

CNK & Associates LLP

Budget 2018 Analysis



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Note: Unless otherwise stated the amendments referred to in this e-publication are effective from AY 2019-20 onwards.

Foreword

The expectations from the Budget were high and the challenges formidable. But the trademark “shock & awe” of this Government were missing.

The Budget has ambitious programmes focusing on agriculture, health, education and infrastructure. The big question is how the spending commitments on these programmes are going to be met without deviating from the path of fiscal prudence.

The worry is also that the target of fiscal deficit was overshoot in good times and with the target for next year set at 3.3% of the GDP, we seem nowhere close to meeting the goal set by the N. K. Singh Committee of keeping it below 2.5%.

There is little in the Budget for the middle class and the salaried class, except perhaps some benefit meted out to senior citizens. The benefit of standard deduction of Rs 40,000 to the salaried class is almost fully nullified by taking away the benefit of conveyance allowance and re-imbursement of medical expenses and by imposing an additional 1% cess. The cruel irony on the other hand is that the Budget gives a hike in salary to the MPs with automatic revision every 5 years indexed to inflation.

The introduction of 10% tax on long term capital gains on the listed equity and equity oriented mutual funds and DDT on such mutual funds is another dampener and is reflected in its impact on the stock market. The move to reduce the corporate tax on domestic companies having turnover up to Rs 250 crore to 25% will provide relief to 99% of companies that file tax returns. However, the expectation was of reduction of the tax burden for all assesseees, including the large corporates, which are the growth drivers of the Indian economy.

On the indirect tax front, the Budget raises basic customs tariff and imposes surcharge on a host of items to rein in imports and give domestic manufacturers a boost. This is in keeping with the avowed object of promoting “make in India” and job creations; though perhaps, on both fronts, much more was required.

The Budget has proposed several schemes aimed at alleviating the rural distress and providing education and health to the underprivileged. “Modicare”, arguably the world’s largest public health insurance programme aspires to provide cover of Rs 5 lakh each for the 100 million poor families and if well implemented can be a game changer.

Though the budget offers little relief to the middle class and the taxpayers, it is a disappointment well worth bearing if the above schemes are well implemented for the benefit of the intended beneficiaries.

Every Budget has its intricacies and the CNK team is happy to present the summary of the Budget proposals demystifying its complexities.

Happy Reading!!

Income Tax Rates for AY 2019-20

A. For Individual, HUF, AOP, BOI and Artificial Juridical Person:

Every Individual (other than Resident Senior Citizen & Very Senior Citizen), HUF, AOP, BOI and Artificial Juridical Person

Tax Slabs	Rate
Upto INR 2,50,000	Nil
INR 2,50,001 to INR 5,00,000	5%
INR 5,00,001 to INR 10,00,000	20%
Above INR 10,00,000	30%

Resident Individual of age 60 years or more but less than 80 years (Senior Citizen)

Tax Slabs	Rate
Upto INR 3,00,000	Nil
INR 3,00,001 to INR 5,00,000	5%
INR 5,00,001 to INR 10,00,000	20%
Above INR 10,00,000	30%

Resident Individual of age 80 years and above (Very Senior Citizen)

Tax Slabs	Rate
Upto INR 5,00,000	Nil
INR 5,00,001 to INR 10,00,000	20%
Above INR 10,00,000	30%

Rate of surcharge on tax

Income	Rate
Upto INR 50,00,000	Nil
INR 50,00,001 to INR 1,00,00,000	10%
Above INR 1,00,00,000	15%

B. For Co-operative societies, Firms (including LLP):

There is no change in the rate of tax.

C. For Companies:

The rate of tax for domestic companies having turnover / gross receipts up to INR 250 crore in FY 2016-17 is 25% whereas the rates for other companies have remained the same.

Particulars		DOMESTIC COMPANY (Having a Turnover below INR 250 Crore in FY 2016-17)	OTHER DOMESTIC COMPANY	FOREIGN COMPANY
Total Income Upto INR 1 Crore	Rate of surcharge	Nil	Nil	Nil
	Effective Tax rate	26%	31.20%	41.60%
Total Income Above INR 1 Crore and up to INR 10 Crore	Rate of surcharge	7%	7%	2%
	Effective Tax rate	27.82%	33.384%	42.432%
Total Income Above INR 10 Crore	Rate of surcharge	12%	12%	5%
	Effective Tax rate	29.12%	34.944%	43.68%

For FY 2018-19 onwards, the Education Cess at 2% and Secondary & Higher Education Cess at 1% shall be replaced by the Health & Education Cess, which shall be levied at 4% on the amount of tax computed inclusive of surcharge, in case of A, B and C.

Standard Deduction Revived

Income chargeable under the head “Salaries” was entitled to a standard deduction upto AY 2005-06. Standard deduction has been reintroduced to the extent of INR 40,000 or the amount of salary, whichever is lower. This deduction is in lieu of the present exemption of INR 19,200 per annum in respect of transport allowance and reimbursement of medical expenses upto INR 15,000 per annum which is not considered as taxable perquisite. Withdrawal of exemption of transport allowance would be brought in by way of amendment to the Rules.

The exemption of transport allowance, would continue to be available to differently-abled persons. Medical reimbursement benefits in case of hospitalization etc., shall also continue.

In view of the increase in cess by 1%, there is almost no effective benefit to most salaried employees.

Standard deduction shall benefit the pensioners, who do not enjoy any exemption on account of transport allowance and medical expenses.

Conversion of Inventory into Capital Asset

Currently, there is a provision in section 45(2) dealing with taxation on conversion of capital asset into stock in trade. There was no similar provision for a reverse situation of conversion of stock in trade into capital asset.

The definition of income under section 2(24) has been amended to include the profit on such conversion of inventory into capital asset. Any profit or gains arising from conversion of inventory into capital asset or its treatment as capital asset, shall be charged to income tax as business income under section 28(via) of the Act. The fair market value of the inventory, on the date of conversion or treatment shall be deemed to be the full value of the consideration. At the time of sale of such capital asset, the cost of acquisition shall be the fair market value on the date of conversion. The period of holding of such capital asset shall be considered from the date of conversion of inventory.

Widening Scope of Business Connection

A. Widening Scope of Dependent Agent

OECD under BEPS Action Plan 7 reviewed the concept of 'PE'. This was with a view to prevent avoidance of payment of tax by circumventing the existing PE definition by way of commissionaire arrangements or fragmentation of business activities. BEPS Action Plan 7 recommended changes in the Model Tax Convention to include persons who not only habitually conclude contracts on behalf of non-residents, but also persons who habitually play a principal role leading to the conclusion of contracts. Further, the recommendations under BEPS Action Plan 7 have now been included in Article 12 of Multilateral Convention to implement Tax Treaty Related Measures, to which India is a signatory.

The existing Explanation 2 to section 9(1)(i) defines business connection to include business activities carried on by a non-resident through dependent agents which includes only agents who habitually conclude contracts on his behalf.

The scope of “business connection” is now expanded to also include persons who habitually play a principal role leading to the conclusion of contracts.

Such contracts include the ones which are -

(i) in the name of the non-resident; or

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

This amendment may disturb the reasonably settled position regarding the interpretation of concept of business connection.

B. Business Connection to Include Significant Economic Presence

The scope of existing provisions of section 9(1)(i) provides for only **physical presence based nexus rule** for taxation of business income of the non-residents in India. To include significant economic presence in India of the non-resident enterprises within the tax net, the scope of “business connection” is further widened by insertion of Explanation 2A.

“Business connection” would not only include the physical presence, but also the **significant economic presence in India**.

The non-resident enterprise would be deemed to have taxable income in India if it has a significant economic presence in India which will be determined on the basis of the following factors:

- (i) Transaction in respect of any goods, services or property (including the provision of download of data or software in India) carried out by non-resident enterprises exceeds prescribed limits; or
- (ii) Systematic and continuous soliciting of business activities or engaging in interaction with prescribed number of users in India through digital means.

The above transactions or activities shall constitute significant economic presence in India, even if the non-resident does not have residence or place of business in India or renders services in India.

The effect of the amendment will be restricted to the non DTAA countries, unless the corresponding modifications to PE rules are made in the respective DTAAAs or till the MLI becomes effective.

Trading in agricultural commodity derivatives not to be considered as a speculative transaction

The agricultural commodity derivatives are not subject to CTT. Since no CTT is paid on derivative transactions relating to agricultural commodities, the same were treated as speculative business, thereby discouraging the transactions in derivatives relating to agricultural commodities.

To encourage the participation in trading of agricultural commodity derivatives, the said transactions even though not chargeable to CTT in a recognized stock exchange would be considered as non-speculative vide amendment in section 43(5).

Presumptive income in case of business of carriage of goods.

The existing section 44AE provides that profits and gains from business of plying, hiring or leasing of 'goods carriages', irrespective of their tonnage capacity, shall be deemed to be an amount equal to INR 7,500 per month or part of a month for each goods carriage or the amount claimed to be actually earned by the assessee, whichever is higher. The only condition was that the assessee should not own more than 10 goods carriages in the previous year.

The presumptive income in case of heavy goods vehicle (more than 12MT gross vehicle weight) shall now be deemed to be an amount equal to INR 1,000 per ton of 'gross vehicle weight' or 'unladen weight'¹ for a month or part thereof, or actual amount claimed by the assessee, whichever is higher.

For other goods carriages, the rate continues to remain the same at INR 7,500 per month per carriage.

Relief from MAT in respect of Certain Foreign Companies

Under the existing regime, there is no specific exemption under MAT to foreign companies covered under the presumptive taxation, who are not required to maintain any books of accounts, in India.

Explanation 4A is inserted to section 115JB of the Act to provide that where a foreign company, whose total income comprises solely of profits and gains from business referred

¹ Definition of 'goods carriage', 'gross vehicle weight' and 'unladen weight' is as per provisions of section 2 of Motor Vehicle Act

to in section 44B (Shipping) or section 44BB (Exploration of Mineral Oil) or section 44BBA (Operation of Aircraft) or section 44BBB (Turnkey Power Projects) and such income has been offered to tax at the rates specified in the said sections, section 115JB shall not be applicable.

This amendment will be retrospectively applicable from AY 2001-02.

Special Rates for certain Domestic Companies

Section 115BA grants an option to newly set up domestic companies engaged in the business of manufacture or production of any article or thing and research in relation thereto; or in distribution of such article or thing manufactured or produced by it, to pay tax at concessional rate of 25% on fulfillment of certain conditions. There are certain incomes which are subject to tax rates which may be lower or higher than the said rate of 25%. The section is amended and shall now be subject to other provisions of the Chapter XII which covers sections 110 to 115BBG which would tax the income at applicable rates specified in those sections.

This amendment will be retrospectively applicable from AY 2017-18.

Amendments pursuant to notified ICDS

The Delhi High Court in the case of *Chamber of Tax Consultants v. Union of India [2018] 252 Taxman 77* had held certain provisions of ICDS to be ultra vires. Following amendments are made to reverse this decision with retrospective effect from AY 2017-18:

- Marked to market loss or other expected loss calculated in accordance with the notified ICDS shall be allowed as deduction – clause (xviii) inserted under section 36(1) deduction for marked to market loss shall not be allowed under any section of the Act other than section 36(1)(xviii) of the Act. – sub-section (13) inserted in section 40A of the Act.
- Section 43AA introduced in the Act to provide that any gain or loss arising on account of effects of changes in foreign exchange rates arising out of foreign currency transactions shall be charged to tax and computed in accordance with the notified ICDS.
- Section 43CB introduced in the Act to provide that profits or gains arising out of a construction contract or a contract for providing services will be computed on the

basis of percentage of completion method in accordance with the notified ICDS except for certain service contracts. Further, the contract revenue shall include retention money and the contract costs shall not be reduced by any interest income, dividends or capital gains.

- Section 145A of the Act has been amended to provide for the valuation of inventory for the purpose of determining income chargeable under the head 'Profits and Gains from Business or Profession' as under:
 - i. the valuation of inventory shall be made at lower of actual cost or net realizable value computed in the manner provided in notified ICDS.
 - ii. 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.
 - iii. inventory being securities not listed, or listed but not quoted, on a recognized stock exchange, shall be valued at actual cost initially recognized in the manner provided in notified ICDS.
 - iv. inventory being listed securities, shall be valued at lower of actual cost or net realizable value in the manner provided in notified ICDS. For this purpose, comparison of actual cost and net realizable value shall be done category-wise.
- New section 145B has been introduced to provide for timing of taxability of the following incomes as under:
 - i. interest received on compensation or on enhanced compensation, shall be deemed to be the income of the year in which it is received.
 - ii. the claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realization is achieved.
 - iii. Income referred to in sub-clause (xviii) of clause (24) of section 2 (subsidy /grant) shall be deemed to be the income of the previous year in which it is received, if not charged to income tax for any earlier previous year.

Withdrawal of Exemption of Capital Gains on transfer of certain Long Term Capital Assets

As per section 10(38) of the Act, any capital gain from sale of long term capital asset being equity shares of a company, unit of equity oriented fund or unit of business trusts is exempt from income tax where the transaction is charged to STT. This exemption is proposed to be withdrawn in case of transfer of these assets after 1st April, 2018 and the same would be taxable as per newly introduced section 112A.

Taxation of Capital Gains on transfer of certain Long Term Capital Assets

New section 112A is introduced in the Act to tax the capital gains from sale of long term capital asset, being equity shares of a company, unit of equity oriented fund or unit of business trust, at the rate of 10% of such capital gains exceeding INR 1,00,000.

The rate of tax at 10% will be applicable to long term capital gains on sale at equity shares of a company, where STT has been paid on acquisition as well as transfer. In case of units of equity oriented fund or units of a business trust, rate of tax at 10% will be applicable, where STT has been paid on transfer.

The Central Government shall notify the acquisitions in respect of which the requirement of payment of STT shall not apply, in case of equity shares. This is likely to be in line with the notification earlier issued in respect of section 10(38).

The requirement of payment of STT at the time of transfer of long term capital asset, being a unit of equity oriented fund or a unit of business trust, shall not apply if the transfer is undertaken on recognized stock exchange located in any International Financial Services Centre (IFSC), subject to the condition that the consideration of such transfer is received or receivable in foreign currency.

Capital gain under this section is to be computed without claiming benefit of indexation and currency conversion.

For the purpose of computing such capital gain, the cost of acquisition in respect of any asset purchased before 1st February, 2018, shall deemed to be higher of –

- (i) Actual cost of acquisition;
- (ii) The fair market value of the asset or the full value of consideration received or accrued on account of transfer, whichever is lower.

The **fair market value** in case of listed equity shares would be the highest quoted price on the stock exchange on 31st January, 2018 or where the asset is not traded on 31st January, 2018, then the highest quoted price on any date preceding 31st January, 2018 when the asset was traded. The fair market value in case of unit of an equity oriented fund or unit of business trust shall be the net asset value of such unit on 31st January, 2018.

It may be interesting to note that a possible view could be taken that provisions of section 48 for computation mechanism may apply to such long term capital assets. Accordingly, capital gains would have to be first computed as per section 48 after considering indexation benefit. In case there is any gain after considering indexation benefit, provisions of section 112A would apply and tax would be charged on entire long term capital gain without considering indexation benefit. Any loss incurred on account of transfer computed under section 48 would be allowed to be set off in accordance with other provisions of the Act.

Provisions of DTAA will continue to apply to capital gains of non-residents.

Income from long term capital gain would be reduced by unutilised basic exemption limit in case of resident individuals/HUF.

Deductions under Chapter VI-A and rebate under section 87A would not be allowed against the tax payable under this section.

Taxation of Long Term Capital Gains in case of FII

Consequential amendment is made in section 115AD to provide for taxability of long term capital gains on transfer of listed equity shares, units of equity oriented funds and units of business trust, as per provisions of section 112A in the hands of FIIs.

Exemption of Long Term Capital Gains on investment in certain bonds

Section 54EC provides for exemption of long term capital gains on investment in notified long term capital gains bonds. This exemption is now restricted only to long term capital gains arising from transfer of land or building. Therefore, long term capital gain on transfer of other capital assets would not be eligible for exemption under section 54EC.

The holding period of such bonds is also being increased from three years to five years for all investment in such bonds made on or after 1st April, 2018. Accordingly even in respect of long term capital gains arising during the FY 2017-18, investments made in specified

assets on or after 1st April, 2018, would have to be made in notified bonds redeemable after five years.

Taxation based on Stamp Duty Value of Immovable Property

At present, while taxing income from capital gains (section 50C), business profits (section 43CA) and other sources (section 56) arising out of transactions in immovable property, the sale consideration or stamp duty value, whichever is higher is adopted as full value of consideration. The difference between sale consideration and stamp duty value is taxed as income both in the hands of the purchaser and the seller, irrespective of the quantum of difference.

Certain Appellate Tribunals have taken a view that a difference of up to 10% would not result in any adjustment.

However, this amendment provides that no adjustments shall be made in a case where the variation between stamp duty value and the sale consideration is not more than 5% of the sale consideration.

Transfer of Capital Asset by Holding Company to Subsidiary Company

Any transfer of a capital asset by a holding company to its wholly owned subsidiary company or vice versa as referred to in section 47(iv) and section 47(v) shall not be taxed under section 56(2)(x) in the hands of the recipient company provided the recipient company is resident in India.

Taxability of Deemed Dividend under section 2(22)(e)

At present, dividend distributed by a domestic company is subject to DDT payable by such company. However, as per Explanation to section 115Q of the Act, dividend which was subject to DDT shall not include dividend referred in section of 2(22)(e) of the Act. Accordingly, the deemed dividend under section 2(22)(e) was taxable in the hands of the recipient/shareholder, at the applicable marginal rate.

The Explanation after section 115Q of the Act is deleted, so as to bring deemed dividend under section 2(22)(e) also within the scope of DDT as per provisions of section 115-O.

Such deemed dividend would be subject to DDT at 30% plus applicable surcharge and cess as against current rate of 15% for DDT on dividend other than dividend as per section 2(22)(e). The said deemed dividend would not be subject to grossing up.

This provision is inequitable to other shareholders.

DDT on distributions by Equity Oriented Mutual Funds

The existing provisions of section 115R, inter alia, provide for payment of income distribution tax on any amount of income distributed by Mutual Fund to its unit holders. There is no similar tax on income distributed by equity oriented funds.

The section is amended to provide for income distribution tax on income distribution by equity oriented mutual funds at the rate of 10%.

Accumulated profits in case of amalgamation:

As per section 2(22), any distribution by the company to the extent of accumulated profits, whether capitalized or not, is considered as dividend. Explanation 2 to section 2(22) defines the expression 'accumulated profits' to include all profits of the company up to the date of distribution or payment or liquidation, subject to certain conditions. As per existing section 2(22), in case of amalgamation of two or more companies, there was no specific provision whereby accumulated profits of amalgamating company would be considered as "accumulated profits" of the amalgamated company, even in a case where the accumulated profits of the amalgamating company were reduced under the scheme of amalgamation.

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

Definition of Eligible Start-ups

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

The said definition of “eligible business” has been expanded, so as to extend benefit of section 80-IAC to business engaged in innovation, development or improvement of products or processes or services, or a scalable business model with high potential of employment generation or wealth creation. The requirement of business being driven by technology or intellectual property is no longer a necessary condition.

The last date up to which eligible start-up company can be incorporated, has been extended by 2 years up to 31st March 2021 in place of current date of 31st March 2019.

One of the conditions to be an “eligible start-up” was that the total turnover of its business should not exceed INR 25 crore in any previous year beginning on or after 1st April 2016 till 31st March 2021. The criteria of turnover has been amended so as to provide that the turnover should not exceed INR 25 crore, in any of the 7 previous years, beginning from the year in which the start-up is incorporated. Accordingly, the eligible start-up would be required to meet threshold turnover of INR 25 crore, even after 31 March 2021 till completion of 7 years of incorporation.

These amendments are applicable from AY 2018-19 onwards.

Relaxation of Conditions for Deduction to be claimed for Employment Generation

Section 80JJAA provides for a deduction of 30% of emoluments paid to new employees for a period of three years from the year of employment. One of the condition for claiming the deduction was that the new employee must be employed for 240 days or more in the year of employment or 150 days or more in case of business of manufacture of apparel, subject to certain conditions.

Therefore, employees who did not satisfy the condition of 240 days or 150 days in the year of employment, the benefit of thirty percent was not available to the assessee though the said conditions were satisfied by the employee in subsequent years.

It is therefore now provided that where a new employee is employed for a period of less than 240 days or 150 days as the case may be, but is in employment for a period of 240 days or 150 days in the immediately succeeding year, the said employee shall be considered to be a new employee in that year and the provisions of this section will apply accordingly.

Further in order to encourage the creation of employment, the minimum period of employment is relaxed to 150 days for footwear and leather industry as well.

Deduction in respect of income of Farm Producer Companies

Farm Producer Companies (FPC) having a total turnover up to INR 100 Crore in any previous year and having income from purchase of agricultural implements, etc. and marketing and processing of agricultural produce grown by its members will be eligible for 100% deduction under new section 80PA. The benefit of 100 % deduction will be available for a period of six years from AY 2019-20.

Deductions under Part C of Chapter VI-A to be allowed only on Timely Filing of Return

Amendment in provisions of section 80AC provides that no deduction would be admissible under sections 80-I, 80-IA, 80-IAB, 80-IAC, 80-IB, 80-IBA, 80-IC, 80-ID, 80-IE, 80JJA, 80JJAA, 80P, 80PA, 80QQB, 80RRB unless the return of income for the concerned assessment year is filed on or before the due date as applicable to the assessee.

All other deductions such as those for investments, donations, mediclaim premiums, etc. as mentioned in Part B shall not be impacted by any delay in filing of return.

Enhanced Deduction in respect of Health Insurance Premium

As per section 80D, any payment towards medical insurance or preventive health check-up of a senior citizen or medical expenditure of a very senior citizen was entitled to a deduction up to INR 30,000. The limit for said deduction in respect of payment of premium for all senior citizens is enhanced to INR 50,000. Further, the deduction available for medical expenditure only for a very senior citizen is now available to all senior citizens up to limit of INR 50,000 subject to the condition that such senior citizen does not have a mediclaim policy.

As per section 80D, any payment in lump-sum to effect or to keep in force insurance on the health of a person, for more than a year was allowed as deduction, in the year of payment. It is proposed that single premium health insurance policies, having cover of more than one year, would be entitled to proportionate deduction, over the number of years for which health insurance cover is provided.

Enhanced Deduction in respect of Medical Treatment of specified diseases

As per section 80DDB, deduction was available to an individual and HUF in respect of payment made for medical treatment of specified diseases of senior citizens up to INR 60,000 and very senior citizen up to INR 80,000. The said deduction is proposed to be enhanced to INR 100,000, without any distinction between senior and very senior citizen.

Introduction of new section 80TTB for Deduction of Interest

Deduction up to INR 10,000 is allowed under section 80TTA to an individual or an HUF in respect of interest income from savings account with bank or post office. Section 80TTB is introduced to allow a deduction up to INR 50,000 in respect of interest income of senior citizens from all bank and post office deposits and not just savings accounts. Deduction under section 80TTA shall not be allowed in case of senior citizen covered section 80TTB.

Certain payments not eligible as application of income

In case of Trust or Institution claiming exemption under section 10(23C)(iv), (v), (vi) or (via) and of Charitable and Religious Trusts claiming exemption under section 11, the following amounts shall not be considered as application of income:

- Where any sum payable to a resident on which tax has not been deducted or after deduction has not been paid on or before due date of filing of return, 30% of such sum;
- Any sum paid in cash above INR 10,000 per person per day and
- Any allowance made for any liability, payment for which is made in cash in the subsequent year exceeding INR 10,000 per person per day; shall not be considered as application in the subsequent year.

Relief from MAT

Under the existing provision of section 115JB of the Act, the company is allowed to reduce its book profit by brought forward book losses or unabsorbed depreciation, whichever is lower. Accordingly, the company is entitled to reduce lower of brought forward book losses or unabsorbed depreciation and not both.

In case of a company, whose application is admitted by the Adjudicating Authority under the IBC, 2016, such companies would be entitled to reduce both viz. brought forward book losses (excluding unabsorbed depreciation) as well as unabsorbed depreciation, from its book profits.

Benefit of Carry Forward and Set Off of Losses

As per section 79 of the Act, carry forward and set off of losses by a closely held company is allowed, only where the shares carrying not less than 51% of the voting power, in the previous year are beneficially held by the persons who beneficially held 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. This restriction shall not apply in case of change of shareholding pursuant to an approved resolution plan under IBC, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

Person Responsible for Signing Return of Income

Section 140 of the Act deals with person who would be responsible for signing return of income. This section is amended to provide that the return during the resolution process under the IBC 2016 shall be verified by an insolvency professional appointed by the Adjudicating Authority.

All these amendments will be applicable from AY 2018-19.

Penalties & Prosecution

Penalty for failure to furnish SFT or reportable account

The amount of penalty levied under section 271FA for failure to furnish statement of financial transaction or reportable account under section 285BA, has now been increased in the following manner:

Particulars	Existing Penalty	Revised Penalty
failing to furnish such statement within the prescribed time	Rs.100 for every day of default	Rs.500 for every day of default
failing to furnish such statement within the period specified in the notice issued under sub-section (5) of section 285BA	Rs.500 for every day of default	Rs.1000 for every day of default

Prosecution for Failure to Furnish Return

Sub-clause (b) of clause (ii) of proviso to Section 276CC provides that a person shall not be proceeded against failure to furnish return of income, if the tax payable by him on the total income determined on regular assessment (as reduced by advance tax and TDS), does not exceed INR 3,000. This limit of INR 3,000 will not be applicable in case of a company w.e.f 1st April, 2018.

Clarification on furnishing of Country by Country Report (CbCR)

Under the existing provisions of section 286, the Parent entity or the alternate reporting entity resident in India is required to furnish CbCR on or before the due date for furnishing of Income Tax Return.

The due date of furnishing of CbCR is now extended for the Indian Parent to twelve months from the end of the relevant FY.

Similarly, CbCR reporting by an alternate reporting entity resident in India of the non-resident parent entity shall be on or before twelve months from the end of the reporting accounting year of the non-resident parent entity.

It is also clarified that where a non-resident parent entity is not obliged to file CbCR in its country of residence, its constituent entity resident in India will be required to furnish the CbCR in India.

Extension of exemption relating to National Pension System (NPS) withdrawal to non-employees

Exemption under section 10(12A) available to an “**employee**” on the amount received from the National Pension System Trust on the closure of his account/ his opting out of the scheme; to the extent of 40% of the total amount payable to him at that time shall now be available to “**any assessee**”. There is however no corresponding similar amendment for partial withdrawals as available under section 10(12B) to employee subscribers.

Taxation of Compensation in connection with Business or Employment

Compensation, whether capital or revenue in nature, received or accrued in connection with termination or modification of terms and conditions of any business contract is now taxable as business income under Section 28(ii)(e).

Similar amendment is made in section 56 by insertion of sub-section (2)(xi) to tax compensation received or receivable in connection with termination of employment or modification of terms and conditions relating thereto.

Consequential amendment is made in the definition of income by insertion of section 2(24)(xviiib).

Rationalisation of the provisions of Section 115BBE

In computing the tax at the rate of 60% under section 115BBE in respect of unexplained income under section 68, 69, 69A, 69B, 69C or 69D, no deduction will now be allowed even in case of the unexplained income added by the AO. This amendment is retrospectively applicable from AY 2017-18 onwards.

Obtaining of PAN in certain cases

PAN will now be used as Unique Entity Number for non-individual entities. Such entities entering into a financial transaction of an amount of INR 2.50 Lakh or more will be required to obtain PAN w.e.f. 1st April 2018.

Further, the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer, office bearer or any person competent to act on behalf of such entities shall also be required to apply for PAN w.e.f. 1st April 2018.

Adjustment in Section 143(1)

Section 143(1) is amended to provide that no adjustment shall be made with regards to income appearing in Form 26AS or Form 16 or Form 16A which has not been included in the return of income. The said amendment is applicable from AY 2018-19 onwards.

E-Assessment

New scheme will be framed for the purpose of e-assessment by way of notification in Official Gazette. Further the power is granted to central government till 31st March, 2020 to direct by way of notification in the Official Gazette that provisions relating to assessment shall not apply or shall apply with such exception, modification and adaption as the case may be specified therein.

Key Highlights:

- No big-bang announcements on the indirect tax front – nothing with respect to GST.
- New Levies:
 - Social Welfare Surcharge (non-cenvatable) introduced on imported goods (except notified goods) @10% (3% in case of Petrol, High Speed Diesel Oil, Silver, Gold) in lieu of existing EC and SHEC in order to finance education, housing and social security – Surcharge to be calculated on aggregate duties of customs (excluding IGST).
 - Road and Infrastructure Cess introduced on imported and locally manufactured Petrol and High Speed Diesel Oil @ Rs. 8/litre (Rs. 4/litre in case of specified North-Eastern refineries) in lieu of the existing road cess @ Rs. 6/litre to finance infrastructure projects.
- 'Make in India Movement' gets a healthy dose of protection with an increase in Customs Duty on various products.
- Luxury Goods – Audis, Mobiles, Televisions, Wrist Watches all set to become dearer.
- Excise duties on petrol/diesel remain unchanged.

➤ Proposed Legislative Changes:

○ **Definitions:**

- The limit of 'Indian Customs Waters' has been extended to 'Exclusive Economic Zones'.
- The term 'assessment' has been amended to cover cases of determination of duty, tax, cess or any other sum payable under the Customs Act.

○ **Advance Ruling:**

- Definition of 'applicant' has been widened to include importers/exporters (Indian and overseas) and any other person with a justifiable cause.
- Scope of Advance Ruling has been broadened to include matters beyond determination of duty and the requirement of proposed activity has been done away with.
- Enabling provision has been introduced for permitting applicants to be represented by a duly authorized resident person (as defined under the Act).
- Advance Ruling is required to be pronounced within a period of 3 months vis-à-vis 6 months earlier.
- Application for Advance Ruling is required to be made to CAAR (to be set up).
- Appeal against orders of CAAR would lie before the Authority for Advance Ruling set up under the Act.

○ **Audit:**

- Provisions have been introduced for enabling Customs Officers to conduct an audit of assessment of imported/exported goods, either in his premise or in the premises of the auditee.
- Auditee can be an importer/exporter/custodian/licensee of a warehouse/any other person concerned with such goods.

○ **Adjudication**

- A pre-SCN consultative process with the person chargeable with duty has been introduced in cases not involving collusion, wilful-misrepresentation, suppression, etc.
- Adjudication proceedings are required to be completed within a pre-determined time frame of 6 months/1 year (extendible by a further period of 6 months/1 year). Proceedings shall be deemed to be closed in case of non-adjudication within the specified time limits.
- Provisions have been introduced for issuance of supplementary SCN in specified circumstances (to be prescribed).
- Provisions have been introduced for closure of cases without imposition of any redemption fine in cases of voluntary payment of all dues.

○ **Miscellaneous:**

- Scope of the Customs Act has been widened to cover any offence or contraventions committed outside India by any person.
- Name of the Central Board has been changed from “Central Board of Excise and Customs” to the “Central Board of Indirect Tax and Customs”.
- *Customs Automated System:*
 - ✓ A new mode, enabling submission of Bill of Entry/Shipping Bill electronically, has been introduced in respect of entry of goods on importation/exportation.
 - ✓ Enabling provisions for issuance of orders (in cases of removal/clearance of goods or warehoused goods for home consumption/exports) electronically through the CAS have been inserted in addition to the existing system of clearance.
 - ✓ Provisions have been introduced to provide legal backing for risk-based selection of self-assessment through CAS.

- *The Central Government has been empowered to exempt duty on goods:*
 - ✓ Imported for repairs, further processing or manufacture.
 - ✓ Re-imported for repairs, further processing or manufacture after exports.
- Facility for advance deposit in the electronic cash ledger (similar to the electronic cash ledger prevalent under the GST Act) has been introduced for payment of dues.
- *Refunds – IGST paid on Imports of Aircrafts:*
 - ✓ Refund of IGST paid on import of aircrafts/aircraft engines/other aircraft parts under cross-border lease during the period July 1, 2017 to July 7, 2017 has been announced in order to mitigate the hardship on account of dual taxation in the form of Customs Duty and IGST.
 - ✓ Refund would be permissible only if both Customs Duty and IGST have been paid by the importer on the said goods.
 - ✓ Refund claim is required to be filed within 6 months from the date of Presidential assent.
- Separate provisions have been introduced for determining the value of goods for the purpose of computing IGST and GST Compensation Cess, in cases where the goods deposited in a warehouse are sold to any person prior to clearance for home consumption/exports.
- Provisions for exchange of information on reciprocity basis between India any other country have been introduced in connection with specified customs matters.

➤ **Tariff Amendments:**

Particulars	Rate of Duty	
	Current (%)	Proposed (%)
Food Processing:		
Fruit and Vegetable Juice/ Miscellaneous Food Preparations (other than Soya)	30	50
Cranberry Juice	10	50
Cashew Nuts in Shell	5	2.5
Orange Fruit Juice	30	35
Footwear:		
Footwear	10	20
Parts of Footwear	10	15
Jewellery, Diamonds and Precious Stones:		
Imitation Jewellery	15	20
Cut and Polished colored gemstones; Diamonds (other than rough diamonds)	2.5	5
Furniture	10	20
Toys and Games	10	20
Sunglasses	10	20
Textile - Silk Fabric	10	20
Medical Devices		
Medical Devices (effective rate of BCD shall remain unchanged)	7.5	10
Raw materials, parts or accessories for the manufacture of Cochlear Implant	2.5	Nil
Electronics/ Hardware:		
Cellular Mobile Phones	15	20
Clocks/ Watches / Wearable Devices	10	20
LCD/ LED/ OLED and other parts of TVs, specific parts / accessories of Cellular Mobile Phones	7.5/10	15
Automobile Parts:		
Truck and bus radial tyres	10	15
CKD imports of motor cars, motor cycles		
CBU imports of motor vehicles	20	25
Specific parts/ accessories of motor vehicles, motor cars, motor cycles	7.5/10	15

SERVICE TAX

➤ **Retrospective Exemptions:**

Nature of Services	Period
Life insurance services to personnel of Coast Guard under the Group Insurance Schemes of the Central Government by the Naval Group Insurance Fund	September 10, 2004 to June 30, 2017
Services by Goods and Service Tax Network to the Central/State Governments or Union Territories	March 28, 2013 to June 30, 2017
Government's share of profit petroleum on account of grant of license/lease by the Government to explore/mine petroleum crude and/or natural gas	April 1, 2016 to June 30, 2017

Refund Claim of service tax paid by the aforesaid service providers to be filed within 6 months from the date of Presidential assent.

GLOSSARY

Abbreviation	Description
%	Percentage / %
Act	Income Tax Act, 1961
AOP	Association Of Persons
AY	Assessment Year
BEPS	Base Erosion and Profit Shifting
CAAR	Customs Authority for Advance Ruling
CAS	Customs Automated System
CbCR	Country by Country Reporting
CTT	Commodities Transaction Tax
DAPE	Dependent Agent Permanent Establishment
DDT	Dividend Distribution Tax
DTAA	Double Tax Avoidance Agreement
EC	Education Cess
FII	Foreign Institutional Investor
FY	Financial Year
GST	Goods and Service Tax
HUF	Hindu Undivided Family
IBC, 2016	Insolvency and Bankruptcy Code, 2016
ICDS	Income Computation and Disclosure Standards
IFSC	International Financial Service Centre
INR	Indian Rupees/ Rs.
LLP	Limited Liability Partnership
MAT	Minimum Alternate Tax
MLI	Multilateral Instrument
MT	Metric Ton
OECD	Organization for Economic Co-operation and Development
PAN	Permanent Account Number
PE	Permanent Establishment
SCN	Show Cause Notice
SFT	Statement of Financial Transactions
SHEC	Secondary and Higher Education Cess
STT	Securities Transaction Tax
TDS	Tax Deducted at Source
w.e.f	with effect from

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Our Offices in India

Ahmedabad

'Hrishikesh',
2nd Floor, Vasantbaug Society,
Opp Water Tank, Gulbai Tekra
Ahmedabad 380 006
Tel No. +91 79 2630 6530

Bengaluru

96, 7th Cross,
Domlur,
Bengaluru -560 071
Tel No +9180 2535 1353

Chennai

Kochu Bhavan
Ground Floor, Old No 62/1, New No 57,
McNichols Road, Chetpet
Chennai 600031
Tel No. +91 44 4384 9695

Mumbai

Mistry Bhavan, 3rd Floor,
Dinshaw Vachha Road, Churchgate
Mumbai 400 020
Tel No +91 22 6623 0600

Mumbai (Suburban Office)

501/502, Narain Chambers,
M.G Road, Vile Parle (East),
Mumbai 400 057
Tel No : 91 22 6457 7600/01/02

New Delhi

Suite 1101,
KLJ Towers, NSP
New Delhi 110 034
Tel No. +91 11 2735 7350 /7030

Pune

4, Kumar Panorama, 1st Floor
45/18 Shankerseth Road
Pune 411 037
Tel No: 91 20 2645 7251/52

Vadodara

C-201/202, Shree Siddhi Vinayak Complex,
Faramji Road, Alkapuri,
Vadodara - 390 005
Tel. No. +91 265 234 3483

Our Overseas Office

Dubai

Suite #17.06 Dubai World Trade Centre,
Shaikh Zayed Road, Dubai, P.O Box.454442
Tel No. +971 04 355 9533