ind AS

**(III)** All other adjustments recorded in Reserves and Surplus (excluding Capital Reserve and Securities Premium Reserve) as referred to in Division II of Schedule III of Companies Act, 2013 and which would otherwise never subsequently be reclassified to the profit and loss account, shall be included in the book profits, equally over a period of five years starting from the year of first time adoption of Ind AS subject to the following:—

**a)** PPE and intangible assets at fair value as deemed cost

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

- The provisions for computation of book profits under section 115JB of the Income-tax Act provide that in case of revaluation of assets, any impact on account of such revaluation shall be ignored for the purposes

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

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

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

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

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

**c) Cumulative translation differences**

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

- In such cases, to ensure that such Cumulative translation differences on the date of transition which have been transferred to retained earnings, are taken into account, these shall be included in the book profits at the time of disposal of foreign operations as mentioned in paragraph 48 of Ind AS 21.

**(ii)** All other adjustments to retained earnings at the time of transition (including for example, Decommissioning Liability, Asset retirement obligations, Foreign exchange capitalisation/decapitalization, Borrowing costs adjustments etc.) shall be included in book profits, equally over a period of five years starting from the year of first time adoption of Ind AS.

**(iii)** Section 115JB of the Act already provides for adjustments on account of deferred tax and its provision. Any deferred tax adjustments recorded in Reserves and Surplus on account of transition to Ind AS shall also be ignored.

### **C. Reference year for first time adoption adjustments**

In the first year of adoption of Ind AS, the companies would prepare Ind AS financial statement for reporting year with a comparative financial statement for immediately preceding year. As per Ind AS 101, a company would make all Ind AS adjustments on the opening date of the comparative financial year. The entity is also

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

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

## **51. Empowering Board to issue directions in respect of penalty for failure to deduct or collect tax at source.**

**51.1** The provisions of clause (a) of sub-section (2) of section 119 of the Income-tax Act empower the Board to issue orders setting forth directions or instructions (not being prejudicial to assessee) to be followed by subordinate authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties.

**51.2** In order to reduce the genuine hardship which may be faced by a person responsible for deduction and collection of tax at source due to levy of penalty under section 271C or 271CA, reference to the aforesaid sections has been inserted in clause (a) of sub-section (2) of section 119 of the Income-tax Act, to empower the Board to issue directions or instructions in respect of the said sections also.

**51.3 Applicability:** The amendment takes effect from 1st April, 2017.

## **52. Reason to believe to conduct a search, etc. not to be disclosed.**

**52.1** Sub-sections (1) and (1A) of section 132 of the Income-tax Act provide that where an authority mentioned therein, based on the information in his possession, has 'reason to believe' or 'reason to suspect' of circumstances referred to in the said sub-sections, he may authorize an authority specified therein to carry out search & seizure.

**52.2** Similarly, sub-section (1) of section 132A of the Income-tax Act provides that the specified income-tax authority based on 'reason to believe' can authorise other income-tax authority mentioned therein to requisition from some other officer or

authority to deliver books of account, documents or assets of the assessee to the income-tax authority so authorised.

**52.3** Confidentiality and sensitivity are the hallmarks of proceedings under sections 132 and 132A of the Income-tax Act. However, certain judicial pronouncements had created ambiguity in respect of the disclosure of 'reason to believe' or 'reason to suspect' recorded by the income-tax authority to conduct a search under section 132 or to make requisition under section 132A of the Income-tax Act.

**52.4** Therefore, an Explanation has been inserted to sub-section (1) and to sub-section (1A) of section 132 and to sub-section (1) of section 132A of the Income-tax Act to declare that the 'reason to believe' or 'reason to suspect', as the case may be, shall not be disclosed to any person or any authority or the Appellate Tribunal.

**52.5** *Applicability:* These amendments take effect retrospectively from the date of enactment of the said provisions viz. to sub-section (1) of section 132 of the Income-tax Act from 1st day of April, 1962 and to sub-section (1A) of section 132 of the Income-tax Act and to sub-section (1) of section 132A from 1st day of October, 1975.

### **53. Power of provisional attachment and to make reference to Valuation Officer to authorised officer.**

**53.1** Section 132 of the Income-tax Act provides the power of search and seizure subject to fulfilment of conditions specified therein.

**53.2** In order to protect the interest of revenue and safeguard recovery in search cases, sub-sections (9B) and (9C) have been inserted in the said section, to provide that during the course of a search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, the authorised officer on being satisfied that for protecting the interest of revenue it is necessary so to do, may attach provisionally any property belonging to the assessee with the prior approval of Principal Director General or Director General or Principal Director or Director. It has been provided that such provisional attachment shall cease to have effect after the expiry of six months from the date of order of such attachment.

**53.3** In order to enable correct estimation and quantification of undisclosed income held in the form of investment or property by the assessee by the Investigation wing of the Department, a new sub-section (9D) has been inserted in the section 132 of the Income-tax Act to provide that in a case of search, the authorised officer may, for the purpose of estimation of fair market value of a property, make a reference to a Valuation Officer referred to in section 142A of the Income-tax Act, for valuation in the manner provided under that sub-section. It also provides that the Valuation Officer shall furnish the valuation report within sixty days of receipt of such reference.

**53.4** Explanation 1 to section 132 of the Income-tax Act has also been amended, to provide that for the purposes of sub-sections (9A), (9B) and (9D), with respect to the

term "execution of an authorisation for search" the provisions of sub-section (2) of section 153B of the Income-tax Act shall apply.

**53.5 *Applicability:*** These amendments take effect from 1st April, 2017.

**54. Rationalisation of the provisions in respect of power to call for information.**

**54.1** The provisions of section 133 of the Income-tax Act empower certain income-tax authorities to call for information for the purpose of any inquiry or proceeding under the Income-tax Act. The second proviso to the said section provides that the power in respect of an inquiry, in a case where no proceeding is pending, shall not be exercised by any income-tax authority below the rank of the Principal Director or Director or the Principal Commissioner or Commissioner without the prior approval of such authorities.

**54.2** Considering the requirement of the work profile of the authorities working in the Investigation Directorate, the first proviso of the said section has been amended to provide that the power in respect of inquiry or proceeding under the Act, as referred to in clause (6) of the said section, may also be exercised by the Joint Director, the Deputy Director and the Assistant Director.

**54.3** The second proviso of the said section has also been amended to provide that the Joint Director, the Deputy Director or the Assistant Director may exercise the powers in respect of such inquiry, without seeking prior approval of higher authorities.

**54.4 *Applicability:*** These amendments take effect from 1st April, 2017.

**55. Extension of the power to survey.**

**55.1** Before amendment by the Act, the provisions of section 133A of the Income-tax Act empowered inter alia an income-tax authority to enter any place, at which a business or profession is carried on, or at which any books of account or other documents or any part of cash or stock or other valuable article or thing relating to the business or profession are kept, for the purposes of conducting a survey.

**55.2** The scope of the said section has been widened by amending section 133A of the Income-tax Act to include any place, at which an activity for charitable purpose is carried on.

**55.3 *Applicability:*** This amendment takes effect from 1st April, 2017.

**56. Legislative framework to enable centralised issuance of notice and processing of information under section 133C.**

**56.1** Section 133C of the Income-tax Act empowers the prescribed income-tax authority to issue notice calling for information and documents for the purpose of verification of information in its possession.

**56.2** In order to expedite verification and analysis of the information and documents so received, section 133C of the Income-tax Act has been amended to

empower the Central Board of Direct Taxes to make a scheme for centralised issuance of notice calling for information and documents for the purpose of verification of information in its possession, processing of such documents and making the outcome thereof available to the Assessing Officer for necessary action, if any.

**56.3 *Applicability:*** This amendment takes effect from 1st April, 2017.

**57. Mandatory furnishing of return by certain exempt entities.**

**57.1** The provisions of sub-section (4C) of section 139 of the Income-tax Act mandate filing of return by certain entities which are exempt from the levy of income-tax.

**57.2** In order to verify that certain entities which enjoy exemption under section 10 actually carry out the activities for which the exemption has been provided under the Act, it has been provided that any person as referred to in clause (23AAA), Investor Protection Fund referred to in clause (23EC) or clause (23ED), Core Settlement Guarantee Fund referred to in clause (23EE) and any Board or Authority referred to in clause (29A) of section 10 of the Income-tax Act shall also be mandatorily required to furnish a return of income.

**57.3 *Applicability:*** This amendment takes effect from 1st April, 2018 and will, accordingly apply from assessment year 2018-19 and subsequent years.

**58. Quoting of Aadhaar number.**

**58.1** Many instances have come to notice where multiple PANs have been allotted to one person or one PAN has been allotted to multiple persons. In order to have a robust way of de-duplication of PAN database, a new section 139AA has been inserted to the Income-tax Act to provide that every person who is eligible to obtain Aadhaar number shall, on or after the 1st day of July, 2017, quote such number –

- (i) in the application form for allotment of permanent account number (PAN);
- (ii) in the return of income furnished.

**58.2** It is further provided that where such person does not have the Aadhaar number, the Enrolment ID of Aadhaar application form shall be quoted.

**58.3** It is also provided that every person having PAN as on the 1st day of July 2017 and who is eligible to obtain Aadhaar number, shall, on or before a date to be notified by the Central Government in the Official Gazette, intimate his Aadhaar number to the prescribed authority in such form and manner as may be prescribed; and in case of failure to intimate the Aadhaar number by the said date, the PAN allotted to such person shall be deemed to be invalid and the provisions of the Income-tax Act shall apply as if the person has not applied for allotment of PAN.

**58.5** It has also been provided that Central Government may notify the person or class of persons to whom the said provisions of the said section shall not apply.



**58.6 Applicability:** This amendment takes effect from 1st April, 2017.

**59. Processing of return within the prescribed time and enable withholding of refund in certain cases.**

**59.1** Before amendment by the Finance Act, 2016, the provisions of sub-section (1D) of section 143 of the Income-tax Act specify that the processing of a return shall not be necessary, where a notice has been issued to the assessee under sub-section (2) of the said section.

**59.2** The said sub-section was amended vide Finance Act, 2016 and it was provided that with effect from assessment year 2017-18, processing under section 143(1) of the Income-tax Act is to be done before passing of assessment order.

**59.3** In order to address the grievance of delay in issuance of refund in genuine cases, a proviso has been inserted in section 143(1D) of the Income-tax Act specifying that the provisions of the said sub-section shall cease to apply in respect of returns furnished for assessment year 2017-18 and onwards.

**59.4** However, to address the concern of recovery of revenue in doubtful cases, a new section 241A has been inserted in the Income-tax Act to provide that, for the returns furnished for assessment year commencing on or after 1st April, 2017, where refund of any amount becomes due to the assessee under section 143(1) of the Income-tax Act and the Assessing Officer is of the opinion that grant of refund may adversely affect the recovery of revenue, he may, for the reasons recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, withhold the refund up to the date on which the assessment is made.

**59.5 Applicability:** These amendments take effect from 1st April, 2017 and accordingly apply to returns furnished for assessment year 2017-18 and subsequent years.

**60. Rationalisation of time limits for completion of assessment, reassessment and re-computation and reducing the time for filing revised return.**

**60.1** The provisions of section 153 of the Income-tax Act specify the time limit for completion of assessment, reassessment and re-computation of cases mentioned therein.

**60.2** In an effort to minimise human interface and move towards technology, massive computerisation has been carried out in the Department, which has translated into overall enhanced efficiency in the functioning of the Department. In view of the same, sub-section (1) of section 153 of the Income-tax Act has been amended to provide that for the assessment year 2018-19, the time limit for making an assessment order under sections 143 or 144 of the Income-tax Act shall be reduced from twenty-one months to eighteen months from the end of the assessment year, and for the assessment year 2019-20 and onwards, the said time limit shall be twelve months from the end of the assessment year in which the income was first assessable.



**60.3** Sub-section (2) of section 153 of the Income-tax Act has further been amended to provide that the time limit for making an order of assessment, reassessment or re-computation under section 147 of the Income-tax Act, in respect of notices served under section 148 of the Income-tax Act on or after the 1st day of April, 2019 shall be twelve months from the end of the financial year in which notice under section 148 is served.

**60.4** Sub-section (3) of section 153 of the Income-tax Act has also been amended to provide that the time limit for making an order of fresh assessment in pursuance of an order passed or received in the financial year 2019-20 and onwards under sections 254 or 263 or 264 of the Income-tax Act shall be twelve months from the end of the financial year in which order under section 254 is received or order under section 263 or 264 is passed by the authority referred to therein.

**60.5** *Applicability:* These amendments take effect from 1st April, 2017.

**60.6** Sub-section (5) of section 153 of the Income-tax Act has also been amended to provide that where an order under section 250 or 254 or 260 or 262 or 263 or 264 of the Income-tax Act requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the time limit relating to fresh assessment provided in sub-section (3) of section 153 of the Income-tax Act shall apply to the order giving effect to such order.

**60.7** Sub-section (9) of section 153 of the Income-tax Act has also been amended to provide that where a notice under sub-section (1) of section 142 of the Act or sub-section (2) of section 143 of the Income-tax Act or under section 148 of the Income-tax Act has been issued prior to the 1st day of June, 2016 and the assessment or reassessment has not been completed by such date due to exclusion of time referred to in Explanation 1 to section 153 of the Income-tax Act, such assessment or reassessment shall be completed in accordance with the provisions of section 153 of the Income-tax Act as it stood immediately before its substitution by the Finance Act, 2016.

**60.8** *Applicability:* These amendments take effect retrospectively from 1st June, 2016.

**60.9** Third proviso to Explanation 1 of section 153 of the Income-tax Act has also been amended to omit the reference of section 153B of the Income-tax Act therein.

**60.10** The meaning of conclusion of proceeding in the Explanation to clause (b) of section 245A of the Income-tax Act has also been amended to provide that conclusion of proceedings shall be construed in accordance with the time specified for making assessment or reassessment under sub-section (1) of section 153 of the Income-tax Act.

**60.11** *Applicability:* These amendments take effect from 1st April, 2017.

**60.12** In order to expedite scrutiny assessments as provided above, it is critical that the returns for an assessment year also freeze by the end of the assessment year. Therefore, the provisions of sub-section (5) of section 139 of the Income-tax Act have also been amended to provide that the time for furnishing of revised return shall be available up to the end of the relevant assessment year or before the completion of assessment, whichever is earlier.

**60.13 *Applicability:*** This amendment takes effect from 1st April, 2018 and will, accordingly apply from assessment year 2018-19 and subsequent years.

**61. Rationalisation of the provisions in respect of time limits for completion of search assessment.**

**61.1** The provisions of section 153B of the Income-tax Act provide for the time limit for completion of assessment under section 153A of the Income-tax Act.

**61.2** Since the time limit for completion of assessment under section 153 of the Income-tax Act has been rationalised, the time limit for completion of assessment under section 153A of the Income-tax Act is also consequentially rationalised. Sub-section (1) of section 153B of the Income-tax Act has been amended to provide that for search and seizure cases conducted in the financial year 2018-19, the time limit for making an assessment order under section 153A of the Income-tax Act shall be reduced from twenty-one months to eighteen months from the end of the financial year in which the last of the authorisations for search under section 132 of the Income-tax Act or for requisition under section 132A of the Income-tax Act was executed. It is further provided that for search and seizure cases conducted in the financial year 2019-20 and onwards, the said time limit shall be further reduced to twelve months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed.

**61.3** It is further provided that period of limitation for making the assessment or reassessment in case of other person referred to in section 153C, shall be the period available to make assessment or reassessment in case of person on whom search is conducted or twelve months from the end of the financial year in which books of accounts or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other persons, whichever is later.

**61.4** A proviso to Explanation to the said section has been inserted to provide that where a proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section for assessment or reassessment shall after the exclusion of the period under sub-section (4) of section 245HA shall not be less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year.

**61.5 *Applicability:*** These amendments take effect from 1st April, 2017.

**61.6** Sub-section (3) of section 153B has also been amended to provide that where a notice under section 153A or section 153C has been issued prior to 1st day of June, 2016 and the assessment has not been completed by such date due to exclusion of time referred to in the Explanation, such assessment shall be completed in accordance with the provisions of this section as it stood immediately before its substitution by the Finance Act, 2016.

**61.7 *Applicability:*** This amendment takes effect retrospectively from 1st June, 2016.

**62. Enabling claim of credit for foreign tax paid in cases of dispute.**

**62.1** The provisions of section 155 of the Income-tax Act provide for procedure for amendment of assessment order in case of certain specified errors.

**62.2** In view of rule 128 of the Income-tax Rules, 1962, which provides a mechanism for claim of foreign tax credit, a new sub-section (14A) has been inserted in section 155 to provide that where credit for foreign taxes paid is not given for the relevant assessment year on the grounds that the payment of such foreign tax was in dispute, the Assessing Officer shall rectify the assessment order or an intimation under sub-section (1) of section 143, if the assessee, within six months from the end of the month in which the dispute is settled, furnishes proof of settlement of such dispute, submits evidence before the Assessing Officer that the foreign tax liability has been discharged and furnishes an undertaking that credit of such amount of foreign tax paid has not been directly or indirectly claimed or shall not be claimed for any other assessment year.

**62.3 *Applicability:*** This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent years.

**63. Deduction of tax at source in the case of certain Individuals and Hindu undivided family.**

**63.1** The provisions of section 194-I of the Income-tax Act provide inter alia for deduction of tax at source at the time of credit or payment of rent to the account of the payee beyond a threshold limit. It is further provided that an individual or a Hindu Undivided Family (HUF) who is liable for tax audit under section 44AB for any financial year immediately preceding the financial year in which such income by way of rent is credited or paid shall be required to deduction of tax at source under this section.

**63.2** Therefore, under the provisions of the aforesaid section, an individual and HUF, being a payer (other than those liable for tax audit) are out of the scope of section 194-I of the Income tax Act.

**63.3** In order to widen the scope of tax deduction at source, a new section 194-IB has been inserted in the Income-tax Act to provide that individuals or a HUF (other than those covered under 44AB of the Income-tax Act) responsible for paying to a resident any income by way of rent exceeding fifty thousand rupees for a month or

part of month during the previous year, shall deduct an amount equal to five per cent of such income as income-tax thereon.

**63.4** It is also provided that tax shall be deducted on such income at the time of credit of rent, for the last month of the previous year or the last month of tenancy if the property is vacated during the year, as the case may be, to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

**63.5** In order to reduce the compliance burden, it is also provided that the deductor shall not be required to obtain tax deduction account number (TAN) as per section 203A of the Income-tax Act. It is further provided that the deductor shall be liable to deduct tax only once in a previous year.

**63.6** It is also provided that where the tax is required to be deducted as per the provisions of section 206AA of the Income-tax Act, such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be.

**63.7** *Applicability:* This amendment takes effect from 1st June, 2017.

**64. Simplification of the provisions of tax deduction at source in case Fees for professional or technical services under section 194J.**

**64.1** The provisions of sub-section (1) of section 194J of the Income-tax Act specify inter alia that a specified person is required to deduct an amount equal to ten per cent of any sum payable or paid (whichever is earlier) to a resident by way of fees for professional services or fees for technical services provided such sum paid/payable or aggregate of sum paid/payable exceeds thirty thousand rupees to a person in a financial year.

**64.2** In order to promote ease of doing business, section 194J has been amended to reduce the rate of deduction of tax at source to two per cent from ten per cent in case of payments received or credited to a payee, being a person engaged only in the business of operation of call centre.

**64.3** *Applicability:* This amendment takes effect from 1st June, 2017.

**65. Non-deduction of tax in case of exempt compensation under RFCTLAAR Act, 2013.**

**65.1** The provisions of section 194LA of the Income-tax Act specify inter alia that any person paying compensation shall deduct tax at source at the rate of ten per cent on the compensation or enhanced compensation or consideration on account of compulsory acquisition of any immovable property (other than agricultural land) under any law for the time being in force subject to certain conditions specified therein.

**65.2** The Central Government has enacted a new law, namely the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act, 2013, ('RFCTLARR Act') on 26th September, 2013 which came into force on 1st January, 2014. Section 96 of the RFCTLARR Act provides inter alia that income-tax shall not be levied on award or agreement made subject to limitations mentioned in section 46 of the said Act. Therefore, compensation received for compulsory acquisition of land under the RFCTLARR Act (except those made under section 46 of RFCTLARR Act), is exempt from the levy of income-tax.

**65.3** The Board has issued Circular number 36/2016 dated 25th October, 2016 clarifying that compensation received in respect of any award or agreement which has been exempted from the levy of income-tax vide section 96 of the RFCTLARR Act shall not be taxable under the provisions of the Income-tax Act, even if there is no specific provision of exemption for such compensation under the Income-tax Act. However, the circular addressed only the matter pertaining to taxability of compensation received on compulsory acquisition of land and not tax deduction at source under section 194LA of the Income-tax Act.

**65.4** In order to harmonise the provisions of the Income-tax Act with the RFCTLARR Act, section 194LA of the Income-tax Act has been amended to provide that no deduction shall be made under this section where such payment is made in respect of any award or agreement which has been exempted from levy of income-tax under section 96 (except those made under section 46) of RFCTLARR Act.

**65.5** *Applicability:* This amendment takes effect from 1st June, 2017.

**66. Extension of eligible period of concessional tax rate on interest in case of External Commercial Borrowing and Extension of benefit to Rupee Denominated Bonds.**

**66.1** The provisions of section 194LC of the Income-tax Act provide that the interest 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 shall be eligible for concessional TDS of five per cent.

**66.2** Before amendment by the Act, it further provided that the borrowings shall be made, under a loan agreement at any time on or after the 1st July, 2012, but before the 1st July, 2017, or by way of any long-term bond including long-term infrastructure bond on or after the 1st October, 2014 but before the 1st July, 2017.

**66.3** Representations were received requesting for extension of concessional rate of TDS under sections 194LC of the Income-tax Act to boost the economy by way of introduction of foreign capital.

**66.4** Therefore, amendment to section 194LC of the Income-tax Act has been made so as to provide that the concessional rate of five per cent TDS on interest payment under this section will now be available in respect of borrowings made before the 1st July, 2020.

**66.5 *Applicability:*** This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent assessment years.

**66.6** Further, consequent upon demand from various stakeholders for granting benefit of lower rate of TDS to rupee denominated bonds, a Press Release dated 29th October, 2015 was issued clarifying that TDS at the rate of 5 per cent would be applicable to these bonds in the same way as it is applicable for off-shore dollar denominated bonds.

**66.7** In order to give effect to the above, section 194LC of the Income-tax Act has been amended to extend the benefit of this section to rupee denominated bond issued outside India before the 1st July, 2020.

**66.8 *Applicability:*** This amendment takes effect retrospectively from 1st April, 2016 and will, accordingly, apply from assessment year 2016-17 and subsequent assessment years.

**67. Extension of eligible period of concessional tax rate under section 194LD.**

**67.1** Before amendment by the Act, the provisions of section 194LD of the Income-tax Act provided for lower TDS at the rate of five per cent in case of interest payable at any time on or after 1st June, 2013 but before the 1st July, 2017 to Foreign Institutional Investors (FIIs) and Qualified Foreign Investors (QFIs) on their investments in Government securities and rupee denominated corporate bonds provided that the rate of interest does not exceed the rate notified by the Central Government in this behalf.

**67.2** Considering the representations received from stakeholders, section 194LD of the Income-tax Act has been amended to provide that the concessional rate of five per cent TDS on interest will now be available on interest payable before the 1st July, 2020.

**67.3 *Applicability:*** This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent assessment years.

**68. Enabling of Filing of Form 15G/15H for commission payments specified under section 194D.**

**68.1** The provisions of sub-section 194D of the Income-tax Act provide inter alia for TDS at the rate of five per cent for payments in the nature of insurance commission beyond a threshold limit of Rs. 15,000 per financial year. Further, the provisions of section 197A of the Income-tax Act provide inter alia that tax shall not be deducted if the recipient of certain payments on which tax is deductible furnishes to the payer a self- declaration in prescribed Form.No.15G/15H declaring that the tax on his estimated total income of the relevant previous year would be nil. Before amendment by the Act, the payment in the nature of income referred to in section 194D was not covered by provisions of section 197A.



**68.2** In order to reduce compliance burden in the case of individuals and HUFs, section 197A of the Income-tax Act has been amended to make individuals and HUFs eligible for filing self-declaration in Form.No.15G/15H for non-deduction of tax at source in respect insurance commission referred to in section 194D of the Income-tax Act.

**68.3** *Applicability:* This amendment takes effect from 1st June, 2017.

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

**69.1** The provisions of section 204 of the Income-tax Act provide the definition of 'person responsible for paying' which include employer, company or its principal officer or the payer.

**69.2** Clause (iii) of the said section provides inter alia that in the case of credit or payment of any sum chargeable under the provisions of this Act, the 'person responsible for paying' shall be the payer himself, or, if the payer is a company, the company itself including the principal officer thereof. However, the said section did not cover person responsible for paying of any sum under sub-section (6) of section 195 of the Income-tax Act, which mandated the 'person responsible for paying' to furnish information relating to payment of any sum, whether chargeable to tax or not.

**69.3** In order to bring clarity to the meaning of 'person responsible for paying' in case of payment by a resident to a non-resident in accordance with section 195(6) of the Income-tax Act, section 204 of the Income-tax Act has been amended to provide that in the case of furnishing of information relating to payment to a non-resident, not being a company, or to a foreign company, of any sum, whether or not chargeable under the provisions of the Income-tax Act, 'person responsible for paying' shall be the payer himself, or, if the payer is a company, the company itself including the principal officer thereof.

**69.4** *Applicability:* This amendment takes effect from 1st April, 2017.

**70. Exemption from tax collection at source under section 206C in case of certain specified goods, services and buyers.**

**70.1** The provisions of sub-section (1F) of section 206C of the Income-tax Act specify inter alia that the seller who receives consideration for sale of a motor vehicle exceeding ten lakh rupees, shall collect one per cent of the sale consideration as tax from the buyer.

**70.2** In order to reduce compliance burden in certain cases, section 206C of the Income-tax Act has been amended to specify that the following classes of buyers are exempt from the applicability of the provision of the said subsection:

- (i) the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State;



- (ii) local authority as defined in explanation to clause (20) of Section 10;
- (iii) a public sector company which is engaged in the business of carrying passengers.

**70.3 Applicability:** These amendments will take effect from 1st April, 2017.

## **71. Strengthening of PAN quoting mechanism in the TCS regime.**

**71.1** Statutory provisions for TDS at higher rate of 20 per cent or the applicable rate (whichever is higher) in case of non-quoting of PAN are made under section 206AA of the Income-tax Act and it exist since April, 2010. PAN acts as a common thread for linking the information in the departmental database. The process of allotment of PAN has been made simple yet robust. PAN application can be made online and PAN is allotted in less than a week.

**71.2** In order to strengthen the PAN quoting mechanism, a new section 206CC has been inserted in the Income-tax Act to provide the following:

- (i) Any person paying any sum or amount, on which tax is collectable at source under Chapter XVII BB (hereafter referred to as collectee) shall furnish his PAN to the person responsible for collecting such tax (hereafter referred to as collector), failing which tax shall be collected at the twice the rate mentioned in the relevant section under Chapter XVII BB or at the rate of five per cent whichever is higher.
- (ii) The declaration filed under sub section (1A) of section 206C shall not be valid unless the person filing the declaration furnishes his PAN in such declaration.
- (iii) In case any declaration becomes invalid under sub-section (2), the collector shall collect the tax at source in accordance with the provisions of sub-section (1).
- (iv) No certificate under sub section (9) of section 206C shall be granted unless it contains the PAN of the applicant.
- (v) To ensure that the collector knows about the correct PAN of the collectee mandatory quoting of PAN of the collectee by both the collector and the collectee in all correspondence, bills and vouchers exchanged between them has been provided for.
- (vi) The collectee shall furnish his PAN to the collector who shall indicate the same in all its correspondence, bills, vouchers and other documents which are sent to collectee.
- (vii) Where the PAN provided by the collectee is invalid or it does not belong to the collectee, then it shall be deemed that PAN has not been furnished to the collector.
- (viii) The non-resident who does not have permanent establishment in India is exempt from applicability the provisions of the said section.

**71.3 Applicability:** This amendment takes effect from 1st April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent years.

**72. Rationalisation of section 211 and section 234C relating to advance tax.**

**72.1** Section 211 of the Income-tax Act provides for instalments of advance tax and due dates for depositing the same. Clause (b) of sub-section (1) of section 211 of the Income-tax Act provides that an eligible assessee engaged in an eligible business referred to in section 44AD of the Income-tax Act is liable to pay advance tax in a single instalment on or before the 15th of March every financial year.

**72.2** Vide Finance Act, 2016, the presumptive taxation regime has been extended to professionals also. Accordingly, the said clause (b) of section 211 of the Income-tax Act has been amended to provide that the assessee who declares profits and gains in accordance with presumptive taxation regime provided under section 44ADA of the Income-tax Act shall also be liable to pay advance tax in one instalment on or before the 15th of March.

**72.3** Sub-section (1) of section 234C of the Income-tax Act has also been amended to provide that in respect of an assessee referred to in section 44ADA of the Income-tax Act, interest under the said section shall be levied, if the advance tax paid on or before the 15th March is less than the tax due on the returned income.

**72.4** Vide Finance Act, 2016, tax on certain dividends received from domestic companies was levied under section 115BBDA of the Income-tax Act with effect from the 1st April, 2017, if such income exceeds ten lakh rupees. However, in view of the uncertain nature of declaration and receipt of dividend incomes, an assessee liable to pay advance tax may not be able to correctly determine such liability within the payment schedule as specified under section 211 of the Income-tax Act and shall, therefore, incur levy of interest on deferment of advance tax as specified under clauses (a) or (b) of section 234C(1) of the Income-tax Act.

**72.5** It is therefore provided that if shortfall in payment of advance tax is on account of under-estimation or failure in estimation of income of the nature referred to in section 115BBDA of the Income-tax Act, the interest under section 234C of the Income-tax Act shall not be levied subject to fulfilment of conditions specified therein.

**72.6 *Applicability:*** These amendments take effect from 1st April, 2017 and accordingly apply from assessment year 2017-18 and subsequent years.

**73. Fee for delayed filing of return.**

**73.1** In view of the non-intrusive information-driven approach for improving tax compliance and effective utilization of information in tax administration, it is important that the returns are filed within the due dates specified in section 139(1) of the Income-tax Act. Further, the reduced time limits provided for making of assessment are also based on pre-requisite that returns are filed on time.

**73.2** In order to ensure that return is filed within due date, a new section 234F has been inserted in the Income-tax Act to provide that a fee for delay in furnishing of return shall be levied for assessment year 2018-19 and onwards in a case where the

return is not filed within the due dates specified for filing of return under sub-section (1) of section 139 of the Income-tax Act. The fee structure is as follows:—

- (i) a fee of five thousand rupees shall be payable, if the return is furnished after the due date but on or before the 31st day of December of the assessment year;
- (ii) a fee of ten thousand rupees shall be payable in any other case.

**73.3** However, in a case where the total income does not exceed five lakh rupees, it is provided that the fee amount shall not exceed one thousand rupees.

**73.4** In view of the above, section 140A of the Income-tax Act has been amended to include that in case of delay in furnishing of return of income, along with the tax and interest payable, fee for delay in furnishing of return of income shall also be payable.

**73.5** Section 143 of the Income-tax Act has also been amended to provide that in computation of amount payable or refund due, as the case may be, on account of processing of return under the said sub-section, the fee payable under section 234F of the Income-tax Act shall also be taken into account.

**73.6** Consequentially, it is also provided that the provisions of section 271F of the Income-tax Act in respect of penalty for failure to furnish return of income shall not apply in respect of assessment year 2018-19 and onwards.

**73.7** *Applicability:* These amendments take effect from 1st April, 2018 and will, accordingly apply from assessment year 2018-19 and subsequent years.

#### **74. Interest on refund due to deductor.**

**74.1** The provisions of section 244A of the Income-tax Act provide that an assessee is entitled to receive interest on refund arising out of excess payment of advance tax, tax deducted or collected at source, etc.

**74.2** A new sub-section (1B) has been inserted in section 244A of the Income-tax Act to provide that where refund of any amount becomes due to the deductor, such person shall be entitled to receive, in addition to the refund, simple interest on such refund, calculated at the rate of one-half per cent for every month or part of a month comprised in the period, from the date on which claim for refund is made in the prescribed form or in case of an order passed in appeal, from the date on which the tax is paid, to the date on which refund is granted. It is also provided that the interest shall not be allowed for the period for which the delay in the proceedings resulting in the refund is attributable to the deductor.

**74.3** *Applicability:* This amendment takes effect from 1st April, 2017.

#### **75. Amendments to the structure of Authority for Advance Rulings.**

**75.1** Chapter XIX-B of the Income-tax Act relates to the Advance rulings under the Act.

**75.2** With a view to promote ease of doing business, it has been decided by the Government to merge the Authority for Advance Ruling (AAR) for income-tax, central excise & customs duties and service tax. Accordingly, necessary amendments

have been made to Chapter XIX-B to allow merger of these AARs. The said amendments are as under:

- (i) The definition of applicant in section 245N of the Income-tax Act has been amended to provide reference of applications for Advance Ruling made under the Customs Act, 1962, the Central Excise Act, 1944 and the Finance Act, 1994 (which makes provisions in respect of Service Tax Matters).
- (ii) Section 245-O of the Income-tax Act which relates to the AAR has also been amended to provide that an officer of the Indian Revenue Service qualified to be a Member of the Central Board of Direct Taxes and an officer of the Indian Customs and Central Excise Service, who is qualified to be a member of the Central Board of Excise & Customs, shall be eligible to be appointed as revenue Member of AAR.
- (iii) In order to improve the efficiency and efficacy of the AAR, and to increase the available pool for appointment as Chairman, AAR, the qualification for appointment as Chairman as provided in section 245-O has also been amended to provide that a former Chief Justice of a High Court, or a person who has been a High Court Judge for at least seven years shall also be eligible to be Chairman of the AAR.
- (iv) It is also provided that the qualifications for appointment as revenue Member or law Member shall be considered as on the date of occurrence of the vacancy.
- (v) It is also provided that in the event the Chairman is unable to discharge his functions owing to absence, illness or any other reason, or in the event that the office of the Chairman falls vacant, the Vice-chairman shall discharge the functions of the Chairman until the new Chairman enters upon his office or until the incumbent Chairman resumes his duties.
- (vi) Section 245Q of the Income-tax Act which relates to application for advance ruling has also been amended to provide reference of applications for Advance Ruling made under the Customs Act, 1962, the Central Excise Act, 1944 and the Finance Act, 1994 (which makes provisions in respect of Service Tax Matters).

**75.3 Applicability:** These amendments take effect from 1st April, 2017.

## **76. Amendment of Section 253.**

**76.1** The provisions of sub-clause (f) of sub-section (1) of section 253 of the Income-tax Act provide that an order passed by the prescribed authority under sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 of the Income-tax Act shall be appealable before the Appellate Tribunal.

**76.2** Section 253 of the Income-tax Act has been amended and the scope of the said section has been expanded to provide that the orders passed by the prescribed authority under sub-clauses (iv) and (v) of sub-section (23C) of section 10 of the Income-tax Act shall also be appealable before the Appellate Tribunal.

**76.3 Applicability:** This amendment takes effect from 1st April, 2017.

**77. Restriction on cash transactions.**

**77.1** In India, the quantum of domestic black money is huge which adversely affects the revenue of the Government creating a resource crunch for its various welfare programmes. Black money is generally transacted in cash and large amount of unaccounted wealth is stored and used in form of cash.

**77.2** In order to achieve the mission of the Government to move towards a less cash economy to reduce generation and circulation of black money, a new section 269ST has been inserted in the Income-tax Act to provide that no person shall receive an amount of two lakh rupees or more,—

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

(b) in respect of a single transaction; or

(c) in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account.

**77.3** It is further provided that the said restriction shall not apply to Government, any banking company, post office savings bank or co-operative bank. Further, it is provided that such other persons or class of persons or receipts may be notified by the Central Government, for reasons to be recorded in writing, on whom the restriction on cash transactions shall not apply. Transactions of the nature referred to in section 269SS of the Income-tax Act are excluded from the scope of the said section.

**77.4** A new section 271DA has also been inserted in the Income-tax Act to provide for levy of penalty on a person who receives a sum in contravention of the provisions of section 269ST of the Income-tax Act. The penalty leviable is a sum equal to the amount of such receipt. The said penalty shall however not be levied if the person proves that there were good and sufficient reasons for such contravention. It is also provided that any such penalty shall be levied by the Joint Commissioner.

**77.5** Consequential amendment has also been amended to section 206C of the Income-tax Act to bring it in sync with the provisions of section 269ST of the Income-tax Act.

**77.6 Applicability:** These amendments take effect from 1st April, 2017.

**78. Penalty on professionals for furnishing incorrect information in statutory report or certificate.**

**78.1** The thrust of the Government in recent past is on voluntary compliance. Certification of various reports and certificates by a qualified professional has been provided in the Income-tax Act to ensure that the information furnished by an assessee under the provisions of the Income-tax Act is correct. Various provisions exist under the Income-tax Act to penalise the defaulting assessee in case of

furnishing incorrect information. However, there existed no penal provisions for levy of penalty for furnishing incorrect information by the person who is responsible for certifying the same.

**78.2** In order to ensure that the person furnishing report or certificate undertakes due diligence before making such certification, a new section 271J has been inserted in the Income-tax Act to provide that if an accountant or a merchant banker or a registered valuer furnishes incorrect information in a report or certificate under any provisions of the Income-tax Act or the rules made thereunder, the Assessing Officer or the Commissioner (Appeals) may direct him to pay a sum of ten thousand rupees for each such report or certificate by way of penalty.

**78.3** The expressions “accountant”, “merchant banker” and “registered valuer” have also been defined. Section 273B of the Income-tax Act has also been amended to provide that if the person proves that there was reasonable cause for the said failure referred to in the said section, then penalty shall not be imposable in respect of section 271J of the Income-tax Act.

**78.4** *Applicability:* These amendments take effect from 1st April, 2017.

**79. Clarification regarding the applicability of section 112.**

**79.1** Section 112(1)(c) of the Income-tax Act was amended vide Finance Act, 2012, with effect from 1st April, 2013 to provide concessional rate of taxation of ten per cent for long-term capital gains arising from the transfer of unlisted securities in case of non-resident. There was an uncertainty as to whether the provisions of section 112(1)(c)(iii) of the Income-tax Act are applicable to the transfer of share of a private company.

**79.2** Section 112(1)(c) of the Income-tax Act was further amended vide Finance Act, 2016 to clarify that the share of company in which public are not substantially interested shall also be chargeable to tax at the rate of ten per cent with effect from 1st April, 2017. As the concessional rate was provided with effect from 1st April, 2013, there was uncertainty about the applicability of the amendment to the intervening period.

**79.3** With a view to clarify that the amendment made by Finance Act, 2016 shall also apply to the period from 1st April, 2013 to 31st March, 2017, section 50 of the Finance Act, 2016 has been amended so as to provide that the effective date of amendment made to section 112(1)(c)(iii) vide Finance Act, 2016 shall be 01-04-2013 instead of 01-04-2017.

**79.4** *Applicability:* This amendment takes effect retrospectively from 1st April, 2013 and will, accordingly, apply from assessment year 2013-14 and subsequent assessment years.

**80. Rationalisation of provisions of the Income Declaration Scheme, 2016 and consequential amendment to section 153A and 153C.**



**80.1** The provisions of clause (c) of the section 197 of the Finance Act, 2016 provide that where any income has accrued, arisen or been received or any asset has been acquired out of such income prior to commencement of the Income Declaration Scheme, 2016 (the Scheme), and no declaration in respect of such income is made under the Scheme, then, such income shall be deemed to have accrued, arisen or received, as the case may be, in the year in which a notice under sub-section (1) of section 142 or sub-section (2) of section 143 or section 148 or section 153A or section 153C of the Income-tax Act is issued by the Assessing Officer, and provisions of the said Act shall apply accordingly.

**80.2** In view of the various representations received from stakeholders, section 197 of the Finance Act, 2016 has been amended so as to omit clause (c) of the said section.

**80.3 *Applicability:*** This amendment takes effect retrospectively from 1st June, 2016.

**80.4** However, in order to protect the interest of the revenue in cases where tangible evidence(s) are found during a search or seizure operation (including section 132A cases) and the same is represented in the form of undisclosed investment in any asset, section 153A of the Income-tax Act relating to search assessments has been amended to provide that notice under the said section can be issued for an assessment year or years beyond the sixth assessment year already provided up to the tenth assessment year if—

- (i) the Assessing Officer has in his possession books of accounts or other documents or evidence which reveal that the income which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in one year or in aggregate in the relevant four assessment years(falling beyond the sixth year);
- (ii) such income escaping assessment is represented in the form of asset;
- (iii) the income escaping assessment or part thereof relates to such year or years.

**80.5 *Applicability:*** The amended provisions of section 153A of the Income-tax Act shall apply where search under section 132 of the Income-tax Act is initiated or requisition under section 132A of the Income-tax Act is made on or after the 1st day of April, 2017.

**80.6** Section 153C of the Income-tax Act has also been amended to provide a reference to the relevant assessment year or years as referred to in section 153A of the Income-tax Act.

**80.7 *Applicability:*** These amendments take effect from 1st April, 2017.