

# INDIA UNION BUDGET 2018

*A Synopsis*

Significant budgetary proposals

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## India Union Budget, 2018

### Comment

This Union Budget 2018 is aimed at fiscal consolidation, rural upliftment while simultaneously trying to spur industrial and economic growth.

India, notwithstanding its international standing as a credible information technology service provider and the thrust of the successive Governments to boost infrastructure investments and accelerate India's industrial development, continues to be a monsoon dependent, agro-based economy. India's economic growth and its GDP are largely fueled by the performance of the country's agricultural sector. Realizing this and also perhaps for the reason that this could be an election year budget, the Hon'ble Finance Minister, Mr. Arun Jaitley has on 1 February 2018 presented a pro-rural budget targeted to assist the rural populace, more particularly the farming community. Budgetary proposals to hike the minimum support price to farmers for all crops (both rabi and kharif) so as to yield revenue of at least 50 per cent more than the cost of their produce, the intention to invest heavily in agricultural markets and to set up irrigation and aquaculture projects have been directed singularly to provide relief to distressed farmers who have been protesting across India for various reasons.

The government has proposed to setup five lakh Wi-Fi hotspots which will provide broadband access to five crore rural citizens. This move along with development and digitization of agricultural markets will bring farmers into the formal economy and help in financial inclusion of the rural sector. IT Companies and banks are likely to leverage these initiatives to provide digital payments, banking and other financial services to rural India.

The proposal to offer protection through the ambitious new flagship National Health Protection Scheme aimed to cover around 10 crores poor and vulnerable families (50 crore beneficiaries) for up to ₹ 5 lakhs per family per year is laudable and welcome. This will be the largest state funded health care system in the world. If implemented effectively, it will offer medical security and succor to the poor and lower income groups who have largely been deprived of high quality private medical care due to lack of insurance and high medical costs. This scheme is also likely to boost the general insurance business as well as the business of private health care providers. Though the Government's initiative is commendable, how quickly can the scheme be rolled out and its effective corruption free implementation will be the key to the success of this scheme.

The Government's initiative to reduce women employees' provident fund contribution to 8% for first three years of their employment against the existing rate of 12% or 10% with no change in employers' contribution will result in higher take-home wages in the hands of women. This coupled with the Government's stepped up efforts to significantly increase loans to women self-help groups (SHGs) and implementation of schemes to generate more jobs for women are designed at women empowerment while recognizing their hitherto unheralded contribution to India's economy.

The Finance Minister has laid out a roadmap to use data generated by the Goods and Services Tax (GST) to enhance credit availability to the Small and Medium Enterprise (SME) sector. He has acknowledged the need for online loan sanctioning for MSMEs. Government's decision to target disbursement of ₹ 3 lakh crore under the Mudra Yojana and to encourage credit-access to women SHGs can provide a huge boost to the Indian economy, if implemented in the right manner. Government will soon announce measures for effectively addressing non-performing assets and stressed accounts of MSMEs which will enable larger financing of MSMEs and also considerably ease cash flow challenges faced by them. MSMEs will greatly benefit by these measures and are likely to be positive contributors to the country's economic growth.

The Government has been unable to meet the targeted fiscal deficit of 3.2% and has revised its fiscal deficit estimate for the FY 2017-18 to around 3.5%. It also aims to bring down the fiscal deficit to around 3.3% in the next FY 2018-19. The steady spike in the crude oil prices (with the bent crude currently trading at around US\$ 69-70 per barrel) will more likely than not increase India's import bill, put pressure on the rupee and also adversely impact the targeted fiscal deficit. The Government may not like to pass the burden of the burgeoning import bill to the public in an election year which could result in a cut in the central excise duty and VAT charged by the State Governments on petroleum products. The State Governments will look up to the Central Government for compensating the resultant loss of revenue. Any cut in central excise or state VAT on fuel could adversely impact Government revenues and have a bearing on its efforts to contain the fiscal deficit within the envisaged targets.

There is virtually nothing in this budget for the urban public or for the salaried middle class barring the re-introduction of the standard deduction of up to ₹ 40,000 per year while simultaneously taking away the annual deduction of up to ₹ 19,200 towards conveyance (transport) allowance and the exemption towards medical expenditure of up to ₹ 15,000 per year. The net benefit, at best, is only marginal with no significant reduction in the annual income-tax liability or an increase in disposable income. The decision to annul medical exemption and transport allowance needs a relook especially since no relief in tax slabs has been given and on the other hand the tax paying public will now have to suffer an additional cess of 1% with the proposed health and education

cess of 4% replacing the present education and higher education cess of 3%. Reliefs proposed for senior citizens by way of exemption on interest income on bank and Post Office deposits of up to ₹ 50,000 under the newly introduced section 80TTB and increasing the deductions for health insurance premium and medical expenditure under sections 80D to ₹ 50,000 and to ₹ 150,000 under 80DDB are appreciable as they will somewhat neutralize the reduction in their disposable income in an inflationary economy.

The budgetary proposal to impose long-term capital gains tax at 10% on equity investments will affect investor sentiment and could perhaps also see foreign currency outflows (from disinvestments) during the current fiscal year. Foreign Institutional Investors, Life Insurance Companies, Mutual Funds and other General Insurance Companies are heavy investors in the stock market apart from the general public. With the stock market reacting unfavourably to the introduction of long term capital gains tax, the market value of their holdings will come down significantly and these investors could liquidate their equity holdings in the next 2 months of the current fiscal year to cut losses and to escape the capital gains tax that will come into force from the next financial year (FY 2018-19). The stock markets could witness a slump during the remainder of the current fiscal as a result of the selling pressure.

The reduced corporate tax rate of 25% (the normal rate is 30%) for companies with up to ₹ 250 crore turnover in the FY 2016-17 is a welcome measure and is expected to benefit around 96% of the corporate assesseees. The resultant surplus can either be ploughed back or distributed as dividends after paying the dividend distribution tax. This could also result in creation of more jobs by increasing employment.

Overall it appears to be a budget aimed at demonstrating fiscal consolidation to reassure the international community while at the same time placating the rural sector in a possible election year without extending significant benefits to the urban public.

Successful and committed implementation of the budgetary proposals with close monitoring will be the key to its success.

New Delhi, 2 Feb 2018

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## Direct Tax Proposals

### ➤ Income Tax rates and Slabs

The proposed amendments, unless specified otherwise, are effective for the FY 2018-19 relevant to the AY 2019-20. Sections quoted below refer to sections of the Income-tax Act, 1961 ("Act").

#### Individuals, HUFs, AoPs and Body of Individuals

No changes have been proposed in tax rates and tax slabs for an Individual, HUFs, AoPs, and Body of Individuals (BOI). However, "Education Cess on income-tax" and "Secondary and Higher Education Cess on income-tax" shall be discontinued and a new cess, by the name of "Health and Education Cess" shall be levied at the rate of four (4%) percent on income tax and surcharge wherever applicable, in all cases.

Income Slab (in ₹ )	Tax Rate	Effective Tax Rate (incl. cess)	Remarks
Up to 250,000	Nil	Nil	Taxable Threshold for a resident senior citizen (age 60 years or more but less than 80 years) is ₹ 300,000 and for a resident very senior citizen (age 80 years or more) is ₹ 500,000
250,001 to 500,000	5%	5.2%	
500,001 to 1,000,000	20%	20.8%	
Exceeding 1,000,000	30%	31.2%	

A surcharge of 10% on tax will apply in respect of individual, HUFs, BOI and AoP whose taxable income exceeds fifty lakh rupees but does not exceed one crore rupees. The effective tax rate (including surcharge and increased cess) for these assesseees stands increased to **34.32%** from 33.99%. For assesseees whose taxable income exceeds one crore rupees, the existing surcharge on tax of 15% will continue to apply. Similarly, the effective tax rate (including surcharge and increased cess) for these assesseees shall stand increased to **35.88%** from 35.535%.

#### Firms

No change in the tax rate which remains at 30%. While the effective tax rate (including cess ) on a Firm having taxable income up to ₹ 1,00,00,000 ( rupees one crore) has been increased to 31.2% from 30.9% due to replacement of Education Cess (2%) and Secondary and Higher Secondary Education Cess (1%) with Health and Education Cess (4%).

Additionally, a firm having taxable income exceeding ₹ 1,00,00,000 shall be levied a surcharge at the rate of 12% on tax and effective tax rate (due to surcharge and increase in cess) shall stand increased to 34.944% from 34.608%.

### Domestic Companies

Tax rate and Tax slab for domestic companies has been classified according to total turnover or gross receipts of FY 2016-17. Domestic companies having total turnover or gross receipts of rupees two hundred and fifty crores (previously fifty crores) or less in the FY 2016-17 will be taxed at the lower rate of 25% and domestic companies having total turnover or gross receipts of more than rupees two hundred and fifty crores shall be taxed at the higher rate of 30%. This is expected to benefit around 96% of the existing corporate assesseees who are essentially MSMEs.

There has been no change in rate of surcharge applicable on domestic companies. The matrix for effective tax rates (inclusive of surcharge and increased cess) on a domestic company is given below:

Companies Turnover  Companies Taxable Income	Up to ₹ 250 crores				More than ₹ 250 crores			
	Tax Rate	Sur.	Cess	Effective Tax Rate	Tax Rate	Sur.	Cess	Effective Tax Rate
Up to 1 crore	25%	-	4%	<b>26%</b>	30%	-	4%	<b>31.2%</b>
1 crore to 10 crore	25%	7%	4%	<b>27.82%</b>	30%	7%	4%	<b>33.384%</b>
Above 10 crores	25%	12%	4%	<b>29.12%</b>	30%	12%	4%	<b>34.944%</b>

### Foreign Companies

The tax rate on foreign companies remains unchanged at 40%. The effective tax rate (including cess) on a foreign company having taxable income up to ₹ 1,00,00,000 ( rupees one crore) has been increased to 41.6% from 41.2% due to replacement of Education Cess (2%) and Secondary and Higher Secondary Education Cess (1%) with Health and Education Cess (4%).

There has been no change in rate surcharge applicable on foreign company. The effective tax rates (inclusive of surcharge and increased cess) on a foreign company are given below:

Taxable income of (₹)	Surcharge	Effective rate(Before)	Effective Rate (Now)
<b>Up to 1 crore</b>	-	41.20%	41.60%
<b>1 crores to 10 crores</b>	2%	42.024%	42.432%
<b>Above 10 crores</b>	5%	43.26%	43.68%

## Cooperative Societies

Cooperative Societies have lower tax thresholds:

Income Slab (in ₹ )	Tax Rate	Effective Tax Rate
<b>0 – 10,000</b>	10%	10.4%
<b>10,001 – 20,000</b>	20%	20.8%
<b>Exceeding 20,000</b>	30%	31.2%

Additionally, cooperative societies having taxable income exceeding ₹ 1,00,00,000 shall be levied a surcharge at the rate of 12% on tax. The effective tax rate (due to surcharge and increase in cess) has been increased to 34.944% from 34.608%.

## ➤ Tax Concessions for Salaried Class, Pensioners and Self-employed

### Re-introduction of Standard deduction on salary income

It is now proposed to provide standard deduction of ₹ 40,000 or the amount of salary, whichever is lower. However, the present exemption in respect of transport allowance of ₹ 19,200 per annum (except in case of differently abled persons) and reimbursement of medical expenses of ₹ 15,000 per annum is proposed to be withdrawn.

	Existing deduction	Proposed standard deduction
Medical allowance	₹ 15,000	₹ 40,000
Transport allowance	₹ 19,200	
<b>Total</b>	₹ 34,200	<b>₹ 40,000</b>
<b>Extra Benefit</b>		<b>₹ 5,800</b>

### Deduction in respect of interest income earned by senior citizen

Enhanced Deduction for interest income from deposits held by senior citizens with banks, cooperative societies carrying on banking business and post office would be available under section 80TTB as under:

	Existing	Proposed
<b>Section applicable</b>	80TTA Interest from banks	80TTB Interest from banks/ post office (including FD interest)
<b>Deduction limit for senior citizen</b>	₹ 10,000	<b>₹ 50,000</b>

However, no deduction will be available under section Section 80TTA of ₹ 10,000 of the Act to senior citizens.

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

Section 80D to be amended to increase the monetary limit of deduction in respect of payments towards annual premium on health insurance policy, or preventive health check-up, of a senior citizen, or on medical expenditure to ₹ 50,000/-

A summary of deduction allowable under Section 80D is explained in below table:

Nature of amount spent	Family Member		Parents	
	Age below 60 years	Age 60 years or more	Age below 60 years	Age 60 years or more
A. Medical Insurance	₹ 25,000	₹ 50,000	₹ 25,000	₹ 50,000
B. Contribution made to CGHS	₹ 25,000	₹ 50,000	-	-
C. Health Check-up	₹ 5,000	₹ 5,000	₹ 5,000	₹ 5,000
D. Medical Expenditure	-	₹ 50,000	-	₹ 50,000
<b>Maximum deduction</b>	<b>₹ 25,000</b>	<b>₹ 50,000</b>	<b>₹ 25,000</b>	<b>₹ 50,000</b>

In case of single premium health insurance policies having cover of more than one year, the deduction shall be allowed on proportionate basis for the number of years for which health insurance cover is provided, subject to the specified monetary limit.

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

Deduction under section 80DDB for Individual and Hindu Undivided Families (HUFs) – Enhanced deduction for sums paid by an individual/HUF for medical treatment of specified diseases would be available under section 80DDB as under:

Age of the member	Deduction	
	Existing	Proposed
Less than 60 years	₹ 40,000	₹ 40,000
60 years but less than 80 years (Senior Citizen)	₹ 60,000	₹ 100,000
80 years and above (Very Senior Citizen)	₹ 80,000	₹ 100,000

### **Rationalization of presumptive taxation scheme in case of goods carriage**

The existing provisions provide for a presumptive income of ₹ 7,500 per month or part there of or the actual amount claimed to be earned by the assessee whichever is higher, for carriage of goods per goods vehicle. The current presumptive income is applicable uniformly to all classes of good carriages irrespective of their tonnage capacity. This provision is applicable to all assesseees not owning more than 10 goods carriages at any time during the previous year. The benefit is currently being availed by transporters owning not more than 10 goods carriages (large capacity/size good carriages).

As a measure of tax equity, 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 an amount equal to ₹ 1,000 per ton of gross vehicle weight or unladen weight per month for each goods vehicle. The vehicles other than heavy goods vehicle will continue to be taxed as per the existing scheme.

Nature of vehicle	Deemed Income per Vehicle
Heavy Vehicle (more than 12MT gross vehicle weight)	1000/- per ton of the Gross Vehicle Weight or Unladen Weight, per month or part of a month, or actual Income, whichever is higher
Other than heavy Vehicle	7500/- per month or part of a month or actual income whichever is higher

### **Compensation in connection with termination of contract**

Any compensation due or received whether revenue or capital, in connection with the termination or the modification of the terms and conditions of any contract relating to its business, shall be taxable as business income under section 28(ii) of the Act. Similarly, any compensation due or received whether revenue or capital, in connection with the termination or the modification of the terms and conditions of any contract relating to employment, shall be taxable as income under section 56 of the Act

## ➤ Tax on Long Term Capital Gains

### **New LTCG tax regime on capital gains arising from listed equity shares**

Currently, long term capital gains arising from transfer of listed equity shares or units of equity oriented fund or units of business trusts, are exempt from income-tax under Section 10(38) of the Act where such transactions are carried out on a recognized stock exchange subjected to securities transactions tax (STT).

It is proposed to withdraw the exemption under section 10(38) and to introduce a new Section 112A to provide that long term capital gains arising from transfer of an equity share, or a unit of an equity oriented fund or a unit of a business trust exceeding ₹ 1 lakh shall be taxed at 10% without giving the benefit of indexation of such capital gains and foreign currency conversion benefit. The Central government is to notify nature of acquisitions to which the condition of STT being paid at the time of acquisition shall not apply.

The above rate of 10% will be applicable, if—

- (a) in case of equity share in a company, STT has been paid at the time of both acquisition and transfer, (however, Central Government may, by notification, provide relaxation); and
- (b) in case of unit of equity oriented fund or unit of business trusts, STT has been paid at the time of transfer.

The above requirement of payment of STT will not be applicable if the transfer is undertaken on a stock exchange located in International Financial Services Centre [IFSC] and consideration on such transfer is receivable in foreign currency.

### **Cost of acquisition for listed securities**

The cost of acquisitions of a listed equity share acquired by the taxpayer before the February 1, 2018, shall be deemed to be the higher of following:

- a) The actual cost of acquisition of such asset; or
- b) Fair market value (FMV) of such shares or actual sale consideration accruing on its transfer, whichever is lower.

The Fair market value of listed equity share shall mean its highest price quoted on the stock exchange on January 31, 2018. However, if there is no trading in such shares on such exchange on January 31, 2018, the highest price of such asset on such exchange on a date immediately preceding January 31, 2018 shall be considered.

In the case of units which are not listed on recognized stock exchange, the net asset value of such units as on January 31, 2018 shall be deemed to be its FMV.

### **Conversion of stock-in-trade into capital asset**

Presently gains arising out of conversion of capital asset into stock in trade is taxed as capital gains under section 45. Unlike section 45 which provides for taxability on conversion of capital asset into stock-in-trade, currently there is no provision to tax conversion of a stock-in-trade into capital asset.

The bill provides for symmetrical treatment by way of taxing conversion of a stock in trade into capital asset as business income under section 28 of the Act at the fair market value as on date of conversion as determined in the prescribed manner. Section 2(42A) is being amended by inserting a provision to consider period of holding on transfer of such converted capital asset from the date of its conversion and section 49 is also being amended by inserting a provision to consider the cost of acquisition as the fair market value on the date of conversion.

### **Variation between sale consideration and stamp duty value of immovable property**

As per the current provisions income from capital gains (section 50C), business profits (section 43CA), and other sources (section 56) arising out of transactions in an immovable property is taxed on the basis of the sale consideration or stamp duty, whichever is higher.

The Finance Bill proposes that that no such adjustments shall be made in a case where the variation between stamp duty value and the sale consideration is not more than five percent of the sale consideration.

### **Transactions between holding and subsidiary**

Section 56 of the Act is being amended so as to exclude the transfers which are in the nature of transaction of money or property between a wholly owned subsidiary company and its holding company. These would not be taxable if the transfer is without or for inadequate consideration. This amendment will apply to the transactions made on or after April 1, 2018.

### **Exemption Section 54EC only for capital gains on sale of immovable properties**

Earlier section 54EC of the Act provided exemption up to ₹ 50 lakhs if any long-term capital gain is invested in the specified bonds of NHAI and RECL within a period of six months after the date of such transfer. Such investments in these bonds had a lock-in period of 3 years.

The Finance Bill, 2018 proposes to amend the said section to provide that the exemption under Section 54EC shall be allowed only if long-term capital gains arising from transfer of an immovable property (land or building or both) are invested in the specified bonds. The lock-in period of such bonds has also been increased to 5 years. In view of this, effective 01.04.2018 Section EC cannot be used if the transfer of Assets other than land or building or both takes place.

## ➤ Tax Incentives/restriction on Corporate Assesseees

### **Rationalisation of provisions relating to certain domestic companies [Section 115BA]**

Currently, section 115BA provides concessional tax rate of 25% (for income other than certain types of capital gains) to a newly set up domestic company engaged in business of manufacturing, production, research or distribution referred to therein, subject to fulfillment of certain conditions. The existing provision is only subject to provisions relating to taxation of capital gains under section 111A and 112 of the Act.

It has been proposed to amend the provisions of section 115BA of the Act to provide that these provisions shall be subject to other provisions of Chapter XII of the Act, which provide for special rates for specified incomes. This amendment is proposed with retrospective effect from the assessment year 2017-18.

### **Section 80-IAC to promote new start-ups**

Presently deduction under Section 80-IAC is available to an eligible start-up if it is incorporated between 01.04.2016 but before 01.04.2019. At the option of the assessee, the deduction can be claimed for any 3 consecutive assessment years out of 7 years beginning from the year the startup is incorporated.

In order to improve the effectiveness of the scheme for promoting start-ups in India, the Finance bill provides for changes in the taxation regime for the start -ups in section 80-IAC as under:

- a) The benefit would now be available to startup companies incorporated on or after 01.04.2016 but before 01.04.2021.
- b) The requirement of turnover not exceeding ₹ 25 Crore would apply to any of the 7 previous years beginning from the year it is incorporated.
- c) The definition of eligible business has been expanded to provide that the benefit would be available if it is engaged in innovation, development or improvement of products or processes or services, or a scalable business model with a high potential of employment generation or wealth creation.

### **Deductions under Section 80JJAA is extended to footwear and leather industry**

Section 80JJAA allows deductions to the manufacturers who employ new employees for a minimum period of 240 days during the year. This deduction is calculated at the rate of 30%

of the additional employee cost incurred by the assessee during the year for a period of 3 years. The eligibility of a manufacturer to claim this deduction is determined only if he gives employment for a minimum period of 240 days during the year. However, for apparel industry the minimum period of employment is relaxed to 150 days and the same has been extended to footwear and leather industry from assessment year 2019-20.

Further, as per the proposed provision, the deductions shall be allowed to the manufacturer in respect of an employee hired in last year, if he continues to remain in employment in current year for more than 240 or 150 days, as the case may be.

### **Deduction under Section 80PA introduced for Farm Producer Companies**

A new section 80PA has been introduced to promote agricultural activities. This new provision proposes 100% deduction of profits for a period of 5 years (from financial year 2018-19) to farm producer companies who have a total turnover of up to ₹ 100 crores during the financial year. Farm Producer Companies are those companies whose gross total income should include income from

- (a) Marketing of agricultural produce grown by its members
- (b) Purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members and
- (c) Processing of agricultural produce of its members.

### **Deductions under Section 80AC not to be allowed if return is not filed on time**

As per existing provisions of Section 80AC of the Act, no deduction would be admissible under section 80-IA or section 80-IAB or section 80-IB or section 80-IC or section 80-ID or section 80-IE, unless the return of income by the assessee is furnished on or before the due date specified under Section 139(1). Amendment in section 80AC is proposed to bring uniformity in all income-based deductions. In other words, the scope of section 80AC is being extended to all similar deductions which are covered in heading "C.—Deductions in respect of certain incomes" in Chapter VIA (sections 80 H to 80RRB). The impact of such amendment shall be that no deduction would be allowed to a taxpayer under these provisions if income-tax return has not been filed on or before the due date.

### **Provisions for companies seeking resolution under Insolvency and Bankruptcy Code 2016**

Currently, under section 79 of the Act, losses of a closely held company are allowed to be carried forward and set off only if shareholders beneficially holding at least 51% of voting

power on the last day of the previous year in which loss was incurred continue to hold 51% of Voting Power till the last day of the previous year.

Restructuring of companies seeking resolution under Insolvency and Bankruptcy Code, 2016 generally involves change in beneficial shareholding beyond the permissible limit Under Section 79 and this acts as a hurdle for rehabilitation of such companies.

It is proposed to provide relief to such companies which are under insolvency resolution by relaxing the rigors of section 79 such that losses shall not lapse despite change in beneficial shareholding. However, this respite shall be available after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner. This amendment is proposed with effect from assessment year 2018-19.

Currently, MAT is levied on book profit of companies after deducting the amount of loss brought forward or unabsorbed depreciation, whichever is less. The aforesaid restriction is as an obstacle for rehabilitating companies seeking insolvency. Accordingly, it is proposed that while computing book profits, for companies under insolvency, aggregate of unabsorbed depreciation and loss brought forward will be allowed as a deduction. The amendment is proposed with effect from assessment year 2018-19.

It is also proposed to amend section 140 to provide that the return of income filed on or after 1 April 2018 by a company under insolvency shall be verified by an insolvency professional appointed by the Adjudication Authority under the Insolvency and Bankruptcy Code 2016.

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## ➤ Dividend and Dividend Distribution Tax

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### **'Accumulated Profits' redefined for purpose of Deemed Dividend**

Currently, any distribution of accumulated profits (whether capitalized or not) to the shareholders by a company is subject to Dividend Distribution Tax. Companies with large accumulated profits used to adopt the amalgamation route to reduce the accumulated profits so as to bypass the provisions of deemed dividend under Section 2(22)(d). To curb this, new Explanation 2A is being inserted in Section 2(22) to provide that , the accumulated profits/losses of an amalgamated company shall be increased by the accumulated profits of the amalgamating company (whether capitalized or not) on the date of amalgamation.

### **Deemed dividend not taxable in hands of receivers**

The taxability of deemed dividend in the hands of the recipient has posed serious problem of collection of the tax liability and has also been the subject matter of extensive litigation. Deemed dividends as specified in section 2(22)(e) were kept out of the ambit of Dividend Distribution Tax (DDT). Now it is proposed to bring deemed dividends also under the scope of dividend distribution tax. Therefore, companies are now liable to pay DDT on the deemed dividend. The tax at the rate of 30% is proposed on such deemed dividend applicable to transactions undertaken on or after April 01, 2018. Consequently, deemed dividend will no longer be taxable in the hands of recipient.

### **Dividend payouts of equity oriented mutual fund subject to DDT**

It is proposed to amend section 115R to provide that where any income is distributed by a Mutual Fund, being an equity-oriented fund, the fund shall be liable to pay additional income tax at the rate of 10% on income so distributed.

## ➤ Non Resident Taxation

### **Business Connection and significant economic presence**

Two significant amendments have been proposed in Section 9 to enlarge the scope of the definition of business connection as under

- (a). Business connection shall also include any business activities carried through a person who, acting on behalf of the non-resident, habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by the non-resident. However, the contracts should be either in the name of the non-resident, or for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that the non-resident has the right to use or for the provision of services by that non-resident.

The above amendment is in line with the recommendations of BEPS Action plan 7 which reviewed the definition of 'PE' with a view to preventing avoidance of payment of tax by circumventing the existing PE definition by way of commissionaire arrangements or fragmentation of business activities and recommended that the definition of PE should include within its ambit an agent who would not only include a person who habitually concludes contracts on behalf of the non-resident, but also a person who habitually plays a principal role leading to the conclusion of contracts and introduction of anti-fragmentation rule so as to prevent the tax payer from resorting to fragmentation of functions which are otherwise a whole activity in order to avail the benefits of exemption under paragraph 4 of Article 5 of DTAA.

- (b). Significant economic presence' in India shall also constitute 'business connection'. Significant Economic Presence shall mean:
- (i) Any transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India if the aggregate of payments arising from such transaction or transactions during the previous year exceeds the amount as may be prescribed; or
  - (ii) Systematic and continuous soliciting of its business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means.

It has been clarified that the transactions or activities shall constitute significant economic presence in India, whether or not the non-resident has a residence or place of business in India or renders services in India and only so much of income as

is attributable to such transactions or activities shall be deemed to accrue or arise in India.

This amendment will have not any effect till such time the definition of PE is modified in the corresponding DTAA which India has entered into.

The above amendments have been necessitated due to existing restrictive definition of section 9(1)(i) of the Act which is based on physical presence based nexus rule for taxation of business income of the non-resident in India. Explanation 2 to the said section which defines 'business connection' is also narrower in its scope since it limits the taxability of certain activities or transactions of non-resident to those carried out through a dependent agent. Therefore, emerging business models such as digitized businesses, which do not require physical presence of itself or any agent in India, is not covered within the scope of clause (i) of sub-section (1) of section 9 of the Act. OECD under its BEPS Action Plan 1 addressed the tax challenges in a digital economy wherein it has discussed several options to tackle the direct tax challenges arising in digital businesses and one such option is a new nexus rule based on "significant economic presence".

#### **Relief under MAT for certain Foreign Companies opting for presumptive taxation**

A clarificatory amendment is proposed under MAT provisions to exclude foreign companies involved in shipping business, exploration, etc. of mineral oils, operation of aircraft, civil construction, etc. in turnkey power projects offering income to tax under specific provisions of section 44B or section 44BB or section 44BBA or section 44BBB if total income solely includes income from businesses referred to in said sections. This retrospective clarification is helpful to settle litigation on applicability of MAT to non-residents taxed on presumptive income under these sections.

The proposed amendment shall take effect retrospectively from 01 April, 2001 and will accordingly apply from AY 2001-02 onwards.

#### **Measures to promote International Financial Services Centre (IFSC)**

Section 47 of the Act provides for tax neutrality relating to certain transfers. In order to promote the development of world class financial infrastructure in India, Section 47 is proposed to be amended to provide that the transactions in bond or Global Depository Receipts (GDR) as referred to in sub-section (1) of Section 115AC or rupee denominated bond of an Indian Company or derivative, by a non-resident on a recognized stock exchange located in any International Financial Services Centre shall not be regarded as transfer, if the consideration is paid or payable in foreign currency.

Further, in the case of a unit located in an International Financial Service Center, the alternate minimum tax under section 115JC shall be charged at the rate of 9 percent of adjusted total income as against the normal rate of 18.5 percent applicable in the case of certain persons other than a company.

**Tax exempt on Royalty and FTS payment made by the NTRO to a non-resident**

Any income arising to a non-resident by way of royalty from, or fees for technical services rendered in or outside India to National Technical Research Organization would be exempt under the new sub-section to be inserted (6D) in section 10. The proposed amendment is applicable from assessment year 2018-19.

## ➤ Tax Deducted at Source (TDS) provisions

### **Disallowance of expense under section 40(a)(ia) and 40A(3),(3A) applicable to trusts institution covered section 10(23) and 11.**

As per section 10(23C), the income of certain funds, Universities, educational institutions, hospitals, etc., is not includible in the total income. Currently there are no restrictions on the mode of payments by charitable or religious trusts or institutions and such payments do not attract any disallowances under section 40(a)(ia) for non-deduction/non-deposition of TDS and under section 40A(3),(3A) for cash payments.

It is now proposed that in the case of charitable or religious trusts or institutions as per section 10(23C) or section 11 of the Act, cash expenditure exceeding ₹ 10,000 a day [as per section 40A(3)/40A(3A)] and 30% of the sum payable to a resident on which there is default of tax deduction at source [section 40a(ia)] shall be disallowed.

### **Tax deduction at source in respect of interest income to senior citizen**

Section 194A is proposed to be amended to raise the threshold for deduction of tax at source on interest income for senior citizens from existing ₹ 10,000/- to ₹ 50,000/-. The proposed amendment shall be applicable with effect from 01 April, 2018.

### **Tax deduction at source on 7.75% Savings (Taxable) Bonds, 2018**

Currently, tax is deducted at source at the time of payment or credit of interest in excess of ₹ 10,000 to a resident on 8% Savings (Taxable) Bonds, 2003. The existing 8% Savings (Taxable) Bonds, 2003 under section 193 of the Act, have been replaced with new 7.75% Savings (Taxable) Bonds, 2018.

It is proposed that the payer would withhold TDS at the time of making payment of interest in excess of ₹ 10,000 to residents on 7.75% Savings (Taxable) Bonds, 2018. The proposed amendment shall be applicable from 01 April, 2018

## ➤ Income Tax Return and Assessment

### **E-Proceedings of all scrutiny assessments**

A new scheme has been proposed for scrutiny assessments to eliminate the interface between the Assessing Officer and the taxpayers. Under the new system, the taxpayer will not be required to appear in person before the Assessing Officer as assessment proceedings in all cases selected under scrutiny will now be conducted through e-mail based communications.

This is extension to the paperless assessment/e-mail based assessment which was introduced in the financial year 2015-16 on pilot basis in five cities, inter-alia, Ahmedabad, Bangalore, Chennai, Delhi and Mumbai.

However, to implement the new system for scrutiny assessment, an amendment was required in Section 143 of the Income-tax Act. Accordingly, new sub-sections (3A) and (3B) are proposed to be inserted in Section 143 to enable the Central Govt. to make steps towards E-Assessment. The directions in this regard need to be issued on or before March 31, 2020.

### **No adjustment under section 143(1) on account of mismatch with Form 26AS**

As per Section 143(1), while processing the return of income, the total income or loss shall be computed after making addition for the difference in income appearing in Form 26AS or Form 16A or Form 16 and income shown in the ITR.

It is now proposed that no such adjustments shall be made in respect of Income-tax return furnished on or after Assessment Year 2018-19 just to account for the difference in the income reported in ITR and displayed in tax passbook or tax certificates.

### **Appeal against penalty imposed by Commissioner (Appeals) under section 271J**

As per section 253, a tax officer is authorized to levy a penalty on accountant/ merchant banker/ registered valuer in case incorrect information is found in any report or certificate furnished by them in the course of any proceedings under Income-tax Act. Section 271J provides penalty amount of ₹ 10,000 for each such report or certificate. These penalty orders under section 271J are currently not appealable to ITAT.

The Finance Bill, 2018 proposes to amend Section 253 so that an appeal can be filed with ITAT against the penalty order of Assessing Officer under section 271J.

### **No deduction of expenses even if unexplained income is determined by Assessing Officer**

As per current section of 115BBE, any sum found credited in the books of the taxpayer, for which he offers no explanation about the nature and source thereof or the Assessing Officer (AO) is not satisfied by the explanation offered by the taxpayer, is termed as 'unexplained income'. Such income is taxed at the flat rate of 60%. It also provides that no deduction in respect of any expenditure shall be allowed to taxpayers from such unexplained income. However, the existing provision is silent whether a taxpayer would get any deduction if the tax officer chooses to make addition to the total income of a taxpayer which is deemed as unexplained income.

The Finance Bill, 2018 proposes that the taxpayer would not be eligible to deduction even in a case where additions are made by the Assessing Officer for the unexplained income and is applicable retrospectively from Assessment Year 2017-18.

### **Higher penalty for default in furnishing AIR (Section 271FA)**

Higher penalty has been proposed for non-filing of statement of financial transaction or reportable account u/s 285BA as under

<b>Default</b>	<b>Existing Penalty</b>	<b>Proposed Penalty</b>
Penalty for not filing Statement within due date	₹ 100 per day during which the default continues	₹ 500 per day during which the default continues
Penalty for not filing Statement within time limit given in notice	₹ 500 per day during which the default continues	₹ 1,000 per day during which the default continues

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

In order to prevent abuse of this provision by shell companies or by companies holding Benami properties, Section 276CC is being amended to provide that benefit of immunity from prosecution for Non filing of return of Income will not be available to companies even if tax payable by the company on its total income as determined and reduced by advance tax and TDS does not exceed three thousand Rupees. The proposed amendment is applicable from 1 April 2018.

## ➤ Amendments in relation to Income Computation and Disclosure Standards (ICDS)

To overcome the ruling of the Delhi High Court in the case of Chamber of Tax Consultants V Union of India (2017) 87 Taxmann.Com 92 (Delhi) on 'Income Computation and Disclosure Standards' [ICDS] and to give legal effect to compliance by the tax assesseees to ICDS in AY 2017-18, the Finance Bill provides for amendment to /insertion of sections with retrospective effect from Assessment Year 2017-18 :

<b>Section 36 (i) (xviii) and Section 40A(13)</b>	New section 36(1)(xviii) has been inserted to provide that any marked to market loss or other expected loss as computed in accordance with the ICDS shall be allowed as deduction with corresponding amendment proposed in section 40A(13) to the effect that no deduction or allowance shall be allowed in respect of any marked to market loss or other expected loss, except as allowable under section 36(1)(xviii)
<b>Section 43AA</b>	New Section 43AA has been inserted to provide that any gain or loss arising on account of any change in foreign exchange rates shall be treated as income or loss. For the purpose of calculating gain or loss, foreign currency transaction includes: <ul style="list-style-type: none"> <li>i. Monetary items and non-monetary items;</li> <li>ii. Translation of financial statements of foreign operations;</li> <li>iii. Forward exchange contracts;</li> <li>iv. Foreign currency translation reserves.</li> </ul>
<b>Section 43CB</b>	New Section 43CB has been inserted to provide that any profits and gains arising from construction contract or a contract for providing service are to be determined in accordance with the ICDS notified under section 145(2). However, section 43CB will not apply to the following contracts: <ul style="list-style-type: none"> <li>i. Service contracts having a duration of not more than 90 days for which the income shall be determined on the basis of project completion method;</li> <li>ii. Service contracts involving indeterminate number of acts over a specified period of time; The income from such contracts has to be determined on the basis of straight line method.</li> </ul>
<b>Section 145A</b>	New Section 145A has been introduced mandating valuation of inventory at lower of cost or net realizable value and the purchases and sales at cum tax/duty/duty/cess/fee in accordance with ICDS notified under section 145(2). This section along with section 145B (refer below) replaces the existing section 145A.

<b>Section 145B</b>	New Section 145B has been inserted to provide for taxation of export incentives as income of the previous year in which reasonable certainty of its realization is achieved. The said section further provides that such subsidy/ grants/cash incentives/duty drawback etc. shall be taxable in the year of receipt, if not charged to tax in any of the earlier previous years
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## ➤ Transfer Pricing

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### **Extension of due date for Country by Country Reporting (CbCR)**

Section 286 of the Act contains provisions relating to Country-by-Country Report (CbCR) in respect of an international group. Based on model legislation of Action Plan 13 of BEPS report of OECD, following amendments are proposed so as to improve the effectiveness and reduce the compliance burden of such reporting:

- Time limit for furnishing the CbCR, in the case of parent entity or Alternative Reporting Entity (ARE), resident in India, is proposed to be extended to 12 months from the end of reporting accounting year
- Where parent entity outside India has no obligation to file the report in the latter's country or territory, in such an event Constituent entity resident in India, having a non-resident parent, shall also furnish CbCR within 12 months from the end of the reporting accounting year;
- The due date for furnishing CbCR by the ARE of an international group, the parent entity of which is outside India, with the tax authority of the country or territory of which it is resident, will be the due date specified by that country or territory.
- Definition of "reporting accounting year" is proposed to be amended to mean the accounting year in respect of which the financial and operational results are required to be reflected in the report referred to in sub-section (2) [Filing by parent entity/ ARE resident in India] as well as report referred to in sub-section (4) [Filing by constituent entity of international group resident in India under specified circumstances]

## ➤ Miscellaneous

### **Requirement to obtain PAN in certain cases**

Section 139A is to be amended, to provide, that every person other than an individual, who enters into a financial transaction of an amount aggregating to ₹ 2.50 Lakhs or more in a financial year shall be required to have PAN.

In order to link the financial transactions with the natural persons, it is also proposed that the Managing Director, Director, Partner, Trustee, Author, Founder, Karta, CEO, Principal Officer or office bearer or any person competent to act on behalf of such entities shall also apply to the Assessing Officer for allotment of PAN.

### **Rationalization of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015**

The power to approve penalty imposed under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 has been vested in the Joint Commissioner. It is now proposed that an Assistant Director or the Deputy Director, investigating a case of undisclosed foreign income or asset, can also be assigned the concurrent jurisdiction of the Assessing Officer and, therefore, can also initiate/impose penalty after obtaining approval from a Joint Director or an Additional Director. Further, the Principal Director General or the Director General are proposed to be empowered to issue instructions or directions to the tax authorities.

### **Trading in Agricultural commodity derivatives**

Currently, trading in commodity derivatives carried out in a recognised association, which is chargeable to Commodities Transaction Tax [CTT] is considered as a non-speculative transaction. However, since CTT is not applicable in case of agricultural commodity derivatives, such transactions are held to be speculative transactions.

In order to encourage participation in trading of agricultural commodity derivatives, it is proposed to provide that a transaction in respect of trading of agricultural commodity derivatives (which is not chargeable to CTT) in a recognised association, will also be treated as non-speculative transaction.

### **Commodities Transaction Tax (CTT)**

Clause (7) of Section 116 of the Finance Act 2013 defines “taxable commodities transaction” as a transaction of “sale of commodity derivatives” in respect of commodities, other than agricultural commodities, traded in recognised association. In order to align the definition of “taxable commodities transaction” with instruments allowed for transaction in

commodity derivatives, the definition has been amended to include “Options in Commodity Futures” too.

Corresponding changes have also been made to Section 117 of the Finance Act 2013 to provide the rate at which CTT shall be chargeable.

The proposed amendments are applicable from Assessment Year 2018-19.

### **National Pension Scheme (NPS)**

As per the existing provisions of the clause (12A) of section 10, an employee contributing to the NPS is allowed an exemption in respect of 40% of the total amount payable to him on closure of his account or on his opting out. The said exemption is not available to non-employee subscribers. In order to provide a level playing field, it is proposed to amend clause (12A) of section 10 of the Act to extend the said benefit to all subscribers including non-employee subscribers.

## Significant Indirect Tax Proposals

### ➤ Customs Duty

Amendments carried out through the Finance Bill, 2018 will be effective from the date of enactment of Finance Bill, 2018, unless otherwise specified.

#### **Name Change**

Name of the Board has been changed from “Central Board of Excise and Customs” to “Central Board of Indirect Taxes and Customs” by amending the definition of Board under section 2 clause 6.

#### **Supplementary show cause notice**

Section 28(7A) is proposed to be inserted for issuance of supplementary show cause notice in such circumstances and in such manner as may be prescribed through regulations within the existing time period. It is also proposed to provide certain grounds on account of which the time limit of six months or one year shall remain suspended.

#### **Customs Automated System**

Clearance of goods for home consumption, export, deposit in warehouse and removal of goods from warehouse for home consumption/export are proposed to be digitized through Customs Automated System in addition to clearance of goods by proper officer.

#### **Import and Re-Exported Goods**

- A new section 25A is being inserted, so as to empower the Central Government to exempt goods imported for repair, further processing or manufacture [‘Inward Processing of Goods’] from payment of whole or any part of duty of customs, leviable thereon subject to certain conditions namely:
  - a) the goods shall be re-exported after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order for clearance of the imported goods is made.
  - b) Imported goods are identifiable in the exported goods and such other conditions as notified.
- A new section 25B is being inserted so as to empower Central Government to exempt goods re-imported after export for repair, further processing or manufacture [‘Outward Processing of Goods’] from payment of whole or any part of duty of customs, leviable thereon subject to certain conditions (as of section 25A).

### **Social Welfare Surcharge**

- Social Welfare Surcharge shall now replace education cess and secondary and higher education cess (2% + 1%) that is currently levied on basic custom duty, at the rate of 10% of aggregate duties of custom on imported goods.
- Similarly, Social Welfare Surcharge on certain items such as motor spirit commonly known as petrol, high speed diesel, Gold, and Silver shall be leviable at the rate of 3% of aggregate duties of custom on imported goods.

### **Road and Infrastructure Cess**

Abolition of Additional Duty of Customs [Road Cess] on imported motor spirit and high speed diesel and Levy of Road and Infrastructure Cess on imported motor spirit and high speed diesel at the rate of ₹ 8 per litre.

Additional duty of customs under section 3(1) of Customs Tariff Act, 1975 in lieu of basic excise duty

Description	From	To
Motor Spirit or petrol	₹ 6.48 per litre	₹ 4.48 per litre
High Speed diesel oil	₹ 8.33 per litre	₹ 6.33 per litre

### **Removal of Education Cess and Higher Education Cess and effective rate of Customs Duty**

The levy of Education cess and Higher Education cess at the combined rate of 3% has been abolished on the goods specified in first schedule to Tariff Act, 1975.

**Key Rate Changes**

S.N.	Commodity Description	Old Rate	New Rate
1	Fruit Juices and Vegetable Juices	30%	50%
2	Perfumes and toiletry preparations	10%	20%
3	Automobile parts	7.5%/10%	15%
4	Footwear	10%	20%/15%
5	Jewellery	15%	20%
6	Cellular mobile phones	15%	20%
7	LCD/LED/OLED and their parts	7.5%/10%	15%
8	Smart Watches/ Wearable Devices	10%	20%
9	Furniture	10%	20%
10	Watches and Clocks	10%	20%
11	Toys and Games	10%	20%
12	Refractory Items	10%/5%	7.5%
13	Silk Fabrics	10%	20%
14	Solar Tempered glass	5%	Nil

## ➤ Excise

### Proposals Involving change in Excise Duty rates

S.N.	Commodity	Rates of Duty	
		From(₹/litre)	To(₹/Litre)
	Motor spirit commonly known as petrol and high speed diesel oil		
1	Levy of Road Levy of Road and Infrastructure Cess on imported motor spirit and high speed diesel	Nil	8
2	Abolition of Additional Duty of Customs [Road Cess] on imported motor spirit and high speed diesel	6	Nil
3	Basic excise duty on		
	1. Unbranded Petrol	6.48	4.48
	2. Branded Petrol	7.66	5.66
	3. Unbranded Diesel	8.33	6.33
	4. Branded Diesel	10.69	8.69
4	Road and Infrastructure Cess on petrol and diesel manufactured in and cleared from 4 specified refineries located in the North-East	Nil	4



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