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SALIENT FEATURES OF THE FINANCE (No.2) BILL, 2019

DIRECT TAXES

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ABOUT THE AUTHOR

Mr. Ved Jain is a fellow member of the Institute of Chartered Accountants of India ('ICAI') and holds three Bachelor's degrees – in law, science & economics. Mr. Jain has been President of the Institute of Chartered Accountants of India (ICAI). He was also on the Board of International Federation of Accountants (IFAC) during 2008-2011, a global organization for the accountancy profession comprising of 167 members and associates in 127 countries.

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.

Mr. Jain has been Chairman of National Council on Direct Taxes of ASSOCHAM and Vice President, ASSOCHAM. He has been on the Board of National Aluminum Company Limited (NALCO), PTC India Limited, PTC Financial Services Limited and IL&FS Engineering and Construction Company Ltd.

Presently, Mr. Jain is independent director on the Board of DLF Limited, Himachal Futuristic Communications Limited, Inventia Healthcare Limited and also Chairman, MCX Clearing Corporation Ltd. He is a life member of Indian Council of Arbitration

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INTRODUCTION

The Hon'ble Finance Minister, Mrs. Nirmala Sitharaman presented her 1st Budget which was also the first budget post-election of Modi 2.0 Government. The Hon'ble Prime Minister has set the agenda of the economic growth by setting target of taking Indian economy to 5 trillion US dollars by 2024 as against present 2.70 trillion US dollars and to 10 trillion US dollars by 2030. In this back drop there were high expectations that this budget will give a big boost to the economy by encouraging and giving incentive to investment in India. At the same time there were apprehensions about the fiscal deficit considering the short fall in revenue collection both in direct and indirect taxes as compared to the target set in the revised budget estimates while presenting interim budget in February 2019. The Finance Minister has adhered to the fiscal discipline as the fiscal deficit has been kept to 3.3% by keeping an aggressive growth in tax revenue and also non-tax receipts from disinvestment. However, issue of impetus to the economy doesn't seems to be addressed so aggressively. For economy to grow fast it is incumbent there should be buoyancy in exports, saving and investments. The past data of exports of last few years indicate that there has not been much growth in exports. Growth in exports can come when India is more competitive as compared to other countries. For this there has to be a focused approach so as to reduce the cost of inputs, labour, capital, electricity, freight and taxes. Countries in the region such as Vietnam, Indonesia, and Thailand are showing good growth in exports and in its GDP. Apparently, growth in these countries is because these countries have been able to reduce cost and tax rates so as to attract foreign investment and manufacturing. China is the manufacturing capital of the World. However, recent development suggest that relationship between China and USA on trade issues is not comfortable and many US companies are looking forward to shift their manufacturing base from China. Thus, there is an opportunity for India to replace China as manufacturing capital of the world. India can take advantage of the Global trade issues and promote itself as manufacturing capital of the World by offering

various incentives which includes reduced tax rates so as to become more competitive as compared to other countries particularly in South East Asia. The growth in economy and the employment that new industries setup in India will be far more beneficial as compare to any loss of revenue, if any.

Though this budget has tried to give a push to the rural infrastructure but still the question is whether this will truly transform the Indian economy. The super-rich class probably has been hit hard by this budget with heavy increase in surcharge. 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 hit hard those taxpayers which are driving the Indian economy and contributing both by way of direct and indirect taxes not what they pay individually but through corporates which they are managing.

Pro poor and rich bashing apparently a good populist measure in short term but is really counterproductive for poor itself in long term. Subsidy by way of direct transfer may be good when it is received but it does not help in creating the earning capacity of the recipient. The focus should be to make people employable and earn more so as they become self-sufficient. Thus, the need of the hour is to take bold initiative by deploying resources which increases earning capacity of such persons so that they need not depend on subsidy and make India a manufacturing hub which in turn would generate huge employment so that poor are able to earn more.

As usual, the budget through Finance (No.2) Bill, 2019 has proposed many amendments to the Income Tax Act despite the fact that Direct Tax Code is in the offing. This Finance (No. 2) Bill, 2019 has 68 clauses proposing amendments to the various provisions of the Income Tax Act besides many clauses proposing amendments to the Income Disclosure Scheme 2016, Black Money (Undisclosed Foreign Income and Assets) Act, Prohibition of Benami Property Transactions Act, 1988 ("PBPT"). The proposed amendments in the Finance (No. 2) Bill, 2019 relating to direct taxes are analysed below. Unless otherwise stated, all these amendments are to be effective from April 1, 2020 i.e. assessment year 2020-21 relating to income earned in the financial year 2019-20 i.e. starting from 1st April, 2019.

A. TAX RATES

1. No change in tax slab, no change in threshold limit.

The Finance Minister has not proposed any change in the threshold limit as well as tax slabs in this budget. It may be relevant to point out that in the interim budget presented on 01.02.2019, the threshold limit of Rs.2.50 lakhs was not increased. However, by increasing the tax rebate from Rs.2,500/- to Rs.12,500/-for taxpayers whose total income does not exceed Rs.5,00,000/-, the tax incidence of such taxpayers was reduced to nil with obligation to file the return for claiming such rebate. It is to be noted that this rebate of Rs.12,500/- under section 87A is not available to those taxpayers whose income exceed Rs.5 lakhs. Thus the moment income exceeds Rs.5,00,000/-, this rebate of Rs.12,500/- is not allowed. Further, there is no marginal relief in respect of such taxpayer whose income just exceeds Rs.5 lakhs. In view of this, the taxpayers having income between Rs.5,00,000/- and Rs.5,15,600/- will in fact be paying income tax more than the income in excess of Rs.5,00,000. Thus, the tax liability of taxpayers in this bracket income will be more than 100% of the income in excess of Rs.5,00,000. A person having income say Rs.5,01,000/- will be liable to pay tax of Rs.13,208/- as against nil tax payable by a person having income of Rs.5,00,000/-. Similarly, a person having income say Rs.5,10,000/- will be liable to pay tax Rs.15,080/- despite the fact income exceeding Rs.5,00,000/- is only Rs.10,000/-.

However, it is to be noted that it is taxable income upto Rs.5,00,000/- which is eligible for claiming rebate of Rs.12,500/- under section 87A. The total income thus to be computed is the income after taking into account the various exemptions and deductions allowed under the Act. In fact a person having an income up to Rs. 12.85 lakhs may end up with paying no taxes as can be seen from the following table:-

Particulars	Amount
Gross Total Income	12,85,000
Less:	
Standard Deduction under section 16 (applicable for salaried taxpayers only)	50,000
Interest on housing loan under section 24	2,00,000
80C (Eligible Investment)	1,50,000
80CCD(2) (National Pension Scheme)	50,000
80D (Medical Insurance)	25,000
80TTA (Bank Interest)	10,000
Interest on loan taken for purchase of affordable house under section 80EEA	1,50,000
Interest on loan taken for purchase of electric vehicles under section 80EEB	1,50,000
Total Deductions	7,85,000
Net Taxable Income	**5,00,000**
Applicable Tax	Nil

Apart from the above deductions, a person may also avail deduction under section 80G on contributions made to certain prescribed funds and charitable institutions.

It is to be noted that an individual taxpayer earning long term capital gains on listed securities will not be eligible for this rebate as Section 112A(6) of the Act expressly excludes income taxable under Section 112A of the Act from calculating rebate under Section 87A of the Act. Thus, in such cases, the liability to pay tax will exist even if the total income is less than Rs. 5,00,000 but more than the maximum amount not chargeable to tax.

It is to be further noted that this rebate of Rs.12, 500/- under section 87A is allowed only to individuals and that too who are resident in India. Accordingly, for HUF, association of persons, body of individual and every juridical person and non-resident individual, the threshold limit will continue to be Rs.2.50 lakhs and these taxpayers

need to pay tax at the rate of 5% in respect of income falling between Rs.2.50 lakhs to Rs.5.00 lakhs even if the total income does not exceed Rs.5.00 lakhs.

In the case of senior citizen (of 60 years or more but less than 80 years of age), the threshold limit continues to be Rs.3,00,000. Accordingly, such Senior Citizen in case their income exceeds Rs.5,00,000/- need to compute tax at the rate of 5% in respect of income falling between Rs.3,00,000/- to Rs.5,00,000/-.

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. Accordingly, there is no additional benefit arising to such very senior citizen on account of increased rebate under section 87A by the interim budget as such senior citizen were otherwise not liable to pay tax in respect of income up to Rs.5,00,000/-.

2. Surcharge on income exceeding Rs.2 crore and exceeding Rs.5 Crore increased substantially.

Surcharge on Individuals, Hindu Undivided Families, Association of Persons, Body of Individuals and every Artificial Juridical Person has been proposed to be increased substantially from 15% to 25% in case where the total income exceeds Rs.2 Crore and from 15% to 37% in case where the total income exceeds Rs.5 Crore. In view of these changes, the effective tax rates applicable to an individual, HUF, association of persons, body of individual and every juridical person shall be as under:-

Income in Rs.	Tax rate %	Surcharge	Health and Education cess	Effective tax rate
Upto 2,50,000	NIL	NIL	NIL	NIL
2,50,000 to 5,00,000	5%	NIL	4%	5.20%
5,00,001 to 10,00,000	20%	NIL	4%	20.80%
10,00,000 to 50,00,000	30%	NIL	4%	31.20%
50,00,000 to 1,00,00,000	30%	10%	4%	34.32%
1,00,00,000 to 2,00,00,000	30%	15%	4%	35.88%
2,00,00,000 to 5,00,00,000	30%	25%	4%	39.00%
5,00,00,000 and above	30%	37%	4%	42.744%

The implications on the taxpayer on account of surcharge being levied will be far reaching as the taxpayer may have to pay the entire income earned in excess of the threshold where rate of surcharge increases as taxes as can be seen from the following table :-

Total Income	Total tax liability (Tax plus applicable surcharge and Health and Education cess)	Additional tax liability	Additional tax liability restricted on account marginal relief
50,00,000	13,65,000	13,65,000	
52,00,000	15,70,120	2,05,120	2,00,000
1,00,00,000	32,17,500		
1,02,00,000	34,35,510	2,18,010	2,00,000
2,00,00,000	69,51,750		
2,09,90,000	79,42,350	9,90,600	9,90,000
5,00,00,000	1,92,56,250		
5,32,00,000	2,24,72,658	32,16,408	32,00,000

The above table shows that a taxpayer having income between Rs.5.00 crore to Rs.5.32 crore need to pay the entire income in excess of Rs.5.00 crore as tax which virtually means tax rate of 100% on income between Rs.5.00 crore to Rs.5.32 crore. Similarly, a taxpayer having income between Rs.2.00 crore to Rs.2.099 crore need to pay the entire income in excess of Rs.2.00 crore as tax resulting into tax rate of 100% on income between Rs.2.00 crore to Rs.2.099 crore. This tax rate of 100% slowly tapers down to 42.788% only at income above Rs.100 Crore as can be seen from the following table.

Total Income	Tax liability	Tax liability on income in excess of Rs.5.00 Crore	Effective tax rate on income in excess of Rs.5.00 crore
5,00,00,000	1,92,56,250	1,92,56,250	-
5,32,00,000	2,24,72,658	32,00,000	100%
5,50,00,000	2,32,42,050	39,85,800	79.71%
6,00,00,000	2,53,79,250	61,23,000	61.23%
7,50,00,000	3,17,90,850	1,25,34,600	50.13%
10,00,00,000	4,24,76,850	2,32,20,600	46.44%
25,00,00,000	10,65,92,850	8,73,36,600	43.66%
50,00,00,000	21,34,52,850	19,41,96,600	43.15%
75,00,00,000	32,03,12,850	30,10,56,600	43.00%
100,00,00,000	42,71,72,850	40,79,16,600	42.93%

Accordingly, there will be no incentive for taxpayer to earn such income. On the contrary any taxpayer earning such income say from salaries, may be inclined to surrender such salary to the employer by foregoing increment or any other perquisite liable for taxation

Further, the impact in absolute amount of tax of the above increase in surcharge can be understood with the following table:-

Income	Existing tax liability	Proposed tax liability	Net increase
50,00,000	13,65,000	13,65,000	NIL
1,00,00,000	32,17,500	32,17,500	NIL
2,00,00,000	69,51,750	69,51,750	NIL
3,00,00,000	1,05,39,750	1,14,56,250	9,16,500
5,00,00,000	1,77,15,750	1,92,56,250	15,40,500
6,00,00,000	2,13,03,750	2,53,79,250	40,75,500
10,00,00,000	3,56,55,750	4,24,76,850	68,21,100

Ongoing through the above table it can be seen that in case of a taxpayer whose income is Rs.6,00,00,000/-, it has to bear an additional tax liability of Rs. 40,75,500/- besides the existing tax liability of Rs.35,88,000/- on this income between Rs.5 Crore to Rs.6 Crore making the effective tax rate as approximately 76%.

It may also be relevant to point out that the surcharge applicable in respect of partnership firm and LLP continues to be 12% where income of the partnership firm of the LLP exceed Rs.1 Crore. Accordingly, the partners of a firm or LLP falling in higher tax bracket and being liable for higher surcharge may amend the partnership deed to have income from such partnership firm as share of profit rather than drawing higher remuneration as working partner. Similarly, the taxpayer carrying on business or profession as sole proprietor may convert such sole proprietor business or profession into a firm or LLP considering the wide gap in the rate of surcharge applicable to an individual and to a partnership firm/LLP.

The increase in effective tax rate may also lead to a rejig of the investment in tax free bonds/securities. The effective post tax return in case of fixed deposit with banks, taxable bonds or securities in case of high income earner will get further reduced with the increased tax rates as compared to the return on tax free bonds, securities, mutual funds etc.

It may also be relevant to point out that the surcharge is applicable on total income which will include income from capital gain both short term and long term, as well as income from dividend exceeding Rs.10 lakhs in aggregate. Thus, it will have impact on income which is chargeable at a concessional rate as can be seen from the following table:

Nature of Income	Basic Tax rate	Total Income up to Rs.50 lacs	Total Income between Rs.50 lacs to Rs.1 crore	Total Income between Rs.1 crore to Rs.2 crore	Total income between Rs.2 Crore to Rs.5 Crore	Total income above Rs.5 Crore
Dividend income exceeding Rs.10 lacs under section 115BBDA	10%	10.40	11.44%	11.96%	13.00%	14.25%
Tax on short term capital gain on listed shares/unit section 111A	15%	15.60%	17.16%	17.94%	19.50%	21.37%
Tax on long term capital gain under section 112	20%	20.80%	22.88%	23.92%	26.00%	28.50%
Tax on long term capital gain of listed equity-Section 112A	10%	10.40	11.44%	11.96%	13.00%	14.25%

It is also important to point out that this increased surcharge shall be applicable on Association of person also. Thus the impact of this will also be on trust as trust are assessed as AOP. Thus Private trust, foreign portfolio investors which are doing investment as trust shall also be liable for this increased surcharge. For charitable trust, in case exemption under section 11 is denied for one or the other reason or where income after exemption under section 11 is subjected to tax, the increased surcharge will be applicable as charitable trust are also assessed as AOP.

3. Concessional rate of 25 % tax in case of certain companies.

The then Finance Minister Mr Arun Jaitley in his budget speech of 2015 has proposed to reduce corporate tax from 30% to 25% over the next four years. A small beginning was made in the budget for the year 2016 by reducing the tax rate from 30% to 29%

in the case of a domestic companies whose total turnover or gross receipt in the financial year 2014-15 does not exceed Rs.5 crore. In the budget 2017, the tax rate was further reduced to 25% in the case of domestic companies whose total turnover or the gross receipt in the financial year 2015-16 does not exceed Rs.50 Crore. This was further increased in the case of domestic companies to Rs.250 crore in the budget 2018. The Finance Minister in this budget 2019 has further increased this amount to Rs.400 crores. Accordingly, the tax rate, in the case of domestic companies whose total turnover or the gross receipt in the financial year 2017-18 does not exceed Rs.400 Crore, will be 25% for Financial Year 2019-20 i.e. Assessment Year 2020-21. It is to be noted that the criteria of turnover is that of financial year 2017-18 irrespective of the turnover of the relevant year i.e. F.Y. 2019-20. The Finance Minister in her budget speech has stated that this concession rate of 25% will now be applicable to 99.3% of the total companies and only 0.7% will be outside this concession. However, it is important to point out that these 0.7% companies are paying tax of approximately Rs. 6,50,000/- crores out of the total tax of Rs. 7,66,000/- crores being paid by the companies. Accordingly, the benefit of this reduced corporate tax rate is in respect of companies which are contributing just 15% of the total tax collected from companies and as such it does not mitigate the issue that corporate tax rates in India are very high. These 0.7% companies are paying approximately 85% of the total corporates tax and reduction in tax rates is relevant and important for these companies. It may also be relevant to point out that the effective tax rate on corporate including the dividend distribution tax and tax on dividend income in the hands of the shareholders is 53.72% in the case of company liable to pay tax at rate of 30% and 49.58% in the case of company liable to pay tax at rate of 25% as can be seen from the following table:-

Particulars	Company whose turnover does not exceed Rs.400 crore in F.Y. 2017-18	Company whose turnover exceed Rs.400 Crore in F.Y. 2017-18
Tax rate	25%	30%
Surcharge on income exceeding Rs.10 Crore at the rate of 12%	12%	12%
Tax and Surcharge	28%	33.6%
Health and Education cess at the rate of 4% of tax and surcharge	1.12%	1.34%
Total tax	29.12%	34.94%
Balance income [100 -total tax]	70.88%	65.06%
Dividend to be distributed to the shareholder along with DDT to be deducted on same	70.88	65.06
Dividend distribution tax @ 20.56% of net income in hands of shareholder	12.08	11.09
Balance Income in the hands of shareholder	58.80	53.97
Tax @10% plus surcharge @37% and cess @ 4% in the hands of the shareholder on dividend received exceeding Rs.10 lakhs	8.38	7.69
Balance Income in the hands of the shareholder	50.42	46.28
Effective Tax Rate	49.58%	53.72%

Further, a company as on date is desired to spend 2% of its profit towards corporate social responsibility (CSR) in case profit is more than Rs.5 crore or more as per the provision of section 135 of Companies Act, 2013. This provision is now proposed to be made mandatory. As per the proposal, a company shall be required to spend the CSR amount i.e. 2% of average net profit of last 3 years within the financial year and in case it is not spent the same will be required to be transferred to a National CSR fund. However, in case CSR fund is required to be spent for an ongoing project, that

requires funding in stages, then in that case the unspent amount shall be required to be deposited in an escrow account to be opened for this purpose. In case of default in complying with above requirement, penalty is also being proposed. It is also important to note that no deduction of this CSR expenditure is allowed while computing business income. Thus, the CSR obligation of 2% shall be now like an additional tax or cess and hence the net income in the hands of the shareholder will get further reduced to that extent.

4. No change in tax rate for other tax payers.

The Finance Bill (No.2), 2019 has not proposed any other 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.

5. Listed company also to pay distribution tax of 20% on buy back of shares.

The Finance Act, 2013 has introduced section 115-QA to levy dividend distribution tax on an Indian company on buy back of its shares not listed in any recognized stock exchange. The tax payable as per this section is at the rate of 20% on the distributed income i.e. the consideration paid by the company on buy back of shares as reduced by the amount which was received by the company for issue of such shares. The Finance Bill (No.2), 2019 has proposed to extent the scope of this distribution tax to

listed companies also. As per the proposal, the listed companies shall be required to pay tax at the rate of 20% of the distributed income with effect from 05.07.2019. This amendment is being proposed considering the fact that many listed companies instead of paying dividend on which dividend distribution tax is payable, were buying back the shares and thus there was tax avoidance.

It is to be noted that this tax is payable on the distributed income computed as per Rule 40BB i.e. difference between the consideration paid by the company for buy back of shares and the amount received by the company for issue of such shares irrespective of the fact whether the company has accumulated profit or not. As the company has paid tax on the distributed income consequent to the buyback of shares, the income arising to a shareholder on buyback of such shares is exempt under clause (34A) of section 10 of the Act. This clause (34A) is also proposed to be amended to exempt distributed income received by the shareholder from a listed company. With this proposed amendment there will be no tax liability in the hands of the shareholders on buy back of shares by listed companies as well.

It may be relevant to point out that considering the fact that on dividend distribution, the company has to pay dividend distribution tax at an effective tax rate of 20.56% and further shareholder has to pay tax at the tax rate of 10% plus applicable surcharge and cess under section 115BBDA of Act as against tax at the time of buyback at the rate of 20% plus applicable surcharge and cess, buy back may still be more tax efficient in terms of total tax outflow.

This amendment is being made effective from immediate effect i.e. 5th July, 2019 and accordingly any buy back of shares by listed companies on or after 5th July, 2019 shall be liable for payment of distribution tax at the rate of 20% plus applicable surcharge under section 115QA of the Act.

B. EXEMPTIONS/DEDUCTIONS

1. Deduction of interest of Rs.1,50,000/- on acquiring first home by an individual.

The Finance (No.2) Bill, 2019 proposes to introduce a new Section 80EEA to provide deduction up to Rs.1,50,000/- in respect of the interest payable on loan taken by an individual from a financial institution i.e. a bank or a housing finance company for the purpose of acquisition of a residential house property. This deduction is in respect of the housing loan sanctioned from 1st April, 2019 to 31st March, 2020. This deduction is over and above the yearly deduction of interest of Rs.1.5 Lakhs which is available under Section 24(a) in respect of self-occupied property. However, it may be noted that where a deduction of interest is claimed under this section, then interest to that extent shall not be eligible for deduction under any other section. Thus, it cannot happen that a person can claim such deduction under section 24(a) and under this proposed section 80EEA. It is to be further noted that for claiming this new deduction, the stamp duty value of the residential house property should not exceed Rs.45 Lakhs. Further the assessee should not have any residential house property on the date of the sanction of the loan. It is to be further noted that the date of sanction of loan is sacrosanct for this deduction. The benefit is available only in respect of the loan sanctioned between 1st April, 2019 and 31st March, 2020. Any loan sanctioned before 1st April, 2019 will not be eligible loan. However, loan sanctioned before 1st April, 2020 will be eligible though the house may be acquired after 1st April, 2020. This deduction shall be available to an individual including non-resident individual as no restriction has been placed on residential status. However, any other entity such as HUF, AOP etc. shall not be eligible from claiming this deduction. Further, this deduction shall not be available to those individual who are eligible to claim deduction under earlier similar section 80EE of the Act. It may be noted that Finance Act, 2013 has introduced a similar deduction of Rs.1,00,000/- by inserting section 80EE of the Act in respect of loan up to Rs.25,00,000/- sanctioned during first day of April, 2013 to 31st March, 2014 for acquisition of a residential house property of value up to Rs.40,00,000/- which was further amended by the Finance Act, 2016

allowing deduction of Rs.50,000/- in respect of loan up to Rs.35,00,000/- sanctioned for acquisition of residential house property of value up to Rs.50,00,000/- during the period from 01.04.2016 to 31.03.2017. Thus, those who have been eligible to claim benefit under this section 80EE shall not be eligible to claim deduction under this proposed section 80EEA of the Act. In the proposed section 80EEA, though there is a condition that value of the residential property should not exceed Rs.45, 00,000/-, but there is no condition of the amount of the loan sanctioned.

2. Exemption of interest of Rs.1,50,000/- on loan for purchase of an electric vehicle.

The Finance (No.2) Bill, 2019 in order to promote purchase of electric vehicle so as to reduce pollution, proposes to introduce a new section 80EEB allowing to an individual a deduction up to Rs.1, 50,000/- in respect of interest payable on loan taken by such individual from a financial institution i.e. a bank or a deposit taking or systematically important non deposit taking NBFC for purchase of an electric vehicle. This deduction is subject to the condition that the loan for purchase of such vehicle has been sanctioned during the period from 1st April, 2019 to 31st March, 2023. Any loan sanctioned before 1st April, 2019 will not be eligible loan. However, loan sanctioned before 1st April, 2023 will be eligible though the electric vehicle may be acquired after 1st April, 2023. Electric vehicle for this deduction has been defined to mean a vehicle which is powered exclusively by an electric motor whose traction energy is supplied exclusively by traction battery installed in the vehicle and has such electric regenerative braking system, which during braking provides for the conversion of vehicle kinetic energy into electric energy. The deduction under this section shall be available to all such electrical vehicle including scooters, E-rickshaw, motor car etc. which meet the above requirement. In the memorandum explaining the provisions relating to the direct taxes, one additional condition has been stated that such individual should not own any other electric vehicle on the date of sanction of loan for purchase of an electric vehicle. This condition is not there in the proposed Finance (No.2) Bill, 2019.

This deduction shall be available to an individual including non-resident individual as no restriction has been placed on residential status. However, any other entity such as HUF, AOP, firm, company etc. shall not be eligible from claiming this deduction. The above deduction under proposed section 80EEB is independent of deduction of interest otherwise allowable under section 36(1)(iii) while computing income of business or profession. Under this section, interest paid on loan borrowed for the purpose of carrying on business is an allowable expenditure. As such, any assessee whether it is an individual or an HUF or a firm or a company carrying on business or profession can claim deduction of the interest paid on the loan taken for purchase of electric vehicle if such vehicle has been put to use for to purpose of the business or profession. This section 80EEB has been introduced so as to encourage those individual taxpayer who are not carrying on business or profession or otherwise not eligible to claim deduction of interest on purchase of vehicle etc. to purchase electric vehicle. Thus, those taxpayer who are having income from salary or those person who are having income from house property or interest etc. shall be eligible to claim deduction of interest on loan taken for purchase of electric vehicle. However, it may be noted that where a deduction of interest is claimed under this section, then interest to that extent shall not be eligible for deduction under any other section. Thus, it cannot happen that a person carrying on business or profession can claim such deduction under section 36(1)(iii) and under this proposed section 80EEB.

3. Exemption of Payment from National Pension System Trust increased from 40% to 60%.

The Finance Act, 2016 has introduced clause (12A) in Section 10 providing exemption up to 40% in respect of 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. The Finance (No.2) Bill, 2019 has proposed to increase the exemption from 40% to 60%. With this amendment, now only balance 40% amount shall be chargeable to tax. It is to be noted that contribution to NPS is eligible for deduction under section 80CCD of the Act. However, such contribution under section 80CCD(1) is subject to overall deduction of Rs.1,50,000/-as per provision of section 80CCE of the Act which includes

deduction upto Rs.1,50,000/- under section 80C of the Act. The amount received back in respect of investment on maturity under section 80C is not liable for tax as most of the scheme under section 80C are covered under the exempt, exempt, exempt model. As against this, contribution towards NPS under section 80CCD do not follow exempt, exempt, exempt model. 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. However, it may be noted that contribution upto Rs.50,000/- is additionally exempt under section 80CCD(1B) which is not part of the overall ceiling of Rs.1,50,000/- under section 80CCE.

4. Exemption of contribution by the Central Government to National Pension Scheme (NPS) on behalf of its employees increased to 14% of the salary.

Presently under section 80CCD (2), the contribution made by the Central Government or any other employer is allowed as a deduction to the extent of 10% of the salary only. However, considering the fact that the central government is contributing more to the account of its employees under this scheme, The Finance (No.2) Bill, 2019 has proposed to increase the exemption in respect of contribution by the Central Government from 10% to 14% of the salary. It is to be noted that this increase is in respect of contribution by Central Government only. In the case of other employer which will include State Government also, the exemption is of 10% of the salary only. This amendment will be effective from Financial Year 2019-20 and accordingly contribution, if any, made in excess of 10% in the preceding years will be chargeable to tax.

5. Investment under NPS Tier –II by Central Government Employees to be eligible for deduction under section 80C.

The Finance (No.2) Bill, 2019 proposes to widen the scope of section 80C by inserting a new clause (xxv) allowing contribution to a specific account of the pension scheme by employees of the central government with a condition that such contribution shall be for a fixed period of not less than 3 years. The specified account is an additional account considered to be Tier-II account of the pension scheme. It is to be noted that

the contribution to this scheme shall be eligible for deduction only for employees of Central Government and not for other taxpayer.

C. CHARITABLE TRUST

1. Compliance of other laws by Trust to be a condition precedent for registration/ continuation of registration under Section 12AA.

The Finance (No. 2) Bill, 2019 has proposed an amendment to section 12AA to put a condition that while granting registration, the Pr. Commissioner or the Commissioner of Income Tax also need to satisfy himself about the compliance by the Trust or Institution of such requirement of any other law for time being in force as are material for the purpose of achieving its object by such trust or institution.

It has been further proposed that if after the grant of registration, it is noticed that the trust or institution has not complied with the requirement of any other law for the time being in force as are material for the purpose of achieving its objects, and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, either has not been disputed or has attained finality, then the Pr. Commissioner or the Commissioner can cancel the registration of such trust or institution. With the proposed amendment the violation of any provision of any other law will also be subject matter of examination by the Pr. Commissioner or the Commissioner as the case may be. This amendment may lead to unnecessary hardship to various charitable trust and institutions which by and large are managed by part time honorary office bearers. At field level, it will be difficult to distinguish what is material or non-material non-compliance. It will be a subjective judgment and will lead to further litigation. It is the respective law which has to ensure its compliance and take punitive action under that law. In case it is considered that the said law is not so effective so as to achieve its compliance, it would have been much better to amend that law providing stringent penalty so as to ensure its compliance rather than shifting the power of compliance of that law under Income Tax Act. It may be important to point out that the cancellation of registration of a trust or institution have far reaching implications in view of the very

stringent provision of section 115TD of the Act whereby on cancellation of registration under section 12AA, the trust or institution has to pay tax on the total fair market value of its assets as on the date of the cancellation of registration. So long the trust or institution is carrying on its activities which fall within the meaning of charitable purpose, there is no reason that income of such trust or institution be taxed. The only purpose of registration under section 12AA is that such trust or institution becomes eligible for claiming exemption. However, such exemption is granted by the assessing officer on year to year basis only after being satisfied that the activities carried out by such trust or institution during the year was charitable. The above amendment shall be effective from 01st September, 2019.

D. SALARIES

1. Interest not to be levied in respect of credit of tax relief allowed in respect of arrears of salaries received under section 89.

The Finance (No.2) Bill, 2019 proposes to remove an anomaly regarding levy of interest in respect of credit of tax relief allowed under section 89 on account of arrears of salary received during the year. As per the provisions of section 89, where a taxpayer receives salary in arrears or in advance in any one financial year due to which his income is assessed at a rate higher than that it would otherwise have been assessed, then such assessee is entitled to relief under Rule 21A. As per this Rule 21A, the arrears or advance so received is spread over to the respective year and tax is recomputed for each year after inclusion of such arrears/advance. The difference in the total tax liability arising during the year after inclusion of such arrears/advance and the tax recomputed is allowed as a relief under this section in the year in which such arrears or advance is received. Consequent to this relief, the tax payable get reduced. However, while computing the interest/tax liability under section 234A, 234B, 234C, 140A and section 143(1), credit of relief under section 89 was not taken into account in view of the language of these sections. Thus, there was an anomaly as taxpayer was being required to pay interest on an amount which was otherwise not payable. This Finance (No.2) Bill, 2019 has proposed to remove

this anomaly by amending these section so as to specifically provide that interest or the tax payable under the said provisions will be computed after giving relief of tax claimed under section 89 of the Act. Since, this is an anomaly which was unintended, the amendment is being made with retrospective effect i.e. from 1st April, 2007 and will be applicable from Assessment Year 2007-08 onwards.

2. Increase in Standard Deduction from 40,000 to 50,000.

The Finance (No.2) Bill, 2019 has not proposed any other change under the head salaries. However, it may be relevant to point out that the interim budget by the Finance Act, 2019 has increased the standard deduction, reintroduced by the Finance Act, 2018, under section 16 while computing salary income from Rs.40,000/- to Rs.50,000/-. It is to be noted that the effective saving to individuals falling in the highest tax slab rate of 30% and the tax slab of 20% would be Rs. 2,080 and Rs. 3,120 respectively as can be seen from the following table:

Individuals falling in highest slab rate of 30%	**FY 2018-19**	**FY 2019-20**
Net taxable income before standard deduction under section 16	1,200,000	1,200,000
Standard deduction under section 16	40,000	50,000
Net taxable income after standard deduction under section 16	1,160,000	1,150,000
Income tax liability	166,920	163,800
Net Savings due to increase in standard deduction		3,120
Net taxable income before standard deduction under section 16	800,000	800,000
Standard deduction under section 16	40,000	50,000
Net taxable income after standard deduction under section 16	760,000	750,000
Income tax liability	67,080	65,000
Net Savings due to increase in standard deduction		2,080

It is also to be noted that this standard deduction is available to all while computing income under the head salaries. As per section 17(1), salary includes pension also. Accordingly, this standard deduction shall also be available in respect of income from pension.

E. INCOME FROM HOUSE PROPERTY

1. Exemption of notional rent increased from one self-occupied to two houses.

The Finance (No.2) Bill, 2019 has not proposed any change under the head Income from House Property. However, it may be relevant to point out that the interim budget by the Finance Act, 2019 has amended section 23(4) to allow exemption for two houses in respect of annual value as against existing exemption in respect of one house. As per section 23(2), where a house which is in the occupation of the owner, or, which could not be occupied by reason of employment etc., the annual value of such house is considered as nil. Now, with the amendment made by the Finance Act, 2019, the annual value of two houses will be taken as nil. It is to be noted that as per provision of section 23(1), the annual value of any house if it is vacant throughout the year is chargeable to tax irrespective of the fact that no actual income or rent has been received in respect of such house. Thus, under section 23(1) the annual value of any house beyond the two houses, if it is vacant throughout the year, will have to be included in the total income and thus will be chargeable to tax.

2. Period of Exemption of property held as stock in trade extended from one year to two years.

As per provision of section 24(5) of the Income Tax Act, inserted by the Finance Act, 2017, where a property is held as a stock in trade and the same is not let out during the whole or any part of the year, the annual value of such property is not chargeable to tax up to a period of 1 year from the end of the financial year in which certificate of a completion of construction is obtained from the competent authority. The implication of this amendment was that after a period of one year, tax is to be

paid on the annual value of such property even if the same is not let out during the whole or part of the year. The interim budget has extended this exemption to not to charge tax up to a period of two years from the end of the financial year in which certificate of completion of construction is obtained from the competent authority. Now, the tax will be required to be paid after a period of two years. This extension of period of two years may lessen the hardship to the real estate developers. However, this will not remove the hardship as these developers will still be required to pay tax on notional income i.e. on the income which in fact has not been earned on the unsold inventory after a period of two years.

F. BUSINESS

1. Facilitating payment by other electronic mode.

The Finance (No.2) Bill, 2019 proposes to amend the following provisions of the Income Tax Act to allow payment through other electronic mode in addition to the existing requirement of making payment for claiming deduction by account payee cheques/bank draft or the electronic clearance system through a bank account. This amendment is being made apparently to address the issue whereby payment through e-wallet was not being considered as payment through an electronic clearance system through a bank account. This amendment is being proposed from 01.09.2019 despite the fact that this is a clarificatory amendment. This may lead to a litigation in respect of the payment made through e-wallet before 01.09.2019. The taxpayer all along have understood that payment through e-wallet is permissible and covered within the meaning of the electronic clearing system stated in the various provision of the Income Tax Act.

Section	Particulars
13A Proviso (d)	Donation exceeding Rs.2,000/- for the purpose of claiming exemption in respect of such donations
35AD(8)(f)	Capital expenditure exceeding Rs.10,000/- for the purpose of claiming deduction under this section
40A(3) and 40A(4)	Expenditure exceeding Rs.10,000/- for claiming deduction while computing income of business or profession.
43(1) second proviso	Expenditure for acquisition of an asset exceeding Rs.10,000/- for claiming depreciation.
43CA(4)	Consideration received on transfer of land or building under an agreement for transfer of an asset for the purpose of availing benefit of the stamp duty rate applicable on the date of such agreement as against on the date of sale deed.
44AD(1) Proviso	For payment received in respect of total turnover or gross receipt for applying presumptive rate of 6% of the total turnover or gross receipts as against 8%.
50C	Consideration received on transfer of land or building held as capital asset under an agreement for transfer of an asset for the purpose of availing benefit of the stamp duty rate applicable on the date of such agreement as against on the date of sale deed.
80JJAA Explanation clause (i) clause (b)	Emoluments paid to employees for claiming deduction in respect of new employees.
269SS	Acceptance of loan of Rs.20,000/- or more
269ST	Receiving of payment from a person in a day or in respect of single transaction or in respect of transaction relating to one event or occasion from a person.
269T	Repayment of loan of Rs.20,000/- or more.

2. Definition of 'Affordable Housing' for Section 80-IBA deductions aligned with GST Act.

The Finance Act, 2016 has inserted section 80-IBA 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 applicability of the above section was extended by the interim budget of 2019 in respect of projects which is approved by the competent authority up to 31.03.2020.

The Finance (No.2) Bill, 2019 now proposes to amend the definition of the affordable housing so as to align it with a definition of affordable housing under the GST Act. As per amendment proposed, the assessee shall be eligible for claiming deduction in respect of housing project approved on or after 1st September, 2019, if a residential unit in the housing project have carpet area not exceeding 60 square meter in metropolitan cities as against 30 square meter at present or 90 square meter in cities other than metropolitan cities as against 60 square meter at present. Further, the scope of metropolitan cities has been widened to now include Bengaluru, Noida, Greater Noida, Ghaziabad, Gurugram, Faridabad, Hyderabad and whole of Mumbai metropolitan region also besides the cities of Chennai, Delhi, Kolkata and Mumbai. Further, an additional condition is being put that the stamp duty value of such residential unit should not exceed Rs.45 lakhs. This condition of Rs.45 lakhs is applicable for residential unit for both in metropolitan cities and other than metropolitan cities. The above changes are applicable in respect of projects approved on or after 1st September, 2019. Accordingly, in respect of the projects approved before 1st September, 2019, the old condition of carpet area shall be applicable.

It may be further noted that for availing exemption 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. Further, the carpet area of the shops and the commercial establishments should not exceed 3% of the aggregate carpet 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 an interior door for a shared hall way and not by walking through the living space of another household.

3. Benefit of non-accrual of interest income on bad or doubtful debts being extended to certain Non-Banking Finance Companies (NBFCs.).

As per section 145 of the Income Tax Act, 1961, income chargeable under the head profit and gains of business or profession is to be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Under mercantile system i.e. accrual system of accounting, interest on loans or advances given is to be accounted for as income. However, under section 43D of the Act an exception has been created allowing public financial institution and scheduled bank including cooperative bank to not to accrue income on account of interest in relation to bad or doubtful debts. Under this section interest income on such bad or doubtful debts is chargeable to tax in the year in which such income is credited to the profit and loss account or is actually received whichever is earlier. This concession of not charging interest income on accrual basis in respect of bad or doubtful debts so far was not available to non-banking financial companies. The Finance (No.2) Bill, 2019 has now proposed to extend the benefit of this section to deposit taking NBFCs and systemically important non deposit taking NBFCs. Systemically important non deposit taking NBFCs are those NBFCs which are not accepting or holding public deposits but are having total assets of not less than Rs.500 crore as per last audited balance sheet and are registered with Reserve Bank of India. In the case of these NBFCs, interest income in respect of bad or doubtful debts shall be chargeable to tax in the year in which such income is credited to the profit and loss account or such interest is actually

received, whichever is earlier. It may be noted that this clause is not applicable to all NBFCs. Non deposit taking which are not systemically important NBFCs are outside the scope of this provision.

4. Interest payment to certain NBFCs to be allowed on payment basis under section 43B.

As per existing provision of section 43B, certain payments are allowed as deduction while computing income of business or profession only on actual payment irrespective of the method of accounting being regularly followed by the taxpayer. This include payment of interest on loans or borrowings from financial institutions and banks. However, this section 43B does not apply in respect of interest on loans or borrowings from NBFCs. The Finance (No.2) Bill, 2019 has proposed to widen the scope of section 43B by inserting clause (da) to allow interest on any loan or borrowing from a deposit taking NBFC or systemically important non deposit taking NBFCs companies only in the year in which such payment is made with a proviso that in case such amount is paid on or before the due date applicable for furnishing the return of income under section 139(1) and evidence of such payment is furnished along with the return of income, the same can be claimed in the year to which such interest liability pertains. This will facilitate realization of interest by such NBFCs as the borrower who has taken loan from such NBFCs can claim deduction of interest while computing its income only after making payment of such interest. It may be noted that this clause is not applicable to all NBFCs. Non deposit taking which are not systemically important NBFCs are outside the scope of this provision.

G. CAPITAL GAIN

1. Exemption from Capital Gain arising from sale of residential property on investment in start-up company being extended up to 31.03.2021.

As per the provisions of section 54GB of the Act, introduced by the Finance Act, 2012, capital gain arising from sale of a residential property including a plot of land was

not chargeable to tax if the net consideration is utilized for subscription in the equity share of a company engaged in the business of manufacture of an article or thing or a business carried out by an eligible startup engaged in innovation, development or improvement of products or processes or services or scalable business model with a high potential of employment generation or wealth creation. The benefit of this provision as per this section was available in respect of residential property transferred up to 31.03.2017. The Finance Act, 2016, however, extended the period for transfer of residential property to 31.03.2019 for investment in eligible start-up. Thus, as per the existing provision, capital gain arising from the residential property including a plot of land is not chargeable to tax if the net consideration is utilized for subscription of equity shares of the company engaged in a business carried out by an eligible start-up only with a condition that assessee has more than 50% share capital or more than 50% voting rights in such company and equity shares of the company or the new assets acquired by the company are not sold or otherwise transferred within a period of 5 years from the date of its acquisition.

The Finance (No.2) Bill, 2019 has proposed to extend this period for transfer of residential property up to 31.03.2021. Further, the condition that such person should hold minimum 50% of the share capital or voting right in the new company is being relaxed to minimum 25% of the share capital or voting rights. The condition putting restriction on transfer of new asset acquired by such company out of the proceeds of capital gain invested as share capital, is proposed to be reduced from 5 years to 3 years in respect of new asset being computer or computer software.

2. Empowerment to CBDT to relax fair market value condition on sale of shares under section 50CA.

As per the existing provisions of the section 50CA, capital gain is to be paid on transfer of shares of a company other than a quoted share on the fair market value computed as per the method prescribed i.e. Rule 11UA, in case the consideration for transfer is less than such fair market value. Considering the fact that in certain cases, the value for transfer of shares is approved by certain authorities and such value may

be different than the fair market value computed in accordance with the prescribed method, the Finance (No.2) Bill, 2019 has introduced a proviso that this section 50CA shall not apply in such cases where the consideration is received by such class of persons and subject to such condition as may be prescribed. Thus, CBDT shall be notifying such cases in respect of certain class of persons to whom this condition of computing capital gain as per fair market value shall not be applicable

H. INCOME FROM OTHER SOURCES

1. Empowerment to CBDT to relax fair market value condition on acquisition of shares under section 56(2)(x).

As per clause (x) of section 56(2), in case any shares are acquired at a value less than the fair market value computed in accordance with the method prescribed i.e. Rule 11UA, the difference is considered as income from other sources and is chargeable to tax. Considering the fact that in certain cases, the value for transfer of shares is approved by certain authorities and such value may be different than the fair market value computed in accordance with the prescribed method, the Finance (No.2) Bill, 2019 has introduced a proviso that this clause (x) of section 56(2) shall not apply in such cases where the consideration is received by such class of persons and subject to such condition as may be prescribed. With the proposed amendment, the difference will not be considered as income from other sources in such cases in respect of certain class of persons as may be notified by the Board. This amendment probably may address the hardship arising on transfer of a company consequent to order of NCLT, etc.

I. INTERNATIONAL TAXATION

1. Gift received by a non-resident from a resident person shall be income deemed to accrue or arise in India.

As per the existing clause (x) of section 56(2), any money or property received without consideration or at a value less than the fair market value, then difference in

the fair market value and the consideration paid, is considered as income from other sources and chargeable to tax. There has been an apprehension that such money or property received without consideration or inadequate consideration i.e. gift of such money or property made by resident to persons outside India are not chargeable to tax as such income does not accrue or arise in India considering the fact that such gift/transfer has taken place outside India. The Finance (No.2) Bill, 2019 in order to address the above apprehension has proposed to amend section 9 to create a deeming fiction by inserting clause (viii) under section 9(1) to the effect that any sum of money paid, or any property situated in India transferred on or after 5th July, 2019 by a resident to a person outside India without consideration or for inadequate consideration, then the aggregate fair market value of such property as exceed the consideration paid by the person outside India shall be deemed to accrue or arise in India. The implication of this amendment will be that the non-resident recipient will be liable to pay tax on such income as income which accrue or arise in India is chargeable to tax in India in the case of non-resident also. It may be relevant to point out that exemption prescribed under clause (x) of section 56(2), shall also be available to non-resident. Hence, transfer to the relative by a resident to a non-resident will not be considered as income and hence, not chargeable to tax. It may also be noted that such transfer by resident to non resident and being chargeable to tax, the same shall be liable for deduction of tax at source under section 195 of the Act. Accordingly, while transferring such money or property, the transferor shall be required to deduct tax at source. This amendment has been made effective from the date of the budget itself i.e. 5th July, 2019.

2. Relaxation in conditions to be met by offshore funds for not having business connection in India.

As per provisions of section 9A introduced by Finance Act, 2015, the fund management activity carried out through an eligible fund manager by an eligible investment fund is not considered to constitute business connection in India and hence, income of such fund is not chargeable to tax having not accrued or arisen in India subject to the conditions prescribed therein. The condition prescribed includes that the monthly

average of corpus of the fund shall not be less than Rs.100 crore at the end of the first year and the remuneration paid to the fund manager is not less than the arm's length price. The Finance (No.2) Bill, 2019 has proposed to relax the condition in respect of the period in which the corpus of the fund is to be achieved and also the remuneration paid to fund manager. As per the proposed amendment, the corpus of the fund shall not be less than Rs. 100 Crore at the end of period of 6 months from the end of the month of establishment or incorporation of the fund or the end of previous year in which the fund has been established whichever is later as against the existing condition of period at the end of the previous year in which fund is established. This relaxation will remove the hardship for those funds which are set up in the second half of the year as a period of 6 months will be available as against the last date of the year which in such cases is less than 6 months. Further, the condition that the remuneration paid to the fund manager is not less than the arm's length price is being relaxed to provide that the remuneration paid is not less than the amount calculated in such manner as may be prescribed. The computation of remuneration having been prescribed in the rules it will remove the uncertainty and subjective assessment while determining arm's length price of the remuneration paid to fund manager which in case get disputed, may have led to denial of benefit to such fund of no business connection and consequently the income of the fund being taxed in India. This amendment is being made with retrospective effect i.e. Assessment Year 2019-20.

3. One-time payment option for Secondary Adjustment consequent to Arm's Length Price determined under Transfer Pricing.

As per provision of Chapter X on Transfer Pricing, income from international transaction is to be computed having regard to arm's length price. In case of difference in the arm's length price and the price actually charged/paid, the difference is added as income which is considered a primary adjustment. The Finance Act, 2017 has inserted section 92CE in this Chapter for making secondary adjustment. In this secondary adjustment, the excess money i.e. the difference between the arm's length price determined and the price at which the international transaction has

actually been taken, if not repatriated within the prescribed time, such excess money shall be deemed to be an advance to the associated enterprise and the interest on such advance computed in the prescribed manner is to be added as income of the assessee. The implication of this secondary adjustment was that in case a primary adjustment has been made, then this secondary adjustment on account of interest shall continue to be made year after year till such time the amount on account of primary adjustment is paid by the associated enterprise. In order to simplify this, the Finance (No.2) Bill, 2019 has inserted sub section (2) under section 92CE to give an option that where the excess money or part thereof on account of primary adjustment in arm's length price has not been repatriated within the prescribed time, the assessee may at its option pay additional income tax @ 18% on such excess money and such tax paid shall be treated as a final payment of tax in respect of the excess money. It has been further provided that no deduction of this amount paid as tax shall be allowed and once this tax has been paid, the assessee shall not be required to make secondary adjustment i.e. to compute interest on primary adjustment from the date of payment of such tax. It may be relevant to point out that this section 92CE is not applicable in respect of those tax payers where the adjustment on account of transfer pricing has been made in respect of Assessment Year prior to Assessment Year 2016-17 and where the amount of such adjustment does not exceed Rs. 1 Crore. Thus, where any addition has been made on account of arm's length price in Assessment Year 2016-17 onwards and the addition so made exceeds Rs. 1 Crore, the taxpayer will be required to pay additional tax @ 18% + applicable surcharge of 12% on such addition and 4% Health & Education cess. Otherwise, such taxpayer has to include interest year after year on the addition made on account of arm's length price and pay tax on such interest at the applicable rate of that year. In case the taxpayer does not intend to pay additional tax and also does not intend to make secondary adjustment of interest, then he needs to repatriate the amount of addition. This repatriation need not be from the same associated enterprise in respect of which adjustment has been made. This excess money can be repatriated from any of the associated enterprise of the assessee which is not resident in India. The time period prescribed for repatriation of excess money is 90 days from the due date of filing return where adjustment on account of arm's length price has been made by the

assessee himself in his return of income and from the date of the order of the AO or the Appellate Authority if such adjustment has been determined in such order and has been accepted by the assessee. The rate of interest on excess money where the transaction is denominated in Indian Rupee is one year marginal cost of fund landing rate of SBI as on first day of the relevant previous year + 3.25% and where the transaction is denominated in foreign currency is 6 months LIBOR as on 30th September of the relevant previous year + 3%. It is also important to point out that this amendment is being made w.e.f. 1st September, 2019. Accordingly, in respect of those tax payers where such adjustment has become final, it will be advisable to pay such additional tax of 18% on the primary adjustment to avoid further secondary adjustment.

4. No assessment/re-assessment on filing of modified return consequent to signing of Advance Pricing Agreement.

Section 92CC and 92CD inserted by Finance Act, 2012 provides mechanism for entering into an Advance Pricing Agreement (APA) with the Tax Department. Such agreement entered into for future transactions could also be applied to international transactions undertaken in the previous four year in specific circumstances. Consequent to such agreement, where a taxpayer has opted to apply such agreement to earlier years, it is required to file a modified return within a period of three months from the end of the month in which APA was entered. The existing sub section (3) of section 92CD provides that where assessment or re-assessment proceedings for an Assessment Year to which agreement applies have been completed before the expiry of time period for furnishing of modified return, the AO shall proceed to assess or re-assess or re-compute the total income having regard to and in accordance with the agreement. Considering the usage of the words "assessee or reassess or recompute" in this sub section (3), there was an apprehension that the assessing officer after filing of such modified return consequent to APA may start fresh assessment or reassessment. The Finance (No.2) Bill, 2019 accordingly has proposed to clarify, by amending this sub section (3) of section 92CD, that in cases where assessment or reassessment

has already been completed, the role of assessing officer consequent to filing of modified return of income file pursuant to the APA shall be restricted to passing an order modifying the total income of the relevant Assessment Year and not to assess or re-assess the total income of the assessee. This amendment is being made w.e.f. 1st September, 2019.

5. Maintenance and Information of Documents by Constituent Entity of an International Group.

As per the existing provision of section 92D of the Act, every person who has entered into international transaction is required to maintain such information and document as has been prescribed. The Finance Act, 2016 has inserted a proviso extending the scope of this section of maintaining and keeping information to a constituent entity of an international group. The Finance (No.2) Bill, 2019 has substituted the existing section 92D with the new section 92D so as to clarify that requirement of maintaining and keeping information by a constituent entity of an international group and filing of required form shall be irrespective of the fact whether such constituent entity has entered into an international transaction or not. Accordingly, all constituent entities of the international group shall be required to keep and maintain information and document as prescribed in Rule 10DA and also file information in Form No. 3CEAA every year before the due date for furnishing the return of income under section 139(1) of the Act irrespective of the fact whether such constituent entity has entered into any international transaction or not.

6. Accounting Year in case of Alternate Reporting Entity to be that which is applicable to Parent Entity.

As per provision of section 286 of the Act, every parent entity or the alternate reporting entity which is resident in India shall furnish a report in respect of the international group of which it is a constituent for every reporting accounting year. However, there was confusion about the reporting accounting year where the parent entity is not resident in India and the accounting year followed by such parent entity

is different than the accounting year in India. The Finance (No.2) Bill, 2019 has accordingly proposed amendment in section 286 to clarify that in such cases, the reporting accounting year shall be the one applicable to the parent entity. It has been further clarified that this amendment is clarificatory in nature and hence, will have retrospective effect from Assessment Year 2017-18 i.e. the year from which this section 286 was made applicable.

7. Deductor not to be treated as assessee in default for non-deduction of tax at source on payment to non-residents.

The Finance (No.2) Bill, 2019 has proposed to widen the scope of the first proviso to section 201(1) to not to consider a person who has failed to deduct tax at source in respect of payment made to a non-resident provided such non-resident has filed his return of income under section 139 and disclosed such payment on which tax was required to be deducted for computing his income in its return and paid the tax due on the income declared as per the return along with a certificate from a Chartered Accountant. As per the existing provision, this benefit was available when there was failure to deduct tax in respect of payment made to resident only. Corresponding amendment has also been proposed in section 40(a)(i) that where a person is not treated as assessee in default in view of proviso to section 201(1), no disallowance under this section 40(a)(i) shall be made in respect of payment made to non-resident without deduction of tax at source. As per the provision of section 40(a)(i) on failure to deduct tax on any interest, royalty, fees for technical services or any other sum chargeable to tax under this Act on which tax was deductible at source and such tax has not been deducted or after deduction has not been paid before the due date specified in section 139(1), such amount is not allowed as deduction while computing profit and gains of business or profession. With the proposed amendment in case of failure to deduct tax in respect of payment made to non-resident, firstly the deductor will not be required to pay tax in case the non-resident has filed the return and included the amount in its return of income. Further, the liability to pay interest in respect of the TDS amount shall be limited to the period from the date when tax was to be deducted till the date of filing of return by the non-resident. This amendment

will help many taxpayers as liability to deduct tax in respect of non-resident is on every person irrespective of the fact whether such person is carrying on business or profession or not. Many such taxpayers while entering into transaction with non-resident such as purchase of property are not aware of the residential status of such non- resident and later on are required to pay tax along with interest when it is discovered that the status of such person was that of non-resident. Now in such cases, if the non-resident has filed the return and declared the capital gain on sale of property, the buyer will be required only to pay interest from the date when the tax was to be deducted till the date of filing of return of income by the non-resident. However, it may be important to note that the penalty for non-deduction of tax at source under section 271C may still be leviable on the deductor if he fails to prove that there was reasonable cause for failure to deduct tax at source. The amendment in proviso to section 201(1) is stated to be effective from 1st September, 2019, whereas consequent amendment in section 40(a)(i) is stated to be effective from 1st April, 2020 and accordingly will apply to the Assessment Year 2020-21 onwards. It may be relevant to point out that similar amendments made in the past in section 40(a)(ia), in respect of payment to resident without deduction of tax at source, despite being stated in the relevant Finance Act to be prospective, have been interpreted by the Courts as clarificatory and hence, held to have retrospective effect.

J. TAX DEDUCTION AT SOURCE

1. Individuals and HUFs (not liable for tax audit) need to deduct tax on payment made for personal use to contractors or pro-fessionals.

The Finance (No.2) Bill, 2019 has further widened the scope of deduction of tax at source by inserting a new section 194M, putting an obligation on individual and HUF to deduct tax at source even in respect of payment made for personal use to contractors or professionals in case the amount paid or credited in the aggregate on account of contractual work or professional fees exceeds Rs. 50 Lakhs in a year. The tax is to be deducted at the rate of 5% and the tax so deducted can be deposited using PAN without obtaining tax deduction account no. (TAN). It is to be noted that there will

be no deduction if the aggregate of the amount paid to a contractor or a professional during the year does not exceed Rs.50 Lakhs. However, in case the amount paid to a contractor or a professional exceeds Rs.50 Lakhs then tax is to be deducted at the rate of 5% on the total amount including the first Rs.50 Lakhs. The objective of introducing this provision is apparently to cover personal expenditure on various social functions, marriages where substantial payments are made to event manager, caterers and also to cover payments made to contractors, interior decorators, architects, etc. It is also interesting to note that though under section 194C the tax deduction rate in respect of payment to contractor is 2% whereas under this section the tax rate proposed is 5% for similar nature of payment. On the contrary, the tax deduction rate under section 194J in respect of payment to professionals is 10% whereas under this section the tax withholding rate is 5% for similar nature of payment. Thus, in one case, on contractor payment the rate is more than twice the normal rate whereas in the other case of payment to professionals the tax rate is half of the normal rate.

This provision shall be applicable from 1st September, 2019. Accordingly, all payments made on or after 1st September, 2019 shall be liable for this TDS. It is to be noted that the payment made before 1st September, 2019 may not be liable for this TDS. However, while computing aggregate amount of Rs. 50 Lakhs in a year, the payments made between 1st April, 2019 and 31st August, 2019 are also to be taken into account.

2. Banks to deduct tax at source on withdrawal of cash.

The Finance (No.2) Bill, 2019 has introduced a new section 194N making it obligatory on banks including Cooperative Banks and post offices to deduct tax at source at the rate of 2% on cash payments in excess of Rs.1 Crore in aggregate during a year from an account maintained with it. This amendment is being made to discourage cash transactions. There is no distinction whether such cash is withdrawn from a current account or a savings account. Applicability is on withdrawal from any account maintained by the recipient with the bank which may mean all the branches of such bank. However, this threshold of Rs. 1 Crore for a bank as a whole may be difficult to

implement as it may not be possible for a bank to find out the aggregate withdrawal in cash from all the branches of a bank. In any case this threshold will be per bank and hence, a person having bank accounts with different banks may be able to withdraw cash in excess of Rs.1 Crore without deduction of tax at source. It is to be noted that the deduction under this clause is on amount exceeding Rs.1 Crore. Thus, no deduction of tax at source up to Rs.1 Crore. Thereafter, deduction of tax at source on amount exceeding Rs.1 Crore. Further, this provisional shall not apply in respect of the cash withdrawal made by the Government, by a bank, by a Cooperative Bank, Post Office, Business correspondent of a bank and white label ATM operators. Further, Central Government has been empowered to exempt such other person or class of persons in consultation with the Reserve Bank of India from the applicability of this provision. It is to be noted that this is not a tax on withdrawal of cash. It is a tax deduction at source and the amount so deducted shall be eligible for credit against tax liability in respect of income of the year. This provision shall be effective from 1st September, 2019 and cash withdrawn in excess of Rs.1 Crore will be liable for tax deduction at the rate of 2%. Further, while considering threshold of Rs.1 Crore the cash withdrawn during 1st April, 2019 to 31st August, 2019 will be taken into account. However, in case cash in excess of Rs.1 Crore has been withdrawn before 1st September, 2019 the same will not be liable for deduction of tax at source.

3. TDS from Payment in respect of Life Insurance Policy.

As per the existing provisions of section 10(10D) any amount received under a life insurance policy including bonus on such policy is exempt from Income Tax. However, the sum received under an insurance policy where the premium paid for any of the year exceeds 20% of the sum assured in respect of policy issued after 1st April, 2003 and the premium paid for any of the year exceeds 10% of the sum assured in respect of policy issued after 1st April, 2012 is not exempt. Accordingly, as per the provision of section 194DA, at the time of payment by the insurance company on such policy, the insurance company is required to deduct tax at source at the rate of 1% on the total amount being paid under the policy including bonus. Since this TDS was to be deducted on the total amount which included the cost

by way of premium paid by the policy holder, this resulted in mismatch of amount reported in Form 26AS which is a gross amount vis-à-vis amount reported by a taxpayer in Income Tax Return which is a net of the amount received and the premium paid. In order to mitigate such difficulties, Finance (No.2) Bill, 2019 has proposed an amendment in section 194DA, to provide that the TDS will be deducted only on the income component i.e. net of the amount being paid by the insurance company including bonus if any and the premium paid by the policy holder and not on the gross amount. Further, it has been proposed to increase the rate of TDS from existing rate of 1% to 5%. After the proposed amendment, there will be no difference in the income reported by the taxpayer in the return of income vis-à-vis the amount deducted by deductor reflecting in Form 26AS. This amendment is being made w.e.f. 1st September, 2019. Accordingly, payment made by insurance company on or after 1st September, 2019 will be liable for TDS at the rate of 5% on the net amount. This amendment also clears the confusion prevailing earlier whether the entire amount received under insurance policy is chargeable to tax or the net amount is chargeable to tax.

4. TDS on purchase of property to be deducted on gross amount.

As per section 194IA of the Income Tax Act, the buyer at the time of payment for purchase of immovable property other than agriculture land is required to deduct tax at source at the rate of 1% on the amount of consideration paid or credited for transfer of such property. However, there was no clarity in respect of the consideration regarding rights to amenities which are part of the sale transaction like club membership fee, car parking fee, electricity & water facility fee, maintenance fee, advance fee, etc. The Finance (No.2) Bill, 2019 in order to clarify has amended the explanation to clarify that the consideration shall include all charges including club membership fee, car parking fee, electricity & water facility fee, maintenance fee, advance fee, etc. or any other charges of similar nature which are incidental to transfer of immovable property. Accordingly, TDS needs to be deducted on the gross amount paid to the seller. This amendment is effective from 1st September, 2019.

5. Facility to be provided for filing of on¬line application to obtain certificate for lower or nil rate of TDS in case of sum paid to non-resident.

As per the existing sub-section (2) of section 195 of the Act, if a person who is responsible for paying any sum to a non-resident which is chargeable to tax under the Act (other than salary) considers that the whole of such sum would not be income chargeable in the case of the recipient, he can make an application to the Assessing officer to obtain certificate/order for lower or nil withholding-tax. However, this process is currently manual and there is no prescribed form for filing such application. Finance (No.2) Bill, 2019 has proposed an amendment in the provisions of this section to prescribe the form and manner of application to the Assessing Officer and also for the manner of determination of appropriate portion of sum chargeable to tax by the Assessing Officer. Similar provisions are already in existence in case of payment to residents in section 197(2A) of the Act. This change will not only reduce the time for processing of such applications, but shall also help tax administration in monitoring such payments. Similar amendment is also proposed to be made in sub-section (7) of section 195 which are applicable to specified class of persons or cases. The above amendments will take effect from 1st November, 2019.

6. Online filing of quarterly statement of transactions which have not been subject to TDS.

As per the existing provisions of Section 206A read with Rule 31ACA, a banking company, co-operative society and Public Company are required to file quarterly returns in respect of payment of interest on time deposit to residents on which deduction of tax at source was not deducted. Further, central government is empowered to issue notification requiring any person responsible for paying to a resident any income liable for deduction of tax at source to file statement in the prescribed form.

As per section 206A, such statements are to be filed on a floppy, diskette, magnetic tape, CD-ROM, or any other on computer readable media. Now, it is proposed to substitute the existing section to enable online filing of such statements in the prescribed form and in the prescribed manner.

Further, at present there is no procedure of correction of such statements for mistakes in such return forms. It is now proposed to provide for correction of such statements for rectification of any mistake or to add, delete or update the information furnished. This amendment will be effective from 01st September 2019 and will enable the CBDT to upload the data of income so collected to the account of the taxpayers.

K. ASSESSMENT

1. Widening the scope of mandatory filing of return by Individuals, HUF, AOP, etc.

The Finance (No.2) Bill, 2019, proposes to widen the scope of mandatory filing of return by Individual, HUF, AOP, etc. As per the proposed amendment, Individual, HUF, AOP, BOI, artificial juridical person shall also be required to file the return even if their total income is below the maximum amount not chargeable to tax, in case such person has deposited an amount exceeding Rs. 1 crore in one or more current accounts maintained with a bank including co-operative bank or has incurred expenditure exceeding Rs. 2 lakhs for himself or any other person for travel to a foreign country or has incurred expenditure exceeding Rs. 1 lakh towards consumption of electricity. Further, Board has been empowered to prescribe other conditions for mandatory filing of return even if the total income does not exceed the maximum amount not chargeable to tax. Further, those taxpayers as are claiming benefit of exemption of capital gain consequent to investment in residential property, capital gain bonds shall also be required to file return, in case their total income before claiming such benefit of capital gain exemption is more than the maximum amount not chargeable to tax.

It is to be noted that the requirement to file tax return in respect of deposit with bank is with reference to current account only and that too with bank and co-operative bank and not with post office. Hence, deposit in savings account and fixed deposit account with bank and cooperative banks and all deposits with post office are not to be considered. Further, it is to be noted that foreign travel expenditure, in case it is incurred by any other person is not to be considered. On the contrary, foreign travel

expenditure incurred for any other person is to be included while determining the applicability of this condition. This amendment shall be effective from assessment year 2020-21 and hence these conditions of mandatory filing of returns will not be applicable for the current assessment year 2019-20.

2. PAN and AADHAR to be interchangeable for Income-tax purpose and PAN to be inoperative instead of invalid if not linked with Aadhaar.

As per the existing provision of section 139A, a person is required to apply for allotment of PAN who fulfills the criteria prescribed therein. The Finance (No.2) Bill, 2019 proposes to widen the scope by enabling the Board to prescribe such transactions as may be in the interest of Revenue so as to have an audit trail of high value transactions such as purchase of foreign currency or huge withdrawal of cash from banks. Further, amendment has been proposed to provide for interchangeability of PAN with the Aadhaar Number. Accordingly, a person who is required to quote his PAN under this Act and who has not been allotted a PAN but possess the Aadhaar Number, can quote his Aadhaar Number instead of PAN. Such person on the basis of Aadhaar Number quoted shall be allotted PAN. Thus, Aadhaar Number and PAN will get linked automatically. It is to be noted that Aadhaar Number can be quoted only by such person who has not been allotted PAN. In case PAN has already been allotted, then such person is required to quote PAN only. It is only when a person has been allotted a PAN and who has already linked his Aadhaar Number with a PAN that such person can quote Aadhaar Number instead of PAN. Since in this case Aadhaar Number and PAN have been linked, no further PAN will be allotted. In order to ensure that the above requirement is complied with, corresponding amendment is being proposed in section 139AA so as not to invalidate the PAN in the absence of linkage with the Aadhaar Number. Instead of invalidating the PAN in case of failure to link the Aadhaar Number with the PAN, the PAN will be made inoperative after the date to be notified in such manner as may be prescribed. The implication of above amendment is that existing PAN will still be required to be linked with Aadhaar Number. In case of non-linkage, the PAN will become inoperative. Further new PAN will be allotted on the basis of the Aadhaar Number and such new PAN will at the time of allotment itself

get linked. That is why an option is being given to quote either Aadhaar Number or PAN in respect of the transaction prescribed. Thus, it is to be understood that PAN is not being done away. What has been proposed is to allow interchangeability with the result that PAN will get allotted on the basis of Aadhaar Number. It may further be relevant to point out that Rule 114B provide an exhaustive list of transactions where PAN and now Aadhaar Number as well, will be required to be quoted. This include not only opening of bank account, demat account, payment to Hotel, payment for travel exceeding Rs. 50,000, purchase or sale of shares exceeding Rs. 1,00,000 but also sale or purchase of goods or services of any nature exceeding Rs. 2 lakh per transaction. Further an obligation has been cast under section 139A on the person receiving such document of specified transaction which will include seller of goods and services to ensure that the PAN or the Aadhaar Number quoted is correct and authentication thereof be done through the Income tax authority or such other authority or agency as may be prescribed for verification. Thus, the person entering into high value transaction shall quote the Aadhaar Number or PAN. The person with whom such transaction is being entered shall get it authenticated and such transaction thereafter shall be reported by such person in the statement of transactions to be filed under section 285BA. With this process, the tax department will have complete details of all the specified and high value transactions of each of the person. Corresponding amendment has been proposed in section 272B to provide penalty of Rs. 10,000 for quoting a wrong Aadhaar Number also by a person who is required to quote his PAN or Aadhaar Number in any document.

3. Faceless E- Assessment.

The Finance Minister in her budget speech has proposed a scheme of faceless e-assessment which will involve no human interface from this year itself. This faceless e-assessment shall be implemented in a phased manner. In the beginning, the cases selected for limited scrutiny of certain specified transactions or discrepancies will be assessed under this new faceless e-assessment. In such cases, notices shall be issued by the central cell without mentioning the name, designation, location, of the assessing officer and reply to such notices shall be submitted online to central

cell without being addressed to any particular assessing officer. The assessment order accordingly will be received from central cell. It is expected that this faceless e-assessment shall be implemented from current year itself.

L. INTEREST AND PENALTY

1. Income-tax refund to be claimed by filing of Income-tax return only.

As per the existing provisions of section 237, a person is entitled to a refund of tax paid by him for any assessment year where such tax paid exceeds the amount with which such person is liable to pay under the Act. For claiming this refund, section 239 provides that such claim of refund be made in the prescribed form i.e. Form 30 under Rule 41. However, practically this process of claiming refund by filing Form no.30 is not being followed and refund are being claimed on the basis of return of income and are being processed and allowed as well. Considering this, the Finance (No.2) Bill, 2019 has proposed to remove this requirement of filing claim for refund of excess tax paid and such claim for refund of excess tax paid shall be made by furnishing return of income. With this amendment, there will be no need for filing separate form for claiming refund of excess tax paid. The return filed will be treated as a claim for refund of excess tax paid. This amendment made shall be applicable from 1st September, 2019.

2. Penalty for under-reporting of income in case of assessment under section 148 to be same both in cases of non-filing of return and filing of return for first time in re-assessment.

As per existing provisions of section 270A inserted vide Finance Act 2016 applicable from assessment years 2017-18, penalty is leviable for under-reporting and misreporting of income. In the case of non-furnishing of return, the difference between the amount of the income assessed and the maximum amount not chargeable to tax is considered to be income under-reported. The implications of this was that a person who has filed the return for the first time in response to notice under section 148 of the Act,

the income declared in such return has to be reduced from the income assessed for levy of penalty on account of under-reporting of income despite the fact such person has not reported any income before issue of notice under section 148. Accordingly, an amendment has been proposed by Finance (No. 2) Bill, 2019 to plug this gap providing that penalty for under-reporting of income shall be leviable where return has been furnished for the first time under section 148 on the difference between the income assessed and the maximum income not chargeable to tax and hence no credit shall be given of the income declared for the first time in the return filed in response to notice under section 148 while computing amount of income under-reported. This amendment however is more stringent as compared to Explanation 3 to section 271(1)(c) where no penalty was leviable in respect of income declared in the return filed in response to notice under section 148 if such return has been filed before the expiry of the time period for completion of assessment under section 153(1). Now, irrespective of the fact that time period for completion of assessment under section 153(1) has not expired, the income declared in the return filed for the first time in response to notice under section 148 shall be considered and included in the income under-reported for levy of penalty under this new section 270A. Since this is an amendment to rectify the omission, the same is being made with retrospective effect i.e. from assessment year 2017-18, the year from which this section 270A is applicable.

3. Prosecution for failure to furnish return of income not to be initiated if net-tax payable does not exceed Rs. 10,000.

As per the existing provisions of section 276CC, a person can be prosecuted if he willfully fails to file return of income. However, no prosecution can be initiated for failure to file return under section 139(1) if the tax payable on the total income assessed as reduced by the advance tax and TDS is Rs. 3,000 or less. While computing this balance tax payable, at present, only advance tax and TDS are deducted. Self-assessment tax paid and tax collected at source are not deducted. The Finance (No. 2) Bill, 2019 has accordingly proposed an amendment to deduct self-assessment tax paid before the end of relevant assessment year and tax collected at source also

for computing balance tax payable. Further, no prosecution shall be initiated if such balance tax is Rs. 10,000 or less as against present threshold of Rs. 3,000 or less.

M. MISCELLANEOUS

1. Scope of Statement of Financial Transactions being widened.

As per existing provisions of section 285BA of the Act, a statement of financial transaction is required to be filed by various authorities such as sub-registrar, transport authorities, Post Master General, stock exchange, depository, financial institution, etc. in respect of specified financial transactions i.e. purchase and sale of goods, properties, rendering of service, works contract, investment, loan or deposit, etc. where the aggregate value of such transactions is not less than Rs. 50,000. This statement has to be filed in Form 61B for every calendar year (not for every financial year) by 31st May of the following year. The Finance (No. 2) Bill, 2019 has proposed to widen the scope of this statement by requiring such other person also as may be prescribed to file this statement. Also, the threshold of Rs. 50,000 is being deleted with the result that each and every transaction shall now be required to be reported in the statement irrespective of the amount of such transaction. The objective of widening the scope is to obtain more information so as to enable pre-filled return. Further, in order to ensure that such statement is correct, an amendment has been proposed in sub-section (4) of the said section so not to treat the said statement as invalid where defect is not rectified within a period of 30 days from the date on which the income tax authority has intimated the defect, but to treat such return as if the person has furnished inaccurate information in such statement. It may be relevant to point out that under section 271FAA, a penalty of Rs. 50,000 is leviable for furnishing inaccurate information in such statement. This amendment shall be effective from 1st September 2019.

2. Pre-filled tax returns to be made available to the taxpayers.

The Finance Minister in her speech has proposed that pre-filled tax returns will be made available to the taxpayers to ensure accuracy of income reported in the return.

For this purpose, it has been proposed to collect information in respect of income such as salary, capital gains from securities, bank interest, dividend, tax deduction, deduction from various sources which will include banks, stock exchanges, mutual funds, state registration department, etc. Considering this, the scope of statement of financial transactions required to be filed by these institutions under section 285BA as explained hereinabove has considerably being widened. Apparently, the above data shall be available in Form 26AS from where it will get auto-populated to the tax return.

3. Acceptance of payment through electronic mode to be mandatory for certain businesses.

The Finance (No. 2) Bill, 2019 has proposed to introduce a new section 269SU making it mandatory for every person carrying on business whose total sales, turnover or gross receipts exceeds Rs. 50 crores in the preceding financial year to provide facility for accepting payment through the prescribed electronic mode. This amendment has been proposed to promote cashless economy. This requirement is applicable only to person carrying on business and in the absence of specific mention in the proposed amendment, the same will not be applicable to person carrying on profession. This amendment shall be effective from 1st November, 2019 and accordingly all such persons who are carrying on business and whose turnover during the financial year 2018-19 was more than Rs. 50 crores, need to provide this facility of payment through electronic mode from 1st November 2019. In the absence of not providing such facility, this Finance (No. 2) Bill, 2019 has proposed to levy a penalty of Rs. 5,000 per day under section 271DB of the Act.

4. Exemption to non-resident of interest income in respect of Rupee denominated bonds.

The Finance (No. 2) Bill, 2019 has proposed to insert clause (4C) in section 10 so as to exempt income of a non-resident in respect of interest on rupee denominated bond issued during the period from 17th September 2018 to 31st March 2019. This

amendment has been proposed to give statutory recognition to the Press Release dated 17th September 2018 whereby interest payable by an Indian Company or a business trust to a non-resident in respect of rupee denominated bond issued outside India during the period 17th September 2018 to 31st March 2019 was declared to be exempt from tax. This amendment is being made with retrospective effect i.e. assessment year 2019-20.

5. Clarificatory amendment in respect of carry forward of losses of start-ups.

As per clause (a) of section 79, loss incurred in any year is allowed to be set-off in subsequent year only when shares carrying not less than 51 percent of the voting power, are continued to be held in such subsequent year when loss is being set-off, by persons who beneficially held such shares in the year or years when such loss was incurred. The Finance Act 2017, in order to provide relief to eligible start-ups, has inserted another clause (b) allowing set-off of loss in the case of start-ups, on the condition that all the shareholders of such start-up companies who held shares carrying voting power on the last date of the year or years in which the loss was incurred continues to hold shares on the last date of year in which such loss is being set-off. This amendment was made as start-up promoters dilute their shareholding consequent to further issue of capital and percentage of shares held by such promoters goes down below 51% not because of sale of shares by such promoters but by issue of fresh capital to new investors. However, post amendment by the Finance Act 2017, there was a confusion that whether start-up companies need to comply with both the conditions of clause (a) and as well as clause (b). Finance (No. 2) Bill, 2019 proposes to clarify the same by giving an option to start-ups to comply either of the above two conditions to claim benefit of carry forward of losses.

6. Carry forward of losses to be allowed on change of shareholding of company on a petition by the Central Government.

The Finance Act, 2018 has amended provisions of section 79 by inserting a proviso so as to allow the benefit of carry forward of losses to a company where a change

in shareholding has taken place consequent to the resolution plan approved by the NCLT under Insolvency & Bankruptcy Code, 2016 after giving opportunity to the Jurisdictional Commissioner. The benefit of this amendment was not available to such companies where change of shareholding is effected on a petition filed by Central Government under the Companies Act as such petition is not under Insolvency & Bankruptcy Code. The Finance (No. 2) Bill, 2019 has proposed to allow benefit of carry forward of losses to such companies and their subsidiaries and subsidiaries of such subsidiaries, where change in shareholding of such companies and their subsidiaries and subsidiaries of such subsidiaries has taken place pursuant to a resolution plan approved by the NCLT under section 242 of the Companies Act on a petition by the Central Government under section 241 of the Companies Act. This amendment apparently is to address the issue arising in companies like IL&FS where Central Government has moved petition under section 241 of the Companies Act, and NCLT, on such petition, has suspended the Board of Directors of such company and has appointed new Directors.

7. Brought forward of losses and unabsorbed depreciation both to be excluded while computing book profits of Companies referred to NCLT.

The Finance (No. 2) Bill, 2019 has proposed to widen the existing clause (iih) in Explanation 1 to provide that aggregate amount of unabsorbed depreciation and loss brought forward shall be reduced while computing book profits of the companies where on a petition filed by the Central Government under section 241 of the Companies Act, new directors have been appointed by the NCLT. It may be relevant to point out that Finance Act, 2018 has extended the above benefit of reducing the aggregate amount of unabsorbed depreciation and loss brought forward while computing book profit to companies against whom Resolution Process has been admitted by NCLT.

N. BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT

1. Residential status to be applied with reference to the relevant year for applicability of Black Money Provisions.

The provisions of Black Money (Undisclosed Foreign Income and Assets) and imposition of tax Act are applicable to a Resident in India to be determined as per section 6 of the Income Tax Act. Accordingly, Black Money provisions, in respect of bank account or assets outside India, held by any person who has become Non-Resident as on date are not applicable as such persons do not fall within the meaning of the assessee as defined in Section 2 of Black Money (Undisclosed Foreign Income and Assets) and imposition of tax Act. As per this section 2, this Act is applicable when such person is resident of India on the day on which this Act is being applied. In view of this definition of assessee, persons having earned income from source outside India or having acquired assets outside India when they were residents in order to avoid the stringent provision of this Black Money (Undisclosed Foreign Income and Assets) and imposition of tax Act were becoming non-residents.

The Finance (No. 2) Bill, 2019 has accordingly proposed to amend this section 2, to clarify that the assessee under this Black Money (Undisclosed Foreign Income and Assets) and imposition of tax Act shall include a person who was a resident in India in the said year to which the income from a foreign source relates or the said year in which the undisclosed assets located outside India were acquired. With this amendment for applicability of this Black Money (Undisclosed Foreign Income and Assets) and imposition of tax Act, the residential status for the relevant year when income was earned or asset was acquired outside India will be the deciding factor and hence change in residential status to a non-resident later on will not absolve such person from the stringent provisions of Black Money (Undisclosed Foreign Income and Assets) and imposition of tax Act.

Further, a proviso has been inserted so as to exclude the applicability of section 72(c) of this Act which provides that wherein an asset has been acquired prior to commencement of this Act, such asset shall be deemed to have been acquired in the year in which notice is issued by the assessing officer. This is being done as by applying this provision, the relevant assessment year will be the current assessment year when notice is being issued and such asset cannot be charged to tax in the hands of the assessee who has a status of non-resident in this year. However, in case, such presumption of section 72(c) as proposed if excluded, then such asset shall be the income of the year in which such asset was acquired. In case, these assets have been acquired prior to assessment year 2016-17, the same cannot be assessed under this Act as this Act is applicable from A.Y. 2016-17 onwards.

This amendment is proposed to have retrospective effect from 1st July, 2015 i.e., the day Black Money (Undisclosed Foreign Income and Assets) and imposition of tax Act came into force.

It may be still a matter of interpretation and judicial adjudication whether provision of this Act, particularly penal provisions can be applied to transactions which have taken place before the day when the Act came in force. It may also be relevant to point out that as per section 3(1), the basis of charge is for every assessment year commencing on or after 01st April, 2016 i.e., A.Y. 2016-17 and in respect of total undisclosed foreign income and asset of the previous year. To overcome the above applicability from assessment year 2016-17, section 4 has provided that total undisclosed foreign income and asset of any previous year shall include income from a source located outside India which has not been disclosed and the value of undisclosed assets located outside India irrespective of the fact in which such income was earned or assets were acquired. Thus, as per section 3 all undisclosed income and assets has been considered to be the income chargeable under this Act of the year in which such income and assets comes to the notice of assessing officer.

O. Income Disclosure Scheme, 2016

1. Time for payment of tax being extended on payment of interest.

The Finance Act, 2016, has introduced Income Declaration Scheme, 2016 for declaration of undisclosed income and assets on payment of tax at the rate of 30%, penalty at the rate of 7.5% and Krishi Kalyan Cess of 7.5% i.e. 45% of the income disclosed. This tax, penalty and cess was to be deposited in three installments i.e. 25% by 30th September, 2016, 25% by 31st March, 2017 and balance 50% by 30 September 2017. There have been many cases where person having filed the declaration, have forgotten to deposit these installments, consequent to which, the declaration made by such person has become invalid and reassessment proceedings on account of such income escaping assessment have been initiated. The Finance (No. 2) Bill, 2019 in order to address this issue has proposed to amend section 187 of the Finance Act, 2016 to extend the time for payment of tax on income disclosed under the Scheme with interest at the rate of 1% per month commencing from the date when the amount was due till the date when payment is made in respect of class of persons to be notified. Thus, this is an opportunity for those who have made the disclosure under the scheme and for one reason or the other reason have not deposited tax. This may also help those who have made disclosure and there have been delay in depositing installment of taxes. Such person also can avail the benefit by paying interest on such delay.

This amendment is proposed to be retrospective and shall be effective from 1st June, 2016.

2. Refund of excess tax paid, if any, under Income Declaration Scheme, 2016.

As per the provisions of section 191 of the Finance Act, 2016, the tax, surcharge and penalty paid under Income Declaration Scheme was not refundable. The Finance (No. 2) Bill, 2019, however, has proposed to amend this section 191 of the Finance Act, 2016, empowering the Central Government to notify the class of persons who

can claim refund of the excess tax, if any, paid by them under this scheme. From the proposed amendment, it is not clear which class of persons will be eligible for claiming refund. Apparently, those who have paid excess tax by mistake or who have paid taxes but whose declarations were not accepted may be allowed to claim refund and adjust such refund against tax demand created in respect of the same income which was part of declaration and have been assessed later on consequent to non-acceptance of declaration. Further, the proposed amendment is silent on the payment of interest on such refund. There may be cases where demand on the same income be outstanding and hence liable for interest. In all fairness and to be equitable, either interest on such refund of tax paid under the scheme be allowed or interest on the demand outstanding of the same income which was subject matter of disclosure be not charged by adjusting such refund on the date when demand was created. This amendment is also proposed to be retrospective and shall be effective from 1st June, 2016.

P. PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988 ("PBPT")

1. Act being amended to cover up the lapse of prior approval by the Initiating Officer before issue of notice under section 24(1).

As per section of 23 of the Prohibition of Benami Property Transactions Act, 1988 ("PBPT"), the Initiating Officer can conduct an enquiry after obtaining approval of the approving authority i.e. Additional Commissioner or a Joint Commissioner. Under section 24(1), Initiating Officer has to issue a notice after recording reasons on the basis of the material in his possession. Further, under section 24(3), the Initiating Officer can provisionally attach the property on apprehension of alienation of the property with the prior approval of the Approving Authority. Thus, investigation as well as provisional attachment can be done by Initiating Officer only after obtaining the prior approval. In many of the cases, the Initiating Officer has issued notice under section 24(1) without obtaining prior approval of the Approving Authority with the result the proceeding initiated are being challenged as bad in law. In order to address

this issue, the Finance (No. 2) Bill, 2019 has proposed to amend section 23 of the PBPT Act by inserting an explanation that this section 23 shall not apply and shall be deemed to have never applied where a notice under section 24(1) has been issued by the Initiating Officer. It is important to note that section 23 speaks of prior approval for conducting enquiry/investigation and section 24(1) only speaks of issuance of notice. The issuance of notice has to be for the purpose of conducting enquiry/investigation. The implication of this amendment will be that an Initiating Officer can issue a notice without obtaining enquiry/investigation. The purpose of prior approval under section 23 for conducting enquiry/investigation and under section 24(3) for provisional attachment is to put a check on the power of the Initiating Officer. These were lapses on the part of the Initiating Officer where notices have been issued without prior approval. In case, it was because of some wrong understanding of the provisions, then ideally this amendment should be restricted to validate such notices issued till date and not to do away with the requirement of prior approval for all times. Initiating benami proceedings against any person is a serious issue and there has to be proper check and balance by way of prior approval of an higher authority. Since this amendment is to address a lapse, the same is proposed to have effect retrospectively from 1st November, 2016 i.e. the day when the amended PBPT Act came into force.

2. Time period of passing order within 90 days to be reckoned from the end of the month.

The Finance (No. 2) Bill, 2019 proposes to amend section 24(3) of the PBPT Act so as to count the period of 90 days in respect of provisional attachment under section 24(3) and passing of order under section 24(4) from the end of the month in which notice under section 24(1) is issued as against from the date of issuance of notice at present. This amendment is proposed to be effective from 1st September, 2019.

3. Time period during which proceedings are stayed to be excluded.

The Finance (No. 2) Bill, 2019 proposes to insert an explanation so as to exclude the period during which proceedings is stayed by an order or injunction of any

court while computing limitation of a period of 90 days allowed to Initiating Officer to pass order under section 24(4), the period of 15 days allowed to the Initiating Officer under section 24(5) for drawing up a reference of statement of the case and referring it to the adjudicating authority and period of one year allowed to the adjudicating authority under section 26(7) within which it has to pass the order. Further, it has been provided that if the remaining period after exclusion of the aforesaid period available to the Initiating Officer under section 24(4) for passing an order is less than 30 days, then such remaining period shall be shall be deemed to have been extended to 30 days. In case the remaining period after exclusion of the aforesaid period available to the Initiating Officer under section 24(5) for making a reference to Adjudicating Authority is less than 7 days, then such remaining period shall be shall be deemed to have been extended to 7 days. In case the remaining period after exclusion of the aforesaid period available to the Adjudicating Authority for passing an order, on reference received from Initiating Officer, under section 26(7) is less than 60 days, then such remaining period shall be shall be deemed to have been extended to 60 days. This amendment shall be effective from 1st September, 2019.

4. Penalty for non-compliance of summons.

As per provisions of section 19 of the PBPT Act, the authorities under this Act has powers to issue summon. Further, under section 21, the Initiating Officer, Approving Authority and the Adjudicating Authority has power to call for information. However, there is no penal provision in case the notice issued are not complied with. Accordingly, the Finance (No. 2) Bill, 2019 proposes to insert a new section 54A in PBPT Act to provide for penalty of Rs. 25,000 for each failure. However, this penalty cannot be imposed without giving an opportunity of being heard. Further, no penalty shall be imposed if the person proves that there was good and sufficient reasons which prevented him for complying with the summons or furnishing information. This amendment shall be effective from 1st September, 2019.

5. Certified copies of records or documents to be admissible evidence in prosecution proceedings.

The Finance (No. 2) Bill, 2019 proposes to insert a new section 54B in the PBPT Act to provide that entries in the record or other documents in the custody of an authority shall be admissible as evidence in a prosecution proceedings under the PBPT Act. Such entries may be proved, in the prosecution proceedings, either by production in the records or in the custody of the authority containing such entries or the production of the copy of the entries certified by the authority having custody of the record or other documents under its signature stating that it is a true copy of the original entries. This amendment shall be effective from 1st September, 2019.

6. Prosecution to be instituted with the sanction of Commissioner of Income Tax instead of Board.

The Finance (No. 2) Bill, 2019 proposes to amend section 55 of the PBPT Act so as to provide that prosecution shall be instituted against any person with the sanction of the competent authority instead of sanction of the Board at present. Further, explanation is being inserted below section 55 to provide that competent authority shall mean a Commissioner, a Director, a Principal Commissioner of Income-tax or a Principal Director of Income-tax. This amendment shall be effective from 1st September, 2019.

Q. SECURITIES TRANSACTION TAX (STT)

1. STT to be paid on difference between the strike price and the settlement price.

The Finance (No. 2) Bill, 2019 proposes to amend section 99 of the Finance (No. 2) Act, 2004 which has introduced securities transaction tax. As per this section, STT is to be paid on the value of taxable securities transaction i.e. the settlement price

in respect of sale of an option in securities, where option is exercised. As per the proposed amendment, the STT shall be payable not on the settlement price but on the difference between the strike price and the settlement price. This amendment shall be effective from 1st September, 2019.

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TAXTATION 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 offical circulars, clarifications 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
Issue, Clarifications and Judgements

VED JAIN

The issues involved in Search, Seizure and Survey have been discussed in detail in the book and references 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 systems 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 cooperates. 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 policy makes, 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 has teaching experience of more than 25 years. She has published a number of articles in reputed journals including Asia-Pacific Buletin (Amsterdam), Taxman a, The Chartered Accountants and others.