BUDGET 2019

Analysis of
the Provisions of
The Finance Bill, 2019

Dear Readers,

"Karya purusha karena lakshyam sampadyate"

Meaning with determined human efforts, the task will surely be completed

The Finance Minister Nirmala Sitharaman presented her maiden budget in Modi 2.0 Government in Lok Sabha on July 05, 2019. While the global economy is battling with strong headwinds, India's economy is on the path to emerging as one of the fastest growing economies in the world. In its preceding term, the Government showed strong resolve by introducing path-breaking initiatives such as GST, along with several others such as 'Make in India', 'Digital India' and 'Startup India'. This Budget has closely watched to understand the Government's directional framework for the next five years which is guided by the dictum of "blue sky thinking" and making India a $5 trillion economy by 2024-25. The FM's speech aimed at Vision for the decade to be achieved by Grameen Bharat (Rural India), Shahree Bharat (Urban India), Nari Tu Narayani (Women), Youth, Ease of Living and India's Soft Power.

The Budget announced major policy measures to boost economic growth and introduced amendments to taxation laws to achieve the Governments vision for New India 2022. The budget kept the income tax slab rates unchanged but announced a slew of new income tax proposals that could impact many taxpayers. The Aadhar and PAN have been made interchangeable, a scheme of faceless assessment in electronic mode involving no human interface to be launched in a phased manner, increased surcharge significantly for the High Net Worth Individuals (HNIs), corporate tax with turnover of up to ₹400 crore slashed to 25 per cent from a current rate of 30 per cent.

The budget focuses on supporting the needy farmers, economically less privileged, and workers in the unorganised sector, while continuing the Government of India's push towards better physical and social infrastructure. To meet various social welfare objectives related to inclusive growth and financial inclusion, the budget proposes to create a social stock exchange for listing social enterprises. Also, under the banking reform, proposal for strengthening the regulatory authority of Reserve Bank of India over NBFCs were also placed, structural reforms in indirect taxation, bankruptcy and real estate to be carried out, the regulation of housing finance companies (HFCs) moved from the National Housing Bank (NHB) to the Reserve Bank of India (RBI).

In this publication, we discuss in detail the tax proposals of the Finance (No.1) Act, 2019 and Finance (No. 2) Bill, 2019 and the recent changes that have come up in the Indirect Taxes. We are grateful for the efforts of the entire team who have helped in bringing out this publication.

Contents

A. DIRECT TAX PROPOSALS

I. RATES OF INCOME TAX

1. Income Tax Rates (For Assessment Year 2020-21)

The tax structure can be summarized as below:

1.1 Individuals (Resident Individuals), HUF, AOP, BOP and AJP-

- Other than Senior Citizen and Super Senior Citizen

Upto Rs. 2,50,000	NIL
Rs. 2,50,001 to 5,00,000	5 per cent
Rs. 5,00,001 to 10,00,000	20 per cent
Above Rs. 10,00,000	30 per cent

- Senior Citizen (60 years or more but below the age of 80 years)

UptoRs. 3,00,000	NIL
Rs. 3,00,001 to 5,00,000	5 per cent
Rs. 5,00,001 to 10,00,000	20 per cent
Above Rs. 10,00,000	30 per cent

- Super Senior Citizen (80 years and above)

UptoRs. 5,00,000	NIL
Rs. 5,00,001 to 10,00,000	20 per cent
Above Rs. 10,00,000	30 per cent

- Surcharge: The amount of Income-Tax computed as above, shall be increased by:
  - Surcharge @ 10% of such Income-Tax if total income > Rs.50 Lacs < Rs.1 Crore.
  - Surcharge @ 15% of such Income-Tax if total income >Rs.1 Crore < Rs. 2 Crore.
  - Surcharge @ 25% of such Income-Tax if total income >Rs. 2 Crore < Rs. 5 Crore
  - Surcharge @ 37% of such Income-Tax if total income >Rs. 5 Crores

- Cess: "Education Cess on income-tax" and "Secondary and Higher Education Cess on income-tax" has been discontinued. However, a new cess, by the name of "Health and Education Cess" has been levied at the rate of four per cent on the amount of tax computed, inclusive of surcharge (wherever applicable), in all cases. No marginal relief shall be available in respect of such cess.

1.2 Firms: Tax rate 30%. Cess @ 4%, Surcharge @ 12% if Taxable Income exceeds Rs. 1 Crore.

1.3 Domestic Company: Tax rate 30%. Cess @ 4% on tax.

Taxable Income	Surcharge
Up to Rs. 1 crore	NIL
>Rs. 1 crore<Rs. 10 Crores	7 per cent
Rs. 10 Crores or above	12 per cent

1.4 Foreign Company: Tax rate 40%. Cess @ 4% on tax

Taxable Income	Surcharge
UptoRs. 1 crore	NIL
>Rs. 1 crore<Rs. 10 Crores	2 per cent
Rs. 10 Crores or above	5 per cent

- Marginal Relief on Surcharge:
  - In case of Individuals/HUF/ AOP/ BOI/ AJP, the amount payable as Income Tax and Surcharge on Total Income exceeding Rs 50 Lacs/ Rs. 1 Crore/ Rs. 2 Crore/ Rs. 5 Crore as the case may be shall not exceed the tax payable on Total Income of Rs. 50 Lacs/ Rs. 1 Crore/ Rs. 2 Crore/ Rs. 5 Crore by more than the amount of Income that exceeds Rs. 50 Lacs/ Rs. 1 Crore/ Rs. 2 Crore/ Rs. 5 Crore.
  - Similarly, in the case of certain companies, the amount payable as Income Tax and Surcharge on Total Income exceeding Rs 1 Crore (or Rs. 10 Crore) shall not exceed the tax payable on Total Income of exceeding Rs. 1 Crore (or Rs. 10 Crore) by more than the amount of Income that exceeds Rs. 1 Crore (or Rs. 10 Crore).

1.5 Tax Rates for Certain domestic Companies:

In case of domestic company, the rate of income-tax shall be 25 per cent (plus surcharge and cess) of the total income if the total turnover or gross receipts of the previous year 2017-18 does not exceed four hundred Crore rupees.

II. INCENTIVES

2. Tax Incentive on Affordable Housing

2.1. The Finance Act (1), 2019 made an amendment in section 80IBA of the Act whereby the benefit of the deduction under the said section was extended for a period of one year and the deduction was made available for a project approved by the competent authority after the 1st day of June, 2016, but on or before the 31st day of March, 2020 (earlier 2019).

2.2. The existing provisions of the section 80-IBA of the Act, inter alia, provide that where the gross total income of an assessee includes any profits and gains derived from the business of developing and building housing projects, there shall, subject to certain conditions, be allowed, a deduction of an amount equal to hundred per cent of the profits and gains derived from such business.

2.3. However, the Government's intention to incentivize construction of affordable housing projects has been evident in the recent amendments appearing in GST laws. With a view to align the definition of "affordable housing" under section 80-IBA with the definition under GST Act, it is proposed to amend the said section so as to modify or insert certain conditions regarding the housing project approved on or after 1st day of September, 2019. The modified / newly inserted conditions are as under:

- Metropolitan cities to now include Bengaluru, Chennai, Delhi National Capital Region (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of Mumbai Metropolitan Region) instead of just Chennai, Delhi, Kolkata and Mumbai;
- The assessee shall now be eligible for deduction under the section, in respect of a housing project if a residential unit in the housing project have carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities (this was earlier allowed for 30 square meter and 60 square meter respectively only);
- A new condition is proposed to be inserted whereby the stamp duty value of such residential unit in the housing project shall not exceed forty five lakh rupees;

2.4. These amendments will take effect from 1st April, 2020 and will, accordingly, apply in relation to assessment year 2020-21 and subsequent assessment years.

Comments:

- *The proposed amendment is applicable for projects for which approvals are received between 1st day of September, 2019 and 31st day of March, 2020 only. Old conditions shall apply for projects approved before 1st day of September, 2019.*
- *The addition of Bengaluru, Hyderabad, parts of Delhi NCR and parts of Mumbai Metropolitan Region as metropolitan cities will now restrict the land size of upcoming projects in these cities to a smaller threshold of one thousand square metres as opposed to two thousand square meters available presently. However, no new restriction is proposed to be imposed in size of a residential unit which stays at sixty square metres.*
- *The additional condition of stamp duty value of a unit not exceeding forty five lakhs has flowed directly from GST and is expected to benefit the Revenue as many projects which earlier qualified for deduction on all other grounds shall now move out of the periphery of this deduction consequent to this proposed amendment.*
- *There may be a question pertinent to note here that what shall happen in case some residential units have stamp duty value exceeding forty five lakhs in a project and some have stamp duty value not exceeding forty five lakh rupees? It is noteworthy here that in case of Bengal Ambuja Housing Developments Ltd. v. CIT [IT Appeal No. 1595 (Kol.) of 2005, dated 24-3-2006], the assessee was allowed proportionate deduction for units which satisfied the conditions specified in the then tax laws. Therefore, in the present case also, in case some units satisfy the spelt out conditions and some do not, proportionate deduction may be claimed.*

3. Further tax benefit for owning multiple house property

3.1. With a view to extend the benefit of claiming exemption and deductions under the Act for residential properties acquired or constructed by assessees, the Government has increased the threshold limits of house property held by an assessee from one house property to two house property under section 23(2) and section 54 of the Act.

3.2. The benefit of considering the Annual Value of a house property as Nil under section 23 of the Act has been extended for two residential houses instead of one residential house as per erstwhile provisions.

3.3. The provisions of section 23(5) of the Act have been further amended and the benefit of Nil Annual Value of vacant property held as stock in trade has been extended for a period of two years from the end of the financial year in which the completion certificate is issued. This benefit was available only for a period of one year form the end of the financial year in which the completion certificate is issued as per the erstwhile provisions.

3.4. A proviso to section 54(1) of the Act has been inserted whereby an assessee is allowed to purchase or construct two residential houses in India and claim deduction under section 54 for the combined value of both the residential houses subject to the condition that the amount of capital gains against which such a deduction is proposed to be claimed does not exceed Rs. 2 crores.

3.5. These amendments have taken effect from 1st April, 2020 and will accordingly apply in relation to assessment year 2020-21 and subsequent assessment years.

Comments:

- *The aforesaid amendments have been made by Finance Act (1), 2019.*
- *The amendment in clause 23 shall now enable the assessee to claim two house property as self-occupied and declare the annual value of two house property as Nil.*
- *The deduction of interest paid, if any, on both the above house property shall be allowed to the assessee, however, the aggregate of such deduction shall not exceed an amount of Rs. 200,000/- for both the house property combined.*
- *Real estate developers and builders can now hold completed units as inventory for a period of two years from the end of the financial year in which completion certificate is issued without paying any tax on deemed rental income.*
- *The exemption under section 54 has been allowed for purchase of two new houses subject to a threshold limit of Rs 2 crores and this option can be exercised only once in the entire lifetime of an assessee.*
- *It is evident from the above provisions that the Government is willing to encourage investment in real estate sector by providing additional tax benefits to both the buyers and the sellers of real estate assets.*

4. Incentives to Non-Banking Finance Companies (NBFCs)

4.1. Section 43D inter alia provides that interest income in relation to certain categories of bad or doubtful debts as prescribed received by public financial institutions, scheduled banks, certain cooperative banks, state financial corporation or state industrial investment corporation or certain public companies , shall be chargeable to tax in the previous year in which it is credited to its profit and loss account or actually received, whichever is earlier.

4.2. It is now proposed to amend Section 43D so as to extend the benefit of the provision to deposit-taking NBFCs and Systemically important non deposit-taking NBFCs.

4.3. Section 43B inter alia provides that any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or a State financial corporation or a State industrial investment corporation, in accordance with the terms and conditions of the agreement governing such loan or borrowing, 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.

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

4.5. For the purposes of Section 43D and 43B, the term “deposit taking non-banking financial company” is defined to mean a non-banking financial company which is accepting or holding public deposits and is registered with the Reserve Bank of India under the provisions of the Reserve Bank of India Act, 1934 and “systemically important non-deposit taking non-banking financial company” is defined to mean a non-banking financial company which is not accepting or holding public deposits and having total assets of not less than five hundred crore rupees as per the last audited balance sheet and is registered with the Reserve Bank of India under the provisions of the Reserve Bank of India Act, 1934.

4.6. This amendment will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.

Comments:

- *This amendment will bring deposit-taking and systemically important non-deposit taking NBFCs at par with public financial institutions, scheduled banks, cooperative banks, State financial corporations, State industrial investment corporations and public companies like housing finance companies by allowing deferment of tax on interest on NPAs to the year of their ultimate realisation.*
- *The taxability of interest on NPA has been a subject matter of long drawn litigation. Courts have applied the real income theory for taxability of interest income (Refer E.D. Sassoon & Co. Ltd v. CIT [TS-1-SC-1954-O], Godhra Electricity Co. Ltd v. CIT [1997] 225 ITR 746 (SC), CIT vs. Shoorji Vallabhdas And Co [1962] 46 ITR 144 (SC)), and upheld that where recovery of interest is contingent or uncertain, interest income does not accrue under Section 5 of the Act and hence, cannot be brought to tax. This view*

has been confirmed by the Hon'ble Supreme Court in CIT vs. Vasisth Chay Vyapar Ltd. [2018] 90 taxmann.com 365 (SC).

- *Accrual of interest on NPAs and tax thereon had also been hit by the Income Computation and Disclosure Standards (ICDS) notified w.e.f. Assessment Year 2017-18 wherein ICDS-IV relating to income recognition strongly propagated the view that that interest income "accrues" on time basis and has to be recognised as income and offered to tax on such accrual. However, when the constitutional validity was challenged before the Hon'ble Delhi High Court by The Chamber of Tax Consultants reported in Chamber of Tax Consultants vs. Union of India [2017] 87 taxmann.com 92 (Delhi), it emerged that ICDS cannot override the binding judicial precedents or provisions of the Act or Rules.*
- *The proposed amendment rests the issue of taxability of interest of NPA for deposit-taking NBFCs and systemically important non deposit-taking NBFCs. However this may open a pandora box of litigation for other categories of NBFCs. Thus, for the ongoing litigations, one has to seek shelter under the favourable judicial precedents.*
- *The NBFC regulations prescribed by RBI entails the concept of multiple NBFCs meaning thereby that NBFCs that are part of a corporate group or are floated by a common set of promoters shall not be viewed on a standalone basis and their asset sizes will be aggregated to determine the category of NBFC. Therefore, if the aggregate asset size of the NBFCs in the same group is Rs. 500 crores and above as per the last audited Balance Sheet, every such NBFC in the group shall fall under the category of systemically important non deposit-taking NBFCs. However, under the Income Tax Act there is no concept of multiple NBFCs. To avail the benefit every NBFC has to comply with the definition of systemically important non deposit-taking NBFC on a standalone basis.*
- *The extension of the provisions of Section 43B to the prescribed class of NBFCs will be a very beneficial provision.*

5. Incentives for start-ups – carry forward of losses and exemption u/s 54GB

5.1. Section 79 of the Income Tax Act provides conditions for carry forward and set off of losses in case of a company not being a company in which the public are substantially interested. Clause (a) of this section applies to all such companies, except an eligible start-up as referred to in section 80-IAC, while clause (b) applies only to such eligible start-up.

5.2. Under clause (a), no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, unless on the last day of the previous year, the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred.

5.3. Under clause (b), the loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, if, all the shareholders of such company who held shares carrying voting power on the last day of the year or years 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. The said clause was inserted vide Finance Act, 2017 in order to facilitate ease of doing business and to promote start-up India.

5.4. To further facilitate ease of doing business in the case of an eligible start-up, it is proposed to amend section 79 so as to provide that loss incurred in any year prior to the previous year, in the case of closely held eligible start-up, shall be allowed to be carried forward and set off against the income of the previous year on satisfaction of either of the two conditions stipulated currently at clause (a) or clause (b). For other closely held companies, there would be no change, and loss incurred in any year prior to the previous year shall be carried forward and set off only on satisfaction of condition currently provided at clause (a).

Comments:

- *In effect, post enactment of the above provisions, with effect from the assessment year 2020-21 and thereafter, an eligible start up shall be allowed the benefit of carry forward and set off of losses even if the shareholders of the start-up company decide to dilute their shareholding, for the year in which the loss has taken place, they may do so subject to the condition that their total voting rights in the start-up stay at more than fifty one percent.*
- *To elaborate this further, we may say that the benefit of set off and carry forward of losses is available to a start-up satisfying either of the following two conditions:*
    - *All the shareholders of such company who held shares carrying voting power on the last day of the year or years in which the loss was incurred, continue to hold those shares on the last day of such previous year even if the combined voting rights of such shareholders falls below fifty one percent; or*
    - *The shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred even if they do not hold all those shares which they held in the year of loss.*

5.5. Further, the existing provisions of the section 54GB of the Income-tax Act, inter alia, provide for roll over benefit in respect of capital gain arising from the transfer of a long-term capital asset, being a residential property owned by the eligible assessee. To be able to get benefit of this provision, the assessee is required to utilise the net consideration for subscription in the equity shares of an eligible company before the due date of filing of the return of income.

5.6. The assessee is required to have more than fifty per cent share capital or more than fifty per cent voting rights after the subscription in shares in the eligible company.

5.7. The said section, inter alia, puts restriction on transfer of assets acquired by the company for five years from the date of acquisition.

5.8. Currently the benefit of this section was only available for investment in the equity shares of eligible start-ups and that period also got over on 31st March 2019. Thus, at present no benefit is available for residential property transferred after 31st March 2019.

5.9. In order to incentivise investment in eligible start-ups, it is proposed to amend the said section so as to-

- Extend the sun set date of transfer of residential property for investment in eligible start-ups from 31st March 2019 to 31st March 2021;
- Relax the condition of minimum shareholding of fifty per cent of share capital or voting rights to twenty five per cent;
- Relax the condition restricting transfer of new asset being computer or computer software from the current five years to three years.

Comments:

- *The proposed amendments shall ease the claim of deduction u/s 54GB of the Act and is aimed at relaxing the conditions imposed for availing the said deduction.*
- *Further extension of two years for the purpose of availing the deduction is aimed at continuing promotion of investment in start-ups.*
- *Relaxing the period of restriction on transfer of assets by start-up being computers or computer software to three years from the existing five years is a welcome move as in case of technology driven companies, these transfers take place frequently.*

6. Compliance with the notification of exemption issued under section 56(2)(viib) for start-ups

6.1. The provisions of section 56(2)(viib) of the Act provides for charging of the consideration received for issue of shares by certain companies, where such consideration exceeds the fair market value of such shares. However, the Central Government is empowered to notify that the provisions of this section shall not be applicable to consideration received by a notified company.

6.2. Certain notifications issued under this sub-clause by the Central Government provide for exemption, subject to the fulfilment of certain conditions.

6.3. With a view to ensure compliance to the conditions specified in the notification, it is proposed to provide that in case of failure to comply with the conditions, the consideration received for issue of shares which exceeds the face value of such shares shall be deemed to be the income of the company chargeable to income-tax for the previous year in which the failure to comply with any of the said conditions has taken place.

6.4. These amendments will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.

Comments:

- *The proposed amendment is aimed at combating a situation wherein a start-up company claims the benefit of exemption from section 56(2)(viib) on the basis of the* *notification issued under the said section and subsequently violates such conditions. In such a scenario, the existing provisions of the Act do not prescribe any taxation impact. However, the proposed amendment considers the above lacuna and aims at plugging the loophole.*

- *The Finance Minister in her Budget Speech also specified that the start-ups are currently facing the 'angel tax' issue whereby the issue price of shares issued by them is subject matter of scrutiny by income tax department and tedious litigations are faced by them. To resolve this so-called 'angel tax' issue, the Finance Minister has ensured that 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. This is a welcome move and with this, funds raised by start-ups will not require any kind of scrutiny from the Income Tax Department.*
- *The Finance Minister also proposed that in addition to the above, special administrative arrangements shall be made by Central Board of Direct Taxes (CBDT) for pending assessments of start-ups and 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 his supervisory officer.*
- *The proposed amendment proposes to tax difference of issue price and face value in case of violation of conditions and corresponding taxability under this section. However, in case the fair market value of the equity shares of the start-up company on the date of issue of shares exceeds the face value, then taxing the difference between such fair market value and issue price seems to have been a more logical proposition instead of taxing the difference between the face value and the issue price as proposed herein. Litigations on this ground may follow.*

7. Tax incentive for electric vehicles

7.1. In order to improve environment and to reduce vehicular pollution, it is proposed to insert a new section 80EEB in the Act to provide deduction in computing the total income of an individual, of the amount of interest payable on loan taken by the individual from any financial institution for the purpose of purchase of an electric vehicle. "Electric vehicle" has been defined to mean a vehicle which is powered exclusively by an electric motor whose traction energy is supplied exclusively by traction battery installed in the vehicle and has such electric regenerative braking system, which during braking provides for the conversion of vehicle kinetic energy into electrical energy.

7.2. The deduction shall not exceed one lakh and fifty thousand rupees and shall be subject to the condition that the loan has been sanctioned by the financial institution during the period beginning on the 1st day of April, 2019 and ending on the 31st day of March, 2023. No further deduction shall be allowed in respect of such interest under any other provision of the Act for the same or any other assessment year.

7.3. This amendment will take effect from 1st April, 2020 and will, accordingly apply in relation to the assessment year 2020-21 and subsequent assessment years.

Comments:

- *This is a thoughtful move towards the conservation of the resources and the environment.*

III. ASSESSMENT, RECOVERY AND PENALTY

8. Finance Minister's Speech

8.1. Faceless E- Assessment:

"The existing system of scrutiny assessments in the Income-tax Department involves a high level of personal interaction between the taxpayer and the Department, which leads to certain undesirable practices on the part of tax officials. To eliminate such instances, and to give shape to the vision of the Hon'ble Prime Minister, a scheme of faceless assessment in electronic mode involving no human interface is being launched this year in a phased manner. To start with, such e-assessments shall be carried out in cases requiring verification of certain specified transactions or discrepancies.

Cases selected for scrutiny shall be allocated to assessment units in a random manner and notices shall be issued electronically by a Central Cell, without disclosing the name, designation or location of the Assessing Officer. The Central Cell shall be the single point of contact between the taxpayer and the Department. This new scheme of assessment will represent a paradigm shift in the functioning of the Income Tax Department."

Comments

- *The procedure of e-assessment is already operational in terms of CBDT Instruction No. 01/2018 dated 12/02/2018 read with Instruction No. 03 dated 20/08/2018. As per the aforesaid Instructions, all assessment proceedings have to be conducted electronically excepting where assessment is to be framed under section 153A,153C, 147, 144 and set aside assessments. The manual interface are allowed in following circumstances:*
    - *where manual books of account or original documents have to be examined;*
    - *where Assessing Officer invokes provisions of section 131 of the Act or a notice is issued for carrying out third party enquiries/investigations;*
    - *where examination of witness is required to be made by the concerned assessee or the Department;*
    - *where a show-cause notice contemplating any adverse view is issued by the Assessing Officer and assessee requests for personal hearing to explain the matter.*
- *Though the Finance Minister whispered about Faceless E-Assessment in the Budget Speech, however, the Finance Bill is silent on this issue. It is expected that detailed clarification on the issue will come in the near future.*

8.2. Mega Investment in Sunrise and Advanced Technology Areas:

“In order to boost economic growth and Make in India, the government will launch a scheme to invite global companies through a transparent competitive bidding to set up mega-manufacturing plants in sunrise and advanced technology areas such as Semi-conductor Fabrication (FAB), Solar Photo Voltaic cells, Lithium storage batteries, Solar electric charging infrastructure, Computer Servers, Laptops, etc and provide them investment linked income tax exemptions under section 35 AD of the Income Tax Act, and other indirect tax benefits.”

Comments

- *Though the Finance Minister whispered about proposed amendments in section 35AD, however, these proposals do not find place in Finance Bill. It is expected that suitable amendment may come up while passing the Finance Bill.*

9. Rationalisation of the provisions of section 276CC

9.1. Existing provisions

Under the existing provisions of Section 276CC, if a person willfully fails to furnish in due time the return of income which he is required to furnish, he shall be punishable with imprisonment for a term, as specified therein, with fine.

In case of assessee, being person other than company, such proceedings may be initiated if the tax payable by such person, on the total income determined on regular assessment does not exceed three thousand rupees. The existing provisions do not provide for taking into account tax collected at source and self-assessment tax for the purposes of determining the tax liability.

9.2. Budget proposals

It is proposed to amend the said section so as to make the legislative intention clear and to include the self-assessment tax, if any, paid before the expiry of the assessment year, and tax collected at source for the purpose of determining tax liability.

Further, the existing threshold limit of tax payable under said section has been proposed to be amended so as to increase the threshold of tax payable from the existing rupees three thousand to rupees ten thousand.

These amendments will take effect from 1st April, 2020 and will, accordingly, apply in relation to assessment year 2020-21 and subsequent assessment years.

Comments

- *Amendment was made by the Finance Act 2018 wherein it the existing section 276CC was amended to provide that in case of company, no threshold limit for initiating prosecution provisions shall be allowed. However, the present Finance Bill has allowed threshold limit of Rs. 10,000/- in case of assessee, being a non-company.*

10. Rationalisation of the Black Money (Undisclosed Foreign Income and Assets) and Imposition Act, 2015

10.1. The existing provisions of section 2 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (the Black Money Act) provide inter alia that the "assessee" means a person who is resident in India within the meaning of section 6 of the Income-tax Act.

10.2. It is proposed to widen the scope of Black Money Act so as to provide that the "assessee" shall mean a person being resident in India (as per the earlier definition) in the previous year , or a person being a non-resident or not ordinarily resident in India within the meaning of clause (6) of section 6 of the Income-tax Act, in the previous year, who was resident in India either in the previous year to which the income referred to in Section 4 relates, or in the previous year in which the undisclosed asset located outside India was acquired.

10.3. It is also proposed to provide that the previous year of acquisition of the undisclosed asset located outside India shall be determined without giving effect to the provisions of section 72(c) of the Black Money Act.

10.4. The amendment will take effect retrospectively from 01st July, 2015.

10.5. It is also proposed to amend Section 84 of Black Money Act so as to provide that the provisions of Section 144A of the Income Tax Act shall be applicable to Black Money Act with necessary modifications.

Comments

- *It reiterates the Clarification issued by CBDT vide Circular No 13 of 2015 dated July 6, 2015 wherein it was clarified that a person who is presently a non-resident, but who had acquired an undisclosed foreign asset out of income chargeable to tax in India at the time when he was resident, can file a declaration U/s 59 of the Act. A contradictory view was given by CBDT vide Circular No. 12 of 2015 dated July 2, 2015. In fact, Section 1(2) of the Act, clearly stated that the Act extends to 'whole of India'. Hence it could not have been applied to persons who were not in India and despite divergent views expressed by CBDT, the scope of the Act was restricted to persons resident in India. Therefore, the proposed amendment to enhance the scope of "assessee" to non-residents could be pre-empted from Circular dated July 6, 2015.*
- *Earlier, the undisclosed foreign income/asset of an assessee could be taxed from assessment year 2016-17 and onwards. In other words, a person who was a resident prior to A.Y. 2016-17 but had become non-resident or a not ordinarily resident from A.Y. 2016-17 and onwards would not have been subjected to the provisions of the Black Money Act, but with retrospective applicability, scope of the Act has been considerably widened.*

11. Rationalizing the provisions of the Prohibition of Benami Property Transactions Act

11.1. The existing provisions of section 23 of the Prohibition of Benami Property Transactions Act ('the PBPT Act') provide that the Initiating Officer, with the prior approval of the Approving Authority, shall conduct any inquiry or investigation. This power is exercised by the Initiating Officer where no case is pending before him. However, it is not expressly provided in the PBPT Act that the prior approval of Approving Authority shall not be required where the Initiating Officer has already initiated proceedings by issuing notice under section 24(1).

11.2. In order to clarify that no prior approval of the Approving Authority would be required in cases where notice under section 24(1) has been issued, it is proposed to suitably amend the provisions of section 23 of the PBPT Act.

11.3. This amendment will take effect retrospectively from 1st November, 2016.

11.4. Further, section 24(3) of the PBPT Act provides for attachment of property for a period of ninety days from the date of issue of notice under section 24(1) of the PBPT Act.Section24(4) provides for passing of order within ninety days from the date of issuing notice under section 24(1).

In order to rationalize the aforesaid provisions, it is proposed to amend the section 24 so as to provide that the period of ninety days in respect of provisional attachment of the property under section 24(3) and passing of order under section 24(4) shall be reckoned from the end of the month in which the notice under section 24(1) is issued.

11.5. This amendment will take effect from 1st day of September, 2019.

11.6. The existing provisions of section 24(4) of the PBPT Act provide for passing of order by the Initiating Officer, of section 24(5) provide for making of reference by the Initiating Officer and of section 26(7) provide for passing of order by the Adjudicating Authority. However, no exclusion is provided for the period during which the proceedings are stayed by the Court. In order to provide for the exclusion and adequate time to pass the order or make the reference, it is proposed to suitably amend the provisions of sections 24 and 26.

11.7. This amendment will take effect from 1st September, 2019.

11.8. With a view to ensure compliance with the summons issued and information required to be furnished under the PBPT Act, it is proposed to insert a new section 54A in the PBPT Act so as to provide for levy of penalty of rupees twenty five thousand for failure to comply with the summons issued or to furnish information under section 19 or section 21 respectively of the PBPT Act.

11.9. This amendment will take effect from 1st September, 2019.

11.10. With a view to enable admissibility of certified copies of records or other documents in the custody of the authority as evidence in any proceeding under the PBPT Act, it is proposed to insert a new section 54B in the said Act so as to provide that entries in the records or other documents in the custody of an authority shall be admitted in evidence in any proceedings for the prosecution of any person for an offence under the PBPT Act.

11.11. This amendment will take effect from 1st September, 2019.

11.12. The existing provisions of the section 55 of the PBPT Act provide that no prosecution shall be instituted against any person in respect of any offence under the said Act without the previous sanction of the Board. With a view to rationalise the provisions, it is proposed to amend the said section so as to provide that no prosecution shall be instituted against any person in respect of any offence under the said Act without the previous sanction of the competent authority.

11.13. This amendment will take effect from 1st September, 2019.

Comments

- *As mentioned in the Explanatory Memorandum, most of the aforesaid proposals are to rationalize the provisions of the Act. However, one very important proposal under section 55 of PBPT Act is worth mentioning here. As per the existing provisions, no prosecution can be instituted against any person in respect of any offence under the Act without the previous sanction of the Board. However, w.e.f. 01.09.2019, the prosecution can be instituted with the sanction of the competant authority. A new Explanation is proposed to be inserted in section 55 of PBPT Act, wherein competent authority means a Commissioner, a Director, a PCIT or PDIT.*
- *Another important amendment is penalty of Rs. 25,000/- for non-compliance of summons under section 19 or 21 of PBPT Act*
- *The proposal to increase the limit from ten to fourteen per cent of contribution made is applicable only when the contribution is made by the Central Government to the account*

12. Amendment in penalty provisions relating to under-reported income u/s 270A

12.1. Existing provisions

Section 270A contains provisions relating to penalty for under-reporting and misreporting of income. These penalty provisions are applicable from AY 2017-18 (the assessment of which is time barred in December 2019). Thus, these penalty provisions would be initiated / levied for the first time during the ongoing assessment proceedings. These section do not specifically contain the mechanism for determining under-reporting of income and quantum of penalty to be levied in the case where the person has under-reported income and furnished the return of income for the first time under section 148 of the Act.

12.2. Budget proposals

In order to provide for manner of computing the quantum of penalty in a case where the person has under-reported income and furnished his return for the first time under section 148, it is proposed to suitably amend the provisions of section 270A.

12.3. These amendments will take effect retrospectively from 1st April, 2017 and will accordingly, apply in relation to assessment year 2017-2018 and subsequent assessment years.

Comments

- *As the readers may be aware, the Finance Act 2016 has courageously taken the challenge to displace on of the frequently litigated legal provisions viz section 271(1)(c)* *dealing with penalty which had plethora of amendments by way of appending Explanations in addition to conflicting interpretations at various point of time. Any assessee who has handled assessment proceedings would confirm that the proposal to levy penalty u/s 271(1)(c) was a regular feature, though in most cases, the appellate forum used to delete this penalty. Now this good old section has been given burial and in its place a new section 270A/270AA has been made applicable from AY 2017-18 onwards*

- *The amendment in the present Finance Bill seems to be clarificatory in nature and is only intended to cover proceedings under section 148 where the return has been furnished for the first time*

13. Enhancing time limitation for sale of attached property under rule 68B of the Second Schedule of the Act

13.1. The existing provisions of rule 68B of the Second Schedule of the Act provide that no sale of immovable property attached towards the recovery of tax, penalty etc. shall be made after the expiry of three years from the end of the financial year in which the order in consequence of which any tax, penalty etc. becomes final.

13.2. In order to protect the interest of the revenue, especially in those cases where demand has been crystallised on conclusion of the proceedings, it is proposed to amend the aforesaid sub-rule so as to extend the period of limitation from three years to seven years

13.3. In order to ensure that the limitation of time period for sale of attached property may not be an impediment in recovery of tax dues and may not lead to permanent loss of revenue to the exchequer, it is further proposed to insert a new proviso in the said sub-rule so as to provide that the Board may, for reasons to be recorded in writing, extend the aforesaid period of limitation by a further period of three years.

13.4. These amendments will take effect from 1st September, 2019.

Comments

- *Rule 68 earlier stated that if a property attached by the Tax Recovery Officer is not sold within a time period of three years from the end of the financial year in which the order demanding tax and penalty becomes final then the attachment is deemed to have been vacated and the property shall return back to the owner.*
- *However to protect the interest of department, such time limit has been increased to seven years from the end of the financial year in which the order demanding tax and penalty becomes final. Further even if the property so attached is not sold within the time frame of seven years then a further extension of three years may be taken to sell that property subsequent to approval from the Board.*

14. Rationalization of provisions relating to claim of refund.

14.1. <u>Existing provisions</u>

The existing provisions of section 239 of the Act provide inter alia that every claim of refund under Chapter XIX of the Act shall be made in Form No. 30 along with the return u/s 139 of the Act and where any part of the total income of a person consist of dividends or any other income on which TDS has been deducted u/s192 to 194, 194A and section 195, the claim of refund shall be accompanied by TDS certificates.

14.2. Budget proposals

In order to simplify the procedure for claim of refund, it is proposed to amend the said section so as to provide that every claim for refund under Chapter XIX of the Act shall be made by furnishing return in accordance with the provisions of section 139 of the Act.

This amendment will take effect from 1st September, 2019.

Comments

- *During the period of furnishing of paper return, there was requirement to claim refund in Form No. 30 and this form was usually submitted with the return. However, ever since, electronic return became applicable, this form could not be submitted electronically and was not even asked by the department. The proposed is seems to be just rationalise the already existing procedure being followed by the department.*

IV. TAX COMPLIANCE

15. Mandatory furnishing of return of income by certain persons

15.1. Under the existing provisions of Section 139(1), a person, other than a company or a firm, is required to furnish the return of income only if his/its total income exceeds the maximum amount not chargeable to tax.

15.2. The existing provisions further provide that individuals, HUF, AOP, BOI, AJP where their total income, without giving effect to the provisions of section 10(38) or section 10A or section 10B or section 10BA or Chapter VI-A exceeds the maximum amount not chargeable to tax, are liable to furnish a return of their income.

15.3. It is now proposed to amend Section 139(1) to mandate filing of returns by persons other than a company or a firm whose income who is not required to furnish a return under the existing Section 139(1), and who during the previous year—

(i) has deposited an amount or aggregate of the amounts exceeding one crore rupees in one or more current accounts maintained with a banking company or a co-operative bank; or

(ii) has incurred expenditure of an amount or aggregate of the amounts exceeding two lakh rupees for himself or any other person for travel to a foreign country; or

(iii) has incurred expenditure of an amount or aggregate of the amounts exceeding one lakh rupees towards consumption of electricity; or

(iv) fulfils such other conditions as may be prescribed, 15.4. It is further proposed that individuals, HUF, AOP, BOI, AJP where their total income, without giving effect to the provisions of section 54 or section 54B or section 54D or section 54EC or section 54F or section 54G or section 54GA or section 54GB exceeds the maximum amount not chargeable to tax, shall also furnish a return of their income.

15.5. This amendment will take effect from 1st April, 2020 and will, accordingly apply in relation to the assessment year 2020-21 and subsequent assessment years.

Comments:

- *This amendment seeks to widen the ambit of filing of returns by persons other than company and firm , to cover those persons who are not required to file their return of income by virtue of the total income falling below the maximum amount not chargeable to tax but have entered to certain high value transactions during the previous year. The amendment aims to capture these transactions.*
- *The amendment covers deposit of amount exceeding Rs. 1 crore in one or more current accounts with banks. Deposit in savings bank account is not yet covered.*
- *Persons, other than company and firm, whose total income did not exceed the maximum amount not chargeable to tax by virtue of claiming benefit of exemption on capital gains tax on investments in specified assets will now have to mandatorily furnish return of income.*

16. Inter-changeability of Permanent Account Number (PAN) and Aadhar Number and mandatory quoting and linking of PAN and Aadhar

16.1. Section 139A(1) inter alia provides that every person specified therein, who has not been allotted a PAN, shall apply to the Assessing Officer for the allotment of PAN.

16.2. Section 139A inter alia provides that every person receiving any document relating to a prescribed transaction for which PAN is required to be quoted shall ensure that the Permanent Account Number has been duly quoted in the document.

16.3. It is proposed to amend section 139A by insertion of clause (E) such as to provide that –

a. Every person who is required to furnish or intimate or quote his PAN under the Act, and who, has not been allotted a PAN, but possesses an Aadhar Number, may furnish or intimate or quote his Aadhar Number in lieu of PAN , and such person shall be allotted a PAN in the prescribed manner;
b. Every person who has been allotted a PAN, and who has linked his Aadhar number under section 139AA, may furnish or intimate or quote his Aadhar Number in lieu of PAN.

16.4. It Is proposed that every person entering into such transaction, as may be prescribed, shall quote his permanent account number or Aadhaar number, as the case may be, in the documents pertaining to such transactions and also authenticate such permanent account number or Aadhaar number, in such manner as may be prescribed.

16.5. It is further proposed that every person receiving any document relating to the prescribed transactions shall ensure that the PAN or Aadhar Number, as the case may be, has duly been quoted in such document and also that such PAN or Aadhar Number has been authenticated.

16.6. The process of "authentication" has been defined to mean the process by which the permanent account number or Aadhaar number along with 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.

16.7. Under the existing provisions of Section 272B, if a person who is required to quote his PAN in any document referred to in section 139A, or to intimate such number as required in that section, quotes or intimates a number which is false, and which he either knows or believes to be false or does not believe to be true, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ten thousand rupees.

16.8. It is proposed to amend section 272B to extend the penalty for quoting false Aadhar Number as well. Further, the quantum of penalty has been increased from Rs. 10,000 to Rs. 10,000 for each such default.

16.9. It is further proposed to levy a penalty of Rs. 10,000 for each default-

a. On the person who is required to quote or authenticate PAN or Aadhar Number in documents in accordance with the provisions of Section 139A and fails to do so.
b. on the person who is required to ensure the quoting or authenticating PAN or Aadhar Number and fails to do so.

16.10. It is also proposed to amend section 139AA(2) of the Act so as to provide that if a person fails to intimate the Aadhar Number in the manner as prescribed under that section, the PAN allotted to the person shall be made inoperative.

16.11. These amendments will take effect from 1st September, 2019.

Comments:

- *This is a welcome amendment as assessees who do not possess PAN can now interchangeably use their Aadhar Number.*
- *The objective is also to deepen the tax base and to keep audit trail of high value transactions, such as purchase of foreign currency or withdrawal from banks entered into by persons who do not possess a PAN, thus covering a wider gambit of transactions.*
- *Linking of PAN with Aadhar up to 31st August, 2019 is mandatory so as to prevent the PAN from becoming inoperative.*

17. Widening the scope of Statement of Financial Transactions (SFT) to enable pre-filling of ITRs

17.1. Currently Section 285BA mandates certain reporting entities such as local authority, Registrar, Stock Exchanges, RBI, Depositories, etc. to furnish a statement in respect of specified financial transactions. Under first proviso to Section 285BA(3), CBDT has been given the power to prescribe different values for different reportable transactions for different persons. However, second proviso to section 285BA(3) provides that the value so prescribed shall not be less than Rs. 50,000.

17.2. It is proposed to amend Section 285BA to obligate other entities as may be prescribed for reporting SFT in addition to the present list of reportable entities. Further it is proposed to remove the minimum threshold of Rs. 50,000/- on the value of reportable transactions as prescribed by the Act

17.3. This amendment will take effect from 1st September, 2019.

Comments:

- *The amendment aims to ensure timely and accurate data collection for the purpose of enabling pre-filled ITRs. Besides the existing set of reporting entities, certain other entities who are responsible for registering, or maintaining books of accounts other documents containing the records of specified financial transactions or any reportable account are proposed to be included within the ambit of SFT reporting.*
- *The threshold for specified financial transactions is presently provided under Rule 114E of the Income Tax Rules, 1962. The amendment seeks to remove the minimum threshold limit of Rs. 50,000/ prescribed under the Act for SFT reporting. By virtue of removal of the second proviso to section 285BA(3), the Board now may reduce the value transactions to be reported to even less than Rs. 50,000.*

18. Cancellation of registration of the Trust or Institution

18.1. Section 12AA of the Act prescribes for manner of grating registration in case of trust or institution for the purpose of availing exemption in respect of its income under section 11 of the Act, subject to conditions contained under sections 11, 12, 12AA and 13. Section 12AA also provides for manner of cancellation of said registration. This section provides that cancellation of registration can be on two grounds:-

- the Principal Commissioner or the Commissioner is satisfied that activities of the exempt entity are not genuine or are not being carried out in accordance with its objects; and
- it is noticed that the activities of the exempt entity are being carried out in a manner that either whole or any part of its income would cease to be exempt .

18.2. In order to ensure that the trust or institution do not deviate from their objects, it is proposed to amend section 12AA of the Income-tax Act, so as to provide that,-

- at the time of granting the registration to a trust or institution, the Principal Commissioner or the Commissioner shall, *inter alia*, also satisfy himself about the compliance of the trust or institution to requirements of any other law which is material for the purpose of achieving its objects;

- where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A and subsequently it is noticed that the trust or institution has violated requirements of any other law which was material for the purpose of achieving its objects, and the order, direction or decree, by whatever name called, holding that such violation has occurred, has either not been disputed or has attained finality, the Principal Commissioner or Commissioner may, by an order in writing, cancel the registration of such trust or institution after affording a reasonable opportunity of being heard.

18.3. These amendments shall be effective from 1st September, 2019.

Comments

- *Previously the section stated that the Principal Commissioner or Commissioner on receiving an application for the registration of a trust / institution made under section 12A, shall call for necessary documents or information which he thinks is necessary to satisfy himself about the geniuses of the activities of the trust /institution. After satisfying himself he may pass an order in writing registering the trust or refusing to register the trust after providing reasonable opportunity of being heard. Further cancellation of registry of trust / institution may take place if it is noticed at a later stage that the activities of the trust / institution is not genuine or not in accordance with the objectives of the trust.*

- *The amended section under Finance Bill 2019 further elaborates the above section whereby the Principal Commissioner or Commissioner needs to verify all compliances required under any law for the time being which is material for the trust / institution to achieve its objectives, apart from verifying the genuineness of the activities of the trust /institution.*

- *Cancellation may be done when the activities of the trust / institution is not genuine or not in accordance with the objects of the trust. The scope of cancellation is further increased when the trust / institution has violated requirements of any other law which is material for the purpose of achieving its objects.*

- *The idea behind amending the above provision is to stop the trusts / institutions to deviate from its prime objective against which the registration was provided and also abide to all laws which it needs to follow to sustain its identity as a trust / institution and to achieve its objects.*

- *For instance a trust does abide by its objective but fails to abide by allied laws namely The Indian Trust's Act 1882, State Public Trusts Act or any other law then the trust maybe liable for cancellation after being provided reasonable opportunity of being heard.*

19. Provision of credit of relief provided under section 89

19.1. Section 89 of the Income-tax Act contains provisions for providing tax relief where salary, etc. is paid in arrears or in advance.

19.2. The existing provisions of section 140A, section 143, section 234A, section 234B and section 234C contain provisions relating to computation of tax liability after allowing credit for prepaid taxes and certain admissible reliefs, credits etc. However, the relief under section 89 is not specifically mentioned in these sections, which is resulting into genuine hardship in the case of taxpayers who are eligible for this relief.

19.3. In view of the above, it is proposed to amend section 140A, section 143, section 234A, section 234B and section 234C so as to provide that computation of tax liability shall be made after allowing relief under section 89.

19.4. These amendments will take effect retrospectively from 1st April, 2007 and will, accordingly, apply in relation to the assessment year 2007-08 and subsequent assessment years.

Comments

- *Section 89 arises in cases where a salaried person receives salary or profit in lieu of salary (namely compensation on retirement, bonus, salary increment etc.), being paid in arrears or in advance in any one financial year for more than twelve months.*

- *In such cases tax for the current year is calculated taking into effect relief provided under section 89 of the Income Tax Act 1961. The calculation is computed as follows:*

  Step 1: Calculate tax for the current year (including cess and education cess) on income including salary in arrears/advance/compensations.

  Step 2: Calculate tax for the current year (including cess and education cess) on income excluding salary in arrears compensations.

  Step 3: Step 1 minus Step 2

  Step 4: Calculate tax for the year in which salary ought to have been received (including cess and education cess) on income including salary in arrears compensations.

  Step 5 : Calculate tax for the year in which salary/compensation ought have been received (including cess and education cess) on income excluding salary in arrears

  Step 6 : Step 4 minus Step 5

  Step 7 : Relief u/s 89 = Step 3 minus Step 6 (if positive, otherwise nil).

- *Earlier section 140A, section 143, section 234A, section 234B and section 234C did not contain any specific mention on the relief provided under section 89 while computing the tax liability and interest thereon. However the same has been inserted in all the above mentioned sections to remove ambiguities arising while computing tax liability with rebate under section 89.*

V. INTERNATIONAL TAXATION AND TRANSFER PRICING

20. Deemed accrual of gift made to a person outside India

20.1. Under the existing provisions of the Act, gifts made by persons being residents in India to persons outside India are claimed to non-taxable in India as it was contended that the said income does not accrue or arise in India.

20.2. The Finance (No. 2) Bill 2019 proposes to insert clause (viii) to Section 9 by virtue of which income of the nature referred to in Section 2(24)(xviia), arising from any sum of money paid, or any property situated in India, transferred by a person resident in India to a person outside India shall be deemed to accrue or arise in India.

An understanding of the proposal in brief:

- What property is sought to be covered?

  Sum of money whether situated in India or outside India;

  Property movable & immovable situated in India;

- Donor- whether physically present in India or physically present outside India;

- Donee- present outside India at the time of transaction

20.3. The Memorandum to the Bill provides that the existing provision for exempting gifts as provided in proviso to section 56 (2) (x) will continue to apply for such gifts deemed to accrue or arise in India. In a treaty situation, the relevant article of applicable DTAA shall continue to apply for such gifts as well.

20.4. The amendment will take effect from 1st April 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.

Comments:

- *The text of the clause (viii) as proposed to be introduced merely makes reference to income under Section 2(24)(xviia) - sum of money or value pf property referred to in clause (x) of sub-section (2) of section 56. It is not clear from the drafting of the clause whether the exclusions specified in proviso to section 56(2)(x) shall be available in respect of such gifts. The memorandum however makes an explicit reference by specifying that the gifts as provided in proviso to Section 56(2)(x) [close relatives etc] shall be exempted. This anomaly should be rectified and the exemption to be included in the clause (viii) itself to avoid unnecessary litigation.*

- *In context of the proposed insertion, it is relevant to draw reference to Section 93 of the Income Tax, Act 1961, which was introduced to prevent residents of India from evading the payment of income-tax by transferring their assets to non-residents while enjoying the income, by adopting devious methods. The section is worded in the widest phraseology to prevent evasion of tax. In the circumstances envisaged in this section, even if the income is received by a person who is not liable to be assessed by reason of his not being a resident, the income is deemed to be the income of the transferor and is rendered liable to tax in his hands.*

- *Section 93 is on income arising on transfer of asset and not on transfer of asset, whereas the proposed Section 9(1)(viii) taxes the transfer of asset itself in the hands of the person outside India.*

- *A reading of the clause indicates that there has to be a transfer from a person resident in India to a <u>person outside India</u>. A question arises as to whether a transfer to an account maintained in India by a non-resident will attract the rigours of Section 9(1)(viii).*

- *The proposal talks about gift made by a resident to a non-resident. There is no clarity on a gift made by a non-resident to a non-resident of a property situated in India. Whether the same will be covered under section 9(1)(i) is a question which shall be tested in due course. The insertion of 9(1)(viii) creates an ambiguity to transactions of gifts made between NRs of assets situs of which is in India and will create problems for the Revenue where the taxpayers argue that gift is not a transfer.*
- *The said proposal refers to transfer of property situated in India. Taxability of transfers of property situated outside India and owned by residents are outside the ambit of the said clause. It may also be relevant to mention that FEMA provisions do not allow gifts to other than close relatives, who are covered under the exempted category under section 56(2)(x).*

21. Clarification with regard to power of AO in respect of modified return of income filed in pursuance to signing of APA

21.1. Section 92CC of the Act empowers the CBDT to enter into an APA with any person for determining the ALP or specifying the manner in which ALP is to be determined in relation to an international transaction which is to be entered into by that person. The APA is valid for a period, not exceeding five previous years, as may be specified therein. This section also provides for rollback of the APA for four years. Thus, once the APA is entered into, the ALP of the international transaction, which is subject matter of the APA, would be determined in accordance with such APA.

21.2. In order to give effect to the APA, section 92CD also provides for mechanism, including filing of modified return of income by the taxpayer and manner of completion of assessments by the Assessing Officer having regard to terms of the APA.

21.3. Concerns were raised in cases where assessment or re-assessment has already been completed, before expiry of the time allowed for filing of modified return. due to the use of words “assess or reassess or recompute”, the Assessing Officer may start fresh assessment or reassessment in respect of completed assessments or reassessments of the assessees who have modified their returns of income in accordance with the APA entered into by them, while the intention of the legislature is for Assessing Officer to merely modify the total income consequent to modification of return of income in pursuance to APA.

21.4. It is, therefore, proposed to amend sub-section (3) of section 92CD to clarify that in cases where assessment or reassessment has already been completed and modified return of income has been filed by the tax payer under sub-section (1) of said section, the Assessing Officers shall pass an order modifying the total income of the relevant assessment year determined in such assessment or reassessment, having regard to and in accordance with the APA.

21.5. This amendment will take effect from 1st September 2019.

22. Reducing human intervention in tax administration

22.1. <u>Application under Sections 195(2) and 195(7) for payment made to non-residents</u>

- Under the existing provisions of the Income Tax Act, 1961, as per sub-section (2) of Section 195, if a person who is responsible for paying any sum chargeable under the Act (other than salary) to a non-resident considers that the whole of such sum would not be income chargeable in the case of the recipient, he may 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 under sub-section (1) only on that proportion of the sum which is so chargeable. Currently, the process of making the application is manual and time consuming.

- It is proposed to make the aforesaid application an online process which shall be less time consuming and also enable the department to keep a tab on such payments. Similar amendment is proposed for specified class of persons or cases which fall under the ambit of Section 195(7).

- The amendments will take effect from 1st November'19.

22.2. <u>Electronic filing of statement of transactions on which tax has not been deducted</u>

- Currently, as per provisions of Section 206A, it is required for any banking company or co-operative society or public company responsible for paying interest to a resident, shall prepare and deliver to the prescribed income-tax authority the quarterly returns, in the prescribed form, on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media. It is proposed to enable online filing of such statements.

- It is proposed to make a consequential amendment arising out of amendment made by Finance Act 2019 whereby threshold for TDS on payment of interest by a banking company or co-operative society or public company was raised to forty thousand rupees.

- The amendments will take effect from 1st September'19.

23. Extension of benefit of proviso to sub-section (1) of Section 201 to payments made to non-residents and consequential amendments in Section 40

23.1. Section 201(1) of the Income Tax Act'1961 provides that any person, including the principal officer of a company, who fails to deduct the whole or any part of tax in accordance with the provisions of Chapter XVII-B on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an 'assessee in default' in respect of such tax if such resident has furnished his return of income, has taken into account such sum for computing his income and has paid the tax due on the income declared by him in such return of income. The deductee had to furnish a certificate to this effect from an accountant in prescribed form under the first proviso to sub-section (1) of Section 201.

23.2. The benefit of the said proviso was restricted to payments made to residents. In order to remove this anomaly, it is proposed to extend the benefit of this proviso even in respect of failure to deduct tax on payment to non-residents.

23.3. This amendment will take effect from 1st September'19.

23.4. Further, it is also proposed to amend clause (a) of Section 40 to provide that as per the proviso to sub-section (1) of Section 201, if the assessee is not deemed to be assessee in default, then it shall be deemed that the assessee has deducted and deposited tax in respect of payment made to resident/non-resident and consequently no disallowance would be made U/s 40 of the Act.

23.5. This amendment will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.

Comments

- *The Bill has sought to bring much needed clarity for payments being made to non-residents where tax has not been deducted at source and such payments are not subject to withholding tax by virtue of provisions of Section 201(1). Earlier, the assessee was bound to make an application to the Assessing Officer and wait for his approval even when such payments could be made without deduction of tax at source.*
- *Amendment to Section 40 was required as various assesses were in receipt of intimation U/s 143(1a) wherein additions were proposed on account of non-deduction of tax at source even in cases where Form 26A had been received from deductees as per Rule 31ACB of the Income Tax Rules, 1962. The said matter was also subject matter of much deliberation and verification by Assessing Officer during assessment stage.*

24. Clarification regarding definition of the "accounting year" in section 286 of the Act

24.1. Section 286 of the Income Tax Act is related to furnishing of report in respect of international group. The provisions of the said section, inter alia, provide for specific reporting regime containing revised standards for transfer pricing documentation and a template for country-by-country reporting. It provides that every parent entity or the alternate reporting entity, resident in India, shall, for every reporting accounting year, in respect of the international group of which it is a constituent, furnish a report, to the prescribed authority within a period of twelve months from the end of the said reporting accounting year, in the form and manner as may be prescribed.

24.2. In the existing provision, for the purpose of this section, the meaning of 'accounting year' is defined in Sub-clause (i) of clause (a) of sub-section (9) of the said section as a previous year, in a case where the parent entity or alternate reporting entity is resident in India.

24.3. By the Finance Bill, 2019, it is proposed to amend the said sub-clause so as to provide that the accounting year in case of an alternate reporting entity, resident in India, whose ultimate parent entity is outside India, shall not mean the previous year but an annual accounting period, with respect to which the parent entity of the international group prepares its financial statements under any law for the time being in force or the applicable accounting standards of the country or territory of which such entity is resident.

24.4. This amendment is clarificatory in nature which will remove the unintended anomaly as regards the interpretation of accounting year in case of ARE, resident in India.

24.5. This amendment will take effect retrospectively from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-2018 and subsequent assessment years.

25. Transfer Pricing - Clarification relating to the provisions of secondary adjustment and giving an option to assessee to make one-time payment

25.1. "Secondary Adjustment" means an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustments, thereby removing the imbalance between cash account and actual profit of the assessee.

25.2. The concept of Secondary Adjustment was inserted in the Income tax Act vide Section 92CE by the Finance Act, 2017. Section 92CE provides that where the primary adjustment being the determination of the transfer price is in accordance with the arm's length price resulting in an increase in the income or loss has been made

- Suo moto by the assessee;
- By the AO and accepted by the assessee;
- Determined by APA;
- Made as per safe harbor rules;
- Under mutual agreement procedure;

then the assessee shall make secondary adjustment i.e. an adjustment in its books of accounts and that of its AE to reflect the true allocation of profits as is consistent with the transfer price so determined, thereby eliminating the mismatch between cash account and actual profits.

25.3. The excess amount as is available with the AE owing to the primary adjustments of transfer price is required to be repatriated within time as may be prescribed, failing which such sum shall be treated as an advance to the AE and interest shall be computed thereon.

25.4. The Finance bill proposes to provide much needed clarifications in the provisions relating to secondary adjustment as follows:

- The condition of threshold of ₹1 crore and of primary adjustment made up to assessment year 2016-17 are alternate conditions- this amendment will take effect retrospectively from financial year 2017-18.

- Option given to the assessee to make onetime payment in case of excess money or part thereof is not repatriated on time into India - this amendment will be effective from 1 September 2019.

    - Taxes will be paid 18% plus 12% surcharge on excess money or part thereof in addition to the payment of interest till date of payment of additional tax. The tax so paid is final payment of tax and no corresponding tax credit will be allowed.

    - No deduction shall be allowed under any other provision of the Act in respect of amount on which such additional tax is paid.

- The excess money may be repatriated from any of the associated enterprises of the assessee which is not resident in India - this amendment will take effect retrospectively from Financial year 2017-18

- The secondary adjustment provisions will apply to advance pricing agreements (APAs) signed on or after 1st April, 2017. However, there is no refund of prior taxes- this amendment will take effect retrospectively from Financial year 2017-18.

26. Relaxation in conditions of special taxation regime for offshore funds

26.1. Section 9A of the Income tax Act is related to certain activities not to constitute business connection in India. It provides that in the case of an eligible investment fund, the fund management activity carried out through an eligible fund manager located in India and acting on behalf of such fund shall by itself not constitute business connection in India of the said fund. It further provides that an eligible investment fund shall not be said to be resident in India merely because the eligible fund manager undertaking fund management activities on its behalf is located in India.

26.2. These eligible investment funds which are those offshore funds which collects funds from its members for investing it for their benefits provided conditions prescribed in sub-sections of the said section are fulfilled. The fore-most Sub-section (3) of the said section provides for the conditions to be fulfilled for being an eligible investment fund. These conditions, inter-alia, are related to residence of fund, corpus, size, investor broad basing, investment diversification and payment of remuneration to fund manager at arm's length.

26.3. Clause (j) of the said sub-section provides that the monthly average of the corpus of the fund shall not be less than one hundred crore rupees. The first proviso to said clause further provides that where the fund has been established or incorporated in the previous year, the corpus of fund shall not be less than one hundred crore rupees at the end of such previous year.

26.4. Further, clause (m) of said sub-section provides that 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 arm's length price of the said activity.

26.5. With the Finance Bill, 2019, the said clause (j) and (m) are proposed to provide some more relaxation in these conditions in the following manner –

   a. the corpus of the fund shall not be less than one hundred 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
   b. 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

26.6. These amendments will take effect retrospectively from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment year.

27. Rationalisation of provision relating recovery of tax in pursuance of agreements with foreign countries

27.1. The existing provisions of section 228A of the Act provide inter alia that where an agreement is entered into by the Central Government with the Government of any foreign country for recovery of income-tax under the Income-tax Act and the corresponding law in force in that country and where such foreign country sends a certificate for the recovery of any tax due under such corresponding law from a person having any property in India, the Board, on receipt of such certificate may, forward it to the Tax Recovery Officer within whose jurisdiction such property is situated for the recovery of tax in pursuance of agreement with such foreign country.

27.2. In order to provide assistance in recovery of tax as per treaty obligation with the other country, it is proposed to amend the said section so as to provide for tax recovery where details of property of the persons are not available but the said person is a resident in India or in a foreign country. Thus, the details with respect to property have been done away with for initiation of recovery proceedings.

27.3. These amendments will take effect from 1st September, 2019.

VI. TDS RELATED PROVISIONS

28. Tax Deduction for Interest Paid on loan taken for low cost houses

28.1. In order to provide an impetus to the ‘Housing for all’ objective of the Government and to enable the home buyer to have low-cost funds at his disposal, it is proposed to insert a new section 80EEA in the Act so as to provide a deduction in respect of interest up to one lakh fifty thousand rupees on loan taken for residential house property from any financial institution subject to the following conditions:

28.2. The loan has been sanctioned by a financial institution during the period beginning on the 1st April, 2019 to 31st March 2020.

- The stamp duty value of house property does not exceed forty-five lakh rupees; and
- The assessee does not own any residential house property on the date of sanction of loan.

28.3. It is also proposed that where a deduction under this section is allowed for any interest, deduction shall not be allowed in respect of such interest under any other provisions of the Act for the same or any other assessment year.

28.4. This amendment will take effect from 1st April, 2020 and will accordingly apply in relation to assessment year 2020-21 and subsequent assessment years.

Comments:

- *The proposed insertion has been made with a view to allow additional incentive to purchase of low cost houses by assesses not owning any house as on date.*
- *It is important to consider here that the option of claiming a deduction under section 24(b) and consequent claiming of loss under the head House Property upto Rs.*

200,000/- is still available to an assessee and considering the fact that the proposed amendment allows deduction only if no other deduction has been claimed by the assessee under any other provisions of the Act, one can safely assume that the additional benefit arising out of this section will be restricted to only initial assessment years when the annual interest paid on loan exceeds Rs. 200,000/-. In case the annual interest outgo of an assessee does not exceed Rs. 200,000/-, no additional tax benefit arises as a result of the proposed amendment.

- *Further, when the assessee has the option to either claim deduction under section 24(b) or section 80EEA, it is advisable to claim the deduction under 24(b) first. This is because loss under the house property can be set off against any income and can also be carried forward unlike deduction under chapter VI-A, which can neither be adjusted against capital gains chargeable to tax at special rates nor can be carried forward for future set off.*
- *The threshold limit of forty five lakhs is on the stamp duty value of the property and hence the actual acquisition value is immaterial.*
- *The proposed deduction is only available for loans sanctioned between 1st April, 2019 to 31st March, 2020 and shall not be allowed for loans sanctioned before 1st April, 2019 or after 31st March, 2020.*
- *The proposed deduction is available only if the house purchased by the assessee out of the said loan is the only house that the assessee is owning as on the date of sanction of loan. Hence, any property acquired subsequent to the date of sanction of the said loan shall not affect the right of an assessee to claim deduction under section 80EEA of the Act.*
- *The proposed amendment is similar to section 80EE however, it does not overwrite the provisions of section 80EE. Hence, any assessee claiming deduction under section 80EE can continue to claim the same and shall not be affected as a result of insertion of section 80EEA into the Act.*

29. Tax Deduction at Source (TDS) on payment by Individual/HUF to contractors and professionals

29.1. Under the existing provisions of Section 194C, any person responsible for paying any sum to any resident contractor for contractual work is liable to deduct TDS when such payment exceed the prescribed threshold. However, there is no liability on an individual/HUF to deduct TDS where such sum is paid exclusively for personal purposes. Individuals /HUF are liable to deduct tax at source in a financial year when the total sales/gross receipts or turnover from business/profession exceed the monetary limits specified under clause (a) or clause (b) of Section 44AB during the immediately preceding financial year.

29.2. Under the existing provisions of Section 194J, any person responsible for paying any sum to any resident for professional services is liable to deduct TDS when such payment exceed the prescribed threshold. However, there is no liability on an individual/HUF to deduct TDS where such sum is paid exclusively for personal purposes. Individuals /HUF are liable to deduct tax at source in a financial year when the total sales/gross receipts or turnover from business/profession exceed the monetary limits specified under clause (a) or clause (b) of Section 44AB during the immediately preceding financial year.

29.3. In order to widen the tax base, it is now proposed to insert Section 194M to provide that any person, being an individual or a Hindu undivided family (other than those who are required to deduct income-tax as per the provisions of section 194C or section 194J) responsible for paying any sum to any resident for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract or by way of fees for professional services during the financial year, is liable, at the time of credit of such sum or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct TDS @ 5% on such sum if it exceeds fifty lakh rupees in a financial year.

29.4. This amendment will take effect from 1st September, 2019.

Comments:

- *The proposed amendment is intended to cover:*

  ii. *Payments made for contractual work or professional services for personal purposes by Individual/HUF , and;*

  iii. *Payments made by individuals/ HUF who are not liable to Tax Audit under Section 44AB of the Act in the preceding financial year, for contractual work or professional services whether for personal purposes or otherwise,*

  on such sum if it exceeds fifty lakh rupees in a financial year.

  .
- *Section 194J covers fees for professional services, technical services, remuneration, commission to director of a company, royalty, etc. However, Section 194M covers only fees for professional services.*
- *Section 194M does not cover fee for technical services. Whether a fee is paid for professional service or for technical service may remain an issue for litigation, there being a thin line of difference between the two.*
- *Section 194M provides for deduction of TDS at the time of credit of such sum or at the time of payment in cash or by issue of a cheque or draft or by any other mode, whichever is earlier. However, where maintenance of books of accounts is not mandatory for the individuals and HUF covered under the section, there cannot be any credit of such sum. The point of taxation can only be payment in such cases.*

30. Tax Deduction at Source (TDS) at the time of purchase of immovable property

30.1. Under the existing provisions of Section 194IA relating to deduction of TDS on the transfer of immovable property, any person, being a transferee, responsible for paying to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), is liable to deduct TDS @1% , provided the consideration is fifty lakh rupees or more. However, what constitutes "consideration for transfer of immovable property" was not defined.

30.2. It is proposed to amend Section 194IA to provide for the definition of "consideration for immovable property" to include all charges in 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 the immovable property.

30.3. This amendment will take effect from 1st September, 2019.

Comments:

- *In a transaction of sale of immoveable property, Besides the basic sales price, buyers are contractually liable to make certain payments for rights to amenities such as 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 the immovable property either under the same or different agreement. These charges were not includible in sales consideration for the purpose of deduction of TDS. In order to widen the tax base, these payments are now included.*
- *Perhaps, the intention of the legislature is not to cover refundable "deposits". The charges includible are in the nature of "fees", which is to be construed accordingly.*
- *The term used in the section 194IA is "consideration for transfer of any immovable property" whereas the definition is provided for the term "consideration for immovable property". This is probably a drafting anomaly.*

31. TDS on non exempt portion of life insurance pay-out on net basis.

31.1. Under section 194DA of the Act, a person is obliged to deduct tax at source, if it pays any sum to a resident under a life insurance policy, which is not exempt under sub-section (10D) of section 10. The present requirement is to deduct tax at the rate of one per cent. of such sum at the time of payment. Several concerns have been expressed that deducting tax on gross amount creates difficulties to an assesse who otherwise has to pay tax on net income (i.e after deducting the amount of insurance premium paid by him from the total sum received). From the point of views of tax administration as well, it is preferable to deduct tax on net income so that the income as per TDS return of the deductor can be matched automatically with the return of income filed by the assessee. The person who is paying a sum to a resident under a life insurance policy is aware of the amount of insurance premium paid by the assessee. Hence, it is proposed to provide for tax deduction at source at the rate of five per cent. on income component of the sum paid by the person.

31.2. This amendment shall be effective from 1st September, 2019.

Comments

- *Section 10(10D) includes life insurance of disabled person, Keyman Insurance Scheme, insurance policies issued before 31st March 2012 where premium is more than 20% of the capital sum assured and any insurance policy issued after 1st April 2012 whereby premium payable is more than 10% of the capital sum assured. In all the above cases, the sum received from Insurance Company is exempt and hence no TDS is deducted by the Insurance Company during its payout. However all other insurance policies attract tax and hence TDS needs to be deducted by the insurance Company while paying the assured sum.*
- *The difficulty faced by the assesse was that TDS was being deducted at the rate of one percent on the total sum paid by Insurance Company which turned out to be a huge figure for assesses having marginal income or those not falling under the tax bracket at all. To curb the above difficulty, Budget 2019 says that TDS should be*

deducted only at the rate of five percent on the income portion of the LIC policy rather than deducting on the total assured sum.

32. Exemption of interest income of a non-resident U/s 194LC arising from borrowings by way of issue of Rupee Denominated Bonds

32.1. Under the existing provisions of the Income Tax Act, 1961, a concessional rate of withholding tax @ 5% was mandated on interest paid by Indian companies in respect of monies borrowed in foreign currency from a source outside India, subject to certain conditions. In order to incentivise low cost foreign borrowings, it was announced vide press release dated 17th September 2018 that interest payable by Indian Company/business trust in respect of such borrowings in the form of bonds would be exempt from 17th September 2018 to 31st March 2019.

32.2. The said announcement is proposed to be incorporated in the Act by an amendment to provide exemption to income payable by way of interest to a non-resident by the specified company in respect of monies borrowed from a source outside India by way of issue of rupee denominated bond, as referred to in section 194LC.

32.3. This amendment will take effect from 1st April, 2019 and will, accordingly, apply in relation to assessment year 2019-20 and subsequent assessment years.

Comments

- *It has been decided to completely exempt the interest payments on specified borrowings from withholding tax to attract more investments and reduce the overall cost of borrowing, since the taxes are mainly borne by the Indian borrower or issuer. The loss of revenue by exempting the withholding tax would be compensated by the benefits of augmentation of foreign exchange inflow into the country, low cost foreign borrowings for Indian companies particularly for the infrastructure sector and resolve the issue of widening current account deficit. While sections 194LC refer to bonds, the underlying presumption was that the provisions are applicable to debentures as well. A clarification in this regard will make it consistent with the intention.*

33. TDS on Interest Expense

33.1. In section 194A of the Income Tax Act, in sub-section (3), in clause (i), for the words "ten thousand" wherever they occur, the words "forty thousand" shall be substituted

Comments

- *Bank, co-operative societies and post offices are supposed to deduct TDS on interest where interest value exceeds rupees forty thousand (earlier ten thousand). In case of senior citizen the amount shall be fifty thousand rupees.*

- *Any person not being an Individual or HUF and any Individual / HUF whose gross receipts exceeds rupees one crore from business / fifty lakhs from profession / carrying business under section 44AD, 44AE, 44BB, 44BBB / carrying profession under section 44ADA are required to deduct TDS on interest at the rate of ten percent where interest value exceeds rupees five thousand.*

- *However the above shall not apply in case of interest payment made to Banks, co-operative societies or post offices.*

34. TDS on Rent Expense

34.1. In section 194-I of the Income Tax Act, in the first proviso, for the words “one hundred and eighty thousand rupees”, the word “two hundred and forty thousand rupees” shall be substituted.

Comments

- *Any person, not being an individual or a Hindu undivided family paying rent above two lacs forty thousand (previously one lac eighty thousand), shall deduct income-tax thereon at the rate of—*

  (a) two per cent for the use of any machinery or plant or equipment; and

  (b) ten per cent for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings.

- *A person being Individual or HUF shall deduct TDS under this section only when his/her whose gross receipts exceeds rupees one crore from business / fifty lakhs from profession / carrying business under section 44AD, 44AE, 44BB, 44BBB / carrying profession under section 44ADA.*

VII. RESIDUAL

35. Measures for resolution of distressed companies

35.1. Existing provisions

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

b) The Finance Act 2018 gave relaxation to the provisions of section 79, where any change in shareholding takes place in 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. Thus, loss in such cases can be carried forward and set off even if there is change in voting power or shareholding.

35.2. Budget proposals:

a) This benefit is proposed to be extended to certain companies. Thus it has been provided in newly substituted section 79 that the provision of this section shall not apply to those companies, and their subsidiary and the subsidiary of such subsidiary, where

   i. the National Company Law Tribunal (NCLT) on a petition 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 Companies Act, 2013: and

ii. a change in shareholding of such company, and its subsidiaries and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by NCLT under section 242 of the Companies Act, 2013, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

b) Further, it is also proposed that under section 115JB of the Act for calculating book profit, the aggregate amount of unabsorbed depreciation and loss (excluding depreciation) brought forward shall also be allowed to be reduced in cases of the above mentioned companies.

35.3. This amendment will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.

Comments

- *Section 241 of Companies Act 2013 cover oppression and mismanagement which corresponds to section 397/398 of erstwhile Companies Act 1956. The present budgetary proposal is intended to give taxation relief u/s 79 and 115JB to entities acquiring ownership vide order passed by NCLT in respect of petition moved by the Central Government.*
- *The proposed amendment will give taxation relief to acquiring entities of company like IL&FS and its subsidiaries which may be undergoing ownership change in view of petition filed by Central Government u/s 241 of Companies Act 2013 before NCLT*

36. Amendment to section 56

36.1. The existing provisions of the section 56 of the Income-tax Act, inter alia, provide that income by way of interest received on compensation or on enhanced compensation referred to in section 145A(b) shall be chargeable to tax.

36.2. However, the Finance Act, 2018 substituted the provisions of section 145A with sections 145A and section 145B whereby the provisions related to taxing of interest received on compensation or on enhanced compensation were shifted to section 145B from section 145A.

36.3. However, no consequential amendment was made in section 56 by Finance Act, 2018 to enable taxation of interest received on compensation or on enhanced compensation referred to in section 145B(1). Hence, it is now proposed to amend section 56 of the Act to provide the correct reference of section 145B(1) in section 56, in place of the existing reference of section 145A(b).

36.4. The amendment is largely consequential and to avoid any disputes in future, the same has been made to take retrospective effect from 1st April, 2017 and will, accordingly, apply in relation to assessment year 2017-2018 and subsequent assessment years.

37. Deemed fair market value on purchase and sale of shares in certain circumstances

37.1. Existing provisions

- The existing provisions of the section 56(2)(x) of the Income-tax Act, *inter alia*, provide for chargeability of deemed income in respect of acquisition of certain shares, where the acquisition cost of such shares is NIL or less than FMV of such shares. Similarly, section 50CA provides for deemed sales consideration where the fair market value of unquoted shares is less than the sale consideration. For both these provisions, the fair market value is determined based on the prescribed method. Currently, the provisions of section 56(2)(x) are not applicable to certain specified transactions. However, no such exemption is available under section 50CA.

37.2. Budget proposals

- It is proposed to amend these sections to empower the Board to prescribe transactions undertaken by certain class of persons to which the provisions of section 56(2)(x) and 50CA shall not be applicable.

37.3. These amendments will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.

Comments

- *Determination of fair market value based on the prescribed rules may result into genuine hardship in certain cases where the consideration for transfer of shares is approved by certain authorities and the person transferring the share has no control over such determination. For instance, a person may be acquiring controlling stake of a company in terms of order passed by NCLT under IBC Code at say Rs. 1 crore, though the FMV in terms of Rule 11UA is say Rs. 5 cores. The Act as it is stands today, provide for deemed income under section 56(2)(x) of Rs. 4 crores in the hands of the purchaser. Again in the hands of the seller, the deemed sales consideration of such shares is treated as Rs. 5 crores under section 50CA. This was causing genuine hardship to the genuine cases wherein transfer of such shares were happening through the orders of NCLT, Court etc. Now it is proposed that certain transactions of sales of shares (being done under order of certain authorities) shall be exempted from the purview of section 50CA and section 56(2)(x) of the Act.*
- *Presently section 56(2)(x) doesn't apply to certain instances like receipt from relative or on the occasion of marriage etc. However, similar clause is not there in section 50CA of the Act. Thus, even if father is selling unquoted shares to his son at a price less than FMV, the provisions of section 50CA may get applied though 56(2)(x) will not apply. However, if the father is gifting such shares then 50CA doesn't apply. However, with the intended amendment and notification, it is expected that these anomalies shall get removed.*

38. Tax on income distributed to shareholder in case of listed companies

38.1. Section 115QA of the Act provides for the levy of additional Income-tax at the rate of twenty per cent of the distributed income on account of buy-back of shares by a unlisted company.

38.2. Section 10(34A) exempts income arising to the shareholder on account of buyback of unlisted shares in the hands of the shareholders.

38.3. It is now proposed to extend the provisions of Section 115QA to all companies including companies listed on recognized stock exchange. Accordingly, it is proposed to extend the exemption under Section 10(34A) to shareholders of the listed company on account of buy-back of shares on which additional income -tax has been paid by the company.

38.4. This amendment will take effect from 5th July, 2019.

Comments:

- *Listed companies were resorting to buy back of shares which attracted a lower rate of capital gain tax in the hands of shareholders, as against DDT of 18.50% plus applicable surcharge and cess payable by the company on dividend distribution. Such buy-back is proposed to be included in the ambit of Section 115QA and tax on buy-back will now be chargeable in the hands of the company @ 20% plus applicable surcharge and cess, which may discourage companies from resorting to buy-back. However, the silver lining is that such income from buy-back will be exempt in the hands of the shareholders u/s 10(34A) as well as not liable to MAT. In a way, for companies having HNIs as their shareholders, buyback may be tax efficient in some cases vis-a-vis dividend as the former is not includible in total income whereas the latter will form part of total income in excess of Rs.10 lacs.*

39. Incentives to National Pension System (NPS) subscribers under section 80CCD

39.1. Existing provisions

(i)This scheme is applicable to an assessee, being an individual employed by the Central Government or being an employee employed by any other employer or any other assessee, being an individual who has deposited/paid in NPS Scheme.

(ii**)** Under the existing provisions of section 10 of the Act, any payment from the NPS Trust to an employee on closure of his account or on his opting out of the pension scheme is exempt from tax to the extent it does not exceed forty per cent of the total amount payable to him.

(iii) Under the existing provisions of section 80CCD of the Act, in respect of any contribution by the Central Government or any other employer to the account of the employee referred to in the section, the assessee shall be allowed a deduction in the computation of his total income, of the whole of the amount contributed by the Central Government or any other employer, as it does not exceed ten per cent of his salary in the previous year.

39.2. Budget proposals

(i) It is proposed to amend the said section so as to increase the said exemption from forty percent to sixty percent of the total amount payable to the person at the time of closure or his opting out of the scheme.

(ii) It is proposed to increase the limit from ten to fourteen per cent of contribution made by the Central Government to the account of its employee.

(iii) It is proposed to amend the section 80C so as to provide that any amount paid or deposited by a Central Government employee as a contribution to his Tier-II account of the pension scheme shall be eligible for deduction under the said section.

These amendments will take effect from 1st April, 2020 and will, accordingly, apply in relation to assessment year 2020-21 and subsequent assessment years.

Comments

- *The proposals are im*pacting only Central government employees except the Budget proposal mentioned in Sl. No (i) above which is applicable to all employees

40. Demerger of Ind-AS compliant companies

40.1. One of the existing conditions for tax-neutral demergers is that the resulting company should record the property and the liabilities of the undertaking at the value appearing in the books of accounts of the demerged company. It has been represented that Indian Accounting Standards (Ind-AS) compliant companies are required to record the property and the liabilities of the undertaking at a value different from the book value of the demerged company.

40.2. In order to facilitate, 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 the property and liabilities of the undertakings are recorded in compliance to Ind-AS Rules.

40.3. This amendment will take effect, from 1st April, 2020 and will, accordingly, apply in relation to AY 2020-21 onwards.

41. Concessional rate of Short-term Capital Gains (STCG) tax to certain equity-oriented fund of funds

41.1. In order to incentivise fund of funds set up for disinvestment of Central Public Sector Enterprises (CPSEs), Finance Act, 2018 had provided concessional rate of LTCG tax U/s 112A of the Act for the transfer of units of such fund of funds.

41.2. In order to further incentivise these funds of funds, it is proposed to amend Section 111A so as to extend the concessional rate of STCG tax in respect of transfer of units of such fund of funds.

41.3. This amendment will take effect from 1st April, 2020 and will, accordingly, apply in relation to assessment year 2020-21 and subsequent assessment years.

42. Rationalization of provisions relating to Securities Transaction Tax (STT)

42.1. Section 99 of the Finance (No.2) Act, 2004 provides that for the purpose of levy of STT, the value of the securities transaction in respect of sale of an option in securities, where the option is exercised, shall be the settlement price.

42.2. It is proposed to amend the section so as to provide that value of taxable securities transaction in respect of sale of an option in securities, where option is exercised, shall be the difference between the strike price and the settlement price.

42.3. This amendment will take effect from 1st September, 2019.

Comments –

- *The aforesaid amendment has brought a big relief to option traders by streamlining the levy of STT where the option is exercised by restricting it to the difference between the settlement price and strike price rather than levying it on the entire settlement price.*

43. Incentives for Category II Alternative Investment Fund (AIF)

43.1. Existing provisions - Clause (viib) of sub-section (2) of section 56 provides that where a company, not being a company in which the public are substantially interested, receives in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall not be charged to tax.

43.2. However, exemption from this provision has been provided where the consideration for issue of shares received either-

i. by a venture capital undertaking from a venture capital company or a venture capital fund or

ii. by a company from a class or classes of persons as may be notified by the Central Government in this behalf.

43.3. To broaden the scope of exemption, it is proposed that the exemptions shall also be made available where the consideration is received by a venture capital undertaking from venture capital fund or specified funds.

43.4. The definition of the expression "specified fund" is also to be inserted in explanation of the section as " a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012 made under the Securities and Exchange Board of India Act, 1992.

43.5. However, the bill is further taking into account a new proviso to the section that where the company fails to comply with any of the conditions mentioned in the proviso to the section, then, any consideration received for issue of share that exceeds the face value of such shares shall be deemed to be the income of the company chargeable to income-tax for the previous year in which such failure has taken place.

43.6. This amendment will take effect, from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.

44. Provide for pass through of losses in cases of Category I and Category II Alternative Investment Fund (AIF)

44.1. Pass through of profits (other than profits & gains from business) has been allowed to individual investors so as to give them benefit of lower rate of tax, if applicable. Pass through of losses are not provided under the existing regime and are retained at AIF level to be carried forward and set off in accordance with Chapter VI.

44.2. In order to remove genuine difficulty faced by Category I and II AIFs, it is proposed to amend Section 115UB to provide that:

- the business loss of the investment fund, if any, shall be allowed to be carried forward and it shall be set-off by it in accordance with the provisions of Chapter VI and it shall not be passed onto the unit holder;
- the 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 at least twelve months;
- the loss other than business loss, if any, accumulated at the level of investment fund as on 31st March, 2019, shall be deemed to be the loss of a unit holder who held the unit on 31st March, 2019 in respect of the investments made by him in the investment fund and allowed to be carried forward by him for the remaining period calculated from the year in which the loss had occurred for the first time taking that year as the first year and it shall be set-off by him in accordance with the provisions of Chapter VI;
- the loss so deemed in the hands of unit holders shall not be available to the investment fund for the purposes of chapter VI.

44.3. These amendments will take effect from the 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.

45. Incentives to International Financial Services Centre (IFSC)

45.1. Widening the list of securities not considered as transfer

a) Under the existing provisions of the section 47 of the Act, any transfer of a capital asset, being bonds or Global Depository Receipts or rupee denominated bond of an Indian company or derivative, made by a non-resident through a recognised stock exchange located in any IFSC and where the consideration for such transaction is paid or payable in foreign currency is not regarded as transfer.

b) With a view to provide tax-neutral transfer of certain securities by Category III Alternative Investment Fund (AIF) in IFSC, it is proposed to amend the said section so as 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, will not be regarded as transfer subject to fulfilment of specified conditions.

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

d) These amendments will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.

45.2. Impetus to facilitate ECBs by IFSC

a) With a view to facilitate external borrowing by the units located in IFSC, it is proposed to amend section 10 of the Act so as 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 by it on or after 1st day of September, 2019, shall be exempt.

b) This amendment will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.

45.3. Exemption from paying DDT

a) The existing provisions of the section 115-O of the Act, provide 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.

b) To facilitate distribution of dividend by companies operating in IFSC, it is proposed to amend the provision of the said section to provide that any dividend paid out of accumulated income derived from operations in IFSC, after 1st April 2017 shall also not be liable for tax on distributed profits.

c) This amendment will take effect from 1st September, 2019.

45.4. Incentives for mutual funds set up in IFSC

a) The existing provisions of the section 115R of the Act, provide that any amount of income distributed by the specified company or a Mutual Fund to its unit holders shall be chargeable to tax and such specified company or Mutual Fund shall be liable to pay additional income-tax on such distributed income.

b) In order to incentivize relocation of Mutual Fund in IFSC, it is proposed to amend the said section so as to provide that no additional income-tax shall be chargeable in respect of any amount of income distributed, on or after the 1st day of September, 2019, by a Mutual Fund of which all the unit holders are non-residents and which fulfils certain other specified conditions.

c) This amendment will take effect, from 1st September, 2019.

45.5. Profit linked incentives

a) The existing provisions of the section 80LA of the Act, inter alia, provide profit linked deduction of an amount equal to one hundred per cent of income for the first five consecutive assessment years and fifty per cent of income for the next five consecutive assessment years, to units of an IFSC.

b) With a view to further incentivize operation of units in IFSC, it is proposed to amend the said section so as to provide that the deduction shall be increased to one hundred per cent 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.

c) This amendment will take effect, from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.

45.6. Consequential amendments in Section 115A

a) Section 115A of the Act provides the method of calculation of income-tax payable by a non-resident (not being a company) or by a foreign company where the total income includes any income by way of dividend (other than referred in section 115-O), interest, royalty and fees for technical services; etc. Section 80LA, provides for deduction in respect of certain incomes to a unit located in an IFSC. However, sub-section (4) of section 115A prohibits any deduction under chapter VIA which includes section 80LA.

b) In order to ensure that units located in IFSC claim full deduction, it is proposed to amend section 115A of the Act so as to provide that the conditions contained in sub-section (4) of section 115A shall not apply to a unit of an IFSC for under section 80LA is allowed.

c) This amendment will take effect from the 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent years.

Comments –

- *These amendments are aimed at promoting the development of world class financial infrastructure in India and to bring existing IFSC at par with similar IFSC in other countries.*

46. Rationalisation of the Income Declaration Scheme, 2016

46.1. The existing provisions of section 187 of the Finance Act, 2016 provide, inter alia, that the tax, surcharge and penalty in respect of the undisclosed income, declared under the Income Declaration Scheme, 2016 (the Scheme) shall be paid on or before a notified due date.

46.2. In order to address genuine concern of the declarants, it is proposed to amend the said section so as to provide that where the amount of tax, surcharge and penalty, has not been paid within the due date, the Central Government may notify the class of persons who may make the payment of such amount on or before a notified date, along with the interest on such amount, at the rate of one per cent of every month or part of a month, comprised in the period, commencing on the date immediately following the due date and ending on the date of such payment.

46.3. Further, the existing section 191 of the Finance Act, 2016 provides, inter alia, that any amount of tax, surcharge or penalty paid in pursuance of a declaration made under the Scheme shall not be refundable.

46.4. In order to address genuine concern of the declarants, it is proposed to amend the said section so as to provide that the Central Government may notify the class of persons to whom the amount of tax, surcharge and penalty, paid in excess of the amount payable under the Scheme shall be refundable.

46.5. This amendment will take effect retrospectively from 1st June, 2016.

Comments:

- *The class of persons to whom the delayed payment shall be allowed or to whom refund of excess tax paid shall be given shall be notified in due course of time.*
- *No provision for providing interest on refund of amount paid in excess of the amount payable under the Scheme has been enacted nor any amendment has been proposed in section 244A of the Act relating to interest on refunds.*

B. INDIRECT TAX PROPOSALS

I. GST PROPOSALS

47. Composition Scheme

47.1. A new sub-section is being inserted in section 10 of the CGST Act to bring in an alternative composition scheme for supplier of services or mixed suppliers (not eligible for the earlier composition scheme) having an annual turnover in preceding financial year upto Rs 50 lakhs.

47.2. Section 10 of the Central Goods and Service Tax (Amendment) Act, 2018 provides that a registered person whose aggregate turnover is below Rs. 1 crore can opt for Composition Scheme, Rs 75 lakh in case of North-Eastern states and Himachal Pradesh.

47.3. For the purpose of determining the eligibility under the section the term aggregate turnover is computed as per definition under section 2(6) of the Central Goods and Service Tax Act (CGST Act), 2017. Further, the person opting for composition scheme are required to compute the GST tax liability on a flat percentage of turnover in the state or union territory quarterly. The turnover in the state is computed as per section 2(112) of the CGST Act. Both the terms includes exempt supply.

47.4. With a view to relax the existing provisions, explanation is being added to section 10 to clarify that for computing the aggregate turnover to determine eligibility for the composition scheme, value of exempt supplies services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account. Similar exclusion has been effected in the definition of turnover in a state to exclude interest or discount from turnover on which is tax is payable under the composition scheme.

47.5. It is proposed to include supplies from the first day of April of a financial year upto the date when such person becomes liable for registration under CGST Act shall for calculating aggregate turnover and shall be excluded for calculating turnover in the state or union territory. Therefore, no tax shall be payable under the composition scheme on turnover effected before becoming liable for registration. However, such turnover shall be included while computing aggregate turnover for the purpose of determining liability to pay tax.

47.6. Section 39 of the CGST Act is being amended so as to allow the composition taxpayers to furnish annual return along with quarterly payment of taxes. This shall be a welcome move as it reduces the burden of compliances on small composite dealers.

48. Returns

48.1. Section 39 of the CGST Act in respect of furnishing of returns is proposed to be amended by removing the exact date before which the return of inward supply of goods or services, or both shall be furnished and enabling the Government to prescribe such time limits by way of notifications.

48.2. As mentioned earlier, an annual return has been prescribed for composition dealers with quarterly payment of tax.

48.3. A simplified single monthly return shall be rolled out. Taxpayers having annual turnover of less than Rs. 5 crore shall have to file quarterly return.

48.4. A proviso clause has been added in section 44 of the CGST Act providing the powers to the commissioner to extend the time limit for furnishing annual return. The provision has been introduced as the CGST Act is very definite and the last date is prescribed as 31st December following the end of such financial year. The Government had to issue removal of difficulty order for extension of due date for filing of annual return for Financial Year 2017-18 by exercising its power laid in the Constitution of India. This can be done in future by way of a notification only.

49. Payment of Tax and Refunds

49.1. Currently, Section 50 of the CGST Act, 2017 is not limited to the net tax liability; instead, interest is payable on the gross tax liability. This is to say that if an assessee has gross output liability of Rs. 1000 crores and gross input tax credit of Rs. 999 crores during a tax period and delays in furnishing of return, interest is payable on the entire gross output liability of Rs. 1000 crores and not on the net tax liability of Rs. 1 crore.

49.2. The amendments proposed in the GST law aims to remove this inherit incongruity and proposes that interest will be payable only on net tax liability that is paid out of electronic cash ledger and not on the portion of output liability that is paid out of electronic credit ledger.

49.3. Currently, an amount of tax paid under one head in the electronic cash ledger can only be utilized for payment of tax under that head and cross utilization of cash ledger balance is not permissible. This may at times result in unnecessary hardship on the assessee owing to unutilized cash balance in one head and liability in another leading to blockage of working capital or on account of erroneous payment of tax under the wrong head.

49.4. In order to prevent these hardships, it is proposed to insert new sub-sections in section 49 of the CGST Act and section 17A of the IGST Act to provide a facility to the registered person to transfer an amount from one (major or minor) head to another (major or minor) head in the electronic cash ledger. Such transfer shall deemed to be a refund from electronic cash ledger. Thus for example, any balance lying under CGST in the electronic cash ledger may be transferred to IGST, SGST or cess in future.

49.5. It is also proposed to insert section 53A in the CGST Act so as to provide for transfer of amount between Centre and States consequential to amendment in section 49 of the CGST Act allowing transfer of an amount from one head to another head in the electronic cash ledger of the registered person.

49.6. Also, a new sub-section (8A) is being inserted in section 54 of the CGST Act so as to provide that the Central Government may disburse refund amount to the taxpayers in respect of refund of State taxes as well. This shall help in making refunds faster and more convenient for the assessee.

49.7. One nation one tax seems to be an achievable reality with the proposed amendments.

50. Threshold Limit for Registration

50.1. Notification No. 10/2019-Central Tax dated 7th March, 2019 enhanced the threshold limit of registration under section 22 of the CGST Act from Rs. 20 lakhs to Rs. 40 lakhs for those engaged exclusively in supply of goods, except persons liable for compulsory registration under section 24 of the CGST Act, engaged in making intra-State supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand and suppliers of Ice cream and other edible ice, whether or not containing cocoa; Pan masala; Tobacco and manufactured tobacco substitutes.

50.2. It is proposed to amend the act to include the effect of the above notification.

50.3. An explanation is also proposed to be included to the section 22 to consider a person to be engaged exclusively in supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount. Thus, mere existence of interest income or discount income shall not render an assessee ineligible for claiming higher threshold limit for registration.

51. National Appellate Authority for Advance Ruling

51.1. The definition of “adjudicating authority” in clause (4) of section 2 of the CGST Act is being amended so as to exclude “the National Appellate Authority for Advance Ruling” (which is being created by various amendments in Chapter XVII of the CGST Act) from the definition of "adjudicating authority".

51.2. New clause (f) is being inserted in section 95 of the CGST Act to define the "National Appellate Authority for Advance Ruling".

51.3. New sections 101A, 101B and 101C are being inserted in the CGST Act so as to provide for constitution, qualification, appointment, tenure, conditions of services of the National Appellate Authority for Advance Ruling; to provide for procedures to be followed for hearing appeals against conflicting advance rulings pronounced on the same question by the Appellate Authorities of two or more States or Union territories in case of distinct persons; and to provide that the National Appellate Authority shall pass order within a period of ninety days from the date of filing of the appeal respectively.

51.4. Section 102 of the CGST Act is being amended so as to allow the National Appellate Authority to amend any order passed by it so as to rectify any error apparent on the face of the record, within a period of six months from the date of the order, except under certain specified circumstances

51.5. Section 103 of the CGST Act is being amended so as to provide that the advance ruling pronounced by the National Appellate Authority shall be binding, unless there is a change in law or facts, on the applicants, being distinct person and all registered persons having the same Permanent Account Number and on the concerned officers or the jurisdictional officers in respect of the said applicants and the registered persons having the same Permanent Account Number.

51.6. Section 104 of the CGST Act is being amended so as to provide that advance ruling pronounced by the National Appellate Authority shall be void where the ruling has been obtained by fraud or suppression of material facts or misrepresentation of facts

51.7. Section 105 of the CGST Act is being amended so as to provide that the National Appellate Authority shall have all the powers of a civil court under the Code of Civil Procedure, 1908 for the purpose of exercising its powers under the Act

51.8. Section 106 of the CGST Act is being amended so as to provide that the National Appellate Authority shall have power to regulate its own procedure.

52. Electronic Invoice

52.1. After successful implementation of the e-way bill system the government is upbeat on opting for the e-invoicing as it looks to curb tax evasion. The bill proposes e-invoicing wherein invoice details will be captured in a central system at the time of issuance.

52.2. This will eventually be used to prefill the taxpayer's returns. There will be no need for a separate e-way bill. Its roll out would begin from January, 2020. Electronic invoice system will significantly reduce the compliance burden.

52.3. E-invoicing should make business easier and the government is making it quite evident that technology will continue to have a major play in the future of GST in the country. Right now, the businesses issue the invoices through their accounting or billing software and the details of the invoices are uploaded on the GST portal at the time of filing returns. In the electronic invoicing model, the invoices will be issued directly through the GST network.

52.4. All the information will be transferred to the GST portal in real time, eliminating the requirement of a manual transmission. E-invoicing is not only desirable for the Government, but it will also bring immense benefits to the taxpayers. The overall compliance expenses will come down. Also, the automatic transmission of data will ensure filing of error-free returns resulting in faster assessments too. However, the industry will need to prepare itself for the significant change.

53. Other Amendments

53.1. Improving compliance - Authentication of Aadhar: Introduction is made in the Finance (No. 2) Bill, 2019 for authentication of Aadhar or alternate or viable means of identification by every registered person as per the decision of the GST Council. This change shall come into effect on the notified date.

53.2. Ease of living - Digital payments: This Government aims to bring greater ease of living in the lives of its citizens and towards promoting digital economy. To promote digital payments further, the Government on the recommendations of the Council may prescribe a class of registered person who shall offer such low cost digital modes of payment to their customers.

53.3. Anti-Profiteering: Section 171 of the CGST Act is being amended so as to empower the National Anti- Profiteering Authority (under sub-section (2) of section 171 of the Act) to impose penalty equivalent to 10% of the profiteered amount.

II. OTHER INDIRECT TAXES

54. Customs Tariff Act

Changes in relation to imposition of Countervailing duty on subsidized articles

54.1. Under the existing provisions of section 9 of Customs Tariff Act, 1975, a new sub-section (1A) has been inserted stating that countervailing duty shall also be imposed on articles imported by altering the description or name or composition, or imported in an unassembled or disassembled form, or by changing the country of its origin or export.

54.2. Section 9C has been amended so as to provide that appeal against an order of determination or review regarding the existence, degree and effect of increased volume of imports of any articles requiring imposing of safeguard duty shall lie with Customs, Excise and Service Tax Appellate Tribunal.

55. Customs Act, 1962

55.1. Finance (No. 2) Bill, 2019 seeks to amend the Customs Act for facilitating trade by allowing a person other than the person in charge of conveyance to furnish departure or export manifest.

55.2. The proper officer has been empowered to detain and screen or scan a person if he has a reason to believe that person has goods liable to confiscation secreted inside his body, to arrest such person who has committed an offence punishable u/s 132 or 133 or 135 or 135A or 136 outside India, to provisionally attach bank account, to give custody of goods to the owner on execution of an undertaking from such person if it is not practical to take physical possession of the seized goods.

55.3. Fraudulently availing of drawback or any exemption from duty, or obtaining an instrument exceeding rupees fifty lakhs have been made cognizable and non-bailable.

55.4. A new section 114AB has been inserted levying penalty on any person who has obtained any instrument by fraud, collusion, wilful misstatement or suppression of facts which is utilised for payment of duty. This provision shall be applicable to Section 135 if such instrument is used for making payment of duty exceeding rupees fifty lakhs.

55.5. The penalty for contravention of any provision of this Act has been enhanced to maximum of rupees four lakhs and for contravention or non-compliance of any provision of a rule or regulation of this Act has been enhanced to rupees two lakhs.

55.6. Section 99B "Verification of Identity and Compliance" has been inserted which states that the proper officer as he may consider necessary for protecting the interest of revenue may require any person to furnish Aadhar number and other documents. If such person fails to furnish the same he shall be provided with an opportunity to furnish alternative means of identification, any other documents as may be prescribed.

56. Service Tax

56.1. Finance (No. 2) Bill, 2019 seek to retrospectively exempt service tax on liquor, long duration courses of IIMs for relevant periods and upfront amount paid towards long term lease of plots for development of infrastructure for financial business.

57. Sabka Vishwas Legacy Dispute Resolution Scheme

57.1. A dispute resolution cum amnesty scheme called the Sabka Vishwas Legacy Dispute Resolution Scheme is being introduced for resolution and settlement of legacy cases of Central Excise and Service Tax.

57.2. Scheme applicable for tax dues as defined in the scheme as on 30th day of June, 2019.

57.3. Amount of relief ranging from fifty percent of tax dues to seventy percent of tax dues and upto hundred percent of late fee or penalty due where tax dues have been paid or is nil.

Comments:

- *'Directional approach' is being reflected from various changes like the proposal to introduce Sabka Vishwas Legacy Dispute Resolution Scheme 2019 to put an end to litigations of pre-GST regime, preventing illicit import and enhanced penal provisions with an aim to ensure tax compliance. It was mentioned in the speech that more than Rs. 3.75 lakh crore is blocked in litigation in service tax and excise laws and an intention to end these litigations is evident.*

- *This is a welcome move the Government, as the industry is looking to move on after implementation of GST. Given the quantum of relief, the scheme looks very attractive and may get encouraging response from industry.*