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Dated, the 26th of December, 2018

EXPLANATORY NOTES
TO
THE PROVISIONS OF
THE FINANCE ACT, 2018

CIRCULAR
INCOME-TAX ACT

Finance Act, 2018 – Explanatory Notes to the Provisions of the Finance Act, 2018

CIRCULAR NO. /2018, DATED THE 26th OF DECEMBER, 2018

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1. Introduction

1.1 The Finance Act, 2018 (hereafter referred to as 'the Act') as passed by the Parliament, received the assent of the President on the 29th day of March, 2018 and has been enacted as Act No. 13 of 2018. This circular explains the substance of the provisions of the Act relating to direct taxes.

2. Changes made by the Act

2.1 The Act has-

- (i) specified the rates of income-tax for the assessment year 2019-20 and the rates of income-tax on the basis of which tax has to be deducted at source and advance tax has to be paid during financial year 2018-19;
- (ii) amended sections 2, 9, 10, 11, 16, 17, 28, 36, 40A, 43, 43CA, 44AE, 47, 48, 49, 50C, 54EC, 55, 56, 79, 80AC, 80D, 80DDB, 80IAC, 80JJAA, 80TTA, 115AD, 115BA, 115BBE, 115JB, 115JC, 115JF, 115-O, 115Q, 115R, 115T, 139A, 140, 143, 145A, 193, 194A, 245-O, 245Q, 253, 271FA, 276CC, 286 of the Income-tax Act, 1961 ('the Income-tax Act');
- (iii) inserted new sections 43AA, 43CB, 80PA, 80TTB, 112A, 145B in the Income-tax Act;

- (iv) amended section 97 of the Finance (No.2) Act, 2004;
- (v) amended sections 116, 117, 118, 128 of the Finance Act, 2013;
- (vi) amended sections 46, 55 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

3. Rate structure

3.1 Rates of income-tax in respect of income liable to tax for the assessment year 2018-19.

3.1.1 In respect of income of all categories of assessee liable to tax for the assessment year 2018-19, the rates of income-tax have been specified in Part I of the First Schedule to the Act. These are the same as those laid down in Part III of the First Schedule to the Finance Act, 2017 for the purposes of computation of "advance tax", deduction of tax at source from "Salaries" and charging of tax payable in certain cases during the financial year 2017-18.

The main features of the rates specified in the said Part I are as follows:

3.1.2 Individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person.

Paragraph A of Part I of the First Schedule specifies the rates of income-tax in the case of every individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person (other than a co-operative society, firm, local authority and company) as under:-

Income chargeable to tax	Rate of income- tax		
	Individual (other than senior and very senior citizen), HUF, association of persons, body of individuals and artificial juridical person.	Individual, resident in India who is of the age of sixty years or more but less than eighty years. (senior citizen)	Individual, resident in India who is of the age of eighty years or more (very senior citizen)
Up to Rs. 2,50,000	Nil		
Rs. 2,50,001 - Rs. 3,00,000	5%	Nil	Nil
Rs. 3,00,001 - Rs. 5,00,000		5%	
Rs. 5,00,001 - Rs. 10,00,000	20%	20%	20%
Exceeding Rs. 10,00,000	30%	30%	30%

The amount of income-tax so computed shall be increased by a surcharge at the rate of ten per cent of such income-tax in case of a person having a total income exceeding fifty lakh rupees but not exceeding one crore rupees, and fifteen per cent of such income-tax in case of a person having a total income exceeding one crore rupees.

However, marginal relief shall be available so the total amount payable as income-tax and surcharge on total income,—

(i) exceeding fifty lakh rupees but not exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of fifty lakh rupees by more than the amount of income that exceeds fifty lakh rupees;

(ii) exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.1.3 Co-operative Societies.

In the case of every co-operative society, the rates of income-tax have been specified in Paragraph B of Part I of the First Schedule to the Act. The rates are as follows:-

Income chargeable to tax	Rate
Up to Rs. 10,000	10%
Rs. 10,001 – Rs. 20,000	20%
Exceeding Rs. 20,000	30%

The amount of income-tax so computed shall be increased by a surcharge at the rate of twelve per cent of such income-tax in case of a co-operative society having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.1.4 Firms.

In the case of every firm, the rate of income-tax of thirty per cent has been specified in Paragraph C of Part I of the First Schedule to the Act.

The amount of income-tax so computed shall be increased by a surcharge at the rate of twelve per cent of such income-tax in case of a firm having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.1.5 Local Authorities.

In the case of every local authority, the rate of income-tax has been specified at thirty per cent in Paragraph D of Part I of the First Schedule to the Act.

The amount of income-tax so computed shall be increased by a surcharge at the rate of twelve per cent of such income-tax in case of a local authority having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.1.6 Companies.

In the case of a company, the rate of income-tax has been specified in Paragraph E of Part I of the First Schedule to the Act.

In case of a domestic company, the rate of income-tax is--

- a) twenty five per cent of the total income, if the total turnover or gross receipts of the company in the previous year 2015-16 does not exceed fifty crore rupees;

- b) twenty-five per cent of the total income at the option of the company, if it satisfies the conditions contained under section 115BA of the Income-tax Act;
- c) thirty per cent of the total income, in all other cases.

The tax computed shall be enhanced by a surcharge of seven per cent where such domestic company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of twelve per cent shall be levied if the total income of the company exceeds ten crore rupees.

In the case of a company other than a domestic company, royalties received from Government or an Indian concern under an approved agreement made after 31.03.1961 but before 01.04.1976, shall be taxed at fifty per cent. Similarly, fees for technical services received by such company from Government or an Indian concern under an approved agreement made after 29.02.1964, but before 01.04.1976, shall be taxed at fifty per cent. On the balance of the total income of such company, the tax rate shall be forty per cent. The tax computed shall be enhanced by a surcharge of two per cent where such company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of five per cent shall be levied if the total income of the company other than domestic company exceeds ten crore rupees.

However, marginal relief shall be allowed in the case of every company to ensure that,-

- (i) the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees;
- (ii) the total amount payable as income-tax and surcharge on total income exceeding ten crore rupees shall not exceed the total amount payable as income-tax and surcharge on a total income of ten crore rupees, by more than the amount of income that exceeds ten crore rupees.

Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed, inclusive of surcharge in the case of every company. Also, such amount of tax and surcharge shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of the amount of tax computed, inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.2 Rates for deduction of income-tax at source from certain incomes during the financial year 2018-19.

3.2.1 In every case in which tax is to be deducted at the rates in force under the provisions of sections 193, 194, 194A, 194B, 194BB, 194D, 194LBA, 194LBB, 194LBC and 195 of the Income-tax Act, the rates for deduction of income-tax at source during the financial year 2018-19 have been specified in Part II of the First Schedule to the Act. The rates for deduction of income-tax at source during the financial year 2018-19 will continue to be the same as those specified in Part II of the First Schedule to the Finance Act, 2017. However, in case of a non-resident, not

being a company, or a foreign company, tax shall be deducted at source at the rate of ten per cent on income by way of long-term capital gain referred to in section 112A of the Income-tax Act.

3.2.2 Surcharge.

The tax deducted at source in the following cases shall be increased by a surcharge, as specified below, for purposes of the Union:

(i) In case of an individual, Hindu undivided family, association of person, body of individual or artificial juridical person, where the income or aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds—

(a) fifty lakh rupees but does not exceed one crore rupees, the rate of surcharge is ten per cent of such income-tax;

(b) one crore rupees, the rate of surcharge is fifteen per cent of such income-tax.

(ii) In case of a firm or cooperative society, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees, the rate of surcharge is twelve per cent of such income-tax.

(iii) In case of payments made to foreign companies, the rate of surcharge is two per cent of such income-tax where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees but does not exceed ten crore rupees. In case where such income or the aggregate of such incomes paid or likely to be paid to a foreign company and subject to the deduction exceeds ten crore rupees, the rate of surcharge is five per cent.

(iv) No surcharge on tax deducted at source shall be levied in the case of an individual, Hindu undivided family, association of persons, body of individuals, artificial juridical person, co-operative society, local authority, firm, being a resident or a domestic company.

3.2.3 Health and Education Cess.

“Education Cess on income-tax” and “Secondary and Higher Education Cess on income-tax” shall be discontinued. However, a new cess, by the name of “Health and Education Cess” shall be levied at the rate of four per cent of income-tax including surcharge wherever applicable, in the cases of persons not resident in India including company other than a domestic company. For instance, if the amount of income of a foreign company is Rs. 1,20,00,000/- and tax to be deducted from payment to such foreign company is Rs. 12,00,000/- at the rate of ten per cent, then the surcharge at the rate of two per cent on such tax deducted shall be Rs. 24,000. Health and Education cess on such amount of tax deducted and surcharge (Rs. 12,00,000/- + Rs. 24,000/- = Rs. 12,24,000/-) shall be Rs. 48,960/- (4% of Rs. 12,24,000/-).

3.3 Rates for deduction of income-tax at source from "Salaries", computation of "advance tax" and charging of income-tax in special cases during the financial year 2018-19.

3.3.1 Part III of the First Schedule to the Act specifies the rates for deducting income-tax at source from 'Salaries' and computing advance tax during the financial year 2018-19. These rates are also applicable for charging income-tax during the financial year 2018-19 on current incomes in cases where accelerated assessments have to be made, e.g. provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good during that financial year, assessment of persons who are likely to transfer property to avoid tax, assessment of bodies formed for short duration, etc. The rates are as follows:-

3.3.2 Individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person.

Paragraph A of Part III of the First Schedule specifies the rates of income-tax in the case of every individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person (other than a co-operative society, firm, local authority and company). The basic exemption limits, rates of tax and slabs of income for various categories remain the same as in financial year 2017-18.

The rates of tax during the financial year 2018-19 are as follows:-

Income chargeable to tax	Rate of income- tax		
	Individual (other than senior and very senior citizen), HUF, association of persons, body of individuals and artificial juridical person	Individual, resident in India who is of the age of sixty years or more but less than eighty years (senior citizen)	Individual, resident in India who is of the age of eighty years or more (very senior citizen)
Up to Rs. 2,50,000	Nil	Nil	Nil
Rs. 2,50,001 - Rs. 3,00,000	5%		
Rs. 3,00,001 - Rs. 5,00,000		5%	20%
Rs. 5,00,001 - Rs. 10,00,000	20%	20%	20%
Exceeding Rs. 10,00,000	30%	30%	30%

The amount of income-tax so computed shall be increased by a surcharge at the rate of ten per cent of such income-tax in case of a person having a total income exceeding fifty lakh rupees but not exceeding one crore rupees, and fifteen per cent of such income-tax in case of a person having a total income exceeding one crore rupees. However, marginal relief shall be available so the total amount payable as income-tax and surcharge on total income,-

- (i) exceeding fifty lakh rupees but not exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of fifty lakh rupees by more than the amount of income that exceeds fifty lakh rupees;

(ii) exceeding one crore rupees shall not exceed the total amount payable as income-tax and surcharge on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The amount of income-tax as increased by the applicable surcharge, shall be further increased by an additional surcharge called 'Health and Education Cess' at the rate of four per cent of such income-tax inclusive of surcharge. No marginal relief shall be available in respect of the Health and Education Cess.

3.3.3 Co-operative Societies.

In the case of every co-operative society, the rates of income-tax have been specified in Paragraph B of Part III of the First Schedule to the Act. The rates are as follows:-

Income chargeable to tax	Rate
Up to Rs. 10,000	10%
Rs. 10,001 – Rs. 20,000	20%
Exceeding Rs. 20,000	30%

The amount of income-tax so computed shall continue to be increased by a surcharge at the rate of twelve per cent of such income-tax in case of a co-operative society having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The amount of income-tax as increased by the applicable surcharge, shall be further increased by an additional surcharge called 'Health and Education Cess' at the rate of four per cent of such income-tax inclusive of surcharge. No marginal relief shall be available in respect of the Health and Education Cess.

3.3.4 Firms.

In the case of every firm, the rate of income-tax of thirty per cent has been specified in Paragraph C of Part III of the First Schedule to the Act.

The amount of income-tax so computed shall continue to be increased by a surcharge at the rate of twelve per cent of such income-tax in case of a firm having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The amount of income-tax as increased by the applicable surcharge, shall be further increased by an additional surcharge called 'Health and Education Cess' at the rate of four per cent of such income-tax inclusive of surcharge. No marginal relief shall be available in respect of the Health and Education Cess.

3.3.5 Local Authorities.

In the case of every local authority, the rate of income-tax has been specified at thirty per cent in Paragraph D of Part III of the First Schedule to the Act.

The amount of income-tax so computed shall continue to be increased by a surcharge at the rate of twelve per cent of such income-tax in case of a local authority having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The amount of income-tax as increased by the applicable surcharge, shall be further increased by an additional surcharge called 'Health and Education Cess' at the rate of four per cent of such income-tax inclusive of surcharge. No marginal relief shall be available in respect of the Health and Education Cess.

3.3.6 Companies.

In the case of a company, the rate of income-tax has been specified in Paragraph E of Part III of the First Schedule to the Act.

In case of a domestic company,—

- (a) the rate of income-tax is twenty five per cent of the total income, if the total turnover or gross receipts of the company in the previous year 2016-17 does not exceed two hundred and fifty crore rupees;
- (b) the rate of income-tax is twenty-five per cent of the total income at the option of the company, if it satisfies the conditions contained under section 115BA of the Income-tax Act;
- (c) the rate of income-tax is thirty per cent of the total income, in all other cases.

The tax computed shall continue to be enhanced by a surcharge of seven per cent where such domestic company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of twelve per cent shall be levied if the total income of the company exceeds ten crore rupees.

In the case of a company other than a domestic company, royalties received from Government or an Indian concern under an approved agreement made after 31.03.1961 but before 01.04.1976, shall be taxed at fifty per cent. Similarly, fees for technical services received by such company from Government or Indian concern under an approved agreement made after 29.02.1964 but before 01.04.1976 shall be taxed at fifty per cent. On the balance of the total income of such company, the tax rate shall be forty per cent. The tax computed shall continue to be enhanced by a surcharge of two per cent where such company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of five per cent shall continue to be levied if the total income of such company exceeds ten crore rupees.

However, marginal relief shall be allowed in the case of every company to ensure that,-

(i) the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees;

(ii) the total amount payable as income-tax and surcharge on total income exceeding ten crore rupees shall not exceed the total amount payable as income-tax and surcharge on a total income of ten crore rupees, by more than the amount of income that exceeds ten crore rupees.

The amount of income-tax as increased by the applicable surcharge, shall be further increased by an additional surcharge called 'Health and Education Cess' at the rate of four per cent of such income-tax inclusive of surcharge. No marginal relief shall be available in respect of the Health and Education Cess.

3.4 Surcharge on Additional Income-tax.

Where additional income-tax has to be paid under section 115-O or section 115-QA or sub-section (2) of section 115R or section 115TA or section 115TD of the Income-tax Act, that is to say, on distribution of dividend by domestic companies or distribution of income by a company on buy-back of shares from shareholders or on distribution of income by a mutual fund to its unit holders or on distribution of income by a securitisation trust to its investors or on accreted income of certain trusts and institutions, the additional tax so payable shall be increased by a surcharge of twelve per cent of such income-tax.

4. Widening of scope of Accumulated profits for the purposes of Dividend.

4.1 Section 2 of the Income-tax Act defines various terms used in the said Act. Clause (22) of the said section defines "dividend" to include distribution of accumulated profits (whether capitalized or not) to its shareholders by a company, whether it is in the nature of—

- (a) release of all or any of its assets,
- (b) issue of debentures in any form (with or without interest) or distribution of bonus to its preference shareholders,
- (c) distribution of proceeds on liquidation,
- (d) on the reduction of capital, or
- (e) in the case of an unlisted company, any loan or advance given to a shareholder having shareholding of 10% or above, or to a concern in which such shareholder holds substantial interest (exceeding 20% of shareholding or interest) or any payment by such company on behalf of or for the individual benefit of such shareholder.

4.2 The existing provisions of Explanation 2 to the said clause define the term 'accumulated profits' for the purposes of the said clause, as all profits of the company up to the date of distribution or payment or liquidation, subject to certain conditions.

4.3 Instances have come to light whereby companies are resorting to abusive arrangements in order to escape liability of paying tax on distributed profits. Under such arrangements,

companies with large accumulated profits adopt the amalgamation route to reduce capital and circumvent the provisions of sub-clause (d) of clause (22) of section 2 of the Income-tax Act.

4.4 With a view to prevent such abusive arrangements and similar other abusive arrangements, a new Explanation 2A has been inserted in clause (22) of section 2 of the Income-tax Act to widen the scope of the term 'accumulated profits' so as to provide that in the case of an amalgamated company, accumulated profits, whether capitalised or not, or losses as the case may be, shall be increased by the accumulated profits, whether capitalised or not, of the amalgamating company on the date of amalgamation.

4.5 *Applicability:* This amendment takes effect from 1st April, 2018 and will, accordingly, apply in relation to assessment year 2018-19 and subsequent assessment years.

5. Aligning the scope of "business connection" with modified PE Rule as per Multilateral Instrument (MLI)

5.1 Before amendment by the Act, the provisions of Explanation 2 to clause (i) of sub-section (1) of section 9 of the Income-tax Act specified that "business connection" includes business activities carried on by non-resident through dependent agents. The scope of "business connection" under the Income-tax Act is similar to the provisions relating to Dependent Agent Permanent Establishment (DAPE) in India's Double Taxation Avoidance Agreements (DTAAs). In terms of the DAPE rules in tax treaties, if any person acting on behalf of the non-resident is habitually authorised to conclude contracts for the non-resident, then such agent would constitute a Permanent Establishment (PE) in the source country. However, in many cases, with a view to avoid establishing a PE under paragraph 5 of Article 5 of the DTAA, the person acting on the behalf of the non-resident, negotiates the contract but does not conclude the contract.

5.2 The OECD under BEPS Action Plan 7 reviewed the definition of 'PE' with a view to preventing avoidance of payment of tax by circumventing the existing PE definition by way of *commissionaire* arrangements or fragmentation of business activities. In order to tackle such tax avoidance scheme, the BEPS Action Plan 7 recommended modifications to paragraph 5 of Article 5 to provide that an agent would include not only a person who habitually concludes contracts on behalf of the non-resident, but also a person who habitually plays a principal role leading to the conclusion of contracts.

5.3 Further, with a view to preventing base erosion and profit shifting, the recommendations under BEPS Action Plan 7 have now been included in Article 12 of Multilateral Convention to Implement Tax Treaty Related Measures ('MLI'), to which India is also a signatory. Consequently, these provisions had automatically modified India's bilateral tax treaties covered by MLI, where its treaty partner had also opted for Article 12. As a result, the DAPE provisions in paragraph 5 of Article 5 of India's DTAAs, as modified by MLI, have become wider in scope than the current provisions in Explanation 2 to clause (i) of sub-section (1) of section 9 of the Income-tax Act. However, sub-section (2) of section 90 of the Income-tax Act provides that the provisions of the domestic law would prevail over corresponding provisions in the DTAAs to the extent they are beneficial. Since, in the instant situations, the

provisions of the domestic law being narrower in scope were more beneficial than the provisions in the DTAA, as modified by MLI, such wider provisions in the DTAA were ineffective.

5.4 In view of the above, the provisions of section 9 of the Income-tax Act have been amended so as to align them with the provisions in the DTAA, as modified by MLI, so as to make the provisions in the treaty effective. Accordingly, clause (i) of sub-section (1) of section 9 of the Income-tax Act has been amended to provide that "business connection" shall also include any business activities carried through a person who, acting on behalf of the non-resident, habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by the non-resident. It is further amended that the contracts should be-

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

5.5 *Applicability:* This amendment takes effect from 1st April, 2019 and will, accordingly, apply in relation to assessment year 2019-20 and subsequent assessment years.

6. "Business connection" to include "Significant Economic presence"

"The oranges upon the trees in California are not acquired wealth until they are picked, not even at that stage until they are packed, and not even at that stage until they are transported to the place where demand exists and until they are put where the consumer can use them. These stages, upto the point where wealth reached fruition, may be shared in by different territorial authorities." (excerpts from a report on double taxation submitted to League of Nations in early 1920s)

6.1 Taxation of business profits on the basis of economic allegiance has always been the underlying basis of existing international taxation rules. Economists gave primacy to the economic allegiance rather than physical location and made it clear that physical presence was important only to the extent it represented the economic location.

6.2 Ordinarily, as per the allocation of taxing rules under Article 7 of DTAA, business profit of an enterprise is taxable in the country in which the taxpayer is a resident. If an enterprise carries on its business in another country through a 'Permanent Establishment' situated therein, such other country may also tax the business profits attributable to the 'Permanent Establishment'. For this purpose, 'Permanent Establishment' means a 'fixed place of business' through which the business of an enterprise is wholly or partly carried out provided that the business activities are not of preparatory or auxiliary in nature and such business activities are not carried out by a dependent agent.

6.3 For a long time, nexus based on physical presence was used as a proxy to regular economic allegiance of a non-resident. However, with the advancement in information and communication technology in the last few decades, new business models operating remotely through digital medium have emerged. Under these new business models, the non-resident

enterprises interact with customers in another country without having any physical presence in that country resulting in avoidance of taxation in the source country. Therefore, the existing nexus rules based on physical presence do not hold good anymore for taxation of business profits in source country. As a result, the rights of the source country to tax business profits that are derived from its economy are unfairly and unreasonably eroded.

6.4 OECD under its BEPS Action Plan 1 addressed the tax challenges in a digital economy wherein it has discussed several options to tackle the direct tax challenges arising in digital businesses. One such option is a new nexus rule based on "Significant Economic Presence". As per the Action Plan 1 Report, a non-resident enterprise would create a taxable presence in a country if it has a significant economic presence in that country on the basis of factors that have a purposeful and sustained interaction with the economy by the aid of technology and other automated tools. It further recommended that revenue factor may be used in combination with the aforesaid factors to determine 'significant economic presence'.

6.5 Before amendment by the Act, the scope of existing provisions of clause (i) of sub-section (1) of section 9 of the Income-tax Act was restrictive in nature as it essentially provided for physical presence-based nexus rule for taxation of business income of a non-resident in India. Explanation 2 to the said section, which defines 'business connection', was also narrow in its scope since it applied to certain activities or transactions of non-resident, viz. the activities carried out through a dependent agent. Therefore, emerging business models such as digitized businesses, which do not require physical presence (whether of itself or any agent) in India, were not explicitly covered within the scope of the said section.

6.6 In view of the above, a new Explanation 2A has been inserted in clause (i) of sub-section (1) of section 9 of the Income-tax Act to provide that 'Significant Economic Presence' in India shall also constitute 'business connection' and that "Significant Economic Presence" for this purpose shall mean—

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

(ii) systematic and continuous soliciting of business activities or engaging in interaction with such number of users as maybe prescribed, in India through digital means.

6.7 It is further provided that only so much of income as is attributable to such transactions or activities as specified in (i) or (ii) above shall be deemed to accrue or arise in India. It is also provided that the transactions or activities shall constitute significant economic presence in India, whether or not –

(i) the agreement for such transactions or activities is entered in India;

(ii) the non-resident has a residence or place of business in India; or

(iii) the non-resident renders services in India.

Therefore, if any transactions or activities are carried out by a non-resident in India beyond a threshold as may be prescribed, then such non-resident taxpayer would be liable to tax in India irrespective of its physical presence. In this connection, it is also clarified that unless corresponding modifications to PE rules are made in the DTAAs, the cross border business profits will continue to be taxed as per the existing treaty rules.

6.9 *Applicability:* This amendment takes effect from 1st April, 2019 and will, accordingly, apply in relation to assessment year 2019-20 and subsequent assessment years.

7. Royalty and FTS payment by NTRO to a non-resident to be tax-exempt

7.1 Section 195 of the Income-tax Act requires a person to deduct tax at the time of payment or credit to a non-resident.

7.2 Given the strategic nature and business exigencies of the National Technical Research Organisation (NTRO), a new clause (6D) has been inserted in section 10 of the Income-tax Act so as to provide that the income arising to non-resident, not being a company, or a foreign company, by way of royalty from, or fees for technical services rendered in or outside India to, the NTRO, will be exempt from income tax.

7.3 Consequently, NTRO will not be required to deduct tax at source on such payments.

7.4 *Applicability:* This amendment takes effect from 1st April, 2018 and accordingly applies in relation to assessment year 2018-19 and subsequent assessment years.

8. Extending the benefit of tax-free withdrawal from NPS to non-employee subscribers

8.1 Before amendment by the Act, clause (12A) of section 10 of the Income-tax Act provided that an employee contributing to the pension scheme referred to in section 80CCD of the Income-tax Act (NPS) shall be allowed exemption in respect of 40% of the total amount payable to him on closure of his account or on his opting out. However, this exemption is not available to non-employee subscribers.

8.2 In order to provide a level playing field, clause (12A) of section 10 of the Income-tax Act has been amended to extend the said benefit to all subscribers of NPS.

8.3 *Applicability:* This amendment takes effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

9. Exemption to specified income of class of body, authority, Board, Trust or Commission in certain cases.

9.1 Clause (46) of section 10 of the Income-tax Act empowers the Central Government to exempt, by notification, specified income arising to a body or authority or Board or Trust or Commission, if –

(a) they are not engaged in any commercial activity;

(b) they are established or constituted by or under a Central, State or Provincial Act or constituted by the Central Government or a State Government, with the object of regulating or administering any activity for the benefit of the general public.

9.2 Before amendment by the Act, the Central Government was required to notify each body, authority, Board, Trust or Commission separately even if they belonged to the same class of cases. Consequently, the whole process of approval was considerably delayed.

9.3 Accordingly, clause (46) of section 10 of the Income-tax Act has been amended so as to enable the Central Government to also exempt, by notification, a class of such body or authority or Board or Trust or Commission (by whatever name called).

9.4 *Applicability:* This amendment takes effect from 1st April, 2018.

10. Exemption of income of Foreign Company from sale of leftover stock of crude oil on termination of agreement or arrangement

10.1 Clause (48A) of section 10 of the Income-tax Act provides 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 be exempt, if—

(i) storage and sale is pursuant to an agreement or an arrangement entered into or approved, by the Central Government; and

(ii) having regard to the national interest, the foreign company and the agreement or arrangement are notified by the Central Government.

10.2 Before amendment by the Act, clause (48B) of the said section provided that any income accruing or arising to a foreign company on account of sale of leftover stock of crude oil after the expiry of the agreement or arrangement shall be exempt subject to such conditions as may be notified by the Central Government. However, the benefit of exemption was not available on sale out of the leftover stock of crude in case of termination of the said agreement or arrangement.

10.3 Given the strategic nature of the project benefitting India in augmenting its strategic petroleum reserves, clause (48B) of section 10 of the Income-tax Act has been amended to provide that the benefit of tax exemption in respect of income from leftover stock will be available in cases where the agreement or arrangement is terminated in accordance with the terms mentioned therein.

10.4 *Applicability:* This amendment takes effect from 1st of April, 2019 and will, accordingly, apply in relation to assessment year 2019-20 and subsequent years.

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

11.1 Section 11 of the Income-tax Act provides for exemption in respect of income from property held for charitable or religious purposes, where the person in receipt of the income applies or accumulates such income during the previous year in accordance with the relevant provisions. Similarly, the third proviso to clause (23C) of section 10 of the Income tax Act

provides for exemption in respect of the income of certain persons where such income is applied or accumulated during the previous year for the specified purposes in accordance with the relevant provisions.

11.2 Before amendment by the Act, there were no restrictions on payments made in cash by the said persons. There were also no checks on whether such persons follow the provisions of deduction of tax at source under Chapter XVII-B of the Income-tax Act. Consequently, there was a lack of an audit trail for verification of application of income.

11.3 In order to encourage a less cash economy and to reduce the generation and circulation of black money, a new Explanation 3 has been inserted to sub-section (1) of section 11 of the Income-tax Act so as to provide that for the purposes of determining the application of income under the provisions of sub-section (1) of the said section, the provisions of sub-clause (ia) of clause (a) of section 40, and of sub-sections (3) and (3A) of section 40A of the Income-tax Act, shall, *mutatis mutandis*, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession".

11.4 A proviso has also been inserted to clause (23C) of section 10 of the Income-tax Act so as to provide similar restrictions as above on the persons exempt under sub-clauses (iv), (v), (vi) or (via) of the said clause in respect of application of income.

11.5 *Applicability:* These amendments take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent years.

12. Standard deduction on salary income

12.1 Section 16 of the Income-tax Act *inter alia* provides for certain deductions in computing income chargeable under the head "Salaries".

12.2 In order to provide relief to salaried taxpayers, section 16 of the Income-tax Act has been amended so as to allow a standard deduction up to Rs. 40,000 or the amount of salary received, whichever is less.

12.3 Consequently, section 17 of the Income-tax Act has also been amended to withdraw the exemption in respect of reimbursement of certain medical expenses. Further, the exemption in respect of Transport Allowance (except in case of differently abled persons) under the Income-tax Rules, 1962 has also been withdrawn vide notification no. 17/2018 dated 06.04.2018.

12.4 *Applicability:* These amendments take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

13. Taxability of compensation in connection to business or employment

13.1 Before amendment by the Act, the provisions of section 28 of the Income-tax Act provided that certain types of compensation receipts shall be taxable under the head "Profits and gains of business or profession". However, the scope of this section was restrictive since it did not cover a large segment of compensation receipts in connection with business and employment, leading to base erosion and revenue loss.

13.2 Accordingly, section 28 of the Income-tax Act has been amended to provide that any compensation received or receivable, by any person, whether revenue or capital, in connection with the termination or the modification of the terms and conditions of any contract relating to his business shall also be taxable under the head "Profits and gains of business or profession". Further, section 56 of the Income-tax Act has also been amended to provide that any compensation received or receivable by any person, whether in the nature of revenue or capital, in connection with the termination or the modification of the terms and conditions of any contract relating to his employment shall be taxable under the head "Income from other sources". Consequential amendment has also been made in clause (24) of section 2 of the Income-tax Act.

13.3 *Applicability:* These amendments takes effect from 1st April, 2019 and will, accordingly, apply in relation to assessment year 2019-20 and subsequent assessment years.

14. Rationalisation of provisions relating to conversion of stock-in-trade into Capital Asset

14.1 Section 45 of the Income-tax Act provides *inter alia* that capital gains arising from the conversion of capital asset into stock-in-trade shall be chargeable to tax. However, before amendment by the Act, the law did not provide for taxability in cases where the stock-in-trade is converted into, or treated as, capital asset.

14.2 In order to provide symmetrical treatment and discourage the practice of deferring tax payment by converting the inventory into capital asset, section 28 of the Income-tax Act has been amended to provide that any profits or gains arising from conversion of inventory into capital asset or its treatment as capital asset shall be charged to tax as income under the head "Profits and gains from business or profession". It is also provided that the fair market value of the inventory on the date of conversion or treatment, determined in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of such conversion or treatment.

14.3 Consequentially, the following amendments have been made in the provisions of the Income-tax Act—

- (i) clause (24) of section 2 has been amended to include said fair market value in the definition of "income";
- (ii) clause (42A) of section 2 has been amended to provide that the period of holding of such capital asset shall be reckoned from the date of conversion or treatment;
- (iii) section 43 has been amended to provide that where the converted capital asset is used for the business or profession of the assessee, the said fair market value shall deemed as its actual cost;
- (iv) section 49 has been amended to provide that for the purposes of computation of capital gains arising on transfer of such capital assets, the said fair market value shall be deemed as its cost of acquisition.

14.4 *Applicability:* These amendments take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

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

15.1 Clause (5) of section 43 of the Income-tax Act defines "speculative transaction". Clause (e) of the proviso to clause (5) of section 43 of the Income-tax Act, however, stipulates that an eligible transaction in commodity derivatives carried out in a recognised association, which is chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013 (17 of 2013), is a non-speculative transaction.

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

15.3 In order to encourage participation in trading of agricultural commodity derivatives, a new proviso has been inserted to clause (5) of section 43 of the Income-tax Act to provide that a transaction in respect of trading of agricultural commodity derivatives, which is not chargeable to CTT, in a registered association or registered stock exchange, shall be treated as non-speculative transaction.

15.4 *Applicability:* This amendment takes effect from 1st April, 2019 and will, accordingly, apply in relation to assessment year 2019-20 and subsequent assessment years.

16. Rationalization of section 43CA, section 50C and section 56

16.1 Before amendment by the Act, for computing income from business profits (section 43CA), capital gains (section 50C) and other sources (section 56) arising out of transactions in immovable property, the higher of sale consideration or stamp duty value was adopted. The difference was taxed as income both in the hands of the purchaser and the seller.

16.2 It has been pointed out that the variation between stamp duty value and actual consideration received can occur in respect of similar properties in the same area because of a variety of factors, including shape of the plot or location.

16.3 In order to minimize hardship in case of genuine transactions in the real estate sector, section 43CA, section 50C and section 56 of the Income-tax Act have been amended to provide that no adjustments shall be made in a case where the variation between stamp duty value and the sale consideration is not more than five per cent of the sale consideration.

16.4 *Applicability:* These amendments take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

17. Presumptive income under section 44AE in case of goods carriage

17.1 Section 44AE of the Income-tax Act provides that in respect of an assessee who owns not more than ten goods carriages at any time during the previous year and who is engaged in the business of plying, hiring or leasing such goods carriages, the income of such business chargeable to tax under the head "Profits and gains of business or profession" shall be deemed to be the aggregate of the profits and gains from all the goods carriages owned by him in the previous year, computed in accordance with the provisions of the said section.

17.2 Before amendment by the Act, sub-section (2) of the said section provided that the profits and gains shall be deemed to be an amount equal to seven thousand five hundred rupees per month or part of a month for each goods carriage or the amount claimed to be actually earned by the assessee, whichever is higher.

17.3 The presumptive income scheme under section 44AE of the Income-tax Act is applicable uniformly to all classes of goods carriages irrespective of their tonnage capacity. The only condition which needs to be fulfilled is that the assessee should not have owned more than 10 goods carriages at any time during the previous year. Accordingly, a transporter who owns large capacity/size goods carriages can also avail the benefit of section 44AE so long as he owns less than 10 goods carriages. It is necessary to mention here that the legislative intent of introducing this provision was to give benefit to small transporters in order to reduce their compliance burden. However, in this case, it is evident that even though the profit margins of large capacity goods carriages are higher than small capacity goods carriages, the tax consequences were similar which was against the principle of tax equity.

17.4 In view of the above, section 44AE of the Income-tax Act has been amended to provide that in the case of heavy goods vehicle (more than 12MT gross vehicle weight), the profits and gains under this section would be deemed to be an amount equal to one thousand rupees per ton of gross vehicle weight or unladen weight, as the case may be, for every month or part of a month for each goods vehicle or the amount claimed to be actually earned by the assessee, whichever is higher. The vehicles other than heavy goods vehicle will continue to be taxed as per the existing rates.

17.5 Consequently, the Explanation to the said section has also been amended to define the expressions 'gross vehicle weight', 'unladen weight' and 'heavy goods vehicle'.

17.6 *Applicability:* These amendments take effect 1st April, 2019 and will, accordingly, apply in relation to assessment year 2019-20 and subsequent assessment years.

18. Measures to promote International Financial Services Centre (IFSC)

18.1 Section 47 of the Income-tax Act provides for tax neutrality relating to certain transfers.

18.2 In order to promote the development of world class financial infrastructure in India, the aforesaid section has been amended so as to provide that transactions in the following assets, undertaken by a non-resident on a recognised stock exchange located in any International Financial Services Centre, shall not be regarded as transfer, if the consideration is paid or payable in foreign currency:—

- (i) bond or Global Depository Receipt, as referred to in sub-section (1) of section 115AC of the Income-tax Act; or
- (ii) rupee denominated bond of an Indian company; or
- (iii) derivative.

18.3 Before amendment by the Act, section 115JC of the Income-tax Act provided for alternate minimum tax at the rate of 18.5% of adjusted total income in the case of all non-corporate persons.

18.4 In order to promote the development of world class financial infrastructure in India, section 115JC of the Income-tax Act has also been amended to provide that in case of a unit located in an International Financial Service Centre, the alternate minimum tax under section 115JC shall be charged at the rate of 9%.

18.5 Consequential amendment has also been made to section 115JF of the Income-tax Act.

18.6 *Applicability:* These amendments take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

19. Rationalization of the provisions of section 54EC

19.1 Section 54EC of the Income-tax Act provides that capital gain, arising from the transfer of a long-term capital asset, shall not be charged to tax subject to the said gain being invested in the long-term specified asset at any time within a period of six months after the date of such transfer and to such other conditions as specified in the said section.

19.2 The said section also provides that "long-term specified asset" for making any investment under the section on or after the 1st day of April, 2007 means any bond, redeemable after three years and issued on or after the 1st day of April, 2007 by the National Highways Authority of India or by the Rural Electrification Corporation Limited, or any other bond notified by the Central Government in this behalf.

19.3 In order to rationalise the provisions of section 54EC of the Income-tax Act and to restrict the scope of the section to only capital gains arising from long-term capital assets, being land or building or both, section 54EC has been amended to provide that capital gain arising from the transfer of a long-term capital asset, being land or building or both, invested in the long-term specified asset at any time within a period of six months after the date of such transfer, shall not be charged to tax subject to certain conditions specified in the said section.

19.4 Further, to make available funds at the disposal of eligible bond issuing companies for more than three years, it has also been provided that long-term specified asset, for making any investment under the said section on or after the 1st day of April, 2018, shall mean any bond, redeemable after five years and issued on or after 1st day of April, 2018 by the National Highways Authority of India or by the Rural Electrification Corporation Limited or any other bond notified by the Central Government in this behalf.

19.5 *Applicability:* These amendments take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

20. Tax neutral transfers

20.1 Section 47 of the Income-tax Act provides for certain tax neutral transfers. Clause (x) of sub-section (2) of Section 56 of the Income-tax Act also excludes income arising out of certain tax neutral transfers from its ambit. However, before amendment by the Act, transfers referred to in clause (iv) and clause (v) of section 47 were not excluded from the scope of clause (x) of sub-section (2) of section 56.

20.2 In order to further facilitate the transaction of money or property between a wholly-owned subsidiary company and its holding company, section 56 has been amended to exclude such transfer from the scope of clause (x) of sub-section (2) of section 56.

20.3 *Applicability:* This amendment will take effect, from 1st April, 2018 and shall accordingly, apply in relation to the transaction made on or after 1st April, 2018.

21. Benefit of carry forward and set off of losses for facilitating insolvency resolution

21.1 Section 79 of the Income-tax Act provides *inter alia* that carry forward and set off of losses in a closely held company shall be allowed only if there is a continuity in the beneficial owner of the shares carrying not less than fifty one per cent of the voting power, on the last day of the year or years in which the loss was incurred.

21.2 In general, the case of a company seeking insolvency resolution under the Insolvency and Bankruptcy Code, 2016, involves change in the beneficial owners of shares beyond the permissible limit under section 79. This acts as a hurdle for restructuring and rehabilitation of such companies.

21.3 In order to address this problem, section 79 of the Income-tax Act has been amended and the rigors of the said section have been relaxed in case of such companies, whose resolution plan has been approved under the Insolvency and Bankruptcy Code, 2016 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

21.4 *Applicability:* This amendment takes effect from 1st April, 2018 and will, accordingly, apply in relation to assessment year 2018-19 and subsequent assessment years.

21.5 Section 140 of the Income-tax Act has also been amended so as to provide that during the resolution process of a company under the Insolvency and Bankruptcy Code, 2016, its return shall be verified by an insolvency professional appointed by the Adjudicating Authority under the said Code.

21.6 *Applicability:* This amendment takes effect from 1st April, 2018 and will, accordingly apply to return filed on or after the said date.

22. Deductions in respect of certain incomes not to be allowed unless return is filed by the due date

22.1 Before amendment by the Act, section 80AC of the Income-tax Act provided that no deduction would be admissible under section 80-IA or section 80-IAB or section 80-IB or section 80-IC or section 80-ID or section 80-IE, unless the return of income by the assessee is

furnished on or before the due date specified under sub-section (1) of section 139 of the Income-tax Act. However, this burden was not cast upon the assessee claiming deduction under other similar provisions contained in Chapter VIA of the Income-tax Act under the heading "C.—Deductions in respect of certain incomes".

22.2 In order to ensure timely filing of return by the assessee for claiming deductions under the provisions contained in Chapter VIA of the Income-tax Act under the heading "C.—Deductions in respect of certain incomes", section 80AC has been amended to provide that the benefit of deduction under the entire class of deductions under the heading "C.—Deductions in respect of certain incomes" in Chapter VIA of the Income-tax Act shall not be allowed unless the return of income is filed on or before the due date.

22.3 *Applicability:* This amendment take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.

23. Deductions available to senior citizens in respect of health insurance premium and medical treatment

23.1 Before amendment by the Act, section 80D of the Income-tax Act provided *inter alia* that a deduction up to Rs. 30,000 shall be allowed to an assessee, being an individual or a Hindu undivided family, in respect of payments towards annual premium on health insurance policy, or preventive health check-up, of a senior citizen, or medical expenditure in respect of very senior citizen.

23.2 In order to provide relief to cover the higher cost of medical expenses, section 80D of the Income-tax act has been amended and the monetary limit of the said deduction has been raised to Rs. 50,000 from Rs. 30,000.

23.3 The said section has been further amended to provide that in case of single premium health insurance policies having cover of more than one year, the deduction shall be allowed on proportionate basis for the number of years for which health insurance cover is provided, subject to the specified monetary limit.

23.4 *Applicability:* These amendments take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

24. Enhanced deduction to senior citizens for medical treatment of specified diseases

24.1 Before amendment by the Act, section 80DDB of the Income-tax Act provided for a deduction of up to Rs. 80,000 (in respect of a very senior citizen) and Rs. 60,000 (in respect of a senior citizen) to an individual and Hindu undivided family with regard to amount paid for medical treatment of specified diseases in respect of a very senior citizen or a senior citizen, subject to certain specified conditions.

24.2 In order to provide relief to senior citizens for medical treatment for specified diseases, the provisions of section 80DDB of the Income-tax Act have been amended and this monetary limit of deduction has been raised to Rs. 1,00,000 for both senior citizens and very senior citizens.

24.3 Applicability: This amendment takes effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

25. Measures to promote start-ups

25.1 Before amendment by the Act, section 80-IAC of the Income-tax Act provided that the deduction under this section shall be available to an eligible start-up for three consecutive assessment years out of seven years at the option of the assessee, if—

- (i) it is incorporated on or after the 1st day of April, 2016 but before the 1st day of April, 2019;
- (ii) the total turnover of its business does not exceed twenty-five crore rupees in any of the previous years beginning on or after the 1st day of April, 2016 and ending on the 31st day of March, 2021; and
- (iii) it is engaged in the eligible business which involves innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.

25.2 In order to improve the effectiveness of the scheme for promoting start-ups in India, section 80-IAC of the Income-tax Act has been amended so as to make following changes in the taxation regime for the start-ups:—

- (i) The benefit would also be available to start ups incorporated on or after the 1st day of April 2019 but before the 1st day of April, 2021;
- (ii) The requirement of the turnover not exceeding Rs. 25 Crore shall apply to the previous year relevant to the assessment year for which deduction under section 80-IAC is claimed;
- (iii) The definition of eligible business has been expanded to provide that the benefit would be available if it is engaged in innovation, development or improvement of products or processes or services, or a scalable business model with a high potential of employment generation or wealth creation.

25.3 Applicability: These amendments take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.

26. Incentive for employment generation

26.1 Section 80JJAA of the Income-tax Act provides for deduction of 30 per cent in addition to normal deduction of 100 per cent in respect of emoluments paid to eligible new employees who have been employed for a minimum period of 240 days during the year. However, the minimum period of employment is relaxed to 150 days in the case of apparel industry.

26.2 In order to encourage creation of new employment by assessee engaged in the manufacturing of footwear or leather products, section 80JJAA of the Income-tax Act has been amended to extend the relaxation of 150 days to the footwear and leather products industry.

26.3 Further, the deduction available under section 80JJAA has also been rationalised by allowing the benefit of deduction for a new employee who is employed for less than the minimum period during the first year but continues to remain employed for the minimum period in subsequent year.

26.4 *Applicability:* These amendments take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

27. Deduction in respect of income of Producer Companies

27.1 Section 80P of Income-tax Act provides for 100 per cent deduction in respect of profits and gains of cooperative society which provides assistance to its members engaged in primary agricultural activities.

27.2 A new section 80PA has been inserted in the Income-tax Act to extend similar benefits to Producer Companies, having a total turnover of less than Rs. 100 crore, whose gross total income includes any income from—

- (i) the marketing of agricultural produce grown by its members, or
- (ii) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or
- (iii) the processing of the agricultural produce of its members.

The deduction shall be available for the previous year relevant to the assessment year 2019-2020 to 2024-25.

27.3 *Applicability:* This amendment takes effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

28. Deduction in respect of interest income to senior citizens

28.1 Section 80TTA of the Income-tax Act provides for a deduction of up to Rs. 10,000 in respect of interest income from savings account.

28.2 In order to provide relief to senior citizens, a new section 80TTB has been inserted in the Income-tax Act so as to allow a deduction of up to Rs. 50,000 in respect of interest income from deposits held by senior citizens. Consequentially, it has been provided that deduction under section 80TTA shall not be allowed in these cases.

28.3 *Applicability:* This amendment takes effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

28.4 Consequential amendment has also been made in section 194A of the Income-tax Act so as to raise the threshold for deduction of tax at source on interest income for senior citizens from Rs. 10,000 to Rs. 50,000.

28.5 *Applicability:* This amendment takes effect, from 1st April, 2018.

29. New regime for taxation of long-term capital gains on sale of equity shares etc.

29.1 Before amendment by the Act, long term capital gains arising from transfer of long term capital assets, being equity shares of a company or an unit of equity oriented fund or a unit of a business trust, was exempt from income-tax under clause (38) of section 10 of the Income-tax Act. However, transactions in such long term capital assets carried out on a recognised stock exchange were liable to securities transaction tax (STT).

29.2 Over the years, it was felt that this regime is inherently biased against manufacturing and has encouraged diversion of investment in financial assets. It has also led to significant erosion in the tax base resulting in revenue loss. The problem has been further compounded by abusive use of tax arbitrage opportunities created by these exemptions.

29.3 In order to minimize economic distortions and curb erosion of tax base, the provisions of clause (38) of section 10 of the Income-tax Act have been amended to withdraw the exemption available under the said section and a new section 112A has been inserted in the Income-tax Act to provide that long term capital gains arising from transfer of a long term capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust, shall be taxed at 10 per cent of such capital gains exceeding one lakh rupees. The tax on balance total income shall be computed after reducing the total amount of the said capital gains from the total income.

29.4 This concessional rate of 10 per cent will be applicable to said long term capital gains, if—

- (i) in a case where long term capital asset is in the nature of an equity share in a company, STT has been paid on both acquisition and transfer of such capital asset; and
- (ii) in a case where long term capital asset is in the nature of a unit of an equity oriented fund or a unit of a business trust, STT has been paid on transfer of such capital asset.

29.5 Further, sub-section (4) of section 112A empowers the Central Government to specify by notification the nature of acquisition in respect of which the requirement of payment of STT shall not apply in the case of equity share in a company. Similarly, the requirement of payment of STT shall not apply if the transfer is undertaken on a recognised stock exchange located in any International Financial Services Centre (IFSC) and the consideration of such transfer is received or receivable in foreign currency.

29.6 The provisions of section 112A also provide for the following:—

- (i) The benefit of deduction under chapter VIA shall be allowed from the gross total income as reduced by such capital gains.
- (ii) Similarly, the rebate under section 87A shall be allowed from the income tax on the total income as reduced by tax payable on such capital gains.
- (iii) “equity oriented fund” has been defined to mean a fund set up under a scheme of a mutual fund specified under clause (23D) of section 10 and,—
 - (a) In a case where the fund invests in the units of another fund which is traded on a recognised stock exchange, —

- (I) A minimum of 90 per cent of the total proceeds of such funds is invested in the units of such other fund; and
- (II) such other fund also invests a minimum of 90 per cent of its total proceeds in the equity shares of domestic companies listed on a recognised stock exchange; and
- (b) in any other case, a minimum of 65 per cent of the total proceeds of such fund is invested in the equity shares of domestic companies listed on a recognised stock exchange.

29.7 Consequential amendment has been made to section 48 of the Income-tax Act to provide that the provisions of first and second provisos to section 48, relating to computation of capital gains in foreign currency in case of a non-resident and inflation indexation of cost of acquisition and cost of improvement, shall not be allowed for computation of capital gains referred to in section 112A.

29.8 Consequential amendment has also been made in section 55 of the Income-tax Act to provide that the cost of acquisitions in respect of the long term capital asset, being an equity share in a company, or a unit of an equity oriented mutual fund, or a unit of business trust referred to in section 112A, which has been acquired by the assessee before the 1st day of February, 2018, shall be deemed to be the higher of—

- (a) the cost of acquisition of such asset; and
- (b) the lower of—
 - (I) the fair market value of such asset; and
 - (II) the full value of consideration received or accruing as a result of the transfer of the capital asset.

29.9 It has been further provided that,—

- (a) in a case where the capital asset is listed on any recognised stock exchange as on the 31st day of January, 2018, the fair market value shall be the highest price of the capital asset quoted on such exchange on the said date. However, where there is no trading in such asset on such exchange on the 31st day of January, 2018, the fair market value shall be the highest price of such asset on such exchange on a date immediately preceding the 31st day of January, 2018 when such asset was traded on such exchange ;
- (b) in a case where the capital asset is a unit and is not listed on a recognised stock exchange as on the 31st day of January, 2018, the fair market value shall be the net asset value of such asset on the said date; and
- (c) the fair market value of a capital asset, being an equity share in a company, shall be determined after allowing inflation indexation of its cost of acquisition up to financial year 2017-18 in the following cases:—
 - (i) where the share is not listed on a recognised stock exchange as on the 31st day of January, 2018 but listed on such exchange as on the date of transfer;

- (ii) where the share is listed on a recognised stock exchange on the date of transfer and which became the property of the assessee in consideration of a share which is not listed on such exchange as on the 31st day of January, 2018 by way of transactions not regarded as transfer under section 47 of the Income-tax Act.

29.10 Consequential amendment has also been made in clause (42A) of section 2 of the Income-tax Act so as to define 'equity oriented fund' as the fund referred to in clause (a) of Explanation to section 112A of the Income-tax Act.

29.11 *Applicability:* These amendments take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

29.12 Further, consequential amendment has been made in section 97 of the Finance (No.2) Act, 2004 so as to define 'equity oriented fund' as the fund referred to in clause (a) of Explanation to section 112A of the Income-tax Act.

29.13 *Applicability:* This amendment takes effect from 1st April, 2018.

30. Taxation of long-term capital gains in the case of Foreign Institutional Investor

30.1 The provisions of section 115AD of the Income-tax Act *inter alia* provide that where the total income of a Foreign Institutional Investor (FII) includes income by way of long-term capital gains arising from the transfer of certain securities, such capital gains shall be chargeable to tax at the rate of ten per cent. However, before amendment by the Act, long term capital gains arising from transfer of long term capital asset being equity shares of a company or a unit of an equity oriented fund or a unit of business trusts was exempt from income-tax under clause (38) of section 10 of the Income-tax Act.

30.2 Consequent to the withdrawal of exemption under clause (38) of section 10 of the Act, such long term capital gain shall become taxable in the hands of FIIs also. As in the case of domestic investors, the FIIs shall also be liable to tax on such long term capital gains only in respect of amount of such gains exceeding one lakh rupees. Accordingly, the provisions of section 115AD of the Income-tax Act have been amended.

30.3 *Applicability:* This amendment takes effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

31. Rationalisation of provision of section 115BA relating to certain domestic companies

31.1 Section 115BA of the Income-tax Act provides that the total income of a newly set-up domestic company engaged in business of manufacture or production of any article or thing and research in relation thereto, or distribution of such article or thing manufactured or produced by it, shall, at its option, be taxed at the rate of twenty five per cent subject to conditions specified therein. This benefit is available from assessment year 2017-18.

31.2 However, there are certain incomes which are subject to a scheduler tax at a rate which is lower or higher than twenty five per cent. Consequently tax payers have been subjected to unintended hardship or unwarranted relief.

31.3 Accordingly, section 115BA of the Income-tax Act has been amended so as to clarify that the provisions of section 115BA are restricted to the income from the business of manufacturing, production, research or distribution referred to therein; and incomes which are at present taxed at a scheduler rate will continue to be so taxed.

31.4 *Applicability:* The amendment takes effect retrospectively from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years.

32. Rationalisation of the provisions of section 115BBE

32.1 Section 115BBE of the Income-tax Act provides for tax on income referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D at a higher rate of sixty per cent.

32.2 Before amendment by the Act, sub-section (2) of the said section provided that no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any provision of the Income-tax Act in computing his income referred to in clause (a) of sub-section (1).

32.3 In order to rationalize the provisions of section 115BBE, an amendment has been made in sub-section (2) of section 115BBE so as to also include reference of income referred to in clause (b) of sub-section (1) of section 115BBE in sub-section (2) of the said section.

32.4 *Applicability:* This amendment takes effect retrospectively from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-2018 and subsequent years.

33. Relief from liability of Minimum Alternate Tax (MAT) for certain companies

33.1 Section 115JB of the Income-tax Act provides for levy of a minimum alternate tax (MAT) on the "book profits" of a company. In computing the book profit, it is further provided *inter alia* that a deduction in respect of the amount of loss brought forward or unabsorbed depreciation as per books of account, whichever is less, shall be allowed. Consequently, where the loss brought forward or unabsorbed depreciation is Nil, no deduction is allowed.

33.2 In order to provide relief to companies seeking insolvency resolution, section 115JB of the Income-tax Act has been amended to provide that the aggregate amount of unabsorbed depreciation and loss brought forward (excluding unabsorbed depreciation) shall be allowed to be reduced from the book profit, if a company's application for corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 has been admitted by the Adjudicating Authority.

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

33.4 *Applicability:* This amendment takes effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.

33.5 Further, section 115JB of the Income-tax Act has also been amended to clarify that the provisions of the said section shall not be applicable and shall be deemed never to have been applicable to an assessee, being a foreign company, if its total income comprises solely of profits and gains from business referred to in section 44B or section 44BB or section 44BBA or section 44BBB of the Income-tax Act and such income has been offered to tax at the rates specified in the said sections.

33.6 *Applicability:* This amendment takes effect retrospectively from 1st April, 2001 and will, accordingly, apply in relation to the assessment year 2001-02 and subsequent assessment years.

34. Application of Dividend Distribution Tax to Deemed Dividend

34.1 Dividend distributed by a domestic company is subject to dividend distribution tax payable by such company. However, before amendment by the Act, deemed dividend under sub-clause (e) of clause (22) of section 2 the Income-tax Act was taxed in the hands of the recipient at the applicable marginal rate. The taxability of deemed dividend in the hands of recipient has posed serious problem of the collection of the tax liability and has also been the subject matter of extensive litigation.

34.2 With a view to bringing clarity and certainty in the taxation of deemed dividends, the Explanation to Chapter XII-D of the Income-tax Act, occurring after section 115Q, has been deleted so as to bring deemed dividends also under the scope of dividend distribution tax under section 115-O of the Income-tax Act.

34.3 Further, section 115-O of the Income-tax Act has also been amended to provide that such deemed dividend will be taxed at the rate of thirty per cent (without grossing up) in order to prevent camouflaging dividend in various ways such as loans and advances.

34.4 *Applicability:* This amendment relating to imposition of dividend distribution tax on deemed dividend will apply to transactions referred to in sub-clause (e) of clause (22) of section 2 of the Income-tax Act undertaken on or after 1st April, 2018.

35. Dividend distribution tax on income distributed to unit holders by an equity oriented fund

35.1 Section 115R of the Income-tax Act provides *inter alia* that any amount of income distributed by the specified company or a Mutual Fund to its unit holders shall be chargeable to tax and such specified company or Mutual Fund shall be liable to pay additional income-tax on such distributed income at the rate specified in the section. However, before amendment by the Act, any income distributed to a unit holder of an equity oriented fund was not chargeable to tax under the said section.

35.2 With a view to providing a level playing field between growth oriented funds and dividend paying funds in the wake of new capital gains tax regime for unit holders of equity

oriented funds, the provisions of section 115R of the Income-tax Act have been amended so as to provide that where any income is distributed by a Mutual Fund, being an equity oriented fund, the mutual fund shall be liable to pay additional income tax at the rate of ten per cent on income so distributed.

35.3 Further, section 115T of the Income-tax Act has also been amended to provide that an equity oriented fund shall have the same meaning as assigned to it in the new section 112A of the Income-tax Act.

35.4 *Applicability:* This amendment takes effect from 1st April, 2018 and shall apply to the income distributed by an equity oriented fund to its unit holders on or after 1st April, 2018.

36. Entities to apply for Permanent Account Number in certain cases

36.1 Section 139A of the Income-tax Act provides *inter alia* that every person specified therein and who has not been allotted a permanent account number shall apply to the Assessing Officer for allotment of a Permanent Account Number (PAN).

36.2 In order to use PAN as Unique Entity Number (UEN) for non-individual entities, the provisions of section 139A of the Income-tax Act have been amended so as to provide that every resident, not being an individual, which enters into a financial transaction of an amount aggregating to two lakh and fifty thousand rupees or more in a financial year shall be required to apply to the Assessing Officer for allotment of PAN.

36.3 In order to link the financial transactions with the natural persons, it is further provided that the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer or any person competent to act on behalf of such entities shall also apply to the Assessing Officer for allotment of PAN.

36.4 In order to enable issuance of e-PAN for ease of doing business, it is also provided that requirement of issuing PAN in a laminated card shall no longer be mandatory.

36.5 *Applicability:* This amendment takes effect from 1st April, 2018.

37. Rationalisation of prima-facie adjustments during processing of return of income

37.1 Sub-section (1) of the section 143 of the Income-tax Act provides for processing of return of income made under section 139, or in response to a notice under sub-section (1) of section 142.

37.2 Clause (a) of the said sub-section provides that at the time of processing of return, the total income or loss shall be computed after making the adjustments specified in sub-clauses (i) to (vi) thereof. Sub-clause (vi) of the said clause provides for adjustment in respect of addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return.

37.3 With a view to restrict the scope of adjustments, a proviso has been inserted to the clause (a) to provide that no adjustment under sub-clause (vi) of the said clause shall be made in respect of any return furnished on or after the assessment year commencing on 1st April, 2018.

37.4 *Applicability:* This amendment takes effect from 1st April, 2018.

38. New scheme for scrutiny assessment

38.1 Section 143 of the Income-tax Act provides for the procedure for assessment. Sub-section (3) of the said section empowers the Assessing Officer to make, by an order in writing, an assessment of total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

38.2 With a view to prescribe a new scheme for the purpose of making assessments so as to impart greater transparency and accountability by eliminating the interface between the Assessing Officer and the assessee, for optimal utilization of the resources, and to introduce the concept of team-based assessment, the provisions of section 143 of the Income-tax Act have been amended and new sub-sections (3A), (3B) and (3C) have been inserted in the said section.

38.3 The newly-inserted sub-section (3A) empowers the Central Government to prescribe the aforementioned new scheme for scrutiny assessments, by way of notification in the Official Gazette. Sub-section (3B) empowers the Central Government to direct, by notification in the Official Gazette that any of the provisions of Income-tax Act relating to assessment shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified therein. However, no such direction shall be issued after 31st March, 2020. Sub-section (3C) provides that every notification issued under the sub-section (3A) and sub-section (3B) shall be laid before each House of Parliament, as soon as may be.

38.4 *Applicability:* These amendments take effect from 1st April, 2018.

39. Amendments in relation to notified Income Computation and Disclosure Standards

39.1 Section 145 of the Income-tax Act empowers the Central government to notify Income Computation and Disclosure Standards (ICDS). In pursuance to the above, the Central Government has notified ten such Standards effective from 1st April, 2017 relating to Assessment Year 2017-18. These are applicable to all assesses (other than an individual or a Hindu undivided family who are not subject to tax audit under section 44AB of the Income-tax Act) for the purposes of computation of income chargeable to income-tax under the head "Profits and gains of business or profession" or "Income from other sources".

39.2 In order to bring certainty in the wake of recent judicial pronouncements on the issue of applicability of ICDS —

- (i) Section 36 of the Income-tax Act has been amended to provide that marked-to-market loss or other expected loss, as computed in the manner provided in the ICDS notified under sub-section (2) of section 145, shall be allowed deduction.
- (ii) Section 40A of the Income-tax Act has been amended to provide that no deduction or allowance in respect of marked-to-market loss or other expected loss shall be allowed except as allowable under newly inserted clause (xviii) of sub-section (1) of section 36.

- (iii) A new section 43AA has been inserted in the Income-tax Act to provide that, subject to the provisions of section 43A, any gain or loss arising on account of effects of changes in foreign exchange rates in respect of specified foreign currency transactions shall be treated as income or loss, which shall be computed in the manner provided in ICDS as notified under sub-section (2) of section 145 of the Income-tax Act.
- (iv) A new section 43CB has been inserted in the Income-tax Act to provide that profits arising from a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method except for certain service contracts, and that the contract revenue shall include retention money, and contract cost shall not be reduced by incidental interest, dividend and capital gains.
- (v) Section 145A of the Income-tax Act has been amended to provide that, for the purpose of determining the income chargeable under the head "Profits and gains of business or profession,—
- (a) the valuation of inventory shall be made at lower of actual cost or net realizable value computed in the manner provided in the ICDS notified under (2) of section 145;
 - (b) the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation;
 - (c) inventory, being securities not listed, or listed but not quoted, on a recognised stock exchange, shall be valued at actual cost initially recognised in the manner provided in the ICDS notified under (2) of section 145;
 - (d) inventory, being listed securities, shall be valued at lower of actual cost or net realisable value in the manner provided in the ICDS notified under (2) of section 145 and for this purpose the comparison of actual cost and net realisable value shall be done category-wise;
 - (e) inventory, being securities, held by a scheduled bank or public financial institution shall be valued in accordance with the ICDS notified under sub-section (2) of section 145 after taking into account the extant guidelines of the Reserve Bank of India.
- (vi) A new section 145B has been inserted in the Income-tax Act to provide that—
- (a) interest received by an assessee on compensation or on enhanced compensation, shall be deemed to be the income of the year in which it is received;
 - (b) the claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved;
 - (c) income referred to in sub-clause (xviii) of clause (24) of section 2 shall be deemed to be the income of the previous year in which it is received, if not charged to income tax for any earlier previous year;

39.3 Applicability: Recent judicial pronouncements have raised doubts on the legitimacy of the notified ICDS. However, a large number of taxpayers have already complied with the provisions of ICDS for computing income for assessment year 2017-18. In order to regularise the compliance with the notified ICDS by a large number taxpayers so as to prevent any further inconvenience to them, these amendments take effect retrospectively with effect from 1st April, 2017 i.e. the date on which the ICDS was made effective and will, accordingly, apply in relation to assessment year 2017-18 and subsequent assessment years.

40. Tax deduction at source on 7.75% GOI Savings (Taxable) Bonds, 2018

40.1 Government of India introduced 8% Savings (Taxable) Bonds, 2003 in 2003. Under the existing law, the interest received by the investor is taxable. Further, the payer is liable to deduct tax at source under section 193 of the Income-tax Act at the time of payment or credit of such interest in excess of rupees ten thousand to a resident.

40.2 Government has now decided to discontinue the existing 8% Savings (Taxable) Bonds, 2003 with a new 7.75% GOI Savings (Taxable) Bonds, 2018. The interest received under the new bonds will continue to be taxed as in the case of the earlier ones. The provisions of section 193 of the Income-tax Act have been amended to allow for deduction of tax at source at the time of making payment of interest on such bonds to residents. However, no TDS will be deducted if the amount of interest is less than or equal to ten thousand rupees during the financial year.

40.3 Applicability: This amendment takes effect from 1st April, 2018.

41. Amendments to the structure of Authority for Advance Rulings

41.1 Before amendment by the Act, section 245-O of the Income-tax Act provided *inter alia* for the constitution of an Authority for Advance Rulings, and constitution of its benches, for giving advance rulings under Chapter V of the Customs Act, 1962.

41.2 In view of the constitution of new Customs Authority for Advance Ruling under section 28EA of the Customs Act, 1962, the provisions of section 245-O have been amended so as to provide that such Authority shall cease to act as an Authority for Advance Rulings, and shall act as an Appellate Authority for the purpose of Chapter V of the Customs Act, 1962 from the date of appointment of Customs Authority for Advance Rulings under section 28EA of the Customs Act, 1962. Consequential amendment has also been made in section 245Q of the Income-tax Act.

41.3 It is further provided that such Authority shall not admit any appeal against any ruling or order passed earlier by it in the capacity of Authority for Advance ruling after the date of appointment of Customs Authority for Advance Rulings under section 28EA of the Customs Act, 1962.

41.4 In order to avoid overlapping, it is also provided that where the Authority is dealing with an application seeking advance ruling in the matters of the Income-tax Act, the Revenue Member shall be the Member referred to in sub-clause (i) of clause (c) of sub-section (3) of the said section.

41.5 Applicability: These amendments take effect from 1st April, 2018.

42. Appeal against penalty imposed by Commissioner (Appeals) under section 271J

42.1 Section 253 of the Income-tax Act provides *inter alia* that any assessee aggrieved by any of the orders mentioned in sub-section (1) of the said section may appeal to the Appellate Tribunal against such order.

42.2 Clause (a) of the said sub-section has been amended so as to also make an order passed by a Commissioner (Appeals) under section 271J appealable before the Appellate Tribunal.

42.3 Applicability: This amendment takes effect from 1st April, 2018.

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

43.1 Before amendment by the Act, section 271FA of the Income-tax Act provided that if a person who is required to furnish the statement of financial transaction or reportable account under sub-section (1) of section 285BA, fails to furnish such statement within the prescribed time, he shall be liable to pay penalty of one hundred rupees for every day of default.

43.2 The proviso to the said section further provided that in case such person fails to furnish the statement of financial transaction or reportable account within the period specified in the notice issued under sub-section (5) of section 285BA, he shall be liable to pay penalty of five hundred rupees for every day of default.

43.3 In order to ensure compliance of the reporting obligations under section 285BA, the provisions of section 271FA have been amended so as to increase the penalty leviable from one hundred rupees to five hundred rupees and from five hundred rupees to one thousand rupees, for each day of continuing default.

43.4 Applicability: These amendments take effect from 1st April, 2018.

44. Rationalisation of section 276CC relating to prosecution for failure to furnish return

44.1 Section 276CC of the Income-tax Act provides that if a person wilfully fails to furnish in due time the return of income which he is required to furnish, he shall be punishable with imprisonment for a term, as specified therein, with fine.

44.2 Before amendment by the Act, sub-clause (b) of clause (ii) of the proviso to section 276CC provided that a person shall not be proceeded against under the said section for failure to furnish return for any assessment year commencing on or after the 1st day of April, 1975, if the tax payable by him on the total income determined on regular assessment as reduced by the advance tax, if any, paid and any tax deducted at source, does not exceed three thousand rupees.

44.3 In order to prevent abuse of the said proviso by shell companies or by companies holding Benami properties, the provisions of sub-clause (b) of clause (ii) have been amended so as to provide that the said sub-clause shall not apply in respect of a company.

44.4 Applicability: This amendment takes effect from 1st April, 2018.

45. Rationalisation of provisions relating to Country-by-Country Report

45.1 Section 286 of the Income-tax Act provides for a specific reporting regime in the form of Country-by-Country Report (CbCR) in respect of an international group.

45.2 Based on model legislation of Action Plan 13 of Base Erosion and Profit Shifting (BEPS) project of the Organisation for Economic Co-operation and Development (OECD), and to improve the effectiveness and reduce the compliance burden of such reporting, section 286 of the Income-tax Act has been amended in the following manner:—

- (i) the time allowed for furnishing the Country-by-Country Report (CbCR), in the case of parent entity or Alternative Reporting Entity (ARE), resident in India, is extended to twelve months from the end of reporting accounting year;
- (ii) constituent entity resident in India, having a non-resident parent, shall also furnish CbCR in case its parent entity outside India has no obligation to file the report of the nature referred to in sub-section (2) in the latter's country or territory;
- (iii) the time allowed for furnishing the CbCR under sub-section (4) of the said section, in the case of constituent entity resident in India, having a non-resident parent, shall be separately prescribed;
- (iv) the due date for furnishing of CbCR by the ARE of an international group, the parent entity of which is outside India, with the tax authority of the country or territory of which it is resident, will be the due date specified by that country or territory;
- (v) "Agreement" means a combination of all of the following agreements:-
 - (i) an agreement entered into under sub-section (1) of section 90 or sub-section (1) of section 90A; and
 - (ii) an agreement for exchange of the report referred to in sub-section (2) and notified by the Central Government;
- (vi) "reporting accounting year" has been defined to mean the accounting year in respect of which the financial and operational results are required to be reflected in the report referred to in sub-sections (2) and (4) section 286.

45.3 These amendments are clarificatory in nature.

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

46. Rationalisation of the provisions relating to Commodity Transaction Tax

46.1 Before amendment by the Act, clause (7) of section 116 of the Finance Act, 2013 provided that "taxable commodities transaction" shall mean a transaction of sale of commodity derivatives in respect of commodities, other than agricultural commodities, traded in recognised association.

46.2 In order to align the definition of “taxable commodities transaction” with instruments allowed for transaction in commodity derivatives, the provisions of clause (7) of section 116 of the Finance Act, 2013 have been amended so as to include “options in commodity futures” in the definition of “taxable commodities transactions”.

46.3 Before amendment by the Act, section 117 of the Finance Act, 2013 provided the rate at which a commodities transaction tax in respect of every commodities transaction, being sale of commodity derivative, shall be chargeable and payable by the seller.

46.4 In order to provide rates for options in commodity derivative, the provisions of section 117 of the Finance Act, 2013 have been amended so as to prescribe the rate at which sale of an option on commodity derivative shall be chargeable and payable by the seller.

46.5 The provisions of section 117 of the Finance Act, 2013 have also been amended so as to prescribe the rate at which sale of an option on commodity derivative, where option is exercised, shall be chargeable and payable by the purchaser.

46.6 Before amendment by the Act, section 118 of the Finance Act, 2013 provided the value of taxable commodities transactions, being commodity derivative and chargeable under section 117 of the Finance Act, 2013.

46.7 The provisions of section 118 of the Finance Act, 2013 have been amended so as to include the value of taxable commodities transaction, being option on commodities, chargeable under section 117 of the Finance Act, 2013, in the said section.

46.8 Further, the provisions of section 128 of the Finance Act, 2013 have been amended so as to provide that the provisions of section 119 of the Income-tax Act shall apply, so far as may be, in relation to the commodities transaction tax, as they apply in relation to income-tax.

46.9 **Applicability:** These amendments take effect from 1st April, 2018.

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

47.1 Section 46 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (‘the Black Money Act’) provides for the procedure for imposing penalty.

47.2 Before amendment by the Act, sub-section (4) of the said section provided that an order imposing a penalty shall be made with the approval of the Joint Commissioner, in the circumstances specified therein.

47.3 The Assistant Director or the Deputy Director, investigating a case of undisclosed foreign income or asset, can also be assigned the concurrent jurisdiction of the Assessing Officer and, therefore, can also initiate penalty. However, the said authorities shall require approval of the superior officers of the rank of Joint Director or Additional Director for imposition of penalty.

47.4 Accordingly, the provisions of sub-section (4) have been amended so as to provide that the Joint Director shall also be vested with the power to approve an order imposing a penalty.

Clause (b) of the said sub-section has also been amended to include reference to the Assistant Director and Deputy Director therein.

47.5 Further, section 55 of the Black Money Act provides for institution of proceedings for an offence under the said Act.


47.6 Sub-section (1) of the said section provides that a person shall not be proceeded against for an offence under section 49 to section 53 except with the sanction of the Principal Commissioner or Commissioner or the Commissioner (Appeals).

47.7 Before amendment by the Act, sub-section (2) of the said section provided that the Principal Chief Commissioner or the Chief Commissioner may issue such instructions, or directions, to the tax authorities referred to in sub-section (1), as he may think fit for the institution of proceedings.

47.8 The provisions of sub-section (2) have been amended so as to also empower the Principal Director General or the Director General to issue instructions or directions to the tax authorities under the said sub-section.

47.9 Further, marginal heading of the said section has also been amended so as to include the reference of Principal Director General or Director General.

47.10 Applicability: These amendments take effect from 1st April, 2018.


[Dr. T.S. Mapwal]

Under Secretary to the Government of India

Dated 26.12.2018

[F. No. F. No. 370142/7/2018-TPL]

Copy to:-

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2. PS to Secretary (Revenue)/ OSD to Advisor to FM.
3. The Chairperson, Members and all other officers in CBDT of the rank of Under Secretary and above.
4. All Chief Commissioners/ Director General of Income-tax – with a request to circulate amongst all officers in their regions/ charges.
5. DGIT (International Taxation)/ DGIT (Systems)/ DGIT (Vigilance)/ DGIT (Admn.)/ DGIT (NADT)/ DGIT (L&R).
6. Media Co-ordinator and official spokesperson of CBDT.
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8. The Comptroller and Auditor General of India (30 copies).
9. Joint Secretary and Legal Advisor, Ministry of Law and Justice, New Delhi.
10. The Institute of Chartered Accountants of India, IP Estate, New Delhi.
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[Dr. T.S. Mapwal]

Under Secretary to the Government of India