

# Finance Bill 2017

## Direct Taxes Amendments: An Analysis

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# Agenda

- 1.Rates of Income Tax
- 2.Additional Resource Mobilization
- 3.Real Estate Sector
- 4.Stimulating Growth
- 5.Digital Economy
- 6.Electoral Funding
- 7.Ease of Business
- 8.Anti-abuse measures
- 9.Rationalisation Measures

# Rates of Income Tax

- Rate of income tax proposed to be reduced to 5% (from 10%) for income between Rs.2.5L and Rs.5L.
  - Other slabs remain unchanged
- Surcharge of:
  - 10% of income-tax in case of individual having a total income  $> 50L$  and  $\leq 1cr$  Rupees
  - 15% of income-tax in case of individual having a total income  $> 1cr$  Rupees
- Companies with turnover  $\leq$  Rupees 50 crores, corporate tax rate is 25% (from 30%)
  - Big bang announcement?! But only for companies, not firms etc....

**Bottomline: Minor fiddling....**

## 2. Additional Resource Mobilization

- **Existing S.115BBDA:**

- Existing provisions, income by way of dividend over Rs.10 lakhs is chargeable to tax @ 10% on gross basis in case of resident individual, HUF or Firm

- **New S.115BBDA:**

- Finance Bill 2017 from FY 2017-18 for “horizontal equity” amends S.115BBDA to make it **applicable to all resident assessee’s except.....**

# Additional Resource Mobilization

## S.115BBDA

- Domestic company and
- Fund or institution or trust or other medical institution referred to in 10(23C)(iv)(v)(vi)(via) or trust registered u/s 12AA
- **Bottomline:** So what is affected? Family trusts!
  - Many large investors setup private Family Trusts to reduce tax outgo after last year's Budget
    - Cadilla Healthcare, Interglobe Aviation, Piramal Enterprises, Eicher Motors, Glenmark, Tech Mahindra etc.
  - Will Regulated funds like AIF (Alternate Investment Funds) under SEBI Regulations 2(1)(b)) such as Venture Capital Funds, Hedge Funds, Private Equity Funds, Commodity Funds etc. be affected?

# Additional Resource Mobilization

## S.194-IB

- Existing S.194-I:
  - TDS on rent by Individual and HUF under tax audit
- New S.194-IB:
  - To Wider scope of TDS, Individuals or HUF, regardless of tax audit, paying a resident rent above Rs.50k for a month or part of a month during previous year, shall deduct an amount equivalent to 5% of such income
  - No need to obtain TAN (as per S.203A) and can, if necessitated, can deduct tax only once in a previous year
  - If S.206AA applies (recipient PAN not available) then deduction shall not exceed amount of rent payable for last month of previous year (or of tenancy)

# 3. Real Estate Sector

## Base year to 2001

- LTCG of Immovable Property
  - S.2(42A) : Holding period reduced from 36 to 24 months in case of immovable property being land or building, or both, to qualify as a long term capital asset
  - From AY 2018-19 onwards
- Base year from 1981 to 2001
  - S.55: Cost of asset acquired before 01.04.2001 shall be allowed to be taken as market value as on 1<sup>st</sup> April 2001
  - Cost of improvement shall include only capital expenses incurred after 01.04.2001
  - No more fighting out the fair market value with Department?!

# 3. Real Estate Sector

## JDA Taxation

- New sub-section 45(5A)
  - Applies to **Individual or HUF only**
  - CG shall be chargeable only in year in which certificate of completion for the whole or part of project issued by competent authority
  - Stamp Duty value of his/her share, in land or building or both, along with any monetary consideration received deemed to be full value of consideration
  - This benefit will not apply if at any before completion certificate issuance, assessee transfers his share in project to any other person
  - Consequentially S.49 is amended that cost of acquisition of landowner in the project shall be amount which is deemed as full value of consideration under this proposed provision



# 3. Real Estate Sector

## JDA Taxation

- **Dwarka Das Kapadia v. CIT [2003]/180CTR (Bom.)107/260 ITR 491(Bom)/[2003]**; Bombay HC held that if the contract, read as whole, indicates passing of or transferring of complete control over the property in favour of developer, then the date of contract would be relevant to decide year of chargeability. Thus the essence of Section 2(47) (v) may be considered, when there is transfer of complete control over the asset by the owner to the developer.
- **Charanjit Singh Atwal v. ITO Ward-VI(1) Ludhiyana**; it was held that Irrevocable GPA which leads to overall control of property in hands of developer, even if that does not involve exclusive possession of developer, would constitute transfer within the meaning of Section 2(47) (v) . It was held that possession contemplated by Section 2(47) (v) does not require handing over exclusive possession. What is required is that the transferred by virtue of possession should be able to exercise from overall intended purposes.
- **M/s. Binjusaria Properties Pvt. Ltd. Hyderabad versus Asstt. Commissioner of Income-tax**: As on date there was no developmental activity on the land which is subject matter of development agreement – The process of construction has not been even initiated and no approval for the construction of the building is obtained – Thus, the sale consideration in the form of developed area has not been received – Mere receipt of refundable deposit cannot be termed as receipt of consideration – the AO calculated CG on the entire land, even though the assessee has retained 38% share to itself.
- **General Glass Co. Ltd. Vs DCIT 108 TTJ 854 (Mumbai)**: Where payment of balance consideration within stipulated time is essence of the agreement of sale and such payments are not made in time by the transferee, such a contract does not confer any right on the transferee as envisaged under Section 53A of the TP Act and provisions of Section 2(47)(v) cannot be applied in such a situation
- **S. Ranjith Reddy 35 Taxmann.com415 (Hyderabad)**: ITAT Hyderabad has held that where nothing happened during the relevant previous year except execution of the agreement or no progress or construction had taken place it could not be held that the developers had performed its obligation as envisaged by Section 53A of Transfer of Property Act.

# 3. Real Estate Sector

## 80-IBA tweaks

- “Carpet” area instead of “built-up” area
  - Built-up area = Carpet Area + thickness of walls + Balcony
- Restriction of 30 sqms shall not apply to place within municipal limits of 4 metros
- Condition of completion of project for claiming deduction increased from 3 to 5 years
  - From AY 2018-19
- **Bottomline:** Minor tweaks for builders....

# 3. Real Estate Sector

## Land Pooling

- Innovative AP Land Pooling scheme:
  - Landowners voluntarily sign ownership rights over to a single agency/Govt. body.
  - This agency develops the land by building roads and laying sewage lines and electricity connections.
  - Once done, returns back smaller portion of land to the original owners. But plot now more amenities, its price has probably risen to match the market value of the owners' original landholding.
- S.10(37A) introduced so that no CG For Individuals or HUF arising on:
  - Transfer of capital asset under LP scheme
  - Sale of LP Ownership Certs
  - Sale of reconstituted plot of land
- **Bottomline: AP sop** (instead of Special Status?) . Might be replicated in Smart Cities project

# 3. Real Estate Sector

## S.54EC

- CG to extent of Rs.50 lakhs from transfer of long-term capital asset shall be exempt if assessee invests whole or any part of CG in certain specified bonds within specified time
  - NHAI, Rural Electrification Corp. Ltd.
- Proposed to amend S.54EC to provide investment in any bond redeemable after 3 years which has been notified by Central Govt. for this shall also be eligible for exemption
- Bottomline:** Bigger basket of bonds for assessee

# 3. Real Estate Sector

Notional income for house property held as stock-in-trade

- Sec. 23 to be amended dealing with determination of Annual Letting Value (Annual Value)
  - Property held as stock-in-trade not let during the year (whole or in part) the annual value of such property (or part of) property for the period upto 1 year from end of financial year in which Certificate of Completion
- Sec 23(1)(c): *“...where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the amount so received or receivable”*

# 3. Real Estate Sector

Notional income for house property held as stock-in-trade

• **CIT vs. Ansal Housing Finance and Leasing Co Ltd (Delhi HC 354 ITR 80)** held

–Annual Letting Value for real estate developer with ownership of flats waiting to be sold and thus vacant presently cannot be NIL

–Assessee's claim S.23(1)(c) benefit of “vacancy allowance” rejected

• **Revenue favour:**

–Vivek Jain vs. ACIT (337 ITR 74, AP HC) [Individual]

–Sharan Hospitality Pvt. Ltd. (TS-511-ITAT-2016 Mum) [Company]

• **Assessee's favour:**

–DLF Ltd (TS-5387-ITAT-2016(DELHI)-O) : Assessee had “intention to let”(!!) but could not get tenant, hence ALV to be NIL [Company]

–Vikas Keshav Garud (TS-385-ITAT-2016(PUN)) [Individual]

## 4. Measures for Stimulating Growth

### ECB & Masala Bonds & FII/QFI investments

- **194LC** concessional rate for interest payable to non-resident by a specified company on borrowings made by it in foreign currency from sources outside India under loan agmt. or by way of issue of long-term bond shall be eligible for concessional rate of TDS @ 5%
  - Extended to include borrowings made before 1<sup>st</sup> July 2020
  - Applicable from AY 2018-19
- **194LC**: For rupee denominated (“Masala”) bonds, 5% concessional rates available similar to offshore dollar denominated bonds
  - Benefit extended to such bonds issued before 1<sup>st</sup> July 2010
  - Retrospectively from 1<sup>st</sup> April 2016 ie AY 2016-17 and onwards.
- **194LD**: Lower TDS @ 5% on interest payable to FIIs/QFIs on their investment in Govt. securities & rupee-denominated corp. bonds
  - Extended on interest payable before 1<sup>st</sup> July 2020
  - AY 2018-19 and onwards

# 4. Measures for stimulating growth

## Startup India!

- **S.80-IAC** deduction was for 3 consecutive AY's out of 5 years beginning from incorporation; now amended for 3 consecutive AY's out of 7 AY's.
- **S.79 amendment for startups:** Existing S.79 provides that where a change in shareholding has taken place in a previous year in the case of a company (not being PSI), 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.



# 4. Measures for stimulating growth

## Startup India!

- That where a change in shareholding has taken place in a previous year in the case of a company, not being PSI and being an eligible start-up u/S 80IAC of this 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 7 years beginning from the year in which such company is incorporated, continue to hold those shares on the last day of such previous year.
  - From AY 2018-19 and onwards

# 4. Measures for stimulating growth

## MAT credit

- Carry forward of 15 assessment years instead of current 10
  - MAT abolition or reduction in rates was expected but not to be
  - Carry-forward increase helpful as profit-linked incentives are being phased out and so companies can set-off future tax liabilities once profit-linked investments are phased out
- Also, MAT credit to the extent of difference between the foreign tax credit allowed against MAT over such credit allowable against the tax under the other provisions of the Act shall not be eligible to be carried forward
  - Already provided in Rule 128, Notification No.54/2016

# 4. Measures for stimulating growth

## Banking sector

- **S.43D to include co-operative banks**
  - Confirming the confirmed?
    - The Urban Co-operative Bank Karnataka HC
    - Shri Mahila Sewa Sahakari Bank
    - CIT vs. Elgi Finance Madras HC
- S.43B to be consequentially modified to make sure interest payment to said banks is allowed only on actual payment (as the interest income will be offered on actual receipt)

# 4. Measures for stimulating growth

## Banking sector

- **S.36(1)(vii)(a)** provides that a scheduled bank or a non-scheduled 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. The amount of such deduction is 7.5% of total income and not an amount exceeding 10% of aggregate advances made by rural branches of such bank.
  - Now the 7.5% deduction is increased to 8%

# 5. Promoting Digital Economy

## Restricting Cash Donations

- **Disallowance of depreciation u/s 32 and section 35AD on cash payment**
  - **Amendment to actual cost (Section 43)** to provide where an assessee incurs expenditure for acquisition of asset in which payment or aggregate of payments **in a day exceeds Rs.10,000/-** such expenditure shall be ignored for the purpose of determination of actual cost
    - Installation done over multiple days ?:)
- **80G deduction** will not be allowed in respect of donations made of any sum exceeding Rs.2,000 (reduced from Rs.10,000) if the same is not paid by any mode other than cash

# 5. Promoting Digital Economy

## 40A(3) tweaks

- S.40A(3)
  - Reduce existing threshold of cash payment to a person from Rs.20,000/- to Rs.10,000/- per day. Such amount shall not be allowed as deduction in computation of income from “Profits and gains of business or profession”
  - Deeming a payment as profits and gains of business and profession if expenditure is incurred in a particular year but cash payment is made in any subsequent year of a sum exceeding Rs.10,000/- to a person in a single day
  - Expanding mode of payment to include use of an electronic clearing system through a bank account
  - From AY 2018-19 and onwards

# 5. Promoting Digital Economy

## 44AD

### • S.44AD

- Presumptive income scheme in case of eligible assessee carrying out eligible business
- Currently, If total turnover not exceeding Rs.2cr, a sum of 8% of total turnover is deemed to be profits chargeable to tax under “profits and gains of business or profession”
- To incentivize digital payments, rate is reduced to 6% for non-cash payments in applying this Section (and for cash payments it will remain at 8%)

# 5. Promoting Digital Economy

## Restriction on cash transactions

- **No person shall receive an amount of Rs.3,00,000/- or more:**
  - In aggregate from a person in a day
  - In respect of a single transaction
  - In respect of transaction relating to one event or occasion from a person
- otherwise than by A/C payee cheque or bank draft or electronic clearing system through bank A/c
- Not apply to Govt, any banking company, post office savings bank and cooperative bank and others notified by Central Govt
- Transactions of nature of S.269SS are proposed to be excluded from scope of said section
- S.271DA penalty at 100% of such receipt also to be introduced with escape clause of “good and sufficient reasons” for such contravention



# 6. Electoral Reforms

## S.13A amendments

- Cash donation only upto Rs.2000/- can be received
- Political party furnishes a return of income for previous year in accordance with S.139(4B) on or before due date u/S 139
- Shall not be required to furnish name and address of donors who contribute by way of “electoral bonds”
  - Affirms **Common Cause SC judgment** where SC held that political parties have to file RoI and Govt should appoint an inquiry to find out why mandatory filing was not being done and why no action was taken...

# 7. Ease of Doing Business

## Clarity in Indirect Transfer Provisions &

### Offshore fund amendment

- **S.9(1)(i) Explanation 5** provides asset or capital asset being any share or interest in a company registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives value substantially from assets located in India
- **Circular 41/2016:** CBDT indicated FPI's were subject to tax in India on offshore txns if value of Indian assets > 50% of assets owned by FPI
  - Worries raised due to this provision being applicable in case of transfer of stake of investors of India-based funds located abroad, but investing in India-based companies (CBDT Circular put on hold)
- **Explanation 5A to be introduced:** Explanation 5 to S.9(1)(i) will not be applicable to investment held by non-residents, directly or indirectly, in **Category I or Category II foreign portfolio investments**
  - Category III FPI such as corporate bodies, trusts and family offices will still fall under Explanation 5
- **Applicable with retrospective effect from 1 April, 2012.**
- **S.9A** condition for offshore fund monthly average corpus of Rs.100cr to be relaxed

# 7. Ease of Doing Business

## Specified Domestic Transactions (SDT)

- **Applicability of domestic TP** will now be restricted only to related party transactions where one of the entities involved enjoys tax holiday whereas under the existing law, payment made to related parties is also subject to this compliance requirement.
  - S.40(A)(2)(b) reference removed from S.92BA and consequential amendments made to S.40(A)(2). Big relief for taxpayers!
- **Conversion of preference shares** to equity shares to be not considered transfer u/S 47
  - Consequential amendments in S.49 and 2(42A) to be made
- **S.49 amended to reflect S.47(vic) change:** Cost of acquisition of shares of the Indian company in the hands of the demerged foreign company shall be considered as the cost in the hands of the resulting foreign company.
- **AAR's** of IT, Central Excise, Service Tax and Customs Duty to be merged. Qualifications for Members, Chairman etc detailed

# 7. Ease of Doing Business

## Income from transfer of Carbon Credits

- Carbon credits are an incentive given to an industrial undertaking for reduction of Green House Gases. CER certificate is issued and is tradeable and holder can transfer to entity which needs Carbon Credits to overcome an unfavourable position
- Dept has been treating income on transfer of carbon credits as business income taxable @ 30%
  - **Kalpataru Power Transmission (ITA No.538/Ahd/2013 dated 18.3.2016)**
- Multiple decisions holding income from carbon credit transfer as **capital receipt**
  - **CIT vs. Subhash Kabini Power Corp (385 ITR 592 Kar HC)**
  - **CIT vs. My Home Power Ltd. (365 ITR 82 ITAT AP HC)**
  - **CIT vs. Arun Textiles Pvt. Ltd. (TCA No 606 of 2016 dated 29.8.16)**
  - **M/s. Ambika Cotton Mills Ltd. v. DCIT (ITA No.1836/Mds/2012 dated 16.4.2013),**
  - **Salona Cotspin Ltd. Vs DIT (ITA No.426/Mds/2013 dated 11 June 2013)**

# 7. Ease of Doing Business

## S.153 timelines

Particulars	Existing provision	New provision
Assessment or Best Judgment Assessment	21 months from end of AY time limit	AY 2018-19: 18 months AY 2019-20: 12 months (from end of AY)
Reassessment	9 months from end of FY in which notice was served	To be increased to 12 months (On notices issued on or after 1 April 2019)
Fresh assessment pursuant orders of ITAT or revisionary orders passed by Principal Commr/Commr	9 months from end of FY when ITAT order is received or revisionary order passed.	To be increased to 12 months (On orders passed or received on or after 1 April, 2019)
Order giving effect to order of appellate authorities requiring further verification	Same as above ie fresh assessment orders passed pursuant to directions of appellate authorities	Proposed amendment from 1 <sup>st</sup> June 2016 onwards
In case of assessment involving TP above time limits to be increased by 12 months		

# 7. Ease of Doing Business

## Revised return, S.153B timelines

- **Revised Return** u/s 139(5) to be amended to set timelimit upto end of **relevant assessment year** or before completion of assessment whichever is earlier. W.e.f AY 2018-19 onwards
- **Existing search assessment timeline S.153B** to amended on similar lines to S.153
  - For search and seizures in FY 2018-19, assessment order u/S 153A in search and seizure cases to be reduced to 18 months from end of FY in which authorization for search u/S 132 or requisition u/S 132A executed. For FY 2019-20 onwards, 12 months from end of FY in which S.132/132A authorization executed. Similar change to reassessment timeline as in S.153
- **CG Exemption on Rupee Denominated Bond:** S.48 to be amended that appreciation in rupee shall be ignored for computation of full value of consideration and S.47 to be amended that transfer of rupee denominated bond of an Indian company by non-resident to another non-resident is not a transfer. W.e.f AY 2018-19 and onwards

# 7. Ease of Doing Business

## **S.143(1D), S.234, S.211, S.119**

- **S.143(1D)** : Processing of return shall not be necessary where a notice has been issued to assessee under sub-section (2)
- In order to address delay of refund in genuine cases which are checked for scrutiny, proposed that provisions of **S.143(1D) shall cease to apply in respect of returns furnished for AY 2017-18 and onwards**
- However, in terms of safeguard, **S.241A to be inserted** so that AO in writing can with approval of Principal Commr. or Commr. withhold refund upto date assessment is made
- **S.234C(1)** to include assessee's under **S.44ADA** in respect of difference of advance tax paid on or before 15<sup>th</sup> March and tax due on returned income
- **S.211 to be amended** so that S.234C shall not be levied subject to conditions laid therein on account of under-estimation or failure in estimation of income referred to in S.115BBDA (w.e.f AY 17-18 onwards)
- **S.119(2)(a)** : CBDT to be empowered to issue directions or instructions in reference to S.271C and S.271CA also
- Orders passed **u/s 10(23C)(iv) and (v)** can also be appealable before ITAT (w.e.f 1<sup>st</sup> April 2017)

# 7. Ease of Doing Business

## FTC, TCS, Interest on refund

- **S.155(14A) to implement FTC Rules 2016, Rule 128** provides for claim of credit for foreign tax paid in case of dispute if on resolution of dispute:
  - Within 6 months from end of month in which dispute is settled, furnish proof of settlement before the AO and
  - Submits evidence that foreign tax liability has been discharged and
  - An undertaking that such FTC was not claimed in any other AY
  - W.e.f AY 2018-19
- **S.206C(1F)** : Seller shall collect 1% of sales as tax on sale of motor vehicles exceeding ten lakh rupees. Now certain buyers such as Central Govt., State Govt., Embassy, High Commission, legation, commission, consulate, trade rep of foreign State, local authority, public sector company engaged in business of carrying passengers
- **S.244A(1B)** : Provide where refund of any amount becomes due to the deductor, such person shall receive in addition to refund, SI on such refund @ 1.5% for every month from date on which claim of refund is made or for giving effect to an order u/S 250 or 254 or 260 or 262 from the date on which tax is paid up to the date on which refund is granted
  - Confirmed **DIT vs. Tata Chemicals (Civil Appeal 6301 of 2011 dated 26 Feb 2014 SC)**



# 7. Ease of Doing Business

## **S.194D, S.10(48B), S.44AA, S.44AD, S.194LA, S.194J**

- S.197A to be amended for insurance agents to file self-declaration in Form 15G/15H for non-deduction of tax at source in respect of insurance commission referred to in **S.194D** (w.e.f 1<sup>st</sup> June 2017)
- **New S.10(48B)** so that any income accruing to foreign company on account of sale of leftover stock of crude oil from facility in India after expiry of agreement referred to in S.10(48A) shall also be exempt (w.e.f AY 2018-19)
- **S.44AA (Maintenance of accounts by certain persons)** limits increased from 1.25lakhs to 2.5lakhs and Rs.10 lakhs to Rs.25 lakhs for individuals and HUF respectively. (w.e.f AY 2018-19)
- Presently, every individual carrying on business or professional shall get accounts audited u/S.44AB if total sales, turnover or gross receipts exceed Rs.1cr. CBDT in press release on 20 June 2016 clarified that as per **S.44AD(1) he/she shall not be required to get accounts audited u/S 44AB if total turnover or gross receipts of previous year does not exceed Rs.2cr.** This amendment is to codify the press release
- **S.194LA:** No TDS on payments made in respect of award exempted by levy of income tax under S.96 of RFCTLARR Act
- **S.194J :** 2% TDS instead of 10% on payments to call-centers

# 8. Anti-abuse measures

## **S.10(38), S.50CA, S.56, S.58**

- **S.10(38)** amended to provide exemption only if acquisition is chargeable to STT. Genuine cases such as IPO, Bonus, rights issue etc. to be specifically notified for exemption
- **S.50CA**, on the lines of S.50C for immovable property, to introduce consideration for transfer of share of a company (other than quoted share) is less than FMV then FMV shall be deemed full value of consideration for CG
  - Double trouble – S.50CA seller, S.56 buyer?
- **S.56** scope widened:
  - Earlier only Individuals and HUF in S.56(2) for receipt of money or property without adequate consideration and in certain specific cases to firms and companies
    - S.56(2)(viiia) company, not PSI, receives shares of company (not being a PSI company).
    - S.56(2)(viiib) on company, not PSI, receiving consideration for issue of shares
  - Now **S.56(x) to be inserted** to provide receipt of sum of money or property by any person from any other person without consideration or inadequate consideration in excess of INR 50,000 shall be chargeable. Exceptions are also supposed to be widened
- **S.58** to be amended so that S.40(a)(ia) applies to “income from other sources”

# 8. Anti-abuse measures

## S.94B : OECD BEPS 4

- Company financed through debt or equity: the method has significant effect on profits
  - Interest payments usually deductible, equity contribution is not
  - Debt therefore is usually preferable and high level of debt means more interest deduction and lesser profit
- **OECD BEPS (Base Erosion Profit Shifting) Action Plan 4** addresses this and provides caps on interest claim
- **S.94B to be inserted to implement this plan**
  - Capping interest expense claimed by entity to its AE to 30% of EBIDTA
  - **Excess interest can be carried forward 8 years** and deduction against “Profits and gains of business profession” to extent of maximum allowable interest expenditure
  - Banks & insurance business to be kept away from ambit of this section
  - W.e.f AY 2018-19

# 8. Anti-abuse measures

## S.92CE: Secondary Adjustment

- In international transaction with AE, adjustment over Rs.1cr made **(primary adjustment)** by:
  - **Assessee (or)**
  - **AO which has not been disputed by assessee (or)**
  - **Determined by APA (or)**
  - **Under Safe Harbor Rules (or)**
  - **MAP**
- **Adjusted amount should be repatriated by AE to assessee**
- If not done so, same would be treated as “Advance” and on which secondary adjustment by way of interest income will be made
- Again following OECD TP Guidelines.....
- **Overruled: PMP Auto Components P. Ltd. (TS-263-ITAT-2014 Mum TP)**

# 8. Anti-abuse measures

## Corpus donations, Fee for delayed return, Penalty on CAs

- Contribution given by an exempt entity (for ex: Charitable Trust) to another exempt entity with **specific direction that it shall form part of corpus shall not be treated as application of income**
  - Currently, in such cases, the donor treats it as application of income where for donee/recipient it is not considered as income.
  - Similar restrictions to be in place for 10(23C)
  - Overrules **Tewari Charitable Trust vs. DIT (ITA No.6192/Mum/2012)**
- Fee for delayed return introduced via **S.234F** (Rs.5k before Dec 31<sup>st</sup>, Rs.10k otherwise. If total income  $\leq$  Rs.5lakhs, Rs.1k)
  - Consequentially, S.271F in respect of penalty for failure to furnish return shall not apply w.e.f AY 2018-19 onwards
- **S.271J Penalty on professionals furnishing incorrect information in statutory report:**
  - Rs.10,000/- for each report a CA or merchant banker or valuer provides which furnishes incorrect information. Reasonable cause cover available u/S 273B. W.e.f 1<sup>st</sup> April 2017 (**No lawyers though!**)
- Mandatory filing of returns by certain exempt entities under S.139(4C) such as Core Settlement Guarantee Fund, Investor Protection Fund etc.

# 9. Rationalization measures

## S.115JB – Ind-AS

- Ind AS implementation laid down in Companies (Indian Accounting Standards) Rules, 2015
- Govt issued **Income Computation and Disclosure Standards (ICDS)** for computation of taxable income for specified heads of income
- CBDT Committee studied framework for computation of MAT liability u/S.115JB for Ind AS compliant companies in year of adoption and thereafter. Committee recommendations are being implemented
- As Ind-AS required to be adopted by certain companies in FY 2016-17 mandatorily, these amendments will take effect from 1<sup>st</sup> April 2017 and apply to AY 2017-18 and onwards

# 9. Rationalization measures

## S.115JB – Ind-AS

#	Items included in other comprehensive income that will be permanently recorded in reserves and never be reclassified to P&L	On first time adoption	Year on year treatment
1	Changes in revaluation, surplus of property, plant & equipment and Intangible Assets (Ind AS 16, 38)	To be included in book profit at time of realization/ disposal/retirement/transfer	To be included in book profit at time of realization/ disposal/retirement/transfer
2	Gains and losses from investments in equity instruments designated at fair value through other comprehensive income (Ind AS 109)	Same as above (in #1)	Same as above (in #1)
3	Re-measurements of defined benefit plans (Ind AS 19)	To be included in Book Profits equally over 5 years starting from first time adoption of Ind-AS	To be included in book profits every year as gain and losses arise
4	Any other item	Same as above (in #3)	Same as above (in #3)

# 9. Rationalization measures

## S.10AA

- Courts have taken a view that deduction is to be allowed from total income of undertaking and not from total income of assessee
  - In **CIT vs. Yokogawa India Ltd. (Civil Appeal 8498 of 2013)**, in the context of deduction u/s 10A, SC had observed that
    - Deduction u/s 10A/10B are qua the undertaking without reference to other eligible /non-eligible units and thus the benefit is granted to the undertaking which resultantly flow to the assessee by drawing support from contemporaneous CBDT Circular No. 794 dated August 9, 2000.
    - SC concluded that Sec. 10A/10B are provisions of deduction and the stage of deduction is while computing gross total income of eligible undertaking under Chapter IV of the Income-tax Act and not at the stage of computation of total income under Chapter VI
- **Yokogawa ratio has now been overruled w.e.f AY 2018-19 and onwards** to provide that amount of deduction u/s 10AA shall be allowed from total income of assessee before giving effect to provisions of S.10AA and deduction u/S 10AA shall not exceed total income
  - Given amendment is proposed as Clarification, tax authorities may apply it to open assessments and appeals?



# 9. Rationalization measures

## S.90/90A, S.11 & 12

- **Any term defined used in agreement u/S 90 or 90A of the Act** is defined under said agreement, the said term shall be assigned meaning as provided in said agreement and where the term is not defined, but is defined in the Act, it shall be assigned the meaning as defined in the Act or any explanation issued by the State Govt.
- **Trust obtained registration under S.12AA if it has subsequently adopted modification of objects which do not conform to registration**, it shall be required to obtain fresh registration by making application within period of 30 days from date of such adoption of modifications
- Clarity on return of income to be filed within time allowed u/S 139 for entities registered u/S 12AA
- Amendments are stated as clarificatory and w.e.f AY 2018-19 and subsequent years

# 9. Rationalization measures

## **S.112, S.87A, S.112, S.195(6), S.206CC, NPS**

- **S.49 and S.2(42) amended** to match S.47(xix) to provide tax neutrality on transfer of units in a consolidating plan of mutual fund scheme
- **S.87A rebate** reduced to Rs.2500 from Rs.5000 and available only to resident individuals whose total income does not exceed Rs.3.5 lakhs
- **S.112(1)(c)** : After amendment the share of company, not PSI, shall also be chargeable to tax at concessional rate of 10% w.e.f April 2013
- **S.195(6)**: 'person responsible for paying' shall be payer himself, or if payer is a company, the principal officer thereof
- **S.206CC**: Currently, in absence of PAN of payee, payer is required to withhold tax at higher rate of 20% (except for payments to non-residents). Similar provision shall apply in case of TCS but a rate of
  - (a) twice the normal TCS rate or
  - (b) 5%, whichever is higher. S.206CC
- **NPS**: Budget has proposed that partial withdrawals of up to 25% of the contributions (not on corpus) will not be taxed.
  - It is in addition to exemption of 40% of corpus at the time of withdrawal.
- The government has brought the NPS schemes for employees and self-employed individuals on a par, in terms of deductions under section 80CCD of the Income-tax Act, 1961.
  - W.e.f AY 2018-19 onwards

# 9. Rationalization measures

Set-off of loss from House Property, Provisional attachment, S.133(6) powers etc.

- **Set-off loss from house property is restricted to Rs. 2 lac against 'any other head of income' in the relevant financial year:**
  - Residual loss can be carried forward to subsequent years but restrictions of set off limit, in any assessment year is Rs. 2 lacs.
  - This will be set back to the property purchased from borrowed funds where interest cost is substantial, which was hitherto available for set off against income under other head of income also.
- **S.153A:** Income tax officers can now reopen **tax cases for up to 10 years** if search operations reveal undisclosed income and assets of over Rs 50 lakh.
- During course of search or seizure (or) within 60 days from date on which last of authorizations of search was executed, **Authorized officer can provisionally** attach any property of assessee with prior approval .
  - Cease to have affect after expiry of 6 months from order
- **S.133(6)** power for JD, DD and AD and needn't seek prior approval
- Extension to **survey place in which charitable activity is carried on**
- Exemption of income of **CM's and LG's relief fund**
- Correct reference to FEMA instead of FERA in S.110(4)(ii)
- **CBDT can send centralized notices u/S.133C**

# 9. Rationalization measures

## Reason to believe to conduct a search etc.

- It is proposed to insert an Explanation to sub-section (1) and to sub-section (1A) of section 132 and to sub-section (1) of section 132A 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**
  - Hon'ble SC in **DGIT vs. Spacewood Furnishers Ltd. (Civil Appeal 4394 of 2015 dated May 13,2015 SC)** held that reasons recorded prior to authorizing search **need not to be disclosed or communicated to the person** against whom the warrant of authorization is issued.
  - No right is conferred on taxpayer of inspection of documents or to a communication of the reasons for the belief at the stage of issuing of the authorization.
  - "Any such view would be counterproductive of the entire exercise contemplated by Section 132 of the Act" and material may be disclosed only at the stage of commencement of the assessment after search is completed

# 9. Rationalization measures

## Reason to believe to conduct a search etc.

- The Hon'ble SC Court noted as follows:
  - (i) The authority must have information in its possession on the basis of which a reasonable belief can be founded
  - (ii) Such information must be in possession of the authorized official before the opinion is formed.
  - (iii) There must be application of mind to the material and the formation of opinion must be honest and bonafide. Consideration of any extraneous or irrelevant material will vitiate the belief/satisfaction.
  - (iv) Though Rule 112(2) of the Income Tax Rules which specifically prescribed the necessity of recording of reasons before issuing a warrant of authorization had been repealed on and from 1st October, 1975 the reasons for the belief found should be recorded.
  - (v) **The reasons, however, need not be communicated to the person against whom the warrant is issued at that stage.**
  - (vi) Such reasons, however, may have to be placed before the Court in the event of a challenge to formation of the belief of the authorized official in which event the court (**exercising jurisdiction under Article 226**) would be entitled to examine the relevance of the reasons for the formation of the belief though not the sufficiency or adequacy thereof.

# 9. Rationalization measures

## S.206CC – PAN for TCS, NPS

- **S.206CC:** Currently, in absence of PAN of payee, payer is required to withhold tax at higher rate of 20% (except for payments to non-residents). Similar provision shall apply in case of TCS but a rate of
  - (a) twice the normal TCS rate or
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- **NPS:** Budget has proposed that partial withdrawals of up to 25% of the contributions (not on corpus) will not be taxed.
  - This is in addition to the exemption of 40% of the corpus at the time of withdrawal.
- The government has brought the NPS schemes for employees and self-employed individuals on a par, in terms of deductions under section 80CCD of the Income-tax Act, 1961.
  - W.e.f AY 2018-19 onwards

# 10. Others

## S 35AD(7B), 80CCG

- **35AD(7B)** - Existing provision provides that where any capital asset on which benefit of section 35AD is claimed is used for any other purpose, it shall be deemed income net of depreciation.
- To provide clarity now, deemed income of capital asset shall be after depreciation allowable from date of acquisition
- **80CCG:** Under section 80CCG, deduction from total income was allowed to new retail investors for investment in listed equity shares or listed units of an equity-oriented fund for a period of three consecutive years, subject to various conditions and up to a maximum amount of ₹25,000 per year.
- - Deduction under section 80CCG is no longer available to new retail investors from AY 2018–19 onwards.
- - New retail investors who had claimed deduction for AY 2017–18 or prior years will continue to be entitled to deduction until AY 2019–20 if otherwise eligible

**Thank you**

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