BUDGET 2018
ANALYSIS
FINANCE BILL, 2018

BANSI S. MEHTA & CO.
Chartered Accountants

Preface

This e-booklet highlights the key proposals put forth by the Honourable Finance Minister in his Union Budget 2018. This e-booklet is for private circulation amongst clients and professional colleagues of Bansi S. Mehta & Co. only. It is not for general circulation and is under no circumstances an offer, invitation or solicitation of any kind. This e-booklet is intended to be a succinct overview of the proposals put forth and is neither to be construed as comprehensive nor as to render taxation, legal, economic or financial advice. This e-booklet should not be relied upon for taking any actions/ decisions on the contents of the e-booklet and proper professional/ legal advice should be sought.

Further, this e-booklet contains only the proposals and amendments as given in the Finance Bill, 2018, which may be modified before it receives the approval and assent of the Parliament and the President.

The material used in the preparation of this e-booklet has been sourced from various sources including the speech of the Finance Minister, websites of the Government and other publicly available information. While all reasonable care has been taken in preparation of this e-booklet, we accept no responsibility for any errors it may contain or for any omissions or otherwise or for any loss, howsoever caused or sustained, by the person who relies on it.

LIST OF ABBREVIATIONS

Abbreviations	Full Name
AAR	Authority for Advance Rulings
ACIT	Assistant Commissioner of Income Tax
Act	Income Tax Act, 1961
A.O.	Assessing Officer
A.Y.	Assessment Year
BEPS	Base Erosion and Profit Shifting
BIFR	Board for Industrial and Financial Reconstruction
CbCR	Country by Country Report
CBDT	Central Board of Direct Taxes
Cl.	Clause
CIT	Commissioner of Income-tax
CIT(A)	Commissioner of Income-tax (Appeals)
CG	Central Government
Co	Company
CTT	Commodities transaction tax
DTAA	Double Taxation Avoidance Agreement
ECS	Electronic Clearance System
EM	Explanatory Memorandum
FA	Finance Act
FB	Finance Bill, 2018
FB 17	Finance Bill, 2017
FII	Foreign Institutional Investor
FMV	Fair Market Value
FTS	Fees for Technical Services
FMV	Fair Market Value
FII	Foreign Institutional Investment
Hon	Honourable
IBC	Insolvency and Bankruptcy Code, 2016

Abbreviations	Full Name
ICDS	Income Computation and Disclosures Standards
IFSC	International Financial Services Centre
IndAS	Indian Accounting Standards
ITAT	Income Tax Appellate Tribunal
ITD	Income Tax Digest
ITO	Income Tax Officer
ITR	Income Tax Reports
LTCG	Long term capital gains
Ltd	Limited
MAT	Minimum Alternate Tax
MLI	Multilateral Instrument
MT	Metric Tonne
NCLT	National Company Law Tribunal
NHAI	National Highways Authority of India
NPS	National Pension Scheme
NTRO	National Technical Research Organisation
OECD	Organisation for Economic Co-operation and Development
P.a.	Per annum
PAN	Permanent Account Number
Para	Paragraph
PE	Permanent Establishment
RBI	Reserve Bank of India
RECL	Rural Electrification Corporation Limited
RSE	Regional Stock Exchanges
Rules	Income Tax Rules, 1962
Sec.	Section
SICA	Sick Industrial Companies Act
STT	Securities Transaction Tax
TDS	Tax Deducted at Source
u/s	Under Section
WP	Writ Petition

INDEX

CHAPTER – I

RATES OF INCOME TAXES

1.1 Basic Tax Rate:

There has been no change in the rates of income-tax for all categories of assesses liable to pay income-tax for the A.Y. 2019-20 except in case of domestic companies.

The rates of income-tax for A.Y. 2019-20 are as follows:-

a) For every individual (other than those mentioned in b and c below) or Hindu Undivided Family, every association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in section 2(31)(vii) of the Income-tax Act, 1961:

SLAB	APPLICABLE RATE OF TAX
Upto Rs. 2,50,000	Nil
Rs. 2,50,001 to Rs. 5,00,000	5%
Rs. 5,00,001 to Rs.10,00,000	20%
Above Rs.10,00,001	30%

b) For resident individual, who is of the age of sixty years or more but less than eighty years at any time during the previous year:

SLAB	APPLICABLE RATE OF TAX
Upto Rs.3,00,000	Nil
Rs. 3,00,001 to Rs. 5,00,000	5%
Rs. 5,00,001 to Rs. 10,00,000	20%
Above Rs. 10,00,001	30%

c) For resident individual, who is of the age of eighty years or more at any time during the previous year:

SLAB	APPLICABLE RATE OF TAX
Upto Rs. 5,00,000	Nil
Rs. 5,00,001 to Rs. 10,00,000	20%
Above Rs. 10,00,001	30%

d) In the case of every co-operative society:

SLAB	APPLICABLE RATE OF TAX
Upto Rs. 10,000	10%
Rs. 10,000 to Rs. 20,000	20%
Above Rs. 20,001	30%

e) In case of firm and local authority 30%

f) In case of domestic company:

The tax rate has been reduced in case of certain companies from 30% to 25%.

Earlier, the concessional tax rate of 25% was applicable for domestic companies whose total turnover or gross receipts in the previous year 2015-16 does not exceed Rs. 50 crores. The limit of Rs. 50 crores has been increased to Rs. 250 crores to cover medium level enterprises.

TURNOVER/GROSS RECEIPTS	APPLICABLE RATE OF TAX
(i) where its total turnover or the gross receipt in the previous year 2016-2017 does not exceed Rs. 250 crs;	25%
(ii) other than that referred to in item (i)	30%

g) In case of foreign company: 40%

1.2 Surcharge:

There has been no change in the rate of Surcharge.

1.3 Cess has been increased by 1%:

It is proposed to substitute the present “Education Cess on income tax”, and “Secondary and Higher Education Cess on income tax”, by “Health and Education Cess on income tax”, leviable for AY 2019-20.

CESS	**% ON INCOME TAX & SURCHARGE**	
	Existing	**Proposed**
Education	2	-
Secondary and Higher Education	1	-
Health and Education	-	4

CHAPTER – II

STANDARD DEDUCTION FROM SALARY INCOME

1.1 Background: [Sec. 16 and 17]

1.1.1 Sec.16 provides for certain deductions in computing income chargeable under the head “Salaries”. Sec. 17, *inter alia*, defines ‘perquisite’ to include the value of any fringe benefit or amenity.

1.1.2 The proviso to clause (viii) of Sec. 17(2) excludes, *inter alia*, any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family other than the treatment referred to in clauses (i) and (ii); subject to an overall limit of Rs. 15,000 in the previous year.

1.2 Proposed Amendments [FB – Cl. 7 and 8]:

1.2.1 It is proposed to insert clause (ia) in Sec. 16 to allow a standard deduction upto Rs. 40,000/- or the amount of salary received, whichever is less, in respect of transport allowance (except in case of differently abled persons) and reimbursement of miscellaneous medical expenses.

1.2.2 Consequently, it is proposed that the exemption provided with respect to the reimbursement of medical expenditure in the proviso to clause (viii) of Sec. 17(2) be deleted.

1.3 Rationale of the Proposed Amendments:

Income tax data analysis suggests that major portion of personal income-tax collection comes from the salaried class and in order to provide relief to salaried taxpayers, it is proposed to give standard deduction of Rs. 40,000/- in lieu of the present exemption in respect of transport allowance and reimbursement of miscellaneous medical expenses.

1.4 Our Comments:

1.4.1 The increase in deduction is only optical, as deduction for transport allowance and medical re-imbursements amounts to Rs. 34,200/-. The additional deduction of Rs. 5,800 is coupled with an increase in cess of 1%, thereby resulting in higher tax outgo for employees with salaries higher than approx. Rs. 10.10 lacs p.a.

1.4.2 These amendments will be operative from April 1, 2019.

CHAPTER – III

HOUSING AND REAL ESTATE

1.1 Background: [Section 43CA, 50C and 56]

While taxing income from capital gains (Sec. 50C), business profits (Sec. 43CA) and other sources (Sec. 56), arising out of transactions in immovable property, being land or building or both, the sale consideration or stamp duty value, whichever is higher is adopted.

1.2 Proposed Amendments [FB – Cl. 14, 19 & 21]:

1.2.1 It is proposed to insert a new proviso to sub-section (1) to Sec. 43CA to provide that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed 105% of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of consideration.

1.2.2 Similar amendment is proposed to be made in section 50C by way of insertion of a new *proviso*, after the *second proviso*, to the said section.

1.2.3 It is further proposed to amend Sec. 56(2)(x) by substituting item (B) of sub-clause (b) to provide that in case the consideration for an immovable property, being land and building, is lower than the stamp duty value of such property, the excess of the stamp duty value over such consideration as does not exceed the higher of Rs. 50,000/- or 5% of the consideration shall be chargeable to tax in the hands of the transferee.

1.2.4 It is also proposed to amend sub-section (4) of Sec. 43CA by substituting the words "by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account" for the words "by any mode other than cash".

1.3 Rationale of the Proposed Amendments:

It has been pointed out that 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 for the tolerance limit of 5%.

1.4 Our Comments:

1.4.1 It is a welcome provision because it tones down the provisions of Sec. 50C of the Act and provides a tolerance limit in case where sale consideration is lower than the stamp duty value upto 5% of the sale consideration.

1.4.2 However, the limit of 5% specified in the proposed amendments is much lower than the tolerance limit provided in section 55A r.w.r 111AA, which is 15%

1.4.3 The substitution of words "by any mode other than cash", the words "by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account" in sub-section (4) of Sec. 43CA will now be in line with existing provisions of Sec. 50C and Sec. 56(2)(x).

1.4.4 These amendments will take effect from A.Y 2019-20.

CHAPTER – IV

CAPITAL GAINS

1 WITHDRAWAL OF EXEMPTION U/S. 10(38):

1.1 Background [Sec. 10(38) and Sec.115AD]:

1.1.1 Sec. 10(38) of the Act exempts LTCG arising on sale of equity shares or a unit of an equity oriented fund or a unit of a business trust from levy of capital gains u/s 45, where such transaction is entered on the into on or after October 1, 2004 and is chargeable to STT.

1.1.2 FB 17, amended Sec. 10(38) to exclude certain transactions from the exemption available on LTCG arising on sale of equity shares through a RSE. The section was amended to exempt LTCG arising on sale of equity shares which were acquired on or after October 1, 2004, only if:

a) STT is paid on acquisition ; or
b) the transaction is notified as exempt

1.1.3 CBDT vide Notification no. F. No. 43/2017 dated June 5, 2017 notified the transactions of acquisition of equity shares entered into on or after the October 1, 2004 which are not chargeable to STT, to which exemption would continue to apply.

1.1.4 As per Sec. 115AD of the Act, income of an FII, including long-term capital gains arising on transfer of securities is taxed at the rate of 10%.

1.2 Proposed Amendments [FB – Cl. 5, 31 & 32]:

1.2.1 Exemption u/s 10(38) on transfer of long term capital asset being equity shares in a company or a unit of a business trust or a unit of an equity oriented fund is withdrawn in respect of the transfers made on or after April 1, 2018.

1.2.2 Ordinarily, tax on LTCG is levied u/s. 112 of the Act at the rate of 20% after availing indexation and, in case of listed securities, there is an option to pay tax at the rate of 10% without availing the indexation benefit. However, in the FB, it is proposed to insert a new Sec. 112A to tax LTCG on equity shares in a company or a unit of a business trust or a unit of an equity oriented fund at the rate of 10% on such LTCG, in excess of Rs.1 lakh. This new section shall override the provisions of Sec. 112.

1.2.3 No indexation benefit would be available on computation of such LTCG.

1.2.4 In respect of the shares that were acquired before January 31, 2018, and which would be transferred on or after April 1, 2018, the taxpayer shall be entitled to exemption on so much of the capital appreciation as has accrued up to January 31, 2018. In other words, in computing the capital gains, the assessee shall be entitled to a deduction of the FMV of the shares as on January 31, 2018, if such FMV is higher than his cost of acquisition. However, if such substitution of the cost of acquisition by the FMV results in a loss on such sale of the shares, such loss shall not be allowed.

1.2.5 For availing this concessional tax treatment, one of the conditions is that the STT should have been paid on acquisition of the equity shares and, in case of units, STT should be paid on its transfer.

1.2.6 CG has been given powers to notify such transactions to which this condition of having paid STT shall not apply for availing this concessional tax treatment.

1.2.7 It is also proposed to amend Sec. 115AD to bring it in line with the proposed amendment in Sec. 112A, whereby income arising from transfer of long term capital assets referred to in Sec. 112A, to the FII would be taxed at the rate of 10% on such LTCG, in excess of Rs.1 lakh.

1.3 Rationale of the Proposed Amendments:

The EM explains the rationale behind this proposal as follows:

1.3.1 In order to minimize economic distortions and curb erosion of tax base, it is proposed to withdraw the exemption under clause (38) of Sec. 10.

1.3.2 The current regime is inherently biased against manufacturing and has encouraged diversion of investment in financial assets. It has also led to significant erosion in the tax base resulting in revenue loss.

1.4 Our Comments:

1.4.1 The proposed amendment is applicable from A.Y. 2019-20. Thus, the shares sold upto March 31, 2018 shall be governed by the existing law and hence will be entitled to the exemption u/s. 10(38), if it is otherwise allowable.

1.4.2 This levy results in a double tax outlay i.e. payment of STT as well as tax on LTCG. This contradicts the perceived objective of levy of STT in 2004 when the Hon. Finance Minister, while introducing STT and simultaneously exempting LTCG on listed shares, said “the new tax regime will be win-win situation for all concerned”.

1.4.3 The provisions of new Sec. 112A shall not apply to unlisted shares. The gains on sale of unlisted shares will continue to be governed by Sec. 112 of the Act.

1.4.4 Similarly, the shares that were unlisted on acquisition, but they became listed before sale, the provisions of new section 112A shall not apply and the gains will have to be taxed in accordance with Sec. 112.

2 RESTRICTING BENEFIT OF SEC. 54EC TO ONLY LAND & BUILDING:

2.1 Background [Sec. 54EC]:

Sec. 54EC of the Act, provides exemption from capital gains arsing on sale of long term capital assets ('LTCA'), if such gains are invested within a period of six months from the date of transfer, in LTCA being bonds issued on or after April 1, 2007, by NHAI, REC or any other bond notified by the Central Government in this behalf. The investment in such LTCA should not exceed fifty lakh rupees and the lock-in period is for such reinvestment is 3 years.

2.2 Proposed Amendments [FB – Cl. 20]:

2.2.1 It is proposed to restrict the applicability of section 54EC of the Act, only for transfer of long term capital assets ("LTCA") being "land or building" .Whereas, previously the exemption u/s 54EC was available on sale of *any* LTCA. Thus, the exemption from capital gains u/s 54EC would now be available only on transfer of LTCA being "land or building".

2.2.2 Further, it is proposed to amend the Explanation after sub-section 3 of section 54EC, pertaining to the LTCA for making any investment u/s 54EC. Thus, LTCA for the purpose of making investment u/s 54EC, would mean bonds redeemable after 5 years and issued on or after April 1, 2018. Thus, the lock-in period of reinvestments is now increased to 5 years.

2.3 Rationale of the Proposed Amendment:

In order to rationalise the provisions of section 54EC of the Act and to restrict the scope of the section only to capital gains arising from long-term capital assets.

2.4 Our Comments:

The proposed amendment u/s 54EC is applicable w.e.f A.Y. 2019-20. Thus, the investments made on or April, 1 2018 would be as per amended provisions.

CHAPTER – V

DIVIDENDS

1 "ACCUMULATED PROFITS" PURSUANT TO AMALGAMATION FOR "DEEMED DIVIDEND":

1.1 Background [Section 2(22)]:

1.1.1. Sec. 2(22) defines the term 'dividend' and covers within its scope distributions under certain circumstances made by the companies to the extent of accumulated profits, whether capitalised or not.

1.1.2. *Explanation* 2 to Sec. 2(22) defines the term 'accumulated profits' for the purposes of said clause to include all the profits of the company upto the date of distribution or payment or liquidation, as the case may be, subject to certain conditions.

1.2 Proposed Amendment [FB – Cl. 3(a)]:

It is proposed to insert Explanation 2A under Sec. 2(22) of the Act under which the accumulated profits of the amalgamated company will include the accumulated profits as on the date of amalgamation, whether capitalized or not, of the amalgamating company.

1.3 Rationale of the Proposed Amendments:

The said amendment is proposed with a view to prevent companies with large accumulated profits which resort to amalgamation route to reduce capital and circumvent the provisions of sub-clause (d) of clause (22) of Sec. 2 of the Act. Proposed amendment is an anti-avoidance measure.

1.4 Our Comments:

1.4.1. Generally, every scheme of amalgamation provides for accounting treatment to be adopted in the books of the amalgamating and the amalgamated company and the Scheme is ultimately approved by the High Court or the National Company Law Tribunal under the provisions of the Companies Act. The proposed amendment seeks to include accumulated profits of the amalgamating company as on the date of amalgamation in the accumulated profits of the amalgamated company, regardless of the accounting treatment adopted by the amalgamated company.

1.4.2. The proposed amendment overrules the decision in case of ACIT v. Gautam Sarabhai Trust (2002) 81 ITD 677 (Ahd. ITAT).

1.4.3. The date of amalgamation referred to in the proposed amendment would mean the 'Appointed Date' mentioned in the scheme in view of the decision in case of Mashall Sons & Co. (India) Ltd. v. ITO (1996) 223 ITR 809 (SC).

1.4.4. This provision will apply to all types of dividends covered in section 2(22) of the Act.

1.4.5. Though it is proposed that amendment will take effect from April 1, 2018. In the context of this provision, this will have to be interpreted as applicable to dividends declared, distributed or paid after April 1, 2018. However, it appears that it will cover within its scope the amalgamations, which have already been approved in past years, if the amalgamated company declares, distributes or pays dividend after April 1, 2018, thereby in effect making the proposed amendment is retroactive.

2 DIVIDEND DISTRIBUTION TAX ON DEEMED DIVIDEND:

2.1 Background [Sections 115-O and 115Q]:

Dividend deemed u/s. 2(22)(e) is only taxed in the hands of the recipient and the company is not held as assesse in default.

2.2 Proposed Amendment [FB – Cl. 38 & 39]:

It is proposed to insert Provisos to Sec. 115-O(1) and Sec. 115-O(1B) so as to tax the Company at the rate of 30% (without grossing-up) on deemed dividend u/s. 2(22)(e) of the Act. Also, the company would be held as assesse in default in case it has failed to pay tax on dividend which is deemed to have arisen u/s. 2(22)(e).

2.3 Rationale of the Proposed Amendments:

Tax on deemed dividend on shareholders entailed difficulties of collection and also litigation. In order to overcome these difficulties it is proposed to shift taxability from shareholders to the company.

2.4 Our Comments:

Set-off of dividend income u/s. 2(22)(e) in the hands of the shareholder will now not be possible. Secondly, the Company which would have inadvertently given loan and fallen u/s 2(22)(e) would become assesse in default.

3 TAX ON DISTRIBUTED INCOME TO UNIT HOLDERS:

3.1 Background [Section 115R]:

Distribution of income by equity oriented mutual funds was not subjected to tax on distribution of income u/s. 115R of the Act.

3.2 Proposed Amendment [FB – Cl. 40]:

It is proposed that equity oriented mutual funds would have to pay additional tax at the rate of 10% on distribution of income.

3.3 Rationale of the Proposed Amendments:

The intention behind the proposed amendment is to bring a level playing field for income distribution by equity oriented mutual fund, in view of the new capital gains scheme.

3.4 Our Comments:

3.4.1 This section should be interpreted to be applicable to dividends distributed after April 1, 2018.

3.4.2 In case of redemption of units of equity oriented fund, the gain, if any, up to January 31, 2018 is proposed to be exempt. This benefit is not available for distribution of income by equity oriented mutual funds. Such funds may therefore distribute accretions before March 31, 2018.

3.4.3 This amendment is effective from April 1, 2018.

4 COMPENSATION RECEIVED BY EMPLOYEES:

4.1 Background: [Section 17(3)(i) and 56]:

Sec. 17(3)(i) of the Act specifies that profits in lieu of salary includes any compensation due or received by an assessee from his employer or former employer in connection with termination or modification of employment. However, it did not include a case where there was no employment but only a proposal of employment.

4.2 Proposed Amendment [FB – Cl. 3(b)(i)(B) & 21(B)]:

The proposed amendment seeks to tax any compensation received or receivable in connection with termination or modification of the terms and conditions of any contract relating to employment.

4.3 Rationale of the Proposed Amendments:

There was erosion in tax base as large segment of compensation receipts in connection with employment was outside the purview of taxation and therefore there was a loss of revenue. It is now proposed to tax such compensation receipts.

4.4 Our Comments:

4.4.1 It may be noted that a specific provision already exist u/s. 17(3)(i) of the Act pursuant to which such any compensation in connection with termination of employment or modification of the terms and conditions relating thereto is chargeable to tax as 'profits in lieu of salary'.

Thus, *per se* the amendment is not required.

4.4.2 Also, Sec. 56 is a residual head of income and thus, since the compensation is already chargeable to tax under Sec. 17(3)(i), the provisions of the proposed clause (xi) to Sec. 56(2) would not be applicable.

4.4.3 Further, in the case of CIT vs. Pritam Das Narang [2016] 381 ITR 416 (Delhi) it has been held that amount received by assessee from prospective employer as compensation for non-commencement of employment would not be in nature of 'profit in lieu of salary' but in nature of capital receipt not chargeable to tax. In view of the proposed amendment, such cases of compensation from prospective employer, which are not chargeable to tax u/s. 17(3) would now be chargeable to tax under the Act.

4.4.4 These amendments will be effective from April 1, 2019.

5 WIDENING DEFINITION OF EQUITY ORIENTED FUNDS:

5.1 Background [Section 115T and Section 97 of Finance (No.2) Act, 2004]:

Currently, the term equity oriented fund is defined in Sec. 115T to mean the Unit scheme, 1964 and mutual funds where at least sixty five percent of investible funds were invested in equity shares of domestic companies. Thus, a Fund of Funds was not covered under equity oriented fund even if it invested only in equity oriented funds,

5.2 Proposed Amendments [FB – Cl. 41 & 214]:

The definition of equity oriented funds is brought u/s. 112A, whereby, a fund that invested ninety percent of its total proceeds into another fund which in turn invests ninety percent of its proceeds into equity shares of domestic listed companies; is classified as an equity oriented fund.

5.3 Our Comments:

With effect from April 1, 2018, fund of funds focussing on equity oriented funds having ninety percent allocation in direct domestic equity would be included within the definition of equity oriented funds. Thereby, benefit of lower rate of tax will be available to such Fund of Funds.

CHAPTER – VI

CONVERSION OF STOCK-IN TRADE

1.1 Background [Section 28]:

Presently, there are provisions of Sec. 45(2) to govern the tax treatment of conversion of capital asset into stock-in-trade. However, there are no specific provisions to provide for the reverse scenario.

1.2 Proposed Amendments [FB – Cl. 3, 9 & 18]:

1.2.1 It is proposed to widen the scope of Sec. 28, being the charging section for profits and gains from business or profession, by insertion of a new clause (via) which brings into the tax net the FMV of inventory as on the date on which it is converted into, or treated as, a capital asset to be determined in a manner to be prescribed.

1.2.2 It is proposed to simultaneously amend the definition of 'income' u/s 2(24) by way of a insertion of a new clause (xiia) which brings into its ambit the FMV of stock in trade as on the date of its conversion into capital asset.

1.2.3 It is also proposed to insert sub-clause (ba) of clause (i) of Explanation 1 to section 2(42A) to provide that in determining the period for which any capital asset is held by the assessee in the case of a capital asset referred to in clause (via) of Sec. 28, the period shall be reckoned from the date of its conversion or treatment.

1.2.4 Further, it is also proposed to insert sub-section (9) to Sec. 49 to provide that where the capital gain arises from the transfer of a capital asset referred to in clause (via) of Sec. 28, the cost of acquisition of such asset shall be deemed to be the FMV which has been taken into account for the purpose of the said clause.

1.3 Rationale of the Proposed Amendments:

1.3.1 Sec. 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.

1.3.2 The proposed amendments provide symmetrical treatment and discourage the practice of deferring the tax payment by converting inventory into capital asset.

1.4 Our Comments:

1.4.1 While the proposed amendments seek to provide certainty of taxation when a stock-in-trade is converted into a capital asset and thereby resolve the contradictory views taken by judicial authorities on the period of holding of such asset, it nonetheless seeks to overrule settled law of Supreme Court in case of Kikabhai Premchand v. CIT (1953) (24 ITR 506), wherein it is held that that no man can be assumed to be trading with himself for the purpose of ascertaining taxable profits. In fact, the above ratio was followed by Hon'ble Calcutta High Court in CIT v. Dhanuka & Sons (1979) (124 ITR 24) wherein it has been held that there cannot be an actual profit or loss on such transfer when no third party is involved and the items are kept in a different account of the assessee himself.

1.4.2 Thus, to the above extent, despite providing certainty, it is not symmetrical with existing provisions of Sec. 45(2) which recognize the above decision of Supreme Court and tax the capital gain only when the asset so converted into stock in trade is sold or otherwise transferred. The question of discouraging the practice of deferring tax payment arise only when the tax is 'actually payable'. However, the proposed provisions seek to tax hypothetical income which is not earned by the assesse.

1.4.3 These amendments are proposed to come into force from A.Y. 2019-20 onwards.

CHAPTER – VII

INCOME COMPUTATION AND DISCLOSURE STANDARDS

1.1 Background [Section 145(2)]:

1.1.1 Sec. 145(2) of the Act empowers the Central Government to notify from time to time "income computation and disclosure standards" ("ICDS") to be followed by any class of assessee or in respect of any class of income.

1.1.2 Pursuant thereto, in March 2016 the Government notified 10 ICDS covering income computation and disclosure standards in respect of different items of income / assessees. These were later partly modified in July 2016 and ultimately were made applicable with effect from A.Y. 2017-18.

1.1.3 There are several provisions in these ICDS which are contrary to various decisions of the Supreme Court and High Courts. This led to a writ petition in the Delhi High Court and in the landmark decision in the case of *The Chamber of Tax Consultants & Anr. V. UOI (2017) 252 Taxman 77 (Del) ("CTC")*, the Delhi High Court took note of the settled law that a notification cannot overrule the judicial pronouncements and it held many of the provisions of ICDS as unsustainable in law or ultra vires and were struck down or read down. Besides, the High Court also held that Sec. 145(2) does not provide any guiding principles for the scope and ambit of the delegated power of the Central Government to notify the standards and thus read down Sec. 145(2) of the Act to restrict the power of the Central Government to notify ICDS that do not seek to override binding judicial proceedings or provisions of the Act.

1.1.4 The FB 2018 seeks to undo the effect of the Delhi High Court decision by making certain retrospective amendments to the provisions of the Act.

1.2 Proposed Amendments:

1.2.1 **Insertion of section 36(1)(xviii) and 40A(13): [FB - Cl. 10 and 11]:**

a. The Delhi High Court, in para 61 of CTC, observed that the cases not governed by any specific ICDS are to be governed by ICDS-I and the CBDT has, in ICDS-I, notified that expected losses and marked-to-market losses are not to be recognised / allowed. The High Court further observed that the concept of prudence is embedded in Sec. 37(1) of the Act which allows deduction in respect of expenses "laid out" or "expended" and that the concept of prudence is inherent in this. Later, in para 102(iv), the High Court holds that ICDS-I which does away with the concept of 'prudence' is contrary to the Act and binding judicial precedents and is therefore unsustainable in law.

b. In order to overcome this, the FB 2018, vide Cl. 10, seeks to introduce a new clause (xviii) in section 36(1) of the Act. U/s. 36(1), certain specific deductions are provided while computing the income chargeable under the head "profits and gains of business or profession". The new clause provides that *"marked to market loss or other expected loss as computed in accordance with the ICDS notified u/s. 145(2)"* shall be allowable. A corresponding provision is made in Sec. 40A by introducing a new sub-section (13) to provide that no deduction shall be allowed in respect of marked-to-market losses or expected losses except as allowable u/s. 36(1)(viii).

1.2.2 **Insertion of section 43AA: [FB - Cl. 13]:**

a. The Delhi High court, in para 88 to 91 of CTC, discussed some of the provisions of ICDS-VI relating to Effect of changes in Foreign Exchange Rates and observed that some of the provisions are contrary to the decisions of the Supreme Court in the case of Sutlej Cotton Mills Ltd. v. CIT (1979) 116 ITR 1 (SC). Later, in para 102(xi) of CTC, the High Court has held that ICDS-VI to be *ultra vires* the Act and has been partially struck down.

b. In order to overcome this decision, the FB, 2018, vide Cl. 13, seeks to introduce a new section 43AA, which, in brief, provides as under:

- any gain or loss arising on account of any change in foreign exchange rates shall be treated as income or loss and it shall be computed in accordance with the ICDS notified u/s. 145(2).

- it further provides that gain or loss on account of effects of changes in foreign exchange rates shall be in respect of "all foreign currency transactions" including some specified transactions. The transactions so specifically included are monetary and non-monetary items, translations of financial statements of foreign operations, forward exchange contracts and foreign currency translation reserve. These terms are nowhere defined in the Act. However they are dealt with in the relevant ICDS.

1.2.3 **Insertion of section 43CB: [FB Cl. 15]:**

a. The Delhi High Court, in para 83 of CTC, has observed that the proportionate completion method as well as the contract completion method have been recognised as valid method of accounting by the Supreme Court. However, para 6 of ICDS-IV permits only one of the methods, i.e. proportionate completion method and therefore, it is contrary to the said decisions.

b. In para 69 of the CTC, the Court observed that to the extent ICDS-III says that retention moneys should be considered as part of contract revenues, it is contrary to various judicial pronouncements on the subject.

c. It further observed, in para 76 of CTC, that to the extent ICDS-III read with ICDS-IX provide that the incidental income cannot be reduced from the borrowing costs, the same is also contrary to the decision of the Supreme Court in CIT v. Bokaro Steel Ltd (1999) 236 ITR 315 (SC).

d. Finally, in the operative portion, in para 102(vi), (vii) and (ix) of CTC, the Court held that those portions of ICDS-III and IV that provide as above are *ultra vires* and are thus struck down.

e. In order to overcome this decision, the FB 2018, vide Cl. 15, seeks to introduce a new section 43CB. Gist of the said section is as under:

- this section applies to profits and gains arising from construction contracts and contracts for providing services.
- such profits are to be determined on the basis of percentage of completion method in accordance with ICDS.
- in case of contract of services with duration of not more than 90 days, the profits are to be determined based on project completion method.
- in case of services involving indeterminate number of acts over a specific period of time shall be determined on straight line basis.
- in all cases, retention moneys shall be counted as part of contract revenues.
- contract costs shall not be reduced by incidental income in the nature of interest, dividend or capital gains.

1.2.4 **Substitution of section 145A [FB – Cl. 45]:**

a. In para 67 and 68 of CTC, it is observed that ICDS dealing with inventory valuation is contrary to the provisions of section 145A of the Act which states that the inventory should be valued for taxation purposes in accordance with the method of accounting regularly followed by the assessee and it is thus an exercise of excessive delegation of legislative power which is impermissible.

b. In order to overcome the effect of this decision, the FB 2018, vide Cl.45, seeks to substitute Sec. 145A of the Act which now does not override the provisions of Sec. 145 of the Act. Besides, the new Sec. 145A provides that the inventory shall be valued as per the provisions of ICDS.

1.2.5 **Insertion of new section 145B: [FB – Cl. 45]**

A new section 145B has been introduced to provide that interest received on any compensation or on enhanced compensation shall be deemed to be the income of the previous year in which it is received. It further provides that any escalation of price in a contract or export incentives shall be deemed to be income of the previous year in which reasonable certainty of realisation is achieved. This section also provides that subsidy which is treated as income u/s. 2(24)(xviii) shall be chargeable to tax in the year in which it is received, if not already charged to tax in an earlier year.

1.3 Rationale of the Proposed Amendments:

The Explanatory Memorandum states that these amendments are mde "in order to bring certainty in the wake of recent judicial pronouncements on the issue of applicability if ICDS". It further justifies the retrospective amendment w.e.f. A.Y. 2017-18 on the ground that "a large number of taxpayers have already complied with the provisions of ICDS for AY 2017-18. In order to regularise the compliance with the notified ICDS by a large number of taxpayers so as to prevent any further inconvenience to them", the amendments are made retrospective.

1.4 Our Comments:

1.4.1 In respect of insertion of sections 36(1)(xviii) and 40A(13), at first blush, it appears that by making a provision in the Act itself, the shortcoming in the original ICDS regime has been addressed. However, this may not be true. In re Delhi Laws Act [TS-3-SC-1951], the power of the Parliament to delegate its functions was questioned. Supporting the delegation of parliament's power subject to certain restrictions the court held that, the Legislature cannot part with its essential legislative function which consists in declaring its policy and making it a binding rule of conduct. A surrender of this essential function would amount to abdication of legislative powers in the eye of law. *The Court can interfere if no policy is discernible at all or the delegation is of such an indefinite character as to amount to abdication*.

1.4.2 Later, in 1954, the rigor of In re Delhi (supra) was diluted by a seven-judge bench of the Supreme Court constituted in case of Harishankar Bagla [TS-9-SC-1954] wherein it was held that, while delegating powers of legislation to executive, *the legislature must declare the policy of the law and the legal principles which are to control the given legislation and must provide a standard to guide the officials or body in power to execute the law.* The essential legislative function consists in the determination or choice of the legislative policy and of formally enacting that policy into a binding rule of conduct.

1.4.3 The concept of delegated legislation was elucidated by Supreme Court in case of Vasanlal Maganbhai Sanjanwala [TS-12-SC-1960] wherein it is stated that, when the Legislature enacts laws to meet the challenge of the complex socioeconomic problems, they often find it convenient and necessary to delegate subsidiary or ancillary powers to delegates of their choice for *carrying out the policy laid down by the Acts as part of the administrative law*. The Legislature has to lay down the policy and principle to afford guidance for carrying out the said policy before it delegates its subsidiary powers in that behalf.

1.4.4 In 1979, in the case of Avinder Singh[6] [TS-16-SC-1978] the Supreme Court held that what constitutes an essential feature cannot be delineated. The Legislature is the master of legislative policy and if the delegate is free to deal with policy, it may be usurpation of legislative power itself. The Supreme Court laid down the following tests for valid delegation of legislative power:

(i) the Legislature cannot efface itself?

(ii) it cannot delegate the plenary or the essential legislative function?

(iii) even if there be delegation, Parliamentary control over delegated legislation should be a living continuity as Page 1 of 3 3 Jul 2015

1.4.5 If the amendments in Sec. 36(1)(viii) and section 40A(13) are carefully viewed in the light of the above decisions, it will be observed that these sections merely say that the mark-to-market losses and expected losses other than those stated in ICDS shall not be allowed. These sections do not lay down any guiding principles or parameters to guide the executive as to how to determine which types of losses should be notified as allowable or not allowable. It is once again left to the sweet discretion of the executive to decide the type of losses that should be allowed or not allowed.

1.4.6 In the present FB itself, we have an example of a proper delegated legislation in Clause 44 wherein the legislature has granted powers on the Central Government to make scheme for e-assessments. There, clearly, guiding principles and parameters are laid down and the executive has to formulate a scheme in accordance with those principles. There is nothing of this sort in the newly inserted Sec. 36(1)(xviii) or Sec. 40A(13). This leaves the new provisions also vulnerable to challenge on the grounds of excessive delegation.

1.4.7 Besides, if this amendment is to be upheld as valid, then there will be questions as regards marked-to-market gains. Accounting principles pronounced by RBI as applicable to some tax payers like primary market dealers who are governed by RBI require recognising even marked-to-market gains. While these new sections specifically deal with marked-to-market losses, there are no provisions for dealing with marked-to-market gains and hence a question will remain to be answered as to whether such gains will be taxable or not. In this regards, one may have to take recourse to the FAQ issued by the CBDT in relation to ICDS to claim that such gains are not taxable.

1.4.8 In respect of marked-to-market gains arising on account of application of IndAS, one may have to fall back on the first principles of "accrual" to claim that such gains are not taxable. It is a settled law that for an income to "accrue" the tax payer must have a "right to receive" the income. This means that the assessee must have earned it and also there should be a debt on the part of the payer to pay it. In case of marked-to-market gains, there is no right to receive the gains and hence the same cannot be regarded as income accrued for tax purposes.

1.4.9 In so far as insertion of Sec. 43AA is concerned, the said provision is subject to the provisions of Sec. 43A. Thus, the forex fluctuation effect relating to assets acquired from abroad from borrowings made in foreign currency will be capitalised to the cost of the asset as per the provisions of that section. Rest of the forex fluctuation will be treated as income or gain as per the new section and shall be computed in accordance with the provisions of ICDS.

1.4.10 Thus, the Act now provides for taxing (or allowing) gains (or losses) that are capital in nature. Indeed, this clearly overrides the decision of the Supreme Court in the case of *Sutlej Cotton Mills (supra)*. It is however, interesting to note that the definition of "income" in section 2(24) has not been amended to include such capital receipts to tax.

1.4.11 Indeed, Sec. 43AA does not and cannot override the provisions of section 4 and 5 which deal with the scope of total income and accrual of income. What is not income cannot be taxed. To this extent, this provision is also vulnerable to challenge if it is passed in its present form.

1.4.12 In respect of insertion of Sec. 43CB, the same cannot apply to assessees engaged in providing services and following cash method of accounting because ICDS are not applicable to assessees following cash method of accounting.

1.4.13 As a result of substitution of Sec. 145A, there could be a difference between the valuation of inventory for accounting purposes and for tax purposes not only on account of items of tax, duty etc., but also on account of difference in methods of valuation of inventory as suggested in ICDS for securities held as stock-in-trade vis-à-vis the method followed in accounts.

CHAPTER – VIII

CHARITABLE TRUSTS

1.1 Background [Sec. 10(23C) and Sec. 11]:

1.1.1 The third proviso to Sec. 10(23C) exempts income certain notified/approved funds, universities, educational institutions, hospitals, subject to fulfilment of conditions.

1.1.2 Sec. 11 grants exemption to total income of a charitable trust registered u/s 12A/12AA, subject to fulfilment of conditions.

1.2 Proposed Amendments [FB – Cl. 5 (b)(ii) and 6]:

1.2.1 Clause 5 (b)(ii) proposes to insert *thirteenth proviso* to Sec. 10(23C) an expense claimed towards application of income by a trust/institution will not be allowed, if:

a. such trust/institution has not complied with Chapter XVII-B of the Act on TDS [non compliance with Sec. 40(a)(ia)]; or

b. such trust has made payment exceeding Rs. 20,000/- otherwise than by an account payee cheque or account payee bank draft or use of ECS through a bank account [non compliance with Sec. 40A(3)]; or

c. if such trust/institution has claimed and is allowed deduction in respect of any liability for an expenditure in any year, and in a subsequent year, if any payment or aggregate of payments towards such liability, to a person in a day in excess of Rs. 20,000/- towards such liability is made otherwise than by an account payee cheque or account payee bank draft or use of ECS through a bank account [non compliance with Sec. 40A(3A)].

1.2.2 FB proposes to introduce Explanation 3 to Sec. 11 with analogous provisions on restriction of application of income by a trust/institution registered u/s 12A/12AA.

1.3 Rationale of the Proposed Amendments:

1.3.1 At present there are no restrictions on payments in cash by charitable or religious trusts or institutions and no checks on whether such trusts or institutions have followed the provisions of TDS under Chapter XVII, due to which there is no audit trail for verification of application of income.

1.3.2 Proposed amendments would also encourage cash less economy and reduce the generation and circulation of black money.

1.4 Our Comments:

1.4.1 As per CBDT Circular No.5-P(LXX-6), dated 19.6.1968, "income" for the purpose of Sec. 11 of the Act will be commercial income as per accounts of the trust, as increased by the appropriations towards the purpose of the trust or otherwise, and also after adding back any debits made for capital expenditure incurred for the purposes of the trust or otherwise. Thus, the starting point for computing "income" of a charitable trust/institution is after reducing normal outgoings for running of such trust.

1.4.2 The proposed amendment restricts deduction towards application of income, which is after computing the commercial income of the trust/institution. Hence, the proposed amendment does not apply to expenses in the nature of normal outgoings of the trusts/institutions.

1.4.3 Charitable trusts/institutions often have to incur expenses towards their objects in cash, eg, giving aid to poor and needy people who do not have bank accounts, meeting hospitalisation cost of needy people on urgent basis, etc. Though rule 6DD lists circumstances under which disallowances are not to be made u/s 40A(3) and 40A(3A), there is no provision in rule 6DD to cover exceptional circumstances, like the ones mentioned above. Hence, even in genuine cases of charitable activities, amounts spent would not be treated as application of income.

1.4.4 As far as TDS compliance is concerned, Sec. 40(a)(ia) applies to computation of business income. For a charitable trust, registered u/s 10(23C)/ 11, there is no concept of computing head-wise income. Further, the Act contains adequate provisions to deal with non compliance with TDS machinery. Hence, the proposed amendment is extremely harsh for charitable trusts/institutions.

1.4.5 These amendments will take effect from A.Y. 2019-20.

CHAPTER – IX

BEPS MEASURES AND CBCR AMENDMENTS

1 BEPS Action 7/Action 1 and Article 12 of MLI:

1.1 Background:

1.1.1 Action 7 of the OECD/G20 BEPS project dealt with preventing the artificial avoidance of PE Status. It identified amongst others, method for circumventing the existence of a PE by way of commissionaire arrangements (where the agent would negotiate contract and play principal role in concluding contract but fall short of actually concluding contract) or fragmentation of business activities; and recommended amendments to Articles 5.5 and 5.4 of OECD Model Convention 2017.

1.1.2 These recommendations were included in Article 12 of MLI to which India is a signatory. As a result, the provisions of DTAA would be wider as compared to provisions of 'business connection' under the Act.

1.1.3 Action 1 of OECD/G20 BEPS project addressed the tax challenges in Digital Economy. The emerging business models in digital era raised tax challenges, in particular to nexus, data and characterisation for direct tax purposes. Under such business models a non-resident enterprise interacts with customers in another country without any physical presence in such country, with the aid of technology and automated tools. Action 1 suggested, amongst other options, a nexus based theory in form of 'significant economic presence' for the purpose of taxing such non-resident enterprise, in addition to the physical presence approach.

1.2 Proposed Amendments [FB – Cl. 4]:

1.2.1 Clause (a) to Explanation 2 to Sec. 9(1)(i) is proposed to be substituted to provide, *inter-alia*, that where a person habitually plays principal role leading to conclusion of contract by the non-resident <u>and</u> the contracts are in name of non-resident/ for transfer of ownership of property owned by the non-resident/are for provision of services by the non-resident, a business connection of such non-resident would come into existence in India in the form of 'dependent agent'.

1.2.2 Explanation 2A to Sec. 9(1)(i) is proposed to be inserted to clarify that significant economic presence of a non-resident in India shall constitute "business connection" in India. "Significant economic presence" has been defined as :

(a) transaction in respect of any goods, services or property carried on by a non-resident in India if such transaction(s) exceed prescribed amounts, or
(b) systematic and continuous soliciting of business activities or engaging in interaction with such numbers of users in India, as may be prescribed.

1.2.3 It is also clarified that once the prescribed limit is met, the same would constitute significant economic presence irrespective of whether the non-resident has a residence or place of business in India or renders services in India. Nonetheless, only income attributed to such transactions/activities would be deemed to accrue or arise in India for taxing such non-residents.

1.3 Rationale of the Proposed Amendments:

1.3.1 In view of MLI, the DTAA would be wider as compared to the present domestic law and the assessee may opt for domestic law in view of Sec. 90(2). Thus, to align domestic law with the provisions in DTAA as modified by MLI, clause (a) to Explanation 2 to Sec. 9(1)(i) is proposed to be substituted as above.

1.3.2 To tax the new digital businesses which do not require physical presence but have significant economic presence in India.

1.4 Our Comments:

1.4.1 Considering that India was active participant in BEPS project and was amongst early signatory to MLI, the amendment in domestic law to include a person who plays principal role in concluding contracts by non-resident in ambit of dependent agent is consistent with BEPS recommendation and MLI. However, the moot question is how the Department would determine whether a person has played a principal role on behalf of the non-resident whether legal documents and trail would be conclusive or the actual conduct (Form v. Substance).

1.4.2 Though the EM refers to anti-fragmentation, unlike Article 5 of the DTAA which excludes 'preparatory and auxiliary work' from the ambit of PE, 'business connection' in the Act does not provide for such exclusion, except to limited extent under clause (b) to Sec. 9(1)(i). Thus, such reference in the EM is misplaced.

1.4.3 The proposed amendment to include significant economic presence makes India amongst first few countries which have attempted to tax new business model in digital economy, apart from introduction of equalisation levy. Again the question would be authentic data collection, once the prescribed limit of transaction/activities/users are notified. However, until the respective DTAAs are amended, the non-residents would continue to be governed by the physical presence/fixed base PE rules.

1.4.4 The proposed definition of "significant economic presence" covers 'transaction in respect of any goods, services or property carried out by a non-resident <u>in India</u>'. Such transaction being carried out in India, would anyways fall within the ambit of business connection, even prior to the amendment. Thus, this appears to be an error in drafting the proposed amendment in so far as reference to in India' is concerned.

1.4.5 The amendments shall take effect from April 1, 2019 (A.Y. 2019-20).

2 CbCR – Sec. 286/BEPS Action 13:

2.1 Background

2.1.1 FA 2016 inserted section 286 w.e.f AY 2017-18 for furnishing CbCR by parent entity/alternate reporting entity, resident in India and related provisions. CBDT also notified Rules in respect of electronic filing of Forms related to CbCR. For AY 2017-18, the time lines are also extended.

2.2 Proposed Amendment [FB Cl. 53]

2.2.1 It is proposed to extend the time limit for furnishing of CbCR by a parent entity/alternate reporting entity, resident in India by providing that the same shall be furnished within a period of 12 months from the end of the said reporting accounting year, instead of filing on or before the due date of filing return of income u/s. 139(1).

2.2.2 It is proposed to amend sub-section (4) to Sec. 286 to provide that even where the the parent entity is not obliged to file CbCR in its country or territory, the constituent entity of the international group, resident in India would be required to file CbCR in India.

2.3 Rationale of the Proposed Amendments:

2.3.1 To provide time for compliance u/s. 286, the time for furnishing CbCR has been extended to 12 months from end of reporting accounting year.

2.3.2 While the OECD/G20 countries have agreed to adopt the recommendation under Action 13, certain countries have not yet made amendments under their domestic legislation for furnishing of CbCR or have made amendments but with future date/period. However, in India, the requirement is to file CbCR from AY 2017-18. Hence, there was a gap where the constituent entity is in India, the parent entity of which was outside India and not obliged to file CbCR in its jurisdiction. Thus, in such cases, the proposed amendment seeks to require the Indian constituent entity to furnish CbCR in India.

2.4 Our Comments

2.4.1 The extension of time for furnishing of CbCR is a welcome amendment, since otherwise it have been difficult for a parent entity/alternate reporting entity, resident in India to meet requirement of filing the tax audit report, return of income, form 3CEB, master file and CbCR by the same date.

2.4.2 Under the existing law, in the absence of clarity as to what if the parent entity, resident outside India was not obliged under its domestic law to file CbCR or it was mandatory post a particular period, FB proposes to burden the Indian constituent entity to file CbCR in India. This would lead to enhanced compliance burden in short span of time, which would require the local team of constituent entity to compile details from the parent entity.

2.4.3 The proposed amendments shall take effect from A.Y. 2017-18.

CHAPTER – X

PROMOTION OF IFSC

1.1 Background: [Section 47 and 115JC]:

1.1.1 Sec. 47 lists transactions which are not regarded as transfer.

1.1.2 Sec. 115JC provides for a minimum tax to be levied on adjusted total income of certain persons other than a company.

1.2 Proposed Amendments [FB – Cl. 17, 36 & 37]:

1.2.1 It is proposed to insert a new clause (viiab) in Sec. 47 to provide that any transfer of a capital asset, being bond or Global Depository Receipt, rupee denominated bond of an Indian company or a derivative, by a non-resident on a recognised stock exchange located in any IFSC and where the consideration for such transaction is paid or payable in foreign currency, will not be regarded as a transfer.

1.2.2 It is also proposed to amend the provisions of Sec. 115JC by insertion of new sub-section (4) to provide that where any person, other than a company, is a unit located in an IFSC and derives its income solely in convertible foreign exchange, the rate of tax would be 9% as against18.5%, applicable to other assessees covered u/s 115JC.

1.2.3 Corresponding amendments for change in rate are proposed to be made in Sec. 115JF of the Act which provide for definition of the term 'alternate minimum tax' for the purpose of Chapter XIIBA.

1.2.4 The proposed Sec. 112A also relaxes the condition of payment of STT on acquisition of equity shares / units of equity oriented mutual funds where the transfer is undertaken on a recognized stock exchange located in any IFSC and the consideration of such transfer is received or receivable in foreign currency.

1.3 Rationale of the Proposed Amendments:

1.3.1 The rationale behind the aforesaid proposed amendments is to promote the development of world class financial infrastructure in India.

1.3.2 The rate of MAT u/s 115JB in case of a company being a unit located in an IFSC was reduced to 9% by the Finance Act, 2016. Similar benefit is now extended to the assessees other than companies.

1.4 Our Comments:

1.4.1 STT is not payable on a transaction undertaken on a recognised stock exchange located in an IFSC after the amendment in the Finance (No. 2) Act, 2004 made by the Finance Act, 2016. Relaxation from STT payment on acquisition of shares in the proposed Sec. 112A is in line with the exemption from STT.

1.4.2 These amendments will take effect from A.Y 2019-20.

CHAPTER – XI

CHAPTER VI-A DEDUCTIONS

1 INCOME BASED DEDUCTION NOT BE ALLOWED UNLESS RETURN IS FILED BY DUE DATE:

1.1 Background [Section 80AC]:

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

1.2 Proposed Amendments [FB – Cl. 23]:

It is proposed to extend the scope of Sec. 80AC to provide that no deduction under all provisions falling under the heading "C.—Deductions in respect of certain incomes" in Chapter VIA shall be allowed unless the return of income is filed by the due date.

2 ENHANCEMENT OF AMOUNT OF DEDUCTIONS IN RESPECT OF HEALTH INSURANCE PREMIUM ON HEALTH OF SENIOR CITIZENS:

2.1 Background [Section 80D]:

Sec. 80D provides that an individual or a Hindu undivided family is eligible for deduction in respect of payments towards annual premium on health insurance policy, or preventive health check-up.

2.2 Existing Provisions & Proposed Amendments [FB – Cl. 24]:

Category of person for which amount is paid	Expense	Existing	Proposed (effective from A.Y. 2019-20)
Senior Citizen (60 years or above)	Insurance	30,000	50,000
Senior Citizen (60 years or above)	Medical	NIL **(Refer Note)**	50,000
Senior Citizen (60 years or above)	Insurance	30,000	50,000

Note: The deduction was earlier available to super senior citizen (80 years or above) upto Rs. 80,000. However, the difference between senior citizens and super senior citizens is removed.

3 ENHANCEMENT OF AMOUNT OF DEDUCTIONS AVAILABLE IN RESPECT OF AMOUNT PAID FOR MEDICAL TREATMENT OF CERTAIN SPECIFIED DISEASES IN RESPECT OF SENIOR CITIZENS:

3.1 Background [Section 80DDB]:

Sec. 80DDB provides that an individual or a Hindu undivided family is eligible for deduction in respect of amount paid for medical treatment of certain specified diseases (cases of critical illness).

3.2 Existing Provisions & Proposed Amendments [FB – Cl. 25]:

Category of person for which amount is paid	Existing	Proposed
Senior Citizen (60 years or above)	60,000	1,00,000
Super Senior Citizen (80 years or above)	80,000	- (Refer **Note**)

Note: The deduction was earlier available to super senior citizen (80 years or above) upto Rs. 80,000. However, the difference between senior citizens and super senior citizens is removed. Therefore, deductions available to senior citizens will be available to super senior citizens as well.

4 CHANGES IN THE DEDUCTION AVAILABLE TO START UPS:

4.1 Background [Section 80-IAC]:

Sec. 80-IAC which provides that that deduction shall be available to an 'eligible start up' of an amount equal to 100% of the profits and gains derived from 'eligible business' for a period of three consecutive assessment years out of seven years beginning from the year in which the eligible start up is incorporated if the eligible start up is incorporated on or after April 1, 2016 but before April 1, 2019 and the total turnover of its business does not exceed Rs. 25 crore during any of the previous years beginning on or after April 1, 2016 and ending on the March 31, 2021.

4.2 Proposed Amendments [FB – Cl. 26]:

It is proposed to:

4.2.1. broaden the definition of "eligible business" to mean a business carried out by an eligible start up 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.

4.2.2. extend the benefit of this deduction to eligible start ups incorporated till April 1, 2021; and

4.2.3. provide that the requirement of the total turnover not exceeding Rs. 25 Crore would apply to seven previous years commencing from the date of incorporation.

4.3 Our Comments:

It may be noted that the criteria provided in the amended definition of 'eligible business' are highly subjective in nature and open to interpretation, which could lead to difference of opinion between the assessee and the tax department, thereby resulting in litigation.

5 RELAXATION OF CONDITION FOR DEDUCTION IN RESPECT OF EMPLOYMENT OF NEW EMPLOYEES:

5.1 Background [Section 80JJAA]:

Sec. 80JJAA of the Income-tax Act relating to deduction in respect of employment of new employees provides for a deduction of thirty per cent of emoluments paid to a new employee for three years. In order to claim the deduction, the new employee must be employed for more than two hundred and forty days in the year of employment or one hundred and fifty days in case of business of manufacturing of apparel, subject to certain conditions.

5.2 Proposed Amendments [FB – Cl. 27]:

5.2.1. It is proposed to extend the reduced minimum period of employment of 150 days as applicable in the case of apparel industry to footwear and leather industry.

5.2.2. It is further proposed to provide that where a new employee is employed during the previous year for less than the specified period but is employed for said period in the immediately succeeding year, he shall be deemed to have been employed in the succeeding year and the provisions of this section shall apply accordingly.

6 NEW DEDUCTION IN RESPECT OF INCOME OF FARM PRODUCER COMPANIES:

6.1 Background [Section 80P]:

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

6.2 Proposed Amendments [FB – Cl. 28]:

It is proposed to extend similar benefit 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

7 DEDUCTION IN RESPECT OF INTEREST INCOME TO SENIOR CITIZEN:

7.1 Background [Sec. 80TTA & 80TTB]:

Sec. 80TTA provides for a deduction to all individuals in respect of interest income from savings account upto Rs 10,000/-.

7.2 Existing Provisions & Proposed Amendments [FB – Cl. 29, 30 and 47]:

7.2.1. It is proposed to insert a new section 80TTB to allow a deduction to senior citizens in respect of interest income from deposits.

Category of Income	Existing	Proposed
Interest on deposits with banking company, co-operative society and Post Office	10,000 **(u/s 80TTA)**	50,000 **(u/s 80TTB)**

7.2.2. To avoid double deduction, it has been provided u/s. 80TTA that the deduction under that section will not be available to persons referred u/s. 80TTB.

7.2.3. It is also proposed to amend section 194A so as to raise the threshold for deduction of tax at source on interest income for senior citizens from Rs 10,000/- to Rs 50,000/-.

CHAPTER – XII

PROCEDURAL PROVISIONS

1. REQUIREMENT FOR OBTAINING PAN:

1.1. Background [Section 139A]:

1.1.1. Presently, PAN is mandatorily to be obtained by:

a) persons whose total income or total income of any other person for whom he is assessable exceeds basic exemption limit; or

b) persons whose total sales, turnover or gross receipts of the business or profession exceeds 50,00,000/-; or

c) entities such as charitable or religious trust which is required to file its return of income u/s. 139(4A) of the Act.

1.2. Proposed Amendments [FB – Cl. 42]:

1.2.1. It is proposed that the following persons shall also be required to obtain PAN:

i) any person, other than individual, which enters into a financial transaction of an amount aggregating to Rs. 2,50,000/- or more in a financial year; or

ii) who is a 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 the person referred to in (i) above.

1.2.2. This amendment is proposed to be effective from April 1, 2018.

1.3. Rationale of the Proposed Amendments:

In order to use PAN as Unique Entity Number (UEN) for non-individual entities and to link the financial transactions with natural persons this amendment is proposed.

1.4. Our Comments:

1.4.1. The term "financial transaction" is neither defined in the proposed amendment nor defined in the Act. The term "transaction" is a very wide term. It would ordinarily mean some business or dealing which is carried on or transacted between two or more persons. Accordingly, the *"financial transaction"* may be understood as a transaction entered for a monetary consideration, irrespective of payment.

1.4.2. This amendment is proposed to be effective from April 1, 2018. Considering a reasonable interpretation, transactions entered on or after April 1, 2018 would fall within the ambit of this provision.

2. PROCESSING OF RETURNS U/S. 143(1):

2.1. Background: [section 143(1)]:

Presently, sec. 143(1) of the Act provides for processing of return of income filed u/s. 139, or in response to a notice u/s. 142(1). There were certain mandatory adjustments prescribed in clause (a) of sec. 143(1), which included, in sub-clause (vi), adjustment in relation to addition of income appearing in Form 26AS, Form 16A or Form 16 which has not been included in the total income.

2.2. Proposed Amendments [FB – Cl. 44]:

With a view to restrict the scope of adjustments, it has been proposed to bring a sun-set clause to the aforesaid sub-clause (vi) to sec. 143(1)(a) by providing that no adjustment under sub-clause (vi) be made in relation to a return for AY 2018-19 and onwards.

3. SCHEME FOR ELECTRONIC ASSESSMENT:

3.1. Background: [Section 143]

Presently, the mechanism for making the assessment of total income or loss of the assessee by the assessing office is given u/s. 143(2) r.w.s. 142(1) of the Act, subsequent to which the assessing officer is empowered to pass an assessment order u/s. 143(3) of the Act.

3.2. Proposed Amendments [FB – Cl. 44]:

3.2.1. It is proposed to introduce a new sub-section (3A) to sec. 143 of the Act, empowering the CG to prescribe a scheme, by way of notification in the Official Gazette, for making assessments.

3.2.2. In the proposed sub-section (3A), the CG has been guided to notify such scheme so as to impart greater efficiency, transparency and accountability by –
"(a) eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible;
(b) optimising utilisation of the resources through economies of scale and functional specialisation;
(c) introducing a team-based assessment with dynamic jurisdiction."

3.2.3. It is further proposed to insert sub-section (3B) in the said sec. 143, enabling the Central Government to direct, by notification in the Official Gazette, that any of the provisions of the Act relating to assessment shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified therein. However, no such direction shall be issued after the 31st March 2020.

3.2.4. It is also proposed to insert sub-section (3C) in the said section, to provide that every notification issued under the sub-section (3A) and sub-section (3B), shall be laid before each House of Parliament, as soon as may be.

3.3. Rationale of the Proposed Amendments:

3.3.1. The present mechanism involves personal presence of the assessee or his representative and manual or physical submission of numerous evidences, thus, causing hardship to the assessees and wastage of the resources.

3.3.2. Therefore, it has been proposed to prescribe a new scheme for the purpose of making assessments so as to impart greater transparency and accountability, by eliminating the interface between the Assessing Officer and the assessee, optimal utilization of the resources, and introduction of team-based assessment.

3.4. Our Comments:

3.4.1. Since the proposed amendment is intended to enable the CG to provide mechanism for making an e-assessment, only the machinery to conduct assessment would change and not the procedures under the other provisions of the Act which require the assessee to approach the AOs/CITs (like application for lower TDS, applying for stay of demand, etc.).

3.4.2. There is no clarity as to how would the assessment will be made by certain dedicated teams having dynamic jurisdiction.

4. REMEDY AGAINST ORDER U/S. 271J:

4.1. Background [Section 253 r.w. Sec. 271J]:

Vide Finance Act, 2017, penalty provisions were introduced u/s. 271J of the Act, empowering AO or CIT(A), to penalize the accountant, merchant banker or registered valuer for furnishing inaccurate information in any report or certificate furnished under any provisions of the Act or Rules.

4.2. Rationale of the Proposed Amendments [FB – Cl. 50]:

4.2.1. Since, there was no consequential amendment brought to make the order u/s. 271J appealable before any appellate authority, it has now been proposed to amend sec. 253 of the Act to make the order passed u/s. 271J of the Act appealable before the ITAT.

4.2.2. This amendment is proposed to be effective from April 1, 2018.

4.3. Our Comments:

4.3.1. Since the proposed amendment is effective from April 1, 2018, any order passed u/s. 271J after April 1, 2018, even if the proceedings initiated before that date, would be appealable before the ITAT.

4.3.2. However, it is to be noted that sec. 271J is effective from April 1, 2017, the order passed under the said section is appealable from April 1, 2018.

4.3.3. Therefore, whether the orders passed u/s. 271J during the FY 2017-18 are appealable needs to be clarified.

CHAPTER – XIII

AMENDMENTS RELATING TO PROVISION OF IBC

1 EXCLUDING RESTRUCTING PURSUANT TO IBC U/S. 79:

1.1 Background [Section 79]:

Sec. 79 of the Act prohibits carry forward and set-off of losses in case of company in which public are not substantially interested where there is change in shareholding of more than fifty one percent as on the last day of the previous year as compared to the shareholding as on the last day of the previous year in which the loss was incurred.

1.2 Proposed Amendments [FB – Cl. 22]:

It is proposed to insert *Third Proviso* to Sec. 79 w.e.f. A.Y. 2018-19 to provide that provisions of Sec. 79 shall not apply to cases where change in shareholding more than fifty one percent is pursuant to a resolution plan approved under the IBC after affording reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner

1.3 Rationale of the Proposed Amendments:

The existing Sec. 79 prohibiting carry forward and set-off of losses posed a hurdle in restructuring and rehabilitation of companies, as insolvency resolution under IBC would generally involve a change in shareholding. Therefore, by the proposed insertion of *Third Proviso*, it is intended to remove the hurdle.

1.4 Our Comments:

1.4.1 Under erstwhile SICA, the sick company was unable to avail the benefit of losses, unless the carry forward and set-off of past losses was specifically permitted by the order of BIFR or by specific grant of relief by CBDT pursuant to order of BIFR.

1.4.2 However, as a general practice (particularly after decision of Delhi High Court in case of Tedco Granite Ltd. WP(C) No. 7592/09), the BIFR in its order gave the reliefs sought (including u/s. 79 of the Act) on a ‘to consider’ basis, i.e., the reliefs had to be specifically granted by CBDT post such order. Thus, there remained a possibility that the carry forward and set-off could be denied subsequent to the order of BIFR resulting in the revival being prolonged or not feasible. Thus, the purpose of rehabilitation was defeated in absence of the tax relief in respect of carry forward and set-off of losses.

1.4.3 This is a welcome provision as it would provide certainty to companies seeking insolvency resolution.

1.4.4 The proposed amendment would cover all resolution plans approved by NCLT under IBC during F.Y. 2017-18.

2 DEDUCTION OF LOSSES PURSUANT TO IBC UNDER MAT:

2.1 Background [Section 115JB]:

Sec. 115JB of the Act levies Minimum Alternate Tax on the 'book profits' of the company. While computing the 'book profits', the section provides for certain adjustments to be made to the profit as per Statement of Profit and Loss. One of the adjustment provided is to reduce loss (excluding unabsorbed depreciation) or unabsorbed depreciation, whichever is lower, as per books of account.

2.2 Proposed Amendments [FB – Cl. 35]:

It is proposed to insert clause (iih) in Explanation 1 from A.Y. 2018-19 so as to allow a company against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority u/s. 7, 9 or 10 of IBC so as to reduce losses (including unabsorbed depreciation) from the profits as per Statement of Profit & Loss while computing the 'book profit' for the purpose of section 115JB of the Act.

2.3 Rationale of the Proposed Amendment:

The proposed amendment will enable companies whose insolvency application has been admitted to reduce entire losses [instead of loss (excluding unabsorbed depreciation or unabsorbed depreciation whichever is lower] and consequently the MAT liability will reduce as compared to the situation under the existing provision.

2.4 Our Comments:

The proposed amendment is a welcome move and will reduce the burden of MAT on a company already facing financial crisis and thus will smoothen the insolvency process and revival of sick company.

3 AUTHORIZATION OF RETURN OF PERSON ADMITTED UNDER IBC:

3.1 Background [Section 140]:

Sec.140 of the Act provides for the Authorised signatories for verification of Return u/s. 139 of the Act

3.2 Proposed Amendments [FB – Cl. 43]:

It is proposed to insert clause (c) to the *Second Proviso* to Sec. 140(c) of the Act to provide that from April 1, 2018, where an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority u/s. 7, 9 or 10 of IBC, the return of income shall be signed by the insolvency professional.

3.3 Rationale of the Proposed Amendments:

The proposed amendment is intended to facilitate the insolvency professional to verify the return of income of the company once the application for insolvency resolution has been admitted under the IBC.

3.4 Our Comments:

On appointment of the insolvency professional, the powers of the Board of Directors stand suspended and the same are to be exercised by the insolvency professional. The proposed amendment is to authorise a person (insolvency professional) to verify return of income of a company which is under the insolvency resolution process as per Sec. 17 of IBC Thus, this amendment is to bring harmony between the Act and the IBC so to remove practical difficulties in verifying the return of income of the companies under insolvency resolution.

CHAPTER – XIV

OTHER PROVISIONS

1 COMPENSATION OR OTHER PAYMENT IN CONNECTION WITH THE TERMINATION OR MODIFICATION OF BUSINESS CONTRACTS AND EMPLOYMENT CONTRACTS:

1.1 Background:

1.1.1 Presently, there are no express provisions under the Act with respect to the taxability of compensation or other payments received or receivable in connection with termination or modification of terms and conditions of any contract relating to its business or employment.

1.1.2 Till now, the taxability of the compensation received or receivable with respect to termination of business and employment contracts was based on the judicial precedents and the facts of each case.

1.2 Proposed Amendments [FB – Cl. 3, 9, 21]:

1.2.1 It is proposed to insert new sub-clause (d) in clause (ii) of Sec. 28 to tax any compensation received or receivable, whether revenue or capital, in connection with termination or modification of terms and conditions of any contract relating to its business.

1.2.2 It is proposed to insert new clause (xi) in Sec. 56(2) to tax any compensation received or receivable, whether revenue or capital, in connection with termination or modification of terms and conditions of any contract relating to its employment.

1.2.3 It is proposed to simultaneously amend the definition of 'income' u/s 2(24) by insertion of new clause (xviib) which brings into its ambit any compensation or other payment received or receivable by any person by any person, in connection with the termination or the modification of terms and conditions of any contract relating to its employment.

1.3 Rationale of the Proposed Amendments:

Since a large segment of compensation receipts in connection with business and employment is out of the purview of taxation, it results in base erosion and revenue loss.

1.4 Our Comments:

1.4.1 It is a well settled principle of law that if the compensation is to recoup the loss suffered by the assessee in its normal trading activity, then the same will be a revenue receipt. If, however, the purpose is to recoup the loss suffered by way of impairment to the trading structure, then it would be a capital receipt not chargeable to tax.

1.4.2 The proposed amendment may result in taxing all the compensation receipts, whether received or receivable to recoup the loss suffered by way of impairment to the trading structure or to recoup the loss suffered in the normal trading activity.

1.4.3 Further, any compensation due or received by an employee from his 'employer' or 'former employer' at or in connection with the termination of his employment or the modification of the terms and conditions relating thereto, would be considered as 'profits in lieu of salary' taxable u/s. 17(3) under the head "Salaries". However, if any compensation is due or receivable by the assessee from any other person in connection with the termination or modification of terms of employment, then the same is proposed to be taxable u/s. 56.

1.4.4 These amendments will be effective from April 1, 2019.

2 ROYALTY AND FTS PAYMENT BY NTRO TO A NON-RESIDENT:

2.1 Background: [Section 195 and 10]:
Sec. 195 requires a person to deduct tax at the time of payment or credit to a non-resident. This covered payment by way of royalty or fees for technical services to a non-resident by NTRO.

2.2 Proposed Amendments [FB – Cl. 5(a)]:
It is proposed to exempt income arising to a non-resident by way of royalty or fees for technical services for services rendered to NTRO, by inserting (6D) to Sec. 10.

2.3 Rationale of the Proposed Amendment:
On account of business exigencies of the NTRO, the income is proposed to be exempt and not liabile to withholding tax in India.

2.4 This amendment will be effective from A.Y. 2018-19.

3 NATIONAL PENSION SCHEME:

3.1 Background[Section 10(12A)]:
An employee contributing to the NPS is allowed an exemption of 40% of total amount payable to him at the time of closure or opting out of the scheme. This benefit is not available to non-employee subscribers.

3.2 Proposed Amendments [FB – Cl. 5(b)]:
It is proposed to extend the exemption benefit to even non-employee subscribers.

3.3 Rationale of the Proposed Amendment:
The aim is to give level playing field to all subscribers and bring equity.

3.4 Our Comments:

3.4.1 This is a beneficial amendment whereby even the non-employee subscribers to NPS would get an exemption of 40% of total amount payable to him on closure.

3.4.2 This amendment will be effective from A.Y. 2019-20.

4 CRUDE OIL COMPANIES:

4.1 Background [Section 10(48B)]:

4.1.1 Currently, the Act provides that any income accruing or arising to a foreign company on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India shall be exempt if

a) storage and sale is pursuant to an agreement or an arrangement entered into or approved, by the Central Government and

b) having regard to the national interest, the foreign company and the agreement or arrangement are notified by the Central Government

4.1.2 Further clause (48B) of Sec.10 provides that any income accruing or arising to a foreign company on account of sale of leftover stock of crude oil after the expiry of the agreement or arrangement shall be exempt subject to such conditions as may be notified by the Central Government.

4.1.3 The section presently does not extend the benefit to sale out of the leftover stock of crude in case of termination of the said agreement or the arrangement.

4.2 Proposed Amendments [FB – Cl. 5(b)]:

It is now proposed to extend the exemption benefit to sale out of the leftover stock of crude in case of termination of the said agreement or the arrangement specified u/s. 10(48A).

4.3 Rationale of the Proposed Amendments:

4.3.1 Considering the strategic nature of the project benefitting India to augment its strategic petroleum reserves exemption benefits are extended.

4.3.2 This amendment will be effective from A.Y. 2019-20.

5 TAX TREATMENT OF TRANSACTIONS IN RESPECT OF TRADING IN AGRICULTURAL COMMODITY DERIVATIVES:

5.1 Background:

5.1.1 Sec. 43(5) defines the term ‘speculative transaction’ and the first proviso to Sec. 43(5) deems certain transactions to be non-speculative transactions.

5.1.2 Clause (e) to the first proviso provides that an eligible transaction in respect of trading in commodity derivatives carried out in a recognised association, which is chargeable to CTT under Chapter VII of the FA 13 shall not be deemed to be a speculative transaction.

5.2 Proposed Amendment [FB – Cl. 12]:

It is proposed to insert *Second Proviso* to provide that a transaction in respect of trading of agricultural commodity derivatives, which is not chargeable to CTT, in a registered stock exchange or registered association, will be treated as non-speculative transaction.

5.3 Rationale of the Proposed Amendment:

5.3.1 CTT was introduced vide FA 13 to bring transactions relating to non-agricultural commodity derivatives under the tax net while keeping the agricultural commodity derivatives exempt from CTT. Since no CTT is paid, the benefit of clause (e) of the proviso to clause (5) of the Sec. 43 is not available to transaction in respect of trading of agricultural commodity derivatives and accordingly, such transactions are held to be speculative transactions.

5.3.2 To encourage participation in trading of agricultural commodity derivatives, it is proposed to amend the provisions of clause (5) of Sec. 43 to widen the scope of transactions that would be considered as non-speculative in nature.

5.3.3 The amendment will be effective from April 1, 2019.

6 PRESUMPTIVE INCOME UNDER SECTION 44AE IN CASE OF GOODS CARRIAGE:

6.1 Background:

Presently, section 44AE, *inter alia*, provides that for an assessee who does not own more than ten goods carriages at any time during the previous year, the profits and gains shall be deemed to be an amount equal to seven thousand five hundred rupees 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.

6.2 Proposed Amendments [FB – Cl. 16]:

6.2.1 It is proposed to amend section 44AE to provide that in the case of heavy goods vehicle (more than 12MT gross vehicle weight), the income would be deemed to be the higher of:

a) An amount equal to one thousand rupees per ton of gross vehicle weight or unladen weight (as the case may be) per month or part of a month for each goods vehicle or;

b) The amount claimed to be actually earned by the assessee.

6.2.2 The vehicles other than heavy goods vehicle will continue to be taxed as per the existing rates.

6.3 Rationale of the Proposed Amendment:

6.3.1 The current presumptive income scheme is applicable uniformly to all classes of goods carriages irrespective of their tonnage capacity.

6.3.2 Hence, it is proposed to gift benefit to small transporters so as to reduce their compliance burden. Even though the profit margins of large capacity goods carriages are higher than small capacity goods carriages, the tax consequences are similar which is against the principle of tax equity.

6.3.3 The amendment shall be effective from April 1, 2019.

7 TAX ON INCOME OF CERTAIN DOMESTIC COMPANIES:

7.1 Background[Section 115BA]:

Sec. 115BA of the Act provides that the total income of a newly set up domestic company engaged in business of manufacture or production of any article or thing and research in relation thereto, or distribution of such article or thing manufactured or produced by it, shall, at its option, be taxed at the rate of 25 per cent, subject to conditions specified therein. This benefit is available from assessment year 2017-18. This benefit is subject to provisions of Sec. 111A or Section 112 of the Act.

7.2 Proposed Amendments [FB – Cl. 33]:

It is proposed to amend Sec. 115BA so as to clarify that the provisions of Sec. 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.

7.3 Rationale of the Proposed Amendment:

There are certain incomes which are subject to tax at a rate which is lower or higher than 25 per cent. Benefit of a tax rate lower than 25% was not available in such cases.. It rationalizes the unintended hardships caused to companies subject to tax at a rate lower than 25%.

7.4 Our Comments:

7.4.1 This is rationalization of the provision.

7.4.2 This amendment will take effect retrospectively from the A.Y. 2017-18.

8 DETERMINATION OF TAX IN SPECIAL CASES:

8.1 Background [Section 115BBE]:

8.1.1 Sec. 115BBE (1)(a) and (b) provide for tax on income (as returned or assessed) referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D at a higher rate of sixty percent.

8.1.2 Sec. 115BBE (2) provides that no deduction in respect of any expenditure or allowance or setoff of loss shall be allowed to the Assessee under any provision of the Act in computing his returned income.

8.2 Proposed Amendments [FB – Cl. 34]:

It is proposed to amend sub-section (2) of Sec. 115BBE retrospectively from A.Y. 2017-18 to cover the assessed income also.

8.3 Rationale of the Proposed Amendment:

In order to rationalize the provisions of Sec. 115BBE, it is proposed to amend the said sub-section (2) so as to also include income referred to in clause (b) of sub-section (1) (i.e. assessed income).

8.4 Our Comments:

The proposed amendment seems to rectify the inadvertent non-reference to clause 1(b) in sub-section (2). Also, as the revised Sec. 115BBE was substituted from A.Y. 2017-18 and hence the insertion of reference to clause 1(b) is also proposed retrospectively from A.Y. 2017-18.

9 TDS ON 7.75% SAVINGS (TAXABLE) BONDS, 2018:

9.1 Background:

Sec. 193 of the Act provides for deduction of tax at source in respect of interest on securities with certain exceptions mentioned in the *Proviso*. Clause (iv) of *Proviso* to Sec. 193 states that no tax shall be deducted on any interest payable on any security of Central Government or State Government with an exception to 8% Savings (Taxable) Bonds, 2003 (the same being taxable bonds).

9.2 Proposed Amendment [FB – Cl. 46]:

It is proposed to amend *Proviso* to clause (iv) of *Proviso* to Sec. 193 to include 7.75% Savings (Taxable) Bonds, 2018 within its ambit. Therefore, tax would have to be deducted at source for interest payable on such Bonds.

9.3 Rationale of the Proposed Amendment:

The Government has decided to discontinue the old 8% Savings (Taxable) Bonds, 2003 and replace the same with new 7.75% Savings (Taxable) Bonds, 2018 and intends to give tax treatment to the new Bonds similar to the old 8% Savings (Taxable) Bonds, 2003

9.4 Our Comments:

9.4.1 This amendment for deduction of tax on 7.75% Savings (Taxable) Bonds, 2018 is a consequential amendment as the 8% Savings (Taxable) Bonds, 2003 are replaced with 7.75% Savings (Taxable) Bonds, 2018.

9.4.2 This amendment will be effective from April 1, 2018.

10 AUTHORITY FOR ADVANCE RULING:

10.1 Background [Section 245-O & 245Q]:

10.1.1 Sec. 245-O specifies the constitution of AAR, its members, qualifications of members, etc. The powers and functions of the AAR may be discharged by its Benches as may be constituted by the Chairman from amongst the Members of the AAR. A Bench consists of the Chairman or the Vice-chairman and one revenue Member and one law Member.

10.1.2 As per Sec. 245Q, an applicant desirous of obtaining an advance ruling under Chapter XIX-B of the Act or under Chapter V of the Customs Act, 1962 or under Chapter IIIA of the Central Excise Act, 1944 or under Chapter VA of the Finance Act, 1994 may make an application to the AAR.

10.2 Proposed Amendments [FB – Cl. 48, 49]:

10.2.1 It is proposed to insert a *Proviso* to sub-section (1) of Sec. 245-O stating that the Authority shall cease to act as an "Authority for Advance Rulings" for the purpose of Chapter V of the Customs Act, 1962 from the date of appointment of the Customs Authority for Advance Rulings under customs law.

10.2.2 It is further proposed to insert sub-section (1A) of Sec. 245-O stating that from the date of appointment, the Authority shall act as an Appellate Authority for the purpose of Chapter V of the Customs Act, 1962.

10.2.3 Consequently, it is proposed to amend Sec. 245Q(1) such that from the date of appointment of the Customs Authority for Advance Rulings under customs law, any applicant desirous of obtaining an advance ruling under Chapter V of the Customs Act, 1962 would not be eligible to make an application to the AAR under Chapter XIX-B of the Act.

10.2.4 It is further proposed to insert a *Proviso* to sub-section (7) of Sec. 245-O stating that where the AAR is dealing with an application for advance ruling in any matter relating to the Act, the revenue member of the Bench shall be from the Indian Revenue Service, who is, or is qualified to be, a Member of the Board.

10.3 Rationale of the Proposed Amendments:

10.3.1 There is a proposal to constitute new Customs Authority for Advance Ruling under Sec. 28EA of the Customs Act. Therefore, to avoid overlap, it is proposed to amend the provisions of Sec. 245-O so as to provide that AAR shall cease to act as an Authority for Advance Rulings, and shall act as an Appellate Authority for the purpose of Chapter V of the Customs Act, 1962 from the date of appointment of Customs Authority for Advance Rulings under Sec. 28EA of the Customs Act, 1962.

10.3.2 The amendments will be effective from April 1, 2018.

11 PENALTY:

11.1 Background:

11.1.1 Presently, Sec. 271FA provides that if a person who is required to furnish the statement of financial transaction or reportable account under sub-section (1) of section 285BA, fails to furnish such statement within the prescribed time, he shall be liable to pay a penalty of Rs. 100 for every day during which such failure continues.

11.1.2 The proviso to Sec. 271FA imposes a penalty of Rs. 500 for every day of failure incase such person fails to furnish the statement of financial transaction or reportable account within the period specified in the notice issued under sub-section (5) of Sec. 285BA.

11.2 Proposed Amendments w.e.f. April 1, 2018 [FB – Cl. 51]:

11.2.1 Proposed to increase the penalty for failure to furnish the statement of financial transaction or reportable account under sub-section (1) of Sec. 285BA within the prescribed time from Rs. 100 to Rs. 500 for every day during which such failure continues.

11.2.2 It is also proposed to increase the penalty for failure to furnish the statement of financial transaction or reportable account within the period specified in the notice issued under sub-section (5) of Sec. 285BA from Rs. 500 to Rs. 1000 for every day during which such failure continues.

11.3 Rationale of the Proposed Amendment:

In order to ensure compliance of the reporting obligations under Sec. 285BA, it is proposed to amend Sec. 271FA so as to increase the penalty leviable from Rs. 100 to Rs. 500 and from Rs. 500 to Rs. 1000 for ever day during which such failure continues.

12 PROSECUTION ON FAILURE TO FURNISH RETURNS OF INCOME:

12.1 Background:

12.1.1 Presently, Sec. 276CC provides that if a person wilfully fails to furnish in due time the return of income which he is required to furnish, he shall be punishable with imprisonment and fine as specified therein.

12.1.2 The sub-clause (b) of clause (ii) of the proviso to this section provides that a person shall not be prosecuted against under this section for failure to furnish in due time the return of income under sub-section (1) of Sec. 139 for any assessment year commencing on or after 1st day of April, 1975 if the tax payable by him on the total income determined on regular assessment, as reduced by the advance tax paid, if any, and any tax deducted at source, does not exceed Rs. 3000.

12.2 Proposed Amendments w.e.f. April 1, 2018 [FB – Cl. 52]:

12.2.1 Proposed to amend the provisions of the sub-clause (b) of clause (ii) of the proviso to Sec. 276CC, so as to provide that the said sub-clause not to apply in respect of a company.

12.3 Rationale of the Proposed Amendment:

In order to prevent abuse of the proviso by shell companies or by companies holding Benami properties, the said sub-clause (b) of clause (ii) of the proviso to Sec. 276CC, not to apply in respect of a company.

12.4 Our comments:

Post the above amendment, a director of every company would have to be extra cautious to file the return of income in time under sub-section (1) of Sec. 139, irrespective of the fact that there is NIL tax liability.

13 COMMODITIES TRANSACTION TAX:

13.1 Background:

CTT is levied on sale of commodity derivatives (other than agricultural commodities) which are traded on recognized associations. “Options in commodity derivatives” are permitted instruments in commodity derivatives but are out of the ambit of levy of CTT.

13.2 Proposed Amendment [FB – Cl. 215]:

It is now proposed to amend Sec. 117 and 118 of FA 13 to include “options in commodity derivatives” within the ambit of CTT from April 1, 2018 and also proposed that CTT would be payable by the seller on sale of options in commodity derivate at 0.05% and, where the option is exercised, by the purchaser at the rate of 0.0001% on the value of the transaction.

13.3 Rationale of the Proposed Amendment:

The proposed amendment is to align the ambit of "taxable commodities transaction" with instruments allowed for trading in commodities transaction so as to increase the ambit of CTT as the commodities market is evolving.

13.4 Our Comments:

Though the proposed amendment is to align the CTT provisions, the amendment to FA 13 will be applicable from A.Y. 2018-19. Levy of CTT on transactions already taken place from April 1, 2017 till date may not be possible.