DECODING TAX FINE-PRINT

FINANCE BILL, 2019

VAISH ASSOCIATES ADVOCATES ESTD. 1971

SEQUENCE OF TOPICS

S. No.	Topics	Slide Nos.
I	RATES OF TAX AND PERSONAL TAXATION	1 to 18
II	PROFITS & GAINS OF BUSINESS OR PROFESSION	19 to 22
III	EXEMPTIONS/ DEDUCTIONS	23 to 43
IV	AMENDMENTS RELATING TO ASSESSMENT PROCEDURES	44 to 56
V	TAX ON BUY-BACK OF SHARES	57 to 67
VI	TAXATION OF NON-RESIDENTS	68 to 90
VII	TRANSFER PRICING	91 to 105
VIII	TAX DEDUCTION AT SOURCE	106 to 129
IX	INCENTIVES FOR START-UPS	130 to 142
X	RATIONALIZATION OF PROVISIONS: - TRUSTS - LESS CASH ECONOMY - RESOLUTION OF DISTRESSED COMPANIES (IBC) - INCOME DECLARATION SCHEME, 2016	 143 to 148 149 to 156 157 to 162 163 to 169
XI	BLACK MONEY ACT & BENAMI PROPERTY ACT	170 to 194
XII	MISCELLANEOUS	195 to 226

RATES OF TAX AND PERSONAL TAXATION

Tax Rates – Individuals/HUF

[Chapter II & First Schedule] **(w.e.f. 01.04.2020)**

- No change in tax rates.
- Surcharge on income tax to be increased for higher income groups:

Income (in Rs.)	Existing surcharge	Proposed surcharge	Effective Tax rate
Rs.50 lacs to Rs.1 crore	10%	10%	34.32%
Rs.1 crore to Rs.2 crores	15%	15%	35.88%
Rs.2 crores to Rs.5 crores	15%	25%	39%
Above Rs.5 crores	15%	37%	42.74%

Tax Rates – Individuals/HUF

w.e.f. 01.04.2020

Income	Existing Slabs (A.Y. 2019-20)	Proposed Slabs (A.Y. 2020-21)
A) General (other than Senior citizens & Very senior citizens):		
Upto Rs.2,50,000*	NIL	NIL
Between Rs. 2,50,001 and Rs. 5,00,000*	5.2%	5.2%
Between Rs. 5,00,001 and Rs. 10,00,000	20.80%	20.80%
Between Rs. 10,00,001 and Rs. 50,00,000	31.20%	31.20%
Between Rs. 50,00,001 and Rs.1 crore	34.32%	34.32%
Between Rs.1,00,00,001 and Rs.2 crores	35.88%	35.88%
Between Rs.2,00,00,001 and Rs.5 crores	35.88%	39%
Above Rs.5 crores	35.88%	42.74%

** rates are inclusive of Health and Education Cess @ 4% and Surcharge, wherever applicable

Tax Rates – Individuals/HUF

w.e.f. 01.04.2020

Income	Existing Slabs (A.Y. 2019-20)	Proposed Slabs (A.Y. 2020-21)
B) Senior citizens - Resident (aged 60 years or above but less than 80 years):		
Upto Rs. 3,00,000*	NIL	NIL
Between Rs. 3,00,001 and Rs. 5,00,000*	5.2%	5.2%
Between Rs. 5,00,001 and Rs. 10,00,000	20.80%	20.80%
Between Rs. 10,00,001 and Rs. 50,00,000	31.20%	31.20%
Between Rs. 50,00,001 and Rs. 1 crore	34.32%	34.32%
Between Rs.1,00,00,001 and Rs.2 crores	35.88%	35.88%
Between Rs.2,00,00,001 and Rs.5 crores	35.88%	39%
Above Rs.5 crores	35.88%	42.74%

** rates are inclusive of Health and Education Cess @ 4% and Surcharge, wherever applicable

Tax Rates – Individuals/HUF

w.e.f. 01.04.2020

Income	Existing Slabs (A.Y. 2018-19)	Proposed Slabs (A.Y. 2019-20)
C) Super Senior Citizen – Resident (aged 80 years or more)		
Upto Rs. 5,00,000	NIL	NIL
Between Rs. 5,00,001 and Rs. 10,00,000	20.80%	20.80%
Between Rs. 10,00,001 and Rs. 50,00,000	31.20%	31.20%
Between Rs. 50,00,001 and Rs. 1 crore	34.32%	34.32%
Between Rs.1,00,00,001 and Rs.2 crores	35.88%	35.88%
Between Rs.2,00,00,001 and Rs.5 crores	35.88%	39%
Above Rs.5 crores	35.88%	42.74%
*** NOTE:** **Rebate - maximum of Rs.12,500 from the tax payable would be admissible under section 87A of the Act to those individuals whose total income does not exceed Rs.5,00,000 p.a.**		

** rates are inclusive of Health and Education Cess @ 4% and Surcharge, wherever applicable

Tax Rates – Individuals/HUF

[Chapter II & First Schedule] **(w.e.f. 01.04.2020)**

❖ **Rebate under section 87A to individuals**

- Rebate of income-tax available to resident individuals was enhanced from Rs.2,500 to Rs.12,500 vide Interim Budget, 2019-2020 where total income of individual does not exceed Rs.5,00,000 (earlier limit was Rs.3,50,000)

- Rebate under section 87A as enhanced by Interim Budget, 2019 will continue to hold force.

Tax Rates – Domestic Companies

[Chapter II & First Schedule] **(w.e.f. 01.04.2020)**

- No change in tax rates.

- Concessional tax rate of 25% for domestic companies having total turnover or gross receipts of less than Rs.400 crores in the previous year 2017-18 (increased from Rs.250 Cr.)

Tax Rates – Domestic Companies

w.e.f. 01.04.2020

Income (Where the total turnover in previous year 2017-18 does not exceed Rs.400 crores)	Proposed Slabs (AY 2020-21)
Upto Rs. 1 crore	26%
Above Rs.1 crore but less than Rs.10 crores (inclusive of surcharge @ 7%)	27.82%
Above Rs.10 crores (inclusive of surcharge @ 12%)	29.12%

** rates are inclusive of Health and Education Cess @ 4% and Surcharge, wherever applicable

Tax Rates – Domestic Companies

w.e.f. 01.04.2020

Income (Where the total turnover in previous year 2017-18 exceeds Rs.400 crores)	Proposed Slabs (AY 2020-21)
Upto Rs. 1 crore	31.2%
Above Rs.1 crore but less than Rs.10 crores (inclusive of surcharge @ 7%)	33.384%
Above Rs.10 crores (inclusive of surcharge @ 12%)	34.944%

** rates are inclusive of Health and Education Cess @ 4% and Surcharge, wherever applicable

Tax Rates – Foreign Company

w.e.f. 01.04.2020

Income	Existing Slabs (AY 2019-20)	Proposed Slabs (AY 2020-21)
Upto Rs. 1 crore	41.6%	41.6%
Rs.1 crore to Rs.10 crores (inclusive of surcharge @ 2%)	42.43%	42.43%
Above Rs.10 crores (inclusive of surcharge @ 5%)	43.68%	43.68%

** rates are inclusive of Health and Education Cess @ 4% and Surcharge, wherever applicable

Tax Rates – Local Authority/ Firm

w.e.f. 01.04.2020

Income	Existing Slabs (A.Y. 2019-20)	Proposed Slabs (A.Y. 2020-21)
Upto Rs. 1 crores	31.2%	31.2%
Above Rs.10 crores (inclusive of surcharge @ 12%)	34.94%	34.94%

** rates are inclusive of Health and Education Cess @ 4% and Surcharge, wherever applicable

Tax Rates – Co-operative Society

w.e.f. 01.04.2020

Income	Existing Slabs (AY 2019-20)	Proposed Slabs (AY 2020-21)
Upto Rs. 10,000	10.4%	10.4%
Rs.10,000 to Rs.20,000	20.8%	20.8%
Rs.20,000 to 1 crore	31.2%	31.2%
Above 1 crore (inclusive of surcharge @ 12%)	34.94%	34.94%

** rates are inclusive of Health and Education Cess @ 4% and Surcharge, wherever applicable

Credit of relief under section 89 while computing tax liability

[Clauses 42, 43, 52, 53 & 54] **(w.r.e.f. 01.04.2007)**

- Section 89 of the Act contains provisions for providing tax relief where salary, profits in lieu of salary, family pension is paid in arrears or in advance.

- The existing provisions of sections 140A, 143, 234A, 234B and section 234C of the Act provide for computation of tax liability after allowing credit for prepaid taxes and certain admissible reliefs, credits etc. However, relief under section 89 has not been specifically mentioned in these sections.

- In order to rationalize these provisions and ease the hardship faced by the taxpayers, it is proposed to amend these sections to specifically provide for computation of tax liability after allowing relief under section 89 of the Act.

Deduction under section 80CCD of the Act

[Clause 24] **(w.e.f. 01.04.2020)**

- **Section 80CCD(2)** provides for deduction of employer's contribution to the New Pension System ('NPS') account of an employee, from the total income of such employee, to the extent of 10% of his salary in the previous year.

- It is proposed to amend the aforesaid section to enhance the cap of 10% to 14% of salary in case of Central Government employees.

Comments/ Observations:

- The Central Government, vide notification dated 31.01.2019, enhanced contribution of Central Government to Tier-1 Pension Account of its employees from 10% to 14% w.e.f. 01.04.2019.

- In order to ensure full deduction of the enhanced contribution, amendment in sub-section (2) is being proposed.

- The enhanced limit is not applicable to other than central government employees.

Tax exemption on withdrawal from National Pension System (NPS)

[Clause 6] **(w.e.f. 01.04.2020)**

- Under the NPS scheme, an individual, upon retirement, can withdraw a lump-sum of up to 60% of the corpus fund and balance 40% is mandatorily required to be invested in an annuity plan.

- Presently, **section 10(12A)** provides for exemption of upto 40% out of the aforesaid 60% of the corpus fund withdrawn by the employee upon closure of his account/ opting out, thereby subjecting balance 20% to tax.

- In order to enable the pensioner to have more disposable funds and to bring the tax provisions at par with the NPS scheme, the aforesaid exemption is proposed to be increased from 40% to 60% of the corpus.

Additional benefit for contribution to NPS

[Clause 23] **(w.e.f. 01.04.2020)**

- To expand the tax saving avenues for Central Government employees, it is proposed to insert **clause (xxv) in section 80C** to provide additional deduction in respect of amount contributed by the employee to the additional account/ Tier-II account under the national pension system with a lock-in period of 3 years.
- The contribution shall be in accordance with the scheme as may be notified by the Central Government in the Official Gazette for the purpose of this clause.

PROFITS & GAINS OF BUSINESS OR PROFESSION

Incentives to Non-Banking Finance Companies (NBFCs)

Incentives to NBFCs

[Clauses 13 & 15] **(w.e.f. 01.04.2020)**

- With a view to provide a level playing field to certain categories of NBFCs who are adequately regulated, it is proposed to provide the following incentives to deposit-taking NBFCs and systemically important non deposit-taking NBFCs :

Amendment in section 43D

- It is proposed to extend the benefit provided under section 43D of the Act, which, inter-alia, provides that interest income in relation to certain categories of bad or doubtful debts received by certain institutions or banks or corporations or companies, shall be chargeable to tax in the previous year in which it is credited to profit and loss account or is actually received, whichever is earlier.

Incentives to NBFCs

[Clauses 13 & 15] **(w.e.f. 01.04.2020)**

Amendment in section 43B

- Section 43B of the Act provides for certain deductions to be allowed only on actual payment.

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

EXEMPTIONS/ DEDUCTIONS

Incentive for Category II Alternative Investment Fund (AIF)

[Clause 21] **(w.e.f. 01.04.2020)**

- Provisions of section 56(2)(viib) of the Act presently provide that where a closely held company receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to tax.
- Currently, exemption is available in respect of consideration for issue of shares received:
  - By a venture capital undertaking from a venture capital fund or venture capital company; or
  - By a company from a class or classes of persons as may be notified by the Central Government

Incentive for Category II Alternative Investment Fund (AIF) [cont.]

[Clause 21] **(w.e.f. 01.04.2020)**

- Venture capital company and venture capital fund, which derive their meaning from Explanation to section 10(23FB), have been defined to include Category I AIF.
- With a view to facilitate venture capital undertakings to receive funds from Category II AIF, it is proposed to amend section 56(2)(viib) to exempt consideration received from Category II AIF also from the rigours of the said section.
- Few examples of Category I & Category II AIF, as provided in FAQs to SEBI (Alternative Investment Funds) Regulations, 2012 are as under:

CATEGORY I AIF	CATEGORY II AIF
Angel funds	Real estate funds
SME funds	Private equity funds
Infrastructure funds	Funds for distressed assets

Tax incentive for affordable housing

Section 80EEA – Incentive for affordable housing

[Clause 25] **(w.e.f. 01.04.2020)**

Particulars	Existing section 80EE	Proposed section 80EEA
Eligible person	Individual	Individual
Deduction of 'interest payable' on loan borrowed for the purpose of acquisition of residential house property	Rs. 50,000	Rs. 1,50,000
Period within which loan should be sanctioned	01.04.2016 to 31.03.2017	01.04.2019 to 31.03.2020

Section 80EEA – Incentive for affordable housing

[Clause 25] **(w.e.f. 01.04.2020)**

Particulars	Existing section 80EE	Proposed section 80EEA
Limit of loan to be sanctioned	Rs. 35 lakhs	No such limit proposed
Maximum value of residential house property	Value of residential house property should not exceed Rs. 50 lakhs	**"Stamp duty value"** of residential house should not exceed Rs.45 lakhs

Section 80EEA – Incentive for affordable housing

[Clause 25] **(w.e.f. 01.04.2020)**

- Assessee should not own any residential house property on the date of sanction of loan.
- Deduction in respect of such interest shall not be allowed under any other provision of the Act.
- 'Stamp duty value' has been defined as value adopted or assessed or assessable by any authority of the Central Government or a Sate Government for the purpose of payment of stamp duty in respect of an immovable property.
- Loan should be borrowed from a recognized financial institution

Section 80EEA – Incentive for affordable housing

[Clause 25] **(w.e.f. 01.04.2020)**

Comments/observations

- Section 80EEA provides for deduction of "interest payable". The word 'payable' would mean interest payable as per the terms of the loan agreement, notwithstanding actual payment thereof.

- Deduction of interest beyond Rs. 1,50,000 could be allowable under other provisions, like section 24 of the Act subject to limits prescribed therein, for the purposes of computing 'income from house property'.

Section 80EEA – Incentive for affordable housing

[Clause 25] **(w.e.f. 01.04.2020)**

Comments/observations

- In addition to the existing residential house, assessee can own/buy another residential house property after sanctioning of the loan.

- Unlike erstwhile section 80EE, the proposed section 80EEA pegs the 'value of property' to 'stamp duty value' thereof, in order to avoid under-reporting of value of the property for claiming deduction.

Section 80EEA – Incentive for affordable housing

[Clause 25] **(w.e.f. 01.04.2020)**

Comments/observations

- Since proposed section 80EEA provides for deduction of interest on loan borrowed "for purpose of acquisition of residential house property", it could be argued that interest expenditure incurred prior to possession and/or registration of residential house would also be eligible for deduction.

- Unlike sections 43CA/50C/56(2)(x), where date of registration is different from the date of agreement to purchase, the proposed section 80EEA fails to link stamp duty value to date of agreement.

Section 80-IBA – Incentive for affordable housing to builders

[Clause 26] **(w.e.f. 01.04.2020)**

- Section 80-IBA provides deduction of 100% of the profits and gains derived from the business of developing and building affordable housing projects subject to certain conditions.

- The cap on plot size for development of eligible housing project was pegged for different cities in the following manner:

Size of plot	Areas
Not less than 1000 square meters	Chennai, Delhi, Kolkata and Mumbai ('Metropolitan cities')
Not less than 2000 square meters	Other areas

Section 80-IBA – Incentive for affordable housing to builders

[Clause 26] **(w.e.f. 01.04.2020)**

- It is proposed to amend section 80-IBA to include the following cities as part of metropolitan cities, thereby applying lower threshold of plot size, for projects approved after 01.09.2019:

  "Bengaluru, Delhi National Capital Region such as Noida, Greater Noida, Ghaziabad, Gurugram, Faridabad, Hyderabad and Mumbai Metropolitan Region"

- It is further proposed to cap the value of each residential unit in the eligible housing project (approved after 01.09.2019) to stamp duty value of Rs.45 lakhs

INCENTIVES TO INTERNATIONAL FINANCIAL SERVICES CENTRE (IFSC)

Incentives to IFSC - Section 10 & 80LA

[Clauses 6 & 28] **(w.e.f. 01.04.2020)**

Amendment in section 80LA

- The existing provisions of the section 80LA of the Act, *inter alia*, provide profit linked deduction to units of an IFSC of an amount equal to 100% of income for the first five consecutive assessment years and 50% of income for the next five consecutive assessment years.
- It is proposed to enhance the said deduction to 100% for any ten consecutive years. The assessee, at his option, may claim the said deduction for any ten consecutive assessment years out of fifteen years beginning with the year in which the necessary permission was obtained.

Incentives to IFSC - Section 115A

[Clause 33] **(w.e.f. 01.04.2020)**

- Section 115A of the Act provides for tax at prescribed rate on dividends, royalty and technical service fees in the case of foreign companies or non-resident (not being a company).
- Sub-section (4) of section 115A prohibits any deduction under Chapter VIA (which includes section 80LA)
- Section 80LA provides for deduction/tax holiday in respect of incomes to a unit located in an IFSC.
- To avoid conflict in two provisions, it is now proposed to provide that nothing contained in sub-section (4) of section 115A shall apply to deduction allowed to a Unit of IFSC under section 80LA.

Incentives to IFSC - Section 115-O

[Clause 35] **(w.e.f. 01.09.2019)**

- Section 115-O of the Act provides for tax on distributed profits of domestic companies. It provides that no tax on distributed profits shall be chargeable in respect of the total income of a company, being a unit of an IFSC, deriving income solely in convertible foreign exchange, for any assessment year on any amount declared, distributed or paid by such company, by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2017, **out of its current income**, either in the hands of the company or the person receiving such dividend.

- It is proposed to provide that dividend paid out of **accumulated income** derived from operations in IFSC, after 1st April 2017 **shall not be liable for tax on distributed profit.**

Incentives to IFSC - Section 115R

[Clause 37] **(w.e.f. 01.09.2019)**

- Section 115R of the Act provides for payment of additional tax on distributed income by the specified company or a Mutual Fund to its unit holders.
- It is proposed to exempt a Mutual Fund in IFSC of which all the unit holders are non-residents and which fulfills certain other specified conditions from payment of additional income-tax in respect of any amount of income distributed, on or after the 1st day of September, 2019.
- The aforesaid proposal shall facilitate relocation of Mutual Funds in IFSC.

Incentives to IFSC - Section 47

[Clause 17/ Clauses 6 & 28] **(w.e.f. 01.04.2020)**

- Under clause (viiab) of section 47 of the Act, inserted by Finance Act, 2018, w.e.f., 1.4.2019, capital gains is exempt on transfer of a capital asset, being bonds or Global Depository Receipts or rupee denominated bond of an Indian company or derivative, by a non-resident through a recognized stock exchange located in any IFSC, where the consideration for such transaction is paid or payable in foreign currency.

- With a view to extend the benefit to Category III Alternative Investment Fund (AIF) in IFSC, it is proposed to amend the said section to provide that any transfer of a capital asset specified in the said clause by such AIF, of which all the unit holders are non-resident, shall not be regarded as transfer subject to fulfilment of specified conditions.

- It is also proposed to widen the types of securities listed in the said clause by empowering the Central Government to notify other securities for the purposes of this clause.

Amendment in section 10

- It is proposed to insert clause (ix) in section 10 of the Act to provide that any income by way of interest payable to a non-resident by a unit located in IFSC in respect of monies borrowed on or after 1st day of September, 2019, shall be exempt from levy of tax

Tax incentive for electric vehicles

Section 80EEB – Incentive for electric vehicles

[Clause 25] **(w.e.f. 01.04.2020)**

- It is proposed to introduce section 80EEB to provide deduction of interest payable by an individual on loan borrowed for purchase of an electric vehicle from any financial institution upto Rs. 1,50,000, subject to the following conditions:

  1. **Period of sanctioning of loan -** 01.04.2019 to 31.03.2023
  2. **No. of electric vehicles -** Assessee should not own any other electric vehicle on the date of sanction of loan

- Deduction in respect of such interest shall not be allowed under any other provision of the Act.

- Loan must be borrowed from defined financial institutions.

Section 80EEB – Incentive for electric vehicles

[Clause 25] **(w.e.f. 01.04.2020)**

Comments/observations

- Section 80EEB provides for deduction of interest payable upto Rs. 1,50,000. The word 'payable' would mean interest payable as per terms of loan agreement, notwithstanding actual payment thereof.

- In case where the financial institution waives off the interest payable claimed as deduction under section 80EEB at a later stage, no provision to withdraw such deduction claimed in earlier year.

- Where loan is borrowed for purchasing an electric vehicle to be used in business or profession, deduction of interest beyond Rs.1,50,000 can be claimed under section 36(1)(iii) read with section 43B of the Act, but on payment basis

AMENDMENTS RELATING TO ASSESSMENT PROCEDURES

Filing of return of income

[Clause 39] **(w.e.f. 01.04.2020)**

- **Section 139(1)** of the Act is proposed to be amended to provide that if a person during the previous year earns income under the head 'capital gains' which is claimed exempt on account of making investment in house property, bonds, specified assets etc. under section(s) 54, 54B, 54D, 54EC, 54F, 54G, 54GA and 54GB of the Act, he will have to mandatorily file return of income if the income without giving effect to such exemption exceeds the maximum amount not chargeable to tax

Filing of return of income

[Clause 39] **(w.e.f. 01.04.2020)**

- Section 139(1) of the Act is further proposed to be amended to provide for mandatory filing of return of income by a person (other than a company or firm) irrespective of the total income being lower than the maximum amount not chargeable to tax, if he has undertaken the following high value transactions during the year:
  - Deposited Rs. 1 crore of more [single or aggregate deposit] in one or more current accounts maintained with any banking company/ co-operative bank; or
  - Incurred foreign travel expenditure of Rs. 2 lakhs or more for self or any other person; or
  - Incurred expenditure of Rs. 1 lakh or more towards consumption of electricity; or
  - Fulfils such other conditions, as may be prescribed

Filing of return of income

[Clause 39] **(w.e.f. 01.04.2020)**

Comments/ Observations:

- This amendment will ensure that people who have ability to incur large expenditure do not escape from paying tax and filing tax return
- The limit of Rs. 1 crore is to be checked for each assessee. In other words, if Mr. X deposits Rs. 50 lakhs in current account maintained in one bank and Rs. 60 lakhs in current account maintained in another bank, provisions of this section would apply
- The amendment would not apply to deposits made in savings bank account
- It appears that deposit of Rs. 1 crore is not restricted to only cash deposits
- Unlike foreign travel by other, electricity expenditure incurred for consumption of electricity by third party may not be covered.

Filing of return of income

[Clause 39] **(w.e.f. 01.04.2020)**

Comments/ Observations:

- The amendment is akin to the 'one-by-six' criteria for compulsory filing of returns, which was introduced by Finance Act 1997. Under this scheme, certain parameters were prescribed and satisfaction of any of such parameter led to mandatory requirement of filing of ITR by the taxpayers irrespective of their total income being less than the basic exemption limit. The said scheme was discontinued w.e.f. assessment year 2006-07, possibly due to the following reasons:
  - The conditions prescribed were basic in nature and without significant/ any monetary threshold, viz., holding a credit card, ownership of motor vehicle etc. leading to astronomical growth in number of ITR's without payment of any taxes;
  - Department did not have sufficient resources and manpower to scrutinize these ITR's

Filing of return of income

[Clause 39] **(w.e.f. 01.04.2020)**

Comments/ Observations:

- By way of the amendment, the 'one-by-six' scheme is proposed to be re-launched by the Government with a more focused and realistic approach, by amply defining the monetary thresholds of specified transactions to avoid redundancies
- Further, with the advancement in technology, these provisions can be effectively enforced and instances of tax evasion can be easily identified, which is illustrated as under:
  - With the help of 'Project Insight', Department has sufficient information on the taxpayers' profile and financial transactions undertaken by them, which can be correlated with the tax returns to identify instances of tax evasion in a more effective manner;
  - With the assistance of Non-filers Monitoring System (NMS), the instances of non-filing of income tax returns despite significant financial transactions are identified with minimal human intervention

Mandatory requirement to obtain PAN

[Clause 40] **(w.e.f. 01.09.2019)**

- Existing provisions of **section 139A** [clauses (i) to (vi) of sub-section 1] mandate certain person(s) to obtain PAN based on taxable income, sales/ turnover, charitable status, quantum of financial transactions entered, etc.

- With the intention to maintain audit trail of high value transactions and to widen tax base, it is proposed to insert a new **clause (vii)** to expand the requirement for obtaining PAN for certain prescribed transactions.

Comments/ Observations:

- Although, the transactions proposed to be covered under clause (vii) are yet to be prescribed by CBDT, as per the language used in the Memorandum, it appears that the proposed transactions shall be high value transactions such as purchase of foreign currency, huge withdrawal from the banks etc.

Inter-changeability of PAN and Aadhaar

[Clauses 40 & 64] **(w.e.f. 01.09.2019)**

- A new **sub-section (5E)** is proposed to be inserted in **section 139A** to provide an option to persons who have already linked their Aadhaar with PAN, to furnish/ quote/ intimate Aadhaar in lieu of PAN.

- Further, if a person has not been allotted PAN but possesses Aadhaar number, such person has an option to furnish/ quote/ intimate Aadhaar number in lieu of PAN.

- It is further provided that such person shall be allotted PAN in the prescribed manner.

Inter-changeability of PAN and Aadhaar

[Clauses 40 & 64] **(w.e.f. 01.09.2019)**

- **Section 272B(2)** of the Act provides for penalty of Rs.10,000 to be levied in case to failure to quote/ furnish correct PAN in terms of section 139A(5)(c)/(5A)/(5C).

- It has been proposed to amend section 272B(2) to clarify that the penalty of Rs.10,000 is **for each such default** quoting/ furnishing PAN in different transactions.

Comments/ Observations:

- Quotation of Aadhaar number without obtaining valid PAN may not absolve the taxpayer from penalty under section 272B(1) for failure to obtain PAN under section 139A(1).

Mandatory quoting of PAN/ Aadhaar in case of specified transactions

[Clauses 40 & 64] **(w.e.f. 01.09.2019)**

- It is proposed to insert new **sub-section (6A)** in **section 139A** imposing obligation on the person entering into certain specified transactions (yet to be notified) to not only quote, but also authenticate PAN/ Aadhaar number in documents pertaining to such transactions.
- Further, vide **sub-section (6B),** it is proposed cast obligation on persons receiving the aforesaid documents to ensure PAN/ Aadhaar has been duly quoted and authenticated.
- Authentication has been defined as "the process by which the permanent account number or Aadhaar number alongwith demographic information or biometric information of an individual is submitted to the income-tax authority or such other authority or agency as may be prescribed for its verification and such authority or agency verifies the correctness, or the lack thereof, on the basis of information available with it"

Mandatory quoting of PAN/ Aadhaar in case of specified transactions

[Clauses 40 & 64] **(w.e.f. 01.09.2019)**

- Further, sub-sections (2A) and (2B) are proposed to be inserted in section 272B to provide for penalty of Rs.10,000 for each non-compliance provided in aforesaid sub-sections (6A) and (6B) respectively.

Comments/ Observations:

- Although the transactions covered under these provisions and the procedure for authentication is to prescribed by CBDT, but it appears that Revenue seeks to verify the authenticity of PAN/ Aadhaar with regard to the demographic/ biometric details of the taxpayers

Consequences of not linking PAN with Aadhaar

[Clause 41] **(w.e.f. 01.09.2019)**

- **Sub-section (2) of section 139AA** of the Act mandates linking of Aadhaar with PAN, failing which the PAN allotted to a person shall be deemed to be invalid in terms of existing proviso to the said sub-section

- In order to protect validity of transactions previously carried out through such PAN, it is proposed to amend the said proviso so as to provide that if a person fails to link the Aadhaar number, PAN allotted to such person shall be made inoperative in the prescribed manner

Consequences of not linking PAN with Aadhaar

[Clause 41] **(w.e.f. 01.09.2019)**

Comments/ Observations:

- Due date for linking Aadhaar with PAN was extended to 30.09.2019 vide CBDT Notification No. 31/2019 dated 31.03.2019

- Therefore, PAN of the assessees who do not intimate their Aadhaar until 30.09.2019, would become inoperative immediately thereafter

TAX ON BUY-BACK OF SHARES

Additional income tax on buy-back of listed shares

[Clauses 6 & 36] **(w.e.f. 05.07.2019)**

- **Section 115QA** inserted vide Finance Act, 2013, provides for levy of additional income tax on the distributed income by the company on buy-back of **unlisted shares**. Consequentially, such distributed income is exempt in the hands of recipient shareholders in terms of section 10(34A)
- The aforesaid provisions were introduced as an anti-abuse provision to curb the practice of unlisted companies resorting to buy-back of shares instead of paying dividends, resulting in loss of revenue on account of reduced tax rate on capital gains arising on buy back of shares vis-à-vis Dividend Distribution Tax
- It is now proposed to extend the scope of section 115QA to buy-back of **listed shares** as well
- Consequentially, income arising in the hands of such shareholders is also proposed to be exempted from tax under section 10(34A)

Additional income tax on buy-back of listed shares

[Clauses 6 & 36] **(w.e.f. 05.07.2019)**

Comments/ Observations:

- In past three financial years, as many as 171 listed companies resorted to buy back of shares worth INR 1.33 trillion from their shareholders including promoters - **report of Business Standard**
- Presently, tax outflow on dividend distribution is higher as compared to tax on capital gains arising in hands of the shareholder upon buy-back:
  - On Dividend Distribution - Additional income tax is levied under section 115-O [@20.555%] in hands of the company and under section 115BBDA [@10.4% plus applicable surcharge] in hands of the shareholder, on the gross amount
  - On Buy-back - Tax is levied under section 46A read with section 112/112A/111A [@ 20.8% with indexation or 10.4% without indexation/ slab rates/10.4%/15.6% (plus applicable surcharge)] in hands of the individual shareholder, on the net consideration
- Taxing buy-back @ 20% intends to curb such tax avoidance practice

Additional income tax on buy-back of listed shares (contd.)

[Clauses 6 & 36] **(w.e.f. 05.07.2019)**

Impact of the amendment:

Particulars	Pre Amendment	Post Amendment	Remarks
Shares allotted by X Ltd. @Rs 100 per share	Rs.10,00,000	Rs.10,00,000	Issue Price
Buy back price @Rs 600 per share	Rs.60,00,000	Rs.60,00,000	
Taxable Capital Gains	Rs.50,00,000	N.A.	Capital gains shall be lower in case market price as on 31.01.2018 is higher than the issue price
Tax on above @10% [u/s 112A] – in hands of shareholder	**Rs.5,00,000**	N.A.	*Tax on capital gains may substantially reduce if the shares were purchased prior to 31.01.2018 and fair market value as on 31.01.2018 is higher than the original cost*
Taxable Distributed income	N.A.	Rs.50,00,000	Since amount received by company on shares bought back is Rs.10,00,000
Tax on above @23.296% [u/s	N.A.	**Rs.11,64,800**	

Additional income tax on buy-back of listed shares (contd.)

[Clauses 6 & 36] **(w.e.f. 05.07.2019)**

Tax impact if companies pay dividend post amendment:

Particulars	Buy Back	Dividend	Remarks
Shares allotted by X Ltd. @Rs 100 per share	Rs.10,00,000		Issue Price
Buy back price @Rs 600 per share	Rs.60,00,000		
Taxable Distributed income	Rs.50,00,000		Since amount received by company on shares bought back is Rs.10,00,000
Tax on above @23.296% [u/s 115QA] – in hands of X Ltd.	Rs.11,64,800		
DDT under section 115-O @20.555% (in hands of X Ltd)		Rs. 12,33,300	Rs. 60,00,000 * 20.555%
Tax under section 115BBDA (in hands of SH)		Rs. 5,00,000	[(Rs.60,00,000 – 10,00,000)*10%]
Total tax outflow	**Rs.11,64,800**	**Rs. 17,33,300**	**Therefore, buy-back of shares would continue to remain a tax efficient strategy**

Additional income tax on buy-back of listed shares (contd.)

[Clauses 6 & 36] **(w.e.f. 05.07.2019)**

Illustration 1: Simple case of buy back

Particulars	Mr. A	Remarks
Issue price	Rs.100	
Buy back price	Rs.600	
Taxable Distributed income	Rs.500	Buy back price *less* Issue price
Tax on buyback @ 23.296%	Rs. 116.48	

Gain of Rs. 500 would be chargeable to tax in hands of Mr. A, which becomes exempt under section 10(34A)

Additional income tax on buy-back of listed shares (contd.)

[Clauses 6 & 36] **(w.e.f. 05.07.2019)**

Illustration-2: Assuming buy back price is higher than the price at which shareholder bought shares in the secondary market:

Particulars	Mr. A	Remarks
Issue price	Rs.100	Mr. A purchases shares from secondary market; seller pays tax on capital gains of Rs. 900; and cost of shares in hands of Mr. A would be Rs.1,000
Purchase price in hands of Mr. A (bought in secondary market)	Rs.1,000	
Capital gains in hands of the seller	Rs.900	
Buy back price	Rs.1,200	
Taxable Distributed income	**Rs.1,100**	**Buy back price *less* Issue price - to the extent of 900 suffers tax twice**
(Loss)/ Gain in hands of Mr. A	200	Exempt under section 10(34A)
Tax on buyback on Rs. 1,100 @ 23.296%	Rs. 256.25	

Additional income tax on buy-back of listed shares (contd.)

[Clauses 6 & 36] **(w.e.f. 05.07.2019)**

Illustration -3: Assuming buy back price is lower than the price at which shareholder bought shares in the secondary market:

Particulars	Mr. A	Remarks
Issue price	Rs.100	Mr. A purchases shares from secondary market; seller pays tax on capital gains of Rs. 900; and cost of shares in hands of Mr. A would be Rs.1,000
Purchase price in hands of Mr. A (bought in secondary market)	Rs.1,000	
Capital gains in hands of the seller	Rs.900	
Buy back price	Rs.600	
Taxable Distributed income	**Rs.500**	**Buy back price *less* Issue price – suffers tax twice**
(Loss)/ Gain in hands of Mr. A	(400)	Buy back price *less* Cost of acquisition –**whether available for set off ?**
Tax on buyback on Rs. 500 @ 23.296%	Rs. 116.48	

Additional income tax on buy-back of listed shares (contd.)

[Clauses 6 & 36] **(w.e.f. 05.07.2019)**

Issues arising for consideration

- Whether loss of Rs. 400 suffered by Mr. A on buyback of shares would be available for carry forward and set off ?

- whether in terms of sub-section (5) of section 115QA, no deduction shall be allowed to the shareholder in respect of income/ **(loss)** charged to tax - by way of carry forward?

- Whether the word 'income' in section 10(34A) includes loss?

- Whether provisions of section 46A have become inoperative post introduction of section 115 QAA and section 10(34A)?

Additional income tax on buy-back of listed shares (contd.)

[Clauses 6 & 36] **(w.e.f. 05.07.2019)**

- Section 2(24)(vi) includes within definition of 'income' **any capital gains** chargeable under section 45
- section 45 makes all gains arising from transfer of a capital asset chargeable to tax, subject to exclusions stated therein
- Computation of capital gains on buy back of shares by the company in section 46A read with section 48
- In case of income - gain, exemption is granted under section 10(34A)
- In case there is a loss, is set off / carry forward allowed as per section 74

Additional income tax on buy-back of listed shares (contd.)

[Clauses 6 & 36] **(w.e.f. 05.07.2019)**

- The return form support the argument of the taxpayer –
  - loss computed in accordance with section 46A is automatically punched in Schedule of carried forward loss
  - income computed in accordance with section 46A forms part of Total Income and is reduced to Nil once details of exempt income are filled in Schedule exempt income

TAXATION OF NON-RESIDENTS

Deemed accrual of gift made to a person outside India

[Clause 4] **(w.e.f. 01.04.2020)**

- Section 2(45) of the Act defines 'Total Income' to mean the total amount of income referred to in section 5 of the Act

- Section 5 of the Act, inter alia, specifies that the 'Total Income' of a non-resident shall include the following:

  - Income received or deemed to be received in India, by or on behalf of the non-resident
  - Income accruing or arising to the non-resident in India
  - Income deemed to be accruing or arising to the non-resident in India

Deemed accrual of gift made to a person outside India (contd.)

- Section 9 of the Act inter alia, specifies that following incomes shall be deemed to accrue or arise in India:
  - 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 situated in India
- Sub-section (xviia) to Section 2(24) of the Act provides that income includes any sum of money or value of property referred to in section 56(2)(x) of the Act

Deemed accrual of gift made to a person outside India (contd.)

- Section 56(2)(x) of the Act, inter alia, provides for chargeability to tax of receipt of any sum or money or property for nil or inadequate consideration, as income from other sources

- Gift of an asset by a person resident in India to a person residing outside India was being claimed as exempt from tax in India in the hands of the non-resident recipient on the ground that

  - income by way of gift does not accrue or arise in India in terms of section 5 of the Act in the hands of the non-resident recipient

- Accordingly, the non-resident recipient argued that if the gift does not fall within the scope of section 5, then,

  - question of applicability of section 56(2)(x) of the Act in the hands of such recipient does not arise

Deemed accrual of gift made to a person outside India (contd.)

- To ensure that gifts made to non-residents are subject to tax in India in the hands of such recipient, Finance (No.2) Bill, 2019 has now proposed to insert clause (viii) to sub-section (1) of section 9 of the Act to provide that:

  - income of the nature referred to in sub-clause (xviia) of clause (24) of section 2, arising from any sum of money paid, or transfer of any property situated in India, on or after 05.07.2019

  - by a person resident in India to a person outside India shall be deemed to accrue or arise in India

Deemed accrual of gift made to a person outside India (contd.)

- The proposed clause (viii) to section 9(1) of the Act appears to be wide and all pervasive and may include all kinds of transfer made in respect of money paid

  - money remitted by a person resident in India to a non-resident in accordance with the Liberalized Remittance Scheme would fall within the mischief of the proposed amendment

  - Any sum of money gifted by an Indian resident from his foreign bank account while travelling abroad to a non-resident would be caught within the sweep of the proposed amendment

Deemed accrual of gift made to a person outside India (contd.)

- Proviso to section 56(2)(x) of the Act inter-alia provides that the said section shall not apply to any sum of money or any property received,
  - from any relative
  - on the occasion of the marriage of the individual
  - under a will or by way of inheritance
  - in contemplation of death of the payer or donor
  - from an individual by a trust created or established solely for the benefit of relative of the individual
  - from any fund or foundation or university referred to in section 10(23C) of the Act
  - from trust registered under section 12AA of the Act

- Memorandum to the Finance (No.2) Bill, 2019 has clarified that exemption provided in proviso to section 56(2)(x) of the Act would also apply to such gifts deemed to accrue or arise in India

Comments

(a) Does the proposed amendment cover only Gifts to non residents or even sale of property (shares etc.) below the fair market value as defined under section 56(2)(x) of the Act?

❖ Memorandum to Finance (No.2) Bill, 2019 which explains the purpose of introducing clause (viii) to section 9(1) reads as under:

*"……***It has been reported that gifts are made by persons being residents in India to persons outside India and are claimed to be non-taxable in India as the income does not accrue or arise in India. To ensure that such gifts made by residents to persons outside India are subject to tax***, it is proposed to provide that income of the nature referred to in sub-clause (xviia) of clause (24) of section 2, arising from any sum of money paid, or any property situate in India transferred, on or after 5th July, 2019 by a person resident in India to a person outside India shall be deemed to accrue or arise in India."*

Comments

- The proposed clause (viii) to section 9(1) of the Act reads as under:

  "(viii) income of the nature referred to in sub-clause (xviia) of clause (24) of section 2, arising from any ***sum of money paid, or any property situate in India*** *transferred, on or after the 5th day of July, 2019 by a person resident in India to a person outside India"*

- The Memorandum merely provides for taxability of **gifts** made by residents to persons outside India

- The proposed clause (viii) to section 9(1) of the Act, however, apparently appears to be wide sweeping and includes within its ambit all kinds of transfer made in respect of money paid, or any property situate in India

Comments

(b) Whether unilateral amendment of the Act would override the provisions of the applicable Tax Treaty?

- In terms of section 90(2) of the Act, provisions of the Act are overridden by the provisions of the Tax Treaty, to the extent more beneficial to the non-resident

- A tax treaty is an agreement between two sovereign countries primarily for granting relief in respect of **income** on which income tax is chargeable in both the countries so as to promote mutual economic relations, trade and investment

Comments

- Whether, Gift made by residents to persons outside India does not partake character of “income” for taxation under a Tax Treaty ?

- Whether, applicability of the proposed amendment to section 9(1) of the Act in a situation where Treaty kicks in or would fail /

- The term “income” having not been defined under the Treaty, should have the same meaning as under section 2(24) of the Act, in view of Article 3(2) of the Tax Treaty which provides that any term not defined therein shall have the meaning which it has under the laws of that State ?

Comments

- Accordingly, in terms of Article 3(2) of the Treaty, the term "income" as defined under section 2(24) of the Act may be considered for the purposes of the Treaty

  - In such a case, gift of money paid, or any property situate in India made by residents to persons outside India would

    - be liable to tax in accordance with Articles 21/22 of the Treaty dealing with taxability of other income/ income not expressly dealt in Article 6 to Article 21 of the Treaty

Comments

(iv) Whether any Treaty grants exclusive taxation rights to the residence country of the recipient of gift?

- Article 22 of India-UAE Tax Treaty provides that:
  - items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with other Articles (i.e. Article 6 to Article 21) of the Tax Treaty, **shall be taxable only in the state of residence of the income recipient**

Comments

- *Article 22 – Other Income*, of the India UAE Tax Treaty reads as under:

  "1. ***Subject to the provisions of paragraph (2), items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing articles of this Agreement, shall be taxable only in that Contracting State****."*

- In other words, Article 22 of the India UAE Tax Treaty grants exclusive taxation rights to the country of residence of the recipient of other income which has not been dealt with under Article 6 to Article 21 of the Treaty

Comments

- Accordingly, since there is no specific Article under the India-UAE Treaty which deals with taxability of gift, therefore
  - in terms of Article 22 of the said Treaty, income arising in the hands of a donee resident in UAE on account of such gift shall be taxable only in UAE and not in India
- The Treaties entered into by India with Korea, Kuwait, Saudi Arabia, Philippines accord similar benefit as stated above to its residents
- Unlike the aforesaid treaties, all other treaties entered into by India contain sub-clause (3) to Article 21/22/23 (as the case may be) of the Treaty which allows the country in which the income arises (source country) to also tax such income if its law so provides

Comments

- For instance, reference may be made to Article 23 of the India-US Tax Treaty which reads as under:

1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing Articles of this Convention shall be taxable only in that Contracting State.
2……..

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Convention and arising in the other Contracting State ***may also be taxed in that other State****.*

Comments

- The Technical Explanation to the India-US Tax Treaty has explained the rationale of Article 23(3) of the said Treaty as under:

  Paragraph 3 modifies the exclusive residence State taxation right to tax "other income" granted by paragraph 1, and the rules of paragraph 2 relating to the taxation of "other income" attributable to a permanent establishment or fixed base. ***Under this paragraph, "other income" which arises in a Contracting State may be taxed by that State even if it is received by a resident of the other Contracting State. This is not an exclusive taxing right; the residence State may continue to tax. Any resulting double taxation is taken care of by the provisions of Article 25*** *(Relief from Double Taxation).*

- To the same effect is the Technical Explanation to the India-Australia Tax Treaty

Comments

- Accordingly, even after the proposed amendment in section 9 of the Act, residents of Korea, Kuwait, Saudi Arabia, UAE and Philippines would not be liable to tax in India in respect of gifts received by them from a person resident in India

(d) Whether the proposed amendment to section 9(1) of the Act constitutionally valid?

- A non-resident is required to comply with the provisions of the Act in respect of income received that has territorial nexus with India
- Whether the non -resident recipient can be made liable to tax in India in respect of gift received from an Indian resident, when gift does not constitute income per se?
- Would this amount to extra territorial operation of the Act?
- What if the gift is completed outside India?

Comments

(e) Other issues

- Whether the fair market value of the property situate in India for the purposes of the proposed clause (viii) to section 9(1) would be computed in accordance with section 56(2)(x) of the Act?

- Whether transfer pricing provisions would apply to determine fair market value in case of transaction between associated enterprises?

- Whether non-discrimination provisions in the applicable Tax Treaty would oust the invocation of Chapter X of the Act?

Exemption of interest income earned by a non-resident from Rupee Denominated Bonds (RDB)

[Clause 6] **(w.e.f. 01.04.2019)**

- The existing provisions of section 194LC of the Act provide that
  - interest income payable to a non-resident by an Indian company or business trust on borrowings made by it in foreign currency from sources outside India under:
    - a loan agreement, or
    - by way of issue of any long-term bond including long-term infrastructure bond, or
    - or Rupee Denominated Bond (RDB) [section 194LC(2)(ia)]

  shall be subject to deduction of tax at source at a concessional rate of 5%.

Exemption of interest income earned by a non-resident from Rupee Denominated Bonds

- In order to incentivize low cost foreign borrowings by an Indian company or a business trust through Off-shore (RDB - popularly known as Masala Bonds), the CBDT issued a press release dated 17.09.2018, providing inter alia, that

  - interest payable by an Indian company or a business trust to a non-resident (including a foreign company) in respect of RDB issued outside India during 17.09.2018 to 31.03.2019, shall be exempt from tax

  - Consequently, as per the said press release, no tax was required to be deducted on the payment of interest in respect of the said RDB under section 194LC of the Act

Exemption of interest income earned by a non-resident from Rupee Denominated Bonds

- The exemption granted vide press release dated 17.09.2018, is proposed to be incorporated in the Act by inserting clause (4C) to section 10 of the Act so as to provide
  - exemption to income payable by way of interest to a non-resident by any Indian company or business trust in respect of
    - monies borrowed from a source outside India by way of issue of RDB, as referred to in clause (ia) of sub-section (2) of section 194LC of the Act during 17.09.2018 to 31.03.2019.

TRANSFER PRICING

Advance Pricing Agreement (APA)

[Clause 29] **(w.e.f. 01.09.2019)**

- APA is an agreement between a taxpayer and a taxing authority for determining an appropriate transfer pricing methodology in advance for a set of controlled transactions over a fixed period of time

- Sections 92CC and 92CD were inserted in the Act by Finance Act 2012 to provide a framework for APA

- Roll back provision was also introduced in the APA scheme by Finance Act 2014 so that an APA entered into for future transactions could also be applied to international transaction undertaken in previous four years in specific circumstances

Advance Pricing Agreement (APA) (contd.)

[Clause 29] **(w.e.f. 01.09.2019)**

- In terms of sub-section (1) of section 92CD of the Act, a person entering into an APA is required to furnish a modified return of income, within a period of three months from the end of the month in which APA was entered into

- Sub-section (3) of section 92CD provides that where assessment or reassessment proceedings for an assessment year to which the agreement applies, have been completed before the expiry of period allowed for furnishing of modified return under sub-section (1), the AO shall proceed to assess or reassess or recompute the total income having regard to and in accordance with the agreement

Advance Pricing Agreement (APA) (contd.)

[Clause 29] **(w.e.f. 01.09.2019)**

- It is now proposed to amend section 92CD(3) to substitute the words *"pass an order modifying the total income of the relevant assessment year"* in place of *"proceed to assess or reassess or recompute the total income of the relevant assessment year"* to provide that in cases where assessment or reassessment has already been completed, the role of the assessing officer shall be restricted to give effect to the modified return of income filed pursuant to the APA and not to assess or reassess the total income of the assessee

Section 92CE – Clarification with regard to provisions of secondary adjustment

[Clause 30]

- Secondary adjustment' means actual allocation of profits consistent with the primary Transfer Pricing adjustment by way of a constructive transaction or a secondary transaction.

- Section 92CE was inserted vide Finance Act 2017, w.e.f 01.04.2018, which provides for secondary adjustment in cases where primary transfer pricing adjustment of INR 10 million or more has been made:
  - suo motu by the taxpayer; or
  - by the assessing officer and has been accepted by the taxpayer; or
  - in accordance with the Advance Pricing Agreement entered into by the taxpayer; or
  - as per the Safe Harbour Rules; or
  - as a result of resolution of an assessment by way of Mutual Agreement Procedure

Section 92CE – Clarification with regard to provisions of secondary adjustment (contd.)

[Clause 30]

- Section 92CE(1)(iii) is proposed to be amended w.e.f. 01-04-2018 to provide that in cases where the difference arises pursuant to an APA entered into between the assessee and the CBDT, secondary adjustment provisions shall be applicable in respect of APAs signed on or after April 1, 2017

- A proviso is also proposed to be inserted in section 92CE(1) w.e.f.01-04-2018 to provide that no refund of taxes already paid under the pre amended section shall be allowed

Section 92CE – Clarification with regard to provisions of secondary adjustment (contd.)

[Clause 30]

- The proviso to sub-section (1) of section 92CE provides exemption from secondary adjustment in cases where:
  - the amount of primary adjustment made in any previous year does not exceed one crore rupees; and
  - the primary adjustment is made in respect of an assessment year commencing on or before 1st April, 2016
- The said proviso is proposed to be amended w.e.f. 01-04-2018 by substituting the word 'and' with 'or' to clarify that the above conditions are alternate and not cumulative

Section 92CE – Clarification with regard to provisions of secondary adjustment (contd.)

[Clause 30]

- In terms of Section 92CE(2) read with Rule 10CB if the amount corresponding to primary adjustment is not repatriated to India by concerned associated enterprise within 90 days, then it would be deemed to be an advance made by the taxpayer in favour of such associated enterprise and interest on the same shall be imputed shall be imputed at the following rate:
  - in cases where the transaction is denominated in INR - MCLR plus 3.25%;
  - in cases where the transaction is denominated in foreign currency - LIBOR plus 3%

- Section 92CE(2) is proposed to be amended w.r.e.f. 01-04-2018 to provide that interest shall be charged on the difference between the arm's length price and the price at which the transaction has been undertaken, to the extent such difference has not been repatriated to India

Section 92CE – Clarification with regard to provisions of secondary adjustment (contd.)

[Clause 30]

- Sub section (2A) is proposed to be inserted in Section 92CE w.e.f. 01-09-2019 to provide an option to the taxpayer to pay additional income tax of 18% plus surcharge of 12% without repatriating the money to India

- Sub section (2B) is proposed to be inserted in Section 92CE w.e.f. 01-09-2019 to provide that the tax so paid shall be treated as final payment of tax in respect of secondary adjustment and no further credit of such tax shall be claimed by the assessee or any other person

- Sub section (2C) is proposed to be inserted in Section 92CE w.e.f. 01-09-2019 to provide that no deduction shall be allowed in respect of the amount on which such tax has been paid under any other provision of the Act

Section 92CE – Clarification with regard to provisions of secondary adjustment (contd.)

[Clause 30]

- Sub section (2D) is proposed to be inserted in Section 92CE w.e.f. 01-09-2019 to provide that where the tax is so paid, the assessee shall not be required to compute secondary adjustment and compute interest under subsection (2) from the date of payment of such tax

- Explanation is proposed to be inserted in Section 92CE w.e.f. 01-04-2018 to clarify that the money may be repatriated by any of the associated enterprises not resident in India

- An option has been provided to taxpayers of paying additional tax @ 18% plus surcharge of 12% instead of making a secondary adjustment

Section 92D - Master File

[Clause 31] **(w.e.f. 01.04.2020)**

- In order to implement the international consensus on BEPS Action 13, the Finance Bill, 2016 introduced specific reporting requirements with respect to Master file and CbC reporting in the Income Tax Act

- Rule 10D of the Income Tax Rules requires the following information to be maintained as part of Master File
  - Overview of the MNE group structure
  - General description of MNEs business including important drivers of profit, supply chain with respect to group's five largest products, functional analysis describing value creation by individual entities etc.

Section 92D - Master File (contd.)

[Clause 31] **(w.e.f 01.04.2020)**

- Information with respect to Intangibles including overall strategy for development, ownership and exploitation of intangibles, location of principal R&D facilities and management, list of intangibles etc
- Interco financial activities
- MNE's financial and tax positions and existing unilateral APAs and other tax ruling with respect to allocation of income

Section 92D - Master File (contd.)

[Clause 31] **(w.e.f 01.04.2020)**

❖ Section 92D(1) provides as under:

"Every person who has entered into an international transaction or specified domestic transaction shall keep and maintain such information and document in respect thereof, as may be prescribed :

***Provided** that the person, being a constituent entity of an international group, shall also keep and maintain such information and document in respect of an international group as may be prescribed."*

Section 92D - Master File (contd.)

[Clause 31] **(w.e.f. 01.04.2020)**

- It is proposed to amend Section 92D(1) to provide as under:

"92D. (1) Every person, -

(i) who has entered into an international transaction or specified domestic transaction shall keep and maintain such information and document in respect thereof as may be prescribed;

(ii) being a constituent entity of an international group, shall keep and maintain such information and document in respect of an international group as may be prescribed."

- The proposed section 92D provides that the requirement for information and document to be kept and maintained by a constituent entity of an international group as Master File, shall be applicable even when there is no international transaction undertaken by such constituent entity

Section 286 – Rationalization of provisions relating to Country by Country Reporting ('CbCR')

[Clause 67] **(w.r.e.f. 01.04.2017)**

- India has been an active member of the Base Erosion and Profit Shifting ('BEPS') initiative of the Organization for Economic Cooperation and Development ('OECD') and is part of the consensus

- The Finance Act, 2016 inserted section 286 providing for furnishing of Country by Country Report ('CbCR')

- Under the existing provisions, the parent company or the alternate reporting entity of an international group resident in India is required to furnish CbCR in Form 3CEAD for every accounting/ reporting year within 12 months of the end of reporting/ accounting year [section 286(2)]

Section 286 – Rationalization of provisions relating to Country by Country Reporting ('CbCR') (contd.)

[Clause 67] **(w.r.e.f 01.04.2017)**

- Section 286 is proposed to be amended to clarify that the accounting year in case of the alternate reporting entity of an international group shall be the one applicable to its parent entity.

TAX DEDUCTION AT SOURCE

TDS under section 194DA on life insurance policy

[Clause 44] **(w.e.f. 01.09.2019)**

- Section 194DA provides that any person responsible for paying **any sum** to **a resident** under a life insurance policy, **which is not exempt under section 10(10D)**, shall, at the time of payment thereof, deduct income tax thereon @ 1%

- In the income tax return, the recipient declared net income, i.e., after deducting the amount paid as insurance premium, while in the TDS returns of the deductor as well as Form 26AS, gross amount paid as insurance claim was reflected

- The aforesaid treatment resulted in mis-match of amounts reported in Form 26AS vis-à-vis amount reported in the income tax return

TDS under section 194DA on life insurance policy (contd.)

[Clause 44] **(w.e.f. 01.09.2019)**

- As a consequence, assessees were receiving notices as per clause (a) of the Explanation to section 139(9) on account of failure to report corresponding receipts to taxation (refer section 199 read with Rule 37BA)

- In order to mitigate difficulties being faced by the assessees from deduction of tax at source on the gross amount, who have to otherwise pay tax on **net income**, i.e., on insurance claim received *less* insurance premium paid by them, and to facilitate matching of TDS returns and Form 26AS with the return of income filed by the assessees, it is proposed to amend section 194DA to impose withholding tax obligation @ 5% on the **income comprised in the sum paid** by the life insurance company

TDS under section 194DA on life insurance policy (contd.)

[Clause 44] **(w.e.f. 01.09.2019)**

- After the proposed amendment, income as per TDS return and Form26AS would automatically match with the amount reported in return of income filed by the recipient assessee. This would prevent unnecessary harassment being caused to the assessees since notice will no longer be automatically issued by CPC

TDS under section 194-IA on transfer of immovable property

[Clause 45] **(w.e.f. 01.09.2019)**

- Section 194-IA of the Act provides for deduction of tax at source on payment made to a resident transferor as **consideration for transfer of any immovable property** (other than agricultural land) @ 1%, where such consideration is fifty lakh rupees or more

- The term 'consideration for transfer of immovable property' is presently not defined

- It is proposed to insert clause (aa) to Explanation to section 194-IA to provide that the term 'consideration for immovable property' shall include all charges of the nature of club membership fee, car parking fee, electricity and water facility fees, maintenance fee, advance fee or any other charges of similar nature, which are incidental to the transfer of immovable property

TDS under section 194-IA on transfer of immovable property (contd.)

[Clause 45] **(w.e.f 01.09.2019)**

- The amendment will address the practice of splitting the sales consideration under various components, to avoid TDS requirement under section 194-IA

TDS on payments by individual/ HUF to contractors and professionals

[Clause 46] **(w.e.f. 01.09.2019)**

TDS on payment by individual/ HUF to contractor or professional

- Under the existing tax regime, there is no provision for deducting tax at source on the payments made by an individual/ HUF to a resident contractor or professional under following circumstances [under section 194C and/ or 194J]:
  - when services are utilized for personal use; or
  - when services are utilized for business purpose but the individual/ HUF was not subjected to tax audit under section 44AB in the preceding financial year

- As a result, substantial amount of payments made by individuals/HUFs are escaping the obligation of TDS, leaving loophole for possible tax evasion

TDS on payments by individual/ HUF to contractors and professionals (contd.)

[Clause 46] **(w.e.f. 01.09.2019)**

- To plug this loophole, it is proposed to insert new '**section 195M**' to provide for deduction of tax at source @ 5% on the payments made by an individual/ HUF to a resident contractor or professional, in respect of which there is presently no obligation under sections 194C and 194J

- Provisions of section 194M would apply if the aggregate payment exceeds fifty lakh rupees in a year

- The words 'contract', 'work' and 'professional services' shall have the same meaning as assigned thereto in section 194C and 194J

TDS on payments by individual/ HUF to contractors and professionals (contd.)

[Clauses 46 & 48] **(w.e.f. 01.09.2019)**

- It is further proposed to provide facility to deposit tax deducted at source using PAN and the payers shall not be required to obtain TAN

- The proposed amendment shall increase the sources of revenue for the tax department and will curb the practice of diverting business payments made to contractors and professionals as personal payments to escape the levy of TDS, thereby preventing tax evasion

- Consequential amendment is proposed to include within purview of the section 197 for obtaining certificate for lower or nil deduction of tax, the provisions of section 194M .

- Rate of TDS@5% under section 194M for contractual payments is higher than the rate of TDS@1%/2% under section 194C.

TDS on cash withdrawals under section 194N

[Clause 46] **(w.e.f. 01.09.2019)**

TDS on cash withdrawal

- For promoting a cashless economy by discouraging cash payments, '**section 194N**' is proposed to be inserted under Chapter XVII of the Act, to provide for levy of TDS @ 2% on **cash payments made during the year, of sum exceeding one crore rupees from an account** maintained with a banking company, or a co-operative society carrying on banking business, or a post office

- The objective of the proposed amendment is to discourage the use of paper currency and promote the use of digital payments for financial transactions

- **The withdrawal threshold of one crore rupees will apply to each account with a bank.**

TDS on cash withdrawals under section 194N (contd.)

[Clause 46] **(w.e.f. 01.09.2019)**

- The proposed section would, however, not apply to any payment made to:
  (a) the Government;
  (b) any banking company;
  (c) co-operative society engaged in the business of banking;
  (d) post office;
  (e) any business correspondent of a banking company or co-operative society;
  (f) any white label ATM;
  (g) such other person or class of persons, as may be prescribed

- The withholding rate of 2% would apply to monies withdrawn in excess of one crore rupees.

Online filing of application seeking determination of tax to be deducted at source on payment to non-residents

[Clause 47] **(w.e.f. 01.11.2019)**

- Sub-section (2) of section 195 of the Act provides that if a person who is responsible for paying any sum to a non-resident which is chargeable to tax under the Act (other than salary) considers that
  - the whole of such sum would not be income chargeable in the case of the recipient, then
    - such payer can make an application to the assessing officer to determine the appropriate proportion of such sum so chargeable, and upon such determination, tax shall be deducted only on that proportion of the sum which is so chargeable.

Online filing of application seeking determination of tax to be deducted at source on payment to non-residents

- In order to streamline and reduce the time for processing of aforesaid applications and for monitoring such payments, it is proposed to
  - amend sub-section (2) of section 195 of the Act so as to empower the CBDT to prescribe the form and manner of making such application and the manner of determining the appropriate proportion of such sum chargeable
- Similar amendment is also proposed to be made in sub-section (7) of section 195 of the Act which are applicable to specified class of persons or cases.

Electronic filing of statement of transactions on which tax has not been deducted

[Clause 50] **(w.e.f. 01.09.2019)**

- **Section 206A** r.w Rule 31ACA provides for filing of quarterly returns (on computer readable media) by a banking company, co-operative society and Indian public company in respect of payment of interest earned on time deposits to residents without deduction of tax at source
- Rule 31AC provides that every branch of banking company is required to maintain particulars of interest on time deposit, in Form 26QA, on which tax is not deducted at source
- It is now proposed to provide mechanism for maintenance as well as filing of such statements in form and manner (electronic filing – as per the Memorandum) as shall be prescribed in due course

Electronic filing of statement of transactions on which tax has not been deducted

[Clause 50] **(w.e.f. 01.09.2019)**

- It is further proposed to introduce sub-section (3) to enable correction of such statements for rectification of any mistake and add/delete/modify the information originally furnished by the payer
- Also, consequential amendment arising out of amendment made in section 194A made vide Finance Act (No.1), 2019, increasing the threshold for TDS on payment of interest is proposed to be raised to forty thousand rupees

Mechanism for obtaining certificate for nil/lower deduction of tax

[Clause 47] **(w.e.f. 01.11.2019)**

- Under the existing provisions of **section 195(2)/(7)**, taxpayer is required to file application for obtaining certificate for nil/ lower deduction of tax in manual mode

- Way back in July 2009, DIT(Systems) introduced a functionality in the TDS Module of the ITD application for issuance of certificates under section 197 in online mode, wherein an all India Unique Certificate Number was generated and printed

- Instances of huge default of 'short deduction' was observed due to wrong quoting of 197 certificate number. This scenario arises when the deductor accepts from the deductee a manually issued lower deduction certificate by the assessing officer and quotes the same in TDS statements

Mechanism for obtaining certificate for nil/lower deduction of tax (contd.)

[Clause 47] **(w.e.f. 01.11.2019)**

- Thereafter, CPC(TDS) provided the facility of validating the 197 certificate to the deductors, who would furnish the certificate number only after validating the certificate on the TRACES website

- In February 2016, pursuant to requests made by the taxpayers, the existing functionality was enhanced to enable issuance of certificates under section 195(2) and 195(3) online through the ITD application

- Recently, vide Notification No. 8/2018 dated 31st December 2018, CBDT had prescribed procedure, format and standards for filing an application for grant of certificate under section 197, through TRACES

- To streamline the process and keep a track of the applications and the corresponding payments, it is proposed to digitalize the mechanism of filing applications under section 195(2)/(7) as well

Mechanism for obtaining certificate for nil/lower deduction of tax (contd.)

[Clause 47] **(w.e.f. 01.11.2019)**

- The procedure, format and standards for filing online application will be prescribed in due course

- It appears that CBDT would also prescribe the manner for determination of appropriate portion of sum chargeable to tax by the assessing officer. This is a welcome amendment since it would eliminate discretion vested with the assessing officer and bring uniformity in issuance of such certificates to a large extent

Relaxing the provisions of sections 201 and 40 of the Act in case of payments to non-residents

[Clause 49] **(w.e.f. 01.09.2019)**

- According to section 201(1), a payer/ deductor is considered as an 'assessee in default' if he fails to deduct, or, after deduction does not pay such tax to the government

- The payment can be in the nature of interest, royalty, fee for technical services or any other sum taxable under the Act

- However, the proviso states that if the payee himself has discharged its correct tax obligations by filing the return of income and furnishing accountant's certificate to this effect, the rigors of section 201 shall not be attracted

- This was also laid down by the apex Court in the case of Hindustan Coca Cola Beverage (P.) Ltd. v. CIT (293 ITR 226)

Relaxing the provisions of sections 201 and 40 of the Act in case of payments to non-residents

- It is essential to, however, note that the said aid provided to the deductor was available only when the payee was a resident

- In order to quash this inconsistency, it is proposed to amend the said proviso to section 201 so as to extend the benefit even in case of failure to deduct tax on payment to non-resident

- Corresponding amendment is also proposed in sub-section (1A) to this section to the effect that interest shall be computed from the date on which such tax was deductible to the date of furnishing the tax return by the payee (whether resident or non-resident)

Relaxing the provisions of sections 201 and 40 of the Act in case of payments to non-residents

[Clause 10] **(w.e.f. 01.04.2020)**

- To give matching effect to the amendment proposed to be brought in section 201 of the Act, it is also proposed to add a proviso to section 40(a)(i)

- Accordingly, if a deductor-assessee
  - fails to comply with the TDS provisions qua the payment made to a non-resident; and
  - is not regarded as an assessee in default,

  it shall be deemed that the assessee has deducted and paid tax on such sums

- In other words, there will be no disallowance under section 40 of the Act in respect of the expenditure, subject to deduction of tax at source

Comments

- The implications in respect of disallowance and recovery of taxes in case of payment to non-residents are sought to be made at par with payment made to residents

- The said amendments are in conformity with the decision of the Delhi HC in the case of CIT vs. Herbalife International India (P.) Ltd: 384 ITR 276, which endorsed parity in respect of deduction qua payments made to residents and non-residents, thereby eliminating discrimination

Comments

- However, this amendment would overrule the findings in the decision of the Visakhapatnam Bench of the Tribunal in the case of Sri Teki Venkata Ramana Rao v. ITO (ITA 151/Viz/2017), wherein it was observed:

  "…… In respect of the non-residents, the deduction of tax at source is more stringent since the person who receives the payment would be leaving the country and the recovery of tax is impossible or remotely possible. There is a clear distinction between the residents and the non residents.

  …. Proviso to Section 201 also allows exceptions on sums paid to residents in different situations not to treat the assessee in default for the principal amount in the following situations whereas the said concessions are not extended to the non residents." (emphasis supplied)

- The proposed amendment is a welcome step as it intends to bring payment to residents and non-residents on an equal footing

INCENTIVES FOR START-UPS

Incentives for Start-ups

- Pursuant to the Government's "Start-up India" campaign, section 80-IAC was inserted vide Finance Act, 2016, providing for deduction to 'eligible start-ups' of profits derived from eligible business for 3 consecutive assessment years. Few other provisions benefitting eligible start-ups have also been introduced since then.
- As on date, eligible start-up is defined to mean a company being engaged in, inter-alia, innovation, development or improvement of products or processes or services, etc., which fulfils the following conditions:
  - Company is incorporated between 01.04.2016 and 01.04.2021;
  - Total turnover of its business does not exceed 25 crores rupees in the previous year for which deduction is claimed;
  - Holds a certificate of eligible business from the Inter-Ministerial Board of Certificate as notified.

Incentives for Start-ups u/s 54GB

[Clauses 20] **(w.e.f. 01.04.2020)**

- The existing provisions of section 54GB of the Act provide that capital gains arising from the transfer of a long-term capital asset, being a residential property owned by an individual/ HUF, shall not be charged to tax where the net consideration is utilized by the assessee for subscription in the equity shares of an eligible company and such company has utilized the investment for purchase of new asset within one year from the subscription date.
- Eligible company is defined in section 54GB(6) to include an eligible start-up provided other conditions listed therein are satisfied.

Incentives for Start-ups u/s 54GB (cont.)

[Clauses 20] **(w.e.f. 01.04.2020)**

❖ Presently, to claim benefit under section 54GB, various conditions are required to be fulfilled. In order to incentivise investment in eligible start-ups, the following amendments have been proposed:

Particulars	Existing position	Amendment proposed
Share of assessee in share capital or voting rights after subscription	More than 50%	More than 25%
Lock-in period for transfer of new asset being computer or computer software	5 years	3 years
Sunset date for transfer of residential property, net consideration from which is to be invested in eligible start-ups	31.03.2019	31.03.2021

Incentives for Start-ups – relaxation u/s 79

[Clause 22] **(w.e.f. 01.04.2020)**

- Clause (a) of section 79 of the Act provides conditions for carry forward and set off of losses in respect of a closely held company. Clause (a) does not, however, apply to an eligible start-up, which is governed by conditions listed under clause (b) of the said section.
- With the aim of facilitating ease of doing business for eligible start-ups, it is proposed to amend section 79 of the Act to provide that a closely held eligible start-up shall be allowed to carry forward and set off loss incurred in any year prior to the previous year, on satisfaction of either of the conditions presently stipulated under clause (a) or clause (b).

Incentives for Start-ups – relaxation u/s 79 (cont.)

[Clause 22] **(w.e.f. 01.04.2020)**

- Accordingly, the rigours of section 79 shall not be applicable to an eligible start-up, provided either of the following conditions are satisfied:
  - on the last day of the previous year, shares of the company carrying not less than 51% of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than 51% of the voting power on the last day of the year/s in which the loss was incurred;

OR

  - all the shareholders of such company who held shares carrying voting power on the last day of the year/s in which the loss was incurred, continue to hold those shares on the last day of such previous year and such loss has been incurred during the period of seven years beginning from the year in which such company is incorporated.

Compliance with Notification for exemption from 'Angel Tax' u/s 56(2)(viib)

[Clause 21] **(w.e.f. 01.04.2020)**

- Many start-ups have, in the recent past, faced the brunt of additions under section 56(2)(viib) due to difference in opinion between the Revenue authorities and the assessee regarding valuation of shares of such start-ups, mainly due to the reason that valuations of many start-ups appear unjustified in view of heavy losses appearing in their financials.
- The 'excess consideration' received by such start-ups on issue of shares at a price over and above their alleged fair market value is treated as income and brought to tax under section 56(2)(viib), colloquially known as "Angel Tax".

Compliance with Notification for exemption from 'Angel Tax' u/s 56(2)(viib) (cont.)

[Clause 21] **(w.e.f. 01.04.2020)**

- To safeguard genuine cases of investments being received by start-ups, the Central Government notified that section 56(2)(viib) shall not apply to investments made by a resident for issue of shares of a "start-up" company at a consideration exceeding the face value of such shares.
- For the purposes of the said Notification, it was provided that "start-up" shall mean a company in which the public are not substantially interested and which fulfils the conditions specified in Notification dated 17.02.2016 issued by Department of Industrial Policy & Promotion ("DIPP").

Compliance with Notification for exemption from 'Angel Tax' u/s 56(2)(viib) (cont.)

[Clause 21] **(w.e.f. 01.04.2020)**

- The DIPP has, time and again, substituted the Notifications issued with respect to "start-ups". The DIPP Notification, in force as on date, was issued on 19.02.2019, wherein it is provided that an entity shall be considered a start-up:
  - Upto a period of 10 years from the date of incorporation/ registration;
  - Turnover of the entity for any of the financial years since incorporation/ registration should not have exceeded 100 crore rupees;
  - Entity should be working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation;
  - Should not be formed by splitting up or reconstruction of an existing business

Compliance with Notification for exemption from 'Angel Tax' u/s 56(2)(viib) (cont.)

[Clause 21] **(w.e.f. 01.04.2020)**

- Under the said Notification, conditions have also been prescribed for a "start-up" to be eligible to avail the benefit of exemption from section 56(2)(viib) of the Act, summarized hereunder:
  - It shall be recognized as "start-up" by Department for Promotion of Industry and Internal Trademark ("DPIIT");
  - Aggregate amount of paid up share capital and share premium of the start-up after issue or proposed issue of shares, if any, shall not exceed 25 crore rupees. In computing total paid up share capital, investments made by non-residents or venture capital company/ fund are not included;
  - Funds raised by the start-up shall not be invested, inter alia, in residential buildings, shares and securities, jewellery or vehicles above Rs.10 lakh, for a period of 7 years from the end of the latest financial year in which shares are issued at a premium.

Compliance with Notification for exemption from 'Angel Tax' u/s 56(2)(viib) (cont.)

[Clause 21] **(w.e.f. 01.04.2020)**

- In order to ensure compliance with the aforesaid conditions prescribed under the DIPP Notification, it is proposed to amend the provisions of section 56(2)(viib) by inserting second proviso stating that in case of failure to comply with the conditions as notified, the consideration received for issue of shares which is in excess of face value of such shares shall be deemed to be the income of the issuer company chargeable to tax in the previous year in which the failure to comply with the said conditions has taken place.

Compliance with Notification for exemption from 'Angel Tax' u/s 56(2)(viib) (cont.)

[Clause 21] **(w.e.f. 01.04.2020)**

Comments/ Observations:

- The language of proviso proposed to be inserted states that in case of violation of any of the prescribed conditions by a start-up claiming exemption from applicability of the said section, the consideration received in excess of 'face value' of shares shall now be taxable as income whereas under the main sub-section, only the consideration received in excess of fair market value of shares was taxable. The language of the amendment is ambiguous and may give rise to protracted litigation.

- The obligation of the start-ups to ensure compliance has, accordingly, become more onerous. While the intention is to facilitate ease of doing business for start-ups, the Legislature has made it clear that strict compliance is a must.

Other incentives for start-ups in speech of Finance Minister – Amendments awaited

- The start-ups and their investors who file requisite declarations and provide information in their returns will not be subjected to any kind of scrutiny in respect of valuations of share premiums;
- The issue of establishing identity of the investor and source of his funds will be resolved by putting in place a mechanism of e-verification;

With the above, funds raised by start-ups will not require any kind of scrutiny from the Income-tax Department.

- Special administrative arrangements shall be made by the CBDT for pending assessments/ redressal of their grievances. It will be ensured that no inquiry or verification in such cases can be carried out by the assessing officer without obtaining approval of supervisory officer.

RATIONALISATION OF PROVISIONS

TRUSTS

Registration and Cancellation of Trust or Institution

[Clause 7] **(w.e.f. 01.09.2019)**

- Under the existing provisions, for the purpose of registration under section 12AA, the trust or institution was only required to satisfy the Pr.CIT/ CIT about the objects and genuineness of the activities, if already undertaken.

- Section 12AA is now proposed to be amended to provide that at the time of granting of registration to a trust or institution, the Pr. CIT/ CIT shall satisfy himself that the applicant trust or institution also complies with the requirements of any other law which are material for the purpose of achieving its objects.

Registration and Cancellation of Trust or Institution

[Clause 7] **(w.e.f. 01.09.2019)**

- The amendment also proposes to empower the Pr.CIT/CIT to cancel the registration under section 12AA, if after granting registration it is noticed that the trust or institution has violated requirements of any other law which was material for the purpose of achieving its objects.

- The proposed amendment, however, specifically provides that the Pr.CIT/CIT can cancel registration for violation of any other law only if the order/direction/decree holding such violation has occurred, has either not been disputed or has attained finality.

Registration of Trust or Institution

[Clause 7] **(w.e.f. 01.09.2019)**

Comments/ Observations:

- The proposed amendment extensively widens the scope of enquiry by the Pr.CIT/CIT to examine compliance with any and every law having an impact/bearing on the charitable objects of the trust or institution.

- The amended provision is too wide and may result in registration being withdrawn on violation of any procedural requirement under any applicable law like any procedure under Societies Registration Act, 1988, ROC non compliance.

Registration of Trust or Institution

[Clause 7] **(w.e.f. 01.09.2019)**

- Registration cannot be cancelled merely on the basis of an allegation of infraction of any other law, unless such allegation culminates into final order/ decree.
- The proposed amendment seeks to overrule decisions where it was held that registration cannot automatically be revoked for infraction/violation of any other law like receipt of capitation fee, etc. [Refer: Sri Belimatha Mahasamsthana Socio Cultural and Educational Trust: 336 ITR 694 (Kar)]
- No similar amendment proposed in section 10(23C)

Measures for promoting cashless economy

Prescription of digital mode of payments

[Clauses 8,9,11,12,14,16,18,21,27,57,58,60] (w.e.f. 01.04.2020)

- In order to avoid transactions in cash, various provisions of the Act prescribe certain modes of payment other than cash as acceptable modes, such as account payee cheque or account payee bank draft or electronic clearing system through a bank account.

- It is not clear whether the newly evolved digital modes of payment like BHIM UPI, UPI-QR Code, Aadhaar Pay, etc. are covered within the ambit of the aforesaid modes of payment other than cash.

Prescription of digital mode of payments

[Clauses 8,9,11,12,14,16,18,21,27,57,58,60] (w.e.f. 01.04.2020)

- In order to put the doubt at rest and to promote alternative modes of payment, certain sections have been amended to include other electronic modes as may be prescribed.

- Although such digital modes of payment have not yet been prescribed, the Hon'ble Finance Minister in the budget speech referred to promotion of certain digital modes of payment like BHIM UPI, UPI-QR Code, Aadhar Pay.

- It is expected that the aforesaid digital modes of payment shall be prescribed later for various provisions of the Act.

Prescription of digital mode of payments

[Clauses 8,9,11,12,14,16,18,21,27,57,58,60] (w.e.f. 01.04.2020)

❖ Sections amended are as follows:

Section	Particulars
Section 13A	No donations to be received by a political party exceeding Rs.2000.
Section 35AD	Deduction allowed in respect of any expenditure of capital nature other than expenditure exceeding Rs. 10,000 incurred by a person in a day by modes other than prescribed therein.
Section 40A	Disallowance of expenditure in respect of which payments are made in excess of Rs. 10,000
Section 43(1)	Payment made for acquisition of an asset in excess of Rs. 10,000 in a day by modes other than prescribed therein shall not be included in the determination of actual cost of the asset

Prescription of digital mode of payments

[Clauses 8,9,11,12,14,16,18,21,27,57,58,60] (w.e.f. 01.04.2020)

Section	Particulars
Section 43CA	In case where date of agreement and date of registration of transfer of an asset are different, then the full value of consideration would be the stamp duty value on the date of agreement provided the consideration is paid by way of modes prescribed on or before the date of agreement. Similar amendment has been made in second proviso to section 50C(1) and second proviso to section 56(2)(x)(b).
Section 44AD	In case of eligible business, a sum equal to 8% of the total turnover or gross receipts is taxable under the head 'PGBP'. Proviso provides that 8% would be substituted with 6% in case gross receipts are received by way of modes prescribed therein.
Section 80JJAA	Provides for deduction of an amount equal to 30% of additional employee cost incurred in the previous year, for 3 assessment years. Sub-clause (b) of clause (i) of the Explanation provides that the additional employee cost would be 'Nil' if the emoluments are paid otherwise than by wayof modes prescribed therein.

Prescription of digital mode of payments

[Clauses 8,9,11,12,14,16,18,21,27,57,58,60] (w.e.f. 01.04.2020)

Section	Particulars
Section 269SS	Prohibits a person from taking or accepting loan or deposit or any specified sum equal to Rs. 20,000 or more otherwise than by way of modes prescribed therein.
Section 269ST	Prohibits a person from receiving Rs. 2,00,000 or more in aggregate in a day or a single transaction or in respect of transactions relating to one event otherwise than by way of modes prescribed therein.
Section 269T	Prohibits a banking company, co-operative bank, company, cooperative society, firm or any other person from repaying any loan/deposit in excess of Rs. 20,000 otherwise than by way of modes prescribed therein.

Acceptance of payments through electronic modes – Section 269SU and section 271DB

[Clause 59 & 62] **(w.e.f. 01.11.2019)**

- **Section 269SU** has been introduced so as to provide that every person carrying on a business, having total sales/gross receipts exceeding Rs. 50 crores during the immediately preceding previous year, shall provide facility for accepting payment through the prescribed electronic modes in addition to the existing electronic modes of payment.

- **Section 271DB** has been introduced to prescribe penalty of Rs.5,000 for every day on failure to provide such facility for electronic modes of payment.

Acceptance of payments through electronic modes – Section 269SU and section 271DB

[Clause 59 & 62] **(w.e.f. 01.11.2019)**

- Penalty would not be attracted if the person proves that there were good and sufficient reasons for such failure.

- Penalty would be imposed by the Joint Commissioner.

- Consequential amendment has been proposed in Payment and Settlement Systems Act, 2007 so as to provide that no bank or system provider shall impose any charge upon anyone for using modes of electronic payment prescribed under section 269SU of the Act.

RESOLUTION OF DISTRESSED COMPANIES

Measures for Distressed Companies

[Clauses 22 & 34] **(w.e.f. 01.04.2020)**

- Presently, the provisions of section 79 are not applicable to a company where any change in shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016 (IBC), subject to the condition that jurisdictional Principal Commissioner or Commissioner is provided a reasonable opportunity of being heard.

- Presently, clause (iih) of Explanation 1 to section 115JB of the Act provides that companies against whom an application for CIRP has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the IBC would be eligible to claim deduction of aggregate amount of unabsorbed depreciation and loss brought forward against net profit as per profit and loss account to arrive at book profit for purposes of the said section.

Measures for Distressed Companies

[Clauses 22 & 34] **(w.e.f. 01.04.2020)**

- It is now proposed to extend the aforesaid benefits of –

  (a) non-applicability of section 79, and
  (b) allowability of deduction of aggregate amount of unabsorbed depreciation and loss brought forward while computing book profit under section 115JB,

  to a company, and its subsidiary and the subsidiary of such subsidiary, where the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013 has suspended the Board of Directors of such company and has appointed new directors who are nominated by the Central Government under section 242 of the said Act.

Exemption from deeming of fair market value of shares for certain transactions

[Clauses 19 & 21] **(w.e.f. 01.04.2020)**

- Section 56(2)(x) provides for chargeability to tax of receipt of money or specified property for nil or inadequate consideration. In case of receipt of shares, the amount of income is determined having regard to the fair market value (Rule 11UA).

- Similarly, in the hands of the seller/ transferor, shares of an unquoted company sold for consideration less than the fair market value, determined as per Rule 11UAA, are brought to tax under section 50CA of the Act.

Exemption from deeming of fair market value of shares for certain transactions (cont.)

[Clauses 19 & 21] **(w.e.f. 01.04.2020)**

- To avoid genuine hardship caused to persons transferring shares at consideration approved by certain authorities, where such persons have no control over the determination of price for such transfer, it is proposed to amend both these sections to empower the Board to prescribe transactions undertaken by certain class of persons to which the provisions of sections 56(2)(x) & 50CA shall not apply.

Comments/ Observations:

- Placement of these proposed amendments in the chapter "*Facilitating Resolution of Distressed Companies*", reflects the intention of the Legislature to reduce avoidable income-tax burden on companies whose shares are transferred at consideration approved by the NCLT or other authorities, where the parties have no control over such determination.

Certain questions arising in cases under IBC remain to be unanswered

- Whether benefit arising on waiver of loans/ liabilities and consequential write back thereof in the financial statements of the corporate debtor would be taxable under section 28(iv)?

- Whether benefit arising on write back of operational liabilities such as outstanding trade creditors towards supply of raw materials, etc., would be taxable in the hands of the corporate debtor under the provisions of section 41(1)?

- Whether section 56(2)(x) would have any applicability on account of waiver of loans/ liabilities on the ground that there is receipt of money without consideration or inadequate consideration?

- Whether section 115JB would apply qua benefit received on write back of amount of loans/ liabilities?

INCOME DECLARATION SCHEME, 2016

Rationalisation of the Income Declaration Scheme, 2016

[Clause 199 & 200] **(w.e.f. 01.06.2016)**

- By the Finance Act, 2016, Income Declaration Scheme, 2016 (IDS) was introduced for making declaration of undisclosed income and undisclosed asset for any assessment year upto assessment year 2016-17. The said scheme was in force from 01.06.2016 to 30.09.2016.

- Section 187 of Finance Act, 2016 provided that tax, surcharge and penalty in respect of the undisclosed income declared under IDS, shall be paid on or before the notified date, i.e., 30.09.2017 and there was no provision for late deposit of tax.

Rationalisation of the Income Declaration Scheme, 2016

[Clause 199 & 200] **(w.e.f. 01.06.2016)**

- It is now proposed to amend section 187 of the Finance Act, 2016 by way of insertion of proviso thereto, to provide that a specified category of people would be allowed to pay up the requisite amount, along with 1% interest per month, within a date to be notified by the Government.

- The proposed amendment seeks to effectively re-open the IDS for the specified category of people who had declared unaccounted income under the scheme but not paid the tax, surcharge and penalty by the due date.

Rationalisation of the Income Declaration Scheme, 2016

[Clause 199 & 200] **(w.e.f. 01.06.2016)**

Comments/ Observations:

- The proposed amendment seeks to provide another chance to **certain class of declarants, to be notified**, to pay up and wipe their slate clean.

- The Bombay High Court in Nandu Atmaram Wajekar: (2017) 80 taxmann.com 167 (Bom) held that in the absence of any provision in the scheme, the time limit for payment of tax could not be extended.

Rationalisation of the Income Declaration Scheme, 2016

[Clause 199 & 200] **(w.e.f. 01.06.2016)**

Comments/ Observations:

- The Supreme Court in Dal Chandra Rastogi vs. CBDT: (2019) 104 taxmann.com 341 (SC) permitted the assessee to deposit tax under IDS belatedly subject to interest @12%.

- The proposed amendment is apparently in line with the aforesaid recent decision of the Supreme Court.

- There is, however, no clarity why the relaxation is proposed only for specific class of assessees to be notified by the Govt.

Rationalisation of the Income Declaration Scheme, 2016

[Clause 199 & 200] **(w.e.f. 01.06.2016)**

- Section 191 of the Finance Act, 2016 categorically provided that any amount of tax, surcharge and penalty paid under the IDS Scheme will not be refundable.

- It is now proposed to insert a proviso to the aforesaid section to provide that the tax, surcharge and penalty paid in excess of amount payable shall be refundable to class of persons notified by Central Government.

Rationalisation of the Income Declaration Scheme, 2016

[Clause 199 & 200] **(w.e.f. 01.06.2016)**

Comments/ Observations:

- The Madhya Pradesh High Court in the case Smt. Sangeeta Agrawal vs. PCIT: 409 ITR 254 (MP) [SLP dismissed in 262 Taxman 165] directed the Revenue to adjust the amount deposited by the assessee under IDS on rejection of its application against tax dues of the assessee.

- The proposed amendment is apparently in line with the aforesaid legal position.

Prohibition of Benami Property Transactions Act, 1988 (PBPT/ Benami Act)

PBPT Act (Background)

- Benami Act was enacted on 19.05.1988 to provide that no person shall enter into any benami transaction.

- Benami Transaction was defined to mean any transaction in which property is transferred to one person for consideration paid or provided by another person.

- The 1988 Benami Act, in the absence of any machinery, could not be implemented and thus, merely remained on paper.

- To enforce benami law, the above Act was extensively amended by the 2016 Amendment Act, with effect from 01.11.2016

PBPT Act (Background) (contd.)

- The amended Benami Act contains elaborate provisions prohibiting entering into benami transaction and not only sets out the machinery for attachment, adjudication and confiscation of benami property, but also contain severe prosecution provisions.

- Most of the amended provisions are applicable retrospectively, with effect from 19.05.1988.

PBPT Act (Background) (contd.)

❖ "Benami Transaction" is presently defined in section 2(9) to broadly include/ cover a transaction/ arrangement:

(a) where property is held in the name of Person A but consideration is provided/ paid by Person B and property is held for immediate or future benefit for Person B;

(b) in respect of property carried out in a fictitious name;

(c) where the owner denies ownership of the property;

(d) where the person providing the consideration is not traceable or is fictitious.

PBPT Act (Background) (contd.)

❖ Following transactions are excluded:

(a) Property held by a Karta or member on behalf of HUF

(b) Property is held in the name of a Trustee

(c) Property held in the name of spouse/ child

(d) Property held jointly with brother or sister or lineal ascendant or descendent

(e) Transactions covered by Section 53A of Transfer of Property Act, subject to the agreement being registered and stamp duty being paid

PBPT Act (Background) (contd.)

❖ Chapter II of the PBPT Act provides :

(a) that no person shall enter into any “Benami Transaction”

(b) severe punishment involving imprisonment upto 7 years for entering into “Benami Transaction”

(c) confiscation of Benami Property and its vesting in the Government

PBPT Act (Background) (contd.)

- Act lays down following broad procedure leading to adjudication, attachment and confiscation of Benami Property:
  - (a) Pre-notice enquiry/ investigation [Section 23]
  - (b) Issuance of notice and initiation of proceedings by Initiating Officer (IO) [Section 24]
  - (c) Provisional attachment of property [Section 24(3)/(4)]
  - (d) IO drawing statement of case and referring for adjudication to Adjudicating Authority (AA) [Section 24(5)]
  - (e) Adjudication by AA and passing of order confiscating the property and its vesting in the Government [Sections 26 and 27]

Prior Approval for Conducting Inquiry

[Clause 172] **(w.r.e.f. 01.11.2016)**

- Presently section 23 provides that the IO, with prior approval of the Approving Authority, shall have power to conduct enquiry.

- It is now proposed to be clarified that the requirement of prior approval would not apply in cases where proceedings are pending before the IO, i.e., notice under Section 24(1) is already issued.

Provisional Attachment (Time Limit)

[Clause 173] **(w.e.f. 01.09.2019)**

Presently:

- Section 24(3) permits IO to order provisional attachment for a period not exceeding 90 days from the date of issuance of notice u/s 24(1)
- Section 24(4) provides that IO may, after making necessary enquiries, pass an order, within 90 days from the date of issuance of notice u/s 24(1), either (i) continuing the provisional attachment already ordered, or (ii) revoking such attachment, or (iii) making provisional attachment, it not made earlier, or (iv) continuing proceedings without such attachment.
- Section 24(5) provides that where provisional attachment is continued or made u/s 24(4), the IO shall, within 15 days of the date of attachment, draw up a statement of case and refer to AA.

Provisional Attachment (Time Limit) (contd.)

[Clause 173] **(w.e.f. 01.09.2019)**

❖ It is now proposed to amend time limits under Sections 24(3) and 24(4) as under:

(a) Period of 90 days to be reckoned from the last day of the month in which notice under Section 24(1) is issued, and

(b) Period during which the proceeding is stayed by order of Court is to be excluded [*Explanation to Section 24 inserted*]

(c) Minimum remaining period of limitation under Section 24(4) shall be 30 days [*Explanation to Section 24 inserted*]

(d) Minimum remaining period of limitation under Section 24(5) shall be 7 days [*Explanation to Section 24 inserted*]

Adjudication (Time Limit)

[Clause 174] **(w.e.f. 01.09.2019)**

- Presently, section 26(7) requires order of AA to be passed within 1 year from the end of the month in which reference under Section 24(5) is received.

- It is now proposed to provided that for determining time limit under section 26(7) the:

  (a) period during which proceeding is stayed by order of Court is to be excluded [*Explanation to Section 26(7) inserted*]

  (b) minimum remaining period of limitation under Section 26(7) shall be 60 days [*Explanation to Section 26(7) inserted*]

Failure to answer summons, furnish information

[Clause 175] **(w.e.f. 01.09.2019)**

- Presently sections 19 and 21 confers powers on the authorities to issue summons and call for information.

- It is now proposed to insert section 54A to empower the authorities to impose penalty of Rs.25,000 for each default on account of failure to: (i) comply with summons issued; or (ii) furnish information required under section 21

- No penalty shall be leviable in cases where non-compliance is due to "*good and sufficient reasons*"

Admissibility of Evidence in Prosecution proceedings

[Clause 175] **(w.e.f. 01.09.2019)**

- Section 54B is proposed to be inserted to provided that:

  (a) entries in records or documents in the custody of an authority shall be admissible in evidence in prosecution of an offense under Section 3; and

  (b) such entries may be proved by production of records in custody of the authority or true copy thereof duly certified by such authority.

- Aforesaid provision is akin to Section 279B of the IT Act

Sanction for Prosecution

[Clause 176] **(w.e.f. 01.09.2019)**

- Presently, under section 55 prior sanction of CBDT is required for instituting prosecution for any offense

- It is now proposed to amend the section to provide that sanction may be accorded by 'Competent Authority', viz., CIT, DIT, Pr. CIT or Pr. DIT as defined under the IT Act.

Open Issues

- Whether the expanded definition of "*benami transaction"* provided under section 2(9) of the PBPT Act, can be applied to a transaction consummated during the period between 19.05.1988 and 01.11.2016?

- Since even *holding of benami property* post-19.05.1988 has now been prohibited, whether transaction undertaken even prior to 19.05.1988 can be covered within the fold of the amended PBPT Act?

- By virtue of section 6 of the PBPT Act, whether *re-transfer of benami property to the benamidar* undertaken prior to 01.11.2016 can be retrospectively invalidated?

- Difference between 'acquisition' of benami property as provided in the Old Act vis-à-vis '*confiscation' of benami property by Central Government*'?

Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (BM Act)

Background

- Black Money Act came into force on 1.07.2015
- Provisions brings to tax "undisclosed foreign income" and "undisclosed asset located outside India"
- Act applicable only to "assessee", being a person resident in India (other than not ordinary resident)
- Section 3 of Black Money Act charges on every assessee for any assessment year on or after 1.04.2016, tax in respect of his:
  (a) undisclosed foreign income; and
  (b) undisclosed foreign asset
- "Undisclosed foreign asset" taxed in previous year in which it comes to notice of AO

Background (contd.)

❖ Under section 10, the assessing officer may on-

- receipt of any information from any authority under any law; or
- coming of any information to his notice,

serve on any person notice for purpose of assessment under Black Money Act.

❖ No time limit for initiating proceedings - 16 years period not applicable.

Definition of "Assessee"

[Clause 195] **(w.r.e.f. 01.07.2015)**

Presently, "assessee" defined in section 2(2) to mean a person:

(a) being a *resident* in India other than not ordinarily resident in India within clause (6) of Section 6 of the IT Act,

(b) by whom *tax* in respect of undisclosed foreign income and assets, or any other sum of money, is *payable under the BM Act*,

(c) including every person deemed to be an *assessee in default* under this Act.

Definition of "Assessee" (contd.)

[Clause 195] **(w.r.e.f. 01.07.2015)**

The definition of "assessee" proposed to be amended to mean a person being:

(a) a resident within the meaning of Section 6 of the IT Act in the previous year; or

(b) a non-resident or not ordinarily resident in the previous year, but who was resident in India in the previous year to which the undisclosed foreign income relates or in which the undisclosed asset located outside India was actually acquired.

Definition of "Assessee" (contd.)

Analysis/ Comments

- Proposed amendment covers persons who may be NR/ NOR in the previous year in which proceedings commenced but were resident when they have earned undisclosed foreign income or acquired undisclosed foreign asset
- Proposed amendment intended to nullify argument regarding non-applicability of BM Act on the ground that in relevant year the assessee was NR/ NOR
- Under existing provisions, undisclosed foreign asset could be taxed in the year in which it comes to notice of AO. Now, AO shall be required to determine year of acquisition to examine residential status.

Definition of "Assessee" (contd.)

Analysis/ Comments (Contd.)

❖ Example:

- Property acquired 2000-01, when assessee was resident

- Assessee became non-resident in FY 2017-18

- AO receives information in FY 2017-18 and issues notice

In above example, assessee could have contended that since in FY 2017-18, he was non-resident, BM Act not applicable

Assessment

[Clause 196] **(w.r.e.f. 01.07.2015)**

- **Regular Assessment – Section 10(3)**
- **Best Judgment Assessment – Section 10(4)**
- It is proposed to amend the aforesaid sections to clarify that powers of assessment includes powers of "*reassessment*".

Imposition of Penalty by Commissioner (Appeals)

[Clause 197] **(w.e.f. 01.09.2019)**

- Presently, under section 17(1)(b), Commissioner (Appeals) only has power to confirm or cancel the penalty levied by the assessing officer
- It is proposed to amend section 17(1)(b) to clarify that Commissioner (Appeals) shall also have power of enhancement or reduction of penalty

Joint Commissioner – Power to Issue Directions

[Clause 198] **(w.e.f. 01.09.2019)**

- Section 84 incorporates application of provisions of IT Act
- The aforesaid section is proposed to be amended to include provisions of section 144A of the IT Act to be made applicable to BM Act

MISCELLANEOUS

TAX NEUTRAL DEMERGER OF IND AS COMPLIANT COMPANIES

Facilitating tax neutral demerger under Ind-AS regime

[Clause 3] **(w.e.f. 01.04.2020)**

- Presently, for demerger to be tax neutral, sub-clause (iii) of clause (19AA) of section 2 requires the resulting company to record the property and liabilities of the demerged undertaking at the values appearing in the books of accounts of the demerged company, immediately before the demerger.

- Under Ind-AS 103 "Business Combination", in case of demerger of an undertaking into an unrelated company, fair valuation of assets and liabilities of the demerged undertaking is mandatory.

- There is thus existing dichotomy between the mandate of sub-clause (iii) of section 2(19AA) and Ind AS-103.

Facilitating tax neutral demerger under Ind-AS regime

[Clause 3] **(w.e.f. 01.04.2020)**

- In order to facilitate demerger, it is proposed to amend section 2(19AA) to provide that the requirement of recording property and liabilities at book value by the resulting company shall not be applicable in a case where in compliance with Ind AS, the property and liabilities of the demerged undertaking are recorded at value(s) different from the value(s) appearing in the books of account of the demerged company immediately before the demerger.

Facilitating tax neutral demerger under Ind-AS regime

[Clause 3] **(w.e.f. 01.04.2020)**

Comments/ Observations

- The adoption of Ind-AS and the resulting fair value accounting have far reaching implications on the M&A landscape.

- Though, in the aforesaid situation, it could be argued that recording of assets and liabilities of demerged undertaking at fair valuation is required from the acquirer's perspective to comply with Ind-AS, while from tax perspective, the condition of transfer at book value is applicable only to the demerged company, in the absence of any clarity, litigation is bound to happen.

- The proposed amendment provides clarity and certainty to the fundamental principle that demerger carried out by Ind AS compliant companies would also be tax neutral, provided other conditions are complied with.

Conditions relaxed for Offshore Funds

[Clause 5] **(w.e.f. 01.04.2019)**

- Section 9A, which was introduced in April 1, 2016, provides for a safe harbour in respect of offshore funds, subject to fulfilment of the conditions specified therein.

- Sub-section (3) of section 9A deals with the eligibility conditions of the fund and are, *inter-alia*, related to residence of fund, corpus, size, investor broad basing, investment diversification and payment of remuneration to fund manager at arm's length.

- In order to give impetus to fund management activities in India, the provisions of clauses (j) and (m) of section 9A of the Act are relaxed to provide that:-

  i. the corpus of the fund shall not be less than Rs. 100 crore rupees at the end of **a period of six months from the end of the month of its establishment or incorporation or at the end of such previous year, whichever is later**; and
  ii. the remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf is not less than the **amount calculated in such manner as may be prescribed**

Conditions relaxed for Offshore Funds

[Clause 5] **(w.e.f. 01.04.2019)**

Comments/ Observations

- The objective of section 9A was to allay fears that the mere presence of a fund manager in India could lead to the offshore fund being taxed in India at domestic tax rates, rather than lower rates specified under various Double Taxation Avoidance Agreements (DTAAs). Unfortunately, the conditions specified under the section are so strenuous that for all practical purposes, they remain unachievable.

- In order to give boost to the domestic fund management industry, it is proposed to relax certain conditions in the implementation of regime of fund managers.

Pass through of losses in cases of Alternative Investment Fund (AIF)

Pass through of Losses in case of AIF

[Clause 38] **(w.e.f. 01.04.2020)**

- The taxability of the income earned by AIFs is governed by a special tax regime as provided under Section 115UB of the Act

- In terms of section 115UB, read with section 10(23FBA) in case of a SEBI registered Category I and II AIF :-
  a) business income is taxed in the hands of AIF;
  b) incomes other than business income is regarded as pass through and taxed in the hands of investors; and
  c) losses are retained at AIF level.

Pass through of Losses in case of AIF

[Clause 38] **(w.e.f. 01.04.2020)**

- It is proposed to amend the said section to provide that:

  - the business loss of the investment fund, if any, shall be retained and allowed to the AIF to be carried forward and set-off in accordance with the provisions of Chapter VI and shall not be passed onto the unit holder;

  - loss other than business loss, if any, shall also be ignored for the purposes of pass through to its unit holders, if such loss has arisen in respect of a unit which has not been held by the unit holder for a period of atleast twelve months;

  - accumulated loss, other than business loss, accumulated by AIF as on 31.3.2019 shall be deemed to be the loss in the hands of the unit holder holding units as on 31.3.2019 and allowed in the hands of such unit holder.

CAPITAL GAINS

Concessional rate of short term capital gains ('STCG') tax to certain equity-oriented fund of funds

[Clause 32] **(w.e.f. 01.04.2020)**

- The provisions of section 111A of the Act prescribes for preferential rate of tax of 15% on STCG arising on sale of certain specified short term capital assets, *inter alia*, including transfer of units of an 'equity oriented fund'.

- Existing clause (a) of Explanation to section 111A provides that the meaning of 'equity oriented fund' shall be the same as defined in Explanation to section 10(38), which means a mutual fund registered under section 10(23D) of the Act and investing more than 65% of the total proceeds in equity shares of domestic companies through recognized stock exchange.

Concessional rate of STCG tax to certain equity-oriented fund of funds. [Contd.]

- Section 112A prescribes concessional rate of tax of 10% on long term capital gains arising on sale of certain specified long term capital assets.

- For the purpose of that section, equity oriented fund has been defined as under:

  (i) In case of direct investment – investment of atleast 65% in equity shares of domestic companies through recognized stock exchange;

  (ii) In case of further investment in other funds – investment of atleast 90% of total proceeds in such other fund provided such other fund further invests atleast 90% of its total proceeds in equity shares of domestic company through recognized stock exchange.

Concessional rate of STCG tax to certain equity-oriented fund of funds. [Contd.]

- In order to rationalize provisions of section 111A and 112A and promoting investment in such fund of funds, it is proposed to amend the explanation to section 111A to incorporate the meaning of 'equity oriented fund' as contained in Explanation to section 112A of the Act.

Comments/observations

- Extends the benefit of concessional rate of STCG tax to mutual funds which are investing in equity shares of domestic companies not directly but through other funds.

Penalty and Prosecutions

Rationalization of penalty provisions relating to under-reported income

[Clause 61] **(w.r.e.f. 01.04.2017)**

- Section 270A of the Act contains penalty provisions for under-reporting of income and misreporting of income.

- A person is considered to have under-reported income, inter alia if:

A. Where return of income has been furnished :

a) Income assessed is greater than income determined under section 143(1)(a) of the Act; **[Section 270A(2)(a)]**

b) Deemed total income assessed or reassessed as per section 115JB or 115JC of the Act is greater than deemed total income determined under section 143(1)(a) of the Act; **[Section 270A(2)(d)]**

Rationalization of penalty provisions relating to under-reported income

B. Where no return of income has been furnished:

a) Income assessed is greater than the maximum amount not chargeable to tax; **[Section 270A(2)(b)]**
b) Deemed total income assessed as per section 115JB or 115JC of the Act is greater than the maximum amount not chargeable to tax. **[Section 270A(2)(e)]**

❖ The computation of under-reported income in respect of aforesaid cases shall be made as under:

A. Where return of income has been furnished:

a) The excess of income assessed over the income determined under section 143(1)(a) of the Act **[Section 270A(3)(i)(a)]**

Rationalization of penalty provisions relating to under-reported income

B. Where no return of income has been furnished:

a) In case of company, firm or local authority – the amount of income assessed; **[Section 270A(3)(i)(b)(A)]**

b) In case of any other person – the excess of income assessed over the maximum amount not chargeable to tax. **[Section 270A(3)(i)(b)(B)]**

❖ The aforesaid existing provision does not cover a situation where the assessee has furnished return for the first time under section 148. Accordingly, assessment of such return is presently outside the ambit of levy of penalty under section 270A of the Act

Rationalization of penalty provisions relating to under-reported income

- It is proposed to amend section 270A of the Act so as to replace the words “no return of income has been furnished” at every place where they occur, with the words “no return of income has been furnished or where return has been furnished for the first time under section 148”.

- As a result, the proposed amendment seeks to consider the entire income assessed after filing to return of income under section 148 as under-reported income, without any relief of income declared in such return.

- The defence of penalty on such under-reported income is, however, subject to protection available under sub-section (6) of 270A of the Act.

- Since the amendment seeks to plug lacunae in law, same has been given retrospective effect w.r.e.f. 01.04.2017.

Rationalization of penalty provisions relating to under-reported income

Comments/Observations

- The proposed amendment under section 270A will be in contrast to the erstwhile penal provisions contained in section 271(1)(c) of the Act, where return filed under section 148 was not automatically amenable to penalty under that section. (Refer, **CIT v. Suresh Chandra Mittal: 251 ITR 9 (SC) and CIT v. Rajiv Garg: 313 ITR 256 (P&H)**
- The erstwhile provisions under Explanation 3 to section 271(1)(c) provided that the assessee would be deemed to have concealed his particulars of income where neither return has been furnished under section 139 nor any notice has been issued under sections 142(1)/148 till the expiry of period prescribed for completion of assessment under section 153(1), notwithstanding that return has been furnished for the first time in pursuance to notice under section 148 of the Act issued thereafter.
- Thus, the erstwhile provision covered only those cases where return was filed for the first time in pursuance to notice issued under section 148 after expiry of period of completion of assessment whereas the existing provision of section 270A were silent on imposition of penalty in cases where return was filed for the first time under section 148 of the Act. The proposed amendment in section 270A is much broader than the provisions of section 271(1)(c) inasmuch as the same would cover cases where return has been filed for the first time in response to notice issued under section 148 of the Act, even where such notice has been issued within the time limit prescribed for completion of assessment.

Rationalization of prosecution provisions relating to section 276CC

[Clause 65] **(w.e.f. 01.04.2020)**

- Section 276CC of the Act deals with launching of prosecution proceedings on failure to furnish return of income within the time limit stipulated under the Act.

- Sub-clause (b) of clause (ii) of proviso to section 276CC of the Act provides immunity from prosecution proceedings in case of failure to furnish return of income within the due date, if the tax payable by a person (not being a company) on regular assessment does not exceed Rs.3,000/-.

- The existing provision provides for taking credit of TDS, advance tax while determining the tax liability for claiming immunity from prosecution but not other prepaid taxes such as self assessment tax or tax collected at source ('TCS')

Rationalization of prosecution provisions relating to section 276CC

- In accordance with the legislative intent, it is proposed to amend the aforesaid provision to specifically provide for credit of self assessment tax, if any, paid before the expiry of assessment year and TCS for determining tax liability.

- Further, the existing threshold limit of tax payable for claiming immunity from prosecution has been increased from Rs.3000/- to Rs.10,000/-.

Comments/Observations

- Immunity provision not applicable to a Company
- Benefit for credit of self assessment tax only if paid before the expiry of assessment year and not later.
- Considering that the aforesaid amendment seeks to clarify the legislative intent , whether the aforesaid amendment can be applied retrospectively? [Refer: **CIT v. Alom Extrusions Ltd.: 319 ITR 306 (SC) and Allied Motors (P.) Ltd. v. CIT: 224 ITR 677 (SC)]**

Others

Rationalization of the provisions relating to Securities Transaction Tax ('STT') in respect of sale of option in securities, where option is exercised

[Clause 193] **(w.e.f. 01.09.2019)**

- STT was introduced vide Finance Act (No. 2), 2004.
- Presently section 99 r.w.s 98 of the Finance Act (No.2), 2004 provides that purchaser of an option in securities, where option is exercised, shall be subject to STT @ 0.125 percent of settlement price.

Rationalization of the provisions relating to Securities Transaction Tax ('STT') in respect of sale of option in securities, where option is exercised

- It is proposed to amend the said section so as to provide for levy of STT on aforesaid transaction at intrinsic value, i.e., difference between strike price (i.e., the price at which option was bought) and the settlement price (i.e., the price on the day of settlement).

- **Illustration -** If a person exercises an option to purchase 500 shares of Reliance Industries Ltd., at a strike price of Rs.1300 per share, which is settled at price of Rs.1320 per share on the date of settlement, the purchaser shall only be liable to pay STT on the intrinsic value of Rs.20 (Rs.1320 – Rs.1300).

- Under the proposed amendment, STT of Rs. 12.75 per lot [i.e. (1320-1300) x 500 x 0.125%] would be payable as against the STT of Rs. 825 per lot (i.e. 1320 x 500 x 0.125%) payable under the existing provisions which was absurd and against the legislative intent.

Rationalisation of provisions relating to claim of refund

[Clause 55] **(w.e.f. 01.09.2019)**

- Section 239 provides that every claim of refund under Chapter XIX of the Act shall be made in the prescribed form and verified in the prescribed manner. As per Rule 41 of the Rules, claim of refund shall be made in Form No. 30 and shall be accompanied by a return in the form prescribed under section 139 of the Act unless the same has already been filed before the assessing officer. .

- Sub-section (2) of section 239 of the Act provides limitation of one year from the end of the assessment year for making claim of refund pertaining to such assessment year.

Rationalisation of provisions relating to claim of refund

- It is proposed to amend the said section to provide that every claim for refund under Chapter XIX of the Act shall be made by furnishing return in accordance with provisions of section 139 of the Act. It is further proposed to omit sub-section (2) of section 239 of the Act which provides limitation for claiming refund.

Comments/Observations

- Filing of return under section 139 has been made mandatory for claiming refund.

- Considering time limit to file such claim has been removed, it is not clear, whether limitation to file belated/revised return under section 139 shall be applicable for such claim of refund under section 239 of the Act.

Rationalisation of provisions relating to claim of refund

- If such limitation is to be read in, then where return was already filed, subsequent enhancement of the claim of refunds on account of fresh TDS certificates/credit of taxes under section 90, etc., could be claimed through resort to section 155(14)/(14A) of the Act, within the time limits prescribed therein.

- Where return is selected for scrutiny, legitimate claim of refund, though not claimed in the return of income can be claimed during the course of assessment/appellate proceedings by taking recourse of Article 265 of the Constitution of India and CBDT Circular No.14 (XL-35) dated 11.04.1955. (Refer, **CIT vs Mahalaxmi Sugar Mills Co Ltd : 160 ITR 920 (SC), CIT vs Simon Carves Ltd : 105 ITR 212 (SC), Anchor Pressings (P) Ltd vs CIT and Ors : 161 ITR 159 (SC)**

Recovery of Tax pursuant to agreements with foreign countries

[Clause 51] **(w.e.f. 01.09.2019)**

- Section 228A of the Act, *inter alia*, provides that where tax is to be recovered by Government of one country corresponding to law in force in that country, the Government of foreign country may send to CBDT a certificate for recovery of any tax due under such corresponding law from a person having any property in India, then the Board may, on receipt of such certificate, forward it to Tax Recovery Officer (TRO) within whose jurisdiction such property is situated for recovery of tax in pursuance of agreement with such foreign country.

- Likewise, if Indian taxpayer has property in foreign country, the TRO may send a certificate to the Board certifying the amount of tax due from the taxpayer and thereupon, the Board will take action for recovery of such dues as per the terms of the agreement with foreign country.

Recovery of Tax pursuant to agreements with foreign countries (contd.)

[Clause 51] **(w.e.f. 01.09.2019)**

- In order to rationalise the provisions for recovery of tax, in cases where exact details of defaulter is not known, it is proposed to amend sub-section (1) of said section to provide for tax recovery from a person resident in India, where details of property of the person(s) are not available, from the property in India.
- Similarly, sub-section (2) is proposed to be amended to provide that TRO may seek assistance by forwarding a certificate to the Board for recovering tax from person resident in foreign country, where details of property are not available, from the property outside India.

Recovery of Tax pursuant to agreements with foreign countries (contd.)

[Clause 51] **(w.e.f. 01.09.2019)**

- Specific provisions for assistance in collection/ recovery of tax are also incorporated in DTAA's providing that the Contracting States shall provide assistance to each other for collection/ recovery of taxes as well as interest and penalties relating thereto provided reasonable steps are taken by the country seeking such assistance. [refer South Africa, UK, Sweden, Kenya, etc]

Extension of time limit for sale of attached property in Second Schedule of the Act

[Clause 68] **(w.e.f. 01.09.2019)**

- Part III of Second Schedule of the Act provides for attachment and sale of immovable property as a procedural measure for recovery of tax.
- Currently, Rule 68B of said Schedule provides that no sale of immovable property attached towards recovery of tax, penalty, etc. shall be made after expiry of three years from end of financial year in which the order resulting in demand of tax, penalty, etc. becomes final under section 245I of the Act or as per Chapter XX (Appeals and Revision).
- To safeguard the interests of the revenue, it is proposed to enhance the period of limitation for sale of attached property from 3 years to 7 years.
- It is further proposed to insert a new proviso in said sub-rule to provide that the Board may, for reasons recorded in writing, extend the aforesaid period of limitation by further period of 3 years

THANK YOU

New Delhi
1st, 9th & 11th Floor
Mohan Dev Building
13, Tolstoy Marg
New Delhi-110001
Tel: 91 11 42492525
Fax: 91 11 23320484
E-mail: delhi@vaishlaw.com

Mumbai
106 Peninsula Centre
Dr. S.S. Rao Road,
Parel
Mumbai-400012
Tel: 91 22 42134101
Fax: 91 22 42134102
E-mail: mumbai@vaishlaw.com

Bengaluru
105-106, Raheja Chambers, #12,
Museum Rd, Shanthala Nagar,
Ashok Nagar,
Bengaluru, Karnataka 560001
Tel: 91 80 40903588-89
Fax: 91 80 40903584
E-mail: bangalore@vaishlaw.com

VAISH ASSOCIATES ADVOCATES ESTD. 1971

Corporate, Tax and Business Advisory Law Firm