SALIENT FEATURES OF
THE FINANCE BILL, 2016

Direct Taxes

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ABOUT THE AUTHOR

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He was also on the Board of Governors of the Indian Institute of Corporate Affairs of the Ministry of Corporate Affairs, Government of India. He has also held the position of 'Member of Income Tax Appellate Tribunal', in the rank of Additional Secretary, Government of India.

Post Satyam episode, Government of India appointed him on the Board of two of the Satyam related companies which he has successfully revived and put both these companies back on track.

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INTRODUCTION

The Finance Minister, Shri Arun Jaitley presented the 3rd Budget of the NDA Government led by Shri Narendra Modi for the year 2016-17 on 29th February, 2016. The budget has been subject matter of analysis by the various classes of people. The economists have given a thumbs up to this budget because of the adherence to the fiscal discipline. The Finance Minister has adhered to the fiscal deficit of 3.9% in the year 2016 and 3.5% in the year 2016-17. This is a credible achievement considering the fact that revenue collection during the year 2015-16 has been lower except excise duty, mainly because of increase in excise duty rate consequent to fall in the oil prices and the additional burden consequent to implementation of the Seventh Pay Commission and the implementation of the Defence One Rank One Pension. The growth in GDP continues to be good which is 7.65%, as against global growth being down to 3.1% in the year 2015. In the year 2015-16, inflation has come down to 5.4% as against 9.4% in the preceding three years.

Though this budget has given a big push to the rural infrastructure but still the question is whether this will truly transform the Indian economy. The middle class probably has been hit hard by this budget with a few more cess, increase in surcharge, taxation of dividend income which virtually tantamount to double taxation. The budget has tried to address the political agenda of promising more for farmers and the poor people which are obviously more in numbers. However, in the process the question is whether we have ignored the business and middle class taxpayer. In a country of 125 crore population there are about five crore taxpayers. Any relaxation given to these five crore taxpayers is criticized by the politicians, obviously to address the other 120 crore people which are poor ignoring the fact that when we make doing business difficult by increasing compliance, taxes, imposing

new levies and cess, there are no new business/no growth in business and when there are no business/no growth in business there are no scope of further employment and these 120 crore people remain poor as they do not get opportunity to come out of poverty.

Thus this process of condemning the taxpayers and making their working and businesses more and more difficult, in a way, is a self-defeating process and ultimately it is counterproductive to the poor for which the political class at least is eager to demonstrate that it cares for them. The budget needs to address the concern of the India and its economy in real terms rather than having a budget which apparently addresses the concerns of the poor but in substance does not help the poor to come out of the poverty.

On the issue of taxation, the expectation from this Government on administrative reforms were very high, particularly in view of its agenda of 'ease of doing business 'in India. Though in this budget a beginning has been made to address the grievances of the taxpayers but still there is a long way to go to really make the tax regime taxpayer friendly.

As usual, the budget is an occasion to revisit the tax policies by way of amendments through Finance Bill. This budget is no exception. The Finance Bill, 2016 runs into 212 pages and has 112 clauses for making amendments to the various provisions of the Income Tax Act besides three chapters on Equalization Levy, the Income Declaration Scheme, 2016 and the Direct Tax Dispute Resolution Scheme running into additional 49 clauses. The proposed amendments in the Finance Bill, 2016 relating to direct taxes are analysed below. Unless otherwise stated, all these amendments are to be effective from April 1, 2017 i.e. assessment year 2017-18 relating to income earned in the financial year 2016-17 i.e. starting from 1st April, 2016.

A. TAX RATES

1. No change in tax rates, no change in threshold limit. However, tax rebate for income up to Rs.5 lakh is being increased to Rs.5000.

The Finance Minister has not proposed any change in the threshold limit as well as tax slabs despite high expectations from the taxpayers, particularly considering the inflation in the preceding year. Further, surcharge is being increased from 12% to 15% on income above Rs.1 crore in case of Individuals, Hindu Undivided Families, Association of Persons, Body of Individuals and every Artificial Juridical Person.

2. Tax Rate for individual

The tax rates applicable to an individual, HUF, association of persons, body of individual and every juridical person shall be as under:-

Income	Tax Rate
Upto Rs.2,50,000	Nil
Rs.2,50,001 - Rs.5,00,000	10%
Rs.5,00,001 to Rs.10,00,000	20%
Above Rs.10,00,000	30%

In the case of senior citizen (of 60 years to 80 years of age), the threshold limit continues to be Rs.3,00,000. There is also no change in the threshold limit of Rs.5,00,000 in the case of very senior citizen i.e. above 80 years of age. A small concession has been given to the taxpayers having income up to Rs.5 lakh. Under the existing provisions of section 87A, individual residents in India whose total income does not exceed Rs.5 lakh, are entitled to a tax rebate of Rs.2000. This tax rebate is proposed to be increased to Rs.5000. The implication of this amendment will be that individual residents having income up to Rs.3 lakh will not be required to pay any tax and individual residents having income above Rs.3 lakh and up to Rs.5 lakh will get a rebate of Rs.5000 with the result the effective tax payable on income of Rs.5 lakh by individual residents will now be Rs.20,600. This benefit is not available to those resident individuals whose income exceed Rs.5 lakh.

3. **No change in tax rate for other tax payers**

The Finance Bill, 2016 has not proposed any change in the tax rates applicable to partnership firms and companies, both domestic as well as foreign companies. The tax rates applicable in the case of a partnership firm which includes LLP will be 30%. There is no increase in surcharge. Surcharge at the rate of 12% shall continue to be applicable in case total income exceeds Rs.1 Crore. The tax rate in the case of domestic companies shall be 30% with surcharge at the rate of 7% where the total income of the domestic company exceeds Rs.1 Crore but does not exceed Rs.10 Crore and surcharge at the rate of 12% where the total income of the domestic company exceeds Rs.10 Crore. The tax rate in respect of companies other than domestic companies shall be 40% with surcharge of 2% where the total income exceeds Rs.1 Crore but does not exceed Rs.10 Crore and surcharge at the rate of 5% where the total income of such company exceed Rs.10 Crore.

4. **Additional tax at the rate of 10% on dividend income exceeding Rs.10 lakh**

The Finance Bill, 2016 proposes to insert a new section 115BBDA levying additional tax on dividend received from a domestic company by a resident individual, Hindu Undivided Family or a firm (this will include LLP in view of the definition of the firm) exceeding Rs.10 lakh at the rate of 10%. The flat rate of 10% shall be applicable, the moment income from dividend exceeds Rs.10 lakh and no deduction in respect of any expenditure or allowance is to be allowed while computing the income by way of dividend. This additional tax is not payable on the deemed dividend income under section 2(22)(e) of the Income Tax Act. The explanation given by the Finance Minister for levying this tax is that dividend income normally should be taxed at the rate of 30% in the case of a person having income above Rs.10 lakh. Since dividend distribution tax works out to 15% and this creates vertical inequity among the taxpayers as those who have high dividend income are subjected to tax only at the rate of 15% whereas such income in their hands would have been chargeable to tax at the rate of 30%. This reasoning given by the Finance Minister is contrary to the reasoning given and the policy adopted way back in the year 1997. The then Finance Minister in his budget speech has ended the controversy whether taxation of

dividend tantamount to double taxation or not by abolishing the tax on dividend. The relevant paras of the budget speech for the year 1997 read as under:-

> *"100. Another area of vigorous debate over many years relates to the issue of tax on dividends. I wish to end this debate. Hence, I propose to abolish tax on dividends in the hands of the shareholder.*
>
> *101. Some companies distribute exorbitant dividends. Ideally, they should retain bulk of their profits and plough them into fresh investments. I intend to reward companies who invest in future growth. Hence, I propose to levy a tax on distributed profits at the moderate rate of 10 per cent on the amount so distributed. This tax shall be incidence on the company and shall not be passed on the shareholder."*

Ongoing through the above reasoning given way back in 1997, it is quite clear that tax on dividend was abolished and this dividend distribution tax was introduced to encourage companies to retain the income for the future growth. Thus to say now that it creates vertical inequity may not be correct. Further in case the present Government is of the view that dividend income should be independently taxed, then there is no reason why company should bear the dividend distribution tax. The dividend may be taxed in the hands of the shareholder at the appropriate tax rate applicable as the case may be with benefit of old Section 80M to avoid cascading effect of this tax in the hands of corporate. It may also be important to note that the dividend distribution tax in the present form is being retained not because any concession is to be provided to the shareholder but by way of revenue compulsion as substantial amount of dividend distribution tax is paid by the public sector companies in respect of the dividend these PSUs pay to the Government. In case dividend is taxed in the hands of the shareholder, substantive amount of this dividend paid by public sector companies and banks (estimated at Rs. 90229 crore in the receipts budget for 2014-15) to the Government will not be liable for taxation as income of the Government of India is not chargeable to tax and consequently collection on account of income tax will go down.

An idea of this can be had from the fact that as per the Receipt Budget, the amount of dividend income projected for the year 2016-17 from Public Sector Undertakings is Rs.53883 crore and Rs.69897 crore from Nationalized Banks and Reserve Bank of India. This dividend goes to the President of India after payment of effective dividend distribution tax at the rate of 20% which comes to around Rs.20,000 crore (excluding surplus from RBI, being not liable for Dividend Distribution Tax) by the public sector companies. If the incidence of tax on dividend is shifted from company to the shareholder, then this dividend distribution tax will not be payable by the Public Sector companies which in turn will pay higher dividend to the Government. Thus for the Government of India it is a neutral exercise. However, it adds numbers to the Central Board of Direct Taxes as it adds to the direct tax collection made by it. The taxing dividend income in the hands of every shareholder by way of dividend distribution tax at the rate of around 20% also creates vertical inequity as many shareholders may not be having taxable income or may be chargeable to tax at the rate of 10%. This also creates vertical inequity as dividend income, despite having suffered the dividend distribution tax, is considered to be tax free income in the hands of the shareholder with the result that shareholder is not allowed to deduct any expenditure incurred in relation to earning such dividend income besides consequences of disallowance under section 14A of the Income Tax Act. In case the Government is of the view that taxing dividend does not tantamount to double taxation (as dividend is paid by a company to its shareholder out of the income on which the company has paid the tax), then it will be ideal to go back to the system prevalent prior to 1997 and tax the dividend income in the hands of a shareholder. In order to avoid any leakage of dividend income being not taxed in the hands of the shareholder, the withholding tax provision of section 194 can be revived so that the company deducts tax at source on the dividend paid to each of the shareholder. This will be more equitable, fair and will remove vertical inequity for shareholders.

5. **Concessional rate of 29% tax in case of certain companies**

The Finance Minister in his budget speech of 2015 has proposed to reduce corporate tax from 30% to 25% over the next four years. A small beginning has been made in this budget in the case of a domestic company whose total turnover or gross receipt

in the previous financial year 2014-15 does not exceed Rs.5 crore, the rate of tax has been reduced from 30% to 29%. This is a small concession available to small companies whose turnover does not exceed Rs.5 crore in the financial year 2014-15.

6. **Concessional rate of tax of 25% on new companies engaged in manufacturing**

The Finance Minister has further reduced the tax rate applicable to a domestic company from 30% to 25% for newly set up domestic companies engaged solely in the business of manufacture or production of an article or thing. This is being done by inserting a new section 115BA overriding other provisions of the Income Tax Act. Under this provision an option has been given to such companies which have been set up and registered on or after 1st March, 2016 in case such company is engaged in the business of manufacturing or production of an article or thing. It has been further provided that while computing the total income of such company no deduction on account of SEZ under section 10AA, additional depreciation under section 32(1)(iia), investment allowance in respect of new plant and machinery under section 32AC, 32AD, Tea Development Benefit under section 33AB, Site Restoration benefit under section 33ABA, Scientific Research benefit under section 35, Social Welfare project benefit under section 35AC, 35AD, agricultural extension project benefit under section 35CCC, skill development project under section 35CCD and the benefit available under provisions of Chapter VI-A i.e. 80IA, 80IB, 80IC, etc. other than section 80JJAA in respect of employment will not be available. Further depreciation in such cases shall be computed in the manner as will be prescribed. In this regard the Finance Minister in his budget speech has stated to reduce the rate of depreciation and accordingly a new schedule prescribing reduced rate of depreciation will be applicable in such cases.

For claiming concessional rate of 25% such company is required to exercise the options before the due date of furnishing the return under section 139(1) of the Act. On going through the above provision it is apparent that this option can be exercised on year to year basis and will be beneficial to those which are engaged in manufacturing and the investment in plant and machinery, etc. is not very high which consequently will not affect much the claim of reduced depreciation. It is to

be noted that this benefit is available only to such companies which have been set up and registered on or after 1st March, 2016 and accordingly the existing companies cannot be used for setting up a new business. A new company needs to be incorporated so that its date of registration is also on or after 1st March, 2016.

7. **Reduced rate of tax – Income by way of patent**

The Finance Bill, 2016 has introduced a new section 115BBF proposing to tax income by way of royalty in respect of patent developed registered in India at the rate of 10%. This concessional rate is being introduced to encourage indigenous research and development activities and to make India a global research and development hub. This concessional tax rate shall be applicable only to a person resident in India who is true and first inventor of the invention and in whose name the patent is registered in accordance with the provisions of the Patents Act. The income shall include consideration including lump sum consideration for the transfer of all or any rights including granting of the license in respect of the patent and also imparting of any information concerning working of or the use of a patent, rendering of any services in connection with the above activities. Patent will mean patent for any invention granted under the Patents Act, 1970. The invention shall mean a new product or a process involving innovative subject and capable of industrial application. This benefit is available to true and first inventor which will not include the first importer of an invention to India and also will not include the person to whom an invention is first communicated from outside India. It is important to note that this benefit is available in respect of income from royalty in respect of the patent developed. Development will mean the expenditure incurred by assessee for any invention in respect of which patent is granted under the Patents Act, 1970. To be eligible to claim concessional rate of 10% all the above conditions need to be fulfilled.

8. **Increase in rate of Securities Transaction Tax**

The Finance Bill, 2016 has proposed to increase the Securities Transaction Tax on sale of an option in security where option is not exercised from 0.017% to 0.05%. This new rate will be effective from 1st June, 2016.

B. CHARITABLE TRUST

1. Tax on accumulated income on conversion to non-eligible charitable trusts.

The Finance Bill, 2016 has proposed to introduce a new Chapter XII-EB and has introduced section 115TD providing that where a trust or institution registered under section 12AA has converted itself into any form which is not eligible for grant of registration under section 12AA or has merged with any entity other than an entity having object similar to it and registered under section 12AA or has failed to transfer upon dissolution of its assets to any other trust or institution registered under section 12AA or to any other fund or institution specified in section 10(23C) sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) within a period of 12 months from the end of the month in which the dissolution has taken place has to pay tax at the maximum marginal rate on the accreted income as on the specified date.

Accreted income here will mean the aggregate fair market value of the total assets which exceed the total liability of the trust or institution as on the date of the conversion, merger or dissolution as the case may be in accordance with the method of valuation as may be prescribed.

It has been further provided that a trust or institution shall be deemed to have been converted into a non-eligible charitable entity, if the registration granted to it under section 12AA has been cancelled or it has adopted or undertaken modification of its object which do not confirm to the conditions of the registration or has not applied for registration under section 12AA or if the application filed for registration has been rejected.

The principal officer on transferring a trust or institution is required to pay the tax within 14 days from the date of order cancelling the registration is received or from the end of the previous year in case it has not applied for registration or from the date on which the order rejecting the registration application is received by it or the date of the merger as the case may be.

It is to be noted that the tax is to be paid at the maximum marginal rate on the fair market value of the total assets exceeding the liability on the date of happening and the trust or institution shall not be eligible to claim any benefit of the threshold limit available otherwise to an AOP. The implication of the above provision apparently is too harsh. In case of cancellation of registration on any ground entire assets exceeding liability at its fair market value will be subjected to maximum marginal rate. Some of these trusts or institutions may default inadvertently or by reason beyond its control. The liability to pay maximum marginal rate will be too harsh. Further such trust or institution may not be holding liquid assets and may be having immovable properties being used for the purposes or fetching small rent and as such may not have the wherewithal to pay such huge liability arising on the fair market value of such assets. This provision may be appropriate for those trusts or institution which intentionally convert or merge with any other entity not eligible to be termed as charitable entity. The application of such harsh provision on a trust or institution where the registration granted is cancelled or where the application registration is rejected for one reason or the other is not justified.

C. SALARIES

1. Partial withdrawal of exemption on withdrawal of accumulated balance of recognized Provident Fund

The Finance Bill, 2016 has proposed to restrict the benefit to 40% as against 100% available under clause (12) of section 10 in respect of the accumulated balance due and becoming payable to an employee participating in a recognized Provident Fund to the extent provided in Rule 8 of Part A of the Fourth Schedule. As per Rule 8 of Part A of the Fourth Schedule, the accumulated balance due and becoming payable to an employee is excluded from computing its total income if he has rendered continuous service with his employer for a period of 5 years or more or if he has not rendered such continuous service but the service has been terminated by reasons of the employer or discontinuation of employer's business or other aspects beyond the control of the employee or on the cessation by the employer, the employee obtains employment with any other employer and the accumulated balance is transferred to

his individual account in any recognized provident fund maintained by such other employer.

The objective of this proposed amendment was to restrict the benefit to 40% and to tax the balance 60% in respect of the contribution made by the employee on or after 1st April, 2016. The result of this amendment would have been that the benefit of deduction under section 80C in respect of contribution to recognized provident fund would have been available in the year in which such contribution is being made but at the time of withdrawal of this amount under the circumstances specified in above Rule 8 exemption would have been available in respect of 40% only and balance 60% would have become taxable. This was intended to shift the present model of EEE i.e. Exempt, Exempt, Exempt to EET i.e. Exempt, Exempt and Tax. However, considering the hue and cry which has happened immediately after the budget, the Finance Minister has announced in the Parliament to withdraw this proposal. Accordingly withdrawal of the accumulated balance in the recognized provident fund will continue to be fully exempt from tax.

2. **Partial withdrawal of contribution to Superannuation Fund**

The Finance Bill, 2016 on the line of the recognized Provident Fund has also introduced a proviso below clause (13) of Section 10 to restrict the benefit of the exemption to 40% as against 100% on payment from an approved Superannuation Fund. This proviso has also been withdrawn by the Finance Minister after the introduction of the Finance Bill.

3. **Restriction of contribution by employer to the recognized provident fund**

The Finance Bill, 2016 has proposed an amendment to Rule 6 of Part A of Fourth Schedule regarding contribution by the employer to a recognized provident fund. As per the existing Rule 6 contribution made by the employer in excess of 12% of the salary of the employee is deemed to be income of the employee. There is no upper ceiling with the result that if the salary of an employee is high, 12% of that salary is not considered as income of the employee. The Finance Bill, 2016 has proposed to restrict the benefit to 12% of the salary of the employee or Rs.1,50,000 whichever is

less. This would have meant that employees having high salary would have been liable to pay the tax on the contribution made by the employer to the recognized provident fund in excess of Rs.1,50,000, though such amount would have been within 12% of the salary of such employee. This proposal has also been withdrawn by the Finance Minister after the introduction of the Finance Bill in the Parliament.

4. **Payment from National Pension System Trust up to 40% to be exempt**

The Finance Bill, 2016 has proposed to introduce clause (12A) in Section 10 providing that any payment from the National Pension System Trust to an employee on closure of his account or on his opting out of the Pension Scheme shall be chargeable to tax to the extent of 40% only. Presently under section 80CCD contribution to National Pension Trust is eligible for deduction while computing income of the year. However, there is no exemption in respect of the amount received at the time of closure of the account or opting out of the pension scheme. This amendment will make 40% of the amount eligible for exemption at the time of closure of account of opting out of the pension scheme. However, balance 60% amount shall be chargeable to tax. Consequently this scheme will still be not so beneficial as compared to scheme for which deduction is available under section 80C where full exemption is being retained.

5. **Increase in ceiling of contribution to approved Superannuation Fund**

As per the existing provision of section 17(2)(vii) the contribution to an approved Superannuation Fund by the employer exceeding Rs.1,00,000 is considered to be a perquisite in the hands of the employer. The Finance Bill, 2016 proposes to increase the threshold to Rs.1,50,000. Accordingly contribution to an approved Superannuation Fund by the employer to the extent of Rs.1,50,000 will not be considered as perquisite.

6. **Increase in deduction on account of rent paid**

As per the existing provisions of section 80GG of the Income Tax Act, an assessee is allowed a deduction in respect of the expenditure incurred by him towards payment of rent if the same is in excess of 10% of total income (total income before allowing

deduction under this section) in respect of the accommodation occupied by him for the purpose of his own residence. This deduction is available to all the assesses other than assesses which are receiving house rent allowance which are eligible for deduction under section 110(13A) of the Income Tax Act. However, there is a ceiling of Rs.2000 per month or 25% of the total income whichever is less. The Finance Bill, 2016 proposes to increase this ceiling from Rs.2000 per month to Rs.5000 per month. It is to be noted that this deduction is available to all the taxpayers irrespective of the fact whether they are having income from salaries or not. The only condition is that such taxpayers should have incurred expenditure towards payment of rent for accommodation occupied by him for the purpose of his own residence. Further this benefit is not allowed in case any residential accommodation is owned by the assessee or by his spouse or minor child or where the assessee is a member of the Hindu Undivided family at the place where the assessee ordinarily resides or perform duty of his office or employment or carries on his business or profession.

D. **INCOME FROM HOUSE PROPERTY**

1. **Additional deduction of interest up to Rs.50,000 to first home buyers**

The Finance Bill, 2016 has introduced a new section 80EE allowing additional deduction to an individual in respect of interest payable on loan payment from any financial institution for the purpose of acquisition of a residential property. This additional deduction shall be available only to the individual assessee who does not own any residential house property on the date of sanction of loan and such loan has been sanctioned by the financial institution during the period between 1st day of April, 2016 and 31st day of March, 2017. The value of the residential house property should not exceed Rs.50 lakh and the amount of loan sanctioned should not exceed Rs.35 lakh. Such loan should have been taken from a bank or from a housing company only. It is to be noted that as per the proposed section the benefit is restricted for a period of one year i.e. loan sanctioned in financial year 2016-17 only.

This deduction is in addition to the deduction available under section 24(b) in respect of the interest on the capital borrowed for a property acquired, constructed, repaired

or renewed on or after 1st April, 1999. Thus in the case of a first home buyer the deduction of interest on housing loan can be up to Rs.2,50,000 and in other cases it shall continue to be Rs.2,00,000.

2. Increase in construction period for claiming deduction of interest

Presently under section 24(b) a deduction of Rs.2,00,000 is allowed on account of the interest in respect of the capital borrowed on or after 1st day of April, 1999 for acquisition or construction of a property where such property is in the occupation of the owner for the purpose of his own residence. However, there is a condition attached to it that the construction of the property should be completed within three years from the end of the financial year in which such loan was borrowed. There have been instances where a person has taken a loan for the purpose of construction of the house and has made payment to the builder or the developer and the property could not be constructed within three years with the result that such person is denied the benefit of deduction under this section in respect of the interest for all times to come. In order to address this issue, the Finance Bill, 2016 has proposed an amendment so as to increase the time period for acquisition or construction of self-occupied property from three years to five years. Accordingly the benefit of deduction of interest under this section will be available if the acquisition or construction of the property is within a period of five years from the end of the financial year in which the amount was borrowed.

3. Rebate to be allowed to unrealized rent and arrears of rent

As per the existing provisions, the unrealized rent received subsequently is chargeable to income tax in the year in which such rent is realized. Similarly arrears of rent are also chargeable to tax in the year in which such arrears are received. However, there is no provision for allowing deduction on account of maintenance to the extent of 30% which is otherwise allowed under section 24(a) in respect of income from house property. In order to remove this anomaly the Finance Bill, 2016 has proposed an amendment by substituting new section 25A in place of existing sections 25A, 25AA and 25B to provide on account of arrears of rent received or unrealized rent realized subsequently from a tenant shall be deemed to be the

income from house property in respect of the financial year in which such rent is received or realized. Further a sum equal to 30% of the arrears of the rent or the unrealized rent shall be allowed as deduction.

E. BUSINESS

1. Phasing out of deduction and exemption

The Finance Bill, 2016 proposes to withdraw the following incentives and deductions available while computing income of the business or profession:-

(i) Deduction in respect of profit derived from development, operation and maintenance of an infrastructure facility under section 80-IA shall not be available if such activity commences on or after 1st day of April, 2017. Thus to be eligible for claiming deduction in respect of infrastructure facility such facility has to be operative before 1st April, 2017.

(ii) Deduction in respect of profit derived from development of Special Economic Zone under section 80-IAB and deduction in respect of profit derived from production of mineral oil and natural gas will also be not available if development of Special Economic Zone and the production of mineral oil and natural gas commences on or after 1st April, 2017.

(iii) The Finance Bill, 2016 proposes to withdraw the deduction available under section 35AC in respect of the expenditure incurred on approved project or scheme for promoting social and economic welfare with effect from 1st April, 2017 i.e. assessment year 2018-19. Thus the financial year 2016-17 will be the last year for claiming benefit under section 35AC of the Income Tax Act.

(iv) SEZ benefit under section 10AA shall be available to units commencing manufacturing or production or an article or thing or start providing services up to 31st March, 2020. Accordingly no Special Economic Zone exemption will be available from financial year 2020-21 which commences its operation on or after 1st April, 2020.

(v) Expenditure on Skill Development Project whereby weighted deduction of 150 per cent is presently allowed under section 35CCD will be allowed only up to 31st March, 2020. On and from 1st April, 2020 i.e. from financial year 2020-21 this deduction will be restricted to 100%of the expenditure incurred on skill development project.

(vi) Expenditure incurred on notified agricultural extension project whereby weighted deduction of 150% is allowed under section 35CCC will be allowed up to 31st March, 2017. On and from 1st April, 2017 i.e. from financial year 2017-18 this deduction will be restricted to 100% of the expenditure incurred on notified agricultural extension project.

(vii) Deduction in respect of cold chain facility, warehousing facility for storage of agricultural produce, affordable housing project, production of fertilizer and hospital whereby weighted deduction of 150% of the capital expenditure is allowed under section 35AD will be available up to 31st March, 2017. On and from 1st April, 2017 i.e. financial year 2017-18 this deduction will be restricted to 100% of the capital expenditure incurred.

(viii) Expenditure on scientific research whereby weighted deduction of 125% is allowed in respect of contribution to an approved scientific research company under section 35(1)(iia) and deduction of contribution to research association or university under section 35(1)(iii) is allowed, not will not be available up to 31st March, 2017. On and from 1st April, 2017 i.e. financial year 2017-18 deduction shall be restricted to 100% only.

Similarly weighted deduction in respect of expenditure on scientific research presently available to the extent of 175% under section 35(1)(ii) and weighted deduction of 200% in respect of the expenditure incurred by a company engaged in the business of bio-technology or in the business of manufacture or production of any article or thing under section 35(2AB) is being phased out. This deduction shall be restricted to 100% from 1st April, 2020 i.e. from financial year 2020-21.

2. Accelerated Depreciation to be reduced to 40%

The Finance Bill, 2016 proposes to reduce the accelerated depreciation presently available upto 100%to 40%. The highest rate of depreciation under income tax shall be restricted to 40% with effect from financial year 2017-18. This reduced rate of depreciation shall be applicable to all the assets including the old assets falling in the relevant block of assets. Since this amendment is effective from financial year 2017-18, accordingly, it will have effect for assessment year 2018-19 onwards. With this proposed amendment, the rate of depreciation in respect of all the items which are above 40% will be reduced to 40%.

3. Non–compete fee to be taxed in the case of profession as well

The Finance Bill, 2016 proposes to amend section 28 and section 55 of the Income Tax Act to extend the scope of chargeability of non-compete fee received or receivable in relation to not carrying out any profession as well.

As per provision of section 28(va), non-compete fee received in relation to not carrying out any business only is chargeable as income under the head 'business'. Further if such non-compete fee received in the business is not chargeable as business income, then such income is chargeable to tax under the head 'capital gains'. The scope of the present section does not extend to non-compete fee received in profession. In order to widen the scope and to include the non-compete fee received in relation to not carrying on any profession, section 28(va) is being amended by adding the word 'profession'. With this amendment non-compete fee received for not carrying out any profession will either be chargeable as capital gain or as business income.

4. Benefit of initial additional depreciation being extended to business of transmission of power

The Finance Bill, 2016 proposes to widen the scope of section 32(1)(iia) so as to extend benefit of additional 20% additional depreciation in the first year to an assessee engaged in the business of transmission of power. As per the existing provision, the additional depreciation at the rate of 20% is allowed in respect of the

cost of new plant and machinery acquired and installed after 31st day of March, 2005 by an assessee engaged in the business of manufacture or production of an article or thing or an assessee engaged in the business of generation and distribution of power. With this amendment this benefit of claiming initial additional depreciation at the rate of 20% shall now also be available to the assessee engaged in the transmission of power.

5. **Investment allowance under section 32AC to be allowed in the year of installation of plant and machinery**

The Finance Act, 2013 has introduced a new provision i.e. 32AC allowing investment allowance at the rate of 15% to a company engaged in the business of manufacture or production of an article or thing which acquires and installs new asset i.e. new plant or machinery other than ship or aircraft after 31st day of March, 2013 but before the 1st day of April, 2015 where the cost of such new plant and machinery exceeds Rs.100 crore. The above provision was further amended by the Finance (No.2) Act, 2014 so as to reduce the amount of the new plant and machinery acquired and installed to Rs.25 crore and has extended the period of claiming this benefit upto 31st March, 2017.

The condition for claiming this benefit was that both acquisition and installation should happen in the same year. Considering the fact that acquisition and installation may not happen in the same year, the Finance Bill, 2016 proposes to provide that acquisition of plant and machinery may be made in financial year 2015-16 but the installation may be made by 31st March, 2017. In such cases the benefit of this investment allowance will be allowed in the year in which the new plant and machinery is installed.

With the proposed amendment, in case an assessee has acquired the new plant and machinery in the financial year 2015-16 and the installation of the same has been done in the financial year2016-17, then such assessee shall be eligible to claim this investment allowance in respect of the plant and machinery installed in the financial year 2016-17. The minimum requirement of Rs.25 crore will be considered taking into account the acquisition made in the financial year 2015-16 if such acquisition

exceeds R.25 crore in the financial year2015-16 to the extent the machineries are installed in 2015-16, the benefit of this investment allowance will be available in the assessment year 2016-17 and to the extent machineries are installed in the financial year 2016-17, the benefit will be available in the assessment year 2017-18. This amendment is being made retrospectively and will accordingly apply to assessment year2016-17.

6. **Non-Banking Financial Companies can now claim deduction of provision for bad and doubtful debt**

As per the existing provision of section 36(1)(vii) of the Income Tax Act read with section 36(2), deduction on account of bad debt is allowed only when such bad debt has been written off as irrevocable in the books of account of the assessee in the relevant year. No deduction is allowed in respect of any provision made for bad and doubtful debt. However, in the case of scheduled banks and public financial institutions, certain deduction is allowed in respect of provision for bad and doubtful debt. This deduction of provision of bad and doubtful debt is allowed considering the requirement of the prudential norms of the Reserve Bank of India whereby it is mandatory to make provision for bad and doubtful debt under certain circumstances.

These prudential norms of Reserve Bank of India are applicable to Non-Banking Financial Companies as well. However, the Income Tax Act does not allow deduction on account of such provision of bad and doubtful debt made by the Non-Banking Finance Companies. This Finance Bill, 2016 proposes to remove this anomaly and it is proposed to allow deduction in respect of provision for bad and doubtful debt to the Non-Banking Financial Companies as well. This deduction will be available under section 36(1)(viia) to the extent of 5% of the total income of the Non-Banking Financial Companies computed before allowing this deduction of 5%.

7. **Scope of section 43B being widened to include amount payable to Indian Railways**

As per the exiting provision of section 43B of the Income Tax Act deduction on account of any tax, cess, duty, fee, provident fund, bonus, etc. is allowed on actual payment irrespective of the method of accounting being followed by the assessee.

The Finance Bill, 2016 proposes to extend the scope of this section to include any sum payable by the assessee to the Indian Railways for the use of the railway assets. If there is any amount payable to the Indian Railways for the use of the railway assets then the deduction of the same will not be allowed even if the assessee is following the mercantile system of accounting unless the payment of the same has been made within the accounting year or before the due date of filing the return.

This provision of section 43B was initially inserted by the Finance Act, 1983 to address the issue which has arisen consequent to the show cause notice being issued by the various tax authorities and deduction of the same being claimed by the taxpayer following mercantile system of accounting. However, over the period the scope of this provision is being expanded year after year so as to address the problem of recovery by the various government institutions. In the year 1989, the scope of this provision was expanded to the bonus payable by an employer. The Finance Act, 1988 expanded it further to any interest on any loan from any public financial institution. The Finance (No.2) Act, 1996 expanded the scope to include interest on any loans and advances from any scheduled bank. The Finance Act, 2001, expanded the scope to include amount payable by an employer to an employee in lieu of any leave salary at the credit of the employee. The provision of section 43B distorts the determination of the true income of the business or the profession. In case there are issues about recovery of any amount by any institution including Indian Railways the same needs to be handled independently. It is not appropriate to achieve the objective through Income Tax Act, as such provision leads to mismatching and distortion of true income. There can be cases where the tax liability of the assessee because of applicability of such provision may go much beyond the income actually earned by such assessee and such assessee may not have even reasons to make payment of such taxes.

8. **Threshold limit for presumptive taxation for business being raised from Rs.1 crore to Rs.2 crore**

As per the existing provisions of section 44AD of the Income Tax Act in the case of an individual, HUF, Partnership firm (other than LLP) carrying on any business other

than the business of plying, hiring or leasing goods carriages in case the total turnover or the gross receipts in the year does not exceed an amount of Rs.1 crore then 8% of the total turnover or gross receipt is deemed to be the profit of the business.

The Finance Bill, 2016 proposes to increase the ceiling from Rs.1 crore to Rs.2 crore. Accordingly in the case of an individual, HUF or partnership firm (other than LLP) in case an assessee carries on a business and if the turnover or the gross receipts does not exceed Rs.2 crore then 8% of the total turnover or gross receipts shall be deemed to be the profit of the business. It is to be noted that this 8% deemed income is the minimum income. As per provision of section 44AD 8% of the total turnover or income higher than that claimed to have been earned is deemed to be the income of a business. Thus assessee cannot take credit of additional capital beyond 8% of the turnover in case income declared is 8% of the turnover.

As per the scheme of this section 44AD on a turnover of Rs.1 crore which is about Rs.30000 to 35000 per day the deemed income will be Rs.8 lakh and after claiming the various exemptions the tax payable will work out to Rs.7725 which is around Rs.644 per month and in case the turnover of Rs.2 crore per month i.e. Rs.60000 to 70000 per day the tax payable will be Rs.198275 after claiming various deductions which works out to around Rs.16500 per month as can be seen from the following table:-

Particulars	Amount (in Rs.)	Amount (in Rs.)
Turnover per annum	**Rs.1,00,00,000/-**	**Rs.2,00,00,000/-**
Presumptive Income @ 8%	**Rs.8,00,000/-**	**Rs.16,00,000/-**
Less:		
– Deduction on account of PPF, LIC Premium, etc. under section 80C	Rs.1,50,000/-	Rs.1,50,000/-
– Deduction on account of interest on housing loan	Rs.2,00,000/-	Rs.2,00,000/-

Particulars	Amount (in Rs.)	Amount (in Rs.)
under section 24(b)		
– Deduction on account of mediclaim under section 80D	Rs.25,000/-	Rs.25,000/-
– Deduction with regard to National Pension Fund under section 80CCD	Rs.50,000/-	Rs.50,000/-
Taxable Income	**Rs.3,75,000/-**	**Rs.11,75,000/-**
Tax on above income	Rs.12,500/-	Rs.1,77,500/-
Rebate under section 87A	Rs.5,000/-	Nil
Tax payable	**Rs.7,500/-**	**Rs.1,77,500**
Turnover per day	**Rs.25,000 - Rs.30,000**	**Rs.50,000 – Rs.55,000**
Tax per day	**Rs.20 – Rs.25**	**Rs.450 – Rs.500**

As can be seen from above that tax liability despite reasonable good turnover is very low.

Further the benefit of presumptive taxation is that no books of accounts are required to be maintained and provision of section 28 or section 44 including section 40A(i)(a) i.e. disallowance on account of non-deduction of TDS, disallowance under section 40A(3) on account of cash payments exceeding Rs.20000 are also not applicable. In fact tax per month is less than the cost of the accountant which otherwise is required to be incurred in case assessee does not opt for presumptive taxation.

9. **Presumptive mode of taxation to be followed for continuous 5 years**

The Finance Bill, 2016 proposes to restrict option presently available to an assessee to declare income on presumptive basis in one year and to change the same by declaring income less than presumptive income on the basis of the audited books of accounts. As per the proposed new sub-section (4) inserted under section 44AD now where an assessee who has opted for presumptive taxation then such assessee has to follow the same for five consecutive assessment years succeeding such year. In case he does not do so then such assessee shall not be eligible to have benefit of the presumptive taxation for next five assessment years from the year of change. In such cases the assessee will be required for the next 5 years to maintain books of accounts, get the same audited and compute income on the basis of such audited books of accounts only.

10. **Presumptive taxation scheme now being made applicable to profession**

The Finance Bill, 2016 proposes to extend the benefit of the presumptive scheme of taxation to an assessee engaged in profession by introducing section 44ADA. As per the proposed section, in the case of an assessee being a resident in India who is engaged in profession and whose total gross receipts do not exceed Rs.50 lakh in a year, a sum equal to 50% of the total gross receipts shall be deemed to be the profit and gains of such profession. No further deduction of any expenditure including salary and interest to partner shall be allowed. Though in the proposed section it has been stated that this will be applicable to a resident assessee but in the memorandum explaining the provisions of the Bill it has been stated that the scheme will be applicable to an individual, HUF or partnership firm excluding LLP as is the case in the case of business under section 44AD. As per the scheme such assessee will not be required to maintain any book of accounts and get the same audited as well.

11. **Threshold limit for tax audit being doubled**

The Finance Bill, 2016 proposes to increase the threshold limit for tax audit from Rs.25 lakh to Rs.50 lakh in the case of profession. In the case of a company and LLP

carrying on business tax audit threshold limit continues to be Rs.1 crore. The Finance Bill, 2016 proposes to amend clause (b) only increasing the threshold limit from Rs.25 lakh to Rs.50 lakh applicable in the case of profession. However, there is no corresponding increase in clause (a) applicable to a person carrying on business. The implication of this will be that taxpayer other than those covered by presumptive taxation of section 44AD and carrying on business, where threshold has been increased from Rs.1 crore to Rs.2 crore, shall be required to get the accounts audited even if the total sales, turnover or gross receipts in business exceed Rs.1 crore. Thus in the case of a company, LLP the requirement to get the tax audit will be applicable if its total sales, turnover or gross receipts in business exceeds Rs.1 crore in the year. Further a new clause (e) is being inserted in section 44AB explaining the applicability of the tax audit to those assessees who have opted for presumptive taxation under section 44AD does not follow the same for the succeeding five years. In such cases tax audit will be required in case the income exceeds the maximum amount which is not chargeable to tax in the previous year and there is no threshold exemption in respect of turnover.

12. **No deduction on account of salary and interest to partners**

The presumptive mode of taxation of business income at the rate of 8% of the turnover under section 44AD in business and 50% of the gross receipts in profession under section 44ADA is applicable to partnership firm as well. As per the existing provision of section 44AD a partnership firm was eligible to claim deduction on account of salary and interest to partners out of such presumptive income of 8%. The Finance Bill, 2016 proposes to delete the proviso and accordingly in the case of a partnership firm no deduction on account of salary and interest paid to partners will be allowed while computing presumptive income under section 44AD in the case of business and under section 44ADA in the case of profession.

13. **Tax exemption for startups**

The Finance Bill, 2016 proposes to provide exemption in respect of income derived from the start up business i.e. a business which involves innovation, development, deployment or commercialization of new products, processes or services driven by

technology or intellectual property. For this new section 80-IAC is being introduced. As per this provision the assessee shall have option to claim the exemption for three consecutive assessment years out of five years beginning from the year in which the eligible start up is incorporated. There is a further condition attached that the eligible startups should be incorporated on or after 1st day of April, 2016 but before 1st April, 2019 and its total turnover in business should not exceed Rs.25 crore in any of the five years starting from 1st April, 2016 to 31st day of March, 2021. Further for claiming this deduction it has to obtain a certificate from the Inter-Ministerial Board of Certification. The other normal condition is that it should not be formed by splitting up or reconstruction of a business already in existence and value of machinery or plant previously used should not exceed 20% of the total value of the machinery or plant used in the business.

In this regard it is to be noted that this exemption will be available to a company only and such company should be incorporated on or after 1st day of April, 2016. There is a further condition attached that the turnover should not exceed Rs.25 crore in any of the five years which mean that in case its turnover exceeds Rs.25 crore in any of these years the exemption already claimed may also be disputed though the intent of this provision does not appear to be so.

14. **Exemption for affordable housing project**

The Finance Bill, 2016 proposes to give exemption in respect of income derived from the business of developing and building affordable housing project which is approved by the competent authority between 1st day of June, 2016 to 31st day of March, 2019 and such project is completed within a period of three years from the date of the first approval by the competent authority. The benefit of this exemption will be available if the project is on a plot of land which is not less than 1000 sq. meters in case such project is located within the cities of Delhi, Mumbai, Chennai & Kolkata or within the area of 25 km from the municipal limits of these cities and the residential units comprised in the housing project does not exceed 30 sq. meters (323 sq. feet) and not less than 90% of the floor area ratio permissible in respect of the plot of land is utilized.

In the case of project located in other cities, the plot of land should not be less than 2000 sq. meters within the jurisdiction of any other municipality or cantonment board and the residential unit comprised in the housing project does not exceed 60 sq. meters (645 sq. ft.) and not less than 80% of the floor area ratio permissible is utilized.

In case of an individual no other residential unit should be allotted to the individual or the spouse or the minor child of such individual. The assessee is further required to maintain separate books of accounts in respect of the housing project. The benefit of this exemption is not available to an assessee which executes the housing project as a works contract. The benefit will also not be available where the housing project is not completed within a period of three years from first approval from the competent authority. In case any exemption has been claimed in any earlier years and the project does not get completed within a period of three years, then the exemption so claimed in earlier year shall deemed to be the income of the year in which the 3 years period of construction expires. It is to be noted that this exemption is available in respect of housing projects those located in the cities of Delhi, Mumbai, Chennai & Kolkata or within an area of 25 km from the municipal limit of these cities and housing projects located within the jurisdiction of any other municipality or cantonment board. If the housing project is outside the municipal limit of any other municipality or cantonment board then the benefit of this section will not be available. The built up area of the shops and the commercial establishments should not exceed 3% of the aggregate built up area. Residential units should have an independent housing unit with separate facilities for living, cooking and sanitary requirement. Such limits should be distinctly separated from other residential units within the building which are directly accessible from an outer door or through and interior door for a shared hall way and not by walking through the living space of another household. This condition has been put in to avoid misuse by making larger flats and being shown to have been divided into two flats.

15. **Incentive for new employment**

The Finance Bill, 2016, proposes to replace the existing section 80JJAA. As per the new section an assessee carrying on business and who is required to get the

accounts audited shall be eligible to claim deduction of an amount equal to 30% of the additional employee cost incurred in the business. This benefit will be available for three assessment years. There is no condition attached on the number of employees to be increased in the year. In the case of the first year of the new business 30% of all the emoluments paid to the employees during the year shall be allowed as deduction. In the case of an existing business total emoluments paid to the additional employees employed during the previous year will be eligible for deduction. An employee whose total emoluments is not more than Rs.25000 per month and who participate in the recognized provident fund and who is employed for a period of not less than 240 days during the year shall be eligible for this deduction. It is to be noted that this benefit is available only to the business and not to the profession and the payment to the employees is to be made by an account payee cheque or draft or electronic clearing system through a bank account. This deduction of 30 per cent of the expenditure tantamount to a saving in tax of about 10 per cent. It is a moot question who will like to increase expenditure of Rs.100 by employing more person for making a savings in tax of Rs.10, if such employees are not otherwise required, one is bound to employ such person irrespective of any such benefit in tax.

F. **CAPITAL GAIN**

1. **Deposit Certificate under Gold Monetization Scheme, 2015 exempt from capital gain**

The Finance Bill, 2016 proposes to amend the definition of the 'capital asset' under section 2(14) to exclude Deposit Certificates issued under Gold Monetization Scheme from the meaning of the 'capital asset'. With the exclusion of such Deposit Certificates from the definition of the 'capital asset' no capital gain will be chargeable on transfer of such Deposit Certificates under section 45 of the Income Tax Act.

2. **Redemption of Sovereign Gold Bond not to be considered as transfer**

As per the provisions of section 47 of the Income Tax Act in certain cases transfer is not recognized and consequently no capital gain tax is payable. The Finance Bill, 2016 accordingly proposes to include Sovereign Gold Bond on redemption not to be

regarded as transfer by inserting a new clause (viic). In the Sovereign Gold Bond Scheme, 2015, a person deposits gold and gets a bond. This bond is redeemable whereby in lieu of the bond and on redemption he gets equal amount of the gold which he has surrendered at the time of buying such Sovereign Gold Bond. Thus on redemption such person gets gold in lieu of the gold and there is no transfer. Recognizing this fact, the Finance Bill, 2016 has introduced the above provision whereby redemption of Sovereign Gold Bond is not to be considered as transfer. However, in case such Sovereign Gold Bonds are sold or transferred by the holder before redemption then there is a transfer. Accordingly the Finance Bill, 2016 has proposed another amendment in section 48 whereby the person transferring the Sovereign Gold Bond shall be entitled to take the benefit of indexation in respect of the long term capital gain arising on transfer of Sovereign Gold Bond.

3. **Transfer of unit in consolidation of 'plans' of Mutual Fund not to be regarded as transfer**

The Finance Bill, 2016 proposes to exempt the transfer by a unit holder of units held by him in consolidation of 'plans' of the scheme. The allotment of such unit in consideration of the units will not be regarded as transfer under section 47 (xix). Consequently the cost of acquisition of the new unit will be the same as the cost of the units in lieu of which the new units have been allotted.

4. **Restriction on exemption from capital gain on conversion of a company into LLP**

The Finance Bill, 2016 proposes to insert a further restriction in section 47(xiiib) whereby no capital gain is chargeable to tax on conversion of a company into Limited Liability Partnership. As per the existing provision of section 47(xiiib) on conversion of a company into LLP the same is not regarded as transfer provided the following conditions are fulfilled:-

(i) the total sales, turnover or gross receipts in the business of the company do not exceed sixty lakh rupees in any of the preceding previous years;

(ii) the shareholders of the company become partners of the LLP in the same proportion as their shareholding in the company;

(iii) no consideration other than share in profit and capital contribution in the LLP arises to partners.

(iv) the erstwhile shareholders of the company continue to be entitled to receive at least 50 per cent of the profits of the LLP for a period of five years from the date of conversion.

(v) all assets and liabilities of the company become the assets and liabilities of the LLP; and

(vi) no amount is paid, either directly or indirectly, to any partner out of the accumulated profit of the company for a period of three year from the date of conversion.

With the introduction of the above provision a number of companies particularly investment companies have converted into LLPs to avoid payment of Minimum Alternate Tax on its book profit and dividend distribution tax. The Finance Bill, 2016 has proposed to put a gap by putting another condition that the benefit will be available only when the value of the total assets in the books of accounts of the company in any of the three previous years preceding the previous year in which the conversion took place should not exceed Rs.5 crore. With this amendment, companies where the total value of the assets in the books of accounts is more than Rs.5 crore will not be eligible and will be liable for capital gain tax on conversion into LLP. The proposed section refers to the value of the assets as appearing in the books of accounts which will mean the value as appearing in the books of accounts and not the market value as on the date of the conversion. In case a company still wants to avail the benefit and if the value of the total assets exceeds Rs.5 crore, the option available to such company will be to reduce the total value of its assets or to hive of undertaking so as to bring it down below Rs.5 crore.

5. Date of agreement to be considered for determination of circle rate while computing capital gain

As per the provision of section 50C in the case of sale of capital asset being land or building, the consideration received consequent to such sale is less than the value adopted for the purpose of payment of stamp duty then such value is taken to be the consideration and capital gain is payable on the basis of such value adopted for the purpose of payment of stamp duty. In some cases there is a time gap between the agreement to sell so entered into and when the sale deed is executed. In case of increase in circle rate during this period the seller is required to pay capital gain on the basis of the value as on the date of the sale deed as against the date on which the agreement to sell was entered into. The Finance Bill, 2016 proposes to amend this provision of section 50C by inserting a proviso that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for as the consideration for computing capital gain. In order to ensure that such agreements are genuine it has been further provided that amount of the consideration or a part thereof should have been received by the seller by way of account payee cheque or draft or electronic clearing system through a bank account on or before the date of agreement to sell. This amendment will go a long way to address the cases where there is a considerable delay between the date of agreement to sell and the sale deed and dispute normally arise as to who will pay the additional cost of tax consequent to change in circle rate during this period.

6. No capital gain tax on transfer of residential property for investment in startup companies

The Finance Bill, 2016 proposes to introduce a new exemption from capital gain tax arising on account of transfer of a residential property if such capital gain is invested in subscription of shares of a startup company. Such company has to fulfill all the conditions so as to qualify as an eligible startup company. This benefit will be available only to an individual or HUF and such individual or HUF has more than 60% shares of the startup company and such company should utilize the amount invested

in shares to purchase new assets before the due date of filing of return by such individual or HUF. The new asset here will include plant and machinery as well as computers and computer software. It is important to note that such startup company should be technology driven and should be certified in this regard by the Inter-Ministerial Board of Certification notified by the Central Government.

7. Additional exemption of Rs.50 lakh in units of Funds being set up for Startup India Action Plan

The Finance Bill, 2016 proposes to provide further exemption of Rs.50 lakh in case of investment of a capital gain arising from the transfer of a long term capital asset in units of a Fund and it is proposed to be set up to finance the startups. For this purpose a new section 54EE is being introduced. Such investment has to be made within a period of six months after the date of transfer of capital asset. Further such units cannot be transferred within a period of three years from the date of its acquisition nor can such units be used as security for taking any loan or advances. In case of violation of these conditions the amount of the unit will be deemed to be the income of the year for which the violation took place. It is to be noted that this exemption under section 54EE will be in addition to the exemption available under section 54EC in respect of Capital Gain Bonds. Thus the assessee will be in a position to invest up to Rs.1 crore i.e. Rs.50 lakh in Capital Gain Bonds under Section 54EC and R.50 lakh in Start Up Funds under section 54EE of the Act and claim exemption in respect of long term capital gain.

G. INCOME FROM OTHER SOURCES

1. Shares received on merger or amalgamation at a value less than book value to be taxed

As per the existing provisions of section 56(2)(vii) any share received by an individual or HUF at a value less than the book value is deemed to be the income from other source of such individual or HUF. The scope of the present provision also extends to the share received consequent to the demerger or amalgamation. The Finance Bill, 2016 proposes to exclude the shares received consequent to demerger or amalgamation of a company from the purview of section 56(2)(vii) of the Act.

With the proposed amendment in case an individual or HUF receives shares consequent to demerger or amalgamation then the difference in the book value of such shares and the value at which shares are allotted will not be deemed to be the income of such individual or HUF.

2. **Interest on Gold Deposit Certificate to be exempt**

The Finance Bill, 2016 proposes to widen the scope of section 10(15) to extend the benefit of exemption of the income of interest on Gold Deposit Certificate issued under the Gold Monetization Scheme, 2015. With this amendment the capital gain as well as interest income, both will be exempt in the case of Gold Deposit Certificate issued under Gold Monetization Scheme, 2015.

3. **Business Trusts to be exempt from dividend distribution tax**

The Finance (No.2) Act, 2014 has provided pass through status to the Real Estate Investment Trust (REIT) and Infrastructure Investment Trust. As per the proposal the income was to be assessed in the hands of the beneficiary. However, there was no exemption from payment of dividend distribution tax in respect of the income distributed by the Special Purpose Vehicle to the business trust. The Finance Bill, 2016 proposes to further expand the benefit exempting the Special Purpose Vehicle from payment of dividend distribution tax in respect of the distribution made by it to the business Trust. Further such dividend received by these business trusts and its investor shall not be taxable in the hands of the trust as well as investor. However, this exemption will be available to only such trust which hold 100% of the share capital of the SPV and this exemption would be only in respect of the dividend paid out of the current income after the date when such business trust has acquired 100% shareholding of the SPV. Dividend paid out of accumulated profit up to the date when the business trust has become 100% shareholder will be liable for dividend distribution tax. With this amendment, now it will be more beneficial to hold the investment in the real estate through a business trust as the incidence of tax will be at one point only and the dividend paid out of such income will not be liable for further taxation. This can go a long way in unlocking the value of the real estate. The above amendment shall be applicable from 1st June, 2016.

H. INTERNATIONAL TAXATION

1. New Equalization Levy

The Finance Bill, 2016 proposes to levy a new tax called Equalization Levy by introducing Chapter VIII in the Finance Bill, 2016. As per the provisions of this Chapter every non-resident who receives any consideration for online advertisement or any provision for digital advertising space or any other facility or service for the purpose of online advertisement from a person resident in India and carrying on business or profession or from a non-resident having a Permanent Establishment in India, shall be charged an Equalization Levy at the rate of 6% of the amount of the consideration. However, such levy shall not be payable in case the amount of the consideration does not exceed Rs.1 lakh. However, in order to ensure the recovery of such tax from the non-resident an obligation has been put on the person receiving such services to deduct this Equalization Levy from the amount paid or payable to the non-resident. The amount so deducted is to be deposited within a period of 7 days from the end of the calendar month and in case an assessee who fails to deduct the levy, then the same can be recovered from such person. Further an obligation has been put on such person to file a statement after the end of each financial year. The statement so furnished shall be processed. In case a person who fails to pay the equalization levy within the period prescribed he will be liable to pay interest at the rate of 1% for every month or part of the month besides a penalty of Rs.1000 per day for late filing of statement. However, this penalty shall not exceed the amount of equalization levy. Chapter VIII is a Code in itself and prescribes complete mechanism of filing of statement, processing, representation, rectification, appeal, etc.

The objective of this equalization levy is to collect tax from non-residents in respect of online advertisement. However, the Finance Bill, 2016 has proposed an absolutely new chapter and a new mechanism with the result that the paper work and compliance will get increased considerably. It would have been ideal that such equalization levy would have been made part of section 195 where every person making payment to a non-resident which is chargeable to tax is required to deduct tax at source. This would have avoided separate levy, separate payment and

separate filing of statement, its processing, etc. The new equalization levy and its procedural requirement goes against the very spirit of ease of doing business in India.

It is also important to note that this being not income tax but an equalization levy, the non-resident from whose consideration this amount will be deduced may not be eligible to take credit of the same under the Double Taxation Avoidance Agreement in its home country. This proposal in the Finance Bill, 2016 to introduce "equalization levy" at the rate of 6% on cross border payments for online advertisement services, where the non-resident recipient of income, being the provider of such services, does not have a PE in India is an attempt to override the DTAA entered into by India with various countries. Income of the nature on which this levy is proposed constitutes "business income" in the hands of the non-resident company and such income in the absence of a PE in India cannot be taxed in India.

Accordingly without an amendment in the DTAA any attempt to levy such tax is an indirect way to override DTAA through amendment in domestic laws and may not be appreciated internationally.

The equalization levy shall be effective from the date to be appointed in the notification. Since the Finance Bill will get approved by 31st May, 2016 the notification can be expected thereafter only.

2. **Place of effective management for deciding the status of a company being postponed by one year**

The Finance Act, 2015 has amended the provisions of section 6(3) in regard to the status of a company said to be a resident in India. Before this amendment by the Finance Act, 2015 a company is said to be a resident in India if it is an Indian company or during the year the control and management of its affairs is situated wholly in India. The Finance Act, 2015 has proposed that if its place of effective management (POEM) in that year is in India the same will be treated as a resident in India. The Finance Bill, 2016 has postponed the applicability of this new criteria with effect from 1st April, 2017 i.e. assessment year 2017-18. Accordingly the criteria of

place of effective management will not be applicable for financial year 2015-16 i.e. assessment year 2016-17.

3. **Relaxation of conditions for exemption to Off-shore Funds**

The Finance Act, 2015 has introduced a new section 9A to provide that certain activities of Off-shore funds will not constitute business connection in India and accordingly the income shall not be deemed to accrue or arise in India. However, certain conditions were imposed to avail this benefit which included residential status of such fund, amount of the investment in the fund, investor base and the payment of remuneration, etc. For the purpose of availing this benefit the fund has to be a resident of a country or territory with which India has entered into a Double Taxation Avoidance Agreement or Tax Information Exchange Agreement and such fund cannot carry on or control and manage directly or indirectly any business in India. The Finance Bill, 2016 proposes to relax this condition so as to provide that such fund should be established or incorporated or registered outside India in a country or a specified territory notified by the Central Government in this behalf. The condition that the fund is not controlling and managing any business in India shall be restricted only with regard to the activities in India. Consequently the condition that the fund should be a resident of a country with whom India has entered into Double Taxation Avoidance Agreement has been deleted. Further the condition that the fund shall not carry on or control and manage any business from India has also been deleted.

4. **Increased tax concession to International Financial Services Centre**

The Finance Bill, 2016 proposes to provide virtually tax free regime to the International Financial Services Centre. As per the proposal, the income arising from the transactions undertaken in foreign currency at a recognized Stock Exchange located in an International Financial Services Centre shall be exempt. Further no security transaction tax and the commodity transaction tax shall be applicable in respect of transactions entered into by any person on a recognized Stock Exchange located in an International Financial Services Centre. The Minimum Alternate Tax payable under section 115JB in the case of a company being a unit located in an

International Financial Services Centre shall be 9% as against normal rate of 18%. No further dividend distribution tax shall be payable by such company nor the dividend shall be chargeable to tax in the hands of the company or the person receiving such dividend. The above proposal has been introduced with an objective to make this International Financial Services Centre as a world class financial service hub. With the above concession in the tax the only tax payable by a unit operating in an International Financial Services Centre will be Minimum Alternate Tax that too at the rate of 9%. The exemption in respect of STT and CTT shall be effective from 1st June, 2016 and the rest of the exemption from capital gain, dividend distribution tax, concessional MAT shall be applicable from assessment year 2017-18.

5. **No Minimum Alternate Tax (MAT) on foreign companies for the prior period**

The Finance Bill, 2016 proposes to give statutory recognition to the recommendation of the Justice A.P. Shah Committee on the issue of applicability of Minimum Alternate Tax provisions on foreign companies and hence no MAT will be applicable on foreign companies for prior assessment years. For this Explanation 5 is being inserted in section 115JB to provide that provision of MAT shall not be and shall be deemed to never to have been applicable to a foreign company. This amendment is being made retrospectively with effect from 1st April, 2001.

6. **Exemption from PAN to Non-Resident**

The Finance (No.2) Act, 2009 has introduced section 206AA requiring every person to furnish Permanent Account Number and in the absence of the same tax shall be required to be deducted at the rate of 20% or the rate specified or the rate in force whichever is higher. Dispute has arisen about the non-residents who do not have the PAN. The Finance Bill, 2016 proposes to address this issue so as to clarify that this section shall not apply to a Non-resident. However, certain conditions have been prescribed. The Finance Minister in this regard has clarified in his budget speech that alternative documents establishing identity of the non-resident may also be accepted and in such case higher rate of tax deduction at source will not be applicable.

7. **Display of diamond by diamond mining company not to be considered as business connection in India**

As per the provisions of section 9 of the Income Tax Act, income is deemed to arise or accrue in India from any business connection in India. The Finance Bill, 2016 proposes to relax this condition in the case of a foreign company engaged in the business of mining diamond if they undertake activities to display uncut and unassorted diamond in Special Zone notified by the Central Government in this behalf. This concession is being given to facilitate shifting of operations by foreign mining companies to India and to promote trading of diamond by the leading diamond mining companies of the world in India. This amendment is being made retrospectively i.e. assessment year 2016-17.

8. **Concessional rate of 10% on long term capital gain to be applicable to unlisted securities as well**

As per the provisions of section 112(1)(c) of the Income Tax Act in the case of a Non-resident income tax on long term capital gain arising from unlisted securities is levied at the rate of 10% without giving benefit of indexation. In order to address the judicial pronouncements, whereby unlisted securities have been given meaning to not to include shares of a company in which the public are not substantially interested, it is being clarified that this benefit of concessional rate of 10% shall be available in respect of long term capital gain arising from the transfer of capital asset being shares of a company not being a company in which the public are substantially interested.

9. **Capital gain consequent to fluctuation in foreign currency on Rupee Denominated Bonds to be exempt from tax**

The Finance Bill, 2016 proposes to exempt capital gain arising in the hands of a non-resident investor in Rupee Denominated Binds consequent to the appreciation of the Rupee between the date of issue and the date of redemption. Accordingly any gain arising on account of appreciation of Rupee against a foreign currency at the time of redemption of Rupee Denominated Bonds of an Indian company subscribed by him shall be ignored for the purpose of computation of the full value of the consideration

under section 48 of the Act. It is to be noted that this benefit is available to the person who has subscribed to it and only at the time of redemption.

I. ASSESSMENT

1. Period of late filing return being reduced

As per the existing provision of section 139(4), any person who has not furnished return within the time allowed under section 139(1) can furnish the return at any time before the expiry of one year from the end of the relevant assessment year. The Finance Bill, 2016 proposes to restrict this benefit till the end of the relevant assessment year. Accordingly the return has to be filed now before the end of the relevant assessment year and any return filed beyond that period shall be considered to be invalid return.

2. Belated return can now be revised

As per the existing provisions of section 139(5) any person who has furnished the return under section 139(1) and later on such person discovers any omission or error or any wrong statement therein he could file revised return at any time before the expiry of one year from the end of the relevant assessment year, or completion of the assessment whichever is earlier. This facility of revising the return under the existing provision is not available in case the original return has not been filed in time. The Finance Bill, 2016 proposes to amend this and permit furnishing revised return even in the case where the return has been filed late. The time period, however, for revising this return has been retained to one year from the end of the relevant assessment year.

This amendment though in a way addresses the problem of revising a return which originally was delayed but still does not address the issue about any error or omission noticed by the assessee during the course of the assessment which period goes beyond one year from the end of the relevant assessment year. It would have been ideal that assessee be permitted to file a revised computation of claim at any time before the completion of the assessment. Since many times during the assessment the assessee is denied a claim and as a consequence thereof the

assessee may be entitled to an alternative claim. In such a situation denial of the benefit of alternative claim is not justified. Invariably in such cases the assessee makes a claim in the appellate proceedings and the matter gets remanded back leading to delay and increased paper work.

3. **Return not to be treated defective in case of non-payment of tax and interest**

Under the existing provisions of section 139(9) a return may be treated as rejected where the tax together with interest payable in accordance to the provisions of section 14A, has not been paid before the due date of furnishing the return. The Finance Bill, 2016 proposes to delete this condition and hence a return will not be considered to be defective return even if the tax and interest has not been paid before furnishing such return.

4. **Return to be filed by a person having exempt income from long term capital gain**

As per the existing provision of section 139(1), return is required to be filed by a person having income exceeding maximum amount which is not chargeable to tax. Thus those assesses who have exempt income in respect of long term capital gain under section 10(38) are not required to file the return of income. In order to bring transparency and accountability the Finance Bill, 2016 proposes to provide that the income is to be first computed without giving effect to the exemption under section 10(38) and if such amount exceeds the maximum amount chargeable to tax then such person shall be required to file the return of income. This amendment has been made probably keeping in mind the large number of case where long term capital gain has been subject matter of verification and was found to be not genuine.

5. **Processing of return to be mandatory**

As per the existing provision processing of return is not mandatory. The Finance Bill, 2016 proposes to amend this provision to provide that before making an assessment under section 143(3) a return has to be processed under section 143(1) of the Act.

6. Scope of making adjustment while processing return being extended

As per the existing provision of section 143(1) while processing return, adjustment on account of arithmetical error or any incorrect claim can be made.

The Finance Bill, 2016 proposes to add 4 new clauses whereby while processing return following adjustment are also to be made:-

(i) Disallowance of loss if the return of the year for which such loss is being claimed was furnished beyond the due date;

(ii) Disallowance of expenditure included in the tax audit report but not taken into account while computing the total income

(iii) Disallowance of deduction under section 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE which is not permissible if the return is furnished beyond the due date;

(iv) Addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return.

However, it has been provided that no adjustment shall be made unless an intimation is given to the assessee on such adjustment either in writing or in an electronic mode and the response received from the assessee within 30 days of such intimation shall be considered before making any adjustment.

The above amendment still have a far reaching implication. There could be a few cases where auditors may have taken a view and the assessee may have a different view than the auditors. Further there may be income appearing in Form 26AS which may not pertain to the year under consideration as under the TDS provision tax is required to be deducted at source at the time of credit or payment whichever is earlier which will include even advance payment. An assessee may not include such advance in its income and hence would not have taken credit of the TDS as well. But such amount will appear in the Form 26AS. This may lead to a lot of paper work and huge demand being created against the assessee.

7. **Notice under section 143(2) can now be issued by prescribed Income Tax Authority as well**

As per the existing provisions of section 143(2) if the Assessing Officer considers it necessary or expedient he may serve on the assessee a notice requiring him to either to attend his office or to produce or calls to be produced any evidence on which the assessee may relay in support of his return. Thus under the existing provisions the Assessing Officer only has the authority to issue notice under section 143(2) of the Act. The Finance Bill, 2016 proposes to expand this power to the prescribed income tax authority also. This probably is being done as now returns are being selected for scrutiny on the basis of computer aided selective scrutiny and notice in such cases can be issued automatically from the Computer Centre itself. The officer therein will be prescribed by the authority for the purpose of issue of notice under section 143(2). This amendment shall be applicable from 1st June, 2016. Hence from that day onwards notice under section 143(2) can be issued by the prescribed authority and not necessarily to be issued by the Assessing Officer.

8. **Scope of reopening of the assessment being expanded**

Section 133C empowers the prescribed income tax authority i.e. Principal Director General, Director General, Principal Director or Director to call for information for the purpose of verification of information in his possession relating to any person, which may be useful or relevant to any enquiry or proceeding under this Act. The Finance Bill, 2016 proposes to insert sub-section (2) in this section 133C empowering such authority to process such information or document and make available outcome of such processing to the Assessing Officer. Further provisions of section 147 is also being amended to empower the Assessing Officer by inserting clause (ca) in the Explanation 2 where income shall be deemed to have escaped assessment, where on the basis of the information or document received from the above authority it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss/deduction, allowance or relief in the return. This amendment shall be effective from 1st June, 2016 and accordingly the Assessing Officer shall be entitled to reopen the assessment under section 147 on the basis of the information received by it from the prescribed authority.

9. Time period for completion of assessment being reduced to 21 months

At present an assessment can be completed within a period of 2 years from the end of the relevant assessment year. This period is being again reduced to 21 months from the end of the relevant assessment year. Thus all assessment will now be completed in December as against March. Similarly the period of reassessment under section `147 is being reduced to 9 months from the end of the year in which notice under section 147 is served on the assessee. Similarly, period for completion of fresh assessment in pursuance of an order passed under section 254, section 263 or section 264 is being reduced to 9 months as against existing one year from the end of the financial year in which such order is received.

10. Limitation period being prescribed to give effect to the appeal/revision/settlement order

The Finance Bill, 2016 proposes to provide limitation period of 3 months for giving effect to an order passed under sections 250, 254, 260, 262, 263, 264 or order under section 245D(4) where effect can be given wholly or partly otherwise than by making a fresh assessment. This period of 3 months is to be computed from the end of the month in which the order is received or passed as the case may by the Principal Chief Commission, Chief Commissioner or Commissioner. In case where it is not possible to pass such order within the aforesaid period of 3 months then the Principal Commissioner or Commissioner on receipt of reason in writing from the Assessing Officer if satisfied may allow additional time of 6 months.

This provision shall be effective from 1st June, 2016. However, in respect of cases pending as on the 1st day of June, 2016 the time limit for passing such order has been kept upto 31st March, 2017 as a transitional provision. This is an important amendment. Presently there is no time period prescribed for giving effect to the appeal order except in the case where the assessment is set asided. With the introduction of this provision the Assessing Officer will be duty bound to give effect to the appeal order within the prescribed period and this will go a long way in addressing the grievances of the taxpayer whereby refund arising consequent to the relief given in the appeal order are not issued.

11. **Time limit for completion of assessment in search cases**

The time limit for completion of assessment under section 153A in the case of a searched person is being reduced to 21 months as against 2 years from the end of the financial year in which search is carried out.

Further the time limit for completion of assessment of a person other than the searched person under section 153C is also being restricted to 21 months from the end of the financial year in which search is carried out as against the present provision of one year from the end of the financial year in which the books of accounts or assets seized or requisitioned are handed over under section 153C to the Assessing Officer. With this amendment the assessment in the search, both of the searched person and the person other than the searched under section 153C have to be completed within a period of 21 months from the end of the financial year in which the search is carried out. With the above amendment the Assessing Officer now will have to take a call for invoking the provision of section 153C in the case of person other than searched person at an early stage. Further in case where the assessee who has been searched at the advance stage of its assessment under section 153A able to establish that the money, bullion or jewellery, etc. seized or the documents seized do not belong to him but belongs to another person in that case the assessment of such other person has to be completed within the limited time available i.e. the time available in the case of the searched person. This may create a practical difficulty in such cases of assessment under section 153C.

J. **TAX DEDUCTION AT SOURCE**

1. The Finance Bill, 2016 has proposed to increase the threshold limit of tax deduction at source and also revised the rate of deduction of tax at source on various payments as detailed below:-

Increase in threshold limit

Particulars	Existing Limit	Proposed Limit
Payment of accumulated balance due to an employee under section 192A	30,000	50,000

Particulars	Existing Limit	Proposed Limit
Winning from Horse Race under section 194BB	5,000	10,000
Payment to contractors under section 194C in aggregate during the year	75,000	1,00,000
Payment of compensation on acquisition of certain Immovable property under section 194LA	2,00,000	2,50,000
Insurance Commission under section 194D	20,000	15,000
Commission on sale of lottery tickets under section194G	1,000	15,000
Commission or brokerage	5,000	15,000

Revision in rates of deduction of tax at source

Particulars	Existing Rate of TDS (%)	Proposed Rate of TDS (%)
Payment in respect of Life Insurance Policy under section 194DA	2%	1%
Payments in respect of NSS Deposits under section 194EE	20%	10%
Insurance commission under section 194D	10%	5%
Commission on sale of lottery tickets under section 194G	10%	5%

Particulars	Existing Rate of TDS (%)	Proposed Rate of TDS (%)
Commission or brokerage under section 194H	10%	5%

Further the provision of section 194A in respect of income from units and section 194L in respect of payment of compensation on acquisition of capital assets are being deleted.

The above threshold limit and the tax rates shall be applicable from 1st June, 2016.

2. Self-declaration for non-deduction of tax to cover rental payment

At present under section 197A of the Income Tax Act tax is not required to be deducted in case of an individual who is resident in India if he furnishes a declaration in writing in prescribed form no. 15G/15H to the effect that tax on his estimated total income will be Nil. As on date this declaration cannot be filed in respect of rental income. The Finance Bill, 2016 proposes to expand the scope of this section 197A to allow self-declaration in form no.15G/15H for non-deduction of tax in respect of rental payment also if the tax on the estimated total income will be Nil.

The above provision will be applicable from 1st June, 2016 and as such declaration in form no. 15G and 15H can be filed in respect of rental payment as well from that day onwards.

3. Tax to be collected at source (TCS) on cash transaction exceeding Rs.2 lakh

The Finance Minister in his budget speech of 2015 has proposed to reduce cash transaction. In line with his intent, a notification dated 30th December, 2015 was issued making it mandatory to quote PAN in respect of cash payment exceeding Rs.2 lakh for sale of goods or services of any nature. In order to further strengthen this provision, the Finance Bill, 2016 has proposed to collect tax at source at the rate of 1% in respect of sale in cash of any goods other than bullion and jewellery or providing of any services exceeding Rs.2 lakh. Thus not only now PAN will be

mandatory for cash payment exceeding Rs.2 lakh on sale of goods and services but also in such cases TCS is also to be collected at the rate of 1%. It is to be noted that under the existing provision of section 206C (1D) tax is required to be collected at source at the rate of1% on consideration for sale of bullion exceeding Rs.2 lakh and sale of jewellery exceeding Rs.5 lakh. This TCS provision shall not be applicable in respect of payment on which tax is deducted at source by the buyer. Further enabling provision has been proposed in this section to exempt applicability of this 1% TCS in such class of buyers who fulfill such conditions as may be prescribed.

The above provision will be applicable from 1st June, 2016 and accordingly on all cash sale of Rs.2 lakh or more TCS will be required to be collected by the seller from the buyer and PAN will also be required to be quoted on all such sale.

4. **TCS to be collected from the purchaser of motor vehicle**

The scope of TCS is being extended as per the provision of the Finance Bill, 2016 tax at the rate of 1% is to be collected by the seller of the motor vehicle from the purchaser if the value of the motor vehicle exceed Rs.10 lakh. It is to be noted that this TCS on motor vehicle is not on cash sale of motor vehicle. This is irrespective of the transaction being in by cheque or cash. The TCS has to be collected at the rate of 1% on sale of motor vehicle where the value exceeds Rs.10 lakh.

This provision also be applicable from 1stJune, 2016.

K. **PENALTY**

1. **New penalty for concealment of income**

As per the existing provision of the Act, penalty is imposed under section 271(1)(c) for concealment of income as well as for furnishing of inaccurate particulars of income. The minimum penalty is 100% and the maximum penalty can be up to 3 times of the amount of tax sought to be evaded. The Finance Bill, 2016 proposes to replace this section 271(1)(c) in respect of assessment year 2017-18 onwards by introducing a new section 270A. As per this new provision of section 270A penalty has been divided into two parts, one is relating to under-reporting of income and another is misreporting of income. In the case of underreporting of income the

penalty leviable shall be equal to 50% of the amount of the tax payable on under reported income. The penalty in case of misreporting of income, the amount of penalty leviable shall be equal to 200% of the amount of tax payable on such misreported income. In the following cases a person is considered to have underreported the income:-

(a) the income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of section 143;

(b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished

(c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;

(d) the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income determined in the return processed under clause (a) of sub-section (1) of section 143;

(e) the amount of deemed total income assessed as per the provisions of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed;

(f) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

The following will be the case of misreporting of income:-

(a) misrepresentation or suppression of facts;

(b) failure to record investments in the books of account;

(c) claim of expenditure not substantiated by any evidence;

(d) recording of any false entry in the books of account;

(e) failure to record any receipt in books of account having a bearing on total income; and

(f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

Further it has been provided that following income shall not be included for the levy of penalty:-

(i) the amount of income in respect of which assessee offers an explanation and the Assessing Officer or the Commissioner (Appeals) is satisfied with the explanation as bonafide and assessee had disclosed all material facts to substantiate the explanation thereof;

(ii) Income determined on the basis of an estimate, if the accounts are correct and to the satisfaction of the Assessing Officer but the method employed is such that income properly be deduced therefrom.

(iii) Income determined on the basis of an estimate, if the assessee has on his own estimated the lower amount and deduction or disallowance on the same issue and has made appropriate adjustment of the same in the computation of his income and has disclosed all the facts and material to the addition or disallowance;

(iv) Income represented by any addition on account of arm's length price determined by the TPO where assessee has maintained information and document pertaining to international transaction and disclosed all the material facts relating to the transaction;

(v) Undisclosed income for which penalty is leviable under section 271AAB i.e. undisclosed income found during the course of the search for which return is not due as on the date of the search.

On going through the above exclusions it is to be noted that in case of disallowance such as Section 14A, etc. if the assessee has made suo motto disallowance and there

arise an adjustment then no penalty shall be leviable merely because the Assessing Officer has not accepted the disallowance made by the assessee. Similarly no penalty shall be leviable in case of any adjustment made on account of difference in the arm's length price where the international transaction has been declared. Also no penalty shall be leviable in cases where addition is based on estimation if the books are otherwise correct. In view of these amendments it will be advisable for taxpayer to compute the deduction or disallowances as per the provisions of the Act and to disclose the same appropriately in the computation of income along with the basis thereof. If it is so done then in case of any addition consequent to the difference of opinion no penalty shall be leviable for such addition or disallowance.

2. **Immunity from penalty and prosecution in case of under reporting of income**

The Finance Bill, 2016 proposes a new section 270AA providing immunity from imposition of penalty and initiation of prosecution in respect of underreporting of income if the tax and interest payable as per the assessment or the reassessment has been paid within the period specified in the notice on demand and no appeal against the order is filed. The Assessing Officer on receipt of such application has to pass an order within a period of one month from the end of the month in which such application is received accepting or rejecting such application. However, before rejecting such application an opportunity has to be given to the assessee. It has been clarified that this immunity from penalty and prosecution will not be available where there is misreporting of income. This benefit will be available only in the case of underreporting of income. It is to be noted that assessment order has to be accepted in totality and no appeal can be filed against such assessment order. This will give an opportunity to the assessee whether certain additions have been made which fall in the category of under reporting of income and not in the misreporting of income to pay tax and interest before the due date and to avoid the penalty. However, there may be difficulty in those cases where additions have been made which fall in both categories i.e. under reporting of income and misreporting of income. In such cases immunity may not be available.

3. **Direct Tax Dispute Resolution Scheme, 2016**

The Finance Bill, 2016 proposes to introduce Direct Tax Dispute Resolution Scheme, 2016 by introducing a Chapter. This Scheme has two parts, one is relating to appeal which is pending before the Commissioner of Income Tax (Appeals) or Commissioner of Income Tax (Wealth) as on 29th February, 2016. This appeal can be against the assessment order or a penalty order. In case the appeal is pending against an assessment order and the disputed tax does not exceed Rs.10 lakh, the assessee would be required to pay tax at the applicable rate plus interest up to the date of the assessment. In such cases no penalty shall be leviable. However, in those cases where disputed tax exceeds Rs.10 lakh then the assessee will be required to deposit tax plus interest up to the date of the assessment but also 25% of the minimum penalty leviable.

In case the appeal is pending against a penalty order the assessee will be required to pay 25% of the minimum penalty leviable along with tax and interest payable on account of assessment or reassessment.

For availing this scheme the assessee will be required to file a declaration on or after 1st day of June, 2016 but on or before a date to be notified by the Central Government. The designated authority to whom such declaration is to be filed shall within a period of 60 days from the date of receipt of the declaration determine the amount payable and grant a certificate specifying the amount payable by the assessee. The assessee shall be required to pay the amount so determined within 30 days of the receipt of the certificate and intimate the effect of such payment along with proof to the designated authority and thereafter the designated authority will pass the order and grant immunity from instituting any proceeding in respect of any offence under the Income Tax Act or Wealth Tax Act and immunity from imposition or waiver of penalty.

The benefit of this scheme, however, will not be available in those -

(i) Cases where prosecution has been initiated before 29th February, 2016.

(ii) Search or survey cases where the declaration is in respect of tax arrears.

(iii) Cases based on information received under DTAA

(iv) Person notified under Special Courts Act, 1992.

(v) Cases covered under Narcotic Drugs and Psychotropic Substances Act.

It is to be noted that above scheme is applicable only in respect of all pending before Commissioner of Income Tax (Appeals). Further it is to be noted that appeal arising from the assessment order framed consequent to the search and survey cases are not eligible for settlement of the dispute. Accordingly appeals where assessment orders have been passed under section 153A or 153C or where assessment has been framed consequent to the survey cannot be settled under this scheme.

The second part of the Scheme is a declaration in respect of any tax determined in consequence of amendment made with retrospective effect in the Income Tax Act or the Wealth Tax Act a dispute in respect of which is pending as on 29.02.2016. Such dispute need not necessarily be pending with the Commissioner (Appeals). Such dispute can be pending with Commissioner (Appeals) or the Tribunal or the High Court or the Supreme Court. A person who wants to take benefit of this scheme before filing the declaration shall be required to withdraw such appeal including any arbitration proceeding, if any, initiated in respect of such dispute. Such declarant shall also be required to furnish an undertaking waiving his right to seek or pursue any remedy or claim. In such cases the declarant shall be required to pay the amount of such tax. No interest and penalty shall be payable in respect of such dispute arising consequent to the retrospective amendment. As is apparent from the Scheme the second part of the scheme is intended to address on going dispute of Vodafone, Cairn Energy Ltd. where consequent to the retrospective amendment made by the Finance Act, 2012 tax demand has been created.

4. **Income Declaration Scheme, 2016**

The Finance Bill, 2016 has proposed another scheme called the Income Declaration Scheme, 2016 so as to provide a window to those persons who have not paid full taxes in the past can declare the income and pay tax at the rate of 45% on such undisclosed income. This scheme shall open from 1st June, 2016 and will remain

open upto the date notified by the Central Government. As per this scheme any person may make a declaration in respect of any income chargeable to tax for any assessment year prior to the assessment year2017-18 which means income upto 31st March, 2016 for which he has failed to furnish the return or which he has failed to disclose in the return of income or which has escaped assessment.

For this purpose a declaration has to be filed with the Principle Commissioner or the Commissioner and tax payable shall be in aggregate 45% of the fair market value of such asset as on the date of commencement of this Scheme i.e. 1st June, 2016. This tax of 45% comprises of 30% tax, 7.5% surcharge to be called Kisan Kalyan Cess and penalty at the rate of 7.5%. It is to be noted that this aggregate tax of 45% is to be paid not on the actual undisclosed income earned in the relevant year but on the fair market value of such asset as on the date of commencement of this scheme i.e. 1st June, 2016. Accordingly if any person is holding such undisclosed income in the form of investment in any asset such as gold, jewellery, shares, immovable property, etc. it will be required to value such asset at the market value as on 1st June, 2016. The fair market value is to be computed in accordance with the method to be prescribed. Thus the effective tax rate may be much higher depending upon the appreciation in the value of the investment made out of the undisclosed income.

The entire amount of the tax, cess and penalty on 45% has to be paid on or before the date which will be notified by the Central Government and proof of payment of the same has to be filed with the authority before whom the declaration has been filed. No deduction of any expenditure shall be allowed against the income in respect of which declaration under this scheme is to be made and the declarant shall not be entitled to claim any set off or relief in any appeal or reference or other proceedings in respect of such declaration. Another important feature of this scheme is that the following cases shall not be eligible for availing benefit of this scheme:-

- where notices have been issued under section 142(1) or 143(2) or 148 or 153A or 153C, or
- where a search or survey has been conducted and the time for issuance of notice under the relevant provisions of the Act has not expired, or

- where information is received under an agreement with foreign countries regarding such income
- cases covered under the Black Money Act, 2015, or
- persons notified under Special Court Act, 1992, or
- cases covered under Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988.

On going through the above exclusion it is to be noted that the benefit of thi scheme is not available in relation to undisclosed income where a notice under section 142 or section 143(2) or section 148 or section 153A or section 153C has been issued in respect of such assessment year and the proceeding of the same is pending before the Assessing Officer. Thus with these restrictions the eligibility of the potential persons who will be willing to avail the benefit of this scheme will get limited. The exclusion applies to the relevant assessment year. Thus even for that assessment year the undisclosed income is still not in the notice of the department, still benefit of this scheme cannot be availed for such income as such income falls in that assessment year for which notice has been issued.

Further in view of the fair market value to be applied for computing the tax on the undisclosed income in case such undisclosed income is represented by any asset as on 1st June, 2016 the effective tax rate may be substantially high as compared to the 45% stated in the scheme. This may further dissuade many.

5. Penalty in search cases to be 60% of undisclosed income

Presently under section 271AAB penalty is leviable in respect of undisclosed income found during the course of the search in respect of the period for which the due date of filing return has not expired. This penalty can be levied which is not less than 30% but it cannot exceed 90% of the undisclosed income. The Finance Bill, 2016 proposes to remove the discretion and accordingly has proposed to levy penalty at the flat rate of 60% of such income. With tax rate being 30% and penalty at the

rate of 60% after taking into account the interest the total amount payable on undisclosed income in all the cases will be exceed the undisclosed income itself.

L. MISCELLANEOUS

1. Paperless assessment

In order to legalize paperless assessment, the Finance Bill, 2016 has proposed to define terms herein by inserting new clause (23C) to expedite communication of data and document through electronic mode. Further provision of section 282A has also been amended to provide for notice and documents required to be issued shall be issued either in paper form or in electronic form in accordance with set procedure as may be prescribed. With these amendments the Assessing Officer will be able to issue notice through electronic mode and assessee will also be able to attend hearing by submission of documents and data through electronic mode. This will enable the paperless assessment and in times to come in many case assessee may not be required to attend hearing physically before the AO.

The above amendment shall be applicable from 1st June, 2016 and this being procedural amendment the same will also be applicable to all the ongoing assessment on or after 1st June, 2016.

2. Subsidy by Central Government for setting up of trust or institution not to be considered as income

The Finance Bill, 2016 proposes to amend an anomaly which has been created consequent to the amendment made by the Finance Act, 2015 whereby scope of income under section 2(24) was expanded to include assistance in the form of subsidy or grant or cash incentive, etc. by the Central Government or a State Government or any authority or body or agencies. The implication of the above amendment was that Central grant or assistance including the grant given by the Central Government for setting up of trust or institution became chargeable to tax as income of such trust or institution. With the proposed amendment such grant or subsidy given by the Central Government for the purpose of the corpus of such

institution established by the Central Government or the State government shall not be considered as income.

3. Advance tax to be paid in 4 installments

As per the existing provisions of the Income Tax all companies are required to pay advance tax in 4 installments whereas other assesses such as individual, HUF, firm, etc. are required to pay advance tax in 3 installments. The Finance Bill, 2016 proposes to make an amendment whereby all assesses shall now be required to pay advance tax in 4 installments as under:-

(i) On or before 15th June (not less than 15% of such advance tax)

(ii) On or before 15th September (45% of such advance tax as reduced by the amount, if any, paid in the earlier installment)

(iii) On or before 15th December not less than 75% of such advance tax as reduced by the amount if any paid in earlier installments

(iv) On or before 15th March – the whole amount of advance tax as reduced by amounts if any paid in earlier installments

As per the provision of section 208 advance tax is payable in every case where the amount of such tax payable is Rs.10,000 or more. This amount is to be calculated after taking credit of the tax deducted at source if the balance liability of the tax deducted at source if the balance liability on the estimated income is more than Rs.10000 then advance tax shall be required to be paid in the above stated 4 installments.

However, in the case of an assessee who is covered by the provisions of section 44AD i.e. an assessee carrying on business whose turnover does not exceed Rs.2 crore in the year the liability to pay advance tax shall be in one installment i.e. 15th March.

It is to be noted that failure to pay the advance tax as prescribed by the due date and levy of interest at the rate of 1% per month for a period of 3 months on the

amount of the shortfall. This interest under section 234C is leviable for 3 months even when there is a delay for payment for even one day.

The above amendment shall be effective from 1st June, 2016 and accordingly for the next financial year2016-17 the first date for payment of advance tax with interest will be 15th June, 2016.

4. **Enhanced payment of interest on refund**

The Finance Bill, 2016 proposes to bring accountability and has introduced a provision to the effect that assessee shall be eligible in case of delayed refund an additional interest calculated at the rate of 3% per annum. As per the amended provision of section 153(5) appeal effect order is to be passed within a period of 3 months from the end of the month in which such order is received. In case refund is not granted within this period then interest from that day to the date on which such refund is granted will be provided at the additional interest. This is also an important amendment. It is a first step towards accountability. As stated hereinabove, the Assessing Officer is now required to give effect to the appeal order within a period of 3 months. With this amendment, the Assessing Officer also shall be duty bound to issue the refund immediately. The enhanced rate of interest at the rate of 3% though does not suitably compensate the taxpayer of the money withheld as the taxpayer is normally required to pay interest at the rate of 12 to 15% on its borrowing from bank but still it will help in getting back the refund at an early date.

5. **Interest on refund in case of belated return to be computed from the date of filing return**

The Finance Bill, 2016 proposes to amend the provisions of section 244A to provide that in the case of belated return the interest on refund will start from the date of filing the return and not from the 1st day of the assessment year. Further interest on refund of self-assessment tax shall also begin from the date of payment of such tax or the filing of the return whichever is later to the date on which refund is granted.

6. **Abolition of post of Senior Vice President of ITAT**

As per the existing structure of the Income Tax Appellate Tribunal, there is a President, Senior Vice President, Vice President and Members of the Tribunal. The Finance Bill, 2016 proposes to abolish the designation of the Senior Vice President.

7. **No appeal to be filed by the department against the order of DRP**

At present both assessee as well as department can file an appeal before the ITAT against the order passed by the Dispute Resolution Panel. In order to reduce litigation, Finance Bill, 2016 has proposed that no appeal can be filed by the Assessing Officer before the ITAT against an order of the Dispute Resolution Panel. This amendment shall be effective from 1st June, 2016 and accordingly from that day onwards no appeal can be filed against the order of the Dispute Resolution Panel.

It is to be noted that at the time when the provisions of Dispute Resolution Panel was enacted, no appeal could be filed by the department against the order of the DRP. Since no appeal could be filed the Dispute Resolution Panel was reluctant to give relief to the assessee and considering this issue an amendment was made by the Finance Act, 2012 enabling the department to file appeal against the order of the DRP. Now after this proposed amendment in many cases the DRP will again be reluctant to give relief to the assessee so as to keep the issue alive in the interest of the department which ultimately may lead to undue inconvenience to the taxpayer.

8. **Period to rectify mistake by ITAT being reduced to 6 months**

As per the provisions of section 254(2), ITAT is empowered to rectify any mistake apparent from record. This mistake can be rectified at any time within a period of 4 years from the date of the order. The Finance Bill, 2016 has proposed to reduce this period to 6 months from the end of the month in which the order was passed by the ITAT.

The above amendment shall be effect from 1st June, 2016 and accordingly in all the cases where rectification applications are pending and the period of more than 6 months have elapsed it will be appropriate to file such application before 1st June, 2016.

9. **Single Member Bench power (SMC) being increased from Rs.15 lakh to Rs.50 lakh**

As per the provisions of section 255(2) of the Income Tax Act, a Bench of the ITAT consists of two members i.e. one judicial member and one accountant member. However, smaller appeals can be heard by the single member bench (SMC). Such single member bench can dispose of appeals where the total income computed by the Assessing Officer does not exceed Rs.15 lakh. The Finance Bill, 2016 proposes to enhance this power of the single member bench to Rs.50 lakh. Now appeals where the total income as computed by the Assessing Officer does not exceed Rs.50 lakh can be heard and disposed of by a single member bench.

The above amendment shall be applicable from 1st June, 2016 and accordingly all the appeals pending as on 1st June, 2016 where the total income assessed by the Assessing Officer is Rs.50 lakh or less irrespective of the amount in dispute can be heard by a single member bench.

10. **No fee to be paid by department in appeal against order of the DRP**

The Finance Bill, 2016 proposes to remove the anomaly by making retrospective amendments from 1st July, 2012 to provide that no feel shall be payable by the department for the appeal filed by it against the order of the DRP. As per the existing provisions no fee is required to be paid by the department in the appeal filed by it against the order of the CIT(A). At the time when Finance Act, 2012 amended the provisions allowing filing of the appeal by the department against the order of the DRP, inadvertently amendment of paying no fee for such appeal were left out. In a few cases such appeals filed by Revenue have been dismissed by the ITAT for non-payment of fee. Since this amendment is being made retrospectively i.e. from 1st July, 012 all such appeals will be considered to be validly filed after the Finance Bill, 2016 is enacted.

11. **Stay of demand**

The Finance Minister in his budget speech has also announced that it will be mandatory for the AO to grant stay of demand once the assessee pays 15% of the

disputed demand while the appeal is pending before the Commissioner of Income Tax (Appeals). In this regard the Central Board of Direct Taxes has issued Office Memorandum dated 29th February, 2016 clarifying that where the outstanding payment is disputed before the CIT(A), the Assessing Officer shall grant stay of the demand till disposal of the appeal on payment of 15% of the disputed demand. It has been further provided that this amount of 15% can be higher or lower as well where addition on the same issue either has been confirmed or deleted by the appellate authorities in earlier year.

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TAXATION DEDUCTION & COLLECTION AT SOURCE
Issues, Judgements and Clarifications

VED JAIN

In this book an effort has been made to deal with all the issues involved in the area of tax deduction and collection and it also suggests how procedures could be simplified and nationalized. Important official circulars, clarification and summaries of relevant judgements have been reproduced. Three appendices at the end give current data relating to rate of tax deduction at source, data schedule for deposit of tax and tax rated as per double taxation avoidances agreement with different countries.

SEARCH, SEIZURE AND SURVEY
Issues, Clarifications and Judgements

VED JAIN

The issues involved in Search, Seizure and Survey have been discussed in detail in this book and reference to the relevant circulars have been provided. Summary of relevant judgements have also been reproduced.

TAXATION OF INCOME AN INTERNATIONAL COMPARISION
A Select Study of
U.S. . U.K. . Australia . Malaysia . Pakistan . India

INDU JAIN

Business and investment Operations of individuals and companies are becoming increasingly international in scope in the wake of current wave of globalization and openness sweeping across the countries of the world. Income tax system of different countries differ in terms of definition of income and expenses, exemptions and concessions, rates and collection procedures. Varying tax practices of different countries complicate decision-making of individuals and corporates. Hence, the comparative study of income tax becomes relevant in this context.

This book explains and compares the income tax provisions of six countries, three developed countries, viz. the U.K., the U.S., and Australia and three developing countries, namely Malaysia, Pakistan and India.

The book will be useful for a cross-section of readers including researchers, teachers and students of economics, commerce, law and management. The critical analysis of the income tax systems of six countries would also be beneficial for policymakers, corporate executives, legislators and tax consultants.

Indu Jain obtained her Ph.D. degree from the Department of Commerce, Delhi School of Economics, University of Delhi. She is Reader in the Department of Commerce, Daulat Ram College, University of Delhi. She was teaching experience of more than 25 years. She has published a number of articles in reputed journals including Asia-Pacific Bulletin (Amsterdam), Taxmann, The Chartered Accountants and others.