



R.VAGHASIA GROUP

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HIGHLIGHTS-INCOME TAX

FINANCE BILL, 2018

© TAX RATES:

- ◆ There is no change in the basic exemption limit for Individual, Hindu Undivided Family, Association of Person, Body of Individuals and Artificial Juridical Person.
- ◆ There is no change in basic tax rate of Co-operative Society, Firms and Local Authorities
- ◆ Domestic companies having total turnover during F.Y. 2016-17 not exceeding Rs 250 Crores shall be liable to pay tax at the rate of 25% as against present ceiling of turnover during F.Y 2015-16 of Rs 50 Cr.
- ◆ Existing Education cess and secondary and higher education cess levied at the rate of 2% and 1% respectively shall be discontinued. A new cess by the name "Health and Education Cess" at the rate of 4% shall be levied.

© TAX IMPACT ON INDIVIDUALS

- ◆ **In case of Individual (below 60 years of age), Hindu Undivided Family, Association of Person and Body of Individuals:**

| Particulars | Income level | | | | | |
|----------------|---------------|--------------------|-------------------|--------------------|--------------------|---------------|
| | Upto 2.5 lacs | 2.5 lacs to 5 lacs | 5 lacs to 10 lacs | 10 lacs to 50 lacs | 50 lacs to 1 crore | Above 1 crore |
| Taxable income | Upto 2.5 lacs | 2.5 lacs to 5 lacs | 5 lacs to 10 lacs | 10 lacs to 50 lacs | 50 lacs to 1 crore | Above 1 crore |
| Current tax | Nil | 5.15% | 20.60% | 30.90% | 33.99% | 35.54% |
| Proposed tax | Nil | 5.20% | 20.80% | 31.20% | 34.32% | 35.88% |

- ◆ **In case of Individual (between 60 to 80 years of age)**

| Particulars | Income level | | | | | |
|----------------|--------------|------------------|-------------------|--------------------|--------------------|---------------|
| | Upto 3 lacs | 3 lacs to 5 lacs | 5 lacs to 10 lacs | 10 lacs to 50 lacs | 50 lacs to 1 crore | Above 1 crore |
| Taxable income | Upto 3 lacs | 3 lacs to 5 lacs | 5 lacs to 10 lacs | 10 lacs to 50 lacs | 50 lacs to 1 crore | Above 1 crore |
| Current tax | Nil | 5.15% | 20.60% | 30.90% | 33.99% | 35.54% |
| Proposed tax | Nil | 5.20% | 20.80% | 31.20% | 34.32% | 35.88% |

◆ **In case of Individual (Above 80 years of age)**

| Particulars | Income level | | | | |
|----------------|--------------|-------------------|--------------------|--------------------|---------------|
| | Upto 5 lacs | 5 lacs to 10 lacs | 10 lacs to 50 lacs | 50 lacs to 1 crore | Above 1 crore |
| Taxable income | | | | | |
| Current tax | Nil | 20.60% | 30.90% | 33.99% | 35.54% |
| Proposed tax | Nil | 20.80% | 31.20% | 34.32% | 35.88% |

© **TAX IMPACT ON DOMESTIC COMPANIES FOR A.Y. 2019 - 2020**

◆ **Companies having Turnover during FY 16-17 upto Rs. 250 Cr.**

| Particulars | Income Level | | |
|----------------|--------------|---------------------|----------------|
| | Upto 1 Crore | 1 Crore to 10 Crore | Above 10 Crore |
| Taxable Income | | | |
| Current Tax | 30.90% | 33.06% | 34.61% |
| Proposed Tax | 26.00% | 27.82% | 29.12% |

◆ **Companies having Turnover during FY 16-17 above Rs 250 Cr.**

| Particulars | Income Level | | |
|----------------|--------------|---------------------|----------------|
| | Upto 1 Crore | 1 Crore to 10 Crore | Above 10 Crore |
| Taxable Income | | | |
| Current Tax | 30.90% | 33.06% | 34.61% |
| Proposed Tax | 31.20% | 33.38% | 34.94% |

- © Definition of accumulated profits of amalgamated company widened so as to include accumulated profits of the amalgamating company also, whether capitalized or not, as on the date of amalgamation to prevent arrangements resorted to by companies in order to escape liability of paying tax on distributed profits by reducing capital through amalgamation route.
- © Stock in Trade Converted into Capital Asset will be taxed under the head "Profits and Gains of Business and Profession" by taking the Fair Market Value of stock in trade as on date of conversion.
- © In order to align the provisions in the DTAA as modified by Multilateral Instruments (MLI), so as to make the provisions in the treaty effective, the definition of "business connection" is proposed to be amended u/s 9.
- © Provisions of Section 40(a) and 40A(3) shall be applicable to charitable and religious trusts and institutions in order to encourage less cash economy and to reduce generation and circulation of black money.

- © Standard deduction of Rs.40,000/- allowable to Salary Persons in lieu of Transport Allowance of Rs.19,200/- and Medical Reimbursement Perquisites of Rs.15,000/-, thereby resulting into net benefit of Rs.5,800/-.
- © Deduction in respect of marked to market loss or other expected loss u/s 36 shall be allowed if computed in accordance with ICDS.
- © In order to encourage participation in trading of agricultural commodities and derivatives, any transaction in respect of trading in agricultural commodity derivatives, which is not chargeable to CTT, in a registered stock exchange, will not be considered as a speculative transaction.
- © Any gain or loss arising on account of any change in foreign exchange rates, shall be treated as income or loss and the same shall be computed in accordance with ICDS.
- © In order to minimize hardship in the real estate sector, it is proposed to provide that no adjustment shall be made in a case where the variation between stamp duty value and the sales consideration is not more than 5% of the sales consideration u/s 43CA (Business Profits), 50C (Capital Gains) and 56 (Income from Other Sources).
- © New Section 43CB to be inserted to provide for computation of income from construction and service contracts as under :

| | |
|---|---|
| Construction Contract or a Contract for providing services | Percentage of Completion Method as per ICDS |
| Contract for providing services with duration less than 90 days | Project Completion Method |
| Contract for providing services involving indeterminate number of acts over specific period of time | Straight Line Method |

- © Section 44AE amended so as to compute presumptive income in case of heavy vehicles (More than 12MT) at Rs. 1,000/- per ton of gross vehicle weight or unladen weight for every month or part thereof or amount actually earned whichever is higher. In case of vehicles of 12MT or less gross vehicle weight the earlier provision of Rs. 7,500/- per month for each vehicle would continue.

- © Any transfer by a non-resident of capital asset as referred u/s 115AC, rupee denominated bond of an Indian Company or Derivatives on a recognised stock exchange located in any International Financial Service Centre (IFSC) and the consideration is in foreign currency, would not be regarded as transfer u/s 47.
- © Exemption u/s 54EC allowed against long term capital gain arising on transfer of land or building or both (earlier any long term capital asset) by making investment in long term specified asset redeemable after 5 years (earlier 3 years)
- © Provisions of Section 56(2) would not be applicable to transfer of capital asset between holding company and its wholly owned Indian Subsidiary company and between subsidiary company and its Indian holding Company.
- © To carry forward loss, limitation to hold more than 51% of shares shall not apply where a company seeking insolvency resolution under the Insolvency and Bankruptcy Code, 2016.
- © Benefit of deduction under the heading "C.—Deductions in respect of certain incomes" in Chapter VIA shall not be allowed if the return of income is not filed within due date u/s. 139(1).
- © Deduction u/s. 80D is increased from Rs. 30,000/- to Rs. 50,000/- in case of payments made towards health insurance premium or medical expenditure of a senior citizen.
- © Deduction u/s. 80DDB is increased to Rs. 1,00,000/- in case of payments made towards medical treatment of specified diseases of senior citizen.
- © Deduction u/s. 80TTB on interest income from Banks and post offices earned by senior citizen upto Rs 50,000/-
- © Section 112A inserted to provide tax @10% on long term capital gains arising from transfer of a long term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust exceeding one lakh rupees. However, deemed capital gains for fair value as on 31-01-2018 is proposed to be exempted.

- © Section 115JB to be amended to provide that the aggregate amount of loss brought forward and unabsorbed depreciation shall be allowed to be reduced from the book profit, if a company's application for corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 has been admitted.
- © Section 115JC to be amended so as to provide that a unit located in an International Financial Service Center, the alternate minimum tax shall be charged @9% instead of @18.5%.
- © Deemed dividends u/s 2(22)(e) shall be liable to dividend distribution tax under section 115-O @30% (without grossing up).
- © Dividend distribution tax to be levied @10% on income distributed by an equity oriented fund Mutual Fund.
- © Quoting of PAN is made mandatory for financial transaction of an amount aggregating to Rs. 2,50,000/- or more in a financial year in case of a person not being an individual i.e. a Natural person. The said obligation is simultaneously cast on the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer or any person competent to act on behalf of such entities.
- © To improve more transparency & accountability by eliminating the interface between the AO & the assessee, new section 143(3A), 143(3B) & 143(3C) to be inserted enabling the central government to prescribe new scheme for scrutiny assessments by way of notification.
- © In order to regularise the compliance with the notified ICDS by a large number of taxpayers, it is proposed to bring the amendments retrospectively in provisions of section 145A pertaining to method of accounting, with regard to valuation of inventory, transactions of purchase and sales of goods or service or securities, claim for escalation of price in a contract or export incentives, assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement referred to in section 2(24)(xviii).

- © Section 194A is amended to raise the threshold for deduction of tax at source on interest income for senior citizens from Rs 10,000/- to Rs 50,000/-
- © Section 253 pertaining to 'Appeals to Appellate Tribunal' is proposed to be amended to also make an order passed by a Commissioner (Appeals) under section 271J appealable before the Appellate Tribunal.
- © Penalty for delay in furnishing the statement for specified financial transaction (SFT) beyond prescribed time limit is increased five-fold from Rs . 100/- to 500 /- per day when delay is up to 30 days and from Rs . 500/- to Rs . 1 000/- per day when delay is beyond that.
- © Immunity from prosecution and imprisonment u/s. 276CC on failure to furnish prescribed returns for any assessment year commencing on or after the 1st day of April, 1975 shall henceforth not be available in case of companies.
- © Provisions pertaining to CbCR has been proposed to be rationalised by extending the period of reporting.

Analysis - INCOME TAX

© DEFINITIONS:

♦ Widening of scope of Accumulated profits for the purposes of Dividend

It is proposed to insert a new Explanation 2A in section 2(22) of the Act to widen the scope of the term 'accumulated profits' so as to provide that in the case of an amalgamated company, accumulated profits, whether capitalised or not, or losses as the case may be, shall be increased by the accumulated profits of the amalgamating company, whether capitalised or not, on the date of amalgamation.

The said proposed insertion is to prevent abusive arrangements resorted to by companies in order to escape liability of paying tax on distributed profits by reducing capital through amalgamation route.

(w.e.f. A.Y. 2019-2020)

♦ Widening the definition of Income

It is proposed to amend the definition of the term 'Income' so as to include the Fair Market Value of Inventory on its conversion from stock in trade to capital asset.

Further, it is proposed to amend definition of 'Short Term Capital asset' so as to provide that on sale of the said converted capital asset, the period of holding shall be reckoned from the date of its conversion or the treatment.

Thus, if the stock in trade is converted into capital asset, then the Fair Market Value of the inventory on the date of conversion determined in the prescribed manner shall be treated as business Income.

(w.e.f. A.Y. 2019-2020)

It is further proposed to amend definition of the term 'Income' so as to include any compensation or other payment received on termination of the employment or modification of terms and conditions relating thereto.

(w.e.f. A.Y. 2019-2020)

© INCOME DEEMED TO ACCRUE OR ARISING IN INDIA

♦ Amendment to Section 9 relating to Income deemed to accrue or arise in India

The scope of existing provisions of section 9(1)(i) is restrictive as it essentially provides for physical presence based nexus rule for taxation of business income of the non-resident in India. Explanation 2 to the said section which defines 'business connection' is also narrow in its scope since it limits the taxability of certain activities or transactions of non-resident to those carried out through a dependent agent. Therefore, emerging business models such as digitized businesses, which do not require physical presence of the non-resident or any agent in India, is not covered within the scope of the said clause.

Thus, in view of the above, it is hereby proposed to substitute clause (a) of the said Explanation 2 so as to provide that "business connection" shall include any business activity carried through a person who, acting on behalf of the non-resident, has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident or habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by the non-resident and the contracts are -

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

It is further proposed to insert a new Explanation 2A in section 9(1)(i) so as to provide that the significant economic presence of a non-resident in India shall constitute "business connection" of the non-resident in India and the "significant economic presence" for this purpose, shall mean -

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

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

It is further proposed to provide that the transactions or activities shall constitute significant economic presence in India, whether or not the non-resident has a residence or place of business in India or renders services in India.

It is also proposed to provide that only so much of income as is attributable to the transactions or activities referred to in clause (a) or clause (b) shall be deemed to accrue or arise in India.

(w.e.f. A. Y. 2019-2020)

© INCOMES NOT TO BE INCLUDED IN TOTAL INCOME

- ◆ It is proposed to insert a new clause (6D) in the said section so as to exempt from tax any income arising to a non-resident, not being a company, or a foreign company, by way of royalty from or fees for technical services rendered in or outside India to the National Technical Research Organisation (NTRIO)

Consequently, NTRIO will not be required to deduct tax at source on such payment.

- ◆ Under the existing provisions pertaining to National Pension Scheme, an employee contributing to the NPS is allowed an exemption in respect of 40% of the total amount payable to him on closure of his account or on his opting out. This exemption is not available to non-employee subscribers.

In order to provide a level playing field, it is proposed to amend the said clause (12A) of section 10 of the Act to extend the said benefit to all subscribers.

- ◆ At present, there are no restrictions on payments made in cash by charitable or religious trusts or institutions. There are also no checks on whether such trusts or institutions follow the provisions of deduction of tax at source under Chapter XVII-B of the Act. This has led to lack of an audit trail for verification of application of income.

It is proposed to insert proviso in section 10(23C) so as to provide that for the purpose of determining the amount of application under item (a) of the said third proviso, the provisions of section 40(a)(ia) pertaining to disallowance of expense for non-deduction of tax at source and restrictive provisions of cash payment in excess of Rs. 10,000/35,000 of section 40A(3)/(3A) shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and Gains of Business and Profession".

- ◆ It is proposed to withdraw the benefit of exemption to long term capital gain arising on sale of listed equity shares covered in Section 10(38) on or after the 1st day of April, 2018.

(w .e .f . A. Y .2019-20 20)

- ◆ **Amendment in Section 11 relating to Income from property held for charitable or religious purposes**

At present, there are no restrictions on payments made in cash by charitable or religious trusts or institutions. There are also no checks on whether such trusts or institutions follow the provisions of deduction of tax at source under Chapter XVII-B of the Act. This has led to lack of an audit trail for verification of application of income.

In order to encourage a less cash economy and to reduce the generation and circulation of black money, it is proposed to insert a new Explanation to the section 11 to provide that for the purposes of determining the application of income under the provisions of sub-section (1) of the said section, the provisions of section 40(a)(ia) pertaining to disallowance of expense for non-deduction of tax at source

and restrictive provisions of cash payment in excess of Rs. 10,000/35,000 of section 40A(3)/(3A) shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession".

(w.e.f. A. Y. 2019-2020)

© SALARY

◆ Amendment in Section 16 & 17 relating to deductions and definitions

It is hereby proposed to provide Standard Deduction of Rs. 40,000/- from the salary income in Section 16 and the present allowance of Rs. 19,200/- (1,600/- p.m.) in respect of Transport Allowance (except in case of differently abled persons) and Rs. 15,000/- in respect of reimbursement of medical expenses (Perquisite) is proposed to be withdrawn and thereby resulting into net benefit of Rs. 5,800/- (40000 - 19200 - 15000).

(w.e.f. A. Y. 2019-2020)

© PROFIT AND GAINS FROM BUSINESS AND PROFESSION

◆ Amendment in Section 28 relating to Profits and Gains of Business and Profession

- It is proposed to widen the definition of business income so as to provide that any compensation due or received by any person, by whatever name called, at or in connection with the termination or the modification of the terms and conditions, as the case may be, of any contract relating to his business shall be chargeable to tax under the head "Profits and Gains of Business or Profession".
- It is proposed that if the stock in trade is converted into capital asset, then the Fair Market Value of the inventory on the date of conversion determined in the prescribed manner shall be treated as income to be taxed under the head "Profits and Gains of Business and Profession".

At present, under section 45, Capital Gain Income arising on conversion of capital asset into stock in trade is taxable. However,

under the existing law, there was no specific provision in respect of taxability in cases where, stock in trade was converted into capital asset and thus, the provision has been proposed in order to discourage the practise of deferring the tax payment by converting inventory into capital asset.

(w.e.f. A.Y. 2019-2020)

Amendment in Section 36 relating to Deductions

It is hereby proposed to insert a new clause (xviii) in Section 36(1) so as to provide that deduction in respect of any marked to market loss or other expected loss shall be allowed, if computed in accordance with the income computation and disclosure standards (ICDS) notified under section 145(2).

(w.r.e.f. A.Y. 2017-2018)

◆ Amendment in Section 40A relating to Expenses or payments not deductible in certain circumstances

It is proposed to insert a new sub-section (13) in section 40A so as to provide that no deduction or allowance shall be allowed in respect of any marked to market loss or other expected loss except as allowable under the new clause (xviii) of section 36(1).

(w.r.e.f. A.Y. 2017-2018)

◆ Amendment in Section 43 relating to Definitions of certain terms relevant to income from profits and gains of business and profession

In order to encourage participation in trading of agricultural commodities and derivatives, it is proposed to insert a new proviso to clause (5) so as to provide that transaction in respect of trading in agricultural commodity derivatives, which is not chargeable to commodity transactions tax, in a registered stock exchange or registered association, will be treated as non-speculative transaction.

(w.e.f. A.Y. 2019-2020)

◆ **Insertion of new Section 43AA to provide for taxation of foreign exchange fluctuation**

The proposed new section provides that, subject to the provisions of section 43A, any gain or loss arising on account of any change in foreign exchange rates shall be treated as income or loss, as the case may be, and such gain or loss shall be computed in accordance with the ICDS notified under section 145(2).

It is further proposed to provide that gain or loss arising on account of the change in foreign exchange rates shall be in respect of all foreign currency transactions including those relating to monetary items and non-monetary items or translation of financial statements of foreign operations or forward exchange contracts or foreign currency translation reserves

(w.r.e.f. A. Y. 2017-2018)

◆ **Amendment to Section 43CA providing for special provision for fully value consideration for transfer of assets other than capital assets in certain cases**

At present, business profits arising out of transactions in immovable property are taxed on –

- sale consideration or
- stamp duty value

whichever is higher,

It has been pointed out that this variation can occur in respect of similar properties in the same area because of a variety of factors, including shape of the plot or location. In order to minimize hardship in case of genuine transactions in the real estate sector, it is proposed to provide that no adjustments shall be made in a case where the variation between stamp duty value and the sale consideration is not more than five percent of the sale consideration

(w.e.f. A. Y. 2019-2020)

◆ **Insertion of new Section 43CB to provide for Computation of Income from construction and service contracts**

The proposed new section provides that profits and gains of a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method in accordance with the ICDS notified under section 145(2).

It is further proposed to provide that in the case of a contract for providing services with duration less than ninety days, the profits and gains shall be determined on the basis of project completion method.

It is also proposed to provide that in the case of a contract for provision of services involving indeterminate number of acts over a specific period of time, the profits and gains arising from such contracts shall be determined on the basis of a straight line method.

It is also proposed to provide that for this purpose the contract revenue shall include retention money and the contract costs shall not be reduced by any incidental income in the nature of interest, dividends or capital gains.

(w.r.e.f. A.Y. 2017-2018)

◆ Amendment of Section 44AE in regard to presumptive income in case of goods carriage

| Particulars | Pre Amendment | Post Amendment | |
|---|--|--|--|
| | | More than 12 MT gross vehicle weight | Equal To or Less than 12 MT gross vehicle weight |
| Assessing 10 goods carriage at any time during the previous year and engaged in the business of plying, hiring or leasing goods carriages | Rs 7,500 /- per month or part of the month for each goods carriage or amount actually earned, whichever is higher, is taxable. | Rs 1,000 / per ton of gross vehicle weight or unladen weight, as the case may be, for every month or part of the month or amount actually earned, whichever is higher, is taxable. | Rs 7,500 /- per month or part of the month for each goods carriage or amount actually earned, whichever is higher, is taxable. |

(w.e.f. A.Y.2019-2020)

© CAPITAL GAINS

◆ Amendment to Section 47 relating to Transactions not regarded as transfer

It is proposed to insert a new clause (viiab) in the said section so as to provide that any transfer of a capital asset by a non-resident, being

- bond or Global Depository Receipt referred to in sub-section (1) of section 115AC or
- rupee denominated bond of an Indian company or
- derivative,

on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency, shall not be regarded as transfer.

Further, consequential relief is proposed under section 115JC wherein alternate minimum tax would be charged on the income generated by a

unit located in an International Financial Service Centre, at 9% instead of 18.5%.

(w.e.f. A.Y.2019-2020)

◆ **Amendment to Section 49 relating to Cost of acquisition**

It is proposed to amend the said section so as to provide that the cost of acquisition of the capital asset which is converted from stock trade to capital asset shall be the Fair Market Value on the date of conversion.

(w.e.f. A.Y.2019-2020)

◆ **Amendment to Section 50C relating provision for full value of consideration in certain cases**

At present, Capital Gain arising out of transactions in immovable property are taxed on –

- sale consideration or
- stamp duty value

whichever is higher,

It has been pointed out that this variation can occur in respect of similar properties in the same area because of a variety of factors, including shape of the plot or location. In order to minimize hardship in case of genuine transactions in the real estate sector, it is proposed to provide that no adjustments shall be made in a case where the

variation between stamp duty value and the sale consideration is not more than five percent of the sale consideration.

(w.e.f. A.Y.2019-2020)

◆ Amendment to Section 54EC relating to Capital Gain not to be charged on investment in certain bonds

| Particulars | Pre-Amendment | Post-Amendment |
|--|---|--|
| Assets Transferred | Any long Term Capital Asset | Long Term Capital Asset being Land or Building or Both |
| Lock In Period of Investment in Long Term Specified Asset (Any Bonds issued by the NHAI/ RECL or any other bond notified by the Central Government) to claim exemption u/s. 54EC | 3 years if investment made on or after 01.04.2007 till 31.03.2018 | 5 years if investment made on or after 01.04.2018 |

(w.e.f. A.Y.2019-2020)

© INCOME FROM OTHER SOURCES

◆ Amendment to Section 56 relating to Income from Other Sources

| Particulars | Pre Amendment (on or after 01.04.2017 but before 01.04.2019) | Post Amendment (on or after 01.04.2019) |
|---|--|--|
| Where any person receives an immovable property | If difference between the consideration and stamp duty value exceeds Rs. 50,000/- then- - the stamp duty value of such property as exceeds such consideration shall be considered as income | If difference between the consideration and stamp duty value is more than the higher of the following amounts- namely- - Rs. 50,000/- and - Amount equal to 5% of the consideration, Then the stamp duty value of such property as exceeds such consideration shall be considered as income |

(w.e.f. A.Y.2019-2020)

It is also proposed to insert a new clause (xi) in sub-section (2) of the said section so as to provide that any compensation or other payment due to or received by any person, by whatever name called, in connection with the termination of his employment or the modification

of the terms and conditions relating thereto shall be chargeable to income-tax under the head "Income from other sources".

(w .e .f . A. Y .2019-20 20)

It is further proposed to amend the fourth proviso to clause (x) of the said sub-section so as to exclude the transfer of capital asset between holding company and its wholly owned Indian subsidiary company and between subsidiary company and its Indian holding company, which are not regarded as transfer under clause (iv) or clause (v) of section 47, from the scope of clause (x) of the said sub-section.

(w .r .e .f . A. Y .2018-2019)

♦ **Carry forward and set off of losses in the case of certain companies [Section 79]**

Section 79 of Act provides that carry forward and set-off of losses in case of company, not being a company in which public are substantially interested, shall be allowed only if there is continuity in the beneficial owner of the shares carrying not less than 51% of the voting power, on the last day of the year or years in which the loss was incurred.

However, there is hurdle in case where a company seeking insolvency resolution under Insolvency and Bankruptcy Code, 2016, involves change in the beneficial owners of shares beyond the permissible limit under section 79.

To overcome this difficulties, it is proposed to insert third proviso to section 79 to provide that the limitation to hold more than 51% of shares shall not apply where a change in the shareholding takes place in a previous year/s pursuant to approved resolution plan under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

(w .r .e .f . A. Y .2018-2019)

◆ **Deduction not to be allowed unless return furnished within due date specified u/s. 139(1) [Section 80-AC]**

Section -80AC provides that deduction under section 80-IA or section 80-AB or section 80-IB or section 80-IC or section 80-ID or section 80-IE, shall be allowed only if the return of income for such assessment year is filed on or before the due date specified under section 139(1) of the Act.

It is proposed to widen the scope of section 80-AC so as to provide that the benefit of deduction under following sections, shall be allowed only if the return of income is filed within the due date specified u/s. 139(1) of the Act.

| S ection | P a r t i c u l a r s |
|-----------------|--|
| 80-IA | Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc. |
| 80-IA C | Special provision in respect of specified business. |
| 80-IA B | Deductions in respect of profits and gains from housing projects |
| 80-IB | Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings |
| 80-IC | Special provisions in respect of certain undertakings or enterprises in certain special category States |
| 80-ID | Deduction in respect of profits and gains from business of hotels and convention centres in specified area |
| 80-IE | Special provisions in respect of certain undertakings in North-Eastern States |
| 80-JJ A | Deduction in respect of profits and gains from business of collecting and processing of bio-degradable waste |
| 80-JJ AA | Deduction in respect of employment of new employees |
| 80-L A | Deductions in respect of certain incomes of Offshore Banking Units and International Financial Services Centre |
| 80-P | Deduction in respect of income of co-operative societies. |
| 80-Q | Deduction in respect of profits and gains from the business of publication of books. |
| 80-QQ A | Deduction in respect of professional income of authors of text books in Indian languages |
| 80-QQB | Deduction in respect of royalty income, etc., of authors of certain books other than text-books |
| 80-R R B | Deduction in respect of royalty on patents |

(w.r.e.f. A. Y. 2018-2019)

◆ **Deduction in respect of health insurance premia [Section 80D]**

It is proposed to increase the monetary limit for claiming deduction under section 80D from Rs. 30,000/- to Rs. 50,000/- in case of an assessee, being an individual or a Hindu undivided family, in respect of payments towards annual premium on health insurance policy, or preventive health check-up or medical expenditure of a senior citizen. The proposed amendment also remove the difference between senior citizen and very senior citizen for claiming deduction under this section.

(w.e.f. A. Y. 2019-2020)

◆ **Deduction in respect of medical treatment of specified diseases. [Section 80DDB]**

It is proposed to increase the monetary limit for claiming deduction under section 80DDB to Rs. 1,00,000/- for senior/very senior citizen from earlier limit of Rs. 60,000/- in case of senior citizen and Rs. 80,000/- in case of very senior citizen in respect of payments made for medical treatment of specified diseases.

(w.e.f. A. Y. 2019-2020)

◆ **Special provision in respect of specified business [Section 80-IAC]**

It is proposed to widen the scope and time limit for availing the deduction under section 80-IAC to an eligible start-up if following condition get fulfilled-

| Pre a mendme nt | P ost a mendme nt |
|---|--|
| incorporated on or after the 1st day of April, 2016 but before the 1st day of April, 2019 | incorporated on or after the 1st day of April, 2019 but before the 1st day of April, 2021 |
| the total turnover of its business does not exceed Rs. 25 Crore in any of the previous years beginning on or after the 1st day of April, 2016 and ending on the 31st day of March, 2021 | The requirement of the turnover not exceeding Rs 25 Crore would apply to seven previous years commencing from the date of incorporation; |
| it is engaged in innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property | it is engaged in innovation, development or improvement of products or processes or services, or a scalable business model with a high potential of employment generation or wealth creation |

◆ **Deduction in respect of employment of new employees [Section 80-JJAA]**
1

Section 80-JJAA provides that deduction of 30% is allowed in addition to normal deduction of 100% in respect of emoluments paid to eligible new employees who have been employed for a minimum 150 days during the year in case for apparel industry and 240 days in any other case.

To encourage the new employment, it is proposed to extend the relaxation of 150 days during the year to industries engaged in the business of footwear and leather products.

◆ **Deduction in respect of income of Farm Producer Companies [Section 80-PA]**

It is proposed to insert a new section 80-PA in line with section 80-P so as to extend the benefit to Farm Producer Companies (FPC), having a total turnover up to Rs 100 Crore, whose gross total income includes any income from –

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

The benefit shall be available for a period of five years from F.Y. 2018-19

(w.e.f. A.Y. 2019-2020)

◆ **Deduction in respect of interest on deposits in savings account [Section 80-TTA]**

It is proposed to amend section 80-TTA to exclude Senior Citizen from claiming deduction up to Rs. 10,000/- of interest income from saving bank account.

(w.e.f. A.Y. 2019-2020)

◆ **Deduction in respect of interest Income of Senior Citizen [Section 80-TB]**

It is proposed to insert a new section 80TTB so as to allow a deduction upto Rs 50,000/- to senior citizens in respect of interest income earned from bank or post offices.

It is further proposed to provide that where the income referred to in this section is derived from any deposit held by, or on behalf of, a firm, an AOP or a BOI, no deduction shall be allowed under this section in respect of such income in computing the total income of any partner of the firm or any member of the association or any individual of the body.

(w.e.f. A. Y. 2019-20 20)

© **Insertion of new section to tax long term capital gains on sale of equity shares (Section 112A)**

It is proposed to withdraw the exemption under clause (38) of section 10 and to introduce a new section 112A in the Act to provide that long term capital gains arising from transfer of a long term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust shall be taxed at 10% of such capital gains exceeding one lakh rupees.

This concessional rate of 10 per cent. will be applicable to such long term capital gains, if -

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

Further, the new provision of section 112A also proposes to provide the following:-

- ⦿) The long term capital gains will be computed without giving effect of indexation in respect of cost of acquisitions and cost of improvement,

if any, and the benefit of computation of capital gains in foreign currency in the case of a non-resident, will not be allowed.

- (i) The cost of acquisitions in respect of the long term capital asset acquired by the assessee before the 1st day of February, 2018, shall be deemed to be the higher of –
- (a) the actual cost of acquisition of such asset;
- and (b) the lower of –
- (i) the fair market value of such asset; and
- (ii) the full value of consideration received or accruing as a result of the transfer of the capital asset.

Example on calculating cost of acquisition:

| S h a r e s o f A B C L t d . | | | | |
|--|-----|-----|------|-----|
| Actual purchase price (\$ TT paid) (A) | 100 | 100 | 100 | 80 |
| F M V of asset as on 31-01-2018 (B) | 110 | 120 | 80 | 120 |
| Actual sale value (\$ TT paid) (C) | 120 | 110 | 90 | 150 |
| Deemed cost of acquisition (D) [lower of (B) and (C) compared with higher of (A)] | 110 | 110 | 100 | 120 |
| Capital gains to be taxed @ 10 % on (C) – (D) | 10 | Nil | (10) | 30 |

- (i) Fair market value has been defined to mean –
- (a) in a case where the capital asset is listed on any recognized stock exchange, the highest price of the capital asset quoted on such exchange on the 31-01-2018. However, where there is no trading in such asset on such exchange on the 31-01-2018, the highest price of such asset on such exchange on a date immediately preceding the 31-01-2018 when such asset was traded on such exchange shall be the fair market value; and
- (b) in a case where the capital asset is a unit and is not listed on recognized stock exchange, the net asset value of such asset as on the 31-01-2018.
- (M) The benefit of deduction under chapter VIA and rebate under section 87A shall be allowed.

Further, it is also proposed to provide that in the case of an individual or a Hindu undivided family, being a resident, where the total income as reduced by such long-term capital gains is below the maximum amount which is not chargeable to income-tax, then, such long-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax.

Consequential changes are also proposed to be made in Section 115AD relating to tax on income of Foreign Institutional Investors from securities or capital gains arising from transfer of capital assets covered in proposed section 112A.

(w.e.f. A. Y. 2019-2020)

© **Rationalisation of provision of section 115BA relating to certain domestic companies**

Section 115BA of the Act provides optional benefit of lower income tax rate of 25% to newly set up domestic company, subject to conditions specified therein effective from A.Y. 2017-18.

However, there are certain incomes which are subject to a scheduler tax at a rate which is lower or higher than 25%. Consequently tax payers have been subjected to unintended hardship or unwarranted relief. Accordingly, it is proposed to amend section 115BA so as to clarify that the provisions of section 115BA is restricted to the income from the business of manufacturing, production, research or distribution referred to therein; and income which are at present taxed at a scheduler rate will continue to be so taxed.

(w.r.e.f. A. Y. 2017-18)

In our opinion, companies who have exercised this option of lower tax rate of 25% are at loss, since many benefits like deductions, depreciation as per income tax act, carry forward of losses are not available and also in this budget it is proposed to levy tax @25% to companies having turnover less than Rs. 250 crores with all benefits.

© **Rationalisation of the provisions of section 115BBE**

Section 115BBE provides for tax on income referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D at a higherrate of 60% without deduction in respect of any expenditure or allowance or set-off of any loss as reflected in the return of income filed by the assessee.

In order to rationalize the provisions of section 115BBE, it is proposed to provide that deduction in respect of any expenditure or allowance or set-off of any loss shall not be allowed even to income determined by assessing officer in said section.

(w.r.e.f. A. Y. 2017-18)

© **Relief from liability of Minimum Alternate Tax (MAT) to rehabilitating companies (Section 115JB)**

It is proposed to amend section 115JB to provide that the aggregate amount of loss brought forward (excluding unabsorbed depreciation) and unabsorbed depreciation (instead of lower of brought forward and unabsorbed depreciation) shall be allowed to be reduced from the book profit, if a company's application for corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 has been admitted by the Adjudicating Authority. This amendment is as per Press Release of CB DT dtd. 06-01-2018.

(w.r.e.f. A. Y. 2018-19)

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

(w.r.e.f. A. Y. 2001-02)

© **Reduction in Alternate Minimum Tax on International Financial Service Center (Section 115JC)**

It is proposed to amend section 115JC so as to provide that in case of a unit located in an International Financial Service Center, the alternate minimum tax shall be charged @9% instead of @18.5%.

(w.e.f. A.Y. 2019-20)

© **Applicability of Dividend Distribution Tax to Deemed Dividend u/s 2(22)(e) (Section 115-O)**

It is proposed to delete the Explanation to Chapter XII-D occurring after section 115Q of the Act so as to bring deemed dividends u/s 2(22)(e) under the scope of dividend distribution tax under section 115-O. Further, such deemed dividend is proposed to be taxed at the rate of 30% (without grossing up).

(w.e.f. A.Y. 2019-20)

© **Dividend distribution tax on dividend payouts to unit holders in an equity oriented fund (Section 115R)**

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

(w.e.f. A.Y. 2019-20)

© **Entities to apply for pan in certain cases u/s 139A:**

In order to widen the tax base by increasing the scope of linking financial transactions with PAN, it is proposed to insert clause (v) & (vi) in section 139A(1).

Clause (v):

Every person, not being an individual, which enters into a financial transaction of an amount aggregating to two lakh and fifty thousand rupees or more in a financial year shall be required to apply to the Assessing Officer for allotment of PAN.

Clause (v i):

Further, the obligation to obtain PAN by such person referred to in clause (v) herein above is cast on, the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer or any person competent to act on behalf of such entities.

(w .e .f . A . Y . 2019-20 20)

© Method of accounting in ce rt a in ca se s:

In view of certain recent judicial pronouncements on the issue of applicability of ICDS and in order to bring certainty, it is proposed to substitute section 145A, such that for the purpose of determining the income chargeable under the head "Profits and gains of business or profession, –

- (a)) the valuation of inventory shall be made at lower of actual cost or net realizable value computed in the manner provided in ICDS notified under Section 145(2).
- (b)) the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation.
- (c)) inventory being securities not listed, or listed but not quoted, on a recognised stock exchange, shall be valued at actual cost initially recognised in the manner provided in ICDS notified under Section 145(2).
- (d)) inventory being listed securities, shall be valued at lower of actual cost or net realisable value in the manner provided in ICDS notified under Section 145(2) and for this purpose the comparison of actual cost and net realisable value shall be done category-wise.

Thus, by including the term 'securities' meaning of the term inventory has been broadened.

(w .r .e .f. A . Y . 20 17-1 8)

© **Taxability of certain income:**

A new section 145B has been inserted to include second limb of section 145A pertaining to interest received by an assessee on any compensation or enhanced compensation.

Further, in view of certain recent judicial pronouncements, it is proposed to provide that claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved.

Similarly, it is proposed to provide that assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement referred to in section 2(24) (xviii) shall be deemed to be the income of the previous year in which it is received, if not charged to income-tax in any earlier previous year.

(w.r.e.f. A. Y. 2017-18)

© **Deduction of tax source from interest on term deposits:**

In view of insertion of new section 80TTB, allowing deduction from interest on term deposits to senior citizen for Rs. 50,000/- section 194A is amended to revise limit for deduction of tax at source on such income in case of such assessee from Rs. 10,000/- to Rs. 50,000/-.

(w.e.f. A. Y. 2019-2020)

© **Appeal against penalty imposed by CIT (Appeals) U/S. 271J:**

Section 253 pertaining to 'Appeals to Appellate Tribunal' is proposed to be amended so as to also make an order passed by a Commissioner (Appeals) under section 271J appealable before the Appellate Tribunal.

However, if penalty is imposed by the assessing officer u/s. 271J, the provisions of section 246A with respect to appeal before CIT(A) is silent.

(w.e.f. A. Y. 2019-2020)

© **Penalty u/s. 271FA for delay in furnishing statement for specified financial transaction u/s. 285BA:**

Penalty for delay in furnishing the statement for specified financial transaction beyond prescribed time limit is increased from Rs. 100/- day to Rs. 500/- per day.

Delay beyond 30 days shall attract penalty of Rs. 1000/- instead of Rs. 500/- per day of delay.

| Particulars | Present penalty per day | Proposed penalty per day |
|--|-------------------------|--------------------------|
| When delay is for a period upto 30 days from the prescribed time limit | 100 | 500 |
| Fail to furnish statement within time specified in notice | 500 | 1000 |

(w.e.f. A.Y. 2019-20 20)

© **Punishment and prosecution for failure to furnish return:**

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

However, if the tax payable by the assessee on the total income determined on regular assessment as reduced by the advance tax paid and tax deducted at source, does not exceed three thousand rupees no action shall be taken under this section.

In order to prevent abuse of the said immunity of the said proviso by companies, it is proposed to amend the provisions so as to provide that the relaxation provisions shall not apply in respect of a company and hence, companies are mandatorily required to file return of income irrespective of tax liability.

(w.e.f. A.Y. 2019-20 20)

© Rationalization of provisions relating to Country-by-Country Report :

| Particulars | Present time period | Proposed time period |
|---|--------------------------------|---|
| In the case of parent entity or Alternative Reporting Entity (ARE), resident in India | Due date as per section 139(1) | 12 months from the end of reporting accounting year |
| In case of the ARE of an international group, the parent entity of which is outside India, with the tax authority of the country or territory of which it is resident | Due date as per section 139(1) | The due date specified by that country or territory |

(w.e.f. A.Y. 2019-2020)