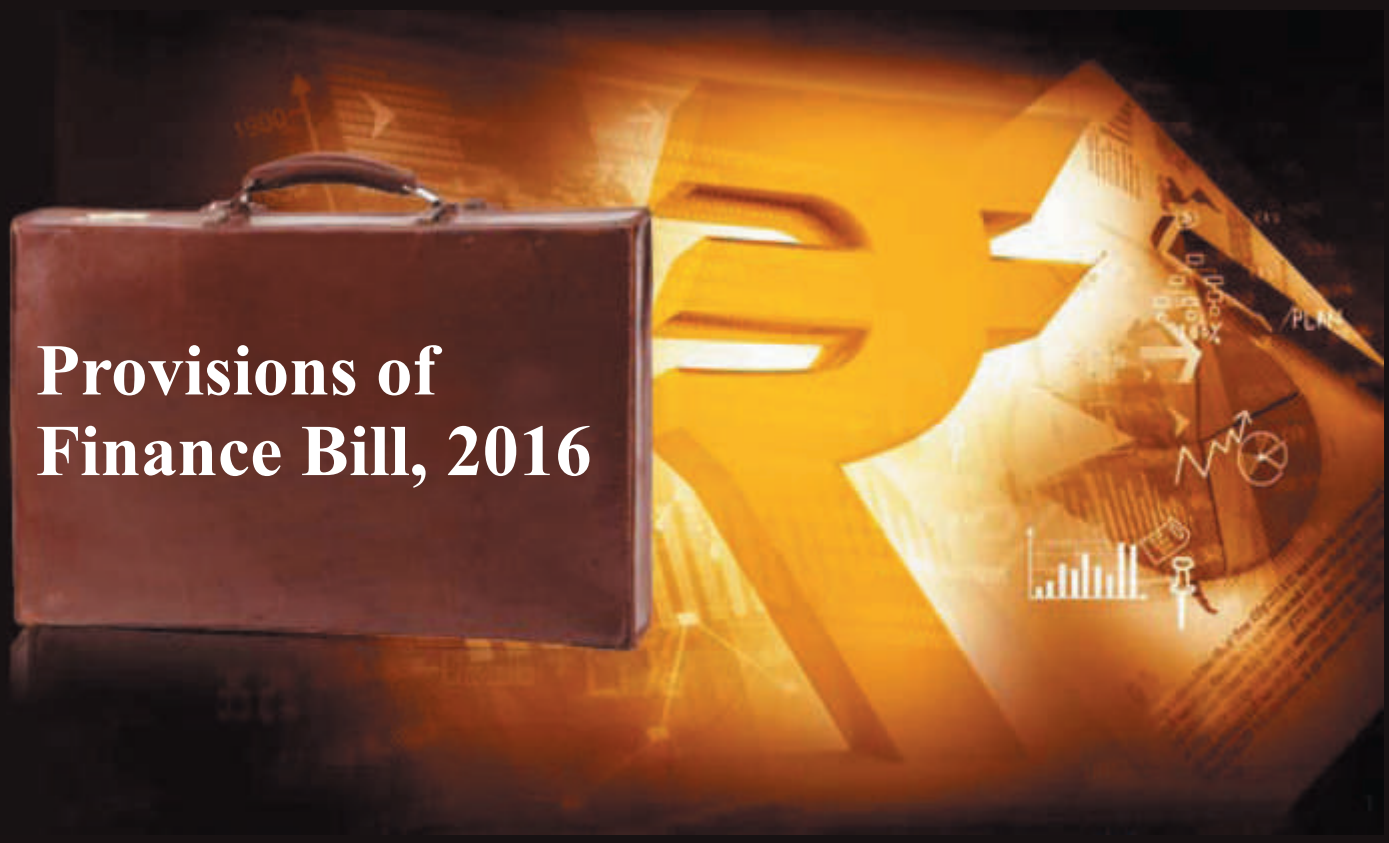

Provisions of Finance Bill, 2016

M/s S. Jaykishan

Chartered Accountants

Dear Reader,

The Country is facing an uncertain business environment, depreciating rupee, rising inflation, low investor confidence due to several grey areas in regulations such as indirect transfer, possible implementation of GST and introduction of BEPS.

Through the budget, the Narendra Modi-led Government was expected to be in line with its new national initiative “Make in India” and to transform India into a global manufacturing hub and boost investment. This will embark a major step towards achieving “Ache din” for the Indian economy.

The Government has announced a series of measures to reduce litigation and rationalistaion of tax proposals. The nine point agenda mentioned in the budget speech is a welcome move.

The Government notified that ‘Minimum Alternate Tax’ does not apply to foreign companies that do not have any taxable presence in India through a press release on 24th September, 2015 and this effect would be considered on a retrospective basis from 01.04.2001.

The Government is set to introduce a framework for Base Erosion and Profit Shifting (BEPS), a global agreement to check tax avoidance by multinationals, making it difficult for the MNCs to evade tax by shifting it in tax havens in the Budget. Going ahead, any company or conglomerate that has an operation outside India would have to submit a detailed split of revenues, profit, operations (corresponding economic activity) and taxes paid in each country they operate.

Largely, the budget proposals of this year is a fine balance between reduction of effective rate of tax, doing away of exemptions/deductions.

We are grateful for the efforts of the entire team who have helped in bringing out this publication.

Regards

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Contents

A. RATES OF INCOME TAX

1. Income Tax Rates (For Assessment Year 2017-18)

The Income Tax Slab Rates are different for different categories of taxpayers.

The tax structure can be summarized as below:

Individuals (Resident Individuals) and HUF

- Other than Senior Citizen and Super Senior Citizen

Upto Rs. 2,50,000	NIL
Rs. 2,50,00 1 to Rs. 5,00,000	10 per cent
Rs. 5,00,001 to Rs. 10,00,000	20 per cent
Above Rs. 10,00,000	30 per cent

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

Upto Rs. 3,00,000	NIL
Rs. 3,00,00 1 to Rs. 5,00,000	10 per cent
Rs. 5,00,00 1 to Rs. 10,00,000	20 per cent
Above Rs. 10,00,000	30 per cent

- Super Senior Citizen (80 years and above)

Upto Rs. 5,00,000	NIL
Rs. 5,00,00 1 to Rs. 10,00,000	20 per cent
Above Rs. 10,00,000	30 per cent

- Surcharge: The amount of Income-Tax computed as above, shall be increased by surcharge @ 15% of such Income-Tax in case, the person has taxable income exceeding Rs. 1 Crore.
- Cess: 3% Cess on tax in all cases.
- Rebate: The rebate under Section 87A inserted by Finance Act, 2013 being Rs.2,000/- for individual resident assessee, whose Taxable Income does not exceed Rs.5,00,000/- has been increased to Rs. 5,000/- with the objective to provide relief to individuals in the lower income slab. In other words, such assessee shall be entitled to compulsory tax rebate of Rs.5,000/- subject to limit of their tax liability.

Firms – Tax rate 30%. Cess @ 3% on tax, Surcharge @ 12%, if Taxable Income exceeds Rs. 1 Crore.

Domestic Company - Tax Rate 30%, Cess 3% on tax

Taxable Income	**Surcharge**
Upto Rs. 1 Crore	NIL
> Rs.1 Crore <Rs.10 Crores	7 per cent
> Rs.10 Crores	12 per cent

Foreign Company - Tax Rate 40%, Cess 3% on tax

Taxable Income	Surcharge
Upto Rs. 1 Crore	NIL
> Rs.1 Crore <Rs.10 Crores	2 per cent
> Rs.10 Crores	5 per cent

Marginal Relief on Surcharge

The amount payable as Income Tax and Surcharge on Total Income exceeding Rs.1Crore (or Rs.10 Crores for certain companies) shall not exceed the total amount payable as Income Tax on Total Income of Rs. 1 Crore (or Rs. 10 Crores) by more than the amount of Income that exceeds Rs. 1 Crore (or Rs. 10 Crores).

2. Different Tax rate for certain domestic companies

The rates of income-tax shall be 29% of the total income if the total turnover or gross receipts of the company in the previous year 2014-15 does not exceed Rs 5Crores.

Comments

- *While announcing last year Budget, our Hon'ble Finance Minister has promised that the tax rate on companies will be reduced to 25% phase-wise in four years. However, the tax rate has been reduced to 29% only in very few cases. As mentioned above, the tax rate shall be 29% only in such companies, whose total turnover or gross receipt doesn't exceed Rs. 5Crores in previous year 2014-15.*
- *Thus, companies incorporated in FY 2015-16 or 2016-17 shall not be eligible to take benefit of lower rate of tax @29%. Even companies which are incorporated in FY 2014-15, they may avail lower tax benefit only when their turnover is below Rs. 5 crores. Thus practically very few companies may actually get benefit of nominal reduction in tax rate.*

3. Lower Tax rate for New Manufacturing Companies

A new section 115BA is proposed to be inserted to provide tax relief to newly set-up domestic companies engaged solely in the business of manufacture or production of article or thing. It is proposed that the income-tax shall be computed @ 25% from A.Y. 2017-18, at the option of the company, if, -

(i) the company has been setup and registered on or after 1st day of March, 2016;
(ii) the company is engaged in the business of manufacture or production of any article or thing and is not engaged in any other business;
(iii) the company while computing its total income has not claimed any benefit under section 10AA, benefit of accelerated depreciation, benefit of additional depreciation, investment allowance, expenditure on scientific research and any deduction in respect of certain income under Part-C of Chapter-VI-A other than the provisions of section 80JJAA; and
(iv) the option is furnished in the prescribed manner before the due date of furnishing of income.

Comments

- *The apparent relief of 5% which has been provided by reducing tax rate to 25% for all new manufacturing Companies is nothing but an eyewash. A company can claim reduced rate of tax if it decide not to claim various tax incentives. Prima-facie, a company shall be better-off if it avails tax incentives and opt for tax @ 30% rather than opting for tax rate f 25%.*
- *That apart, the company is still within the domain of MAT provisions.*

B. ADDITIONAL RESOURCE MOBILISATION

4. Rationalisation of taxation of income by way of dividend

4.1. As per section 10(34) of the Act, income received by way of dividends referred to in Section 115-O of the Act in exempt in the hands of the shareholder.

4.2. It is now proposed to insert Section 115BBDA so as to provide that dividend received by individual, HUF or a firm, resident in India, exceeding ten lacs, from a domestic company shall be taxable at the rate of 10%.

4.3. It is further provided that no deduction in respect of any expenditure or allowance or set off of loss shall be allowed to the assessee in computing the income by way of dividends.

4.4. Dividends for the purpose shall have the meaning assigned to it in Section 2(22) [except clause (e) thereof]

4.5. This amendment will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years.

Comments:

- *The insertion of Section 115BBDA levying a tax on dividend recipients in excess of ten lacs will have the effect of increasing their tax liability despite the dividend being already subject to DDT in the hands of the company*
- *The proposed amendment does not cover dividend received from Mutual Funds*
- *The proposed amendment does not apply to corporate and non-residents and consequently, dividend received will continue to be exempt in their hands*
- *The Finance Minister in his Budget speech in relation to Section 14A read with Rule 8D has proposed as follows:*
  "I propose to rationalize the formula in Rule 8D governing such quantification. The said Rule is being amended to provide that disallowance will be limited to 1% of the average monthly value of investments yielding exempt income, but not exceeding the actual expenditure claimed."
  However, disallowance under section 14A in respect of such dividend remains a contentious issue which has not been clarified.

5. Change in rate of Securities Transaction Tax in case where option is not exercised

5.1. Under the provisions of section 98 of the Act, the STT applicable in case of sale of an option in securities where option is not exercised is 0.017 per cent of the option premium

5.2. It is proposed to increase the said rate of STT to 0.05 per cent of such transaction.

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

6. Equalisation Levy

6.1. Businesses in digital domain do not seem to occur in any physical location but instead takes place in the nebulous world of “cyberspace”. These new business models have created new challenges for the levy of tax. Thus, to overcome the challenges of taxation thereon, Equalisation Levy has been proposed to be introduced.

6.2. It is proposed to charge an equalisation levy at the rate of 6% of the amount of consideration for any specified service received/ receivable by a person, being a **non-resident** from:

- a person resident in India carrying on business or profession; or
- a non-resident having a permanent establishment (PE) in India.

6.3. Specified service means online advertisement, provision of digital advertising space and any other service as may be notified by the Government

6.4. The equalization levy, shall, however, not be charged, where:

- the non-resident service provider has a PE in India;
- the aggregate consideration in a previous year does not exceed Rs 1 lakh;

6.5. The equalisation levy so deducted during any calendar month shall be paid to the credit of the Central Government by the 7thday of the month immediately following the said calendar month. In the event of any delay simple interest @ 1% for every month or part of the month shall be paid pending such delay.

6.6. Failure to deduct the equalization levy shall attract disallowance u/s 40(ia).

6.7. Once the equalization levy is charged on the income of the non-residents, such income is exempted from Indian Income Tax under the proposed provisions of Section 10(50).

6.8. The proposed amendment will take effect from the date appointed in the notification to be issued by the Central Government.

Comments:

- *Equalisation levy is proposed to be charged only on non-residents. The same is not income tax. The charge is proposed to be inserted through introduction of Chapter VIII of the Finance Bill. Like STT, it remains a separate tax.*
- *E-commerce companies are earning substantial revenues and escaping income tax both in the country of residence and country of source. This amendment will help the Indian Income Tax authorities tap tax on income accruing to foreign e-commerce companies from India thus keeping in pace with the widening server-based transactions.*
- *The proposed amendment is in line with BEPS Action Plan 1 on Digital Economy.*
- *The levy is proposed to be charged only on services and not on goods sold through e-commerce.*

C. WIDENING OF TAX BASE AND ANTI-ABUSE MEASURES

7. Tax Collection at Source (TCS) on sale of vehicles; goods or services

7.1. Under the existing provisions of Section 206C(1) of the Act, TCS is collected by the seller on the sale of specified items such as alcoholic liquor for human consumption, timber, tendu leaves etc, at the rates prescribed therein. Further under Section 206C(1D), in respect of sale of bullion or jewellery in cash, TCS at the rate of one per cent is collectible if consideration for bullion and jewellery exceeds Rs. two lacs and five lacs respectively.

7.2. It is proposed to amend Section 206C(1) to provide for TCS in respect of motor vehicle having value exceeding Rupees ten lacs at the rate of one per cent.

7.3. It is further proposed to amend Section 206C(1D) to include TCS collection on receipts in cash as consideration for sale of any other goods or provision of service if the value exceeds Rupees two lacs, to be levied at the rate of one percent.

7.4. It is further provided that no tax shall be collected by the seller if the buyer has deducted TDS on such amount.

7.5. It is further proposed that TCS in respect of the aforesaid sale of goods or services shall not apply to such class of buyers who fulfil such conditions as may be prescribed.

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

Comments:

- *The amendment proposed is intended to reduce the quantum of cash transaction in sale of goods and services and curb the flow of unaccounted money in the trading system and to bring high value transactions with the tax net*

8. Tax on distributed income to shareholders

8.1. Under the existing provisions of section 115QA of the Act, an additional income tax at the rate of 20 per cent of the distributed income on account of buy back of unlisted shares by a company is levied.

8.2. The term 'distributed income' means 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.

8.3. "Buy back' has been defined to mean the purchase by a company of its own shares in accordance with the provisions of Section 77A of the Companies Act, 1956.

8.4. Under the existing provisions, there was an ambiguity regarding the applicability of the provisions in respect of buy back of shares under Section 68 of the Companies Act, 2013, capital reduction under Section 100 and merger/demerger under section 391 to 394 of the Companies Act, 1956. There have also been issues regarding lack in clarity in determination of consideration received by the company in respect of the shares bought back. It was viewed by the Legislature that the present provisions provides a tax arbitrage opportunity of scaling up of consideration particularly under a tax neutral business reorganisation, followed by buy back of shares.

8.5. In order to provide clarity and remove ambiguity, the term 'buy back' is proposed to be defined to mean purchase by a company of its own shares in accordance with the provisions of any law for the time being in force relating to companies. Further, 'distributed income' is also proposed to be amended to mean 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 determined in the manner as may be prescribed.

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

Comments:

- *Tax under Section 115QA is levied on the consideration on buy back paid by the company to its shareholders as reduced by the amount received for issue of such shares. In case of shares issued pursuant to amalgamation / demerger, no consideration was received by the company for issue of such shares. Therefore, this led to disputes regarding computation for the purpose of this Section. This is sought to be addressed by the Rules to be prescribed in this behalf to cover such circumstances.*
- *It has also been a contentious issue that no buy back other than that under Section 77A of the Companies Act, 1956 is covered by this Section.*
- *The proposed amendment seeks pluck these loop holes to cover all buy back of shares under the new law in force for the time being relating to companies.*

9. Charitable Trusts

9.1. The existing provisions of sections 11 and 12 of the Act provide for exemption to trusts or institutions in respect of income derived from property held under trust and voluntary contributions, subject to various conditions contained in the said sections. The primary condition for grant of exemption is that the income derived from property held under trust should be applied for the charitable purposes. Section 12AA provides for registration of the trust or institution which entitles them to be able to get the benefit of sections 11 and 12. It also provides the circumstances under which the registration can be cancelled.

9.2. It has been provided in the Explanatory Memorandum to the Finance Bill that a charitable institution may voluntarily wind up its activities and dissolve or may also merge with any other charitable or non-charitable institution, or it may convert into a non-charitable organization. In such a situation, the existing law does not provide any clarity as to how the assets of such a charitable institution shall be dealt with. There is no provision in the Act which ensure that the corpus and asset base of the trust

accreted over period of time, with promise of it being used for charitable purpose, continues to be utilized for charitable purposes and is not used for any other purpose. In order to ensure that the intended purpose of exemption availed by trust or institution is achieved, a specific provision in the Act is required for imposing a levy in the nature of an exit tax which is attracted when the organization is converted into a non-charitable organization or gets merged with a non-charitable organization or does not transfer the assets to another charitable organization.

9.3. Accordingly, it is proposed to amend the provisions of the Act by introducing new section 115TD, which inter-alia provides that in such circumstances, such trust or institution shall be chargeable to maximum marginal rate of tax on the accreted income. The accreted income for this purpose means the amount by which the amount by which the aggregate fair value of the total assets of the institution exceeds the total liability in accordance with such method of valuation as may be prescribed.

9.4. It has been provided that a trust or an institution shall be deemed to have been converted into any form not eligible for registration under section 12AA in a previous year, if,—

(i) the registration granted to it u/s 12AA has been cancelled;
(ii) it has adopted or undertaken modification of its objects which do not conform to the conditions of registration and has not applied for fresh registration consequent to such modification in the object.

9.5. These amendments will take effect from 1st June, 2016.

Comments:

- *The proposal to tax Corpus Fund at maximum marginal rate may be justified in cases where a charitable trust is amalgamated into non-charitable trust. However, the proposal in the present form can have far reaching implications. Of late, we find that registration of a number of charitable trusts are being cancelled u/s 12AA(3) of Income Tax Act which provides that if the Principal Commissioner or Commissioner is satisfied that the activities of the trust are not genuine or are not being carried out in accordance with the objects of the trust, he shall cancel the registration of the trust. Now with the proposed amendment, the entire corpus of the trust may be liable to be taxed at maximum marginal rate in the year of cancellation of registration. Now if the registration is cancelled from retrospective date, there may be dual impact of tax, one for earlier years when benefit of section 11 cannot be availed because of cancellation of registration, and secondly, in the year of cancellation of registration.*
- *Even modification in the object clause of the trust deed without taking approval from the Commissioner may be treated as conversion of trust and may invite cancellation of registration.*

D. MEASURES TO PHASE OUT DEDUCTION

10. Phasing out of deductions and exemptions

10.1. It is proposed to reduce the rate of corporate tax from 30% to 25% over the next four years along with corresponding phasing out of exemptions and deductions. In this regard, broad guiding principles had been put in the public domain for receiving comments from the stakeholders. These guiding principles are listed below for reference.

(a) Profit linked, investment linked and area based deductions will be phased out for both corporate and non-corporate tax payers.

(b) The provisions having a sunset date will not be modified to advance the sunset date. Similarly the sunset dates provided in the Act will not be extended.

(c) In case of tax incentives with no terminal date, a sunset date of 31.3.2017 will be provided either for commencement of the activity or for claim of benefit depending upon the structure of the relevant provisions of the Act.

(d) There will be no weighted deduction with effect from 01. 04.2017.

10.2. Based on the above guiding principles and taking into account the response of the stakeholders, the following incentives under the Act are proposed to be phased out in the manner as tabulated below in Table 1 and Table 2:

Table 1: Proposed Phase out plan of incentives (Profit linked Deductions/weighted deduction) available under the Act.

Sl. No	Section	Incentive currently availablein the Act	Proposed phase out measures/Amendment
1	10AA	Profit linked deductions for units in SEZ for profit derived from export of articles or things or services	No deduction shall be available to units commencing manufacture or production of article or thing or start providing services on or after 1st day April, 2020 (from PY 2020-21 onwards).
2	35AC.	Deduction for expenditure incurred by way of payment of any sum to a public sector company or a local authority or to an approved association or institution, etc. on certain eligible social development project or a scheme.	No deduction shall be available with effect from 1.4.2017 (i.e., from PY 2017-18 and subsequent years).
3	35CCD	Weighted deduction of 150% on any expenditure incurred (not being expenditure in the nature of cost of any land or building) on any notified skill development project by a company.	Deduction shall be restricted to 100% from 01.04.2020 (i.e. from PY 2020-21 onwards).
4	Section 80IA; 80IAB, and 80IB(9)	100% profit linked deductions for specified period on eligible business carried on by industrial undertakings or enterprises	No deduction shall be available if the specified activity commences on or after 1st day April, 2017. (i.e., from PY 2017-18 and subsequent years).

These amendments mentioned in table 1 will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years.

Table 2: Proposed Phase out plan of incentives (Accelerated Depreciation/Weighted Deduction) available under the Act.

Sl.	Section	Incentive currently available in the Act	Proposed phase out measures/ Amendment

1	32 read with rule 5 of IT Rules, 1962	Accelerated depreciation upto 100%, in respect of certain block of assets, is provided to certain Industrial sectors in order to giveimpetus for investment.	To amend the new Appendix IA read with Rule 5 of IT Rules, 1962 to provide that highest rate of depreciation under the IT Act shall be restricted to 40% w.e.f 01.4.2017. (i.e., from PY 2017-18 and subsequent years) for all the assets (whether old or new) falling in the relevant block of
2	35(1)(ii)	Weighted deduction from the business income to the extent of 175 % of any sum paid to an approved scientific research association which has the object of undertaking scientific research or to an approved university, college or other institution and if such sum is used for scientific research.	Weighted deduction shall be restricted to 150% from 01.04.2017 to 31.03.2020 (i.e. from PY 2017-18 to PY 2019-20) and thereafter deduction shall be restricted to 100% from 01.04.2020 (i.e. PY 2020-21 onwards).
3	35(1)(iia)	Weighted deduction from the business income to the extent of 125% of any sum paid as contribution to an approved scientific research company.	Deduction shall be restricted to 100 % with effect from 01.04.2017 (i.e. from PY 2017-18 and subsequent years).
4	35(1)(iii)	Weighted deduction from the business income to the extent of 125% of contribution to an approved research association or university or college or other institution to be used for research in social science or statistical research.	Deduction shall be restricted to 100% with effect from 01.04.2017 (i.e. from PY 2017-18 and subsequent years).
5	35(2AA)	Weighted deduction from the business income to the extent of 200% of any sum paid to a National Laboratory or a university or an Indian Institute of Technology or a specified person for the purpose of approved scientific research programme.	Weighted deduction shall be restricted to 150% with effect from 01.04.2017 to 31.03.2020 (i.e. from PY 2017-18 to PY 2019-20). Thereafter, deduction shall be restricted to 100 % from 01.04.2020 (i.e. from PY 2020-21 onwards)/
6	35(2AB)	Weighted deduction of 200% of the expenditure (not being expenditure in the nature of cost of any land or building) incurred by a company, engaged in the business of bio-technology or in the business of manufacture or production of any article or thing except some items appearing in the negative list specified in Schedule-XI, on scientific research on approved in-house research and development facility.	Weighted deduction shall be restricted to 150% from 01.04.2017 to 31.03.2020 (i.e. from PY 2017-18 to PY 2019-20). Thereafter, deduction shall be restricted to 100% from 01.04.2020 (i.e. from PY 2020-21 onwards).

7	35AD	In case of a cold chain facility, warehousing facility for storage of agricultural produce, an affordable housing project, production of fertiliser and hospital weighted deduction of 150% of capital expenditure (other than expenditure on land, goodwill and financial assets) is allowed.	Deduction shall be restricted to 100% of capital expenditure w.e.f. 01.4.2017 (i.e. from PY 2017-18 onwards).
8	35CCC	Weighted deduction of 150% ofexpenditure incurred on notified agricultural extension project.	Deduction shall be restricted to 100% from 1.4.2017 (i.e. from PY 2017-18 onwards).

10.3. These amendments mentioned in table 2 will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

E. MEASURES TO PROMOTE SOCIO-ECONOMIC GROWTH

11. Exemption of income of Foreign company from storage and sale of crude oil stored in India

11.1. As per Section 9 of the Act, one of the conditions for income having deemed to accrue or arise in India is that it is directly or indirectly derived through or from a business connection in India.

11.2. In order to achieve neutrality in terms of taxation to encourage private players including foreign national oil companies NOCs & MNCs to store their crude oil in India and to build up strategic oil reserves, it is proposed to amend the provisions of section 10 of the Act to provide that any income accruing or arising to a foreign company on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India shall not be included in the total income, if, -

I. such storage and sale by the foreign company is pursuant to an agreement/arrangement entered into by the Central Government or approved by it; and

II. the foreign company and the agreement/arrangement are notified by the Central Government in this behalf.

11.3. Since the storage of oil is expected to begin in the current financial year, this exemption would be available from the previous year 2015-16, i.e. assessment year 2016-17 onwards.

12. Exemption in respect of certain activity related to Diamond Trading in "Special Notified Zone"

12.1. In the case of a foreign company engaged in the business of mining of diamonds, no income shall be deemed to accrue or arise in India through or from activities which are confined to display of uncut and unassorted diamonds in a Special Zone notifed by the Central Government in the Official Gazette in this behalf.

12.2. The amendment is proposed to take effect from 1stday of April, 2016 and shall be applicable for the Assessment Year 2016-17.

Comments

- *The Special Notified Zone is a trading centre where global miners can import and trade in rough diamonds. Prior to the approval of creation of SNZ at Bharat Diamond Bourse in Mumbai for display of imported rough diamonds, re-exporting and trading thereof, the diamond manufacturers used to travel to abroad to countries like Dubai, Belgium or Israel to purchase raw materials,*

thereby ramping up their cost. Though as much as 85 per cent of rough diamonds are polished in the country, only 15 per cent of them are imported directly, the rest being bought by middlemen.

- *It is to be noted that the activity of foreign mining companies (FMC) of mere display of rough diamonds even with no actual sale taking place in India may lead to creation of business connection in India of the FMC.This potential tax exposure has been an area of concern for the mining companies willing to undertake these activities in India.*
- *Accordingly, the Finance Bill proposes to amend the provisions of Section 9 of the Act in line with the press release issued by the Government of India on 16h October, 2015 to provide that the activity of mere display of rough diamonds in the SNZs by the foreign miners shall not trigger business connection of the miners in India.*

13. Taxation of Income from Patents

13.1. With a view to strengthen indigenous research & development activities and to make India a global R & D hub, the Government has decided to put in place a concessional taxation regime for income from patents. A new section 115BBF is proposed to be inserted to provide that where the total income of the eligible assessee includes any income by way of royalty in respect of a patent developed and registered in India, such royalty shall be taxable at the rate of 10%(plus applicable surcharge and cess) on the gross amount of royalty. No expenditure or allowance in respect of such royalty income shall be allowed in respect thereof under the Act.

13.2. The following conditions must be satisfied in order to claim benefit under this section:

- The taxpayer should be a person resident in India as per section 6 of the Act.
- The assessee must earn income in the form of royalty from the patent that is registered under the Patents Act, 1970.
- The assessee must be the patentee and the true inventor of the invention.

13.3. The following royalty income shall not be construed as eligible for benefit under this section:

- Any income chargeable under the head, Capital Gains
- Consideration for sale of product manufactured with the use of patentedprocess or the patented article for commercial use.

13.4. These amendments will take effect from 1st day of April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years.

Comments:

- *This amendment seeks to ensure that the patents developed in India are given the deserved preferential tax treatment. The rate of 10% as is proposed to be levied on royalty received from such Patents is similar to the rate levied in the Patent Box Regime adopted across countries like UK, Netherlands, Luxembourg and Belgium.*
- *This amendment is in line with the recommendation of the OECD's Base Erosion and Profit Shifting (BEPS) project Action Plan 5 which provides that the income arising from the exploitation of intellectual property rights should be taxed in the jurisdiction where substantial R&D activities are undertaken rather than the jurisdiction of legal ownership. The word developed has thus been proposed to be defined as the expenditure incurred by assessee for any invention in respect of which patent has been granted under the Patents Act.*
- *It can be inferred that the concessional treatment applies not only to the new patents that would be registered but also to the existing patents. It will definitely provide an incentive to Corporates to retain and commercialize existing patents and also to develop new innovative ones.*

14. Tax Incentives for Start-Ups

14.1. With a view to providing an impetus to start-ups and facilitate their growth in the initial phase of their business, it is proposed to provide a deduction of 100% of the profits and gains derived by an eligible

start-up from a business involving innovation development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.

14.2. **Insertion of New Section 54EE**

It is proposed to insert a new section to provide exemption from capital gains tax if the proceeds of long term capital gains from any capital asset are invested by an assessee in the units of such specified fund, as may be notified by the Central Government in this behalf. This is subject to the condition that the amount remains invested for three years failing which the exemption shall be withdrawn. Further, the investment in the units of the specified fund shall be allowed up to Rs. 50 Lacs.

Comments:

- *The proposed section is similar to section 54EC of Income Tax act wherein also long term capital gains from investments in specified bonds is exempted. Here also, the long term capital gains if invested in specified funds upto Rs. 50 Lacs is exempted.*

14.3. **Amendment in Section 54GB**

The existing provisions of section 54GB provide exemption from tax on long term capital gains in respect of the gains arising on account of transfer of a residential property, if such capital gains are invested in subscription of shares of a company, which qualifies to be a Small or Medium Enterprise under the Micro, Small and Medium Enterprises Act, 2006 subject to other conditions specified therein.

It is proposed to amend section 54GB so as to provide that long term capital gains arising on account of transfer of a residential property shall not be charged to tax if such capital gains are invested in subscription of shares of a company which qualifies to be an eligible start-up subject to the condition that the investor holds more than fifty per cent shares of such company and such company utilizes the amount invested in shares to purchase new asset (plant and machinery) before due date of filing of return by the investor.

Further, it is proposed to amend section 54GB so as to provide that the expression "new asset" includes computers or computer software in case of technology driven start-ups so certified by the Inter- Ministerial Board of Certification notified by the Central Government in the Official Gazette.

Comments:

- *The Bill seeks to provide relief to Individuals or HUFs willing to set-up a start-up company by selling a residential property to invest in the shares of eligible start-up company.*

- *It is important for the investor i.e., the person selling the residential property and investing the proceeds of such long term capital gains in the shares of eligible business to ensure that the Company in which the proceeds have been invested utilizes such proceeds for the purchase of new assets representing plant & machinery. Technology driven start-ups require certification under the Inter-Ministerial Board of Certification notified by Central Government in the Official Gazette.*

14.4. **Amendment in Section 80-IAC**

It is proposed to amend Section 80-IAC to provide a deduction of 100% of the profits and gains derived by an eligible start-up from a business involving innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.

The benefit of deduction of 100% of the profit derived from such business can be availed by an eligible start-up for 3 consecutive asst. years out of five years, at the option of the assessee, subject to incorporation before 1st day of April, 2019.

These amendments will take effect from 1st April, 2017 and will accordingly apply in relation to the assessment year 2017-18 and subsequent assessment years.

Comments:

- *The proposed benefit of section 80-IAC is available only to a company assessee. However, the start-up ventures may not necessarily be in corporate form.*

- *It is worth mentioning here that it is compulsory to obtain certificate of eligible business from Inter-Ministerial Board of Certification notified by Central Government in the Official Gazette which may be a long drawn process.*

- *Most technology based scalable companies require heavy upfront investments and do not make profits in first few years. Further, the tax holiday of three years provided to start-ups vide amendment in Section 80-IAC will get neutralized since MAT will be applicable on corporate.*

- *Thus, as widely perceived, the tax incentives for start-ups are not so lucrative.*

15. <u>Incentives for Promoting Housing for All</u>

15.1. In order to promote low cost housing and provide a fillip to the realty sector, it is proposed to provide 100% deduction of the profits of an assessee developing affordable housing projects. The project needs to be approved by the competent authority before the 31.03.19 subject to certain conditions which inter alia, include:-

(i) The project is completed within a period of three years from the date of approval,

(ii) The project is on a plot of land measuring atleast 1000 sq. m, within 25 km from the municipal limits of four metros namely Delhi, Mumbai, Chennai & Kolkata and in any other area, it is measuring atleast 2000 sq. m where the sizes of the residential units is not more than 30 sq m and 60 sq m, respectively,

(iii) where residential unit is allotted to an individual, no such unit shall be allotted to him or any member of his family, etc

15.2. The existing provisions of section 80EE provide a deduction of upto Rs. 1 lakh in respect of interest paid on loan by an individual for acquisition of a residential house property. It is proposed to incentivise first-home buyers availing home loans, by providing additional deduction of Rs. 50,000/- over and above the existing limit of Rs. 2,00,000/- in case of a self occupied house property U/s 24 of the Act. This incentive is proposed to be provided for a house property of a value less than Rs. 50 lakhs in respect of which a loan of an amount not exceeding Rs. 35 lakhs has been sanctioned during the period from the 01.04.16 to 31.03.17. It is proposed to extend the benefit of deduction till the repayment of loan.

15.3. These amendments will take **effect** from 1st day of April, 2017.

Comments

- *The proposed amendments would make Section 80EE similar to Section 80IB(10) under which deduction to developers under the said section was available for projects approved before 31.03.07 and the date was not extended in the Finance Bill 2007. As per the judicial pronouncement of the Karnataka High Court in the case of Shravanee Constructions, deduction U/s 80IB(10) of the Act was also made available to a person who was not merely a land owner but carried on activities along with the promoter for developing and building the approved housing project.*

- *MAT U/s 115JB and AMT U/s 115JC would still be applicable, therefore providing only partial relief U/s 80EE.*

- *The onus would be on developers to complete construction of projects within the stipulated time frame of 3 years, which would be quite an onerous task in view of the multiple sanctions required.*

- *A much needed fillip is proposed to be provided to the real estate sector as low cost houses with a carpet area of upto 60 sq m has been excluded from the ambit of service tax as well.*

16. Tax incentive for Employment Generation

16.1. The existing provisions of Section 80JJAA provide for a deduction of thirty percent of additional wages paid to new regular workmen in a factory for three years. The provisions apply to the business of manufacture of goods in a factory where 'workmen' as defined under the aforesaid section are employed for not less than three hundred days in a previous year. Further, benefits are allowed only if there is an increase of at least ten percent in total number of workmen employed on the last day of the preceding year.

16.2. It is proposed to extend this benefit to all assessees who are required to get their accounts audited under section 44AB of Income Tax Act.

16.3. Deduction under the proposed provisions will be available in respect of cost incurred on those employees whose total emoluments are less than or equal to twenty-five thousand rupees per month. No deduction, however, shall be allowed in respect of cost incurred on those employees for whom the entire contribution is paid by the Government under the Employees' Pension Scheme notified in accordance with the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

16.4. It is further proposed to relax the norms for minimum number of days of employment in a financial year from 300 days to 240 days and also the condition of ten per cent increase in number of employees every year is proposed to be done away with so that any increase in the number of employees will be eligible for deduction under the provision.

16.5. It is also proposed to provide that in the first year of a new business, thirty percent of all emoluments paid or payable to the employees employed during the previous year shall be allowed as deduction.

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

Comments

- *It is important to note that the benefit of this Section has now been extended to all assessee who are required to get their accounts audited under section 44AB of Income Tax Act and not limited to company assessee engaged in manufacture of goods in a factory only.*

- *Though this provision has been in the Statute Book for quite few years, but it was seldom used because of two stringent provisions – first, employment of 100 new workmen and secondly, this section could be availed only for manufacturing undertaking. Both the conditions were hard to fulfil except in initial years. However, in initial years, generally an assessee setting up manufacturing unit used to get various tax incentives and hardly has positive GTI. Thus, this provision was generally confined to the statute book only.*

- *Now, the provision has been extended to all assessee covered under tax audit provided there is increase of at least one employee. Thus, even a trading or professional firm will be eligible for availing this benefit. To take an instance, in case of a situation wherein say the assessee is having*

20 (twenty) employees in the previous year and has employed 1(one) new employee in his entity and at the same time, 2(two) old employees have left the job. In such a case, the assessee won't be able to take the benefit until and unless at least 2(two) new employee joins him making the total employee strength of employees exceed 20 (twenty) during the previous year. However, if number of employees last year was 20 (twenty) out of which 10 (ten) has left and 11 (eleven) new have joined, the assessee would be entitled to avail benefit of this section in respect of 11 (eleven) new employees since on an overall basis, the employees has increased.

- *The proposal in the present form is expected to be availed by most of the assessee covered under tax audit. It is expected that this section will be one of the most availed section under Chapter VI-A for assessee having business income. To get the deduction, the assessee shall furnish along with the return of income the report of a Chartered Accountant referred to in Section 288(2) of Income Tax Act giving particulars in the report as may be prescribed. Thus, certification work is expected to increase considerably.*

- *The emoluments paid or payable to the employees shall not be otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account.*

F. RELIEF AND WELFARE MEASURES

17. Tax Treatment Income from Gold Deposit Bonds and Soveriegn Gold Bonds

17.1. **Soveriegn Gold Bond Scheme**

The Government of India has introduced the Sovereign Gold Bond Scheme with the aim of reducing the demand for physical gold so as to reduce the outflow of foreign exchange on account of import of gold. The Gold Bond is a mode for substitution of physical gold and also provides security to the individual investor who invests in Gold for meeting their social obligation.

It is proposed to amend Section 47 of the Income-tax Act, so as to provide that any redemption of Sovereign Gold Bond under the Scheme, by an individual shall not be treated as transfer and therefore shall be exempt from tax on capital gains.

It is also proposed to amend section 48 of the Income-tax Act, so as to provide indexation benefits to long terms capital gains arising on transfer of Sovereign Gold Bond to all cases of assessees.

17.2. **Gold Monetisation Sechme 2015**

The Gold Monetization Scheme, 2015 has been introduced by the Government of India. The scheme has been designed to bring out domestic gold which can be deposited in specified banks in lieu of deposit certificates. The depositer will get pure gold after period of tenure.

It is proposed to amend Clause (14) of section 2, so as to exclude Deposit Certificates issued under Gold Monetisation Scheme, 2015 notified by the Central Government, from the definition of capital asset and thereby to exempt it from capital gains tax.

It is also proposed to amend clause (15) of section 10 so as to provide that the interest on Deposit Certificates issued under the Scheme, shall be exempt from income-tax.

These amendments are proposed to be made effective retrospectively from the 1st day of April, 2016 and shall accordingly apply in relation to assessment year 2016-17 and subsequent years.

Comments

- *Sovereign Gold Bond scheme was launched in November 2015and subscription was for 915.95Kgs. amounting to Rs. 246Crores, it has an annual cap of 500gms per person and the bond was issued for a period of 5 to 7 years. The first trench of the scheme has been closed and as per Secretary, Economic affairs , second trench of the scheme is likely to be launched shortly*
- *As far as Gold Monetization scheme, is concerned, as per Ministry of State for Finance, the Government has netted 1,131Kgs. of Gold valuing Rs.3,014 Crores from 71 depositors. The depositors will earn 2.75% p.a. interest on gold which is exempt as per present Finance Bill. Further, as per proposed amendment, the capital gain, if any, on redemption or sale of such deposits are outside the preview of capital gain tax.*

18. Rupee Denominated Bond

18.1. The Reserve Bank of India has recently permitted Indian corporates to issue rupee denominated bonds outside India as a measure to enable the Indian corporates to raise funds from outside India.

18.2. Accordingly, with a view to provide relief to non-resident investor who bears the risk of currency fluctuation, it is proposed to amend section 48 of the Act so as to provide that the capital gains, arising in case of appreciation of rupee between the date of issue and the date of redemption against the foreign currency in which the investment is made shall be exempt from tax on capital gains.

18.3. This amendment is proposed to be made effective from the 1st day of April, 2017.

19. Consolidation of 'plans' within a 'scheme' of mutual fund

19.1. Section 47 of the Act provides for exemption in case of transfer by a unit holder of unit(s) held by him in the consolidated scheme of a mutual fund scheme made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated scheme of the mutual fund

19.2. The proposed amendment seeks to extend the exemption under section 47 to units held in a consolidated plan of a mutual fund scheme, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated plan of that scheme of the mutual fund

19.3. The proposed amendment defines “consolidating plan” to mean the plan within a scheme of a mutual fund which merges under the process of consolidation of the plans within a scheme of mutual fund in accordance with the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 made under the Securities and Exchange Board of India Act, 1992 and “consolidated plan” means the plan with which the consolidating plan merges or which is formed as a result of such merger

19.4. This amendment will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years.

Comments:

- *This is a welcoming provision extended to the Mutual Fund unit holders under consolidation plans of Mutual Funds.*

20. Relief to Individuals and HUFs receiving shares consequent to demerger or amalgamation

20.1. The existing provisions of Section 56(2)(vii) of the Act provide for chargeability of income from other sources in case any money, immovable property or other property with or without consideration in excess of Rs 50,000 is received by an assessee being an Individual or an Hindu undivided family (HUF).

20.2. The provisions also apply where shares of a company are received by an Individual or an Hindu undivided family (HUF) in consequence of demerger or amalgamation of a company.

20.3. It is proposed to amend the Act so as to provide that any shares received by an Individual or HUF as a consequence of demerger or amalgamation of a company shall not attract the provisions of clause Section 56(2)(vii).

20.4. These amendments are proposed to be made effective from the 1st day of April, 2017 and shall accordingly apply in relation to assessment year 2017-18 and subsequent years.

Comments

- *The proposed amendment is clarificatory in nature, though prospective. Similar provisions were there in section 56(2)(viia). Under any circumstances, the transfer in terms of amalgamation and demerger scheme is not regarded as a transfer in terms of section 47 of Income Tax Act.*

21. Increase in time period for acquisition or construction of self occupied house property for claiming deduction of interest

21.1. The existing provision of Section 24(b) provides that interest payable on capital borrowed for acquisition or construction of a house property shall be deducted while computing income from house property. The second proviso to the said clause provides that a deduction of an amount of two lakh rupees shall be allowed where a house property referred to in section 23(2) (self-occupied house property) has been acquired or constructed with capital borrowed on or after the 1st day of April, 1999 and such acquisition or construction is completed within three years from the end of the financial year in which capital was borrowed.

21.2. It is proposed to extend the time limit of such acquisition or construction from three to five years.

21.3. This amendment will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years.

Comments

- *This is a beneficial provision for buyers of house property given the fact that large housing projects and complexes often take much longer time for completion and the assessee is deprived of the benefit in such cases.*

22. Simplification and rationalisation of provisions relating to taxation of unrealised rent and arrears of rent

22.1. Section 25A, 25AA and 25B deal with taxation of arrear and unrealised rent as and when received.

22.2. It is proposed to merge them under a single new Section 25A to provide a uniform tax treatment of rent arrear and unrealised rent.

22.3. It is proposed to provide that such rent shall be chargeable to income tax in the financial year in which it is received or realised, whether the assessee is the owner of property or not in that financial year.

22.4. It is further proposed that a sum equal to thirty per cent of such rent shall be allowed as deduction.

22.5. This amendment will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years.

Comments

- *The benefit of 30 per cent deduction has been extended to unrealised rent and a uniform treatment under a single Section has been made for unrealised rent and rent in arrears.*

G. EASE OF DOING BUSINESS

23. Modification in conditions of special taxation regime for offshore funds

23.1. As per the provisions of Section 9A of the Act, an eligible investment fund means a fund established or incorporated outside India and which fulfills the conditions specified therein which inter-alia includes-

- the fund is a resident of a country or a specified territory with which an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A has been entered into;
- the fund shall not carry on or control and manage, directly or indirectly, any business in India or from India;

23.2. The proposed amendment seeks to modify the condition to provide that the eligible investment fund for purposes of Sec 9A, shall also mean a fund established or incorporated or registered outside India in a country or a specified territory notified by the Government in this behalf. Further the condition of fund not controlling and managing any business in India or from India shall be restricted only in the context of activities in India.

24. Enabling provisions for implementation of provisions in case of foreign company held to be a resident of India

24.1. It is proposed to amend the provisions of Section 6 of the Act to defer the applicability of the concept of POEM for determining the residential status of companies from AY 2017-18.

24.2. It is proposed to introduce Section 115H to provide transitional mechanism for a foreign company which is incorporated outside India and has not been earlier assessed to tax in India. The provisions of this Act regarding applicability of TDS provisions, computation of total income, set off of losses and manner of application of transfer pricing regime shall apply subject to exceptions, modifications and adaptations.

24.3. In case the residential status is determined to be in India for any previous year in the course of the assessment proceedings for that year, the transitional provisions shall apply for the relevant previous year and the subsequent years until the previous year in which the assessment proceedings are completed.

Comments

- *The Finance Act, 2015 had amended the basis for determining the residential status of companies from the AY 2016-17from the concept of control and management wholly in India to that of POEM in line with the OECD guidelines. The guidelines for determining the POEM were to be notified to provide guidance to tax payers. The Draft guiding principles for determining the POEM were provided by the CBDT on 23rd December, 2015. Such guidelines were ambiguous and lacked clarity. Representations were made in respect of such draft guidelines. However, the final guidelines are still awaited. Determination of the residential status on the basis of final guidelines on POEM if any issued at the end of relevant previous year would have created problems and impossibility of compliance by the assessee of provisions applicable to a resident foreign company.*

25. PROFESSIONALS – Introduction of Presumption Taxation Scheme and Increase in turnover limit for tax audit

25.1. The current scheme of taxation provides for a presumptive taxation scheme for certain eligible persons engaged in certain eligible business only and not for persons earning professional income.

25.2. A new section 44ADA is proposed to be inserted to facilitate estimation of income of an assessee who is engaged in any profession referred to in sub-section (1) of section 44AA such as legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette and whose total gross receipts does not exceed Rs. 50 Lacs in a previous year.

25.3. Such assessee will be subject to taxation at a sum equal to 50% of the total gross receipts, or, as the case may be, a sum higher than the aforesaid sum earned by the assessee.

25.4. The scheme will apply to such resident assessee who is an Individual, Hindu Undivided Family or Partnership Firm but not Limited Liability Partnership Firm.

25.5. Consequential amendments in Section 44AB are proposed to be made so as to increase the threshold limit for tax audit from Rs.25 Lacs to Rs.50 Lacs in case of assessee carrying on profession and align the provisions relating to audit of books of accounts and maintenance of books of accounts and other documents in case the assessee claims that the profits and gains from the profession are lower than the profits and gains computed in accordance with the proposed new Section 44ADA (1) and if his income exceeds the maximum amount which is not chargeable to income-tax.

25.6. These amendments will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years.

Comments

- *The proposed amendment is a welcome move. Professionals like doctors can hardly maintain the books of accounts and relevant records like bills etc. Now, they can straight away opt for presumptive taxation.*
- *Interestingly, HUF is covered under section 44ADA, though it is quite often argued that professional income involve personal skill and cannot be a HUF income.*
- *Interestingly in this section a LLP has been excluded though as per section 2(23) of Income Tax .Act, 'firm' includes LLP.*

26. Increase in threshold limit under presumptive taxation scheme for persons having income from business

26.1. The existing provisions of section 44AD provide for a presumptive taxation scheme for an eligible business where an eligible assessee engaged in eligible business having total turnover or gross receipts not exceeding rupees one crore, a sum equal to 8% of the total turnover or gross receipts, or as the case may be, a sum higher than the aforesaid sum shall be deemed to be profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession". The eligible assessee can report income less than the deemed income of 8% of the total turnover or gross receipts not exceeding rupees one crore provided he maintains books of accounts as per section 44AB. Further in the case of an eligible assessee, so far as the eligible business is concerned, the provisions of Chapter XVII-C shall not apply.

26.2. It is proposed to increase this threshold limit of Rs. 1 Crore specified in the definition of "eligible business" to Rs. 2 Crores.

26.3. It is also proposed that the expenditure in the nature of salary, remuneration, interest etc. paid to the partner as per clause (b) of section 40 shall not be deductible while computing the income under section 44AD as the said section 40 does not mandate for allowance of any expenditure but puts restriction on deduction of amounts, otherwise allowable under section 30 to 38.

26.4. It is also proposed that where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five consecutive assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this

section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).

26.5. For example, an eligible assessee claims to be taxed on presumptive basis under section 44AD for Assessment Year 2017-18 and offers income of Rs. 8 lacs on the turnover of Rs. 1 Crore. For Assessment Year 2018-19 and Assessment Year 2019-20 also, he offers income in accordance with the provisions of section 44AD. However, for Assessment Year 2020-21, he offers income of Rs.4 lakh on turnover of Rs. 1 crore. In this case since he has not offered income in accordance with the provisions of section 44AD for five consecutive assessment years, after Assessment Year 2017-18, he will not be eligible to claim the benefit of section 44AD for next five assessment years i.e. from Assessment Year 2021-22 to 2025-26.

26.6. Further, as the turnover limit of presumptive taxation scheme has been enhanced to Rs. 2 Crores, it is proposed to provide that eligible assessee shall be require to pay advance tax. However, in order to keep the compliance minimum in his case, it is proposed that he may pay advance tax by 15th March of the financial year.

26.7. These amendments will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years.

Comments

- *The proposed amendment is a big relief for small and medium sized entities, as the turnover of Rs. 1 Crore was at a lower end. However, this proposed amendment is entailed with a compliance burden for payment of Advance Tax.*
- *Interestingly, though the turnover limit has been increased in section 44AD, consequential amendment has not been made in section 44AB implying that, the assessee is required to get its accounts tax audited even if he is covered under presumptive taxation. Perhaps this seems to be a drafting error and suitable amendments may come while passing of the Finance Bill.*
- *The burden for payment of Advance Tax has been reduced to a great extent by providing a single date of payment i.e., on 15th March of the financial year. As this date is close the end of the financial year, the entities will be in a better position to determine their tax liability with more accuracy on the income made by them during the previous year.*

27. Deduction in respect of provision for bad and doubtful debts in the case of NBFCs

27.1. Section 36(1)(viia) of the Act allows a deduction in respect of any provision for bad and doubtful debt, limited to an amount not exceeding five per cent of the gross total income in computing the profits of a public financial institutions, State financial corporations and State industrial investment corporations, before making any deduction under the aforesaid clause and Chapter VI-A.

27.2. It is proposed to extend similar benefit to NBFCs as defined in Section 45-I(f) of the RBI Act, 1934.

27.3. This amendment will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years.

Comments:

- *This is a beneficial provision for NBFCs at a time when the books are saddled with NPAs. A view can be taken that the provision extends to all NBFCs irrespective of whether they are registered with the RBI or not.*

28. Rationalisation of scope of tax incentive under section 32AC

28.1. Existing Provisions

The existing provision of sub-section (1A) of section 32AC of the Act allows a deduction of a sum equal to 15% of the actual cost of new plant and machinery (other than ship or aircrafts), acquired and installed by an assessee being a company engaged in the business of manufacture or production of any article or thing during any financial year, exceeding twenty-five crore rupees, if the acquisition and installation is made during the same financial year. This tax incentive is available up to 31.03.2017.

28.2. Budget Proposals

The dual condition of acquisition and installation causes genuine hardship in cases in which assets having been acquired could not be installed in same previous year.

- It is proposed to amend the said sub-section so as to provide that the deduction under the said sub-section shall be allowed if the assets are installed on or before the 31st March, 2017.
- It is further proposed to insert a new proviso in the said sub-section so as to provide that where the installation of the new asset is in a year other than the year of acquisition, the deduction under this sub-section shall be allowed in the year in which the new asset is installed.

28.3. These amendments will take effect retrospectively from 1st April, 2016.

29. Exemption from requirement of furnishing PAN u/s 206AA

29.1. It is proposed to amend the provisions of section 206AA to provide that the higher rate of tax deduction at source shall not applicable in case of payment of interest on long term bonds referred to u/s 194LC and any other payment subject to such conditions as may be prescribed.

Comments

- *Section 206AA has posed a lot of complexities for tax deductors. As per the provisions of the Section in the absence of the PAN of the beneficiary, tax is required to be deducted at the higher of rates in force, relevant rates specified in the provisions of the Act and 20%. It is an impediment in terms of the ease of business since many non-residents prefer not to do business with Indian residents if they are insisted to procure a PAN in India.*
- *Furthermore it was always argued whether the provisions of the Treaty shall override the provisions of Section 206AA which otherwise begins with a no-obstante clause. The Pune Tribunal in the case of Serum Institutes held that the beneficial provisions of the DTAA shall override the provisions of Section 206AA and tax shall be deducted at the rate provided by the Treaty. However, in the absence of any judgement by the higher authorities, the issue remains unresolved.*
- *Thus, in order to alleviate the concerns of the non-residents, the proposed amendment which is in line with the proposals of the Tax Administration Reforms Committee(TARC) seeks to allow deduction of taxes at the normal rates subject to compliance of certain conditions as may be prescribed subsequently. The TARC had proposed that the non-resident may furnish the Tax Identification Number in its country of residence in lieu of PAN.*
- *Further in order to promote ECBs / rupee denominated bonds, the requirement of PAN of beneficiary for complying with TDS obligations on payment of interest on such loans has been proposed to be dispensed with.*

30. Applicability of MAT on foreign companies

30.1. A P Shah Committee on Direct Tax matters recommended for an amendment of section 115JB to clarify the applicability of MAT provisions to Foreign Institutional Investors/ Foreign Portfolio

Investors (FIIs/FPIs) in view of the fact that FIIs and FPIs normally do not have a place of business in India.

30.2. In view of the recommendations of the committee and with a view to provide certainty in taxation of foreign companies, it is proposed to amend the provisions of section 115JB w.e.f. 1st April, 2001 to provide that MAT shall not be applicable to a foreign company if -

(i) the assessee is a resident of a country/ territory with which India has a DTAA or such other agreement and the assesse does not have a permanent establishment (PE) in India in accordance with the provisions of such Agreement; or

(ii) the assessee is a resident of a country with which India does not have any such agreement and the assessee is not required to seek registration under any law for the time being in force relating to companies.

Comments:

- *The proposed amendment seeks to put to rest the controversy surrounding applicability of MAT provisions to foreign companies, if they have no PE or place of business in India. In this context conflicting judgements have been rendered in AAR Rulings of Castleton Investments Limited and Timken Company. A contextual interpretation of the term company has to be made for the purposes of examining applicability of Section 115JB. The profit as per the Profit and Loss Account prepared in accordance with the provisions of the provisions of the Companies Act has to be used for the purpose of determining book profits. Only such foreign companies which are carrying on business in India are required to prepare their financial statements as per the provisions of Section 379 to 383 of the Companies Act, 2013 (or 591-594 of Companies Act, 1956). Thus it may be inferred that the legislature never intended to apply the provisions of Section 115JB to foreign companies which do not have a permanent establishment in India. The proposed amendment is clarificatory in nature and has therefore been made effective from 1st day of April, 2001.*
- *In case of foreign company being a resident of country with which India has a DTAA, a PE in India shall trigger the applicability of provisions of MAT. In the absence of such agreement with the country of which the foreign company is a resident, the proposed amendment requires examiningonly whether the Company is required to seek registration under the provisions of the Companies Act. It may be noted that a foreign company is required to register itself under the Companies Act if not less than 50% of its paid-up share capital (equity or preference or partly equity and partly preference) is held by one or more citizens of India/ companies/ bodies corporate incorporated in India, with regard to the business carried on by it in India.*

31. Incentives to International Financial Services Centre

In order to accelerate the growth of International Financial Services Centre, the following amendments are proposed: -

31.1. It is proposed to insert a proviso to Section 10(38) to exempt capital gains on income arising from a transaction undertaken on a recognized stock exchange located in IFSC where the consideration for such transaction is paid or payable in foreign currency,even though no STT has been paid in respect thereof.

31.2. Section 115JB is also proposed to be amended to provide that in case of a company, being a unit located in IFSC and which is deriving its income solely in convertible foreign exchange, MAT shall be chargeable @ 9%.

31.3. DDT shall not be applicable on dividend declared, distributed or paid by unit located in IFSC, out of its current income derived solely inconvertible foreign exchange, for any assessment year on or after the 1st day of April, 2017. Such dividend shall be exempt in the hands of the person receiving such dividend.

31.4. No STT/ CTT is required to be paid on taxable securities transactions or taxable commodities transaction entered into by any person on a recognized stock exchange located in IFSC where the consideration for such transaction is paid or payable in foreign currency.

31.5. These amendments will take effect from 1st day of April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years.

Comments:

- *The proposed amendment will be of great relief to India's IFSC (IFSC) at Gujarat International Finance Tec City (GIFT City). As per FEMA, any financial institution set up in IFSC shall be treated as a person resident outside India.*

32. Providing time limit for disposing applications made by assessees under sections 273A, 273AA or 220(2A)

32.1. Section 220(2) provides for levy of interest at the rate of 1 per cent for every month or part of month for the period during which the default in payment of demand continues. Section 220(2A) empowers the Principal Chief Commissioner, Chief Commissioner, Principal Commissioner or Commissioner to reduce or waive the amount of interest paid or payable under the said section. No time limit is prescribed for disposing the application.

32.2. It is proposed to insert three provisos in Section 220(2A) (iii) to provide that the Order accepting or rejecting the application of the assessee, either in full or in part, shall be passed within a period of twelve months from the end of the month in which the application is received, after the assessee has been given an opportunity of being heard.

32.3. It is further proposed that where an application is pending as on 1st June, 2016, the Order shall be passed on or before 31st May, 2017.

32.4. Section 273A(4) provides that the Principal Commissioner or the Commissioner may, on an application made by an assessee, reduce or waive the amount of any penalty payable by the assessee or stay or compound any proceeding for recovery of the penalty amount if he is satisfied that there would be genuine hardship to the assessee and that he has co-operated in any enquiry relating to assessment or any proceedings for recovery of any amount due from him. No time limit is prescribed for disposing the application.

32.5. It is proposed to newly insert Section 273(4A) to provide that the Order accepting or rejecting the application of the assessee, either in full or in part, shall be passed within a period of twelve months from the end of the month in which the application is received, after the assessee has been given an opportunity of being heard.

32.6. It is further proposed that where an application is pending as on 1st June, 2016, the Order shall be passed on or before 31st May, 2017.

32.7. Section 273AA provides that the Principal Commissioner or the Commissioner may grant immunity from penalty, if penalty proceedings have been initiated in case of a person who has made application for settlement before the settlement commission and the proceedings for settlement had abated under the circumstances contained in section 245HA of the Act.

32.8. It is proposed to newly insert Section 273AA(3A) to provide that the Order accepting or rejecting the application of the assessee, either in full or in part, shall be passed within a period of twelve months from the end of the month in which the application is received, after the assessee has been given an opportunity of being heard.

32.9. It is further proposed that where an application is pending as on 1st June, 2016, the Order shall be passed on or before 31st May, 2017

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

Comments:

- *The introduction of time lines will expedite the process of disposal of applications, providing much awaited relief to the assessee.*
- *The Finance Minister in his Budget speech had also stated that the Income-tax Department is also issuing instruction making it mandatory for the assessing officer to grant stay of demand once the assessee pays 15% of the disputed demand, while the appeal is pending before Commissioner of Income-tax (Appeals). In case of deviation, assessing officer has to get orders of his superiors. The tax payer also has an option to go to superior officer in case he does not agree with conditions of stay order passed by the subordinate officer.*

33. Providing legal framework for automation of various processes and paperless assessments

33.1. Section 282A(1) provides that where the act requires a notice or other document to be issued by any income-tax authority, such notice or document should be signed by that authority in manuscript.

33.2. It is proposed to amend Section 282A(1) so as to provide that notices and documents required to be issued by income-tax authority under the Act shall be issued by such authority either in paper form or in electronic form in accordance with such procedure as may be prescribed.

33.3. It is also proposed to insert Section 2(23C) to define the term 'hearing' to include communication of data and documents through electronic mode.

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

Comments:

- *The Bill propagates the use of technology in issuing Notices/ other documents by the tax authorities.*
- *In the Finance Bill along with the provisions relating to issuance of Notice under section 143(2), the proposed inclusion of definition of 'hearing' in Section 2(23C), however the said term has not been used in Section 143(2), and therefore, does not seem to have any relevance in the given context.*

H. INCOME DISCLOSURE AND DISPUTE RESOLUTION

34. The Income Declaration Scheme 2016

34.1. An opportunity is proposed to be provided to persons who have not paid full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totalling in all to forty-five per cent of such undisclosed income declared.

34.2. The scheme is proposed to be brought into effect from 1st June 2016 and will remain open up to the date to be notified by the Central Government in the official gazette. The scheme is proposed to be made applicable in respect of undisclosed income of any financial year upto 2015-16.

34.3. Tax is proposed to be charged at the rate of thirty per cent on the declared income as increased by surcharge at the rate of twenty five per cent of tax payable (to be called the Krishi Kalyan cess). A penalty at the rate of twenty five per cent of tax payable is also proposed to be levied on undisclosed income declared under the scheme.

34.4. It is proposed that following cases shall not be eligible for the scheme:

- where notices have been issued under section 142(1) or 143(2) or 148 or 153A or 153C, or

- where a search or survey has been conducted and the time for issuance of notice under the relevant provisions of the Act has not expired, or
- where information is received under an agreement with foreign countries regarding such income, cases covered under the Black Money Act, 2015, or by
- persons notified under Special Court Act, 1992, or
- cases covered under Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988.

34.5. It is proposed that payment of tax, surcharge and penalty may be made on or before a date to be notified by the Central Government in the Official Gazette and non-payment up to the date so notified shall render the declaration made under the scheme void.

34.6. It is proposed to provide that declarations made under the scheme shall be exempt from wealth-tax in respect of assets specified in declaration. It is also proposed that no scrutiny and enquiry under the Income-tax Act and Wealth-tax Act be undertaken in respect of such declarations and immunity from prosecution under such Acts be provided. Immunity from the Benami Transactions (Prohibition) Act, 1988 is also proposed for such declarations subject to certain conditions.

34.7. It is proposed to provide that where a declaration under the scheme has been made by misrepresentation or suppression of facts, such declaration shall be treated as void.

34.8. It is also proposed that nothing contained in the Scheme shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under this Scheme. In cases where any declaration has been made but no tax and penalty referred to the scheme has been paid within the time specified, the undisclosed income shall be chargeable to tax under the Income-tax Act in the previous year in which such declaration is made.

34.9. In cases where any income has accrued, arisen or received or any asset has been acquired out of such income prior to commencement of this Scheme, and no declaration in respect of such income is made under the Scheme such income shall be deemed to have accrued, arisen or received, or the value of the asset acquired out of such income shall be deemed to have been acquired or made, in the year in which a notice under section 142, section 143(2) or section 148 or section 153A or section 153C of the Income-tax Act is issued by the Assessing Officer and the provisions of the Income-tax Act shall apply accordingly.

34.10. It is further proposed that if any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty by an order not after the expiry of a period of two years from the date on which the provisions of this Scheme come into force and such order be laid before each House of Parliament.

34.11. It is proposed that the Central Board of Direct Taxes under the control of Central Government be provided the power to make rules, by notification in the Official Gazette, for carrying out the provisions of this Scheme and such rules made be laid before each House of Parliament in the manner provided in the scheme.

Comments:

- *It is provided that where income is declared in the form of Investment in any asset, the fair market value of such asset on the date of commencement of the Scheme shall be deemed to be the undisclosed income. The fair market value of any asset shall be determined in such manner, as may be prescribed. Prima-facie, the Scheme is not similar to VDIS Scheme 1987, wherein a person was required to pay tax on the basis of his acquisition cost and not on the basis of fair market value on the Scheme date.*

- *As per Clause 180 of the Bill, declaration may be made for any assessment year upto AY 2017-18. Thus, income upto 31.03.2017 can be offered in terms of the Scheme. The total tax liability including interest, surcharge and penalty shall be 45% of the income.*
- *The provisions of the Scheme shall not apply in cases where 142(1), 143(2), 148, 153A and 153C is issued and proceeding is pending before AO and in case of pending survey and search case.*
- *There will be no scrutiny or enquiry regarding income declared in these declarations and the declarants will have immunity from Prosecution. Immunity from Benami Transactions (Prohibition) Act 1988 is also proposed subject to certain conditions.*
- *Professional advice is suggested before going into the Scheme.*

35. The Direct Tax Dispute Resolution Scheme, 2016

35.1. Litigation has been a major area of concern in direct taxes. The Hon'ble Finance Minister made a finding in his Budget speech that over 3 lac cases were pending with a demand of Rs. 5.5 lac crores. In order to reduce the huge backlog of cases and to enable the Government to realise its dues expeditiously, it is proposed to bring the Direct Tax Dispute Resolution Scheme, 2016 in relation to tax arrear and specified tax. The salient features of the proposed scheme are as under:

- The scheme be applicable to "tax arrear" which is defined as the amount of tax, interest or penalty determined under the Income-tax Act or the Wealth-tax Act, 1957 in respect of which appeal is pending before the Commissioner of Income-tax (Appeals) or the Commissioner of Wealth-tax (Appeals) as on the 29th day of February, 2016.
- The pending appeal could be against an assessment order or a penalty order.
- The declarant under the scheme be required to pay tax at the applicable rate of 30% plus surcharge at the rate of 25% of tax payable plus interest upto the date of assessment.
- However, in case of disputed tax exceeding rupees ten lakh, twenty-five percent of the minimum penalty leviable shall also be required to be paid.
- In case of pending appeal against a penalty order, twenty-five percent of minimum penalty leviable shall be payable alongwith the tax and interest payable on account of assessment or reassessment.
- Consequent to such declaration, appeal in respect of the disputed income and disputed wealth pending before the Commissioner (Appeals) shall be deemed to be withdrawn.

35.2. In addition to the above, the scheme proposes that person may also make a declaration in respect of any tax determined in consequence of or is validated by an amendment made with retrospective effect in the Income-tax Act or Wealth-tax Act, as the case may be, for a period prior to the date of enactment of such amendment and a dispute in respect of which is pending as on 29.02.2016 (referred to as specified tax).

35.3. For availing the benefit of the Scheme, such declarant shall be required to withdraw any writ petition or any appeal filed against such specified tax before the Commissioner (Appeals) or the Tribunal or High Court or Supreme Court, before making the declaration and shall also be required to furnish a proof of such withdrawal.

35.4. Further if any proceeding for arbitration conciliation or mediation has been initiated by the declarant or he has given any notice under any law or agreement entered into by India, whether for protection of investment or otherwise, he shall be required to withdraw such notice or claim for availing benefit under this Scheme.

35.5. It is proposed that person making declaration in respect of specified tax shall be required to furnish an undertaking in the prescribed form and verified in the prescribed manner, waiving the right, whether direct or indirect, to seek or pursue any remedy or claim in relation to the specified tax which otherwise be available to them under any law, in equity, by statute or under an agreement, whether for protection of investment or otherwise, entered into by India with a country or territory outside India. It is proposed that no appellate authority or Arbitrator or Conciliator or Mediator shall proceed

to decide an issue relating to the specified tax in the declaration in respect of which an order is made by the designated authority or in respect of the payment of the sum determined to be payable.

35.6. It is proposed that where the declarant violates any of the conditions referred to in the scheme or any material particular furnished in the declaration is found to be false at any stage, it shall be presumed as if the declaration was never made under this Scheme and all the consequences under the Income-tax Act or Wealth-tax Act under which the proceedings against declarant were or are pending, shall be deemed to have been revived.

35.7. The declarant under the scheme shall get immunity from institution of any proceeding for prosecution for any offence under the Income-tax Act or the Wealth-tax Act. In case of specified tax the declarant shall also get immunity from imposition of penalty under the Income-tax Act or the Wealth-tax Act. However, in case of tax arrears immunity from penalty is proposed to be of the amount that exceeds the penalty payable as per the scheme. The scheme provides waiver of interest under the Income-tax Act or the Wealth-tax Act in respect of specified tax. However, waiver of interest in respect of tax arrears is to the extent the interest exceeds the amount of interest referred in the scheme.

35.8. In the following cases a person shall not be eligible for the scheme:-

- Cases where prosecution has been initiated before 29.02.2016.
- Search or survey cases where the declaration is in respect of tax arrears.
- Cases relating to undisclosed foreign income and assets.
- Cases based on information received under Double Taxation Avoidance Agreement under section 90 or 90A of the Income-tax Act where the declaration is in respect of tax arrears.
- Person notified under Special Courts Act, 1992.
- Cases covered under Narcotic Drugs and Psychotropic Substances Act, Indian Penal Code, Prevention of Corruption Act or Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

35.9. A declaration under the scheme may be made to the designated authority not below the rank of Commissioner in such form and verified in such manner as may be prescribed. The designated authority shall within sixty days from the date of receipt of the declaration, determine the amount payable by the declarant. The declarant shall pay such sum within thirty days of the passing such order and furnish proof of payment of such sum. Any amount paid in pursuance of a declaration shall not be refundable under any circumstances.

35.10. No matter covered by order of designated authority shall be reopened in any other proceeding under the Income-tax Act, 1961 or Wealth-tax Act, 1957. The designated authority shall subject to the conditions provided in the scheme grant immunity from instituting any proceeding for prosecution for any offence under the two Acts in respect of matters covered in the declaration.

35.11. Nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in relation to which the declaration has been made.

35.12. It is proposed that the Central Government may be given the power to issue such orders, instructions and directions for the proper administration of this Scheme to persons employed in the execution of this Scheme shall observe and follow such orders, instructions and directions of the Central Government. In case any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may by order not inconsistent with the provisions of this Scheme remove the difficulty. However, no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Scheme come into force.

35.13. This scheme is applicable from 1st June, 2016.

Comments:

- This is a one time scheme enabling asseseee to settle the dispute by payment of taxes and interest till the date of assessment plus a marginal penalty of 7.50% of the income . No interest is payable for the period after completion of assessment.
- This scheme is not available where appeals are pending before Tribunal or Court.
- There is no clarity regarding payment of taxes subsequent to order of assessment as to whether credit of the same would be available or not.
- Assessees can contemplate remedial measures under the aforesaid scheme for assessments carried out for A.Y. 2008-09 onwards, in view of the fact that interest would be levied upto the stage of assessment only and this scheme offers a reconciliation option especially in cases wherein the view of Revenue is inclined unfavourably towards the entire business community.

I. RATIONALISATION MEASURES

36. Rationalization of TDS provisions for Category I and Category II Alternate Investment Funds

36.1. Existing Provisions

The existing provisions of section 194LBB provides that in respect of any income credited or paid by the investment fund to its investor, a TDS shall be made by the investment fund @ 10% of the income. Further, facility for certificate for deduction of tax at lower rate or no deduction, U/s 197, is available only in respect of sections enumerated therein and if the AO is satisfied that total income of the recipient justifies issue of such certificate. Currently, section 194LBB is not included in this provision.

36.2. Budget proposals

The existing TDS regime has created certain difficulties. The non-resident investor is not able to claim benefit of lower or NIL rate of taxation which is available to him under the relevant DTAA and TDS @10% is to be undertaken mandatorily even if under DTAA, the income is not taxable in India. There is no facility for any investor to approach the AO for seeking certificate for TDS at a lower or NIL rate in respect of deductions made U/s 194LBB. In order to rationalize the TDS regime the following amendments are proposed:

- In respect of payments made by the investment funds to its investors, it is proposed to amend section 194LBB to provide that the person responsible for making the payment to the investor shall deduct income-tax U/s 194LBB @10% where the payee is a resident and at the rates in force where the payee is a non-resident (not being a company) or a foreign company.
- Further, it is proposed to amend section 197 to include section 194LBB in the list of sections for which a certificate for deduction of tax at lower rate or no deduction of tax can be obtained.
- Consequential changes are also proposed to be made to the definition of "rates in force" so as to include section 194LBB in it.

36.3. The amendments are proposed to be effective from 1st June, 2016.

37. New Taxation Regime for securitisation trust and its investors

37.1. Existing Provisions

The existing provisions of Chapter-XII-EA of the Act consisting of sections 115TA, 115TB and 115TC, provides a special taxation regime in respect of income of the securitisation trusts and the investors of such trusts wherein income distributed by the securitisation trust to its investors shall be

subject to a levy of additional tax @ 25% if the distribution is made to an individual or a HUF and @ 30% if the distribution is to others. Such tax is to be paid by the securitisation trust within 14 days of distribution of income. Further, no distribution tax is to be levied if the distribution is made to an exempt entity. Consequent to the levy of distribution tax, the income of the investor, received from the securitisation trust, is exempt under section 10(35A) and the income of securitisation trust itself is exempt under section 10(23DA) of the Act.

37.2. Budget proposals

The current regime does not cover the trusts set up by reconstruction companies or the securitisation companies although such trusts are also engaged in securitisation activity. Further, disallowance of expenditure in respect of income received from securitisation trust increases the effective rate of taxation. The non-resident and resident investors are also unable to take benefits of their specific tax status. Thus, in order to rationalise the tax regime, and to provide tax pass through treatment, the existing regime is proposed to be substituted by a new regime enumerating the following elements:

- The new regime shall apply to securitisation trust being an SPV defined under SEBI (Public Offer and Listing of Securitised Debt Instrument) Regulations, 2008 or SPV as defined in the guidelines on securitisation of standard assets issued by RBI or being setup by a securitisation company or a reconstruction company in accordance with the SARFAESI Act;
- The income of securitisation trust shall continue to be exempt. However, the income accrued or received from the securitisation trust shall be taxable in the hands of investor in the same manner and to the same extent as it would have happened had investor made investment directly in the underlying assets and not through the trust;
- Tax deduction at source U/s 194LBC shall be effected by the securitisation trust at the rate of 25% in case of payment to resident investors which are individual or HUF and @ 30% in case of others. In case of payments to non-resident investors, the deduction shall be at rates in force;
- The facility for the investors to obtain low or nil deduction of tax certificate U/s 197 would be available; and
- The trust shall provide breakup regarding nature and proportion of its income to the investors and also to the prescribed income-tax authority.

37.3. The amendments are proposed to be effective from 1st June, 2016.

38. Country by Country Reporting

38.1. The OECD report on Action 13 of BEPS Action Plan provides standards for transfer pricing documentation and a template for country-by-country (CbC) reporting of income, earnings, taxes and certain measures of economic activity. It is recommended in the BEPS report that the countries should adopt a standardized approach to transfer pricing documentation consisting of:

- a master file containing standardised information relevant for all multinational enterprises (MNE) group members. It intends to provide an overview of the group's business, overall transfer pricing policies, global allocation of income and economic activities for assisting significant transfer pricing risk etc..;
- a local file referring specifically to material transactions of the local taxpayer; and
- a country-by-country report containing certain information relating to the global allocation of the MNE's income and taxes paid together with certain indicators of the location of economic activity within the MNE group

38.2. The above mentioned three documents will require the taxpayers to express consistent transfer pricing positions and will provide useful informations to tax administrations.

38.3. The Country-by-Country report requires MNE's to report annually and for each tax jurisdiction in which they do business. It requires MNEs to report their total employment, capital, accumulated

earnings, etc in each tax jurisdiction. Such a report is to be submitted by the parent entity of an international group to the prescribed authority in its country of residence. This report is to be based on consolidated financial statement of the group.

38.4. The elements relating to CbC reporting requirement as is proposed to be included through amendment of the Act are-

a) The reporting provision shall apply in respect of international group having consolidated revenue above a threshold to be prescribed.

b) The parent entity of an international group, if resident in India shall be required to furnish the report in respect of the group to the authority prescribed before the due date of furnishing return of income for Assessment Year relevant to the financial year for which the is being furnished.

c) The parent entity shall be required to prepare a consolidated financial statement as per law or would have been required to prepare such statement, had equity share of any entity of the group been listed on a recognized stock exchange in India.

d) Every constituent entity in India, of an international group having a parent entity that is a non resident shall provide information regarding country or territory of residence of the parent of the international group to which it belongs.

e) The report shall be furnished in prescribed form and manner and would contain information in respect of revenue, profit and loss before tax, amount of income tax paid, details of capital, number of employees, accumulated earnings, along with details of each constituent's residential status. The same shall be based on the template provided in the OECD BEPS report on Action Plan 13.

f) The entity in India belonging to an international group shall be required to furnish CbC report to the prescribed authority if the parent entity of the group is resident:-

   i) In a country with which India does not have an arrangement for exchange of the CbC report; or

   ii) such country is not exchanging information with India even though there is an agreement; and

   iii) this fact has been intimated to the entity by the prescribed authority;

g) If there are more than one entities of the same group in India, then the group can nominate the entity that shall furnish the report on behalf of the group. This entity would then furnish the report;

h) If an international group, having parent entity which is not resident in India, had designated an alternate entity for filing its report with the tax jurisdiction in which the alternate entity is resident, then the entities of such group operating in India would not be obliged to furnish report if the report can be obtained under the agreement of exchange of such reports by Indian tax authorities

i) The prescribed authority may call for such document and information from the entity furnishing the report for the purpose of verifying the accuracy as it may specify in notice. The entity shall be required to make submission within thirty days of receipt of notice or further period if extended by the prescribed authority, but extension shall not be beyond 30 days.

j) For non-furnishing of the report by an entity which is obligated to furnish it, a graded penalty structure would apply:-

   i) if default is not more than a month, penalty of Rs. 5000/- per day applies;

   ii) if default is beyond one month, penalty of Rs 15000/- per day for the period exceeding one month applies;

   iii) for any default that continues even after service of order levying penalty either under (i) or under (ii), then the penalty for any continuing default beyond the date of service of order shall be @ Rs 50,000/- per day;

k) In case of timely non-submission of information before prescribed authority when called for, a penalty of Rs5000/- per day applies. Similar to the above, if default continues even after service of penalty order, then penalty of Rs.50,000/- per day applies for default beyond date of service of penalty order.

l) In case of any inaccurate information in the report and
   i) The company is aware of the same at the time of furnishing the report but does not inform the prescribed authority, or
   ii) The entity discovers inaccuracy after the report is furnished and fails to inform the prescribed authority and furnish correct report within a period of fifteen days of such discovery; or
   iii) the entity furnishes inaccurate information or document in response to notice of the prescribed authority, then penalty of Rs.500,000/- applies.

m) The entity can offer reasonable cause defence for non-levy of penalties mentioned above.

39. Exemption of Central Government subsidy or grant or cash assistance, etc. towards corpus of fund established for specific purposes from the definition of Income

39.1. Existing Provisions

The Finance Act, 2015 had amended the definition of income U/s 2(24) of the Act so as to provide that the income shall include assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government (CG) or a State Government or any authority or body or agency in cash or kind to the assessee other than the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43 of the IT Act.

39.2. Budget proposals

As a result grant or cash assistance or subsidy etc. provided by the CG for budgetary support of a trust or any other entity formed specifically for operationalizing certain government schemes will be taxed in the hands of trust or any other entity. Therefore, it is proposed to amend section 2(24) to provide that ***subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or State government shall not form part of income.***

39.3. This amendment will take effect from 1stApril, 2017.

40. Extension of scope of section 43B to include certain payments made to Railways

40.1. Existing Provisions

The existing provisions of section 43B of the Act, inter alia, provide that any sum payable by the assessee by way of tax, cess, duty or fee, employer contribution to Provident Fund, etc., is allowable as deduction of the previous year irrespective of the previous year in which the liability to pay such sum was incurred if the same is actually paid on or before the due date of furnishing of the return of income.

40.2. Budget Proposals

With a view to ensure the prompt payment of dues to Railways for use of the Railway assets, it is proposed to amend section 43B so as to expand its scope to include payments made to Indian Railways for use of Railway assets within its ambit.

40.3. This amendment will take effect from 1stApril, 2017.

41. Assessment Provisions

Rationalisation of time limit for assessment, reassessment and recomputation

41.1. **Time limit for passing assessment order reduced by three months**

The existing statutory time limit for completion of assessment proceedings is provided in section 153 of I.T.Act. In order to simplify the provisions of existing section 153 by retaining only those provisions that are relevant to the current provisions of the Act, section 153 is proposed to be substituted with the following changes in time limit from the existing time limits:

(i) the period, for completion of assessment under section 143 or section 144 be changed from existing two years to twenty-one months from the end of the assessment year in which the income was first assessable;

(ii) the period for completion of assessment under section 147 be changed from existing one year to nine months from the end of the financial year in which the notice under section 148 was served;

(iii) the period for completion of fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment be changed from existing one year to nine months from the end of the financial year in which the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, or the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner

41.2. **Time limit for giving appeal effect rationalized**

(i) It is proposed to provide that the period for giving effect to an order, under sections 250 or 254 or 260 or 262 or 263 or 264 or an order of the Settlement Commission under sub-section (4) of section 245D, where effect can be given wholly or partly otherwise than by making a fresh assessment or reassessment shall be three months from the end of the month in which order is received or passed, as the case may be, by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. It is also proposed that in a case where it is not possible for the Assessing Officer to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such reasons in writing from the Assessing Officer, if satisfied, may allow additional time of six months to give effect to the said order. However, in respect of cases pending as on 1st June 2016, the time limit for passing such order is proposed to be extended to 31.3.2017.

(ii) It is also proposed that where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, 254, 260, 262, 263, or section 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under the Income-tax Act, then such assessment, reassessment or recomputation shall be made on or before the expiry of twelve months from the end of the month in which such order is received by the Principal Commissioner or Commissioner. However, for cases pending as on 1.6.2016, the time limit for taking requisite action is proposed to be 31.3.2017 or twelve months from the end of the month in which such order is received, whichever is later.

(iii) The amendment will take effect from 1st day of June, 2016.

(iv) The provisions of section 153 as they stood immediately before their amendment by the Finance Act, 2016, shall apply to and in relation to any order of assessment, reassessment or recomputation made before the 1st day of June, 2016.

Comments

- *The present section 153 contains various sections, sub-section, clauses, sub-clause, proviso, and Explanation. The proposed amendment has simplified the provision and reduced the time limit for passing assessment order by three months.*

41.3. **Time Limit for passing search assessments**

It is proposed to amend the time limit for completion of assessments made under section 153A or section 153C cases to bring it in sync with the new time limits provided for other cases. Accordingly:

i. The limitation for completion of assessment under section 153A, in respect of each assessment year falling within six assessment years referred to in clause (b) of sub-section (1) of section 153A and in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A be changed from existing two years to twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed.

ii. The limitation for completion of assessment in case of other person referred to in section 153C shall be changed from existing two years to twenty-one months from the end of the financial year in which the last of the authorisation for search under Section 132 or requisition under section 132A was executed or nine months (changed from the existing one year) from the end of the financial year in which the books of account or documents or assets seized or requisition are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later.

iii. The provisions of section 153B as they stood immediately before their amendment by the Finance Act, 2016, shall apply to and in relation to any order of assessment, reassessment or recomputation made before the 1st day of June, 2016.

iv. The amendment will take effect from 1st day of June, 2016

41.4. **Enhancement of powers in electronic processing of information (Return)**

As per Clause (a) of sub-section (1) of section 143 a return filed is to be processed and total income or loss is to be computed after making the adjustments on account of any arithmetical error in the return or on account of an incorrect claim, if such incorrect claim is apparent from any information in the return.

It is proposed to expand the scope of adjustments that can be made at the time of processing of returns under sub-section (1) of section 143. It is proposed that such adjustments can be made based on the data available with the Department in the form of audit report filed by the assessee, returns of earlier years of the assessee, 26AS statement, Form 16, and Form 16A. However, before making any such adjustments, in the interest of natural justice, an intimation shall be given to the assessee either in writing or through electronic mode requiring him to respond to such adjustments. The response received, if any, will be duly considered before making any adjustment. However, if no response is received within thirty days of issue of such intimation, the processing shall be carried out incorporating the adjustments.

The existing provisions of section 133C empower the prescribed income-tax authority to issue notice calling for information and documents for the purpose of verification of information in its possession.

In order to expedite verification and analysis of the information and documents so received, it is proposed to amend section 133C to provide adequate legislative backing for processing of information and documents so obtained and making the outcome thereof available to the Assessing Officer for necessary action, if any

These amendments will take effect from the 1st day of June, 2016.

Comments

- *The proposed amendment can have far reaching implications. Now while processing of return, the CPC may disallow past losses, and make adjustment to income if such income appearing in 26AS but not in the return. Even some adjustment may be made on the basis of audit report and certificate filed by the assessee.*

- *For Instance, the professional Income as per 26 AS is Rs. 2Crores and TDS there from is Rs. 20Lacs, however the accounts of the assessee show professional income of Rs 1.5 Crores and TDS Rs.15Lacs, the difference has been due to advance receipt of Rs 50Lacs on which the TDS was deducted by the party. The assessee was correct in showing income of Rs.1.5Crore in the return. Now the CPC will consider income of Rs. 2 Crore and send intimation with the said adjustment. . If the assesse don't respond to such intimation within 30 days then the processing shall be carried out incorporating the adjustment. Now once the assesse responds, the A.O. may verify the response in terms section 133C. Thus section 133C is in a way of doing' limited scrutiny'. By insertion of amendment of section 133C, the assessing officer has been given the power to verify the responses received by the assesse with respect to proposed adjustment to the intimation. This is a welcome amendment since the assesse shall get reasonable opportunity to explain its case.*

- *It has been provided that an intimation for proposed adjustment could be given by electronic mode also. Now the assesse has to be extra vigilant to ensure that the intimation incorporating adjustment is responded in time.*

41.5. **Processing under section 143(1) be mandated before assessment**

Under the existing provision of sub-section (1D) of section 143, processing of a return is not necessary where a notice has been issued to the assessee under sub-section (2) of the said section

It is proposed to amend sub-section (1D) of the aforesaid section to provide that before making an assessment under sub-section (3) of section 143, a return shall be processed under sub-section (1) of section 143.

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

Comments

- *At present the A.O. is generally not issuing refund for cases where notice u/s 143(2) has been issued on the ground that once a case has been selected under scrutiny, there is no scope of passing 143(1) order, and hence refund cannot be issued. The proposed amendment is a welcome move in the sense that the refund of the assessee will not be withheld.*

- *The proposed amendment is simultaneous with the proposed amendment in section 133C which give power to the A.O. to scrutinize the records, if there is some prima-facie adjustment in the intimation.*

41.6. **Challenging the jurisdiction of Assessing Officer**

The existing sub-section (3) of the section 124, inter-alia, provides that no person shall be entitled to call in question the jurisdiction of an Assessing Officer in a case where return is filed under section 139, after the expiry of one month from the date on which he was served with a notice issued under sub-section (1) of section 142 or sub-section (2) of section 143 or after the completion of the assessment, whichever is earlier. Currently, this provision does not specifically refer to notices issued

under section 153A or section 153C which relate to assessment in cases where a search and seizure action has been taken or cases connected to such cases.

In order to remove any ambiguity in such cases it is proposed to amend sub-section (3) of section 124 to specifically provide that cases where search is initiated under section 132 or books of accounts, other documents or any assets are requisitioned under section 132A, no person shall be entitled to call into question the jurisdiction of an Assessing Officer after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 153A or sub-section (2) of section 153C or after the completion of the assessment, whichever is earlier.

This amendment will take effect from the 1st day of June, 2016.

Comments

- *Instances have come to notice wherein the jurisdiction of an Assessing Officer in such cases have been called into question at the appellate stages, despite the fact that order passed under section 153A or 153C is read with section 143(3) of the Act. Though the proposed amendment is prospective, but it seems to be clarificatory in nature.*

41.7. **Clarification regarding set off losses against deemed undisclosed income**

Section 115 BBE of the Act, inter-alia provides that the income relating to section 68 or section 69 or section 69A or section 69B or section 69C or section 69D is taxable at the rate of thirty per cent and further provides that no deduction in respect of any expenditure or allowances in relation to income referred to in the said sections shall be allowable.

It is proposed to amend the provisions of the sub-section (2) of section 115BBE to expressly provide that no set off of any loss shall be allowable in respect of income under the sections 68 or section 69 or section 69A or section 69B or section 69C or section 69D.

The proposed amendment will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years

Comments

- *Section 115BBE was inserted in the Act from assessment year 2013-14 and it provides that the income tax on the income referred in section 68, 69A, 69B, 69C or 69D shall be chargeable at thirty percent. There has been litigation on the issue of set-off of losses against income referred in section 115BBE of the Act. The matter has been carried to judicial forums and in some cases, the appellate authorities has taken a view that losses may be allowed to be set -off against income referred to in section 115BBE and only if there is taxable income thereafter, tax @ 30% may be charged on income u/s 115BBE. To take an instance, if assessee has normal business loss of Rs. 2 crores, and income u/s 68 is Rs. 3 crores, then, there has been interpretation that tax shall be levied on Rs 1 crore only u/s 115BBE. With the proposed amendment, the tax shall be 30% on Rs. 3 crores, i.e., Rs. 90 lacs and the assessee wouldn't be allowed to set off business loss against income u/s 68.*

42. Penal Provision

42.1. **Rationalisation of penalty provisions**

Under the existing provisions, penalty on account of concealment of particulars of income or furnishing inaccurate particulars of income is leviable under section 271(1)(c) of the Income-tax Act.

It is proposed that section 271 shall not apply to and in relation to any assessment for the assessment year commencing on or after the 1st day of April, 2017 and subsequent assessment years and penalty be levied under the newly inserted section 270A with effect from 1st April, 2017. The new section 270A provides for levy of penalty in cases of under reporting and misreporting of income.

Sub-section (1) of the proposed new section 270A seeks to provide that the Assessing Officer, Commissioner (Appeals) or the Principal Commissioner or Commissioner may levy penalty if a person has under reported his income.

42.2. **Cases of underreporting of income**

It is proposed that a person shall be considered to have under reported his income if,-

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

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

(c) the income reassessed is greater than the income assessed or reassessed immediately before such re-assessment;

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

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

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

Calculation of under-reported income

The amount of under-reported income is proposed to be calculated in different scenarios as discussed herein.

In a case where return is furnished and assessment is made for the first time the amount of under reported income in case of all persons shall be the difference between the assessed income and the income determined under section 143(1)(a). In a case where no return has been furnished and the return is furnished for the first time, the amount of under-reported income is proposed to be:

(i) for a company, firm or local authority, the assessed income;

(ii) for a person other than company, firm or local authority, the difference between the assessed income and the maximum amount not chargeable to tax.

In case of any person, where income is not assessed for the first time, the amount of under reported income shall be the difference between the income assessed or determined in such order and the income assessed or determined in the order immediately preceding such order.

It is further proposed that in a case where under reported income arises out of determination of deemed total income in accordance with the provisions of section 115JB or section 115JC, the amount of total under reported income shall be determined in accordance with the following formula:

(A-B)+(C-D) Where

A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);

B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under reported income;

C = the total income assessed as per the provisions contained in section 115JB or section 115JC;

D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of under reported income.

However, where the amount of under reported income on any issue is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

It is clarified that in a case where an assessment or reassessment has the effect of reducing the loss declared in the return or converting that loss into income, the amount of under reported income shall be the difference between the loss claimed and the income or loss, as the case may be, assessed or reassessed

Calculation of under-reported income in a case where the source of any receipt, deposit or investment is linked to earlier year is proposed to be provided based on the existing Explanation 2 to sub-section (l) of section 271 (1).

It is also proposed that the under-reported income under this section shall not include the following cases:

(i) where the assessee offers an explanation and the income-tax authority is satisfied that the explanation is bona fide and all the material facts have been disclosed;
(ii) where such under-reported income is determined on the basis of an estimate, if the accounts are correct and complete but the method employed is such that the income cannot properly be deducted therefrom;
(iii) where the assessee has, on his own, estimated a lower amount of addition or disallowance on the issue and has included such amount in the computation of his income and disclosed all the facts material to the addition or disallowance;
(iv) where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction under Chapter X and disclosed all the material facts relating to the transaction;
(v) where the undisclosed income is on account of a search operation and penalty is leviable under section 271AAB.

It is proposed that the rate of penalty shall be fifty per cent of the tax payable on under-reported income.

42.3. **Cases of misreporting of income**

However in a case where under reporting of income results from misreporting of income by the assessee, the person shall be liable for penalty at the rate of two hundred per cent of the tax payable on such misreported income. The cases of misreporting of income have been specified as under:

(i) misrepresentation or suppression of facts;
(ii) non-recording of investments in books of account;
(iii) claiming of expenditure not substantiated by evidence;
(iv) recording of false entry in books of account;
(v) failure to record any receipt in books of account having a bearing on total income;
(vi) failure to report any international transaction or deemed international transaction under Chapter X.

It is also proposed that in case of company, firm or local authority, the tax payable on under reported income shall be calculated as if the under-reported income is the total income. In any other case the tax payable shall be thirty per cent of the under-reported income.

It is also proposed that no addition or disallowance of an amount shall form the basis for imposition of penalty, if such addition or disallowance has formed the basis of imposition of penalty in the case of the person for the same or any other assessment year.

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

Consequential amendments have been proposed in sections 119, 253, 271A, 271AA, 271AAB, 273A and 279 to provide reference to newly inserted section 270A.

Comments

- *These amendments shall take effect from AY 2017-18 and thus, shall apply to assessments which are being passed perhaps in FY 2019-20. Hence this section may not have immediate impact.*

- *After the proposed amendment, the penalty shall be either 50% of tax or 200% of tax in case of under-reporting of income and mis-reporting of income respectively. There is not much discretion left to the A.O. Presently, it is the absolute discretion of the A.O. whether to levy penalty between 100% to 300% of tax. The amendment is proposed to give less discretion to the A.O.*

- *In cases covered under under-reporting, presently Courts have been taking view that in similar circumstances, penalty is not leviable at all. The intention to reduce penalty rate in such cases seems to avoid litigations by the assessee.*

42.4. **Amendment of section 271AAB (Penalty in search cases)**

Existing provision of clause © of sub-section (1) of section 271AAB provides that in a case not covered under the provisions of clauses (a) and (b) of the said sub-section of section 271 AAB, a penalty of a sum which shall not be less than thirty per cent but which shall not exceed ninety per cent of the undisclosed income of the specified previous year shall be levied in case where search has been initiated under section 132 on or after the 1st day of July, 2012.

In order to 39ationalize the rate of penalty and to reduce discretion it is proposed to amend that clause © of sub-section (1) of section 271AAB to provide for levy of penalty on such undisclosed income at a flat rate of sixty per cent of such income.

The proposed amendment shall be applicable from AY 2017-18

Comments

- *It is mentioned that the proposed amendment shall be applicable from AY 2017-18 implying that for all search conducted on and from 1.4.2016, the section in the amended form shall be applicable. Section 271AAB is applicable for undisclosed income' of 'specified previous year'. The term 'specified previous year' not only include year of search but also the year preceding the year of search when the due date of filing return of such preceding year has not expired. Now, assuming a search is conducted on 30.04.2016, and the assessment is completed on undisclosed income – Rs. 5 Crores for AY 2016-17 and Rs. 3 Crores for AY 2017-18. Now, as per the amendment, penalty shall be levied at Rs. 1.80 Crores with respect to income for AY 2017-18. As far as AY 2016-17 is concerned, the A.O. is at discretion to levy penalty between Rs. 1.5 Crores to Rs. 4.5 Crores on undisclosed income of Rs. 5 Crores. The proposed amendment seeks to remove this discretion.*

- *It is worthwhile stating here that there is no amendment in scenario (a) or (b) mentioned in Section 271AAB, which provides for penalty @10% or 20% of undisclosed income.*

42.5. **Amendment of Section 272A**

It is proposed to amend sub-section (1) of section 272A to further include levy of penalty of ten thousand rupees for each default or failure to comply with a notice issued under sub-section (1) of section 142 or sub-section (2) of section 143 or failure to comply with a direction issued under sub-section (2A) of section 142.

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

Comments

- *This is a consequential amendment. The proposed insertion of clause (d) in Section 272A(1) is similar to section 271(1)(b) which provides for penalty for non- compliance of certain notices as mentioned above. Since section 271 shall not apply from AY 2017-18, amendment has been proposed in section 272A to cover the cases of 271(1)(b).*

42.6. **Immunity from penalty and prosecution in certain cases by inserting new section 270AA**

It is proposed to provide that an assessee may make an application to the Assessing Officer for grant of immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C, provided he pays the tax and interest payable as per the order of assessment or reassessment within the period specified in such notice of demand and does not prefer an appeal against such assessment order. The assessee can make such application within one month from the end of the month in which the order of assessment or reassessment is received in the form and manner, as may be prescribed.

It is proposed that the Assessing Officer shall, on fulfilment of the above conditions and after the expiry of period of filing appeal as specified in sub-section (2) of section 249, grant immunity from initiation of penalty and proceeding under section 276C if the penalty proceedings under section 270A has not been initiated on account of the following, namely:—

a) misrepresentation or suppression of facts;

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

c) claim of expenditure not substantiated by any evidence;

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

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

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

It is proposed that the Assessing Officer shall pass an order accepting or rejecting such application within a period of one month from the end of the month in which such application is received. However, in the interest of natural justice, no order rejecting the application shall be passed by the Assessing Officer unless the assessee has been given an opportunity of being heard. It is proposed that order of Assessing Officer under the said section shall be final.

It is proposed that no appeal under section 246A or an application for revision under section 264 shall be admissible against the order of assessment or reassessment referred to in clause (a) of sub-section (1), in a case where an order under section 270AA has been made accepting the application.

Clause (b) of sub-section (2) of section 249 provides that an appeal before the Commissioner (Appeals) is to be made within thirty days of the receipt of the notice of demand relating to an assessment order.

It is proposed to provide that in a case where the assessee makes an application under section 270AA of the Income-tax Act seeking immunity from penalty and prosecution, then, the period beginning from the date on which such application is made to the date on which the order rejecting the application is served on the assessee shall be excluded for calculation of the aforesaid thirty days period. The proposed amendment is consequential to the insertion of section 270AA.

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

Comments

- *By the proposed amendment, penalty may not be levied in a number of cases. As mentioned in proposed section 270A, penalty is 50% of tax sought to be evaded in cases of under-reporting of income and 200% in case of mis-reporting of income. Now, the penalty may not be levied for underreporting of income. The penalty proceedings may be dropped by the A.O.*
- *By mentioning that tax and interest has to be paid before making application for immunity from penalty under this section may encourage prompt tax payments.*

43. Rationalization of tax treatment of RPF, Pension Funds and National Pension Scheme

43.1. Presently, there are a number of pension plans and the tax benefits associated with these plans also differ accordingly. In order to bring about greater parity in tax treatment of different types of pension plans, it is proposed to amend the existing provisions of section 10 to provide that for contributions made on or after 1st day of April, 2016 by an employee, 40% of the accumulated balance attributable to such contributions on withdrawal shall be exempt from tax.

43.2. Further propositions made in the Finance Bill are as follows:

S.No	Particulars	Existing	Proposed (Contributionsmade on or after 1.04.16)
1	Payment from an approved superannuation fund made to an employee in lieu of or in commutation of an annuity on his retirement	Exempt from tax	Amount exceeding 40% is taxable
2	Payment from National Pension System Trust to an employee on account of closure or his opting out of the pension scheme as per section 80CCD	Chargeable to tax	40% of the Total Amount payable is exempt. However, in case of death of assesseee, the whole amount received by nominee shall be exempt.
3	Limit of Employer's contribution to an approved superannuation fund without attracting tax in the hands of employee under section 17	Exempt upto Rs. 1,00,000	Exempt upto Rs. 1,50,000

4	Limit of Employer's contribution to recognised provident fund without attracting tax in the hands of employee under Part A of Fourth Schedule	Exempt upto 12% of Salary	Exempt upto Rs. 1,50,000

43.3. There will be also be exemption for one-time portability of funds from recognized provident fund or from approved superannuation fund to NPS referred to in section 80CCD.

43.4. These amendments will take effect from 1st April, 2017.

Comments:

- *The above amendments will have a huge setback to the Salaried class as the salaried people will now have to pay tax on the balance of 60% of withdrawals made by them.*However*, there would be no tax on the remaining 60 per cent if it is invested in annuity (pension) products for earning regular income. The remaining 60 per cent if transferred to the heir, after the employee's death, then that will remain tax free.*
- *This step is aimed at encouraging the salaried to remain invested in the retirement fund and later invest the kitty in annuity (pension) products to earn regular income.*

44. Time limit for carry forward and set off of such loss under section 73A of the Income-tax Act

44.1. The existing provisions of Section 73A of the Act provide that any loss, computed in respect of any specified business referred to in Section 35AD shall not be set off except against profits and gains of any other specified business. Further, Section 80 of the Act provides that a loss which has not been determined in pursance of return filed U/s 139(3), shall not be carried forward and set-off U/s 72(1) or 73(2) or sub-section (1) or sub-section (3) or section 74 or Section 74A(3).

44.2. This loss is to be allowed if the return is filed within the specified time i.e. by the due date of filing of the return of the income as provided in section 80 for other losses determined under the Act.

44.3. Accordingly, it is proposed to amend section 80 so as to provide that the loss determined as per section 73A of the Act shall not be allowed to be carried forward and set off if such loss has not been determined in pursuance of a `return filed in accordance with the provisions of 139(3).

44.4. It is also proposed to amend the said Section 139(3) so as to give reference of Section 73A(2) in the said sub-section. These amendments will take effect retrospectively from 1 stApril, 2016.

45. Amortisation of spectrum fee for purchase of spectrum

45.1. Depreciation is allowed in respect of assets including certain intangible assets U/s 32 of the Act. Amortisation of license fee in case of telecommunication service is provided U/s 35ABB of the Act,

45.2. Government had introduced spectrum fee for auction of airwaves. There was considerable uncertainty in tax treatment of payments in respect of Spectrum i.e. whether spectrum is an intangible asset or whether it is in the nature of a 'license to operate telecommunication business' and eligible for deduction U/s 35ABB of the Act.

45.3. It is proposed to insert a new section 35ABA in the Act to provide for tax treatment of spectrum fee in order to provide clarity and avoid any future litigation. Any capital expenditure incurred and actually paid for the acquisition of any right to use spectrum for telecommunication services by paying spectrum fee will be allowed as a deduction in equal instalments over the period for which the right to use spectrum remains in force.

45.4. These amendments will take effect from 1st day of April, 2017.

46. Filing of return of income

Return U/s	Existing	Proposed
139(1)	If total income in respect of which person is assessable under the Act without giving effect to provisions of Section 10A/10B/10BA or Chapter VI-A exceeds the maximum amount not chargeable to tax, he shall be liable to furnish return of income before the due date.	It is proposed to amend the sixth proviso to Section 139(1) to include that if a person earns income which is exempt under clause (38) of section 10 and income of such person without giving effect to the said clause of section 10 exceeds the maximum amount which is not chargeable to tax, shall also be liable to file return within the due date.
139(4)	If a person has not furnished return of income U/s 139(1) or U/s 142(1), may furnish the return before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier.	If a person has not furnished return of income U/s 139(1), may furnish the return before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier.
139(5)	If a person having furnished return of income U/s 139(1) or U/s 142(1) discovers any omission or any wrong statement therein, he may furnish the return before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier.	If a person having furnished return of income U/s 139(1) or U/s 139(4) or U/s 142(1), discovers any omission or any wrong statement therein, he may furnish the return before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier.
139(9)	A return of income shall be regarded as defective unless the self-assessment tax together with interest has been paid on or before the date of furnishing of return U/s 140A.	A return of income shall not be regarded as defective merely because self-assessment tax together with interest has not been paid on or before the date of furnishing of return U/s 140A.

These amendments will take effect from 1st day of April, 2017.

47. Extension of time limit to TPO

47.1. As per the existing provisions, the Transfer Pricing Officer (TPO) has to pass his order 60 days prior to the date on which the limitation for making assessment expires.

47.2. It is noted that at times seeking information from foreign jurisdictions becomes necessary for determination of arm's length price by the TPO and at times proceedings before the TPO may also be stayed by a court order. Accordingly, it is proposed to amend section 92CA(3A) to provide that where assessment proceedings are stayed by any court or where a reference for exchange of information has been made by the competent authority, if the time available to the TPO for making an order after excluding the time for which assessment proceedings were stayed or the time taken for receipt of information, as the case may be, is less than sixty days, then such remaining period shall be extended to 60 days.

47.3. The amendment will take effect from 1st day of June, 2016.

48. Clarification regarding the definition of the term unlisted securities for Section 112(1)(c)

48.1. The existing provisions of Section 112(1)(c) provide that the long term capital gains arising in the case of a non-resident from the transfer of securities, listed or unlisted, shall be taxable @ 10%.

48.2. The expression "securities" has been given the same meaning as in Section 2(h) of SCRA. A view has been taken by the courts that shares of private companies are not securities since they are non-marketable.

With a view to clarify the position, it is proposed to amend the provisions of Section 112(1)(c) to substitute the words "unlisted securities" with the words "unlisted securities or shares of a company not being a company in which public are substantially interested".

49. Rationalisation of tax deducted at source (TDS) provisions

49.1. It is proposed to revise the existing threshold limits for TDS as under:

SECTION	HEAD	EXISTING THRESHOLD LIMIT (Rs.)	PROPOSED THRESHOLD LIMIT (Rs.)
192A	Payment of accumulated balance due to an employee	30,000	50,000
194BB	Winning from Horse race	5,000	10,000
194C	Payment to Contractors	Aggregate annual limit -75,000	Aggregate annual limit -1,00,000
194LA	Payment of compensation on acquisition of certain immovable property	2,00,000	2,50,000
194D	Insurance Commission	20,000	15,000
194G	Commission on sale of lottery tickets	1,000	15,000
194H	Commission or Brokerage	5,000	15,000

49.2. It is proposed to revise the existing TDS rates as under:

SECTION	HEAD	EXISTING RATE (%)	PROPOSED RATE (%)
194DA	Payment in respect of Life Insurance Policy	2	1
194EE	Payment in respect of NSS Deposits	20	10
194D	Insurance Commission	10	5
194G	Commission on sale of lottery tickets	10	5
194H	Commission or Brokerage	10	5

49.3. These amendments are proposed to be effective from 1st day of June, 2016.

50. Rationalisation of conversion of a company into Limited Liability Partnership

50.1. Section 47(xiiib) provides for tax exemption on conversion of a private company or an unlisted public company into a limited liability partnership on fulfilment of certain conditions.

50.2. It is proposed to provide for an additional condition for availing tax neutral conversion that the total value of the assets as appearing in the books of account of the company in any of the three previous years preceding the previous year in which the conversion take place does not exceed five crores rupees.

50.3. This amendment will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years.

Comments

- *The proposed amendment seeks to restrict conversion of companies to LLP by imposing a restrictive condition. Therefore, companies intending to convert into LLP and which may be impacted by the additional requirement still have a month's time to avail the tax neutral conversion*

51. Payment of interest on refund

51.1. The existing provisions under Section 244A provides for interest of refund arising out of excess payment of advance tax, TDS etc. for the period beginning from 1st April of the relevant Assessment Year and ending on the date on which refund is granted, deducting from the said period, the delay attributable to the assessee.

51.2. The Statute does not provide for any interest on refund of self-assessment tax.

51.3. The proposed amendment seeks to provide that in case of filing of return after due date, the said period of interest shall begin from the date of filing of return till the date of grant of refund.

51.4. It is further proposed that the assessee shall be entitled to interest on refund of self-assessment tax for the period beginning from the date of payment of tax or filing of return, whichever is later till the date of grant of refund.

51.5. Further, a proposed new insertion sub-section (1A) seeks to provide that in case refund arising out of appeal effect is delayed beyond the time limits prescribed under Section 153(5) (three months), the assessee will be entitled to an additional interest on such refund at the rate of three per cent p.a. from the expiry of the said time limits till the date of grant of refund.

51.6. These amendments are proposed to be effective from 1st day of June, 2016.

Comments:

- *Under the existing provisions, in calculating the period for which interest is due, only the period of delay beyond the due date of filing return attributable to the assessee is excluded. However, in view of the proposed amendment, in case of filing return beyond due date, the period of interest only begins from the date of filing of return, therefore, the assessee stands to lose on account of interest in such cases.*

- *Payment of interest on self-assessment tax is a welcome move in the interest of fairness and equity and in line with many judicial decisions.*

- *The Bill provides for increased accountability of tax authorities by providing for an additional interest of three per cent in case of delay in refund arising out of appeal effect.*

52. Enabling of Filing of Form 15G/15H for rental payments

52.1. Under the existing provisions of section 197A(1) of the Act, no deduction of tax is made under Sections 192A (accumulated balance due to an employee-PF), 193 (Interest on securities) , 194A (Interest other than Interest on securities), 194DA (Payment in respect of LIP) or 194K (Income in respect of units of Mutual Fund) in the case of a person (not being a company or a firm) on furnishing to the deductor, a declaration in Form 15G to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be NIL.

52.2. Under the existing provisions of section 197A(1C) of the Act, no deduction of tax is made under Sections 192A (accumulated balance due to an employee-PF), 193 (Interest on securities) , 194A (Interest other than Interest on securities), 194DA (Payment in respect of LIP) , 194EE (Payment in respect of Deposits under NSS) or 194K (Income in respect of units of Mutual Fund) in the case of a person being an individual resident in India who is of the age of 60 years or more, on furnishing to the deductor, a declaration in Form 15H to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be NIL.

52.3. It is proposed to extend the benefit to payment in respect of rent under section 194I.

52.4. This amendment is proposed to be effective from 1st day of June, 2016.

Comments:

- *The amendment will seek to benefit recipients of rent having no tax payable on total income including rent on furnishing the said Declarations and there will be no deduction of TDS in such cases.*

53. Provision of Bank Guarantee under section 281B instead of provisional attachment of property during the pendency of assessment or reassessment proceedings

53.1. The existing provisions contained in section 281B of the Income-tax enables the Assessing Officer to provisionally attach any property of the assessee during the pendency of assessment or reassessment proceedings, for a period of six months with the prior approval of the income- tax authorities specified therein, if the Assessing Officer is of the opinion that it is necessary to do so for the purpose of protecting the interests of the revenue. Such attachment of property is extendable to a maximum period of two years or sixty days after the date of assessment order, whichever is later.

53.2. It is further proposed to insert new sub-sections *(3)* to *(9)* in the said section to provide that the Assessing Officer shall revoke attachment of property made under sub-section *(1)* in a case where the assessee furnishes a bank guarantee from a scheduled bank, for an amount not less than the fair market value of such provisionally attached property or for an amount lower than the fair market value of the property which is sufficient to protect the interests of the revenue.

53.3. It is also proposed that the Assessing Officer may, make a reference to the Valuation Officer, who may be required to submit the report of the estimate of the property to the Assessing Officer within a period of thirty days from the date of receipt of such reference.

53.4. It is also proposed to provide that an order revoking the attachment be made by the Assessing Officer within fifteen days of receipt of such guarantee, and in a case where a reference is made to the Valuation Officer, within forty-five days from the date of receipt of such guarantee.

53.5. It is also proposed that where a notice of demand specifying a sum payable is served upon the assessee and the assessee fails to pay such sum within the time specified in the notice, the Assessing Officer may invoke the bank guarantee, wholly or partly, to recover the said amount.

53.6. If the assessee fails to renew the bank guarantee furnished under sub-section *(3)* or fails to furnish a fresh guarantee from a scheduled bank for an equal amount, fifteen days before the expiry of such guarantee, the Assessing Officer shall, if it is necessary to do so to protect the interest of the revenue, invoke the bank guarantee.

53.7. The amount realised by invoking the bank guarantee shall be adjusted against the existing demand which is payable and the balance amount, if any, be deposited in the Personal Deposit Account of the Principal Commissioner or Commissioner in the branch of Reserve Bank of India or the State Bank of India or of its subsidiaries or any bank as may be appointed by the Reserve Bank of India as its agent under the provisions of sub-section *(1)* of section 45 of the Reserve Bank of India Act, 1934 at the place where the office of the Principal Commissioner or Commissioner is situated.

53.8. In a case where the Assessing Officer is satisfied that the bank guarantee is not required any more to protect the interests of the revenue, he shall release that guarantee forthwith.

53.9. This amendment will take effect from 1st day of June, 2016.

Comments

- *The introduction of concept of taking bank guarantee is welcome. It is expected that similar provision may be incorporated in section 220 for allowing bank guarantee in respect of pending appeal proceedings.*

54. Taxation of non-compete fees and exclusivity rights for not carrying out any activity in relation to Profession

54.1. The existing provision of section 28 (va) of the Income Tax Act, inter alia, provides that any sum, whether received or receivable, in cash or kind, under an agreement for not carrying out any activity in relation to any business, is chargeable to tax as business income for business entities.

54.2. It is proposed to amend section 28(va) of Income Tax Act so as to provide that any sum received or receivable, in cash or kind, under an agreement, for not carrying out any activity in relation to any profession, shall also be income chargeable to income-tax under the head "Profits and gains of business or profession".

54.3. The existing provisions of section 28 (va) of the Income Tax Act clarify that receipts for transfer of right to manufacture, produce or process any article or thing or right to carry on any business, which are chargeable to tax under the head "Capital gains", would not be taxable as profits and gains of business or profession.

54.4. It is proposed to amend the proviso to clarify that receipts for transfer of right to carry on any profession, which are chargeable to tax under the head "Capital gains", would not be taxable as profits and gains of business or profession.

54.5. The existing provision of Section 55(1)(b)(1) provides that the cost of improvement in relation to a capital asset, being goodwill of a business or a right to manufacture, produce or process any article or thing or right to carry on any business, shall be taken to be nil.

54.6. Further, the existing provision of section 55(2)(a) provides that the cost of acquisition in relation to a capital asset, being goodwill of a business or a trademark or brand name associated with a business or a right to manufacture, produce or process any article or thing or right to carry on any business, tenancy rights, state carriage permits or loom hours, shall be taken to be the amount of the purchase price in case the asset is purchased by the assessee, and in any other case such cost shall be taken to be nil.

54.7. It is proposed to amend the said sub-clause (1) of clause (b) of sub-section (1) and clause (a) of sub-section (2) of the section 55 of Income Tax Act so as to include the right to carry on the profession also under its scope.

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

Comments

- *This amendment seems to be to rationalize the provisions and avoid unnecessary litigations.*

55. Section 50C – Full value of consideration to be the value adopted or assessed or assessable by stamp valuation authority on the date of agreement fixing the amount of consideration

55.1. The existing provision of section 50C (1) of Income Tax Act provides that in case of transfer of a capital asset being land or building or both, the value adopted or assessed or assessable by the stamp

valuation authority for the purpose of payment of stamp duty in respect of such transfer is taken as the full value of consideration for the purpose of computation of capital gains.

55.2. It is proposed to amend the said sub-section so as to provide that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer.

55.3. It is further proposed to provide that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement of transfer.

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

Comments

- *Before the proposed amendment, 50C didn't provide any relief where the seller had entered into an agreement to sell the property much before the actual date of transfer of the immovable property and the sale consideration is fixed in such agreement, whereas similar provision exists in section 43CA of the Act i.e. when an immovable property is sold as a stock-in-trade.*

- *This is a welcome amendment as it brings rationalization of Income Tax provisions.*

56. **Rationalisation of Provisions Relating To Appellate Tribunal**

56.1. Appeal against order of DRP

Sub-section (2A) of section 253 provides that the Principal Commissioner or Commissioner may, if he objects to any direction issued by the Dispute Resolution Panel (DRP) under sub-section (5) of section 144C in pursuance of which the Assessing Officer has passed an order completing the assessment or reassessment, direct the Assessing Officer to appeal to the Appellate Tribunal against such order

Further, sub-section (3A) of section 253 provides that every appeal under sub-section (2A) shall be filed within sixty days of the date on which the order sought to be appealed against is passed by the Assessing Officer in pursuance of the directions of the DRP under sub-section (5) of section 144C.

In line with the decision of the Government to minimise litigation, it is proposed to omit the said sub-sections (2A) and (3A) of section 253 to do away with the filing of appeal by the Assessing Officer against the order of the DRP. Consequent amendments are proposed to be made to sub-section (3A) and (4) of the said provision also.

These amendments will take effect from 1st day of June, 2016.

It is also proposed to provide that in cases where Department is already in appeal against the directions of DRP under sub-section (2A) of the section 253 (as it stood before the amendment of the Finance Act, 2016), no fee shall be payable.

This amendment will take effect retrospectively from 1st July, 2012.

56.2. **Rectification of order**

The existing provisions sub-section (2) of the section 254 of the Act, provide that the Appellate Tribunal may rectify any mistake apparent from the record in its order at any time within four years from the date of the order.

In order to bring certainty to the order of ITAT, it is proposed to amend sub-section (2) of section 254 to provide that the Appellate Tribunal may rectify any mistake apparent from the record in its order at any time within six months from the end of the month in which the order was passed.

These amendments will take effect from 1st day of June, 2016.

56.3. **Single Member Bench – monetary limit increased**

The existing provision of sub-section (3) of section 255, inter alia, provides that a single member bench may dispose of any case which pertains to an assessee whose total income as computed by the Assessing Officer does not exceed fifteen lakh rupees.

In view of the recent increase in monetary limit for filing appeal before ITAT and to expedite the process of dispute resolution at the level of ITAT, it is proposed to amend the said sub-section (3) so as to provide that a single member bench may dispose of a case where the total income as computed by the Assessing Officer does not exceed fifty lakh rupees.

These amendments will take effect from 1st day of June, 2016.

Contents

INDRECT TAX PROPOSALS

I. SERVICE TAX

1. Services brought within the tax net

1.1. Services provided by (a) a senior advocate to an advocate or partnership firm of advocates providing legal service and (b) a person represented on an arbitral tribunal to an arbitral tribunal, is taxable under forward charge @ 14% w.e.f 1st April, 2016.

1.2. Contracts for construction, erection, commissioning or installation of original works pertaining to monorail or metro, entered into on or after 1st March 2016 shall now be taxable @ 5.6%.

1.3. Services of transport of passengers, with or without accompanied belongings, by ropeway, cable car or aerial tramway shall now be taxable @ 14% w.e.f. 1st April, 2016.

1.4. Service Tax is being levied on transportation of passengers by air conditioned stage carriage with effect from 1st June, 2016 with an abatement of 60% without credit of inputs, input services and capital goods i.e. effectively @ 5.6%.

2. New Exemptions granted

2.1. Services by way of construction etc. in respect of housing projects under Housing For All (HFA) (Urban) Mission/ Pradhan Mantri Awas Yojana (PMAY) and low cost houses up to a carpet area of 60 square metres in a housing project under "Affordable housing in Partnership" component of PMAY/ any housing scheme of the State Government w.e.f. 1st March, 2016.

2.2. Service of life insurance business provided by way of annuity under the National Pension System has been exempted w.e.f. 1st April, 2016.

2.3. Following services provided by regulatory/ other organizations have also been exempted w.e.f. 1st April, 2016:

- Services provided by Employees' Provident Fund Organization (EPFO),
- Services provided by IRDA,
- Regulatory services provided by SEBI

2.4. Services provided by the following bodies/ institutions/ organizations have also been exempted w.e.f. 1st April, 2016:

- National Centre for Cold Chain Development under Department of Agriculture, Cooperation and Farmer's Welfare, Government of India in respect of knowledge dissemination,
- Biotechnology Industry Research Assistance Council (BIRAC) approved biotechnology incubators to incubates,
- skill/vocational training by training partners under Deen Dayal Upadhyay Grameen Kaushalya Yojana,
- assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development & Entrepreneurship.

2.5. The threshold exemption for services provided by a performing artist in folk or classical art forms of music, dance or theatre has been raised from erstwhile Rs 1 lakh to Rs 1.5 lakh charged per event with effect from 1st April, 2016.

3. Relief measures

3.1. The benefit of quarterly payment of Service Tax is being extended to 'One Person Company' (OPC) and HUF with effect from 1st April, 2016. Earlier they were included in the 'any other assesses' category wherein such assesses were required to pay Service Tax on monthly basis.

3.2. The facility of payment of Service Tax on receipt basis is being extended to 'One Person Company' (OPC) with effect from 1st April, 2016. Therefore, OPC now has an option to pay tax on receipt basis on services of upto Rs. 50 lakhs, if services provided last year are upto Rs. 50 lakhs.

3.3. Exemptions on services of (a) construction provided to the Government, a local authority or a governmental authority, in respect of construction of govt. schools, hospitals etc. and (b) construction of ports, airports, [which were withdrawn with effect from 01.04.2015], are being restored in respect of services provided under contracts which had been entered into prior to 01.03.2015 on payment of applicable stamp duty, with retrospective effect from 01.04.2015. The said services were earlier taxable @5.6% of the total amount. The amount of service tax so paid shall be refunded provided an application is made within six months from the date on which this Bill receives the assent of the President.

3.4. Services provided by way of construction, maintenance etc. of canal, dam or other irrigation works provided to bodies set up by Government but not necessarily by an Act of Parliament or a State Legislature, during the period from the 1st July, 2012 to 29th January, 2014, have being exempted from Service Tax with consequential refunds, subject to the principle of unjust enrichment.

3.5. Services provided by the Indian Institutes of Management (IIM) by way of 2 year full time Post Graduate Programme in Management (PGPM) (other than executive development programme), Integrated Programme in Management and Fellowship Programme in Management (FPM) are being exempted from Service Tax with effect from 1st March, 2016.

3.6. The services provided by mutual fund agent/distributor to a mutual fund or asset management company, are being made taxable under forward charge with effect from 1st April, 2016, so as to enable the small sub-agents down the distribution chain to avail small scale exemption having threshold turnover of Rs 10 lakh per year, subject to fulfillment of other conditions prescribed.

3.7. Service Tax on single premium annuity (insurance) policies has been reduced from 3.5% to 1.4% of the premium w.e.f. 1st April, 2016, in cases where the amount allocated for investment, or savings on behalf of policy holder is not intimated to the policy holder at the time of providing of service.

3.8. The services provided by Indian Shipping lines by way of transportation of goods by a vessel to outside India with effect from 1st March, 2016 has been proposed to be taxable at zero rate and Service Tax @ 14% has been levied on services provided by them by way of transportation of goods by a vessel from outside India up to the customs station in India w.e.f. 1st June, 2016 with a view to complete the credit chain and enable Indian Shipping Lines to avail and utilize input tax credits.

3.9. Notification No. 41/2012- ST, dated the 29th June, 2012 was amended by notification No.1/2016-ST dated 3rd February, 2016 so as to, inter alia, allow refund of Service Tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods for the export of the said goods. This scope of this amendment has been widened so as to make it effective from the date of application of the parent notification (i.e. 1st July 2012).

4. Availability of Input Service Credit on certain abated value of services

4.1. Credit of input services has been allowed on the following services:

- on transport of passengers by rail at the existing rate of abatement of 70%.
- on transport of goods, other than in containers, by rail at the existing rate of abatement of 70%.

- on transport of goods in containers by rail at a reduced abatement rate of 60%. (Earlier the abatement was 70%)
- on transport of goods by vessel at the existing rate of abatement of 70%.

4.2. The above changes shall come into effect from 1st April, 2016

5. Rationalization of Abatements [w.e.f 1st April, 2016]

5.1. With a view to reduce the number of various abatements under a category of a service, the abatements in respect of the services mentioned below have been rationalized.

5.2. The abatement rate in respect of services by way of construction of residential complex, building, civil structure, or a part thereof, is being rationalized at 70% by merging the two existing rates (70% for high end flats and 75% for low end flats).

5.3. The abatement rate in respect of services by a tour operator in relation to packaged tour (defined where tour operator provides to the service recipient transportation, accommodation, food etc) and other than packaged tour is being rationalized at 70%. Therefore the revised rate of tax comes to 4.2%.

5.4. The abatement on shifting of used household goods by a Goods Transport Agency (GTA) is being rationalized at the rate of 60%, without CENVAT credit on inputs, input services and capital goods. The existing rate of abatement of 70% allowed on transport of other goods by GTA continues unchanged. Therefore the revised rate of tax comes to 5.6% as against 4.2% previously.

5.5. The abatement rate on services of a foreman to a chit fund is being rationalized at the rate of 30%, without CENVAT credit on inputs, input services and capital goods. Earlier no such abatement was available and the same was taxable @ 14%.

6. Measures to Reduce Litigation

6.1. **Indirect Tax Dispute Resolution Scheme, 2016**

Finance Bill, 2016 has rolled out this new Scheme for resolution of 'indirect tax dispute' i.e. dispute in respect of any provisions of the Act pending before Commissioner (Appeals) as an appeal as on the 1st Day of March, 2016. Under the Scheme, the person is required to make a declaration before the Designated Authority in this regard on or before the 31st Day of December, 2016 and the declaration shall be acknowledged by the designated authority. On receipt of the acknowledgement, the declarant shall pay tax due, interest thereon and 25% of the penalty imposed in the impugned order and intimate the designated authority within 7 days of making such payment along with proof thereof. Based upon the proof of payment, the designated authority shall pass an order of discharge of dues within 15 days and the appeal pending before the Commissioner (Appeals) shall stand disposed off and the declarant shall get immunity from all proceedings under the Act in respect of the indirect tax dispute for which declaration was made. The declaration so made shall become conclusive on issuance of Order and no matter relating to impugned order shall be reopened thereafter in any proceedings before any authority or court. However, this Scheme shall not apply in the following cases:

- Where the impugned order is in respect of search & seizure proceeding,
- Where prosecution has been instituted before the 1st day of June, 2016,
- Where the impugned order is in respect of narcotic drugs or other prohibited goods;
- Where the impugned Order is in respect of any offence punishable under IPC, the Narcotic Drugs and Psychotropic Substances Act, 1985 or the Prevention of Corruption Act, 1988,
- Where any detention order has been passed under the Conservation of Foreign Exchange & Prevention of Smuggling Act, 1974.

This Scheme shall come into force on the 1st day of June, 2016.

Although, the government has come out with this initiative to reduce litigations, it remains uncertain as to number of persons opting for this scheme as apart from prosecution, the declarant under the scheme is saving only on 75% of the penalty imposed in the impugned order. Cases where the impugned order has high value demands and the department is erroneous in issuing order may not come under the ambit of this Scheme. Further, it is stated that cases where prosecution has been instituted before 1st day of June, 2016 will not be covered by the Scheme whereas the Scheme on the other hand intends to cover within its ambit all 'indirect tax dispute' in appeal as on 1st March, 2016. This is quite a contradiction as in many of the cases which are pending as on 1st March, 2016, prosecution may be instituted before 1st June, 2016.

6.2. It has been clarified that any activity carried out by a lottery distributor or selling agent in relation to promotion, marketing, organizing, selling of lottery or facilitating in organizing lottery of any kind, in any other manner, of the State Government as per the provisions of the Lotteries (Regulation) Act, 1998 (17 of 1998), is leviable to Service Tax.

6.3. In case of export of services, time limit for filing application for refund of CENVAT Credit has been prescribed at 1 year from the date of:

- receipt of payment in convertible foreign exchange, where provision of service has been completed prior to receipt of such payment; or
- issue of invoice, where payment, for the service has been received in advance prior to the date of issue of the invoice.

6.4. Assignment by the Government of the "right to use the radio-frequency spectrum and subsequent transfers" thereof has been included in the list of 'Declared Services' so as to clarify that such assignment is a service leviable to Service Tax and not sale of intangible goods.

6.5. Service tax on the services of Information Technology Software on media bearing RSP is being exempted from Service Tax with effect from 1st March, 2016 provided Central Excise duty is paid on RSP in accordance with Section 4A of the Central Excise Act. Mutual exclusiveness of levy of excise duty and Service Tax on Information Technology Software in respect of software recorded on media "NOT FOR RETAIL SALE" is being ensured by exempting from excise duty only that portion of the transaction value on which Service Tax is paid.

7. Introduction of Krishi Kalyan Cess (KKC)

7.1. Finance Minister introduced Krishi Kalyan Cess @ 0.5% on all taxable services w.e.f. 1st June, 2016. The proceeds would be exclusively used for financing initiatives for improvement of agriculture and welfare of farmers.

7.2. The KKC is leviable in addition to any cess or service tax on such taxable services under Chapter V of the Finance Act, 1994.

7.3. The provisions of Chapter V and the rules made thereunder, including those relating to refunds and exemptions from tax, interest and imposition of penalty shall apply accordingly to KKC.

7.4. The introduction of KKC is seen as an initiative to improve agriculture that forms the backbone of Indian economy.

7.5. Therefore the effective rate of service w.e.f 1st June, 2016 will be 15%.

8. Reduced Compliance Cost

8.1. With a view to reduce the compliance cost and compliance burden on the assessee the Hon'ble Finance Minister has proposed reduction in number of returns to be filed by a central excise assessee, above a certain threshold, from 27 to 13, i.e. one annual and 12 monthly returns. Monthly returns are already being e-filed. CBEC shall provide for e-filing of annual return also.

8.2. Service Tax assessees will also have to file the annual return, above a certain threshold, in addition to two half yearly returns being filed by them.

9. CENVAT Credit Rules

9.1. The FM has proposed certain amendments in CENVAT Credit Rules, 2004 with a view to effect better input tax credit flow including apportionment of credit.

9.2. The amendment will allow banks and other financial institutions to reverse credit in respect of exempted services on actual basis in addition to the option of 50% reversal.

9.3. The amendment seeks to improve credit flow, reduce the compliance burden and associated litigation, particularly those relating to apportionment of credit between exempted and non-exempted final products / services. Amendments have also been made in the provisions relating to input service distributor, including extension of this facility to transfer input services credit to outsourced manufacturers, under certain circumstances. The amendments in these rules will also enable manufacturers with multiple manufacturing units to maintain a common warehouse for inputs and distribute inputs with credits to the individual manufacturing units.

9.4. The amended rules seek to provide for reversal of CENVAT Credit of inputs/input services which have been commonly used in providing taxable output service and an activity which is not a 'service' under the Finance Act, 1994.

9.5. The proposed amendment allow CENVAT credit of Service Tax paid on amount charged for assignment by Government or any other person of a natural resource, over such period of time as the period for which the rights have been assigned.

10. Amendment in interest rates across all indirect taxes

10.1. Interest rates on delayed payment of duty/tax across all indirect taxes are being rationalized and made uniform at 15%, except in case of Service Tax collected but not deposited to the exchequer, in which case the rate of interest will be 24% from the date on which the Service Tax payment became due. This change has seen a reduction in interest rate of 3%.

10.2. For assessees, having value of taxable services in the preceding year/years covered by the notice is less than Rs. 60 Lakh, the rate of interest on delayed payment of Service Tax will be 12%.

10.3. The above changes will come into effect on the day the Finance Bill receives the assent of the President.

11. Miscellaneous amendments

11.1. Limitation period for short levy/non levy/short payment/non-payment/erroneous refund of Service Tax has been increased from 18 months to 30 months.

11.2. The Negative List entry covering 'educational services by way of (a) pre-school education and education up to higher and secondary school or equivalent, (b) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force and (c) education as a part

of an approved vocational education course. However, the exemption shall continue by way of exemption notification No. 25/2012-ST.

11.3. Amendments are being made to Service Tax law so as to provide for closure of proceedings against co-notices, once the proceedings against the main notice have been closed

11.4. The power to arrest in Service Tax is being restricted only to situations where the tax payer has collected the tax but not deposited it to the exchequer, and that too above a threshold of Rs 2 crores. Further, the monetary limit for launching prosecution is being increased from Rs. 1 crore to Rs. 2 crore of Service Tax evasion thereby providing relaxation in attracting provisions for prosecution.

II. EXCISE

12. Excise Duty on articles of Jewellery

12.1. Excise duty of 1% (without CENVAT credit) or 12.5% (with CENVAT credit) is being levied on articles of jewellery [excluding silver jewellery, other than studded with diamonds/other precious stones] with a higher threshold exemption upto Rs. 6 crore in a year and eligibility limit of 12 crore. Thus, a jewellery manufacturer will be eligible for exemption from excise duty on first clearances upto Rs. 6 Crore during a financial year, if his aggregate domestic clearances during preceding financial year were less than Rs. 12 crore. In other words, jewellery manufacturer having aggregate value of clearances in a financial year exceeding Rs. 12 crore, will not be eligible for this threshold exemption in the subsequent financial year. Necessary amendments have been made in notification No.8/2003-Central Excise, dated 01.03.2003 in this regard.

12.2. The SSI exemption for the month of March, 2016 for jewellery manufacturers will be Rs.50 lakh, subject to the condition that value of clearances for home consumption from one or more manufacturer from one or more factory or premises of production or manufacture during the financial year 2014-15 should not be more than Rs. 12 crore. Computation in this respect shall be as per the provisions of Para 3A of notification No. 8/2003- CE. For this purpose, a certificate from a Chartered Accountant, based on the books of accounts for the FY 2014- 15, shall be sufficient.

12.3. Therefore, for determining the eligibility for availing of the SSI exemption from 2016-17 onwards, a certificate from a Chartered Accountant, based on the books of accounts for 2015-16, shall suffice.

12.4. In respect of excisable goods produced on or before 29.02.2016 but lying in stock as on 29.02.2016 excise duty shall be levied upon clearance. Jewellery manufacturer are, therefore, required to keep a stock declaration of finished goods, goods-in-process and inputs as on 29.02.2016 in their records duly certified by a Chartered Accountant so as to enable the manufacturers to claim CENVAT credit on inputs or inputs contained in goods lying in stock as already provided for in Rule 3(2) of the CENVAT Credit, Rules, 2004, if he so desires. No stock declaration, will, however, be required to be made to the jurisdictional central excise authorities.

13. Excise Duty on Textiles

13.1. Excise duty of 2% (without CENVAT credit) or 12.5% (with CENVAT credit) is being levied on readymade garments and made up articles of textiles falling under Chapters 61, 62 and 63 (heading Nos. 6301 to 6308) of the Central Excise Tariff except those falling under 6309 and 6310 of retail sale price (RSP) of Rs. 1000 and above when they bear or are sold under a brand name. This optional levy would apply to such readymade garments and made up articles of textiles regardless of the composition of the garment / article. However, in respect of readymade garments and made up articles of textiles other than those mentioned above, the optional levy of Nil (without CENVAT credit) or

6% (with CENVAT credit) in case of garments / articles of cotton not containing any other textile material and Nil (without CENVAT credit) or 125% (with CENVAT credit) in case of garments / articles of other composition, as the case may be, shall continue. The tariff value for readymade garments and made up articles of textile is also being increased from 30% to 60% which shall apply to all goods mentioned in the notification No.20/2001-CentralExcise (N.T.) dated 30.04.2001. It may be noted that the new levy is similar to the levy of mandatory excise duty of 10% on readymade garments and made up articles of textiles [goods falling under Chapters 61, 62 and 63 (heading Nos. 63.01 to 63.08)] when they bear or are sold under a brand name, which was introduced in the Budget 2011-12, except that:

a. The present levy is an optional levy, that is domestic manufacturers will have the option to pay excise duty of 2% (without CENVAT credit) or 12.5% (with CENVAT credit),

b. The levy is restricted to such articles which have RSP of Rs.1000 and above, and

c. The tariff value is being revised from 30% of RSP to 60% of the RSP

13.2. Excisable goods which were produced on or before 29.02.2016 but lying in stock as on 29.02.2016 shall attract excise duty upon clearance. Manufacturers shall keep a stock declaration of finished goods, goods-in-process and inputs as on 29.02.2016 in their records duly certified by a Chartered Accountant so as to enable the manufacturers to claim CENVAT credit on inputs or inputs contained in goods lying in stock as already provided for in Rule 3(2) of the CENVAT Credit, Rules, 2004, if he so desires. No stock declaration, will, however, be required to be made to the jurisdictional central excise authorities.

13.3. Full exemption from Central Excise duty will be available to duty-paid goods returned to the manufacturer during a financial year up to an aggregate ceiling not exceeding 10% of the value of clearances for home consumption made in the preceding financial year. The manufacturer would be required to observe the following procedure for this purpose:

(a) To submit intimation within 48 hours of the receipt of the returned goods about the value of returned goods received in his factory/registered premises;
(b) To maintain proper accounts/record of the receipt, finishing operations, and dispatch of returned stock indicating the monthly and cumulative value of the returned stock received during the financial year and to produce the same as and when required.

14. Clean Energy Cess

14.1. 'Clean Energy Cess' levied on coal, lignite and peat has been renamed to 'Clean Environment Cess' and rate has been increased from Rs. 200 per tonne to Rs. 400 per tonne.

15. Other key amendments under Central Excise

15.1. Excise duty on tobacco increased by 10-15%, except for beedi

15.2. 1% infra cess to be levied on small gasoline cars.

15.3. Excise duty on sacks and bags of all plastics is being rationalized @ 15%.

15.4. Excise duty on Disposable sterilized dialyzer and micro barrier of artificial kidney has been done away with.

15.5. 9% interest on refund ordered by appellate authorities

15.6. Any appeal pending against an order of penalty can be settled by paying 25% of the imposed penalty amount.

15.7. Single Member Bench of CESTAT can handle litigation upto Rs 50 Lakhs .

15.8. The facility for revision of return, which was earlier available to a service tax assessee only, has been extended to manufacturers also.

15.9. In cases where invoices are digitally signed, the manual attestation of copy of invoice, meant for transporter, is done away with.

III. CUSTOMS

16. Amendment to various Sections of the Customs Act

16.1. Subsection (43) of Section 2 is being amended so as to add a new class of warehouses for enabling storage of specific goods under physical control of the department, as control over the other types of warehouses would be only record based.

16.2. Section 65 (Manufacture and other operations in relation to goods in a warehouse) is being amended to delete the payment of fees to Customs for supervision of manufacturing facilities under Bond; and empower Principal Commissioner or Commissioner of Customs to license such facilities.

16.3. Section 68 (Clearance of warehoused goods for home consumption) and 69 (Clearance of warehoused goods for exportation) is being amended to omit rent and other charges on account of omission of section 63.

16.4. Section 71 (Goods not to be taken out of warehouse except as provided by this Act) is being amended so as to substitute the word "exportation" with the word "export" to align with definition contained in sub section (18) of section 2.

16.5. Section 72 (Goods improperly removed from warehouse, etc.) is being amended to delete clause (c) regarding improper removal of samples.

16.6. Section 73 (Cancellation and return of warehousing bond) is being amended to provide for cancellation bond in case of transfer of ownership of the goods, and is thus aligned with sub-section (5) of section 59.

17. Deferred payment of Duty

17.1. Sections 28, 47(Clearance of goods for home consumption), 51 and 156 are being amended so as to:

a) increase the period of limitation from one year to two years in cases not involving fraud, suppression of facts, willful mis-statement, etc.

b) provide for deferred payment of customs duties for importers and exporters to certain class of importers and exporters.

17.2. Sub-section (2) of the section 47 is amended to empower the Central Government to fix the rate of interest not below ten per cent and not exceeding thirty-six per cent p.a. where importer fails to pay import duty either in full or in part within two days from the date specified therein.

17.3. It also seeks to insert a new section to Section 51 therein to empower the Central Government to fix the rate of interest not below five per cent and not exceeding thirty-six per cent p.a. where the exporter fails to pay export duty either in full or in part within the date specified by rules.

18. Substitution of various Sections of the Customs Act

18.1. Section 25 (Power to grant exemption from duty) is amended so as to substitute sub-section (4) thereof to provide that every notification issued under sub-section (1) or sub-section (2A) shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette. It is further proposed to omit sub-section (5) thereof.

18.2. Section 53(Transit of certain goods without payment of duty) is substituted so as to enable the Board to frame regulations for allowing transit of certain goods and conveyance without payment of duty.

18.3. Sections 57 (Appointing of public warehouses) and 58 (Licensing of private warehouses) are being substituted to provide for licensing by the Principal Commissioner or Commissioner, in place of Deputy/Assistant Commissioner, subject to such conditions as may be prescribed.

18.4. New section 58A is being inserted to provide for a new class of warehouses which require continued physical control and will be licensed for storing goods, as may be specified.

18.5. New section 58B is being inserted so as to regulate the process of cancellation of licences which is a necessary concomitant of licencing.

18.6. The existing section 59 governing warehousing bonds submitted by importers availing duty deferred warehousing is being substituted so as to fix the bond amount at thrice the duty involved and to furnish security as prescribed.

18.7. The existing section 60 (Permission for deposit of goods in a warehouse) is being substituted to define the date of removal of goods from a customs station and deposit thereof in a warehouse.

18.8. The existing section 61 (Period for which goods may remain warehoused) is being substituted to extend the period of warehousing to all goods used by Export Oriented Undertakings, Units under Electronic Hardware Technology Parks, Software Technology Parks, Ship Building Yards and other units manufacturing under bond; empower Principal Commissioners and Commissioners to extend the warehousing period upto one year at a time.

18.9. The existing section 64 relating to owner's rights to deal with warehoused goods is being substituted so as to rationalize the facilities and rights extended under the section.

19. Omission of various Sections of the Customs Act

19.1. The Finance Bill, 2016 seeks to omit the following Sections:

- Subsection (45) of Section 2 which defines "warehousing station" is being omitted.
- Section 9 relating to power to declare places to be warehousing stations.
- Section 62 relating to physical control over warehoused goods is being omitted since the conditions for licensing different categories of warehouses and exercising control over the same are being provided under sections 57, 58 and 58A.
- Section 63 relating to payment of rent and warehouse charges is being omitted in view of the privatization of services, and free market determination of rates, including those by facilities in the public sector.

20. Insertion of new Section in the Customs Act

20.1. The Bill seeks to insert a new section 73A in the Customs Act. Sub-section (2) of the proposed section 73A seeks to empower the Board to make regulations to provide for the responsibilities of the person who has been granted licence under section 57 or section 58 or section 58A, who has the custody of the warehoused goods.

20.2. Sub-clause (c) in subsection (2) of section 156 of the Customs Act is proposed to be inserted so as to empower the Central Government to make rules to provide for the due date and the manner of making deferred payment of customs duties, taxes, cess or any other charges.

21. Retrospective Amendment:

21.1. To amend various notifications pertaining to Advance Licence and Duty Free Import Authorization Schemes retrospectively, to correct the reference to "section 8" in such notifications to "section 8B" so as to clearly provide that exemption from safeguard duty under section 8B of the Customs Tariff Act, 1975 was/is available under these notifications on imports under Advance Licence and Duty Free Import Authorization Schemes.

Key Features of Budget 2016-2017

1. INTRODUCTION

- Growth of Economy accelerated to 7.6% in 2015-16.
- Robust growth achieved despite very unfavourable global conditions and two consecutive years shortfall in monsoon by 13%
- Foreign exchange reserves touched highest ever level of about 350 billion US dollars.

2. CHALLENGES IN 2016-17

- Risks of further global slowdown and turbulence.
- Additional fiscal burden due to 7th Central Pay Commission recommendations and OROP.

3. ROADMAP & PRIORITIES

- Focus on enhancing expenditure in priority areas of - farm and rural sector, social sector, infrastructure sector employment generation and recapitalisation of the banks.
- Focus on Vulnerable sections through:
  - Pradhan Mantri Fasal Bima Yojana
  - New health insurance scheme to protect against hospitalisation expenditure
  - facility of cooking gas connection for BPL families
- Continue with the ongoing reform programme and ensure passage of the Goods and Service Tax bill and Insolvency and Bankruptcy law

4. AGRICULTURE AND FARMERS' WELFARE

- Allocation for Agriculture and Farmers' welfare is 35,984 crore
- 'Pradhan Mantri Krishi Sinchai Yojana' to be implemented in mission mode. 28.5 lakh hectares will be brought under irrigation.
- Implementation of 89 irrigation projects under AIBP, which are languishing for a long time, will be fast tracked
- Programme for sustainable management of ground water resources with an estimated cost of 6,000 crore will be implemented through multilateral funding
- 5 lakh farm ponds and dug wells in rain fed areas and 10 lakh compost pits for production of organic manure will be taken up under MGNREGA
- 2,000 model retail outlets of Fertilizer companies will be provided with soil and seed testing facilities during the next three years
- To reduce the burden of loan repayment on farmers, a provision of 15,000 crore has been made in the BE 2016-17 towards interest subvention
- Allocation under Prime Minister Fasal Bima Yojana 5,500 crore.
- 850 crore for four dairying projects - 'Pashudhan Sanjivani', 'Nakul Swasthya Patra', 'E-Pashudhan Haat' and National Genomic Centre for indigenous breeds

5. RURAL SECTOR

- Allocation for rural sector - 87,765 crore.
- 2.87 lakh crore will be given as Grant in Aid to Gram Panchayats and Municipalities as per the recommendations of the 14th Finance Commission
- 100% village electrification by 1st May, 2018.
- A new Digital Literacy Mission Scheme for rural India to cover around 6 crore additional household within the next 3 years.
- National Land Record Modernisation Programme has been revamped.
- New scheme Rashtriya Gram Swaraj Abhiyan proposed with allocation of 655 crore.

6. SOCIAL SECTOR INCLUDING HEALTH CARE

- Allocation for social sector including education and health care - 1,51,581 crore.
- 2,000 crore allocated for initial cost of providing LPG connections to BPL families.
- New health protection scheme will provide health cover up to One lakh per family. For senior citizens an additional top-up package up to 30,000 will be provided.
- 3,000 Stores under Prime Minister's Jan Aushadhi Yojana will be opened during 2016-17.
- "Stand Up India Scheme" to facilitate at least two projects per bank branch. This will benefit at least 2.5 lakh entrepreneurs.
- National Scheduled Caste and Scheduled Tribe Hub to be set up in partnership with industry associations
- Allocation of 100 crore each for celebrating the Birth Centenary of Pandit Deen Dayal Upadhyay and the 350th Birth Anniversary of Guru Gobind Singh.

7. EDUCATION, SKILLS AND JOB CREATION

- 62 new Navodaya Vidyalayas will be opened
- Sarva Shiksha Abhiyan to increasing focus on quality of education
- Regulatory architecture to be provided to ten public and ten private institutions to emerge as world-class Teaching and Research Institutions

- Higher Education Financing Agency to be set-up with initial capital base of 1000 Crores
- Digital Depository for School Leaving Certificates, College Degrees, Academic Awards and Mark sheets to be set-up.

8. JOB CREATION

- GoI will pay contribution of 8.33% for of all new employees enrolling in EPFO for the first three years of their employment. Budget provision of 1000 crore for this scheme
- Deduction under Section 80JJAA of the Income Tax Act will be available to all assesses who are subject to statutory audit under the Act
- 100 Model Career Centres to operational by the end of 2016-17 under National Career Service.
- Model Shops and Establishments Bill to be circulated to States

9. INFRASTRUCTURE AND INVESTMENT

- Total investment in the road sector, including PMGSY allocation, would be 97,000 crore during 2016-17.
- India's highest ever kilometres of new highways were awarded in 2015. To approve nearly 10,000 kms of National Highways in 2016-17.
- Amendments to be made in Motor Vehicles Act to open up the road transport sector in the passenger segment
- Action plan for revival of unserved and underserved airports to be drawn up in partnership with State Governments.
- Steps to re-vitalise PPPs:
  - Public Utility (Resolution of Disputes) Bill will be introduced during 2016-17
  - Guidelines for renegotiation of PPP Concession Agreements will be issued
  - New credit rating system for infrastructure projects to be introduced
- Reforms in FDI policy in the areas of Insurance and Pension, Asset Reconstruction Companies, Stock Exchanges.
- 100% FDI to be allowed through FIPB route in marketing of food products produced and manufactured in India.

10. FINANCIAL SECTOR REFORMS

- A Statutory basis for a Monetary Policy framework and a Monetary Policy Committee through the Finance Bill 2016.
- New derivative products will be developed by SEBI in the Commodity Derivatives market.
- Amendments in the SARFAESI Act 2002 to enable the sponsor of an ARC to hold up to 100% stake in the ARC and permit non institutional investors to invest in Securitization Receipts.
- Allocation of 25,000 crore towards recapitalisation of Public Sector Banks.
- Target of amount sanctioned under Pradhan Mantri Mudra Yojana increased to 1,80,000 crore.
- General Insurance Companies owned by the Government to be listed in the stock exchanges.

11. GOVERNANCE AND EASE OF DOING BUSINESS

- Automation facilities will be provided in 3 lakh fair price shops by March 2017.
- Amendments in Companies Act to improve enabling environment for start-ups.
- Price Stabilisation Fund with a corpus of 900 crore to help maintain stable prices of Pulses.

12. FISCAL DISCIPLINE

- Fiscal deficit in RE 2015-16 and BE 2016-17 retained at 3.9% and 3.5%.
- Revenue Deficit target from 2.8% to 2.5% in RE 2015-16
- Special emphasis to sectors such as agriculture, irrigation, social sector including health, women and child development, welfare of Scheduled Castes and Scheduled Tribes, minorities, infrastructure.

13. RELIEF TO SMALL TAX PAYERS

- Raise the ceiling of tax rebate under section 87A from 2000 to 5000 to lessen tax burden on individuals with income upto 5 laks.
- Increase the limit of deduction of rent paid under section 80GG from 24000 per annum to 60000, to provide relief to those who live in rented houses.

14. BOOST EMPLOYMENT AND GROWTH

- Increase the turnover limit under Presumptive taxation scheme under section 44AD of the Income Tax Act to 2 crores to bring big relief to a large number of assessees in the MSME category.
- Extend the presumptive taxation scheme with profit deemed to be 50%, to professionals with gross receipts up to 50 lakh.
- Phasing out deduction under Income Tax:
  - Accelerated depreciation wherever provided in IT Act will be limited to maximum 40% from 1.4.2017
  - Benefit of deductions for Research would be limited to 150% from 1.4.2017 and 100% from 1.4.2020
  - Benefit of section 10AA to new SEZ units will be available to those units which commence activity before 31.3.2020.
  - The weighted deduction under section 35CCD for skill development will continue up to 1.4.2020

- Corporate Tax rate proposals:
  - New manufacturing companies incorporated on or after 1.3.2016 to be given an option to be taxed at 25% + surcharge and cess provided they do not claim profit linked or investment linked deductions and do not avail of investment allowance and accelerated depreciation.
  - Lower the corporate tax rate for the next financial year for relatively small enterprises i.e companies with turnover not exceeding 5 crore (in the financial year ending March 2015), to 29% plus surcharge and cess.
- 100% deduction of profits for 3 out of 5 years for startups setup during April, 2016 to March, 2019. MAT will apply in such cases.
- 10% rate of tax on income from worldwide exploitation of patents developed and registered in India by a resident.
- Complete pass through of income-tax to securitization trusts including trusts of ARCs. Securitisation trusts required to deduct tax at source.
- Period for getting benefit of long term capital gain regime in case of unlisted companies is proposed to be reduced from three to two years.
- Non-banking financial companies shall be eligible for deduction to the extent of 5% of its income in respect of provision for bad and doubtful debts.
- Determination of residency of foreign company on the basis of Place of Effective Management (POEM) is proposed to be deferred by one year.
- Commitment to implement General Anti Avoidance Rules (GAAR) from 1.4.2017.
- Exemption of service tax on services provided under Deen Dayal Upadhyay Grameen Kaushalya Yojana and services provided by Assessing Bodies empanelled by Ministry of Skill Development & Entrepreneurship.
- Exemption of Service tax on general insurance services provided under 'Niramaya' Health Insurance Scheme launched by National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability.
- Basic custom and excise duty on refrigerated containers reduced to 5% and 6%.

15. MOVING TOWARDS A PENSIONED SOCIETY

- Withdrawal up to 40% of the corpus at the time of retirement to be tax exempt in the case of National Pension Scheme (NPS). Annuity fund which goes to legal heir will not be taxable.
- In case of superannuation funds and recognized provident funds, including EPF, the same norm of 40% of corpus to be tax free will apply in respect of corpus created out of contributions made on or from 1.4.2016.
- Limit for contribution of employer in recognized Provident and Superannuation Fund of 1.5 lakh per annum for taking tax benefit. Exemption from service tax for Annuity services provided by NPS and Services provided by EPFO to employees.
- Reduce service tax on Single premium Annuity (Insurance) Policies from 3.5% to 1.4% of the premium paid in certain cases.

16. PROMOTING AFFORDABLE HOUSING

- 100% deduction for profits to an undertaking in housing project for flats upto 30 sq. metres in four metro cities and 60 sq. metres in other cities, approved during June 2016 to March 2019 and completed in three years. MAT to apply.
- Deduction for additional interest of 50,000 per annum for loans up to 35 lakh sanctioned in 2016-17 for first time home buyers, where house cost does not exceed 50 lakh.
- Distribution made out of income of SPV to the REITs and INVITs having specified shareholding will not be subjected to Dividend Distribution Tax, in respect of dividend distributed after the specified date.
- Exemption from service tax on construction of affordable houses up to 60 square metres under any scheme of the Central or State Government including PPP Schemes.
- Extend excise duty exemption, presently available to Concrete Mix manufactured at site for use in construction work to Ready Mix Concrete.

17. RESOURCE MOBILIZATION FOR AGRICULTURE, RURAL ECONOMY AND CLEAN ENVIRONMENT

- Additional tax at the rate of 10% of gross amount of dividend will be payable by the recipients receiving dividend in excess of 10 lakh per annum.
- Surcharge to be raised from 12% to 15% on persons, other than companies, firms and cooperative societies having income above 1 crore.
- Tax to be deducted at source at the rate of 1 % on purchase of luxury cars exceeding value of ten lakh and purchase of goods and services in cash exceeding two lakh.
- Securities Transaction tax in case of 'Options' is proposed to be increased from .017% to .05%.
- Equalization levy of 6% of gross amount for payment made to non-residents exceeding 1 lakh a year in case of B2B transactions.
- Krishi Kalyan Cess, @ 0.5% on all taxable services, w.e.f. 1 June 2016. Proceeds would be exclusively used for financing initiatives for improvement of agriculture and welfare of farmers. Input tax credit of this cess will be available for payment of this cess.

- Infrastructure cess, of 1% on small petrol, LPG, CNG cars, 2.5% on diesel cars of certain capacity and 4% on other higher engine capacity vehicles and SUVs. No credit of this cess will be available nor credit of any other tax or duty be utilized for paying this cess.
- Excise duty of '1% without input tax credit or 12.5% with input tax credit' on articles of jewellery [excluding silver jewellery, other than studded with diamonds and some other precious stones], with a higher exemption and eligibility limits of 6 crores and 12 crores respectively.
- Excise on readymade garments with retail price of 1000 or more raised to 2% without input tax credit or 12.5% with input tax credit.
- 'Clean Energy Cess' levied on coal, lignite and peat renamed to 'Clean Environment Cess' and rate increased from 200 per tonne to 400 per tonne.
- Excise duties on various tobacco products other than beedi raised by about 10 to 15%.
- Assignment of right to use the spectrum and its transfers has been deducted as a service leviable to service tax and not sale of intangible goods.

18. PROVIDING CERTAINITY IN TAXATION

- Committed to providing a stable and predictable taxation regime and reduce black money.
- Domestic taxpayers can declare undisclosed income or such income represented in the form of any asset by paying tax at 30%, and surcharge at 7.5% and penalty at 7.5%, which is a total of 45% of the undisclosed income. Declarants will have immunity from prosecution.
- Surcharge levied at 7.5% of undisclosed income will be called Krishi Kalyan surcharge to be used for agriculture and rural economy.
- New Dispute Resolution Scheme to be introduced. No penalty in respect of cases with disputed tax up to 10 lakh. Cases with disputed tax exceeding 10 lakh to be subjected to 25% of the minimum of the imposable penalty. Any pending appeal against a penalty order can also be settled by paying 25% of the minimum of the imposable penalty and tax interest on quantum addition.
- High Level Committee chaired by Revenue Secretary to oversee fresh cases where assessing officer applies the retrospective amendment.
- One-time scheme of Dispute Resolution for ongoing cases under retrospective amendment.
- Penalty rates to be 50% of tax in case of underreporting of income and 200% of tax where there is misreporting of facts.
- Disallowance will be limited to 1% of the average monthly value of investments yielding exempt income, but not exceeding the actual expenditure claimed under rule 8D of Section 14A of Income Tax Act.
- Time limit of one year for disposing petitions of the tax payers seeking waiver of interest and penalty.
- Mandatory for the assessing officer to grant stay of demand once the assesse pays 15% of the disputed demand, while the appeal is pending before Commissioner of Income-tax (Appeals).
- Monetary limit for deciding an appeal by a single member Bench of ITAT enhanced from 15 lakhs to 50 lakhs.
- 11 new benches of Customs, Excise and Service Tax Appellate Tribunal (CESTAT).

19. SIMPLIFICATION AND RATIONALIZATION OF TAXES

- 13 cesses, levied by various Ministries in which revenue collection is less than 50 crore in a year to be abolished.
- For non-residents providing alternative documents to PAN card, higher TDS not to apply.
- Revision of return extended to Central Excise assesses.
- Additional options to banking companies and financial institutions, including NBFCs, for reversal of input tax credits with respect to non-taxable services.
- Customs Act to provide for deferred payment of customs duties for importers and exporters with proven track record.
- Customs Single Window Project to be implemented at major ports and airports starting from beginning of next financial year.
- Increase in free baggage allowance for international passengers. Filing of baggage only for those carrying dutiable goods.

20. TECHNOLOGY FOR ACCOUNTABILITY

- Expansion in the scope of e-assessments to all assessees in 7 mega cities in the coming years.
- Interest at the rate of 9% p.a against normal rate of 6% p.a for delay in giving effect to Appellate order beyond ninety days.
- 'e-Sahyog' to be expanded to reduce compliance cost, especially for small taxpayers.

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