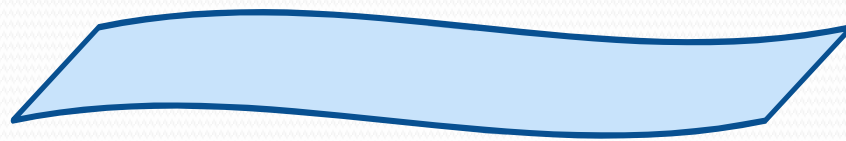




# *Budget 2017 - Decoded*



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### KEY HIGHLIGHTS 2017

#### DIRECT TAX PROPOSALS

##### Rates and Slabs of Income Tax

- 1) Existing rate of taxation for individual assesses between income of ₹2.5 lakhs to ₹5 lakhs reduced to 5% from the present rate of 10% and hence the Income Tax Slab for various assesses would be as follows:

- (i) In case of every individual other than (ii) and (iii) below or HUF or every AOP or Body of Individuals or Artificial Juridical Person:

| <b>Slab</b>               | <b>Rate of Income Tax</b> |
|---------------------------|---------------------------|
| Upto Rs. 250000           | Nil                       |
| Rs. 250001 to Rs. 500000  | 5%                        |
| Rs. 500001 to Rs. 1000000 | 20%                       |
| Above Rs. 1000000         | 30%                       |

- (ii) In case of every individual being resident in India who is of the age of 60 years or more but less than 80 years:

| <b>Slab</b>               | <b>Rate of Income Tax</b> |
|---------------------------|---------------------------|
| Upto Rs. 300000           | Nil                       |
| Rs. 300001 to Rs. 500000  | 5%                        |
| Rs. 500001 to Rs. 1000000 | 20%                       |
| Above Rs. 1000000         | 30%                       |

- (iii) In case of every individual being resident of India who is the age of 80 years of more:

| Slab                      | Rate of Income Tax |
|---------------------------|--------------------|
| Upto Rs. 500000           | Nil                |
| Rs. 500001 to Rs. 1000000 | 20%                |
| Above Rs. 1000000         | 30%                |

**Surcharge would be levied on above Income Tax as follows:**

| Category  | Surcharge |
|---|-----------|
| Person having a total income more than Rs. 50 Lakhs but less than Rs. 1 Crore | 10%       |
| Person having total income exceeding Rs. 1 Crore                              | 15%       |

**2) In case of Domestic companies**

| Slab  | Rate of Income Tax |
|---|--------------------|
| Turnover or Gross Receipts of the Financial Year 2015-16 Upto Rs. 50 Crores | 25%                |
| Others  | 30%                |

**3) TDS in case of certain Individuals and HUF: (With effect from 01/06/2017)**

New Section 194IB is introduced for the Individuals and HUF other than those having Tax Audit under Section 44AB of the Income Tax Act. As per the said section Individuals and HUF (other than those having Tax Audit under Section 44AB of the Income Tax Act) responsible for paying to a resident any income by way rent exceeding Rs 50000 per month or part of a month during the previous year shall deduct an amount equal to 5% of such income as Income Tax thereon.

It is further proposed that, tax shall be deducted on such income at the time of credit of rent for the last month of the previous year or the last month of tenancy if the property is vacated during the year, as the case may be, to the account of

the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode which is earlier.

Furthermore it is proposed that, the deductor shall not be required to obtain TAN number and such tax needs to be deducted only once in a previous year. And deduction under this Section shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy as the case may be.

#### **4) Rationalisation of Provisions of Section 80-IBA to promote Affordable Housing: (With effect from A.Y. 2018-19)**

The existing provisions of section 80-IBA provides for 100% deduction in respect of the profits and gains derived from developing and building certain housing projects subject to specified conditions. The conditions specified, inter alia, include the limit of 30 square meters for the built-up area of residential unit in respect of project located in the Chennai, Delhi, Kolkata and Mumbai or within 25 kms from the municipal limits of these four cities. Further, it is also provided that in order to be eligible to claim deductions, the project shall be completed within a period of three years.

It is proposed to amend section 80-IBA so as to provide the following relaxations:—

- (i) The size of residential unit shall be measured by taking into account the "carpet area" as defined in Real Estate (Regulation and Development) Act, 2016 and not the "built-up area".
- (ii) The restriction of 30 square meters on the size of residential units shall not apply to the place located within a distance of 25 kms from the municipal limits of the Chennai, Delhi, Kolkata or Mumbai.
- (iii) The condition of period of completion of project for claiming deduction under this section shall be increased from existing three years to five years.

#### **5) Change in Holding Period of Real Estate for Capital Gain: (With effect from A.Y. 2018-19)**

Section 2(42A) of the Act is amended so as to reduce the period of holding from existing 36 months to 24 months in case of immovable property being land or building or both, to qualify as long term capital asset.

#### **6) Exemption of Capital Gain under Section 10(37A) and amendment to Section 49 of the Act:**

New Section 10(37A) is inserted in the Act to give exemption to following transfers in respect of land acquired by the Government of Andhra Pradesh under the Land Pooling Scheme for the formation of new capital city Amaravati”

- (i) Transfer of Capital Asset being land or building or both, under land pooling scheme
- (ii) Sale of LPOCs (Land Pooling Ownership Certificates) by the said persons received in lieu of land transferred under the scheme
- (iii) Sale of reconstituted plot of land by said persons within two years from the end of the financial year in which possession of such plot or land was handed over to the said persons. This amendment will take effect retrospectively with effect from A.Y. 2015-16.

In relation to the above amendment Section 49 is also amended so as to provide that, where reconstituted plot or land, received under Land Pooling scheme is transferred after the expiry of two years from the end of the financial year in which the possession of such plot or land shall be deemed to be its stamp duty on the last day of second financial year after the end of financial year in which the possession of such asset was handed over to the assessee. This amendment shall be effective from A.Y. 2018-19.

It is applicable to Individual or HUF who was the owner of such land on 2<sup>nd</sup> June 2014 and has transferred such land under the land pooling scheme notified under the provisions of Andhra Pradesh Capital Region Development Authority Act, 2014.

### **7) Computation of Capital Gains in case of Joint Development Agreement: (with effect from A.Y.2018-19)**

New Section 45(5A) is inserted so as to provide that in case of an assessee being individual or Hindu Undivided Family, who enters into a Joint Development Agreement for development of the property, the capital gains arising out of such transaction shall be chargeable to Income Tax only in the year in which Certificate of Completion for whole or part of the project is received.

Further for the purpose of calculation of consideration stamp duty value of his share of property as increased by monetary consideration if any shall be considered.

### **8) Shifting Base year from 1981 to 2001 for computation of capital gains: (With effect from A.Y. 2018-19)**

Currently Base year for the purpose of computation of indexation of capital gain is 01.04.1981 and costs in respect of capital assets prior to 01.04.1981 is considered to be FMV as on 01/04/1981 or the actual cost of asset. Now it is proposed to change the base year as 01.04.2001 and costs in respect of capital assets prior to 01.04.2001 can be taken as FMV as on 01.04.2001.

**9) Amendment to Section 54EC to widen the scope: (With effect from A.Y. 2018-19)**

Currently investment in bonds issued by National Highway Authority of India or by the Rural Electrification Corporation Limited is eligible for exemption under Section 54EC but now it is proposed to include any bond redeemable after three years and which is notified by the Central Government in this respect.

**10) No notional Income for house property held as stock-in-trade for one year: (With effect from A.Y. 2018-19)**

Notional Income in respect of vacant house property held as stock-in-trade shall be shown as Nil for a period of one year from the end of the financial year in which the certificate of completion of construction of the property is obtained from competent authority.

**11) Non-deduction of tax in case of exempt compensation under RFCTLAAR Act, 2013: (With effect from 01/04/2017)**

The existing provision of section 194LA of the Act, inter-alia, provides that any person paying compensation shall deduct tax at source at the rate of ten per cent. on the compensation or enhanced compensation or consideration on account of compulsory acquisition of any immovable property (other than agricultural land) under any law for the time being in force subject to certain conditions specified therein.

The Central Government has enacted a new law namely Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, ('RFCTLARR Act') on 26th September, 2013 which came into force on 1st January, 2014. Section 96 of the RFCTLARR Act inter-alia, provides that income-tax shall not be levied on award or agreement made subject to limitations mentioned in section 46 of the said Act. Therefore, compensation received for compulsory acquisition of land under the RFCTLARR Act (except those made under section 46 of RFTCLARR Act), is exempted from the levy of income-tax.

The Board has issued Circular number 36/2016 dated 25th October, 2016 clarifying that compensation received in respect of any award or agreement which has been exempted from the levy of income-tax vide section 96 of the RFCTLARR Act shall not be taxable under the provisions of the Act, even if there is no specific provision of exemption for such compensation under the Act. However, the circular addressed only the matter pertaining to taxability of compensation received on compulsory acquisition of land and not tax deduction at source under section 194LA of the Act.

Thus in order to rationalise the provisions of the Act, it is proposed to amend the section 194LA to provide that no deduction shall be made under this section where such payment is made in respect of any award or agreement which has been exempted from levy of income-tax under section 96 (except those made under section 46) of RFCTLARR Act.

**12) Extention of benefit of concessional tax rate under Section 194LC: (With effect from A.Y. 2018-19)**

Section 194LC is amended to provide the concessional rate of TDS @ 5% on Interest in respect of External Commercial Borrowing for all the borrowings made before 1<sup>st</sup> July, 2020 and further benefit is also extended to Rupee Denominated Bonds issued outside India before the 1<sup>st</sup> July, 2020.

**13) Extention of benefit of concessional tax rate under Section 194LD: (With effect from A.Y. 2018-19)**

The existing provisions of section 194LC of the Act provide that the interest payable to a non-resident by a specified company on borrowings made by it in foreign currency from sources outside India under a loan agreement or by way of issue of any long-term bond including long-term infrastructure bond shall be eligible for concessional TDS of five per cent.

It further provides that the borrowings shall be made, under a loan agreement at any time on or after the 1<sup>st</sup> July, 2012, but before the 1<sup>st</sup> July, 2017; or by way of any long-term bond including long-term infrastructure bond on or after the 1<sup>st</sup> October, 2014 but before the 1<sup>st</sup> July, 2017, respectively.

It is proposed to amend section 194LC to provide that the concessional rate of five per cent. TDS on interest payment under this section will now be available in respect of borrowings made before the 1<sup>st</sup> July, 2020.

**14) Carry forward and set off of losses in respect of certain companies: (With effect from A.Y. 2018-19)**

For the purpose of carry forward of losses in respect of start-ups, the condition of continuous holding of 51% of voting rights has been relaxed subject to the condition that the holding of the original promoter/promoters continues.

**15) Extending the period for claiming exemption under Section 80IAC for start-ups: (With effect from A.Y. 2018-19)**

Profit (linked deduction) exemption available to the start-ups under Section 80-IAC for 3 years out of 5 years is changed to 3 years out of 7 years



**16) Tax Credit for Minimum Alternate Tax and Alternate Minimum Tax: (With effect from A.Y. 2018-19)**

Tax Credit for Minimum Alternate Tax and Alternate Minimum Tax can be carried forward up to 15<sup>th</sup> assessment years immediately succeeding the assessment years in which such tax credit becomes allowable.

**17) Extention of Scope of Section 43D and 43B to Co-operative Banks: (with effect from A.Y. 2018-19)**

Benefit of taxation of Interest on bad or doubtful accounts on receipt basis under Section 43D is currently not available to co-operative banks but now it would be available to co-operative banks other than primary agriculture credit society or a primary co-operative agricultural and rural development bank. Consequently as per matching principle in taxation, Section 43B is also amended to provide that any sum payable by the assessee as interest on any loan or advances from a co-operative bank other than primary agriculture credit society or a primary co-operative agricultural and rural development bank shall be allowed as a deduction if it is actually paid on or before the due date of furnishing the return of income of the relevant previous year.

**18) Amendment to Section 36(1)(vii)(a): (with effect from A.Y. 2018-19)**

The present limit of 7.5% of total income as deduction for bad and doubtful debts available to banks under Section 36(1)(vii)(a) is increased to 8.5% of the total income.

**19) Restricting Cash Donations under Section 80G: (with effect from A.Y. 2018-19)**

Currently cash donations in excess of Rs. 10000 are not allowed as a deduction under Section 80G but this limit is reduced to Rs. 2000 and hence cash donations in excess of Rs. 2000 would not be allowed as a deduction under Section 80G.

**20) Disallowance of Depreciation under Section 32 and capital expenditure under Section 35AD on cash payment: (with effect from A.Y. 2018-19)**

Section 43 of the Act is amended to provide that, payment for Capital Asset in excess of Rs. 10000 in a day to a person otherwise than by an account payee cheque or bank draft or electronic clearing system through a bank account shall be ignored for the purpose of cost of such Capital Asset and thus eventually depreciation would be calculated on the reduced cost only.

Further Section 35AD of the Act is amended to provide that, any expenditure under Section 35AD in excess of Rs. 10000 in a day to a person otherwise than an



account payee cheque or bank draft or electronic clearing system through a bank account shall not be allowed as a deduction.

**21) Section 40A(3) of the Act is amended to reduce the cash limit to Rs. 10000 from Rs. 20000: (with effect from A.Y. 2018-19)**

Threshold limit of allowable expenditures otherwise than an account payee cheque or bank draft or electronic transfer through a bank account for the purpose of calculation of Profits and Gains from Business or Profession is reduced to Rs. 10000 from current limit of Rs. 20000.

**22) Amendment to Section 44AD: (with effect from A.Y. 2017-18 i.e. for the FY 2016-17)**

Currently as per Section 44AD eligible business and eligible assessee can show a profit @ 8% of the Total Turnover or Gross Receipts for the purpose of Profits and Gains from Business or Profession. Section 44AD is amended to provide that, the current rate of 8% would be reduced to 6% in respect of amount of such total turnover or gross receipts received by an account payee cheque or a bank draft or electronic transfer through a bank account during the previous year on or before the due date specified in Section 139(1) of the Act in respect of that previous year. However the existing rate of 8% shall continue to apply in respect of total turnover or gross receipts received in any other mode.

**23) Restriction on Cash receipts: (with effect from A.Y. 2017-18 i.e. for the FY 2016-17)**

New Section 269ST is introduced to provide that, no person shall received an amount of Rs. 3 Lakhs or more otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account –

- (a) In aggregate from a person in a day;
- (b) In respect of a single transaction; or
- (c) In respect of transactions relating to one or more event or occasion from a person

New Section 271DA is introduced to provide the penalty in case of contravention of provisions of Section 269ST and penalty in such a case would be a sum equal to such receipt.

Consequentially Section 206C is amended to omit the provisions related to TCS @ 1% of sale consideration on cash sale of jewellery exceeding Rs. 5 Lakhs.

**24) Clarity on Indirect Transfer provisions: (With retrospective effect from 01/04/2012 i.e. A.Y. 2012-13)**

As per Explanation 5 to Section 9(1)(i) of the Act, an asset or capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India. The said section is amended to clarify that, Explanation 5 shall not apply to any asset or capital asset mentioned therein being investment held by non-resident, directly or indirectly, in a Foreign Institutional Investor, as referred to in clause (a) of the Explanation to Section 115AD, and registered as Category – I or Category – II Foreign Portfolio Investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 made under Securities Exchange Board of India Act, 1992.

**25) Enabling of Filing of Form 15G/15H for commission payments specified under Section 194D: (With effect from 01/06/2017)**

As per Section 197A of the Act tax shall not be deducted, if the recipient of certain payments on which tax is deductible furnishes to the payer a self-declaration in prescribed Form No. 15G/15H declaring that the tax on his estimated total income of the relevant previous year would be Nil. Presently Section 197A is not applicable to commission referred in Section 194D but now Section 197A is amended to include receipts by Individual or HUF referred in Section 194D of the Act.

**26) Increase in threshold for maintenance of books of accounts: (With effect from A.Y. 2018-19)**

As per the provisions of Section 44AA (2) (i) and (ii) of the Act, books of accounts are required to be maintained for business or profession if the income exceeds Rs. 1.2 Lakhs and turnover or gross receipts exceeds Rs. 10 Lakhs. The said section is amended to provide that, the threshold of income shall be increased to Rs. 2.5 Lakhs and threshold of Rs. 10 Lakhs shall be increased to Rs. 25 Lakhs.

**27) Exclusion of certain assesses from Audit under Section 44AB of the Act: (With effect from A.Y. 2017-18)**

Finance Act, 2016 increased the threshold Section 44AD of taxation under presumptive basis from Rs.1 Crore to Rs. 2 Crores; however Section 44AB was not amended in this respect and threshold under Section 44AB was still Rs. 1 Crore thus in order to remove this practical anomaly Section 44AB is amended to increase the threshold for audit for eligible assesses who are taking benefits under Section 44AD from Rs. 1 Crore to Rs. 2 Crores.

**28) Exemption from TCS under Section 206C in case of certain specified buyers: (With effect from 01/04/2017)**

Section 206C(1F) is amended to exclude following buyers from the compliance of TCS in case of sale consideration greater than Rs. 10 Lakhs:

Central Government, State Government, an embassy, commission, consulate and the trade representation of a foreign state, Local authority, public company which is in the business of carrying passengers.

**29) TDS on Professional Fees under Section 194J: (With effect from 01/06/2017)**

Section 194J is amended to provide that, TDS shall be reduced to 2% from current rate of 10% in case of payee being the person engaged in the call center business.

**30) Amendment to Section 92BA relating to Specified Domestic Transactions:(With effect from A.Y. 2017-18)**

Currently as per the provisions of Section 92BA of the Act requires CA Certificate in Form 3CEB in respect of payments to parties covered under Section 40A(2)(b), now Section 92BA is amended to exclude expenses paid to parties covered under Section 40A(2)(b) from the ambit of Section 92BA and hence no requirement of Form 3CEB for such expenses.

**31) Tax Neutral Conversion of Preference Shares into Equity Shares: (With effect from A.Y. 2018-19)**

Section 47 is amended to exclude conversion of preference shares into equity shares from the definition of conversion and hence no capital gain tax on such conversion.

**32) Processing of return within the prescribed time and enable withholding of refund in certain cases: (With effect from A.Y. 2017-18)**

The provisions of sub-section (1D) of section 143 provide that the processing of a return under Section 143(1) i.e. summary assessment shall not be necessary, where a notice has been issued to the assessee under sub-section (2) of the said section i.e. scrutiny assessment. Amendment to the said sub-section brought by Finance Act, 2016 provides that with effect from assessment year 2017-18, processing under section 143(1) is to be done before passing of assessment order.

In order to address the grievance of delay in issuance of refund in genuine cases which are routinely selected for scrutiny assessment, it is proposed that provisions of section 143(1D) shall cease to apply in respect of returns furnished for assessment year 2017-18 and onwards.

However, to address the concern of recovery of revenue in doubtful cases, it is proposed to insert a new section 241A to provide that, for the returns furnished for assessment year commencing on or after 1st April, 2017, where refund of any amount becomes due to the assessee under section 143(1) and the Assessing Officer is of the opinion that grant of refund may adversely affect the recovery of revenue, he may, for the reasons recorded in writing and with the previous

approval of the Principal Commissioner or Commissioner, withhold the refund upto the date on which the assessment is made

**33) Rationalisation of Section 211 and 234C relating to advance tax: (With effect from A.Y. 2017-18)**

Currently Section 211 provides for payment of advance tax in case of eligible assessee's under Section 44AD engaged in the business through one installment on or before 15<sup>th</sup> March, but now Section 211 is amended to even include eligible assessee's under Section 44ADA engaged in the profession and consequential amendment in Section 234C in respect of interest on advance tax is made.

**34) Additional Interest on refund due to deductor: (With effect from 01/04/2017)**

New Sub-section (1B) is inserted in Section 244A of the Act to provide that, simple interest at the rate 1.5% for a month or part of a month comprised in the period, from the date on which tax is paid, to the date on which refund is granted and this interest shall be in addition to the current interest on refund. However if the delay is due to the deductor then no such interest shall be paid.

**35) Extension of capital gain exemption to Rupee Denominated Bonds: (With effect from A.Y. 2018-19)**

Section 47 is amended to provide that, rupee denominated bond of Indian company issued outside India, by a non- resident to another non- resident shall not be regarded as transfer

**36) Foreign Tax Credit under in case of dispute: (With effect from A.Y. 2018-19)**

Section 155(14A) is inserted to provide that where credit for Foreign Taxes paid is not given on the ground that such foreign tax is paid under dispute, the Assessing officer shall rectify the order or an intimation under Section 143(1) if the assessee within 6 months from end of the month in which the dispute is settled furnishes proof of settlement of such dispute.

**37) Amendment to the structure of Authority for Advance Rulings: (With effect from 01/04/2017)**

It has been decided by the Government to merge the Authority for Advance Rulings for income tax, central excise, customs duty and service tax and accordingly necessary amendments are made in the Act.

**38) Empowering Board to issue directions in respect of penalty for failure to deduct or collect tax at source: (With effect from 01/04/2017)**

In Case of levy of penalty under Section 271C and 271 CA related to TDS and TCS, Board is given a power to issue directions to the concerned sub-ordinate authorities to avoid hardship in genuine cases.

**39) Rationalisation of the provision in respect of time limits for completion of search assessment: (With effect from 01/04/2017)**

Time limit for Assessment Order passed under Section 153A in case of search and seizure conducted is changed as follows:

| Financial Year in which Search and Seizure is conducted | Existing Time Limit for passing order | New Time Limit for passing order |
|---|---------------------------------------|----------------------------------|
| 2018-19   | 21 Months                             | 18 Months                        |
| 2019-20   | 21 Months                             | 12 Months                        |

**40) Additional Condition for exemption under Section 10(38): (With effect from A.Y. 2018-19)**

Section 10(38) exempt capital gain on transfer of long term capital asset being equity shares or units of equity oriented fund. But now this exemption will be applicable only if the acquisition of shares is chargeable to Securities Transaction Tax. However some specific genuine transactions are excluded from this new condition.

**41) FMV of Shares for Capital Gain: (With effect from A.Y. 2018-19)**

In order to rationalize the provisions relating to deeming full value of consideration for computation of income under the head “capital gains”, new section 50CA is introduced to provide that, in case of consideration of shares (other than quoted shares) at the time of transfer is less than the FMV of the shares then the full value of consideration for the purpose of capital gain shall be FMV of such shares as on that date.

**42) Widening Scope of Income from other sources: (With effect from 01/04/2017)**

Existing provision of sum of money received in excess of Rs. 50000 or inadequate consideration for any property is currently restricted to Individual, HUF, Firm and a company but new Section 56(2)(x) is introduced to cover all the assessees for taxation of such transactions under Income From other sources.

**43) Disallowance of non deduction of tax from payment to resident: (With effect from A.Y. 2018-19)**

Currently provisions of Sections 40(a) (ia) related to disallowance in case of non-deduction of TDS is applicable only for the purpose of computation of Profits & Gains from Business or Profession but the said section is being made applicable to even the computation of Income from Other Sources.

**44) Limitation of Interest Deduction in certain cases: (With effect from A.Y. 2018-19)**

It is proposed to insert a new section 94B, to provide that interest expenses exceeding Rs. 1 Crore claimed by an entity to its associated enterprises shall be lesser of following two:

- a. 30% of its earnings before interest, taxes and depreciation.
- b. Actual Interest paid or payable to associated enterprise

The disallowed interest expense can be carried forward for eight assessment years immediately succeeding the assessment year for which the disallowance was first made.

### **45) Secondary Adjustment – Transfer Pricing (With effect from A.Y. 2018-19)**

The provisions of secondary adjustment are internationally recognised and are already part of the transfer pricing rules of many leading economies in the world. Whilst the approaches to secondary adjustments by individual countries vary, they represent an internationally recognised method to align the economic benefit of the transaction with the arm's length position.

In order to align the transfer pricing provisions in line with OECD transfer pricing guidelines and international best practices, it is proposed to insert a new section 92CE to provide that the assessee shall be required to carry out secondary adjustment where the primary adjustment to transfer price, has been made suo motu by the assessee in his return of income; or made by the Assessing Officer has been accepted by the assessee; or is determined by an advance pricing agreement entered into by the assessee under section 92CC; or is made as per the safe harbour rules framed under section 92CB; or is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 90 or 90A.

It is proposed to provide that where as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed as the income of the assessee, in the manner as may be prescribed.

It is also proposed to provide that such secondary adjustment shall not be carried out if, the amount of primary adjustment made in the case of an assessee 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.

- 46) Corpus donation by exempt entity to another exempt entity would not be considered as application of income for the purpose of Section 11. (With effect from A.Y. 2018-19)



**47) Mandatory filing of return by certain exempt entities: (With effect from A.Y. 2018-19)**

Following entities need to file their Income Tax Return:

- a. Any person referred in Section 10(23AAA)
- b. Investor Protection Fund under Section 10(23EC) or (23ED)
- c. Core Settlement Guarantee Fund under Section 10(23EE)
- d. Any Board or authority referred in Section 10(29A)

**48) Fee for delayed filing of return: (With effect from A.Y. 2018-19)**

Delay in filing of income tax return under Section 139(1) would attract late filing fees under new Section 234F as follows:

- a. If the return is furnished after the due date but on or before 31<sup>st</sup> December of the Assessment Year – Fees Rs. 5000
- b. In any other case – Fees Rs. 10000

In case of an assessee whose total income does not Rs. 5 lakhs the above mentioned fees shall be restricted to Rs. 1000. Consequentially due to introduction of late filing fees provisions of Section 271F as relating to Penalty for failure to furnish return shall not be applicable.

**49) Penalty on Professionals furnishing incorrect information in Statutory report or certificate: (With effect from 01/04/2017)**

Section 271J is inserted to provide that if an accountant or a merchant banker or a registered valuer, furnishes incorrect information in a report or certificate under any provisions of the Act or rules made thereunder, the Assessing officer or the Commissioner (Appeals) may direct him to pay a sum of Rs. 10000 for each such certificate or report.

50) There are some changes made in the provisions of Section 115JB related to MAT on Book Income to be in line with Ind AS.

**51) Clarification regarding the applicability of Section 112: (With effect from A.Y. 2013-14)**

Section 112(1)(c) provides the concessional rate of tax @ 10% for long term capital gains arising from the transfer of unlisted securities of both private as well as public company in case of non-resident. Applicability of this section in case of private company was made with effect from 01/04/2017 by Finance Act, 2016; however in case of public company it is applicable from 01/04/2013 hence to bring similarity for both private as well as public company, Section 50 is amended to make this provision applicable for private company from 01/04/2013 i.e. A.Y. 2013-14.



**52) Changes in Rebate under Section 87A: (With effect from A.Y. 2018-19)**

Rebate under Section 87A is reduced from Rs. 5000 to Rs. 3500 and also it is available to only resident individuals whose total income does not exceed Rs. 350000.

**53) Consolidation of plans within a scheme of mutual fund: (With effect from A.Y. 2017-18)**

As per the provisions of Section 47(xix) of the Act, “any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating plan of a mutual fund scheme, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated plan of that scheme of the mutual fund.” is exempted from capital gain.

Now Section 2(42A) and 49 is amended to provide that, the cost of units in consolidated plan of mutual fund, shall be the cost of the units of the consolidating mutual fund and the period shall include the period for which the units in consolidating plan of mutual fund scheme were held by the assessee.

**54) Clarification with regard to interpretation of 'terms' used in an agreement entered into under section 90 and 90A: (With effect from A.Y. 2018-19)**

As per the provisions of Section 90 and 90A of the Act gives power to Central Government to enter into agreement with different countries in case of Double Taxation and while drafting the said agreements various “terms” are used. In order to remove any ambiguity as regards to interpretation of various “terms” as referred above, Section 90 and 90A is amended to provide that, the meaning of these terms shall be:

- a. If it is defined under the said agreement then the same shall be used
- b. If it is not defined under the said agreement then if it is defined elsewhere in the Act, the same shall be used
- c. If it is not defined anywhere in the Act also, then meaning shall be taken from any explanation issued by Central Government in this regard.

**55) Actual cost of asset in case of withdrawal of deduction in terms of Sub-section (7B) of section 35AD: (With effect from A.Y. 2018-19)**

The existing provisions of Section 35AD of the Act, inter alia provides for investment linked deduction on amount of capital expenditure incurred, wholly or exclusively, the purposes of business, during the previous year for a specified business excluding capital expenditure incurred for acquisition of any land or goodwill or financial instrument. Further sub-section (7B) of Section 35AD provides that where any asset on which benefit of section 35AD is claimed and allowed, is used for a purpose other than specified business, the benefit of

deduction already granted under section 35AD shall be deemed to be the income of the assessee. However, it further provides that the deemed income shall be net of normal depreciation as would be entitled.

Clause (1) of section 43 defines "actual cost" for the purposes of claiming depreciation under section 32 of the Act in certain situations. However, there is no clarity on determination of actual cost for the purposes of allowance of depreciation of such assets in respect of which the deduction which is already allowed in a previous year under section 35AD of the Act, is withdrawn in terms of sub-section (7B) of the said section.

In light of the recommendations of Income-tax simplification committee and to bring clarity, it is proposed to amend the provisions of the section 43 of the Act, to provide that where any capital asset in respect of which deduction allowed under section 35AD is deemed to be the income of the assessee in accordance with the provisions of sub-section (7B) of the said section, the actual cost to the assessee shall be the actual cost to the assessee, as reduced by an amount equal to the amount of depreciation calculated at the rate in force that would have been allowable had the asset been used for the purposes of business since the date of its acquisition.

**56) Fresh registration for change or modifications of object of registered trust or institution: (With effect from A.Y. 2018-19)**

Section 12A provides for the conditions for applicability of Section 11 and 12 to a trust or institution and one of the conditions is that it shall be registered under Section 12AA. As per the provisions of Section 12AA if the Principal Commissioner or Commissioner is satisfied that, the trust or institution is not carrying out the activity as mentioned in the objects as provided at the time of registration under Section 12AA, then they can cancel the registration of such trust or institute. However currently there is no provision in the Act as regards to genuine change in the objects of the trust or institute after the registration hence Section 12A is amended to provide that, if there is any change in the objects of the trust or institute after registration under Section 12AA then, it shall be required to obtain fresh registration by making an application within a period of thirty days from the date of such adoption or modifications of the objects in the prescribed form and manner.

**57) Clarification on filing of Income Tax Return for entities registered under Section 12AA: (With effect from A.Y. 2018-19)**

Clarification is being issued that, the person referred in Section 12A shall file their return of income within the time period specified under Section 139 of the Act.

**58) Cost of Acquisition of capital assets of entities in case of levy of tax on accreted income under section 115TD: (With effect from 01/06/2016)**

The existing provisions of the section 49 of the Act provides for computation of cost with reference to certain modes of acquisition of capital asset. It is proposed to amend said section so as to provide that where the capital gain arises from the transfer of an asset, being the asset held by a trust or an institution in respect of which accreted income has been computed, and the tax has been paid thereon in accordance with the provisions of Chapter XII-EB, the cost of acquisition of such asset shall be deemed to be the fair market value of the asset which has been taken into account for computation of accreted income as on the specified date referred to in sub-section (2) of section 115TD.

### **59) PAN mandatory for TCS: (With effect from 01/04/2017)**

In order to strengthen the PAN mechanism in Tax Collected at Source (TCS), it is proposed to insert new section 206C to provide the following:

- i. any person paying any sum or amount, on which tax is collectable at source under TCS provisions shall furnish his Permanent Account Number to the person responsible for collecting such tax, failing which the rate of TCS shall be higher of the following:
  - a. twice the rate prescribed under relevant provisions of Act or
  - b. 5%
- ii. As per the provisions of Section 206C(1A) of the Act TCS shall not be collected, in case of declaration being furnished by the receiver that, the goods specified under the provisions of Section 206(1) are for the purpose of manufacturing, processing or producing articles or things or for the purpose of generation of power and not for the purpose of trading; however as per the amendment this benefit would not be available if PAN is furnished by such assessee.
- iii. Lower rate of TCS shall not be allowed in the absence of PAN
- iv. the collector knows about the correct PAN of the collectee it is also proposed to provide for mandatory quoting of PAN of the collectee by both the collector and the collectee in all correspondence, bills and vouchers exchanged between them
- v. that the collectee shall furnish his Permanent Account Number to the collector who shall indicate the same in all its correspondence, bills, vouchers and other documents which are sent to collectee.
- vi. where the Permanent Account Number provided by the collectee is invalid or it does not belong to the collectee, then it shall be deemed that Permanent Account Number has not been furnished to the collector.
- vii. to exempt the non-resident who does not have permanent establishment in India from the provisions of this proposed section 206CC of the Act.

### **60) Rationalization of deduction under section 80CCG: (With effect from A.Y. 2018-19)**

Under the existing provisions of section 80CCG, deduction for three consecutive assessment years is allowed upto Rs. 25,000 to a resident individual for investment made in listed equity shares or listed units of an equity oriented fund subject to fulfilment of certain conditions. This deduction was introduced vide

Finance Act, 2012. However considering the fact that limited number of individuals availed this deduction and also to rationalize the multiplicity of deductions available under Chapter VI-A of the Act, it is proposed to phase out this deduction by providing that no deduction under section 80CCG shall be allowed from assessment year 2018-19. However, an assessee who has claimed deduction under this section for assessment year 2017-18 and earlier assessment years shall be allowed deduction under this section till the assessment year 2019-20 if he is otherwise eligible to claim the deduction as per the provisions of this section.

**61) Restriction on set-off of loss from House property: (With effect from A.Y. 2018-19)**

Section 71 of the Act relates to set-off of loss from one head against income from another. In line with the international best practices it is proposed to insert sub-section (3A) in the said section to provide that set-off of loss under the head "Income from house property" against any other head of income shall be restricted to two lakh rupees for any assessment year. However, the unabsorbed loss shall be allowed to be carried forward for set-off in subsequent years in accordance with the existing provisions of the Act.

**62) Rationalisation of provisions of the Income Declaration Scheme, 2016 and consequential amendment to section 153A and 153C:**

The existing provisions of clause (c) of the section 197 of the Finance Act, 2016 provide that where any income has accrued, arisen or been received or any asset has been acquired out of such income prior to commencement of the Income Declaration Scheme, 2016 (the Scheme), and no declaration in respect of such income is made under the Scheme, then, such income shall be deemed to have accrued, arisen or received, as the case may be, in the year in which a notice under sub-section (1) of section 142 or sub-section (2) of section 143 or section 148 or section 153A or section 153C of the Income-tax Act is issued by the Assessing Officer, and provisions of the said Act shall apply accordingly.

In view of the various representations received from stakeholders citing genuine hardships if the said provision is made applicable, it is proposed to omit clause (c) of section 197 of the Finance Act, 2016. This amendment will take effect retrospectively from 1st June, 2016.

However, in order to protect the interest of the revenue in cases where tangible evidence(s) are found during a search or seizure operation (including 132A cases) and the same is represented in the form of undisclosed investment in any asset, it is proposed that section 153A relating to search assessments be amended to provide that notice under the said section can be issued for an assessment year or years beyond the sixth assessment year already provided upto the tenth assessment year if—

- (i) the Assessing Officer has in his possession books of accounts or other documents or evidence which reveal that the income which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in

one year or in aggregate in the relevant four assessment years(falling beyond the sixth year);

- (ii) such income escaping assessment is represented in the form of asset;
- (iii) the income escaping assessment or part thereof relates to such year or years.

It is however proposed that the amended provisions of section 153A shall apply where search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017. It is also proposed to consequentially amend section 153C to provide a reference to the relevant assessment year or years as referred to in section 153A.

**63) Exemption of income of Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund:**

Under the existing provisions contained in clause (23C) of section 10, exemption is provided in respect of income of certain funds which, inter-alia, include, the Prime Minister's National Relief Fund.

The Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund, referred at sub-clause (iihf) of clause (a) of sub-section (2) of section 80G, which is of the same nature at the level of state or the Union Territory as is the Prime Minister's National Relief Fund at the national level, is not exempted under the said clause. In the absence of such exemption, these funds are required to obtain registration under section 12A of the Act in order to avail exemption of its income under section 11 and 12 of the said Act and are required to fulfil certain conditions.

Therefore, it is proposed to amend said clause so as to provide the benefit of exemption to the Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund also.

This amendment will take effect retrospectively from the 1st April, 1998, the date on which sub-clause (iihf) of clause (a) of sub-section (2) of section 80G relating to deduction in any sum paid to the Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund came into force, and will, accordingly, apply in relation to assessment year 1998-99 and subsequent years.

**64) Tax-exemption to partial withdrawal from National Pension System (NPS): With effect from A.Y. 2018-19**

The existing provision of section 10(12A) provides that payment from National Pension System (NPS) trust to an employee on closer of his account or opting out shall be exempt up to 40% of total amount payable to him.

In order to provide further relief to an employee subscriber of NPS, it is proposed to amend the section 10 so as to provide exemption to partial withdrawal not exceeding 25% of the contribution made by an employee in accordance with the terms and conditions specified under Pension Fund Regulatory and Development Authority Act, 2013 and regulations made there under.

**65) Rationalisation of deduction under section 80CCD for self-employed individual: (With effect from A.Y. 2018-19)**

The existing provisions of section 80CCD provides that employee or other individuals shall be allowed a deduction for amount deposited in National Pension System trusts (NPS). The deduction under section 80CCD (1) cannot exceed 10% of salary in case of an employee or 10% of gross total income in case of other individuals. However, under the provisions of section 80CCD (2) of the Act, further deduction to an employee in respect of contribution made by his employer is allowed up to 10% of salary of the employee. Thus, in case of an employee, the deduction allowed under section 80CCD adds up to 20% of salary whereas in case of other individuals, the total deduction under section 80CCD is limited to 10% of gross total income.

In order to provide parity between an individual who is an employee and an individual who is self-employed, it is proposed to amend section 80CCD so as to increase the upper limit of ten per cent of gross total income to twenty per cent in case of individual other than employee.



**INDIRECT TAX PROPOSALS**

**SERVICE TAX**

**1. Changes in Negative List under Section 66D and General Exemption: (With effect from 02/02/2017)**

- i. “services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption” services is removed from the Negative List referred in Section 66D of the Act and included in General Exemption notification 25/2012
- ii. The definition of ‘process amounting to manufacture’ is deleted from Section 65B and included in the General Exemption

**2. Changes in Advance Authority Ruling:**

- i. Clause (d) of section 96A is being amended so as to substitute the definition of “Authority” to mean the Authority for Advance Ruling as constituted under section 28E of the Customs Act, 1962. Section 28 (E) of the Customs Act, 1962, is also being amended so as to substitute the definition of “Authority” to mean the Authority for Advance Ruling as constituted under section 245-O of the Income-tax Act, 1961.  
Similar change in Central Excise - Clause (e) of section 23A
- ii. Section 245P of the Income-tax Act, 1961 provides that no proceeding before, or pronouncement of advance ruling by the Authority for Advance Ruling would be invalidated on the ground merely due to any vacancy or defect in the constitution of the Authority. In view of the same, Section 96B relating to vacancies not to invalidate proceedings is being omitted.  
Similar change in Central Excise – Section 23B  
Similar change in Customs - Section 28G
- iii. Sub-section (3) of section 96C is being amended so as to increase the application fee for seeking advance ruling from rupees two thousand five hundred to rupees ten thousand on the lines of the Income Tax Act.  
Similar change in Central Excise – Sub-section (3) of section 23C  
Similar change in Customs - Sub-section (3) of section 28H
- iv. Sub-section (6) of section 96D is being amended so as to extend the existing time limit of ninety days to six months by which time the Authority shall pronounce its ruling, on the lines of the Income Tax Act  
Similar change in Central Excise – Sub-section (6) of section 23D  
Similar change in Customs - Sub-section (6) of section 28I
- v. A new section 96HA is being inserted so as to provide for transferring the pending applications before the Authority for Advance Rulings (Central Excise, Customs and 3 Service Tax) to the Authority constituted under section 245-O of the Income-tax Act from the stage at which such



proceedings stood as on the date on which the Finance Bill, 2017 receives the assent of the President.

Similar change in Central Excise - section 23-I

3. Research and Development Cess Act, 1986 (32 of 1986) is proposed to be repealed.
4. Service tax exemption to taxable services provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds by way of life insurance to members of the Army, Navy and Air Force under the Group Insurance Schemes of the Central Government, is being made effective from 10th day of September, 2004, the date from when the services of life insurance became taxable.
5. Benefit of the exemption notification No. 41/2016-ST dated 22.09.2016 is being extended with effect from 1.6.2007, the date when the services of renting of immovable property became taxable. Notification No. 41/2016-ST dated 22.09.2016, exempts one time upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for grant of long-term lease of industrial plots (30 years or more) by State Government industrial development corporations/ undertakings to industrial units was exempted.
6. Rule 2 A of Service Tax (Determination of Value) Rules, 2006 is being amended with effect from 01.07.2010 so as to make it clear that value of service portion in execution of works contract involving transfer of goods and land or undivided share of land, as the case may be, shall not include value of property in such land or undivided share of land
7. **New Exemptions:**  
Following Services are added to the Mega Exemption Notification 25/2012-ST:
  - i. Services provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds by way of life insurance to members of the Army, Navy and Air Force under the Group Insurance Schemes of the Central Government is being exempted from service tax.
  - ii. Under the Regional Connectivity Scheme (RCS), exemption from service tax is being provided in respect of the amount of viability gap funding (VGF) payable to the selected airline operator for the services of transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in a Regional Connectivity Scheme (RCS) airport, for a period of one year from the date of commencement of operations of the Regional Connectivity Scheme (RCS) as notified by Ministry of Civil Aviation.

8. The exemption vide S. No. 9B of notification No. 25/2012-ST dated 20.06.2012, is being amended so as to omit the word “residential” appearing in the notification. The exemption remains the same in all other respects. S. No. 9B of notification No. 25/2012- ST exempts services provided by Indian Institutes of Management (IIMs) by way of two year full time residential Post Graduate Programmes (PGP) in Management for the Post Graduate Diploma in Management (PGDM), to which admissions are made on the basis of the Common Admission Test (CAT), conducted by IIM.

### **9. Amendment to CENVAT Credit Rules, 2004:**

- i. A new sub-rule 4 is being inserted in Rule 10 of CENVAT Credit Rules, so as to provide that transfer of CENVAT Credit by the jurisdictional Dy./Assistant Commissioner of Central Excise, shall be allowed within 3 months from the date of receipt of application from the manufacturer or service provider in this regard, subject to the fulfillment of the conditions prescribed under Rule 10 (3). (With effect from 02/02/2017)
- ii. Explanation-I (e) applicable to sub-rule 3 and 3A of Rule 6 of CENVAT Credit Rules, 2004 is being amended so as to exclude banks and financial institutions including NBFCs engaged in providing services by way of extending deposits, loans or advances from its ambit. It has been provided in the said explanation that value for the purpose of reversal of common input tax credit taken on inputs and input services used in providing taxable and exempted services, shall not include the value of service by way of extending deposits, loans or advances against consideration in the form of interest or discount. (With effect from 02/02/2017)

### **Customs**

1. A new section 30A is being introduced so as to make it obligatory on the person-incharge of a conveyance that enters India from any place outside India or any other person as may be specified by the Central Government by notification in the Official Gazette, to deliver to the proper officer the passenger and crew arrival manifest before arrival in the case of an aircraft or a vessel and upon arrival in the case of a vehicle; and passenger name record information of arriving passengers in such form, containing such particulars, in such manner and within such time as may be prescribed. The section also intends to provide for imposition of a penalty not exceeding fifty thousand

rupees as may be prescribed, in the case of delay in delivering the information

2. A new section 41A is being introduced so as to make it obligatory on the person-in-charge of a conveyance that departs from India to a place outside India or any other person as may be specified by the Central Government by notification in the Official Gazette, to deliver to the proper officer the passenger and crew departure manifest and passenger name record information of departing passengers before the departure of the conveyance in such form, containing such particulars, in such manner and within such time as may be prescribed. The section also intends to provide for a penalty not exceeding fifty thousand rupees as may be prescribed in the case of delay in delivering the information.
3. Sub-section (3) of section 46 is being substituted so as to make it mandatory to file the bill of entry before the end of the next day following the day (excluding holidays) on which the vessel or aircraft or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing and to provide for imposition of such charges for late presentation of the bill of entry as may be prescribed.
4. Sub-section (2) of section 47 is being amended so as to provide the manner of payment of duty and interest thereon in the case of self-assessed bills of entry or, as the case may be, assessed, reassessed or provisionally assessed bills of entry.
5. Section 49 is being amended to extend the facility of storage under section 49 to imported goods entered for warehousing before their removal.