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Presents

GUIDE TO ANALYSIS OF BUDGET 2019

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Clause by Clause Analysis

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Dedicated to my teachers

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1. Tax Rates

i. Personal Tax Rates

Income (Rs)	Proposed rate of tax (FY 2019-20)
Upto 2,50,000	Nil
2,50,001-5,00,000	10%
5,00,001-10,00,000	20%
10,00,001 and above	30%

Note: Cess of 4% is leviable on the amount of income tax and surcharge, if any.

Rebate under Section 87A remains unchanged for a resident individual (whose income does not exceed 5,00,000). The amount of rebate is 100% of income tax calculated before education cess or 12,500 whichever is less.

Surcharge to be added

Income (Rs)	Proposed rate of tax (FY 2019-20)	Old rate of Tax (FY 2018-19)	Net Increase (for 30% slab) [New - Old = increase]
Upto 50 Lakhs	Nil	Nil	Nil
50 Lakhs -1 Crore	10%	10%	Nil
1 Crore- 2 Crore	15%	15%	Nil
2 Crore – 5 Crore	25%	15%	39.000% - 35.880% = 3.120%
Above 5 Crore	37%	15%	42.744% - 35.880% = 6.864%

ii.) Corporate tax rates

Income	Proposed rate of tax
Domestic Company having total income less than 1 Crore	30%*
Domestic Company having total income more than 1 Crore but less than 10 Crore	30%* plus surcharge of 7%
Domestic Company having total income more than 10 Crore	30%* plus surcharge of 12%
Other Company having total income less than 1 Cror	40%
Other Company having total income more than 1 Crore but less than 10 Crore	40% plus 2%
Other Company having total income more than 10 Crore	40% plus 5%

Note: Cess of 4% shall be levied over and above the above taxes.

*Reduced rate of 25% shall be applicable where total turnover / receipts in the last P.Y. does not exceed Rs 400 Cr

iii. Firms

Flat tax rate of 30% and surcharge @ 12% of income tax if net income exceeds Rs 1 Cr. Additionally, cess of 4% is applicable.

iv. Cooperative Societies

Particular	Rate of Tax
Having total income upto Rs. 10,000	10%
Having total income of more than Rs. 10,000 to Rs. 20,000	1,000 plus 20% of total income in excess of ₹10,000
Having total income of more than 20,000	3,000 plus 30% of total income in excess of ₹ 20,000

Note: Surcharge @ 12% of income tax if net income exceeds `1 Crore is applicable. Additionally, cess of 4% shall be levied.

2. Individual Tax

2.1 Transfer of any money or property situate in India by a person resident in India to a person outside India

Section 9 of the Act deals with Income deemed to accrue or arise in India. Under the Act, non –residents are taxable in India in respect of income that accrues or arises in India or is received in India or is deemed to accrue or arise in India or is deemed to be received in India. Under the existing provisions of the Act, a gift of money or property is taxed in the hands of donee/reciever, except exemptions given u/s 56(2)(x). Presently, these gifts are made by persons being residents in India to persons outside India and are claimed to be non-taxable in India as the income does not accrue or arise in India.

To make these gifts taxable in India, it is proposed to provide that income as referred u/s 2(24)(xviia), arising from any sum of money paid, or any property situate in India transferred, on or after 5th July, 2019 by a person resident in India to a person outside India shall be deemed to accrue or arise in India.

However, the gifts to relatives and on account of marriage as provided u/s 56(2)(x) will continue to be exempt. DTAA provisions will also apply.

2.2 Mandatory furnishing of ITR by certain persons

In order to ensure that persons who enter into certain high value transactions do furnish their return of income, it is proposed to amend section 139 of the Act so as to provide that a person shall be mandatorily required to file his return of income, if during the previous year, he-

(i) has deposited an amount or aggregate of the amounts exceeding one crore rupees in one or more current account maintained with a banking company or a co-operative bank; or

(ii) has incurred expenditure of an amount or aggregate of the amounts exceeding two lakh rupees for himself or any other person for travel to a foreign country; or

(iii) has incurred expenditure of an amount or aggregate of the amounts exceeding one lakh rupees towards consumption of electricity; or

(iv) fulfils such other prescribed conditions, as may be prescribed.

A person who is claiming rollover benefits on investment in a house or a bond or other assets, under sections 54, 54B, 54D, 54EC, 54F, 54G, 54GA and 54GB of the Act, shall also, necessarily be required to furnish a return, if before claim of the rollover benefits, his total income is more than the maximum amount not chargeable to tax.

2.3 Inter-changeability of PAN & Aadhaar and mandatory quoting in prescribed transactions.

As per section 139A(1) of the Act, provides that every person specified therein, who has not been allotted a PAN, shall apply to the Assessing Officer for allotment of PAN.

In many cases persons entering into high value transactions, such as purchase of foreign currency or huge withdrawal from the banks, do not possess a PAN. In order to keep an audit trail of such transactions, for widening and deepening of the tax base, it is proposed to insert a new clause (vii) in the aforesaid sub-section so as to provide that every person, who intends to enter into certain prescribed transactions and has not been alloted a PAN, shall also apply for allotment of a PAN.

To ensure ease of compliance, it is also proposed to provide for inter-changeability of PAN with the Aadhaar number.

Accordingly the provisions of section 139A are proposed to be amended so as to provide that-

(i) every person who is required to furnish or intimate or quote his PAN under the Act, and who, has not been allotted a PAN but possesses the Aadhaar number, may furnish or intimate or quote his Aadhaar number in lieu of PAN, and such person shall be allotted a PAN in the prescribed manner;

(ii) every person who has been allotted a PAN, and who has linked his Aadhaar number under section 139AA, may furnish or intimate or quote his Aadhaar number in lieu of a PAN.

Further, section 139A, provides that every person, receiving a document relating to a transaction for which PAN is required to be quoted shall ensure that the PAN has been duly quoted

therein. It is proposed to provide that every person receiving such documents shall also ensure that the PAN or the Aadhaar number, as the case may be, has been duly quoted. A new sub-section (6A) is also proposed to be inserted to ensure quoting of PAN or Aadhaar number for entering into prescribed transactions and authontication thereof in the prescribed manner. Duty is also proposed to be cast upon the person receiving any document relating to such transactions, through newly proposed sub-section (6B), to ensure that PAN or Aadhaar number, as the case may be, is duly quoted, and authenticated.

In order to ensure proper compliance of the provisions relating to quoting and authentication of PAN or Aadhaar, the penalty provision contained in section 272B is proposed to be amended suitably.

2.4 Consequence of not linking PAN with Aadhaar

As per proviso to section 139AA(2) , the PAN allotted to a person shall be deemed to be invalid, in case the person fails to intimate the Aadhaar number, on or before the notified date.

In order to protect validity of transactions previously carried out through such PAN, it is proposed to amend the said proviso so as to provide that if a person fails to intimate the Aadhaar number, the PAN allotted to such person shall be made inoperative in the prescribed manner.

2.5 Provision of credit of relief provided under section 89

Section 89 of the Income-tax Act contains provisions for providing tax relief where salary, etc. is paid in arrears or in advance.

The existing provisions of section 140A, section 143, section 234A, section 234B and section 234C contain provisions relating to computation of tax liability after allowing credit for prepaid taxes and certain admissible reliefs, credits etc. However, the relief under section 89 is not specifically mentioned in these sections, which is resulting into genuine hardship in the case of taxpayers who are eligible for this relief.

In view of the above, it is proposed to amend section 140A, section 143, section 234A, section 234B and section 234C so

as to provide that computation of tax liability shall be made after allowing relief under section 89.

2.6 Tax incentive for affordable housing

It is proposed to insert section 80EEA to provide a deduction in respect of interest up to Rs 1.5 Lakh on loan taken for residential house property from any financial institution subject to the following conditions:

i. loan has been sanctioned by a financial institution between 1st April, 2019 to 31st March 2020.

ii. the stamp duty value of house property does not exceed Rs 45 Lakh

iii. assessee does not own any residential house property on the date of sanction of loan.

It is also proposed that where a deduction under this section is allowed for any interest, deduction shall not be allowed in respect of such interest under any other provisions of the Act for the same or any other assessment year.

"financial institution" means a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies, or any bank or banking institution referred to in section 51 of that Act or a housing finance company;

The existing provisions of the section 80-IBA provide that where the gross total income of an assessee includes any profits and gains derived from the business of developing and building housing projects, there shall, subject to certain conditions, be allowed, a deduction of an amount equal to hundred per cent of the profits and gains derived from such business.

With a view to align the definition of "affordable housing" under section 80-IBA with the definition under GST Act, it is proposed to amend the said section so as to modify certain conditions regarding the housing project approved on or after 1st day of September, 2019. The modified conditions are as under:

i. the assessee shall be eligible for deduction under the section, in respect of a housing project if a residential unit in the housing project have carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities of

Bengaluru, Chennai, Delhi National Capital Region (limited to Delhi, Noida,Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of Mumbai Metropolitan Region); and

ii the stamp duty value of such residential unit in the housing project shall not exceed forty five lakh rupees;

2.7 Tax incentive for electric vehicles

it is proposed to insert section 80EEB to provide for a deduction of interest on loan taken for purchase of an electric vehicle from financial institution up to Rs 1.5 Lakh subject to the condition that the loan has been sanctioned between 1st April 2019 to 31st March 2023

Where a deduction for interest is allowed under this section, such interest shall not be allowed a deduction under any other provisions of the Act for the same or any other assessment year i.e. this deduction is only for non business assessees.

The memorandum explaining the bill specified another condition that the assessee shall not own any other electric vehicle on the date of sanction of loan. But this condition is missing in the proposed Finance Bill.

2.8 Incentives to National Pension System (NPS) subscribers

i. Under the existing provisions of section 10, any payment to assessee on closure of his account or on his opting out of the pension scheme, to the extent it does not exceed 40% of the total amount payable to him, is exempt from tax.

It is proposed to amend the said section so as to increase the said exemption from 40% to 60%.

It is to be noted that maximum withdrawal limit is already 60% under NPS scheme. Now, the whole of such amount is proposed to be exempted.

ii. Under the existing provisions of section 80CCD of the Income-tax Act, in respect of any contribution by the Central Government or any other employer to the account of the employee referred to in the section, the assessee shall be allowed a deduction in the

computation of his total income, of the whole of the amount contributed by the Central Government or any other employer, as does not exceed 10% of his salary in the previous year. In order to ensure that the Central Government employees get full deduction of the enhanced contribution of pension, it is proposed to increase the limit u/s 80CCD to 14% from existing 10%. For other employers limit is kept unchanged at 10%.

iii Any amount paid or deposited FOR A FIXED PERIOD OF NOT LESS THEN 3 YRS by a Central Government employee as a contribution to his Tier-II account of the pension scheme is proposed to be eligible for deduction u/s 80C.

3. Business Taxation

3.1 Measures for resolution of distressed companies

The existing provisions of section 79 are not applicable to a company where any change in shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016 (IBC) subject to the condition that jurisdictional Principal Commissioner or Commissioner is provided a reasonable opportunity of being heard. The benefit is also available in case of death of a shareholder or on account of transfer of shares by way of gifts to any relative or in case of amalgamation or demerger of foreign company being shareholder in Indian company. Thus, loss in such cases can be carried forward and set off even if there is change in voting power or shareholding. This benefit is proposed to be extended to certain other companies where-

(i) the National Company Law Tribunal (NCLT) on a petition moved by the Central Government under section 241 of the Companies Act, 2013 has suspended the Board of Directors of such company and has appointed new directors, who are nominated by the Central Government, under section 242 of the Companies Act, 2013 and

(ii) a change in shareholding of such company, and its subsidiaries and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by NCLT under section 242 of the Companies Act, 2013, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

(iii) Further, it is also proposed that under section 115JB of the Act for calculating book profit, the aggregate amount of unabsorbed depreciation and loss (excluding depreciation) brought forward shall also be allowed to be reduced in cases of the above mentioned companies.

3.2 Scope of Section 115QA extended to listed companies

Section 115QA of the Act provides for the levy of additional Income-tax at the rate of 20% of the distributed income on account of buy-back of unlisted shares by the company. As

additional income-tax has been levied at the level of company, the consequential income arising in the hands of shareholders has been exempted from tax under clause (34A) of section 10 of the Act.

This section was introduced as an anti-abuse provision to check the practice of unlisted companies resorting to buy-back of shares instead of payment of dividends. This practice of widespread abuse was noted, in the past, amongst unlisted companies where the taxpayers preferred it for tax avoidance, as tax rate for capitals gains was lower than the rate of Dividend Distribution Tax (DDT). However, instances of similar tax arbitrage have now come to notice in case of listed shares as well, whereby the listed companies are also indulging in such practice of resorting to buy-back of shares, instead of payment of dividends.

In order to curb such tax avoidance practice adopted by the listed companies, the existing anti abuse provision under Section 115QA of the Act, pertaining to buy-back of shares from shareholders by companies not listed on a recognised stock exchange, is proposed to be extended to all companies including companies listed on recognised stock exchange. Thus, any buy back of shares from a shareholder by a company listed on recognised stock exchange, on or after 5th July 2019, shall also be covered by the provision of section 115QA of the Act. Accordingly, it is also proposed to extend exemption under clause (34A) of section 10 of the Act to shareholders of the listed company on account of buy-back of shares on which additional income -tax has been paid by the company.

3.3 Facilitating demerger of Ind-AS compliant companies

One of the existing conditions for tax-neutral demergers is that the resulting company should record the property and the liabilities of the undertaking at the value appearing in the books of accounts of the demerged company. It has been represented that Indian Accounting Standards (Ind-AS) compliant companies are required to record the property and the liabilities of the undertaking at a value different from the book value of the demerged company. In order to facilitate, it is proposed to amend section 2 of the Act to provide that the requirement of recording property and liabilities at book value by the resulting company shall not be applicable in a case where the property

and liabilities of the undertakings received by it are recorded at a value different from the value appearing in the books of account of the demerged company immediately before the demerger in compliance to the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015.

3.4 Prescription of electronic mode of payments

Income Tax Act through various provisions encourage/ allow payment or receipt only through account payee cheque/ draft/ electronic clearing system through bank account and prohibits cash transactions.

Under Section 13A of the act, for the purpose of exemption of donation, a political party is required to receive donation of any amount exceeding Rs. 2000/- through account payee cheque/ draft/ electronic clearing system through bank account.

Under Section 35AD of the Act the term 'any expenditure of capital nature' does not include any amount exceeding Rs. 10000/- in a day, if paid, through any mode other than account payee cheque/ draft/ electronic clearing system through bank account.

Under Section 40A of the Act, expenditure is disallowed if the assessee makes payment or aggregate of the payment exceeding Rs. 10000/- through any mode other than account payee cheque/ draft/ electronic clearing system through bank account.

Under second proviso to Sub-section (1) to the section 43 of the Act, Actual Cost for the acquisition of asset or part thereof is reduced, by the amount exceeding Rs. 10000/- in a day paid to a person, if paid through any other mode other than account payee cheque/draft/electronic clearing system through bank account.

Section 43CA of the Act provides that where the date of agreement fixing the value of consideration for the transfer of the asset and the date of registration of such transfer of asset are different, then the full value of consideration for transfer of such asset shall be the stamp duty value on the date of the agreement provided the amount of consideration or a part thereof has been received by way of an account payee cheque or an account payee bank draft or by use of electronic clearing

system through a bank account on or before the date of agreement for transfer of the asset. Similar provision is made in the second proviso to sub-section (1) of section 50C and the second proviso to sub-clause (b) of clause (x) of sub-section (2) of section 56.

Under proviso to sub section (1) of the section 44AD, an eligible assessee engaged in eligible business can opt for presumptive taxation scheme, if he declares profit @ 6% or higher of the turnover received through account payee cheque/ draft/ electronic clearing system through bank account.

Under section 80JJA, deduction equal to 30%, of additional employee cost incurred in the previous year by an assessee in the course of a bsiness, covered u/s 44AB, for 3 years including the year in which additional employment is made. But sub clause (b) of clause (i) specifies that if emoluments are paid through any other mode other than account payee cheque/draft/electronic clearing system through bank account then additional employee cost in case of existing business shall be NIL.

As per section 269SS, a person is prohibited to take/ accept any loan/ deposit from a depositor, any specified sum equal to 20,000/- or more other than through account payee cheque/ draft/ electronic clearing system through bank account

As per section 269ST, a person is prohibited to receive from a person in a single day/ transaction/ one event/ occasion, an amount of Rs. 2,00,000/- or more other than through account payee cheque/ draft/ electronic clearing system through bank account.

As per section 269T, a banking company/ co-operative bank/ any other company/ co-operative society/ firm/ other person is prohibited from repaying any loan/ deposit made by it/ advance received by it amounting Rs. 20,000/- or more other than through account payee cheque/ draft/ electronic clearing system through bank account.

It is proposed to amend the above sections, in addition to the already existing modes of payment to include such other electronic mode as may be prescribed by the board.

3.5 Mandating acceptance of payments through prescribed electronic modes

The new proposed section 269SU provides that every person, carrying on business, shall provide facility for accepting payment through the prescribed electronic modes, in addition to the facility for other electronic modes of payment, if any, being provided by such person, if his total sales/ turnover/ gross receipt in the business exceeds Rs. 50 crores during the immediately preceding previous year.

Another new section 271DB is proposed to ensure compliance of section 269SU, which provides that a penalty of Rs. 5000/- for every day during which such failure continues. If a person proves that there were sufficient & good reason for such failure penalty shall not be imposed.

It is further proposed that penalty shall be imposed by JCIT.

The new proposed Section 10A of Payment and Settlement Systems Act, 2007 provides that no bank or system provider shall impose any charge upon anyone, either directly or indirectly, for using the modes of electronic payment prescribed u/s 269SU of the Income Tax Act.

3.6 Incentives for start-ups

3.6.1 To facilitate ease of doing business in the case of an eligible start-up, it is proposed to amend section 79 so as to provide that loss incurred in any year prior to the previous year, in the case of closely held eligible start-up, shall be allowed to be carried forward and set off against the income of the previous year on satisfaction of either of the two conditions stipulated currently at clause (a) or clause (b). For other closely held companies, there would be no change, and loss incurred in any year prior to the previous year shall be carried forward and set off only on satisfaction of condition currently provided at clause (a).

3.6.2 The existing provisions of the section 54GB of the Income-tax Act, inter alia, provide for roll over benefit in respect of capital gain arising from the transfer of a long-term capital asset, being a residential property owned by the eligible assessee. To be able to get benefit of this provision, the assessee is required to utilise the net consideration for subscription in the equity shares of an eligible company before the due date of filing of the

return of income. The assessee is required to have more than fifty per cent share capital or more than fifty per cent voting rights after the subscription in shares in the eligible company. The said section puts restriction on transfer of assets acquired by the company for five years from the date of acquisition. Currently the benefit of this section was only available for investment in the equity shares of eligible start-ups and that period also got over on 31st March 2019. Thus, at present no benefit is available for residential property transferred after 31st March 2019.

In order to incentivise investment in eligible start-ups, it is proposed to amend the said section so as to-

(i) extend the sun set date of transfer of residential property for investment in eligible start-ups from 31st March 2019 to 31st March 2021;

(ii) relax the condition of minimum shareholding of fifty per cent of share capital or voting rights to twenty five per cent.

(iii) relax the condition restricting transfer of new asset being computer or computer software from the current five years to three years.

3.7 Incentives for Category II Alternative Investment Fund (AIF)

The existing provisions of the said section 56 of the Income-tax Act, inter alia, provide that where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be charged to tax. However, exemption from this provision has been provided for the consideration for issue of shares received by a venture capital undertaking from a venture capital company or a venture capital fund or by a company from a class or classes of persons as may be notified by the Central Government in this behalf. Currently the benefit of exemption is available to Category I AIF. With a view to facilitate venture capital undertakings to receive funds from Category II AIF, it is proposed to amend the said section to

extend this exemption to fund received by venture capital undertakings from Category II AIF as well.

3.8 Incentives to Non-Banking Finance Companies (NBFCs)

3.8.1 As an exception to accrual system, interest income of certain specified assessees such as public financial institutions or a scheduled bank/ cooperative bank/ state financial corporations in relation to certain categories of bad or doubtful debts is chargeable to tax in the previous year in which it is credited to its profit and loss account or actually received, whichever is earlier in accordance to Section 43D. To provide a level playing field, deposit-taking NBFCs and systemically important non deposit-taking NBFCs are proposed to be added in specified assessees to claim the benefit of the section 43D.

3.8.2 Section 43B is also amended to provide that any sum payable by an assessee as interest on any loan from a deposit-taking NBFCs and systemically important non deposit-taking NBFCs shall be allowed as a deduction only if it is actually paid on or before the due date of furnishing the return.

3.9 Exemption of interest income of a non-resident arising from borrowings by way of issue of Rupee Denominated Bonds referred to under section 194LC

To incentivise low cost foreign borrowings through Off-shore Rupee Denominated Bond, a press release announced that interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of rupee denominated bond issued outside India during the period from September 17, 2018 to March 31, 2019 shall be exempt from tax. The exemption announced through the said press release is proposed to be incorporated in the law by inserting sub-section 4C in section 10 of the Act.

4. Capital Gains

4.1 Amendment in calculation of FMV u/s 50CA

The existing provision of section 50CA of the Income tax Act provides for special provision for full value of consideration for transfer of share other than quoted share. The said section provides that where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being share of a company other than a quoted share, is less than the fair market value of such share determined in such manner as may be prescribed, the value so determined shall, for the purposes of computing capital gains, be deemed to be full value of consideration received or accruing as a result of such transfer.

It is proposed to amend the said section so as to provide that the provision of the said section shall not apply to any consideration received or accruing as a result of transfer by such class of persons and subject to such conditions as may be prescribed.

4.2 Concessional rate u/s 111A extended to certain equity-oriented fund

In order to incentivise fund of funds set up for disinvestment of Central Public Sector Enterprises (CPSEs), Finance Act, 2018 has provided concessional rate of long-term capital gains tax under section 112A of the Act for the transfer of units of such fund of funds.

In order to further incentivise these funds of funds, it is proposed to amend section 111A so as to extend the concessional rate of tax for short-term capital gains in respect of transfer of units of such fund of funds.

5. Income from Other Sources

5.2 Compliance with the notification of exemption issued under section 56(2)(viib)

The provisions of section 56(2)(viib) of the Act provides for charging of the consideration received for issue of shares by certain companies, where such consideration exceeds the fair market value of such shares. However, the Central Government is empowered to notify that the provisions of this section shall not be applicable to consideration received by a notified company. Certain notifications issued under this sub-clause by the Central Government provide for exemption, subject to the fulfilment of certain conditions. With a view to ensure compliance to the conditions specified in the notification, it is proposed to provide that in case of failure to comply with the conditions, the consideration received for issue of shares which exceeds the face value of such shares shall be deemed to be the income of the company chargeable to income-tax for the previous year in which the failure to comply with any of the said conditions has taken place.

5.3 Consequential amendment to section 56

The existing provisions of the section 56 of the Income-tax Act, inter alia, provide that income by way of interest received on compensation or on enhanced compensation referred to in section 145A(b) shall be chargeable to tax. The Finance Act, 2018 substituted the provisions of section 145A with sections 145A and section 145B. However, no consequential amendment is made in section 56. It is proposed to amend section 56 of the Act to provide the correct reference of section 145B(1) in section 56, in place of the existing reference of section 145A(b).

6 Changes in International Tax

6.1 Incentives to International Financial Services Centre (IFSC):

In order to promote the development of world class financial infrastructure in India, some tax concessions have already been provided in respect of business carried on from an IFSC. To further promote such development and bring these IFSC at par with similar IFSC in other countries, following additional benefits are proposed:

a. Under the existing provisions of the section 47 of the Act, any transfer of a capital asset, being bonds or Global Depository Receipts or rupee denominated bond of an Indian company or derivative, made by a non-resident through a recognised stock exchange located in any IFSC and where the consideration for such transaction is paid or payable in foreign currency shall not be regarded as transfer.

With a view to provide tax-neutral transfer of certain securities by Category III Alternative Investment Fund (AIF) in IFSC, it is proposed to amend the said section so as to provide that any transfer of a capital asset, specified in the said clause by such AIF, of which all the unit holders are non-resident, are not regarded as transfer subject to fulfillment of specified conditions.

It is also proposed to widen the types of securities listed in said clause by empowering the Central Government to notify other securities for the purposes of this clause.

b. With a view to facilitate external borrowing by the units located in IFSC, it is proposed to amend the section 10 of the Act so as to provide that any income by way of interest payable to a non-resident by a unit located in IFSC in respect of monies borrowed by it on or after 1st day of September, 2019, shall be exempt.

c. The existing provisions of the section 115-O of the Act, provide that no tax on distributed profits shall be chargeable in respect of the total income of a company, being a unit of an IFSC, deriving income solely in convertible foreign exchange, for any assessment year on any amount declared, distributed or paid by such company, by way of dividends (whether interim or

otherwise) on or after the 1st day of April, 2017, out of its current income, either in the hands of the company or the person receiving such dividend.

To facilitate distribution of dividend by companies operating in IFSC, it is proposed to amend the provision of the said section to provide that any dividend paid out of accumulated income derived from operations in IFSC, after 1st April 2017 shall also not be liable for tax on distributed profits.

d. The existing provisions of the section 115R of the Act, provide 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.

In order to incentivize relocation of Mutual Fund in IFSC, it is proposed to amend the said section so as to provide that no additional income-tax shall be chargeable in respect of any amount of income distributed, on or after the 1st day of September, 2019, by a Mutual Fund of which all the unit holders are non-residents and which fulfills certain other specified conditions.

e. The existing provisions of the section 80LA of the Act, inter alia, provide profit linked deduction of an amount equal to one hundred per cent of income for the first five consecutive assessment years and fifty per cent of income for the next five consecutive assessment years, to units of an IFSC.

With a view to further incentivize operation of units in IFSC, it is proposed to amend the said section so as to provide that the deduction shall be increased to one hundred per cent for any ten consecutive years. The assessee, at his option, may claim the said deduction for any ten consecutive assessment years out of fifteen years beginning with the year in which the necessary permission was obtained.

f. Section 115A of the Act provides the method of calculation of income-tax payable by a non-resident (not being a company) or by a foreign company where the total income includes any income by way of dividend (other than referred in section 115-O), interest, royalty

and fees for technical services; etc. Section 80LA, provides for deduction in respect of certain incomes to a unit located in an IFSC. However, sub-section (4) of section 115A prohibits any deduction under chapter VIA which includes section 80LA.

In order to ensure that units located in IFSC claim full deduction, it is proposed to amend section 115A of the Act so as to provide that the conditions contained in sub-section (4) of section 115A shall not apply to a unit of an IFSC for under section 80LA is allowed.

6.2 Provide for pass through of losses in cases of Category I and Category II Alternative Investment Fund (AIF)

Section 115UB of the Act, inter alia, provides for pass through of income earned by the Category I and II AIF, except for business income which is taxed at AIF level. Pass through of profits (other than profit & gains from business) has been allowed to individual investors so as to give them benefit of lower rate of tax, if applicable. Pass through of losses are not provided under the existing regime and are retained at AIF level to be carried forward and set off in accordance with Chapter VI.

In order to remove the genuine difficulty faced by Category I and II AIFs , it is proposed to amend section 115UB to provide that

(i) the business loss of the investment fund, if any, shall be allowed to be carried forward and it shall be set-off by it in accordance with the provisions of Chapter VI and it shall not be passed onto the unit holder;

(ii) the loss other than business loss, if any, shall also be ignored for the purposes of pass through to its unit holders, if such loss has arisen in respect of a unit which has not been held by the unit holder for a period of atleast twelve months;

(iii) the loss other than business loss, if any, accumulated at the level of investment fund as on 31st March, 2019, shall be deemed to be the loss of a unit holder who held the unit on 31st March, 2019 in respect of the investments made by him in the investment fund and allowed to be carried forward by him for the remaining period calculated from the year in which the loss had occurred for the first time

taking that year as the first year and it shall be set-off by him in accordance with the provisions of Chapter VI;

the loss so deemed in the hands of unit holders shall not be available to the investment fund for the purposes of chapter VI.

6.3 Rationalisation of provision relating recovery of tax in pursuance of agreements with foreign countries

The existing provisions of section 228A of the Act provide that where an agreement is entered into by the Central Government with the Government of any foreign country for recovery of income-tax under the Income-tax Act and the corresponding law in force in that country and where such foreign country sends a certificate for the recovery of any tax due under such corresponding law from a person having any property in India, the Board, on receipt of such certificate may, forward it to the Tax Recovery Officer within whose jurisdiction such property is situated for the recovery of tax in pursuance of agreement with such foreign country.

In order to provide assistance in recovery of tax as per treaty obligation with the other country, it is proposed to amend the said section so as to provide for tax recovery where details of property of the persons are not available but the said person is a resident in India.

It is also proposed to amend the said section so as to provide for tax recovery, where details of property of an assessee in default under the Act are not available but the said assessee is a resident in a foreign country.

6.4 Relaxation in conditions of special taxation regime for offshore funds

Section 9A of the Act provides for a safe harbour in respect of offshore funds. It provides that in the case of an eligible investment fund, the fund management activity carried out through an eligible fund manager located in India and acting on behalf of such fund shall by itself not constitute business connection in India of the said fund. Further, an eligible investment fund shall not be said to be resident in India merely because the eligible fund manager undertaking fund management activities on its behalf is located in India. The

benefit under section 9A is available subject to the conditions provided in sub-sections (3), (4) and (5) of the said section.

Sub-section (3) of section 9A provides for the conditions for the eligibility of the fund. These conditions, inter-alia, are related to residence of fund, corpus, size, investor broad basing, investment diversification and payment of remuneration to fund manager at arm's length.

Following 2 conditions are relaxed for such offshore funds

i. the corpus of the fund shall not be less than one hundred crore rupees at the end of a period of six months from the end of the month of its establishment/ incorporation or at the end of such previous year, whichever is later. (Earlier the condition of corpus limit was to be fulfiled only at the end of such previous year)

ii. the remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf is not less than the amount calculated in such manner as may be prescribed. (Earlier it was on arm's length price which is now replaced by prescribed method)

7 Transfer pricing

7.1 Modification order for past years in case of APA

Section 92CC of the Act empowers the Central Board of Direct Taxes (CBDT) to enter into an APA, with the approval of the Central Government, with any person for determining the Arm's Length Price (ALP) or specifying the manner in which ALP is to be determined in relation to an international transaction which is to be entered into by that person. The APA is valid for a period, not exceeding five previous years, as may be specified therein. This section also provides for rollback of the APA for four years. Thus, once the APA is entered into, the ALP of the international transaction, which is subject matter of the APA, would be determined in accordance with such APA.

In order to give effect to the APA, section 92CD also provides for mechanism, including filing of modified return of income by the taxpayer and manner of completion of assessments by the Assessing Officer having regard to terms of the APA.

Sub-section (3) of this section deals with a situation where assessment or re-assessment has already been completed, before expiry of the time allowed for filing of modified return. Apprehensions have been expressed stating that due to the use of words "assess or reassess or recompute", the Assessing Officer may start fresh assessment or reassessment in respect of completed assessments or reassessments of the assessees who have modified their returns of income in accordance with the APA entered into by them, while the intention of the legislature is for Assessing Officer to merely modify the total income consequent to modification of return of income in pursuance to APA.

It is, therefore, proposed to amend sub-section (3) of section 92CD to clarify that in cases where assessment or reassessment has already been completed and modified return of income has been filed by the tax payer under sub-section (1) of said section, the Assessing Officers shall pass an order modifying the total income of the relevant assessment year determined in such assessment or reassessment, having regard to and in accordance with the APA.

7.2 Clarification with regard to provisions of secondary adjustment and giving an option to assessee to make one-time payment

In order to align the transfer pricing provisions with international best practices, section 92CE of the Act provides for secondary adjustments in certain cases.

It, inter alia, provides that the assessee shall be required to carry out secondary adjustment where the primary adjustment to transfer price, has been made suo motu, or made by the Assessing Officer and accepted by him; or is determined by an advance pricing agreement entered into by him under section 92CC of the Act; or is made as per safe harbour rules prescribed under section 92CB of the Act; or is arising as a result of resolution of an assessment through mutual agreement procedure under an agreement entered into under section 90 or 90A of the Act.

The proviso to said sub-section provides exemption in cases where the amount of primary adjustment made in any previous year does not exceed one crore rupees; and the primary adjustment is made in respect of an assessment year commencing on or before 1st April, 2016.

In order to make the secondary adjustment regime more effective and easy to comply with, it is proposed to amend section 92CE of the Act so as to provide that:-

(i) the condition of threshold of one crore rupees and of the primary adjustment made upto assessment year 2016-17 are alternate conditions;

(ii) the assessee shall be required to calculate interest on the excess money or part thereof;

(iii) the provision of this section shall apply to the agreements(APA) which have been signed on or after 1st April, 2017; however, no refund of the taxes already paid till date under the pre amended section would be allowed;

(iv) the excess money may be repatriated from any of the associated enterprises of the assessee which is not resident in India;

(v) in a case where the excess money or part thereof has not been repatriated in time, the assessee will have the option to pay additional income-tax at the rate of eighteen

per cent on such excess money or part thereof in addition to the existing requirement of calculation of interest till the date of payment of this additional tax. The additional tax is proposed to be increased by a surcharge of twelve per cent;

(vi) the tax so paid shall be the final payment of tax and no credit shall be allowed in respect of the amount of tax so paid;

(vii) the deduction in respect of the amount on which such tax has been paid , shall not be allowed under any other provision of this Act; and

(viii) if the assessee pays the additional income-tax, he will not be required to make secondary adjustment or compute interest from the date of payment of such tax.

7.3 Clarification regarding definition of the "accounting year" in section 286 of the Act

Section 286 of the Act contains provisions relating to specific reporting regime in the form of Country-by-Country Report (CbCR) in respect of an international group. It provides that every parent entity or the alternate reporting entity, resident in India, shall, for every reporting accounting year, in respect of the international group of which it is a constituent, furnish a report, to the prescribed authority within a period of twelve months from the end of the said reporting accounting year, in the form and manner as may be prescribed.

There are many doubts that in case of an alternate reporting entity (ARE) resident in India whose ultimate parent entity is not resident in India, the accounting year would always be the accounting year applicable in the country where such ultimate parent entity is resident and cannot be the previous year of the entity resident in India.

In order to address such concerns and to bring clarity in law, it is proposed to suitably amend section 286 so as to provide that the accounting year in case of the ARE of an international group, the parent entity of which is not resident in India, the reporting accounting year shall be the one applicable to such parent entity.

This amendment is clarificatory in nature.

7.4 Rationalisations of provisions relating to maintenance, keeping and furnishing of information and documents by certain persons

Section 92D of the Act inter alia, provides for maintenance and keeping of information and document by persons entering into an international transaction or specified domestic transaction in the prescribed manner.

Sub-section (1) of section 92D provides that every person who has entered into an international transaction or specified domestic transaction shall keep and maintain the prescribed information and document in respect thereof.

Proviso to said section inserted through the Finance Act, 2016 provides that the person, being a constituent entity of an international group, shall also keep and maintain such information and document in respect of an international group as may be prescribed. Accordingly, Rule 10DA, prescribed for this purpose, provides the requisite information to be furnished in prescribed form, subject to the thresholds of the consolidated group revenue and the international transaction.

It is proposed to substitute section 92D of the Act, in order to provide that the information and document to be kept and maintained by a constituent entity of an international group, and filing of required form, shall be applicable even when there is no international transaction undertaken by such constituent entity.

It is also proposed to provide that information shall be furnished by the constituent entity of an international group to the prescribed authority. Sub-section (2) of the proposed section empowers the Board to prescribe the period for which said information and document shall be kept and maintained. Sub-section (3) of the proposed section provides that the

Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under this Act, require any person referred to in clause (i) of sub-section (1) to furnish any information or document referred therein, within a period of thirty days from the date of receipt of a notice issued in this regard which may be further extended upto thirty days on such person's application.

8 Tax Administration and Compliance

8.1 Widening the scope of Statement of Financial Transactions (SFT)

The provisions of section 285BA of the Act provide for furnishing of statement of financial transaction (SFT) or reportable account by person specified therein.

It is proposed to obtain information by widening the scope of furnishing of statement of financial transactions by mandating furnishing of statement by certain prescribed persons(as maybe prescribed by CBDT) other than those who are currently furnishing the same. It is also proposed to remove the current threshold of rupees fifty thousand on aggregate value of transactions during a financial year, for furnishing of information, with a view to ensure pre-filling of information relating to small amount of transactions as well. In order to ensure proper compliance, it is also proposed to amend the provisions of sub-section (4) of aforesaid section so as provide that if the defect in the statement is not rectified within the time specified therein, the provisions of the Act shall apply as if such person had furnished inaccurate information in the statement.

Consequently, it is also proposed to amend the penalty provisions contained in section 271FAA so as to ensure correct furnishing of information in the SFT and widen the scope of penalty to cover all the reporting entities under section 285BA.

8.2 Online application for lower/nil TDS u/s 195 seeking determination of tax to be deducted at source on payment to non-residents

Sub-section (2) of the said section provides that where the person responsible for paying such sum chargeable under the Act to a non-resident considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of such sum so chargeable, and upon such determination, tax shall be deducted only on that proportion of the sum which is so chargeable.

It is proposed to amend the said sub-section so as to empower

the Board to prescribe the form and manner of making such application and the manner of determining the appropriate proportion of such sum chargeable.

Sub-section (7) of the said section empowers the Board to specify a class of persons or cases, where the person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of sum chargeable to tax. It is proposed to amend the said sub-section so as to empower the Board to prescribe the form and manner of making such application and the manner of determining the appropriate proportion of such sum chargeable to tax.

This will not only reduce the time for processing of such applications, but also help tax administration in monitoring such payments.

8.3 Electronic filing of statement of transactions on which tax has not been deducted

Section 206A of the Act relates to furnishing of statement in respect of payment of certain income by way of interest to residents where no tax has been deducted at source.

At present, the section provides for filing of such statements on a floppy, diskette, magnetic tape, CD-ROM, or any other computer readable media. To enable online filing of such statements, it is proposed to substitute this section so as to provide for filing of statement (where tax has not been deducted on payment of interest to residents) in prescribed form in the prescribed manner.

It is also proposed to provide for correction of such statements for rectification of any mistake or to add, delete or update the information furnished.

It is also proposed to make a consequential amendment arising out of amendment carried out by Finance Act, 2019 whereby threshold for TDS on payment of interest by a banking company or cooperative society or public company was raised to Rs. 40,000.

9 Penalty

9.1 Rationalisation of penalty provisions relating to under-reported income

Section 270A contains provisions relating to penalty for under-reporting and misreporting of income. The existing provisions provide for various situations for the purposes of levy of penalty under this section. However, these provisions do not contain the mechanism for determining under-reporting of income and quantum of penalty to be levied in the case where the person has under-reported income and furnished the return of income for the first time under section 148 of the Act.

In order to provide for manner of computing the quantum of penalty in a case where the person has under-reported income and furnished his return for the first time under section 148, it is proposed to suitably amend the provisions of section 270A.

It is proposed to amend clause (b) and clause (e) of the said sub-section (2) so as to provide that where return is furnished for the first time under section 148, a person shall be considered to have under-reported his income, if the income or deemed income assessed is greater than the maximum amount not chargeable to tax . It is further proposed to amend sub-clause (b) of clause (i) of the said sub-section (3) so as to provide that where return is furnished for the first time under section 148 in the case of a company, firm or local authority, the amount of income assessed, and in any other case, the difference between the amount of income assessed and the maximum amount not chargeable to tax shall be the under-reported income. It is also proposed to amend clause (a) of sub-section (10) of section 270A so as to provide that in a case where return is furnished for the first time under section 148, the tax payable in respect of under-reported income shall be the amount of tax calculated on the under-reported income as increased by the maximum amount not chargeable to tax as if it were the total income.

9.2 Rationalisation of the provisions of section 276CC

The existing provisions of section 276CC of the Act, inter alia, provide that prosecution proceedings for failure to furnish returns of income against a person shall not proceeded against, for failure to furnish the return of income in due time, if

the tax payable by such person, not being a company, on the total income determined on regular assessment does not exceed three thousand rupees. The existing provisions do not provide for taking into account tax collected at source and self-assessment tax for the purposes of determining the tax liability.

Since the intent of said provision has always been to take into account pre-paid taxes, while determining the tax payable, it is proposed to amend the said section so as to make the legislative intention clear and to include the self-assessment tax, if any, paid before the expiry of the assessment year, and tax collected at source for the purpose of determining tax liability.

Further, in order to rationalise the existing threshold limit of tax payable under said section, it is further proposed to amend the said section so as to increase the threshold of tax payable from the existing rupees three thousand to rupees ten thousand.

10 Tax Deduction at Source

10.1 Widening of TDS provisions on payment by Individual/HUF contractors and professionals u/s 194M

Presently, no individual /HUF is liable to deduct TDS on any payment made to a resident contractor or professional when it is for personal use or in case of carrying on business or profession which is not subjected to audit u/s 44AB.

It is proposed to insert a new section 194M in the Act to provide for levy of TDS at the rate of 5% per cent on the sum, or the aggregate of sums, paid or credited in a year on account of contractual work or professional fees by an individual /HUF (other than those covered u/s 194C &194J of the act), if such sum, or aggregate of such sums, exceeds 50 lakhs rupees in a year.

There is no need to obtain TAN no. by such individual/HUF and TDS can be paid by them by using their PAN no.

10.2 TDS at the time of purchase of immovable property

Section 194-IA of the Act relates to payment on transfer of certain immovable property other than agricultural land and provides for levy of TDS at the rate of 1% on the amount of consideration paid or credited for transfer of such property. The term 'consideration for immovable property' is presently not defined under the said section.

The term ***"consideration for immovable property"*** shall include all charges of the nature of club membership fee, car parking fee, electricity and water facility fees, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property. This implies that TDS u/s 194-IA should be deducted on the entire consideration paid to the builder/seller.

10.3 Revision in rates of deduction of tax at source on various payments mentioned in the relevant sections of the Act:

Present Section	Nature	Existing Rate	Proposed Rate
194DA	Payment in respect of Life Insurance Policy	1%	5%
194M	Payments by Individual/HUF to contractor or professional	NIL	5%

10.4 Relaxing the provisions of sections 201 and 40 of the Act in case of payments to non-residents

The first proviso to sub-section (1) of the said section provides that any person, including the principal officer of a company specified therein, who fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVIIB on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident has furnished a return of his income, has taken into account such sum for computing income in such return of income, has paid the tax due on the income declared by him in such return of income and furnishes a certificate to this effect from an accountant in the prescribed form. It is proposed to amend the said first proviso so as to substitute the word "resident" with the words "payee". It is further proposed to make a similar amendment in the proviso to sub-section (1A) of the said section. Sub-section (3) of the said section provides that no order deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a payment made to a resident 102 shall be made after the expiry of seven years from the end of the financial year in which payment is made or credit is given. It is proposed to amend the said sub-section to specify that in respect of a correction statement delivered by the assessee under the proviso to sub-section (3) of section 200, no order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a resident, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given, or two years from the end of the

financial year in which such correction statement is delivered under the proviso to sub-section (3) of section 200, whichever is later.

This relief in section 201 is available to the deductor, only in respect of payments made to a resident. In case of similar failure on payments made to a non-resident, such relief is not available to the deductor. To remove this anomaly, it is proposed to amend the proviso to sub-section (1) of section 201 to extend the benefit of this proviso to a deductor, even in respect of failure to deduct tax on payment to non-resident.

Consequent to this amendment, it is also proposed to amend the proviso to sub-section (1A) of section 201 to provide for levy of interest till the date of filing of return by the non-resident payee (as is the case at present with resident payee).

For the same reason, it is also proposed to amend clause (a) of section 40 to provide that where an assessee fails to deduct tax in accordance with the provisions of Chapter XVII-B on any sum paid to a non-resident, but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of the return of income by the payee referred to in that proviso. Thus, there will be no disallowance under section 40 in respect of such payments.

10.5 TDS on non exempt portion of life insurance pay-out on net basis.

Under section 194DA of the Act, a person is obliged to deduct tax at source, if it pays any sum to a resident under a life insurance policy, which is not exempt under section 10(10D) . The present requirement is to deduct tax at the rate of 1% of such sum at the time of payment. It is not justified to deduct tax on gross amount creates difficulties to an assesse who otherwise has to pay tax on net income (i.e after deducting the amount of insurance premium paid by him from the total sum received). Hence, it is proposed to provide for tax deduction at source at the rate of five per cent. on income component of the sum paid by the person i.e. maturity value paid minus insurance premium paid by the person.

10.6 TDS on cash withdrawal to discourage cash transactions

The new section 194N has been proposed to provide that a banking company, a cooperative society engaged in carrying on the business of banking or a post office, which is responsible for paying any sum or aggregate of sums, in excess of Rs 1 crore in aggregate to a person from an account maintained by the recipient, shall deduct TDS @2% on cash payment.

Recipients who are involved in handling of substantial amounts of cash as a part of their business operations, such as Government, banking company, cooperative society engaged in carrying on the business of banking, post office, banking correspondents and white label ATM operators are exempt from this section. Central Government is empowered to exempt other recipients in consultation with RBI through notification in official Gazette.

11 Miscellaneous Amendments

11.1 Expansion of Scope for Cancellation of registration of the Trust or Institution u/s 12AA

Section 12AA of the Act prescribes for manner of granting registration in case of trust or institution for the purpose of availing exemption in respect of its income under section 11 of the Act, subject to conditions contained under sections 11, 12, 12AA and 13. Section 12AA also provides for manner of cancellation of said registration. This section provides that cancellation of registration can be on two grounds:-

(a) the Principal Commissioner or the Commissioner is satisfied that activities of the exempt entity are not genuine or are not being carried out in accordance with its objects; and

(b) it is noticed that the activities of the exempt entity are being carried out in a manner that either whole or any part of its income would cease to be exempt .

In order to ensure that the trust or institution do not deviate from their objects, it is proposed to amend section 12AA of the Income-tax Act, so as to provide that,-

(i) at the time of granting the registration to a trust or institution, the Principal Commissioner or the Commissioner shall, inter alia, also satisfy himself about the compliance of the trust or institution to requirements of any other law which is material for the purpose of achieving its objects;

(ii) where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A and subsequently it is noticed that the trust or institution has violated requirements of any other law which was material for the purpose of achieving its objects, and the order, direction or decree, by whatever name called, holding that such violation has occurred, has either not been disputed or has attained finality, the Principal Commissioner or Commissioner may, by an order in writing, cancel the registration of such trust or institution after affording a reasonable opportunity of being heard.

11.2 Rationalisation of provisions relating to claim of refund

The existing provisions of section 239 of the Act provide inter alia that every claim of refund under Chapter XIX of the Act shall be made in the prescribed form and verified in the prescribed manner.

In order to simplify the procedure for claim of refund, it is proposed to amend the said section so as to provide that every claim for refund under Chapter XIX of the Act shall be made by furnishing return in accordance with the provisions of section 139 of the Act.

11.3 Enhancing time limitation for sale of attached property under rule 68B of the Second Schedule of the Act

The existing provisions of rule 68B of the Second Schedule of the Act provide that no sale of immovable property attached towards the recovery of tax, penalty etc. shall be made after the expiry of three years from the end of the financial year in which the order in consequence of which any tax, penalty etc. becomes final.

In order to protect the interest of the revenue, especially in those cases where demand has been crystallised on conclusion of the proceedings, it is proposed to amend the aforesaid sub-rule so as to extend the period of limitation from three years to seven years

In order to ensure that the limitation of time period for sale of attached property may not be an impediment in recovery of tax dues and may not lead to permanent loss of revenue to the exchequer, it is further proposed to insert a new proviso in the said sub-rule so as to provide that the Board may, for reasons to be recorded in writing, extend the aforesaid period of limitation by a further period of three years.

11.4 Rationalisation of the Income Declaration Scheme, 2016

The existing provisions of section 187 of the Finance Act, 2016 provide, inter alia, that the tax, surcharge and penalty in respect of the undisclosed income, declared under the Income Declaration Scheme, 2016 (the Scheme) shall be paid on or before a notified due date.

In order to address genuine concern of the declarants, it is

proposed to amend the said section so as to provide that where the amount of tax, surcharge and penalty, has not been paid within the due date, the Central Government may notify the class of persons who may make the payment of such amount on or before a notified date, along with the interest on such amount, at the rate of one per cent of every month or part of a month, comprised in the period, commencing on the date immediately following the due date and ending on the date of such payment.

Further, the existing section 191 of the Finance Act, 2016 provides, inter alia, that any amount of tax, surcharge or penalty paid in pursuance of a declaration made under the Scheme shall not be refundable.

In order to address genuine concern of the declarants, it is proposed to amend the said section so as to provide that the Central Government may notify the class of persons to whom the amount of tax, surcharge and penalty, paid in excess of the amount payable under the Scheme shall be refundable.

11.5 Rationalisation of provisions relating to STT

As per the existing provisions section 99 of the Finance (No.2) Act, 2004, the value of taxable securities transaction in respect of sale of an option in securities, where option is exercised, shall be, the settlement price.

In order to rationalise the levy of STT where the option is exercised, it is proposed to amend the said section so as to provide that value of taxable securities transaction in respect of sale of an option in securities, where option is exercised, shall be the difference between the strike price and the settlement price.

11.6 Rationalizing the provisions of the Prohibition of Benami Property Transactions Act

The existing provisions of section 23 of the Prohibition of Benami Property Transactions Act ('the PBPT Act') provide that the Initiating Officer, with the prior approval of the Approving Authority, shall conduct any inquiry or investigation. This power is exercised by the Initiating Officer where no case is pending before him. However, it is not expressly provided in the PBPT Act that the prior approval of Approving Authority shall not be

required where the Initiating Officer has already initiated proceedings by issuing notice under section 24(1).

In order to clarify that no prior approval of the Approving Authority would be required in cases where notice under section 24(1) has been issued, it is proposed to suitably amend the provisions of section 23 of the PBPT Act.

Further, section 24(3) of the PBPT Act provides for attachment of property for a period of ninety days from the date of issue of notice under section 24(1) of the PBPT Act. Section 24(4) provides for passing of order within ninety days from the date of issuing notice under section 24(1).

In order to rationalize the aforesaid provisions, it is proposed to amend the section 24 so as to provide that the period of ninety days in respect of provisional attachment of the property under section 24(3) and passing of order under section 24(4) shall be reckoned from the end of the month in which the notice under section 24(1) is issued.

The existing provisions of section 24(4) of the PBPT Act provide for passing of order by the Initiating Officer, of section 24(5) provide for making of reference by the Initiating Officer and of section 26(7) provide for passing of order by the Adjudicating Authority. However, no exclusion is provided for the period during which the proceedings are stayed by the Court. In order to provide for the exclusion and adequate time to pass the order or make the reference, it is proposed to suitably amend the provisions of sections 24 and 26.

With a view to ensure compliance with the summons issued and information required to be furnished under the PBPT Act, it is proposed to insert a new section 54A in the PBPT Act so as to provide for levy of penalty of rupees twenty five thousand for failure to comply with the summons issued or to furnish information under section 19 or section 21 respectively of the PBPT Act.

With a view to enable admissibility of certified copies of records or other documents in the custody of the authority as evidence in any proceeding under the PBPT Act, it is proposed to insert a new section 54B in the said Act so as to provide that entries in the records or other documents in the custody of an authority shall be admitted in evidence in any proceedings for the prosecution of any person for an offence under the PBPT Act.

The existing provisions of the section 55 of the PBPT Act

provide that no prosecution shall be instituted against any person in respect of any offence under the said Act without the previous sanction of the Board. With a view to rationalise the provisions, it is proposed to amend the said section so as to provide that no prosecution shall be instituted against any person in respect of any offence under the said Act without the previous sanction of the competent authority.

11.7 Extension of tax concession to The Special Undertaking of the Unit Trust of India (SUUTI)

The Special Undertaking of the Unit Trust of India (SUUTI) was created vide the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002. SUUTI is the successor of UTI. The mandate of SUUTI is to liquidate Government liabilities on account of the erstwhile UTI. SUUTI is exempt from income-tax or any other tax or any income, profits or gains derived, or any amount received in relation to the specified undertaking uptil 31st March, 2019. It is proposed to extend the exemption for a further period of two years till 31st March 2021.

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

The existing provisions of section 2 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (the BM Act) provide inter alia that the "assessee" means a person who is resident in India within the meaning of section 6 of the Income-tax Act.

In order to clarify the legislative intent behind enacting the BM Act, which was to tax such foreign income and assets, which were not charged to tax under the Income-tax Act, it is proposed to amend the said section so as to provide that the "assessee" shall mean a person being a resident in India within the meaning of section 6 of the Income-tax Act, in the previous year, or a person being a non-resident or not ordinarily resident in India within the meaning of clause (6) of section 6 of the Income-tax Act, in the previous year, who was resident in India either in the previous year to which the income referred to in section 4 relates, or in the previous year in which the undisclosed asset located outside India was acquired. It is also proposed to provide that the previous year of acquisition of the undisclosed asset located outside India shall be determined

without giving effect to the provisions of section 72(c) of the BM Act.

Further, a clarificatory amendment is also proposed to be made to section 10 of the BM Act so as to include the expressions “re-assess” and “reassessment” in sub-section (3) and (4) of the said section.

The existing provisions of the section 84 of the BM Act provide, inter alia, for application of certain provisions of the Income-tax Act to the BM Act with necessary modifications.

Considering the significance of cases assessed under the BM Act, it is proposed to amend the said section so as to provide that the provisions of section 144A of the Income-tax Act shall be applicable to the BM Act with necessary modifications.

Further, a clarificatory amendment is also proposed to be made in section 17 of the BM Act to clarify that the Commissioner (Appeals) may also vary the penalty order so as to enhance or reduce the penalty.

Notes

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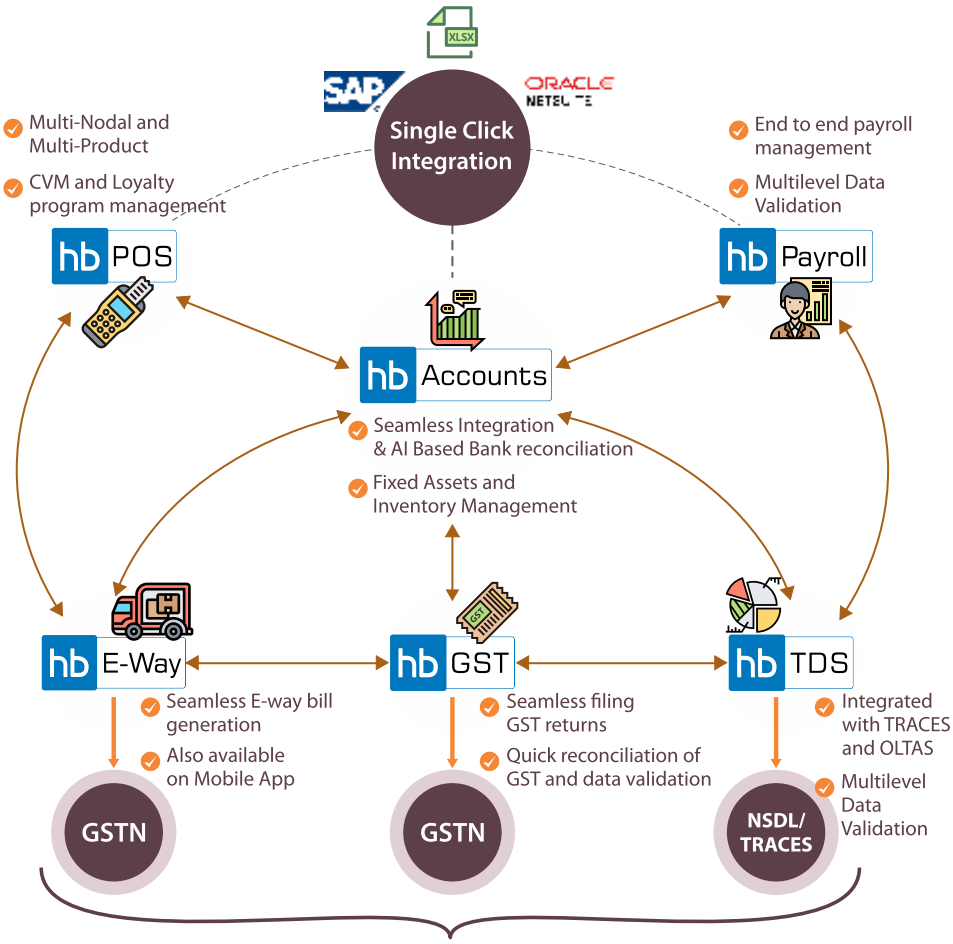

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