

**BUDGET**

The philosopher contemplates  
ideas; the teacher energizes ideas;  
the students generate ideas.  
~ Lionel Crocker

# *Connection*

Volume VI, Issue 11

Feb - March 2018

## LLB &amp; CO.

JUST TO  
REMIND  
YOU:

- March 7 - Payment of TDS / TCS
- March 10 - GSTR I (Monthly)
- March 15 - Advance Tax
- March 20 - GSTR 3B
- March 31 - IT Returns for AY 2016-17 and AY 2017-18

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## UNION BUDGET 2018 HIGHLIGHTS — DIRECT TAXES

## Tax Rates

Tax rates continue to be same for A.Y. 2019-20 as applicable for A.Y. 2018-19. Further, there is no change in the basic exemption limits.

## Health &amp; Education

"Education Cess on income-tax" @2% and "Secondary and Higher Education Cess on income-tax" @1% is levied.

Proposed amendment: A new cess named "Health and Education Cess" is proposed to be levied @ 4% of income-tax including surcharge, if applicable, in place of existing cess of "Education Cess and "Secondary and Higher Education Cess on income-tax".

## Relief to Salaried employees

At present an employee is entitled for exemption of Rs. 19,200 (Rs. 38,400 for physically handicapped or blind or deaf and dumb employees) towards transport allowance and exemption of Rs. 15,000 in respect of reimbursement of medical expenses. No Standard deduction is allowed.

Proposed amendment: A standard deduction of maximum of Rs. 40,000 is proposed to be allowed to salaried employees in lieu of present exemption in respect of transport allowance and reimbursement of medical expenses. The net benefit is only Rs. 5,800 which would be further reduced due to increase in cess by 1%. However, benefit of enhanced transport allowance to differently able persons

shall be allowed.

## Deduction in respect of interest income to senior citizen

A deduction upto Rs 10,000 is allowed under section 80TTA to an assessee in respect of interest income from savings account.

Proposed amendment: A new section 80TTB proposed to be inserted to enhance such deduction to Rs. 50,000 from



the existing limit of Rs. 10,000 for senior citizens. Moreover, the benefit of such deduction is proposed to be extended to interest on fixed deposits and recurring deposits.

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

Section 80D, inter-alia, provides that a deduction upto Rs 30,000 to an assessee, being an individual or a Hindu undivided family, in respect of payments towards annual premium on health insurance policy, or preventive health check-up, of a senior citizen, or medical expenditure in respect of very senior citizen.

Proposed amendment: Section 80D proposed to be amended to increase such limit of

deduction from Rs. 30,000 to Rs. 50,000 for resident senior citizens, who is of the age of 60 years or more during the previous year.

Senior citizens not covered by insurance can claim reimbursement of medical expenditure upto Rs. 50,000. Earlier this benefit was available only for very senior citizens.

Further, in case of single premium health insurance policies to effect or to keep in force an insurance on the health for more than a year, it is proposed that the deduction shall be allowed on proportionate basis for the number of years for which health insurance cover is provided, subject to the specified monetary limit.

## Enhanced deduction to senior citizens for medical treatment of specified diseases

Section 80DDB, *inter-alia*, provide that a deduction shall be available to an individual and Hindu undivided family in respect of an amount paid for medical treatment of specified diseases upto Rs 80,000 in case of very senior citizen and upto Rs 60,000 in case of senior citizens.

Proposed amendment: It is proposed to increase such deduction upto Rs. 1,00,000 for both senior citizens and very senior citizens in place of existing deduction upto Rs 80,000 and Rs. 60,000 in respect of very senior citizen and senior citizens, respectively.

## Extending the benefit of exemp-

## Direct Tax



### tion of withdrawal from NPS to non-employee subscribers

The existing provisions of the clause (12A) of section 10 of the Act provides an exemption of 40% of the total amount payable to an employee contributing to the NPS on closure of his account or on his opting out. This exemption is not available to non-employee subscribers.

**Proposed amendment:** It is proposed to amend this section to extend the benefit of such exemption to all assessees. However, benefit of exemption under clause (12B) for partial withdrawal continues to be restricted to employees alone.

### Conversion of Stock in trade into Capital Asset

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

**Proposed Amendment:** Section 28 proposed to be amended to tax the profit or gains arising from conversion of inventory into capital asset or its treatment as capital asset as business income. The full value of the consideration received or accruing as a result of such conversion would be fair market value of the inventory on the date of conversion determined in the prescribed manner.

Further, for determining capital gain on transfer of such capital asset, the fair market value on the date of conver-

sion shall be the cost of acquisition. The period of holding would be reckoned from the date of conversion or treatment.

It may be noted that business income would be taxable in the year of conversion and there is no provision for postponement of taxability of income to the year in which the transfer took place.

### Transfer 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. The difference is taxed as income both in the hands of the purchaser and the seller.

**Proposed Amendment:** Section 50C, 43CA & 56 proposed to be amended to provide that no adjustments shall be made in a case where the variation between stamp duty value and the sale consideration is not more than 5% of the sale consideration.

### Deduction u/s 54EC

Deduction under section 54EC is available in respect of capital gain, arising from the transfer of a long-term capital asset, invested in the long-term specified asset at any time within a period of six months after the date of such transfer. Long-term specified asset means any bond, redeemable after three years and issued on or after the 1st day of April, 2007 by the Na-

tional Highways Authority of India (NHAI) or by the Rural Electrification Corporation Limited (RECL); or any other bond notified by the Central Government.

**Proposed Amendment:** Section 54EC proposed to restrict the exemption in respect of capital gain arising from the transfer of a long-term capital asset, being land or building or both only and not other capital assets. Further, the period for redemption of long-term specified asset, being a bond increased from three years to five years.

### Business Taxation

Domestic companies whose turnover was less than Rs. 50 crore in financial year 2015-16 was liable to pay corporate tax @25% in FY 2017-18.

**Proposed amendment:** The benefit of concessional rate of corporate tax@25% is proposed to be extended to domestic companies whose total turnover or gross receipt in the previous year 2016-17 does not exceed Rs. 250 crores.

### Deduction in respect of employment of new employees:

A 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 period of 240 days during the year under section 80JJAA. However, the minimum period of employment is relaxed to 150 days in the case of apparel industry.

**Proposed amendment:** Section 80JJAA proposed to be amended to extend this relaxation to footwear and





leather industry. Further, the deduction of 30% would also be available for a new employee who



is employed for less than the minimum period during the first year but continues to remain employed for the minimum period in subsequent year. Such deduction would be available from the subsequent year.

#### **Deduction in respect of Farm Producer Companies**

Section 80P provides for 100 percent deduction in respect of profit of cooperative society which provide assistance to its members engaged in primary agricultural activities.

Proposed amendment: This benefit proposed to be extended to Farm Producer Companies (FPC), having a total turnover upto 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 the financial year 2018-19.

#### **Dividend Distribution tax on Deemed Dividend:**

Dividend distributed by a domestic company is subject to dividend distribution tax payable by such company. However, deemed dividend under section of 2(22)(e) is taxed in the hands of the recipient and no dividend distribution tax is currently being levied.

Proposed amendment: It is proposed to tax deemed dividend referred under section 2(22)(e) in the hands of company. Dividend distribution tax @30% without grossing up is proposed to be levied on the company.

#### **Expanding scope of accumulated profits for deeming dividend**

Accumulated profits for deeming dividend has been provided in section 2(22) as all profits of the company upto the date of distribution or payment or liquidation, subject to certain conditions.

Proposed amendment: The scope of accumulated profits for deeming dividend would include, in a case of amalgamated company, the accumulated profits of the amalgamating company also, whether capitalised or not, on the date of amalgamation.

#### **Mandatory filing of return to claim deduction under the heading C in Chapter VIA**

Section 80AC provides that no deduction would be admissible under section 80-IA or section 80-IAB or section 80-IB or section 80-IC or section 80-ID or section 80-IE, unless the return of income by the assessee is furnished on or before the due date specified under sub-section (1) of section 139 of the Act.

Proposed amendment: It is proposed to extend the scope of section 80AC to provide that the benefit of deduction under the heading "C.—Deductions in respect of certain incomes" in Chapter VIA shall not be allowed unless the return

of income is filed by the due date. It will now include its scope section 80P, 80PA, 80QQB and 80RRB.

#### **Entities to apply for Permanent Account Number in certain cases**

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

Proposed amendment: Section 139A proposed to be amended to provide that non-individual entities, which enters into a financial transaction of an amount aggregating to Rs. 2,50,000 or more in a financial year shall be required to apply to the Assessing Officer for allotment of PAN. Further, 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 would also apply to the Assessing Officer for allotment of PAN.

#### **Prosecution for failure to furnish return**

Section 276CC provides that if a person willfully fails to furnish in due time the return of income which he is required to furnish, he shall be punishable with imprisonment for a term, as specified therein, with fine. However, a person shall not be proceeded against under the said section for failure to furnish return if the tax payable by him on the total income determined on regular assessment as reduced by the advance tax, if any, paid and any tax deducted at





source, does not exceed Rs. 3,000.

**Proposed amendment:** It is proposed to exclude company from such exemption of prosecution. Therefore, companies would be liable for prosecution for failure to furnish return even if there is no tax liability.

#### **Rationalisation of *prima-facie* adjustments during processing of return of income**

Section 143(1) provides for processing of return of income made under section 139, or in response to a no-

tice under section 142(1). At the time of processing of return, the total income or loss shall be computed after making the adjustment, *inter alia*, in respect of addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return.

**Proposed amendment:** It is proposed to restrict the scope of adjustments in processing of return by providing that aforesaid adjustment shall not be made in respect of any return furnished on or after the assessment year com-

mencing on the first day of April, 2018.

#### **E-Assessments: A tax-payer friendly measure**

The budget proposal to notify an electronic mode for assessment across the country will significantly reduce harassment of tax payers by the tax authorities and usher in greater efficiency and transparency in the assessment procedure.

## **FAQs on Taxation of Long Term Capital Gain on Shares**

Under the existing regime, long term capital gains arising from transfer of long term capital assets, being equity shares of a company or a unit of equity oriented fund or a unit of business trust, is exempt from income-tax under clause (38) of section 10 of the Act. However, transactions in such long-term capital assets are liable to securities transaction tax (STT). Consequently, this regime is inherently biased against manufacturing and has encouraged diversion of investment to financial assets. It has also led to significant erosion in the tax base resulting in revenue loss. The problem has been further compounded by abusive use of tax arbitrage opportunities created by these exemptions.

In order to minimise economic distortions and curb erosion of tax base, it is proposed to withdraw the exemption under clause (38) of

section 10 and to introduce a new section 112A in the Income-tax Act, 1961 ('the Act') vide clause 31 of the Finance Bill, 2018 so as to provide that long-term capital gains arising from transfer of such long-term capital asset exceeding one **lakh** rupees will be taxed at a concessional rate of 10 percent.

Since the introduction of the Finance Bill, 2018 on 1<sup>st</sup> February, 2018, several queries have been raised in different fora on various issues relating to the proposed new tax regime for taxation of long-term capital gains. The responses to these queries are provided below.

#### **Q 1. What is the meaning of long term capital gains under the new tax regime for long term capital gains?**

**Ans 1.** Long term capital gains mean gains arising from the transfer of long-term capital asset. The Finance

Bill, 2018 proposes to provide for a new long-term capital gains tax regime for the following assets

- i. Equity Shares in a company listed on a recognised stock exchange;
- ii. Unit of an equity oriented fund; and
- iii. Unit of a business trust.

The proposed regime applies to the above assets, if-

- a. the assets are held for a minimum period of twelve months from the date of acquisition; and
- b. the Securities Transaction Tax (STT) is paid at the time of transfer. However, in the case of equity shares acquired after 1.10.2004, STT is required to be paid even at the time of acquisition (subject to notified exemptions).

#### **Q2. What are the modes of acquisition of equity shares which are proposed to**



be exempted from the condition of payment of STT?

Ans 2. The Central Government



had exempted certain modes of acquisition of equity shares for the purposes of clause (38) of section 10 of the Act vide **notification no. 43/2017 dated 5<sup>th</sup> of June, 2017**. This notification is proposed to be reiterated for the purposes of clause 31 of the Finance Bill, 2018 after its enactment.

**Q3. What is the point of chargeability of the tax?**

Ans 3. The tax will be levied only upon transfer of the long-term capital asset on or after 1<sup>st</sup> April, 2018, as defined in clause (47) of section 2 of the Act.

**Q4. What is the method for calculation of long-term capital gains?**

Ans 4. The long-term capital gains will be computed by deducting the cost of acquisition from the full value of consideration on transfer of the long-term capital asset.

**Q5. How do we determine the cost of acquisition for assets acquired on or before 31<sup>st</sup> January, 2018?**

Ans 5. The cost of acquisition for the long-term capital asset acquired on or before 31<sup>st</sup> of January, 2018 will be the actual cost.

However, if the actual cost is less than the fair market value of such asset as on 31<sup>st</sup> of January, 2018, the fair market value will be deemed to be the cost of acquisition.

Further, if the full value of consideration on transfer is less than the fair market value, then such full

value of consideration or the actual cost, whichever is higher, will be deemed to be the cost of acquisition.

**Q 6. How will the fair market value be determined?**

Ans 6. In case of a **listed equity share or unit**, the fair market value means the highest price of such share or unit quoted on a recognized stock exchange on 31<sup>st</sup> of January, 2018.

However, if there is no trading on 31<sup>st</sup> January, 2018, the fair market value will be the highest price quoted on a date immediately preceding 31<sup>st</sup> of January, 2018, on which it has been traded.

In the case of **unlisted unit**, the net asset value of such unit on 31<sup>st</sup> of January, 2018 will be the fair market value.

**Q 7. Please provide illustrations for computing long-term capital gains in different scenarios, in the light of answers to questions 5 and 6.**

Ans 7. The computation of long-term capital gains in different scenarios is illustrated as under-

**Scenario 1**— An equity share is acquired on 1<sup>st</sup> of January, 2017 at Rs. 100, its fair market value is Rs. 200 on 31<sup>st</sup> of January, 2018 and it is sold on 1<sup>st</sup> of April, 2018 at Rs. 250.

As the actual cost of acquisition is less than the fair market value as on 31<sup>st</sup> of January, 2018, the fair market value of Rs. 200 will be taken as the cost of acquisition and the **long-term capital gain will be Rs. 50** (Rs. 250 – Rs. 200).

**Scenario 2**—An equity share is acquired on 1<sup>st</sup> of January, 2017 at Rs. 100, its fair market value is Rs. 200 on 31<sup>st</sup> of January, 2018 and it is sold on 1<sup>st</sup> of April, 2018 at Rs. 150.

In this case, the actual cost of acquisition is less than the fair market value as on 31<sup>st</sup> of January, 2018. However, the sale

value is also less than the fair market value as on 31<sup>st</sup> of January, 2018. Accordingly, the sale value of Rs. 150 will be taken as the cost of acquisition and the **long-term capital gain will be NIL** (Rs. 150 – Rs. 150).

**Scenario 3**—An equity share is acquired on 1<sup>st</sup> of January, 2017 at Rs. 100, its fair market value is Rs. 50 on 31<sup>st</sup> of January, 2018 and it is sold on 1<sup>st</sup> of April, 2018 at Rs. 150.

In this case, the fair market value as on 31<sup>st</sup> of January, 2018 is less than the actual cost of acquisition, and therefore, the actual cost of Rs. 100 will be taken as actual cost of acquisition and the **long-term capital gain will be Rs. 50** (Rs. 150– Rs. 100).

**Scenario 4**— An equity share is acquired on 1<sup>st</sup> of January, 2017 at Rs. 100, its fair market value is Rs. 200 on 31<sup>st</sup> of January, 2018 and it is sold on 1<sup>st</sup> of April, 2018 at Rs. 50.

In this case, the actual cost of acquisition is less than the fair market value as on 31<sup>st</sup> January, 2018. The sale value is less than the fair market value as on 31<sup>st</sup> of January, 2018 and also the actual cost of acquisition. Therefore, the actual cost of Rs. 100 will be taken as the cost of acquisition in this case. Hence, the **long-term capital loss will be Rs. 50** (Rs. 50 – Rs. 100) in this case.

**Q8. Whether the cost of acquisition will be inflation indexed?**

Ans 8. Sub-clause (5) of clause 31 of the Finance Bill, 2018, *inter alia*, provides that the long-term capital gain will be computed without giving effect to the provisions of the second provisos of section 48. Accordingly, it is clarified that the benefit of inflation indexation of the cost of acquisition would not be avail-







able for computing long-term capital gains under the new tax regime.

**Q9. What is the date of commencement of the proposed new tax regime?**

Ans 9. The proposed new tax regime will apply to transfer made on or after 1<sup>st</sup> April, 2018. The existing regime providing exemption under clause (38) of section 10 of the Act will continue to be available for transfer made on or before 31<sup>st</sup> March, 2018.

**Q10. What will be the tax treatment of accrued gains upto 31<sup>st</sup> January 2018?**

Ans 10. As the fair market value on 31<sup>st</sup> January, 2018 will be taken as cost of acquisition (except in some typical situations explained in Ans 7.), the gains accrued upto 31<sup>st</sup> January, 2018 will continue to be exempt.

**Q11. What will be the tax treatment of transfer of share or unit between 1<sup>st</sup> February 2018 to 31<sup>st</sup> March 2018?**

Ans 11. As replied in answer 9, the new tax regime will be applicable to transfer made on or after 1<sup>st</sup> April, 2018, the transfer made between 1<sup>st</sup> February, 2018 and 31<sup>st</sup> March, 2018 will be eligible for exemption under clause (38) of section 10 of the Act.

**Q 12. What will be the tax treatment of transfer made on or after 1<sup>st</sup> April 2018?**

Ans 12. The long-term capital gains exceeding Rs. 1 Lakh arising from transfer of these asset made on after 1<sup>st</sup> April, 2018 will be taxed at 10 per cent. However, there will be no tax on gains accrued upto 31<sup>st</sup> January, 2018 as ex-

plained in Ans 10.

**Q 15. Whether tax will be deducted at source in case of payment of long-term capital gains by non-resident tax payer (other than a Foreign Institutional Investor)?**

Ans 15. Ordinarily, under section 195 of the Act, tax is required to be deducted on payments made to non-residents, at the rates prescribed in Part-II of the First Schedule to the Finance Act. The rate of deduction in the case of capital gains is also provided therein. In terms of the said provisions, tax at the rate of 10 per cent. will be deducted from payment of long-term capital gains to a non-resident tax payer (other than a Foreign Institutional Investor). The capital gains will be required to be computed in accordance with clause 31 of the Finance Bill, 2018.

**Q 16. Whether tax will be deducted at source in case of payment of long-term capital gains by Foreign Institutional Investors (FIIs)?**

Ans 16. No. There will be no deduction of tax at source from payment of long-term capital gains to a Foreign Institutional Investor in view of the provisions of sub-section (2) of section 196D of the Act.

**Q17. How will the gains in the case of FIIs be determined?**

Ans 17. The long-term capital gains in case of FIIs will be determined in the same manner as explained in earlier answers in the case of resident tax payers.

**Q 18. What will be the treatment of the gains accrued upto 31<sup>st</sup> January 2018 in the case of FIIs?**

Ans 18. In case of FIIs also, there will be no tax on gains accrued upto 31<sup>st</sup> January, 2018 as explained in Ans 10.

**Q19. What will be the tax treatment of transfer of share or unit between 1<sup>st</sup> February 2018 to 31<sup>st</sup> March 2018 in the case of FIIs?**

Ans 19. As explained in Ans 11, in case of FIIs also, the transfer made between 1<sup>st</sup> February, 2018 and 31<sup>st</sup> March, 2018 will be eligible for exemption under clause (38) of section 10 of the Act.

**Q 20. What will be the tax treatment of transfer made on or after 1<sup>st</sup> April 2018 in case of FIIs?**

Ans 20. As explained in Ans 12, in case of FIIs also, the long-term capital gains exceeding Rs. 1 Lakh arising from transfer of these asset made on after 1<sup>st</sup> April, 2018 will be taxed at 10 per cent. However, there will be no tax on gains accrued upto 31<sup>st</sup> January, 2018 as explained in Ans 10.

**Q21. What will be the cost of acquisition in the case of bonus shares acquired before 1<sup>st</sup> February 2018?**

Ans 21. The cost of acquisition of bonus shares acquired before 31<sup>st</sup> January, 2018 will be determined as per sub-clause (6) of clause 31 of the Finance Bill, 2018. Therefore, the fair market value of the bonus shares as on 31<sup>st</sup> January, 2018 will be taken as cost of acquisition (except in some typical situations explained in Ans 7), and hence, the gains accrued upto 31<sup>st</sup> January, 2018 will continue to be exempt.

**Q22. What will be the cost of acquisition in the case of**

**right share acquired before 1st February 2018?**

Ans 22. The cost of acquisition of right share acquired before 31<sup>st</sup> January, 2018 will be determined as per sub-clause (6) of clause 31 of the Finance Bill, 2018. Therefore, the fair market value of right share as on 31<sup>st</sup> January, 2018 will be taken as cost of acquisition (except in some typical situations explained in Ans 7), and hence, the gains accrued upto 31<sup>st</sup> January, 2018 will continue to be exempt.

**Q23. What will be the treatment of long-term capital loss arising from transfer made between 1<sup>st</sup> February, 2018 and**

**31<sup>st</sup> March, 2018?**

Ans 23. As the exemption from long-term capital gains under clause (38) of section 10 will be available for transfer made between 1<sup>st</sup> February, 2018 and 31<sup>st</sup> March, 2018, the long-term capital loss arising during this period will not be allowed to be set-off or carried forward.

**Q 24. What will be the treatment of long-term capital loss arising from transfer made on or after 1<sup>st</sup> April, 2018?**

Ans 24. Long-term capital loss arising from transfer made on or after 1<sup>st</sup> April, 2018 will be allowed to be set-off and carried forward in accordance with exist-

ing provisions of the Act. Therefore, it can be set-off against any other long-term capital gains and unabsorbed loss can be carried forward to subsequent eight years for set-off against long-term capital gains.



## UNION BUDGET 2018 - INTERNATIONAL TAXATION

**Taxation of long-term capital gains in the case of Foreign Institutional Investor[Section 115AD]**

Consequent to the proposal for withdrawal of exemption under section 10(38) of the Act, the FIIs will be liable to tax on long term capital gains arising from transfer of long term capital asset being equity shares of a company or a unit of equity oriented fund or a unit of business trusts only in respect of amount of such gains exceeding one lakh rupees.

This amendment will apply in relation to the assessment year 2019-20 and subsequent assessment years.

**Aligning the scope of “business connection” with modified PE Rule as per Multilateral Instrument (MLI) [Section 9(1)(i)]**

Amendment to Explanation 2 to section 9(1)(i)

“Business connection” shall in-

clude any business activities carried through a person who, acting on behalf of the non-resident,

- habitually concludes contracts or
- habitually plays the principal role leading to conclusion of contracts by the non-resident and
- the contracts are

In the name of the non-resident; or

for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that the non-resident has the right to use; or

for the provision of services by that non-resident.

This amendment is to give effect to BEPS Action Plan 7, which suggests that an agent would include not only a person who habitually

concludes contracts on behalf of the non-resident, but also a person who habitually plays a principal role leading to the conclusion of contracts.

This amendment will apply in relation to the assessment year 2019-20 and subsequent assessment years.

Insertion of Explanation 2A to section 9(1)(i)

“Business connection” to include “Significant Economic presence”.

Significant Economic presence shall mean (mutually exclusive definition)

- 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 the amount as may be prescribed; or
- 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.

The threshold of “revenue” and the “users” in India will be decided after consultation with the stakeholders.

Further, it is proposed as under:

only so much of income as is attributable to such transactions or activities shall be deemed to accrue or arise in India.

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 clarified that unless corresponding modifications to PE rules are made in the DTAAs, the cross border business profits will continue to be taxed as per the existing treaty rules.

The above amendment is in accordance with OECD’s BEPS Action Plan 1, as per which, a non-resident enterprise would create a taxable presence in a country if it has significance economic presence in that country on the basis of factors that have a purposeful and sustained interaction with the economy by the aid of technology and other automated tools.

This amendment will apply in relation to the assessment year 2019-20 and subsequent assessment years

#### **Rationalisation of provisions relating to Country-by-Country Report [Section 286]**

The time allowed for furnishing the Country-by-Country Report (CbCR), in the case of parent entity or Alternative Reporting Entity (ARE), resident in India, is proposed to be extended to twelve months from the end of reporting accounting year (For FY 2017-18 the time limit shall be March 31, 2019)

In case its parent entity outside India has no obligation to file the report in its country or territory then constituent entity resident in India, shall also furnish CbCR within the aforesaid due date i.e. twelve months from the end of reporting accounting year

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

#### **Measures to promote International Financial Services Centre (IFSC)[Section 47]**

Transactions in the following assets, by a non-resident on a recognized stock exchange located in any IFSC shall not be regarded as transfer, if the consideration is paid or payable in foreign currency:—

- bond or Global Depository Receipt, as referred to in section 115AC(1); or
- rupee denominated bond of an Indian com-

pany; or

- derivative

It is further proposed to amend the section 115JC so as to provide that in case of a unit located in an IFSC, the alternate minimum tax under section 115JC shall be charged at the rate of 9% (earlier it was 18.5%).

This amendment will apply in relation to the assessment year 2019-20 and subsequent assessment years.

#### **Exemption of income of Foreign Company from sale of leftover stock of crude oil on termination of agreement or arrangement[Section 10 (48B)]**

The benefit of exemption is presently not available on any income accruing or arising

to a foreign company on account of sale out of the leftover stock of crude in case of termination of the said agreement or the arrangement.

It is now proposed to amend Section 10(48B) to provide that the benefit of tax exemption in respect of income from left over stock will be available even if the agreement or the arrangement is terminated in accordance with the terms mentioned therein.

This amendment will apply in relation to the assessment year 2019-20 and subsequent assessment years.

#### **Royalty and FTS payment by NTR to a non-resident to be tax exempt [Section 10]**

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

Given the business exigencies of the National Technical Research Organisation (NTRO), it is proposed to amend section 10 so as to provide that the income arising to non-resident, not being a company, or a foreign company, by way of royalty from, or fees for technical services rendered in or outside India to, the NTRO will be exempt from income tax.

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

This amendment will apply in relation to the assessment year 2018-19 and subsequent assessment years.

#### **Clarification regarding non applicability of section 115JB [Section 115JB]**

An explanation is proposed to be incorporated in the Section 115JB to clarify that the provisions of section 115JB 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 44BBB and such income has been offered to tax at the rates specified in the said sections.

This amendment will apply retrospectively from 1st April, 2001 ie

in relation to the assessment year 2001-02 and subsequent assessment years.



## SAP based e-CST module for dealers

The dealers registered under the CST Act, 1956, on or after 25.05.2016 can apply for eCST declarations for the periods starting from 01.04.2016 on the SAP System available on the web Portal [www.mahagst.gov.in](http://www.mahagst.gov.in). The process of raising downloading and cancelling CST declarations has been explained in Trade Circular No 8T of 2017.

The dealers registered under the CST Act, 1956, prior to 25.05.2016 were required to obtain their e CST declarations for all the periods from the Mahavikas System. The said facility has been withdrawn vide Trade Circular No 04T Dt 01/02/2018 in order to provide the said facility on SAP based on the web Portal [www.mahagst.gov.in](http://www.mahagst.gov.in). This facility has been made available from 09/02/2018 to the dealers registered under the CST Act, 1956, prior to 25.05.2016, for the periods 01.04.2016 onwards.

The facility of obtaining the e-CST

declarations for the periods prior to 01.04.2016 is also being made available to the dealers registered under the CST Act, 1956, prior to 25/05/2016. Announcement about the implementation of the same will be made in due course of time.

Process of using the e-CST Module by the dealers registered under the CST Act, 1956, prior to 25.05.2016, for the periods 01.04.2016 onwards:

#### **Steps to raise the e-CST declarations**

**To access the module, the dealer needs to create temporary profile on MAHAGST portal, if not created earlier.**

Log into [www.mahagst.gov.in](http://www.mahagst.gov.in) portal

Click on log in for VAT Services

Click "Create Profile for New System"

Select "Registered Dealer" and

Click "Next"

Give PAN and Existing Legacy TIN

Select constitution from drop box

Click Next

User ID and password will be auto populated. Other details to be input by the dealer.

Click Create Profile.

#### **To raise request for declaration dealer should follow following steps:**

Log into [www.mahavat.gov.in](http://www.mahavat.gov.in) portal using valid Login Password credentials.

Select "Form Type & Period- FY after 01/04/2016".

Select "Recipient TIN (s)".

Select the desired invoices.

Complete details in Statement of Request generated.



## CENTRAL SALES TAX

Confirm details entered to raise the desired form.

Dealers will be presented with all invoices for the period and dealer has to mark, the invoices for issuing the e-CST declaration to the limit of issuable balance i.e. total amount claimed in returns for CST declaration type for the period minus declarations already issued.

### Steps to cancel e-CST declarations previously issued:

Log into [www.mahagst.gov.in](http://www.mahagst.gov.in) portal using valid Login Password credentials.

After successful logon, dealer

click on "Cancel e-CST"

This will lead him to the screen to select the form type already generated and wish to cancel.

Select the "Form Type".

Click on "Next" button to cancel the e-CST declarations.

If dealer cancels previously raised declarations, forms issued amount will be updated accordingly and dealer will be able to raise new declarations in lieu of canceled declarations, to the limit of three forms of each type for each period, for every recipient TIN.

### Steps to be taken in case the returns are revised after obtaining the e-CST forms:

Cancel all declarations issued from MAHAGST /SAP portal for that period (need not to cancel declarations obtained from MAHVAT portal).

Reapply for desired e-CST declarations.

The updated user manual and FAQs explaining the process flow has been made available on website [www.mahagst.gov.in](http://www.mahagst.gov.in) through the link Dealer Services-Manuals and Procedures

## Fast Track Insolvency Resolution Process

Amendments made to the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017.

### According to the Amendments,

The Resolution Professional shall appoint Registered Valuers to determine the fair value and the liquidation value of the Corporate Debtor. After the receipt of Resolution Plans, the Resolution Professional shall provide the fair value and the liquidation value to each member of the Committee of Creditors in electronic form, on receiving a confidentiality undertaking. The Resolution Professional and Registered Valuers shall maintain confidentiality of the fair value and the liquidation value.

The Resolution Professional shall submit the information memorandum in electronic form to each member of the Committee of Creditors within

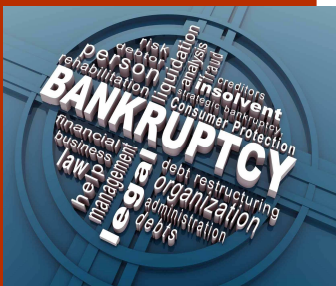
two weeks of his appointment as resolution professional and to each prospective resolution applicant latest by the date of invitation of resolution plan, on receiving confidentiality undertaking.

The Resolution Professional shall issue an invitation, including the evaluation matrix, to the prospective Resolution Applicants. He may modify the invitation as well as the evaluation matrix. However, the prospective resolution applicant shall get at least 15 days from the issue of invitation or modification thereof, whichever is later, to submit resolution plans. Similarly, he will get at least 8 days from the issue of evaluation matrix or modification thereof, whichever is later, to submit resolution plans. An abridged invitation shall be available on the web site, if any, of the corporate debtor, and on the web site, if any, designated by the IBBI for the purpose.

While the Resolution Appli-

cant shall continue to specify the sources of funds that will be used to pay insolvency resolution process costs, liquidation value due to Operational Creditors and liquidation value due to dissenting financial creditors, the Committee of Creditors shall specify the amounts payable from resources under the Resolution Plan for these purposes.

A Resolution Plan shall provide for the measures, as may be necessary, for insolvency resolution of the Corporate Debtor for maximization of value of its assets. These may include reduction in the amount payable to the creditors, extension of a maturity date or a change in interest rate or other terms of a debt due from the Corporate Debtor, change in portfolio of goods or services produced or rendered by the Corporate Debtor, and change in technology used by the Corporate Debtor.





## LLB & Co.

525, The Summit Business Bay,  
Behind Gurunanak Petrol Pump,  
Near W.E. Highway Metro and Cinemax,  
Andheri (East), Mumbai - 400 093

Office No.: 5, Barsana,  
Salasar Brij Bhoomi,  
Near Maxus Mall,  
Bhayandar (West),  
Thane - 401101

Phone: +91 - 22 - 26831036  
+91 - 22 - 49242456  
+91 - 22 - 28040048

**Innovate Create Lead**

## ICAI elects New Torchbearers for the year 2018-19



**CA. Naveen N. D. Gupta**  
President, ICAI



**CA. Prafulla Chhajed**  
Vice-President, ICAI

# *Congratulations*



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