e-zine

Vol-4 • 2017-18
e-newsletter of
VIP ROAD CHARTERED ACCOUNTANTS' ASSOCIATION

Wishing you HAPPY HOLI

Highlights :

- Finance Bill, 2018
- Goods & Services Tax
- Incorporation with Zero Fees
- Removal of Disqualification
- SC Judgement on 12A

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IN THIS ISSUE

President's Message

Dear fellow members,

Once again I feel privileged in having the golden opportunity of communicating through this page. It gives me immense pleasure and Honour in releasing the E-Newsletter of VIPCA.

A few days back our Finance Minister ShriArunjaitley placed the Union Budget 2018 on the floor of parliament.This is the first budget after big-ticket economic reforms such as the Goods and Services Tax (GST), dynamic fuel pricing, mega PSU bank recapitalisation and more.

The Finance Minister said, this year's Budget will consolidate these gains and particularly focus on strengthening agriculture and rural economy, provision of good health care to economically less privileged, taking care of senior citizens, infrastructure creation and working with the States to provide more resources for improving the quality of education in the country.

On the very next day of presentation of Finance Bill 2018, a Budget seminar was organised by our association which was attended by over 400 delegates. I take this opportunity to thank all of you to make the said seminar a grand success.

I on behalf of our Association wish to congratulate new torch bearers of ICAI- CA Naveen N D Gupta elected as the President and CA Prafulla P Chhajed being elected as the Vice-President for the year 2018-19.Our Association has won Inter Study Circle Cricket Tournament held in last month. On behalf of VIPCA I congratulate to our VIPCA cricket team.I extend each one of you and your family members my sincere greetings for HOLI.

With these words, I now solicit your valuable suggestions and feedback to take our association a new height.

With warm regards
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Chairman's Message

Dear Fellow Members,

Happy Holi / Doljatra

At the outset, I greet all of you from the core of my heart in advance for the festive season ahead. I urge for the continued support which we had been getting from all the stakeholders since long for growing on the growth path.

We have just witnessed the Financial Budget 2018 which was presented before the parliament and your Study circle has hosted the First Budget seminar in the City Of Joy with overwhelming response. Lots of measures were taken on Micro and Macro level. Some of major amendments as proposed are with respect to Capital gain, MSP, declaration for steps on use of crypto currency, declaration of universal health coverage, taxability of equity oriented mutual fund and lot others.

Apart from academic and technical session, we also actively participated in the inter study circle league tournament and we won the Match. I on my personal behalf and on behalf of all of you congratulate TEAM – VIPCAA.

With the following word of wisdom, I give rest to my Pen

"वैसे तो तेरी रहमत की कोई कीमत नहीं, अगर ना मिले तो बेशकीमती हो जाती है"

(We normally do not care the care extended by the Almighty, and once it is deprived off, we want to attain it at any cost)

With best compliments

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Highlights of amendments proposed in Direct Tax by the Finance Bill, 2018

Compiled by
CA Manoj Tiwari

Unless otherwise specifically mentioned, the amendments proposed are effective from the Assessment Year 2019-2020 and are, therefore, applicable to income arising on or after 1st April, 2018. Specific mention is made at the relevant places.

PERSONAL TAXATION

Extending the benefit of tax-free withdrawal from NPS to non-employee subscribers [Amendment to section 10(12A)]

The Finance Act, 2016 has included a new clause (12A) in section 10 so as to provide that any payment from the National Pension System Trust to an employee on closure of his opting out of the pension scheme referred to in section 80CCD, to the extent it does not exceed forty per cent of the total amount payable to him at the time of such closure or his opting out of the scheme shall be exempt from tax. Hitherto this exemption is limited to employees.

In order to provide a level playing field, it is proposed to amend clause (12A) of section 10 of the Act to extend the said benefit to all subscribers from the assessment year 2019-20 so as to extend the scope of exemption in individuals who contribute to NPS.

Standard deduction on Salary income [Amendment to sections 16 and 17]

Income from salary is computed after certain deductions. It is proposed to re-introduce the standard deduction at Rs.40,000 per annum or the amount of salary, whichever is lower. As standard deduction is proposed, exemption for reimbursement of medical expenses by the employer of Rs.15,000 per annum and transport allowance (except for differently abled persons) of Rs.1,600 per month have been proposed to be withdrawn. Rule 2BB of the Income-tax Rules, 1962, would be suitably amended. Since salary includes pension, proposed standard deduction will be applicable for pensioners also.

Rationalisation of the provisions of section 54EC [Amendment to section 54EC]

Section 54EC of the Act provides that capital gains, arising from the transfer of a long-term capital asset, invested in the long-term specified asset (i.e., specified bonds redeemable after 3 years) at any time within a period of six months after the date of such transfer, shall not be charged to tax subject to certain conditions specified in the said section being fulfilled.

It is proposed to restrict the definition of long term capital asset to Land, Building or both. It is also proposed to provide that "long-term specified asset", for making any investment under the section on or after the 1st day of April, 2018, shall mean any bond, redeemable after five years and issued on or after 1st day of April, 2018 by the National Highways Authority of India or by the Rural Electrification Corporation Limited or any other bond notified by the Central Government in this behalf.

Deductions available to senior citizens enhanced

[Amendment to sections 80D, 80DDB, 80TTA and 80TTB]

- It is proposed to increase the deduction limit for senior citizens to Rs.50,000 for medical insurance, preventive health check-up and medical expenditure collectively [Section 80D].
- It is proposed to increase the deduction limit for payment for medical treatment of specified diseases for or by senior citizens to Rs.1,00,000. Earlier the limit was Rs.60,000 for senior citizens and Rs.80,000 for very senior citizens. However, limit of Rs.40,000 for others remains same [Section 80DDB].
- Currently, deduction up to Rs.10,000 is allowed for interest from savings account with a bank, a Co-operative Bank and post office under section 80TTA of the Income-tax Act. Henceforth, Section 80TTA has sun set for senior citizens. A separate section is proposed for senior citizens with an enhanced deduction up to Rs. 50,000 for such interest under section 80TTB.

Further, it is proposed to remove the category of very senior citizen for section 80D and section 80DDB.

Tax deduction provisions relaxed for senior citizens [Amendment to section 194A]

Currently, tax is required to be deducted if the interest income from deposits exceeds Rs.10,000. For senior citizens it is proposed that tax should not be deducted if such interest income does not exceed Rs.50,000.

CORPORATE TAXATION AND BUSINESS DEDUCTION

Amendment to Section 56

Provisions relating to the taxability of difference between Stamp duty value and the consideration paid for purchase/receipt of immovable property rationalized Currently section 56(2)(x) of the Act, inter

alia, provides that where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017, any immovable property, for a consideration which is less than the stamp duty value of the property by an amount exceeding Rs.50,000, the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head "Income from other sources It is proposed to amend the said 56(2)(x) of the Act to provide that where any person receives any immovable property for a consideration and the stamp duty value of the property exceeds such consideration then the higher of the following will be charged to tax under the head "income from other sources":

a. stamp duty value of the property which exceed by Rs.50,000 or
b. the amount equal to 5% of the sales consideration

Exclusion of tax neutral transactions from the scope of section 56

Currently, section 47 of the Act provides for certain tax neutral transfers. Section 56 also excludes income arising out of certain tax neutral transfers from its ambit, however, the transfers referred to in clause (iv) and (v) of section 47 (viz., any transfer of a capital asset by a company to its subsidiary company and any transfer of capital asset by subsidiary company to the holding company subject to certain conditions respectively) have not been excluded.

It is now proposed to amend the fourth proviso to section 56(2)(x) of the Act so as to exclude the transfer of capital asset between holding company and its wholly owned Indian subsidiary company and between subsidiary company and its Indian holding company, which are not regarded as transfer under section 47 from the scope of section 56 of the Act.

Compensation for termination of employment or modification of terms of employment taxable as 'Income from other sources'

It is proposed to insert a new clause (xi) in section 56(2) of the Act so as to provide that any compensation or any other payment received or receivable, by whatever name called, in connection with the termination of employment or the modification of the terms and conditions of any contract relating to employment shall be chargeable to tax under the head "Income from other sources".

Deduction to be allowed only on furnishing the return of income within due date

The existing provisions of section 80AC of the Act provide that no deduction will be admissible under section 80-IAB or 80-IB or 80-IC or 80-ID or 80-IE unless the return of income to be filed by the assessee is furnished on or before the due date specified under section 139(1) of the Act. It is now proposed to extend the scope of section 80AC of the Act to provide that the benefit of deduction under the entire class of deductions under the heading "C.—Deductions in respect of certain incomes" in Chapter VIA shall not be allowed unless the return of income is filed within the due date.

Insertion of new provision for benefiting the "Producer Companies" in Agriculture Sector

It is proposed to insert a new section 80PA in the Act to provide that an assessee, being a 'Producer Company' having a total turnover of Rs.100 crores or less in any previous year and whose gross total income includes any income from:

a. the marketing of agricultural produce grown by its members; or
b. the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members; or
c. the processing of the agricultural produce of its members shall be eligible for a deduction of the whole of the amount of income or profits and gains and business attributable to any one or more of such activities as mentioned above.

This benefit will be available for a period of 5 years from the Financial Year 2018-19.

Rationalization of the provisions of section 115BA

Currently, section 115BA of the Act provides that the total income of a newly set up domestic company engaged in business of manufacture or production of any article or thing and research in relation thereto, or distribution of such article or thing manufactured or produced by it, shall, at its option, be taxed at the rate of 25% subject to conditions specified therein.

However, there are certain incomes which are subject to a scheduler tax at a rate which is lower or higher than 25% thereby subjecting the taxpayers to unintended hardship or unwarranted relief.

It is therefore proposed to amend the said section 115BA of the Act to clarify that the provisions of section 115BA are restricted to income from the business of manufacturing, production, research or distribution referred to therein and income which are at present taxed at a scheduler rate will continue to be so taxed.

The amendment will take effect retrospectively from 1st April, 2017.

Rationalization of the provisions of section 115BBE

Income referred to in section 68 (cash credits), section 69 (unexplained investments), section 69A (unexplained money, etc.), section 69B (amount of investments, etc., not fully disclosed in books of account), section 69C (unexplained expenditure, etc.) or section 69D (amount borrowed or repaid on hundi) which is either reflected in the return filed or determined by the Assessing Officer is taxed at the rate of 60% in terms of section 115BBE of the Act.

Further the existing provisions of the said section 115BBE of the Act provides that no deduction in respect of any expenditure or allowance or set off of any loss is allowed to the assessee while computing income of the aforesaid nature which is reflected in the return of income filed.

It is now proposed to widen the ambit of this section to provide that, no deduction in respect of any expenditure or allowance or set off of any loss will be allowed to the assessee where the total income of the assessee includes any income of the aforesaid nature which is determined by the Assessing Officer.

This amendment will take effect retrospectively from 1st April, 2017.

Entities to apply for Permanent Account Number in certain cases

It is proposed to insert a new clause (v) in section 139A(1) to provide that every person, not being an individual, which enters into a financial transaction of an amount aggregating to Rs.2,50,000 or more in a financial year shall apply to the Assessing Officer for allotment of a Permanent Account Number.

It is further proposed to insert a new clause (vi) in section 139A(1) to provide that the Managing Director, Director, Partner, Trustee, Author, Founder, Karta, Chief Executive Officer, Principal Officer or Office bearer of such non individual entities, or any person competent to act on behalf of such entities, shall also apply to the Assessing Officer for the allotment of a Permanent Account Number.

Benefit of carry forward and set off of losses in case of a company seeking insolvency resolution

Section 79 of the Act, inter alia, provides that where a change in shareholding has taken place in a previous year in the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year unless on the last day of the previous year shares of the company carrying not less than 51% of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than 51% of the voting power on the last day of the year or years in which the loss was incurred.

It is proposed to amend the aforesaid section to provide that nothing contained in the said section shall apply to a company where a change in the shareholding takes place in a previous year pursuant to approved resolution plan under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

Signing of the return by a Company seeking insolvency resolution

It is proposed to amend section 140 of the Act so as to provide that during the resolution process under the Insolvency and Bankruptcy Code, 2016, the return shall be verified by an insolvency professional appointed by the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016.

The expressions "insolvency professional" and "Adjudicating Authority" are also proposed to be defined in the said section.

Amendments to the prima facie adjustments permissible while processing of the tax returns

Section 143(1) of the Act provides for processing of return of income filed. Adjustments permissible while processing the return of income in the said section.

One such adjustment which is permissible is in respect of addition of income appearing in Form 26AS or Form 16A or Form 16, which has not been included in computing the total income in the return.

It is now proposed to provide that no adjustment shall be made in respect of items appearing in Form 26AS, Form 16A or Form 16 while processing any return furnished on or after the Assessment Year commencing on 1st April, 2018.

Widening the scope of Accumulated profits for the purposes of Dividend [Section 2(22)]

- Section 2(22) provides for inclusive definition of dividend to include distribution of accumulated profits (whether capitalized or not) by a company to its shareholders.
- Explanation 2 to Section 2(22) provides definition of the term 'accumulated profits' to include all profits of the company up to the date of distribution or payment or liquidation, subject to certain conditions.
- In order to prevent companies from adopting abusive arrangements to escape tax on distributed profits, by inserting a new Explanation 2A it is now proposed to widen the scope of 'accumulated profits' to provide that in case of an amalgamated company, its accumulated profits, whether capitalized or not, or losses shall also include accumulated profits of the amalgamating company as on the date of amalgamation.

Exemption to specified income of class of Body, Authority, Board, Trust or Commission in certain cases

The Central Government is empowered to exempt, through notification, specified income arising to a Body or Authority or Board or Trust or Commission, by virtue of section 10(46) of the Act, if—

- they are not engaged in any commercial activity;
- they are established or constituted by or under a Central, State or Provincial Act or constituted by the Central Government or a State Government, with the object of regulating or administering any

activity for the benefit of the general public. Under the existing provisions, the Central Government is required to notify each case separately even if they belong to the same class of cases. Consequently, the whole process of approval is considerably delayed.

Accordingly, it is proposed to amend the said clause so as to enable the Central Government to also exempt, by notification, a class of such Body or Authority or Board or Trust or Commission (by whatever name called).

Tax deduction at source and manner of payment in respect of certain exempt entities

Currently, section 10(23C) of the Act, inter-alia provides that income of charitable trusts, educational and medical institutions will be exempt from tax if such trusts, institutions, etc., apply its income, or accumulates it for application, wholly and exclusively to the objects for which it is established. Similarly, section 11 of the Act also contains identical provisions vis-à-vis income from property held for charitable or religious purposes.

Currently, there are no restrictions on payments made in cash by such trusts/institutions and there are no checks on whether such trusts or institutions comply with provisions relating to tax deduction at source.

It is now proposed to provide that for the purposes of determining the application of income, provisions of section 40A(3)/(3A) of the Act (relating to restrictions on cash payments), and provisions of section 40(a)(ia) of the Act (relating to non-deductibility of certain expenses on non-deduction/non-payment of TDS) shall apply to these institution.

Measures to promote start-ups

It is proposed to inter-alia amend the Explanation to section 80-IAC which specifies the conditions required to be fulfilled by an "eligible start-up" in respect of its "eligible business" in order to claim deduction under section 80-IAC of the Act.

The proposed amendments are tabulated hereunder:

Erstwhile provisions	Proposed amendments
Meaning of "Eligible business" : • means a business which involves innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property	• means a business carried out by an eligible start up engaged in innovation, development or improvement of products or processes or services or a scalable business model with a high potential of employment generation or wealth creation • incorporated on or after the 1st April, 2016 but before the 1st April, 2021; and
Conditions to be fulfilled by an "Eligible startup" : • incorporated on or after the 1st April, 2016 but before the 1st April, 2019; and • the total turnover of its business does not exceed Rs.25 crores in any of the previous years beginning on or after the 1st April, 2016 and ending on the 31 March 2021	

Incentive for employment generation

At present, under section 80-JJAA of the Act, a deduction of 30% is allowed in addition to normal deduction of 100% in respect of emoluments paid to eligible new employees who have been employed for a minimum period of 240 days during the year. However, the minimum period of employment is relaxed to 150 days in the case of apparel industry. In order to encourage creation of new employment, it is proposed to extend this relaxation to footwear and leather industry.

Further, it is also proposed to rationalize this deduction of 30% by allowing the benefit for a new employee who is employed for less than the minimum period during the first year but continues to remain employed for the minimum period in subsequent year.

Rationalisation of provision relating to conversion of stock-in-trade into a capital asset

Section 45 of the Act inter alia, provides that capital gains arising from a conversion of capital asset into stock-in-trade shall be chargeable to tax. However, in cases where the stock in trade is converted into, or treated as, capital asset, the existing law does not provide for its taxability.

In order to provide symmetrical treatment and discourage the practice of deferring the tax payment by converting the inventory into capital asset, it is proposed to amend the provisions of:

(i) Section 28 so as to provide that any profit or gains arising from conversion of inventory into capital asset or its treatment as capital asset shall be

charged to tax as business income. It is also proposed to provide that the fair market value of the inventory on the date of conversion or treatment determined in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of such conversion or treatment;

(ii) section 2(24) so as to include such fair market value in the definition of income;

(iii) section 49 so as to provide that for the purposes of computation of capital gains arising on transfer of such capital assets, the fair market value on the date of conversion shall be the cost of acquisition;

(iv) section 2(42A) so as to provide that the period of holding of such capital asset shall be reckoned from the date of conversion or treatment.

MAT relief for a Company seeking insolvency resolution

It is proposed to amend section 115JB of the Act to provide that the aggregate amount of unabsorbed depreciation and loss brought forward (excluding unabsorbed depreciation) shall be allowed to be reduced from the book profit, if a company's application for corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 has been admitted by the Adjudicating Authority.

Consequently, a company whose application has been admitted would henceforth be entitled to reduce the loss brought forward (excluding unabsorbed depreciation) and unabsorbed depreciation for the purposes of computing book profit under section 115JB.

Measures to promote International Financial Services Centre (IFSC)

Section 115JC of the Act provides for alternate minimum tax at the rate of 18.50% of the adjusted total income in the case of a non-corporate assessee's.

In order to promote the development of financial infrastructure in India, it is proposed to amend the said section 115JC to provide that in case of a unit located in an International Financial Service Centre, the alternate minimum tax under section 115JC shall be charged at the rate of 9%.

Application of Dividend Distribution Tax [DDT] to Deemed Dividend

Currently, dividend declared, distributed or paid by a domestic company is subject to DDT, which is payable by the company, declaring such dividend. However, deemed dividend under section 2(22)(e) of the Act is not subjected to DDT instead it is taxed in the hands of the recipient company.

With a view to bringing clarity and certainty on the taxation of deemed dividends, it is proposed to bring deemed dividends within the preview of DDT. The deemed dividend will be subjected to DDT at the rate of 30% (without grossing up).

Dividend distribution tax on dividend payouts to unit holders in an equity oriented fund

It is proposed to amend the section 115R of the Act to provide that where any income is distributed by a Mutual Fund being, an equity oriented fund, the mutual fund shall be liable to pay additional income tax at the rate of 10% on income so distributed.

For this purpose, equity oriented fund will have the same meaning assigned to it in the proposed section 112A of the Act.

Tax treatment of transactions in respect of trading in agricultural commodity derivatives

Speculative transaction is defined in section 43(5) of the Act. The proviso to the said section stipulates certain transactions to be non-speculative even though the contracts are settled otherwise than by the actual delivery or transfer of the commodity or scraps.

Clause (e) of the said proviso provides that trading in commodity derivatives carried out in a recognised stock exchange, which is chargeable to commodity transaction tax (CTT) is a non-speculative transaction.

CTT was introduced by the Finance Act, 2013 to bring transactions relating to non-agricultural commodity derivatives under the tax net while keeping the agricultural commodity derivatives exempt from CTT. Since no CTT is paid, the benefit of clause (e) of the proviso to clause (5) of the section 43 is not available to transaction in respect of trading of agricultural commodity derivatives and accordingly, such transactions were held to be speculative transactions.

In order to encourage participation in trading of agricultural commodity derivatives, it is proposed to amend the provisions of section 43(5) of the Act to provide that a transaction in respect of trading of agricultural commodity derivatives, which is not chargeable to CTT, in a registered stock exchange or a registered association, will be treated as a non-speculative transaction.

Presumptive income under section 44AE in case of goods carriage

Section 44AE of the Act inter alia provides that, profits and gains shall be deemed to be an amount equal to Rs.500 per month or part of a month for each goods carriage or the amount claimed to be actually earned by the assessee, whichever is higher.

The current presumptive income scheme is applicable uniformly to all classes of goods carriages irrespective of their tonnage capacity – the only condition which needs to be fulfilled is that the assessee should not have owned more than 10 goods carriages at any time during the previous year. Accordingly, the transporters

who owns (less than 10) large capacity/ size goods carriages are also availing the benefit of section 44AE.

The legislative intent of introducing this provision was to give benefit to small transporters in order to reduce their compliance burden. Even though the profit margins of large capacity goods carriages are higher than small capacity goods carriages, the tax consequences are similar which is against the principle of tax equity.

It is therefore proposed to amend the said section 44AE of the Act to provide that, in the case of heavy goods vehicle (more than 12MT gross vehicle weight), income would deemed to be an amount equal to Rs.1,000 per ton of gross vehicle weight or unladen weight, as the case may be, per month or part of a month for each goods vehicle or the amount claimed to be actually earned by the assessee, whichever is higher.

The vehicles other than heavy goods vehicle will continue to be taxed as per the existing rates.

Amendments in relation to notified Income Computation and Disclosure Standards ["ICDS"]

- In order to bring certainty in the wake of recent judicial pronouncements on the issue of applicability of ICDS, the following amendments are proposed in the Finance Bill 2018
  - — Section 36(1)(xviii) - To provide that marked to market loss or other expected loss as computed in the manner provided in ICDS notified under section 145(2) of the Act shall be allowed as a deduction.
  - — Section 40A - To provide that no deduction or allowance in respect of marked to market loss or other expected loss shall be allowed except as allowable under newly inserted 36(1)(xviii) of the Act.
  - — Section 43AA - To provide that, subject to the provisions of section 43A, any gain or loss arising on account of effects of changes in foreign exchange rates in respect of specified foreign currency transactions shall be treated as income or loss, which shall be computed in the manner provided in ICDS as notified under 145(2) of the Act.
- Section 43BC - To provide that profits arising from a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method except for certain service contracts, and that the contract revenue will include retention money, and contract cost will not to be reduced by incidental interest, dividend and capital gains.
- Section 145A of the Act is also proposed to be amended to provide that, for the purpose of determining the income chargeable under the head "Profits and gains of business or profession,—
  - — The valuation of inventory shall be made at lower of actual cost or net realizable value computed in the manner provided in ICDS under section 145(2).
  - — The valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation.
  - — Inventory being securities not listed, or listed but not quoted, on a recognised stock exchange, shall be valued at actual cost initially recognised in the manner provided in ICDS notified under section 145(2).
  - — Inventory being listed securities, shall be valued at lower of actual cost or net realisable value in the manner provided in ICDS notified under section 145(2) and for this purpose the comparison of actual cost and net realisable value shall be done category wise.
- Also, a new section 145B is proposed to be inserted to provide that:
  - — Interest received by an assessee on compensation or on enhanced compensation, shall be deemed to be the income of the year in which it is received.
  - — The claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved.
  - — Income referred to in sub-clause (xviii) of clause (24) of section 2 shall be deemed to be the income of the previous year in which it is received, if not charged to income tax for any earlier previous year.

These amendments are proposed to be made retrospectively w.e.f. 1/4/2017 and will apply in relation to Assessment Year 2017-18 and subsequent years.

TAX ON CAPITAL GAINS

Long term capital gains exemption withdrawn [New section 112A]

Long-term capital gains arising from transfer of equity shares in a company or a unit of equity oriented fund or a unit of a business trust, on which securities transaction tax is paid, was exempt from tax.

The capital gains exemption regime for equity shares has resulted in business surpluses being invested in financial assets. Hence, it is proposed to withdraw the exemption and tax long-term capital gains exceeding

Rs.1,00,000 arising from transfer of equity shares in a company or a unit of equity oriented fund or a unit of a business trust at 10%. The concessional rate of 10% is applicable to all assesses (including Foreign Portfolio Investors) where Securities Transaction Tax (STT) has been paid on the acquisition and transfer of equity shares and on transfer of units. Unrealised long term capital gains up to 31 January 2018 are proposed to be grandfathered.

- For computing capital gains, cost of acquisition of equity shares and units shall be higher of–
  - — Actual cost of acquisition; or
  - — Fair Market Value as on 31 January, 2018 or sale consideration, whichever is lower
- Capital gains shall be computed without benefit of indexation or exchange rate fluctuations
- No Chapter VIA deductions and/or no Rebate u/s 87A

Conversion of inventory to capital asset taxable in the year of conversion [Amendment to section 2(24), section 2(42A) section 28 and section 49]

In Asstt. CIT v. Bright Star Investment (P) Ltd. (2008) 24 SOT 288 m(Mum-Trib), it was observed that while incorporating section 45, the Legislature has not visualized situations in other way round, where, the stock-in-trade is to be converted into the investments and later on the investment was sold on profit.

It is now proposed to tax conversion of inventory to capital asset as business income on the date of conversion. For this, the consideration shall be the fair market value to be determined in the prescribed manner. Consequently, for purposes of computing capital gains from transfer of converted capital asset, the fair market value on the date of conversion is proposed to be treated as the cost of acquisition and the period of holding shall be reckoned from the date of conversion of such capital asset.

No adjustment to sale consideration on transfer of land or building or both [Amendment to section 43CA and section 50C]

Currently, while taxing income from capital gains or business profits arising from transactions in immovable property, the sale consideration or value adopted by the stamp valuation authority, whichever is higher is adopted. However, it was observed that variation may occur in respect of similar properties in the same area due to a variety of factors.

Accordingly, it is proposed to amend section 50C to provide that no adjustment shall be made to sale consideration in respect of transfer of land or building or both, if the variance between the sale consideration and value adopted by the stamp valuation authority is not more than 5% of the sale consideration.

Similar amendment is also proposed in section 43CA.

Exemption from capital gains [Amendment to section 47]

In order to promote development of world class financial infrastructure in India, it is proposed to exempt transfer by a non-resident of capital asset, being bond or global depositary receipt [referred to in section 115AC of the Act] or rupee denominated bond of an Indian company or derivative, on a recognized stock exchange located in International Financial Services Center, where consideration is paid/ payable in foreign currency.

Taxation of long-term capital gains in the case of Foreign Institutional Investor ["FII"]

Consequent to the proposal for withdrawal of exemption under section 10(38) of the Act the provisions of section 115AD are proposed to be amended such that the similar long term capital gains arising to FIIs will also be taxable.

As in the case of domestic investors, the FIIs will also be liable to tax on such long term capital gains only in respect of amount of such gains exceeding Rs.1,00,000.

ASSESSMENTS AND DISPUTE RESOLUTION

New scheme for scrutiny assessment

Procedure for assessments is prescribed in section 143 of the Act. Section 143(3) of the Act empowers the Assessing Officer to make an Order assessing the income or loss of the assessee and to determine the amount of tax payable/refundable based on such assessment.

It is proposed to prescribe a new scheme for the purpose of making assessments so as to impart greater transparency and accountability, by eliminating the interface between the Assessing Officer and the assessee, optimal utilization of the resources and introduction of team-based assessment.

Accordingly, it is proposed to amend section 143, by inserting a new sub-section (3A), to enable the Central Government to prescribe a new scheme for scrutiny assessments, by way of a notification in the Official Gazette.

It is further proposed to insert sub-section (3B) in the said section, enabling the Central Government to direct, by notification in the Official Gazette, that any of the provisions of this Act relating to assessment shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified therein. However, no such direction shall be issued after the 31 March 2020.

It is also proposed to insert sub-section (3C) in the said section, to provide that every notification issued under the sub-section (3A) and sub-section (3B), shall be laid before each House of Parliament, as soon as may be.

Appeal against penalty imposed by the Commissioner of Income-tax (Appeals) under section 271J of the Act

It is proposed to amend the provisions of section 253 of the Act, to provide that an appeal can also be filed before the Income Tax Appellate Tribunal against an order passed by the Commissioner of Incometax (Appeals) levying penalty under section 271J of the Act (viz., the penalty for furnishing incorrect information in reports or certificates).

Penalty for failure to furnish statement of financial transaction or reportable account

It is proposed to amend section 271FA of the Act as under:

Conditions when penalty is levied	Existing quantum of penalty	Proposed quantum of penalty
If a person who is required to furnish the statement of financial transaction or reportable account fails to furnish such statement within the prescribed time	Rs.100 for everyday during which the failure continues	Rs. 500 for everyday of default
If a person fails to furnish the statement of financial transaction or reportable account within the time specified in response to the notice issued to him	Rs. 500 for everyday during which the failure continues	Rs.1,000 for each day of continuing default

Rationalization of Section 276CC relating to prosecution for failure to furnish return

The existing provisions of section 276CC of the Act inter-alia provides that no person shall be prosecuted for failure to furnish the return of income if the tax payable by him on the total income determined on regular assessment as reduced by the amount of the advance tax and TDS does not exceed Rs.3,000.

It is now proposed to clarify that the above relaxation shall not be available to an assessee being a Company.

INTERNATIONAL TAXATION

Widening the scope of the term 'business connection' [Section 9(1)(i)]

Aligning with modified PE Rule as per MLI

Under the existing provisions, if any person acting on behalf of the non-resident is habitually authorised to conclude contracts for the non-resident, then, such agent would constitute a business connection.

Based on the recommendations under BEPS Action Plan 7, the scope of dependent agent PE under DTAA is widened by MLI, to which India is also a signatory.

It is proposed to amend the term 'business connection' to align it with the provisions in the DTAA. Accordingly, it is proposed that business connection shall also include any business activities carried through a person who, acting on behalf of the non-resident, habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by the non-resident and the contracts are:

- in the name of the non-resident; or
- for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that the non-resident has the right to use; or
- for the provision of services by that non-resident.

'Business connection' to include 'significant economic presence'

The existing provisions provides for physical presence based nexus rule for taxation of business income of the non-resident in India. Therefore, emerging business models such as digitized businesses, which do not require physical presence of itself or any agent in India, is not covered within the scope of existing provisions.

It is proposed to clarify that 'significant economic presence' of a non-resident in India shall constitute 'business connection'. Significant economic presence shall mean:

(i) any transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India if the aggregate of payments arising from such transaction or transactions during the previous year exceeds the amount as may be prescribed; or

(ii) systematic and continuous soliciting of its business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means. These transactions or activities shall constitute significant economic presence in India, whether or not the non-resident has a physical presence in India or renders services in India. Only so much of income as is attributable to such transactions or activities shall be deemed to accrue or arise in India.

Payments towards royalty or fees for technical services by the National Technical Research Organization ["NTRO"] to a non-resident to be exempt from tax

Currently, there is no exemption provided for income received by a non-resident from NTRO by way of royalty or fees for technical services.

Considering the business exigencies of the NTRO, it is proposed to insert a new clause (6D) in the said section 10 of the Act to exempt from any income arising to a non-resident from NTRO by way of royalty or fees for technical services rendered in or outside India.

Supply of Goods to an Export- Oriented Unit under GST regime

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1. The word "Export- Oriented Unit" (EOU) is nowhere defined in the GST law. EOU is like any other supplier under GST and all the provisions of the GST Law will apply to it. The supplies from EOU will be taxable under GST except in the case of zero rated supplies defined under section 16 of the IGST Act, i.e. supplies in the form of export or supplies to a SEZ Unit or SEZ Developer for authorized operations.
2. The supplier of goods to an EOU shall pay IGST or CGST plus SGST on the supplies made by it to the EOU. The EOU, in turn, will be eligible, like any other registered person, to take Input Tax Credit (ITC) of the said GST paid by its suppliers.
3. Section 147 of the CGST Act, 2017 deals with the concept of 'Deemed Export' and under this section, the Government may, on the recommendations of the Council, notify certain supplies of goods manufactured in India as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.
4. In exercise of the said powers u/s 147, the Central Government has issued Notification No. 48/2017-Central Tax dated 18th October, 2017 which *inter alia* states that "Supply of goods by a registered person to Export Oriented Unit shall be treated as deemed export."
5. Explanation to the above notification states that an "Export Oriented Unit" means "an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit approved in accordance with the provisions of Chapter 6 of the Foreign Trade Policy 2015-20"
6. Third proviso to Rule 89(1) of the CGST Rules, 2017 has been amended by N. No. 47/2017-CT dated 18th October, 2017 to allow either the recipient or supplier of such supplies to claim refund of tax paid thereon. It states that "In respect of supplies regarded as deemed exports, the application for refund may be filed by:
   (a) The recipient of deemed export supplies; or
   (b) The supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund.
7. Prior to 18th October, 2017, only the recipient of deemed export supplies were permitted to file a refund application.
8. A refund application by a supplier of goods to an EOU has to be submitted in Form GST RFD-01 as per Rule 89(1).
9. Documentary evidences to be submitted in Annexure-1 of RFD-01 for submitting a refund application:

Sl.	Evidence	Reference
1	A statement containing the number and date of invoices.	Clause (g) of Rule 89 (2)
2	Copy of the Supplier's tax invoice duly signed by the recipient EOU that said deemed export supplies have been received by it.	N. No. 49/2017-CT dated 18th October, 2017
3	An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him.	N. No. 49/2017-CT dated 18th October, 2017
4	An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.	N. No. 49/2017-CT dated 18th October, 2017

10. Due to the non-availability of the refund module on the common portal, the Government has allowed manual filing and processing of refund claims. Rule 97A has been inserted in CGST Rules for this purpose vide Notification No. 55/2017-CT dated 15.11.2017 and Form GST RFD-01A has been prescribed for filing a refund application. However, such manual filing and processing is allowed in respect of zero-rated supplies only as has been clarified via Circular No.17/2017 dated 15.11.2017 issued in this regard. Therefore, while an EOU being a recipient of deemed export supplies can file a manual refund application, a supplier of goods to an EOU cannot do so.

11. For supplies to an EOU in terms of N. No. 48/2017-CT dated 18.10.2017, certain procedure and safeguards have been prescribed in Circular No. 14/2017-GST dated 6th November, 2017. These are as follows:

    i. The recipient EOU / EHTP / STP / BTP unit shall give prior intimation in a prescribed proforma in "Form–A" (appended to the circular) bearing a running serial number containing the goods to be procured, as pre-approved by the Development Commissioner and the details of the supplier before such deemed export supplies are made. The said intimation shall be given to –

        (a) the registered supplier;

        (b) the jurisdictional GST officer in charge of such registered supplier; and

        (c) its jurisdictional GST officer.

    ii. The registered supplier thereafter will supply goods under tax invoice to the recipient EOU / EHTP / STP / BTP unit.

    iii. On receipt of such supplies, the EOU / EHTP / STP / BTP unit shall endorse the tax invoice and send a copy of the endorsed tax invoice to –

        (a) the registered supplier;

        (b) the jurisdictional GST officer in charge of such registered supplier; and

        (C) its jurisdictional GST officer.

    iv. The endorsed tax invoice will be considered as proof of deemed export supplies by the registered person to EOU / EHTP / STP / BTP unit.

    v. The recipient EOU / EHTP / STP / BTP unit shall maintain records of such deemed export supplies in digital form, based upon data elements contained in "Form-B" appended to the circular. The software for maintenance of digital records shall incorporate the feature of audit trail. While the data elements contained in the Form-B are mandatory, the recipient units will be free to add or continue with any additional data fields, as per their commercial requirements. All recipient units are required to enter data accurately and immediately upon the goods being received in, utilized by or removed from the said unit. The digital records should be kept updated, accurate, complete and available at the said unit at all times for verification by the proper officer, whenever required. A digital copy of Form– B containing transactions for the month, shall be provided to the jurisdictional GST officer, each month (by the 10th of month) in a CD or Pen drive, as convenient to the said unit.

    vi. Above procedure and safeguards are in addition to the terms and conditions to be adhered to by a EOU / EHTP / STP / BTP unit in terms of the Foreign Trade Policy, 2015-20 and the duty exemption notification being availed by such unit.

GST AMENDMENTS NOTIFIED ON 23RD AND 25TH JANUARY, 2018

Following are the complete list of GST amendments as notified on 23rd January, 2018:

- Ø E-waybill provisions for intra state movement within West Bengal will be effective from 1st June, 2018
- Ø Original E-waybill rules proposed to be made effective from 1st February for inter- state movement have undergone a few modifications. Some of the major changes are as follows:
  - Consignment value has been explained as the value declared in the invoice/bill of supply/ delivery challan and includes CGST/SGST/ IGST/UTGST
  - Provisions for filing up of Part B of Form GST EWB-01 by supplier/recipient in case of transportation by rail, air or vessel has been introduced.
  - Assigning of e-waybill number to another transporter by supplier/recipient/transporter has been allowed
  - In case of transport through E-commerce operator, information of e-waybill can be filled up by such operator
  - E-waybill number generated shall be valid for 72 hours for updation of Part B of Form GST EWB-01
  - Acceptance/Rejection of e-waybill has been allowed by the recipient/supplier if the details have been furnished by the supplier/ recipient or their transporters respectively
  - Non-requirement of e-waybill has been extended to alcoholic liquor for human consumption, goods not considered as supply as Schedule III, currency, jewellery, all goods exempted under Notification no. 2/Central dated 28th June, 2017 etc.
- Ø A person needs to furnish stock statement in Form GST ITC-03 after filing an intimation for opting of the composition scheme. The time period for furnishing of such form has been extended from 90 days to 180 days from the date when the person commences paying taxes under composition scheme.
- Ø A person with voluntary registration can now apply for cancellation of registration within 1 year from the effective date of registration.
- Ø A person who was registered under the earlier law but is not liable to register under the GST provisions can now apply for cancellation of registration till 31st March, 2018
- Ø The rate of tax under the composition scheme has been revised as per the CGST Rules as follows:

Sl. No.	Category of Registered persons	Rate of Tax
1	Manufacturers other than manufacturers of such goods as may be notified by the government	Half percent of the turnover in the State or Union territory
2	Suppliers making supplies referred to in 6(b) of Schedule II	Two and a half percent of the turnover in the State or Union territory
3	Any other supplier eligible for composition levy under section 10 and the provisions of this chapter	Half percent of the turnover of taxable supplies of goods in the State or Union territory

- Ø Specific valuation provisions have been prescribed in cases of lottery, betting, gambling and horse racing.
- Ø For the purpose of reversal of input tax credit, value of exempt supplies will now exclude:
  - value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount (except Banks/financial institutions/NBFCs)
  - value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India
- Ø Provisions for issue of tax invoices to Input Service Distributorsby persons having the same PAN as that of the ISD for transfer of common input services has now been introduced
- Ø Provisions to mandate tax invoice or bill of supply for transportation of goods where e-waybill is not required have now been introduced

- Ø Rule 96 which provides for refund of tax on export of goods or services has now been rationalised to state which provisions are specifically applicable for goods only
- Ø It has been expressly provided in the rules that refund of integrated tax paid on services exported out of India will be filed in Form GST RFD-01

  (Notification no. 3/2018-CentralTax dated 23rd January, 2018)
- Ø Due date for filing of GST returnForm GSTR 6 by Input Service Distributors for July to February has been extended till 31st March, 2018

  (Notification no. 8/2018-Central Tax dated 23rd January, 2018)
- Ø Late fees have been prescribed to be Rs. 50 per day (in case of other than NIL returns) and Rs. 20 per day (in case of NIL returns) in case of the failure to furnish:
  - GSTR 1 (Statement of outward supplies)
  - GSTR 5 (Non resident taxpayers)
  - GSTR 6 (Input Service Distributors)
  - GSTR 5A (Supplier of OIDAR services to non-registered recipient)

  (Notification no. 4/2018-Central Tax dated 23rd January, 2018)

  (Notification no. 5/2018-Central Tax dated 23rd January, 2018)

  (Notification no. 6/2018-Central Tax dated 23rd January, 2018)

  (Notification no. 7/2018-Central Tax dated 23rd January, 2018)
- Ø Notification for cross empowerment of State tax officers for processing and granting of refund has been rationalized

  (Notification no. 10/2018-Central Tax dated 23rd January, 2018)

  (Notification no. 1/2018-Integrated Tax dated 23rd January, 2018)

RATE CHANGES OF SERVICES

Following are the major changes in the rate of services which have been notified effective from 25th January:

WORKS CONTRACT AND REAL ESTATE

- Ø To exempt (a) services by government or local authority to governmental authority or government entity, by way of lease of land, and (b) supply of land or undivided share of land by way of lease or sub lease where such supply is a part of specified composite supply of construction of flats etc. and to carry out suitable amendment in the provision relating to valuation of construction service involving transfer of land or undivided share of land, so as to ensure that buyers pay the same effective rate of GST on property built on leasehold and freehold land.
- Ø To defer the liability to pay GST in case of TDR against consideration in the form of construction service and on construction service against consideration in the form of TDR to the time when the possession or right in the property is transferred to the land owner by entering into a conveyance deed or similar instrument (eg. Allotment letter). No deferment in point of taxation in respect of cash component.
- Ø To reduce GST rate (from 18% to 12%) on the Works Contract Services (WCS) provided by sub-contractor to the main contractor providing WCS to Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity, which attract GST of 12%. Likewise, WCS attracting 5% GST, their sub-contractor would also be liable @ 5%.
- Ø To reduce GST rate on construction of metro and monorail projects (construction, erection, commissioning or installation of original works) from 18% to 12%.
- Ø To extend the concessional rate of GST on houses constructed/ acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS) / Lower Income Group (LIG) / Middle Income Group-1 (MIG-1) / Middle Income Group-2 (MIG-2) under the Housing for All (Urban) Mission/ Pradhan MantriAwasYojana (Urban) and low-cost houses up to a carpet area of 60 square metres per house in a housing project which has been given infrastructure status, as proposed by Ministry of Housing & Urban Affairs, under the same concessional rate.
- Ø To levy concessional GST @12% on the services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of building used for providing (for instance, centralized cooking or distributing) mid-day meal scheme by an entity registered under section 12AA of IT Act.

HOUSEHOLD SERVICES

- Ø To levy GST on the small housekeeping service providers, notified under section 9 (5) of GST Act, who provide housekeeping service through ECO, @ 5% without ITC.
- Ø To reduce GST rate on tailoring service from 18% to 5%.

SERVICES BY RESIDENT WELFARE ASSOCIATION

- Ø To enhance the exemption limit of Rs 5000/- per month per member to Rs 7500/- in respect of

services provided by Resident Welfare Association (unincorporated or non-profit entity) to its members against their individual contribution.

EDUCATIONAL INSTITUTIONS

- Ø To exempt services relating to admission to, or conduct of examination provided to all educational institutions, as defined in the notification
- Ø To exempt services by educational institution by way of conduct of entrance examination against consideration in the form of entrance fee.
- Ø To exempt subscription of online educational journals/periodicals by educational institutions who provide degree recognized by any law from GST.
- Ø To exempt the service provided by way of renting of transport vehicles provided to a person providing services of transportation of students, faculty and staff to an educational institution providing education upto higher secondary or equivalent.

HEALTHCARE

- Ø To clarify that Services provided by senior doctors/ consultants/technicians hired by the hospitals, whether employees or not, are healthcare services which is exempt.
- Ø Hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/ payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt.
- Ø Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors is taxable.

LEASING AND RENTING OF MOVABLE/IMMOVABLE PROPERTY

- Ø To tax renting of immovable property by government or local authority to a registered person under reverse Charge while renting of immovable property by government or local authority to un-registered person shall continue under forward charge
- Ø To clarify that leasing or rental service, with or without operator, of goods, attracts same GST as supply of like goods involving transfer of title in the said goods. Therefore, the GST rate for the rental services of self-Propelled Access Equipment (Boom. Scissors/Telehandlers) is 28%.
- Ø To clarify that exemption of Rs 1000/- per day or equivalent (declared tariff) is available in respect of accommodation service in hostels.

TOUR OPERATOR SERVICE

- Ø To allow ITC of input services in the same line of business at the GST rate of 5% in case of tour operator service

SERVICES TO GOVERNMENT

- Ø To amend entry 3 of notification No. 12/2017-CT(R) so as to exempt pure services provided to Govt. entity. (in relation to function entrusted to Panchayat or Municipality)
- Ø To expand pure services exemption under S. No. 3 of 12/2017-C.T. (Rate) so as to include composite supply involving predominantly supply of services i.e. upto 25% of supply of goods. (in relation to function entrusted to Panchayat or Municipality)
- Ø To exempt legal services provided to Government, Local Authority, Governmental Authority and Government Entity.

TRANSPORTATION OF GOODS

- Ø To exempt service by way of transportation of goods from India to a place outside India by air (sunset clause upto 30th September, 2018)
- Ø To exempt service by way of transportation of goods from India to a place outside India by sea and provide that value of such service may be excluded from the value of exempted services for the purpose of reversal of ITC. (sunset clause upto 30th September, 2018)

ENTERTAINMENT, EVENTS AND AMUSEMENTS

- Ø To reduce GST rate on services by way of admission to theme parks, water parks, joy rides, merry-go-rounds, go-carting and ballet, from 28% to 18%.
- Ø To increase threshold limit for exemption under entry No. 80 of Notification No. 12/2017-C.T. (Rate) for all the theatrical performances like Music, Dance, Drama, Orchestra, Folk or Classical Arts and all other such activities in any Indian language in theatre GST from Rs.250 to 500 per person and to also extend the threshold exemption to services by way of admission to a planetarium.
- Ø To exempt services provided by and to Fédération Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-20 World Cup in case the said event is hosted by India.
- Ø To clarify that elephant/ camel joy rides are not classified as transportation services and attract GST @ 18% with threshold exemption to small services providers.

FINANCIAL SERVICES

- Ø To provide inCGST rules that value of exempt supply under sub-section (2) of section 17, shall not include the value of deposits, loans or advances on which interest or discount is earned (not to apply to banks/FIs/NBFCs)

- To exempt dollar denominated services provided by financial intermediaries located in IFSC SEZ, which have been deemed to be outside India under the various regulations by RBI, IRDAI, SEBI or any financial regulatory authority, to a person outside India.

INSURANCE

- To enhance the limit to Rs 2 lakh against Sl. No. 36 of exemption notification No. 12/2017-C.T. (Rate) which exempts services of life insurance business provided under life micro insurance product approved by IRDAI upto maximum amount of cover of Rs. 50,000
- To exempt reinsurance services in respect of insurance schemes exempted under S.Nos. 35 and 36 of notification No. 12/2017-CT (Rate).
- To define insurance agent in the reverse charge notification to have the same meaning as assigned to it in clause (10) of section 2 of the Insurance Act, 1938, so that corporate agents get excluded from reverse charge.
- To exempt services provided by the Naval Insurance Group Fund by way of Life Insurance to personnel of Coast Guard under the Group Insurance Scheme of the Central Government retrospectively w.e.f. 1.7.2017.

LOTTERY, BETTING AND GAMBLING

- To clarify that services by way of,-
  1. admission to entertainment events or access to amusement facilities includingcasinos, race-course
  2. ancillary services provided by casinos and race-course in relation to such admission.
  3. services given by race-course by way of totalisator (if given through some other person or charged separately as fees for using totalisator for purpose of betting, are taxable at 28%. Services given by race-course by way of license to bookmaker which is not a service by way of betting and gambling, is taxable at 18%.
- To insert a provision in GST Rules under section 15 of GST Act that the value of lottery shall be 100/112 or 100/128 of the price of lottery ticket notified in the Gazette
- To add, in the GST rate schedule for goods at 28%, actionable claim in the form of chance to win in betting and gambling including horse racing.
- To insert in GST rules under section 15 of GST Act,- *Notwithstanding anything contained in this chapter, value of supply of Betting & Gambling shall be 100 % of the face value of the bet or the amount paid into the totalizator*

PETROLEUM PRODUCTS

- To exempt government's share of profit petroleum from GST and to clarify that cost petroleum is not taxable per se.
- To reduce GST to 12% in respect of mining or exploration services of petroleum crude and natural gas and for drilling services in respect of the said goods.
- To reduce GST rate on transportation of petroleum crude and petroleum products (MS, HSD, ATF) from 18% to 5% without ITC and 12% with ITC.

JOB WORK ON LEATHER GOODS AND FOOTWEAR

- To reduce job work services rate for manufacture of leather goods (Chapter 42) and footwear (Chapter 64) to 5%.

OTHER SERVICES

- To extend GST exemption on Viability Gap Funding (VGF) for a period of 3 years from the date of commencement of RCS airport from the present period of one year.
- To tax time charter services at GST rate of 5%, that is at the same rate as applicable to voyage charter or bare boat charter, with the same conditions.
- To exempt supply of services by way of providing information under RTI Act, 2005 from GST.
- To exempt IGST payable under section 5(1) of the IGST Act, 2017 on supply of services covered by item 5(c) of Schedule II of the CGST Act, 2017 to the extent of aggregate of the duties and taxes leviable under section 3(7) of the Customs Tariff Act, 1975 read with sections 5 & 7 of IGST Act, 2017 on part of consideration declared under section 14(1) of the Customs Act, 1962 towards royalty and license fee includible in transaction value as specified under Rule 10 (c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- To reduce GST on Common Effluent Treatment Plants services of treatment of effluents, from 18% to 12%.
- To exempt services by way of fumigation in a warehouse of agricultural produce.
- To clarify that fee paid by litigants in the Consumer Disputes Commissions and any penalty imposed by these Commissions, will not attract GST.
- To tax time charter services at GST rate of 5%, that is at the same rate as applicable to voyage charter or bare boat charter, with the same conditions.

FAQs ON VALUE OF SUPPLY

Compiled By
CA SHUBHAM KHAITAN

1. What is the significance of value of supply?

Ans. It is used for determining the amount on which GST is required to be charged.

2. Under restricted conditions, what is the value of supply for the purpose of charging GST?

Ans. Transaction value is to be considered as the value of supply if certain conditions are satisfied.

3. What is meant by transaction value?

Ans. The price actually paid or payable is considered as the transaction value on which GST is required to be paid.

4. What are the conditions in which transaction value is to be considered as the value of supply?

Ans. There are two conditions which need to be satisfied for considering transaction value as the value of supply:

   a. The supplier and recipient are not related
   b. Price is the sole consideration in a transaction

5. What is meant by the term consideration?

Ans. Consideration has been defined in Section 2(28) of the Revised Model GST Law. It can be basically summarized as below:

   a. Any payment in money or otherwise for supply whether by the recipient or any other person
   b. Monetary value of act or forbearance for supply whether by the recipient or any other person. The act or forbearance may be voluntary or non-voluntary.
   c. Consideration excludes the subsidy paid by Central Government or State Government
   d. Deposits when applied by the supplier as consideration for supply. The deposit may be refundable or non-refundable.

6. A landlord takes a 3 month rental deposit worth Rs. 90,000 in August, 2017 for adjustment if the tenant fails to deposit the rent for a particular month. This adjustment occurs in October, 2017. What will considered as the date of payment?

Ans. The date of payment of consideration is said to occur on the date when the supplier applies the same as consideration. Here, the adjustment of the deposit of rent is occurring in October, 2017. So, the date of payment will also be considered in this month.

7. A non-refundable deposit has not been applied as consideration by a supplier. Will it be included in the value?

Ans. No, even a non-refundable deposit will not be part of the total consideration unless the said amount is applied as consideration by the supplier.

8. Give an example of monetary value of forbearance.

Ans. A former employee of a company signs a non-compete agreement for Rs. 10,00,000 which states that he cannot engage in the same line of business as the company atleast for the next 2 years. In this situation, Rs. 10,00,000 is the consideration against the forbearance to engage in the particular line of business.

9. Will the GST valuation rules be applicable in case of import of goods?

Ans. No, the valuation provisions as per the Customs law will be applicable in case of import of goods.

10. Will the valuation provisions of Customs apply in respect of import of services?

Ans. No, the Customs provisions applies to import of goods only and not services.

11. Are the valuation provisions separate for goods and services?

Ans. The value of supply principles is common for both goods and services.

12. Will the value of supply be inclusive or exclusive of GST?

Ans. The taxes paid under CGST/SGST/IGST/UTGST/GST Compensation Act, 2016 will not form part of the total value of supply.

13. If the total amount charged also includes other indirect taxes apart from GST, will that also form part of the total value of supply?

Ans. For the purpose of calculating value of supply, any taxes, duties, cesses, fees and charges levied under any statute other than GST will form part of the value of supply if it has been charged separately by the supplier to the recipient.

14. Will free supply of materials by the recipient to the supplier form part of the value in case of a works contract?

Ans. As per the contract, if the supplier was liable to procure the materials which is ultimately given by the recipient, then the said amount will be included in the value of supply. Obviously, this will be subject to the fact that the price has actually been decreased to the extent of this free supply.

15. If the recipient directly makes any payment on behalf on the supplier and it is proven that the contract value has not decreased due to this payment, will the amount of payment be included in the total value of supply?

Ans. No, if the payment made is already included in the price actually paid or payable and the value of contract has not decreased, then this payment will not be included in the total value. This is because if it had been included, it would have resulted in inclusion of the same value twice.

16. Transportation, insurance and packing expenses are charged by the supplier along with the cost of goods delivered by the supplier to his recipient. Should these charges be included in the value of the supply?

Ans. Any incidental expenses charged by the supplier for anything done by him at the time of or before delivery of goods will be included in the value of supply. So, all the three aforesaid expenses will be included in the value of supply.

17. In an ex-factory delivery contract, the delivery is undertaken by the recipient on a transporter recommended by the supplier. Should the amount paid to the transporter be included in the value ?

Ans. This activity is not being undertaken by the supplier. So, the transportation charges paid by the recipient will not be included in the value of supply.

18. As per the terms of the contract, in case of a delay in payment of consideration, late payment charges need to be paid by the recipient. Should this be part of the value?

Ans. Any kind of charges in form of interest or late fees or penalty in case of a delayed payment of consideration will be included in the value of supply.

19. Will revenue subsidies paid by the Central Government against supply be part of the total value of supply?

Ans. Subsidies paid by the Central Government or State Government are not part of the definition of consideration. Also, the said subsidy by Central or State Government has also been specifically provided as an exception to the inclusions in the total value of supply. So, such subsidies will not be included in the value of supply.

20. Should capital subsidy for setting up a factory be part of the value of supply?

Ans. Subsidies directly linked to the price will only be part of the value. Capital subsidy for setting up a factory is not linked to the price. So, it will not be included in the value of supply.

21. Subsidy of Rs. 5,00,000 will be paid on supply of 50,000 units. Will this be included in the value?

Ans. It will be included as it directly influences the price of the goods by Rs. 10/unit. It is needless to state here that the subsidy should be paid by any authority other than the Central or State Government.

22. Will subsidy be included in the value of the supplier or the recipient?

Ans. The subsidy is to be included in the value of the supplier who receives the subsidy.

23. Will the trade discount of 10% shown on the face of the invoice be included in the transaction value?

Ans. No, discount allowed before or at the time of supply will not be included in the transaction value. This is subject to the discount having been recorded in the invoice.

24. A cash discount of 5% will be provided as per the terms of the contract if the payment is made within 2 months. Assuming the said payment is made within 2 months and the input tax credit has been reversed by the recipient, should this discount be included in the transaction value?

Ans. Cash discount will not be included in the transaction value if:

1. The discount was established as per the terms of the contract agreed at or before the time of supply
2. It is specifically linked to the relevant invoice
3. Input Tax credit has been reversed by the recipient with respect to the said discount

Hence in the given case, cash discount will not form part of the value of supply.

25. Unhappy with the quality of goods, the recipient pays Rs. 90,000 to the supplier instead of Rs. 1,00,000 agreed as per the original contract terms. Both the parties agree to show Rs. 10,000 as a discount. Will be this be part of the value?

Ans. Such discount will be included in the transaction value because it was not agreed as per the terms of the original agreement entered at or before the time of supply.

26. A quantity discount agreed as per the terms of the contract is provided by the supplier. The recipient even after availing the said discount does not reverse the input tax credit on it. Should this be included in the value of supply?

Ans. Yes, this will continue to be included in the value till the recipient reverses the input tax credit on it.

27. What will be the value of supply when transaction value cannot be determined for a particular supply?

Ans. In such cases, value will be determined as per the valuation rules which will be prescribed.

Indian Government announces Company Incorporation with ZERO fees

By CA Nikita Bhatia

On the eve of 69th Republic day, the Government has taken another massive step for ease of doing business in India. The Ministry of Corporate Affairs (MCA) has implemented various steps making the process of Company incorporation simpler and easier.

Since the last few years, the government has been continuously pursuing initiatives to make the company registration process straightforward and uncomplicated. The current reforms in the procedures can be described as the most significant ones till date.

Let us have a look on the current and revised processes for Company Incorporation:

1. Zero Fees for Incorporation:

   To foster and promote new Startups and businesses, the Ministry of Corporate Affairs (MCA) has announced zerofees of incorporation for SPICE Forms, e-MoA and e-AoA. This will enable saving of a few thousand rupees, thereby encouraging more startups to formally register their company. Stamp Duty will still be applicable at a rate depending upon the state of incorporation.

2. Introduction of Reserve Unique Name (RUN) Form:

   The MCA has further simplified the name reservation process by introducing Reserve Unique Name (RUN) Form.

   Earlier, Company Name could be reserved either in advance through the Name Reservation -INC-1 form or directly through the incorporation application (SPICE Form). Form INC-1 has now been replaced by RUN Form.

Past Scenario	Current Scenario
Application for name reservation was being done through e-Form INC-1 which has provision of applying upto 6 names.	Application for reservation will be done through RUN – a web-based form, where only one name choice can be provided at a time.
INC-1 required Director Identification Number (DIN) of atleast 2 directors and atleast one DSC to sign the e-form.	RUN web-form does not require any prior DIN or DSC, thus making the process extremely quick and easy.
MCA Fees for filing INC-1 is Rs.1000 per form. If the proposed names are not in consonance with the Name Reservation Rules, the MCA provides one another chance of resubmitting the form with fresh names.	MCA Fees for name reservation using RUN web-form is Rs.1000 per form submission – irrespective of whether the name is approved or not.
The approved name was valid for a period of 60 days for both new and existing companies.	An approved name is valid for a period of:- – 20 days from the date of approval, in case of new company. – 60 days from the date of approval, in case of existing company.

Hence, proposed companies have the option to apply for the name reservation directly by themselves by submitting the simple RUN web-form and they would be intimated by the MCA on the approval through email.

It is suggested that RUN Form be used when there is ambiguity on the preferred name being approved due to its similarity with existing Companies or LLP's.

Direct application through SPICE form can also be used in cases, when the proposed name is unique, has high chance of acceptance and the applicant wants to save on time and money.

3. Director Identification Number (DIN)

   Earlier, DIN could be applied by the proposed director/applicant directly through e-Form DIR-3 or at the time of incorporation through the SPICE form.

However, the new rules state as under:

— Directors of a new Company can now apply for DIN only through the SPICE Forms. Details of such directors have to be filled in the SPICE Forms along with their proof of identity and address.

— Existing Companies can use Form DIR-3 for adding a new Director. The new DIR-3 Form has the provision to furnish the CIN of the Company for which the Director is being appointed and a declaration that the DIN is being obtained for adding the person as a Director to the mentioned company.

The government is definitely expecting a spur in company incorporations with the new set of rules, which aim at not only simplifying the procedures but also making the same more fool proof.

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About the Author: Nikita Bhatia is a CA, CA and Masters in Business Finance (MBF) from ICAI.She has worked with clients from various sectors including e-commerce, technology, banking, education, manufacturing and international trade. Her exposure across a wide portion of economy gives her the edge to help business scale up and guide them effectively in legal, compliances and tax related matters.

Removal of Disqualification of Director if having Directorship in "Struck off Company/ies"

Compiled By
CS RAKHI SHAW

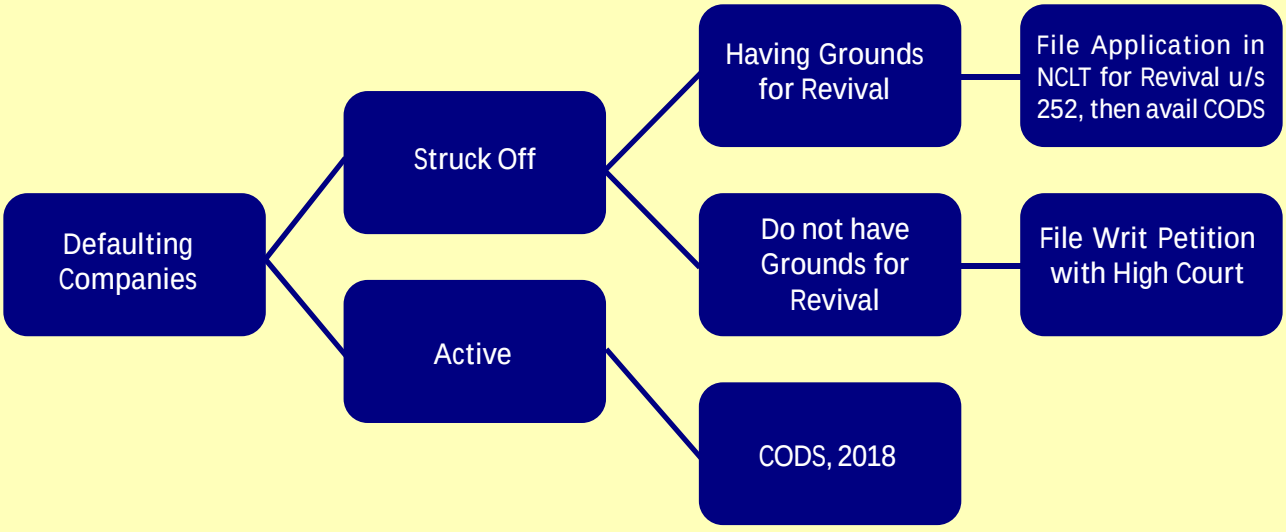
I. There was no procedure in Companies Act, 2013. Ministry of Corporate Affairs came out with a scheme "CODS" (Condonation of Delay Scheme, 2018). As per this scheme a person may avail this scheme and comply with its provisions. According to the scheme his Disqualification shall be removed by the Registrar of Companies. However, this CODS is applicable on all the Defaulting Companies other than the Companies which have been struck off. So, a person having directorship in the "Struck off Company" shall not be able to get his disqualification removed by the ROC.

II. As Directors of Struck off Company cannot avail the Condonation of Delay Scheme, 2018. However, they have two ways as mentioned below :

1. An application can be filed with National Company Law Tribunal (NCLT) for revival of Company. If revival order is received from NCLT then avail the CODS, 2018.

2. Disqualification may also be removed filing a Writ Petition with "HON'BLE HIGH COURT", If Director does not want to revive the Company

Flow Chart for Easy Understanding (POINT II) :



SUPREME COURT JUDGEMENT ON 12A

12A very important decision from Apex Court
THE SUPREME COURT OF INDIA
Civil Appeal No. 6262 of 2010
INDUSTRIAL INFRASTRUCTURE DEVELOPMENT
CORPORATION (GWALIOR) M P LTD
Vs
COMMISSIONER OF INCOME TAX, GWALIOR
R K Agrawal & Abhay Manohar Sapre, JJ
Dated: February 16, 2018
Appellant Rep by: Mrs. Rani Chhabra, AOR

Respondent Rep by: Mr. K. Radhakrishnan, Sr. Adv. Mrs. Sadhna Sandhu, Adv. Mrs. Anil Katiyar, AOR Mr. B. V. Balaram Das, AOR

Income Tax - Sections 2(15) & 12A - General Clauses Act - Section 21.

Keywords: Charitable purpose - Finance (No.2) Act, 2004 - public utility activity

The Assessee-company was established to assist the State in the development of industrial growth centers. The Assessee filed an application u/s 12A and submitted that since they were engaged in the public utility activities which were covered under the term of "charitable purpose" u/s 2(15) and hence, were entitled to claim registration u/s 12(A). The Assessee had also made an application for condonation of delay in filing the registration application. Accordingly, the CIT condoned the delay and granted the registration certificate to the Assessee without examining the Assessee's claim of exemption after the return was filed. Later, the CIT issued a SCN to the Assessee. In reply, the Assessee opposed the grounds on which the withdrawal/cancellation of the certificate was proposed. The CIT then failed to find any substance in the stand taken by the Assessee and hence, cancelled the certificate.

Aggrieved Assessee filed a rectification application u/s 154 before the CIT contending that once the registration certificate was granted u/s 12A, he had no power to cancel/recall the certificate granted to the Assessee. Therefore, the rectification application was rejected and held that he had the power to cancel the certificate once granted by him and, therefore, the order for cancelling the registration certificate was legal and proper. Again, the Assessee had also filed an appeal before the Tribunal wherein, the same was allowed and therein set aside the order passed by the CIT by which he had cancelled/withdrawn the registration certificate. Aggrieved by the order of the Tribunal, the Revenue preferred an appeal to the High Court where it was noted by the Court that sec 21 of the General Clauses Act was the source of power to pass cancellation of the certification granted by the CIT when there was no express power available u/s 12A. Accordingly, the HC set aside the order passed by the Tribunal and restored the order of the CIT.

On appeal, the Apex Court held that,

Whether it is necessary for the quasi-judicial authority to be vested with express power to cancel the registration once the same is granted by the authority - YES: SC

Whether the CIT order that grants registration u/s 12A, falls neither under the head legislative nor the head Executive - YES: SC

Whether the provisions of Sec 21 of the General Clauses Act have an application only if an order is in the nature of 'Notification', 'rules' & 'bye-laws' - YES: SC

Whether the power to cancel registration granted u/s 12A was, for the first time, vested in the CIT vide Finance Act, 2004 - YES: SC

++ the CIT had no express power of cancellation of the registration certificate once granted by him to the Assessee u/s 12A till 01.10.2004. It is for the reasons

that, first, there was no express provision in the Act vesting the CIT with the power to cancel the registration certificate granted u/s 12A. Second, the order passed u/s 12A by the CIT is a quasi judicial order and being quasi judicial in nature, it could be withdrawn/recalled by the CIT only when there was express power vested in him under the Act to do so. In this case there was no such express power. Indeed, the functions exercisable by the CIT u/s 12A are neither legislative and nor executive but they are essentially quasi judicial in nature;

++ an order of the CIT passed u/s 12A does not fall in the category of "orders" mentioned in sec 21 of the General Clauses Act. The expression "order" employed in sec 21 would show that such "order" must be in the nature of a "notification", "rules" and "bye laws". In other words, the order, which can be modified or rescinded by applying sec 21, has to be either executive or legislative in nature whereas the order, which the CIT is required to pass u/s 12A, is neither legislative nor an executive order but it is a "quasi judicial order". It is for this reason, sec 21 has no application in this case;

++ the general power, u/s 21 of the General Clauses Act, to rescind a notification or order has to be understood in the light of the subject matter, context and the effect of the relevant provisions of the statute under which the notification or order is issued and the power is not available after an enforceable right has accrued under the notification or order. Moreover, sec 21 has no application to vary or amend or review a quasi judicial order. A quasi judicial order can be generally varied or reviewed when obtained by fraud or when such power is conferred by the Act or Rules under which it is made. Relying upon the said rule of interpretation, this Court has held that the Government has no power to cancel or supersede a reference once made u/s 10(1) of the Industrial Disputes Act, 1947. Similarly, on the same principle it is held that the application of sec 21 of the General Clauses Act has no application to amend or rescind or vary a notification issued u/s 3 of the Commissions of Enquiry Act for reconstituting the commission by replacement or substitution of its sole member except applicable for a limited purpose for extending the time for completing the enquiry;

++ while construing the provisions of Citizenship Act that the certificate of registration of citizenship issued u/s 5(1)C of the Citizenship Act cannot be cancelled by the authority granting the registration by recourse to sec 21 of the General Clauses Act. And lastly, while construing the provisions of the Representation of People Act, it is held that the Election Commission cannot, by recourse to sec 21 of the General Clauses Act, deregister or cancel the registration of a political party u/s 29A for the decision of the Commission to register a political party u/s 29A(7) is a quasi judicial in nature;

++ it is not in dispute that an express power was conferred on the CIT to cancel the registration for the first time by enacting sec 12AA(3) only w.e.f. 01.10.2004 by the Finance (No.2) Act 2004 (23 of 2004) and hence, such power could be exercised by the CIT only on and after 01.10.2004, i.e.,(AY 2004-2005) because the amendment in question was not retrospective but was prospective in nature. The issue involved in this appeal had also come up for consideration before three High Courts, namely, Delhi, Uttaranchal and Allahabad High Courts;

++ all the three High Courts after examining the issue, in the light of the object of Ss 12A and 21 of the General Clauses Act held that the order of the CIT passed u/s 12A is quasi judicial in nature. Second, there was no express provision in the Act vesting the CIT with power of cancellation of registration till 01.10.2004; and lastly, sec 21 of the General Clauses Act has no application to the order passed by the CIT u/s 12A because the order is quasi judicial in nature and it is for all these reasons the CIT had no jurisdiction to cancel the registration certificate once granted by him u/s 12A till the power was expressly conferred on the CIT by sec 12AA(3) w.e.f. 01.10.2004;

++ therefore, the appeal succeeds and is allowed. The order so challenged is set aside and the order of Tribunal is restored. Needless to say, the CIT would be free to exercise his power of cancellation of registration certificate u/s 12AA(3) in the case at hand in accordance with law.

Glimpses of Activities

A Study Circle Programme on Benami Transaction & I.T. Implication by Guest Speaker CA Manoj Tiwari on 17th December, 2017.



Our Annual Picnic at Shyam Kutir on 7th January, 2018.


A Seminar on Companies Amendment Act, 2017 by CA Sumit Binani and on Settlement Commission by Bench Officers and CA Jinesh Vanzara on 13th January, 2018.


Inter Study Circle League Cricket Tournament on 14th January, 2018.





Glimpses of Activities

A Study Circle Programme on "E-Way Bill" and Latest Changes on GST by Guest Speaker CA Shubham Khaitan on 21st January, 2018.


A Study Circle Programme on Companies Amendment Act, 2017, Condonation of Delay Scheme, 2018 & (SS-3) by CS Shikha Gupta on 28th January, 2018.


A Seminar on Union Budget 2018-19 at Kalakunj by Guest Speakers Adv. N.K. Poddar, CA Sushil Goyal, CA S.S. Gupta & CA Jatin Harjai on 2nd Feb. 2018