BUDGET ASSAYER

India Budget 2019-20

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advocates & solicitors

Forward

After the thumping victory in the general elections, National Democratic Alliance (**NDA**) presented the first full budget for the FY 2019-20. The expectations around this budget were mixed. While the markets expected it to set the ball rolling for India's economic growth; the nay sayers were of the view that it would be difficult for the government to announce significant reformative measures that could revive some of the sputtering sectors of Indian economy, in view of the falling tax collections.

In the Budget speech, the FM had highlighted the increased tax collections from FY 2013-14 to FY 2018-19, however, remained silent on the 18% shortfall on the targeted collections for FY 2018-19. She began the direct tax related portion of her speech by quoting a verse from ancient Sangam era Tamil literature, Pura Nanooru, and stated that the Government would not trample the earnings of tax payers with aggressive tax measures, thereby indirectly indicating that there would not be many tax sops as well.

The FM seems to have taken a conservative approach and have tried to ensure that she doesn't rub anybody on the wrong side! Increasing economic uncertainties did not allow her to grant her any room to placate the voters! While it can be said that she did a decent job of not upsetting any taxpayer, except maybe the ultra-rich, at the same time, it can also be stated that she has not been able to come up with any specific plans to take India out of the present morass!

In addition to the Government's fascination with the start-ups, two other sectors seem to have received a lot of attention i.e. real estate and electric vehicle sectors. While additional tax benefits have been offered to people buying electric vehicles, similar benefits have also been extended to real estate sector, especially in the affordable housing area. Similarly, while claiming that the Government shall launch a mega manufacturing plants in sunrise and advanced technology areas and provide the manufacturers, of solar electric charge charging infrastructure, lithium storage batteries, etc., with the investments linked income tax exemptions and other indirect tax benefits, the Finance Bill is surprisingly silent about it! It appears to be a lapse which hopefully should be corrected soon!

Following up with its objective of taking its battle with unaccounted and black money head on, several other changes have been proposed which is likely to provide significant impetus to the Government! At the same time, a number of additional steps have been proposed to promote digital economy and cashless economy. Few other amendments have also been proposed to promote IFSCs as preferred international financial service sector.

In continuation of our earlier tradition, we have made our sincere efforts to examine the impact of the Budget 2019 on the taxpayers. We hope you will find our work informative and helpful in your decision making process.

We would appreciate your feedback on our work and look forward to receiving your comments at budget.assayer@cyrilshroff.com.

Yours sincerely,

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Managing Partner

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SECTION A:

ANALYSIS OF PROPOSED CHANGES IN DIRECT TAX

I. TAX RATES

i. Corporates Tax Rates

In the Budget for 2018, the FM had reduced the corporate tax rates for companies whose reported turnover was upto INR 2.5 billion in FY 2016-17. In the current Finance Bill, aiming at delivering on the promise of phased reduction of corporate tax rates, the FM has now proposed to extend the benefit of reduced corporate tax rate of 25% to domestic companies whose annual turnover or gross receipts did not exceed INR 4 billion in FY 2017-18. This proposal is expected to cover 99.3% of all companies and is in line with the much anticipated reduction in corporate tax rates. Other resident companies with a higher turnover shall be liable to pay corporate tax at the rate of 30% while foreign companies will continue to pay tax at the rate of 40%.

However, it is also important to note that while it might be possible to claim that 99.3% of corporate India shall be liable to pay tax at the reduced rate, the larger companies generally pay most of the taxes. As per some estimates, more than 60% of Indian direct tax collection comes from such entities. Thus, it may be fair to suggest that a large part of corporate taxes have been left untouched.

It may also be noted that Ms. Sitharaman's predecessor had assured corporate India that India is moving towards a simpler tax regime and corporate India could expect a lower tax incidence without any possible exemptions / deductions. It was also suggested that the actual rate shall be reduced to 25% without any additional exemptions or deductions. However, it appears that the present economic situation has significantly reduced the legroom for the Finance Minister and has prompted her to renege on the promise given by her predecessor.

Increase in surcharge for High Net Worth non - corporates

ii. Non – corporate tax rates

However, in order to enhance the contribution of rich and ultra-rich taxpayers in India's development, the rate of surcharge levied for individuals, HUF, AOP, BOI, artificial juridical person having taxable income between INR 20- 50 million and income above INR 50 million have been increased to 25% and 37% respectively.

The increase in the surcharge would result in the increase of effective tax rate for such taxpayers (viz. individuals, HUF, AOP, BOI, artificial juridical person) as per the following table:

Sr. No.	Taxable income of the taxpayer (INR)	Existing rate	Expected rate
1	Upto INR 500,000	Nil	Nil
2	>500,000 to 1,000,000	20.80%	20.80%
3	>1,000,000 to 5,000,000	31.20%	31.20%
4	>5,000,000 to 10,000,000	34.32%	34.32%
5	>10,000,000 to 20,000,000	35.88%	35.88%
6	>20,000,000 to 50,000,000	35.88%	39.00%
7	Above 50,000,000	35.88%	42.74%

There is no change in the effective tax rates for other tax payers like cooperative societies and firms (including LLPs). It may be noted that in the interim Budget introduced in February, 2019, the rebate allowed under Section 87A was increased, so as to ensure that no taxes are required to be paid by individual taxpayers earning income up to INR 500,000.

While the intention behind the increase in rate of surcharge may be to tax the rich and ultra-rich non-corporates, it may be noted that a large number of FPIs are also impacted by the increase in surcharge, as they are structured as trusts which may be taxed as AOPs. Tax on such funds that earn more than INR 50 million will increase to 42.74% from the current 35.8%. There will also be an increase in tax levied on them for long term capital gains (from 11.96% to 14.25%) and short term capital gains (from 17.94% to 21.37%).

It may be noted that the difference in surcharge between corporates and non-corporates exist for a long time now. However, earlier, in view of the fact that surcharge was not as high as the proposed 25% and 37%, it was not too much of a concern for the FPIs.

The FM had specifically highlighted the importance of FPIs in the Budget by emphasizing that FPIs acts as a key source in the capital of Indian economy and proposed certain measures to ensure a hassle free investment experience for them. Even in the Budget speech, the FM had proposed an increase in surcharge on individuals but did not mention other tax payers like AOP, BOI, HUF and artificial juridical person.

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Hence, it is not clear if the government had foreseen this impact on the FPIs before the Budget.

While at an event post the Budget, the Chairman of CBDT said that the matter has been brought to their notice and is being examined and a clarification could be issued soon, but the FM has ruled out an immediate clarification for FPIs on the proposed increase in surcharge. Therefore, in case the government wants to exempt FPIs from the surcharge, it will have to insert a carve-out in the Finance Bill for them. Hence, the government's stance on this issue will become clearer only in the coming days.

II. AMENDMENTS IMPACTING CORPORATE RE-STRUCTURING

i. Facilitating demerger of Ind AS compliant companies

Currently, one of the conditions for achieving a tax neutral demerger is that all the property and liabilities of the demerged company being transferred to the resulting company are recorded by the resulting company at the value appearing in books of account of demerged company, immediately before the demerger.

However, for the resulting companies which prepare their books of accounts as per the provisions of Ind AS, the property and liabilities of the demerged company are required to be recorded as per the value prescribed under Ind AS, which could be different than the book value of the demerged company.

For example, Ind AS 103 requires that fair value of the business combination should be recorded at the time of any acquisition, including acquisition through a demerger. Thus, assets acquired from the demerged company shall have to be recorded at their respective fair values in the books of the resulting company, as against the book value prescribed by the IT Act, thereby challenging the tax neutrality of the transaction. It is important to note that while the said transaction would have complied with all other applicable legal provisions, merely because of a differential accounting treatment provided under the applicable accounting principles, such valid and legitimate demerger may not be regarded as a tax compliant demerger and hence, may lose its tax neutrality.

> **"Tax neutral de-merger aligned with Ind AS"**

Accordingly, to enable the Ind AS compliant companies achieve a tax neutral demerger, the Finance Bill has proposed to insert a new proviso to Section 2(19AA) of the IT Act to clarify the said requirement of recording property and liabilities of the demerged undertaking at the book value appearing immediately before demerger will not apply to companies preparing their books of account as per Ind AS.

The proposed amendment is a positive change as it smoothens out the unnecessary challenges imposed on taxpayers on account of inconsistencies in two different provisions i.e. tax laws and accounting provisions. However, there has been no comment on the treatment made by such companies in the past which would have already been demerged. Hence, the companies who would have already got the approval of demerger from the NCLT and who may be questioned by the income tax department in the future may also use this provision as it may have persuasive value to convince the tax authorities about the tax neutrality of the demerger.

ii. Deemed accrual of gift by person resident in India to person outside India

Under the existing provisions of the IT Act, a gift of money or property is taxed in the hands of the done except for the specific exemption provided under Section 56(2)(x) of the IT Act.

Although the provisions under Section 56(2)(x) of the IT Act had always taxed the gift received by a person outside India since it merely states "any person receives any sum of money or property". The income tax authorities generally used to contend that gifts received by non-residents were always taxable in India whereas some of the ingenuous taxpayers used to contend that there was no charging provision that could make such notional income taxable in the hands of such non-resident individuals and accordingly, used to claim them as tax exempt receipts. It must have also been noted by the government that gifts received by such non-resident recipients are not even reported in their return of income on the ground that the same were not taxable in India. It also used to be contended that Section 56(2)(x) of the IT Act was brought as an anti-abuse provision and hence, any gift received a non-resident during the ordinary course of business, was not required to be considered as income.

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The Government seems to have taken a much stronger view and accordingly, in order to plug this loophole, they have proposed to introduce a new provision which requires that any sum of money or value of property received/situated in India which is or shall be transferred on or after July 05, 2019 by a person resident in India to a person outside India shall be deemed to accrue or arise in India.

By bringing a special deeming fiction for such gifts received by a person outside India, the ambiguity regarding such income stands closed and the transaction shall now be taxable in India on account of the proposed insertion. The taxability of such income in the hands of the non-resident recipient, however, shall be subject to benefits available under the applicable DTAA, if any. It is pertinent to note that taxability of such income would be determined as per the provisions of 'Other Income' clause provided in the relevant DTAA. Many DTAAs provide that 'Other Income' shall only be taxed in the country of residence, provided the non-resident has not established a permanent establishment or a fixed base in the source country i.e. India. Under such situations, it may be possible to claim that any gift received by a non-resident from an Indian tax resident is not chargeable to tax in India under the relevant DTAA.

"Restrictions on set-off and carry forward of losses relaxed for distressed companies"

It may be pertinent to note that the proposed amendment also mandates that in case a non-resident individual receives money in excess of INR 50,000 from a non-relative, even if there is no other income taxable in India, he/ she shall be required to compulsorily file the return of income disclosing the same so that Indian tax authorities have the ability to examine the facts and circumstances of the case to examine the genuineness of the treaty exemption.

It is also important to note that this proposed change does not impact the genuineness of the transaction and any gift granted by a resident individual to his non-resident relative shall continue to remain exempt.

iii. Measures for resolutions of distressed companies

Under the existing Section 79 of the IT Act, the provisions giving a restriction on allowing carry forward or set off of brought forward losses on change of shareholding above a prescribed threshold, shall not apply where the change in shareholding is as per a resolution plan approved under the IBC, subject to providing an opportunity of being heard to the Jurisdictional Commissioner. Thus, the brought forward losses are allowed to be carried forward for set off even if there is a change in shareholding or voting power beyond the prescribed threshold.

The said benefit has been proposed to be extended to certain distressed companies, their subsidiaries and step-down subsidiaries in situations where a petition has been moved by the Central Government under Section 241 of the Companies Act, which covers circumstances like oppression or affairs of the company are being conducted in a manner prejudicial to the interests of public or members, etc. In such cases, if NCLT suspends the board of directors and appoints new directors nominated by the Central Government, and there is a change in shareholding of such company, its subsidiary and step down subsidiaries pursuant to a resolution plan approved by NCLT, then such companies have also been proposed to be exempted from the application of Section 79 of the IT Act. Thus, such companies shall be able to carry forward of brought forward business losses which can be set off against the future profits.

Therefore, this amendment aims at providing a fair treatment to such companies where the change in shareholding is due to the factors beyond the control of the shareholders and the same is resolved by NCLT by changing the board of directors or shareholding.

Further, a special benefit has also been given in respect of MAT provisions under Section 115JB of the IT Act where, similar to a company under IBC, a company whose proceedings have been taken over by NCLT, the aggregate of unabsorbed depreciation and business loss brought forward should be reduced from any profits earned by the company from the book profits of the company. This helps in reducing the MAT liability of such companies who shall be experiencing genuine hardships.

However, for IBC and distressed companies, there may be situations where the amount of loan and interest waiver is more than the aggregate of brought forward book losses and depreciation and hence, such companies may end up paying tax under MAT provisions. Given the quantum of loans on such companies which have been and would be referred to

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the NCLT, and looking at the whole scenario under which the companies have been caught, it would have been a better idea to completely exempt them from MAT provisions for a certain number of years to give them some time to revive their operations and become able and fit to pay taxes.

III. TAX INCENTIVES

i. Incentives to NBFCs

NBFCs are a very important channel for extending credit to the Indian economy, given their wide distribution networks, which have far more extensive reach across rural India than scheduled banks. In the recent past, certain structural issues of the NBFC sector have come into attention of the regulators due to irregularities observed in some large NBFCs pursuant to which the Government was forced to step in to stem the rot. However, this has resulted in the lack of belief in the Sector itself which led to a severe liquidity crunch being experienced by the Sector. While the situation has improved to some extent, it is still by no means normal and faith hasn't yet been restored completely. Due to the liquidity crunch experienced by the NBFC Sector, the industry was trying to look at alternative sources of funds, which has resulted in their incurring relatively higher costs.

> **NBFCs allowed to postpone their accrued interest income to the year of receipt**

As per the provisions of Section 43B of the IT Act, interest income payable by any person who had borrowed from scheduled banks and public financial institutions or corporations, can be claimed as a tax deductible expense only when such income is actually paid by the borrower. Thus, the provisions persuade the borrowers to pay the specified banks and financial institutions so that such expense can be claimed as a tax deductible expense.

In order to provide further relief to certain specified NBFCs and also with an intention to put pressure on the borrower, it is proposed that all deposit taking NBFC and systematically important non deposit taking NBFCs shall be treated at par with the banks, financial institutions or corporations from a tax perspective. Accordingly, it has been proposed that borrowers shall be able to claim deduction in respect of any expense only when they actual pay such interest to the aforesaid NBFCs and merely accounting entries in the books of account shall not grant them any such deduction. This provision is expected to give a significant push to the debt and interest collection process of such NBFCs.

A similar provision has also been introduced which intends to grant such NBFCs parity with banks and other financial institutions. Just like banks and financial institutions, it is proposed that such specified NBFCs shall also not have to pay tax on the interest accrued by them on non-performing assets. Such interest shall be subject to tax only when they are actually recovered from the borrower.

These provisions are among a series of other initiatives announced in the Finance Bill with an aim of reviving the NBFC sector. This provision will enable the NBFCs to be competitive alongside the other banks and institutions.

ii. Tax incentives to Start – Ups

Recognizing that the start-ups contribute enormously to address the problem of unemployment, the Government has been continuously providing tax benefits to the start-up industry in order to encourage their growth and provide them a tax friendly environment. To grant further incentives to such start-ups, Finance Bill contains a number of new initiatives:

(i) Exemption from Section 56(2)(viib) extended to funds received from Category II AIF

Under the existing provisions of the IT Act, the exemption from the applicability of Section 56(2)(x) of the IT Act was available to funds received by a venture capital undertaking from a venture capital company or fund which is registered as a Category I AIF.

It is proposed to amend the above Section with an objective to facilitate venture capital undertakings or venture capital companies to receive funds from Category II AIFs also.

This amendment is aimed at boosting the foreign direct investment and will increase avenues of investment for this category of AIF like real estate funds, private equity funds, etc. It is a step in the right direction and would avoid exposing investors investing in start-ups through Category –II AIFs to any additional risk or exposure. This will also work towards promoting Indian economy and making India a more investor friendly destination.

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(ii) Carry forward of losses

Under the existing provisions of the IT Act, a company in which public are not substantially interested can carry forward and set off the brought forward business losses of one year in the next year only if at least 51% of shareholders carrying the voting power are the same as that of the year in which the loss was incurred.

A new provision was introduced in 2017 for start-ups allowing such start-ups to carry forward and set off brought forward losses if any of the shareholders holding voting power as on the last day of the FY in which the loss was incurred continue to be shareholders on the last day of the FY in which the loss is sought to be set off.

> **Resolving pending tax issues and facilitating tax favourable regime for startups**

Thus, the extent of shareholding didn't matter for start-ups as long as the shareholders at the time the loss was incurred continue to be shareholders at the time when loss is to be brought forward. However, this provision caused a hardship for many startups, as it may even be more onerous than the previous Section, which at least granted leeway for change in shareholding up to 49%. In today's era, where there is continuous entry and exit of investors in startups that is beyond the control of the founder, the benefit of carry forward losses could have been lost.

In view of the hardship, it has been proposed that for a start-up, there is an option to meet any of the above two conditions i.e. either maintenance of at least 51% shareholding or continuing all shareholders, in order to be able to carry forward and set off the brought forward losses.

This step may allow the founders of start-ups to raise capital from different sources as appropriate during the different stages of its life.

(iii) Exemption from capital gains extended

Presently, if an individual or HUF willing to set up a start-up sells his/ her residential property and invests the consideration in the shares of an MSME company, the said gains were exempt from capital gains tax on satisfaction of prescribed conditions. This exemption was available till March 31, 2019 and had involved a lock-in period of 5 years for transfer of assets acquired by such company from such funds. Further, the provision also involved such individual or HUF to subscribe to at least 50% of share capital or voting power in such a start-up.

Recognizing the benefit provided by this provision to small time entrepreneurs willing to put their funds in a start-up, the sunset clause for the said exemption on capital gains earned from the transfer of residential property is proposed to be extended from March 31, 2019 to March 31, 2021. Further, it is also proposed that the lock-in period for the transfer of assets is proposed to be reduced from 5 years to 3 years. Additionally, it is also proposed that such benefit shall continue to be available if the individual or HUF subscribed to only 25% of share capital instead of the existing 50%.

(iv) Other benefits for start-ups

Apart from the above, in order to quickly resolve the teething problems faced by many start-ups, it has also been stated by the FM in her speech that in respect of taxation on issuance of share capital by start-ups at high share premiums under Section 56(2)(viib) of the IT Act, popularly called the angel-tax issue, no scrutiny shall be made by tax officers on the start-ups and their investors if they provide the requisite declaration.

Further, in order to address the cases where capital investments received by start-ups have been challenged by the tax authorities by treating them as unexplained cash credits taxable under Section 68 of the IT Act, it has been announced by the FM that a mechanism of e-verification shall be put in place in order to resolve the issue of establishing the identity of the investors and the source of their funds. Thus, there will not be any further scrutiny by the income tax department on the funds received by start-ups.

For the pending assessments, special administrative arrangements shall be made by

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the CBDT to ensure that grievances are addressed at the earliest and no further inquiry on a start-up shall be made by the AO, without obtaining approval from his/ her supervisory officer.

The above provisions will allow the much-needed breather to start-ups from all the pending tax issues that they have been facing for a while and will ensure that they are not unduly harassed by the tax officers henceforth. This will promote also more foreign investment as it will restore the confidence of foreign investors in the Indian market and also in the Indian tax environment.

iii. Incentives to units set up under International Financial Service Center

IFSC allows overseas financial institutions and overseas branches/subsidiaries of Indian financial institutions to operate within India and cater to customers outside India. This is achieved only when IFSC provide favourable regulatory regimes and business friendly environment to investors and financial institutions. In the recent past, in order to incentivize the growth of IFSC into a world class financial services hub, various tax incentives were provided such as exemption from capital gains tax in the hands of non-resident on transfer of certain types of securities, reduced rate AMT/MAT, exemption from payment of DDT and STT, etc.

> **Increased benefits for units setup in IFSC**

The Finance Bill has come in with a few additional simplification procedures and incentives to usher in the world class financial infrastructure in India and bring in Indian IFSC at par with corresponding international financial centres of other countries.

(i) Increased duration to claim 100% for IFSC

The existing Section 80LA of the IT Act provides for profit linked deduction on the gross total income of the Unit of an IFSC. Such deduction would be equal to 100% of the income derived from such Unit for its business which has been approved for setting up such an IFSC in an SEZ. The said deduction would be available for a period of first five years starting from the year in which the required permissions or approval were obtained for commencement. Thereafter, for the next consecutive five years, a deduction of 50% is available on the income derived from such Unit.

The Finance Bill proposes to extend the deduction of 100% of the income derived from such Unit, to a period of any 10 consecutive years chosen by the concerned Unit out of the 15 years beginning from the year in which the requisite permissions or approvals were obtained. Thus, 100% deduction has been extended to a period of 10 consecutive years and a choice has also been given to such Units to choose the 10 year period out of the first 15 years of its operations.

(ii) Units of IFSC can claim exemption under Section 80LA on their entire income

With increased focus to holistically create an IFSC friendly regime, apart from increasing the available deductions for units set up in the IFSC, Finance Bill also proposes certain corresponding changes to Section 115A of the IT Act to ensure that Section 80 LA benefits are easily available to such units.

Section 115A of the IT Act provides the manner in which tax is calculated by non-residents or by a foreign company in India where income of such non-residents or foreign companies include income in the nature of interests, dividends (other than dividends referred to in Section 115-O of the IT Act), royalty, FTS etc. Sub-section (4) of Section 115A does not allow the benefit of deductions available under Chapter VI-A of the IT Act, on the income earned by non-residents or foreign companies specified in Section 115A, except for income in the nature of royalty or FTS. It may be pertinent to note that Chapter VI-A of the IT Act also includes Section 80LB, which provides for deductions on the income earned by the units of IFSC. Thus, such units, having income specified in Section 115A(1)(a) would not be able to avail the benefit of Section 80LB as per the extant provision.

In order to address this issue, Finance Bill proposes to add a proviso to sub-section (4) of Section 115A, which excludes the applicability of this sub-section (4) to the units

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of IFSC. This would ensure that the units of IFSC shall be able to claim deduction under Section 80LA on their entire income, including income specified in Section 115A(1)(a). The specific benefit provided to IFSC units would create an impetus on setting up of new business units by several non-residents in IFSC.

(iii) Mutual funds located in IFSC exempt from tax on income distributed to shareholders

Section 115R of the IT Act provides that any amount of income distributed by a specified company or a mutual fund to its unit holders shall be chargeable to an additional amount of tax at the rates specified in sub-section (2)in the hands of such specified company or unit holder.

With the objective of incentivizing mutual funds to reposition themselves in the IFSC, Finance Bill proposes to exempt the mutual funds located in an IFSC from the levy of tax on their income distributed to their unit holders where such income is derived from transactions made on a recognized stock exchange located in an IFSC. As stated above, the amendment is being proposed as a part of the larger objective to promote setting up of business units in IFSC.

(iv) Dividends paid by IFSC units from accumulated profits also exempt from DDT

The IT Act, under Section 115-O, imposes DDT at the rate of 15% (plus applicable surcharge and education cess) on the dividends declared, distributed or paid by the domestic companies out of their current or accumulated profits.

An exception was carved out in 2016 for dividends declared, distributed and paid out of the current income of companies who had units in an IFSC and derived their income in convertible foreign exchange. Such dividend was neither taxable in the hands of the company not in the hands of recipients.

However, this exception under the extant provisions was applicable only on dividends declared, distributed or paid out of the current profits of companies. The exception created in sub-section (8) of Section 115-O was silent on the dividends declared, paid and distributed out of the accumulated profits. In order to address this ambiguity and to create a more IFSC friendly regime, Finance Bill proposes to amend sub-section (8) to include dividends declared, distributed and paid from the accumulated profits as well.

In other words, dividends declared, distributed and paid by the companies who have units in IFSC (and derive their income solely in convertible foreign exchange) and such dividend is declared from their current as well as accumulated profits shall be exempt from tax in the hands of company as well as the recipients.

(v) No capital gains tax on transfer of bonds, GDRs and RDBs by Category III AIF in IFSC

Under the extant Section 47 of the Act, any transfer of a capital asset, being bonds or GDRs or rupee denominated bond RDBs of an Indian company or derivative, made by a non-residentthrough a recognised stock exchange located in any IFSC, where the consideration for such transaction is paid or payable in foreign currency, is regarded as transfer and is accordingly subject to capital gains tax.

In order to extend incentives of tax-neutral transfer of certain securities by Category III AIF in IFSC, Section 47 is proposed to be amended by the Finance Bill as to provide that any transfer of a capital asset, specified in the said clause by aforesaid AIF, of which all the unit holders are non-resident, would not be regarded as transfer subject to the condition that the consideration for such transaction is paid or payable in foreign currency.

The Finance Bill also proposes to widen the types of securities listed in aforesaid relevant clause by empowering the Central Government to notify other securities for the purposes of this clause.

(vi) Relief on interest paid to non-residents by IFSC units

With a view to facilitate external borrowing by the units located in IFSC, the Finance Bill proposes to amend the Section 10 of the Act so as to provide that any income by way of interest payable to a non-resident by a unit located in IFSC in respect of monies borrowed by it on or after September 01, 2019, would be tax exempt.

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iv. Relaxation in conditions providing special tax regime for offshore fund

Under the existing provisions of Section 9A of the IT Act, the presence of a fund manager in India and acting on behalf of an eligible investment fund, by itself, will not constitute a business connection in India for such investment fund. Further, the presence of such fund manager in India doesn't make the investment fund a resident of India.

Certain conditions are to be fulfilled by an investment fund in order to be eligible for such relaxed provisions. To give an impetus to such fund management activity in India, the Finance Bill proposes relaxation in the following conditions:

a) The condition regarding the corpus of the fund for an investment fund established in the said FY is currently considered at the end of the FY. It is proposed that such corpus will now be seen at the end of a period of six months from the last day of the month in which the fund is established or incorporated or the last day of the FY, whichever is later.

b) Currently, remuneration paid by the fund to an eligible fund manager for the fund management activity should not be less than the arm's length price for such activity. It is proposed that the methods for determining the minimum quantum of such remuneration shall be prescribed by the CBDT.

While the first amendment is aimed at providing a time period of at least six months to the offshore fund to increase its corpus, the second amendment is expected to provide certain level of flexibility in the amount of remuneration payable to an eligible fund manager.

The final prescription to be provided by the CBDT will have to be seen and it is highly anticipated that it should not increase the compliance burden on the offshore fund. It may be noted that whenever any provisions have to be prescribed by the CBDT, such provisions are generally drafted in a manner to allow taxpayers and tax authorities interpret such provisions differently thereby resulting in unwarranted litigation. Hence, it is hoped that the rules should provide clear provisions which ideally should not lead to unnecessary confusions and complications later on.

v. Benefit of concessional rate of short term capital gains tax extended to fund of funds

Finance Act 2018 had introduced Section 112A into the IT Act which provided concessional rate of long term capital gains tax on, inter alia, transfer of units of fund of funds (**"FoF"**). One of the purposes of doing the same was to incentivize FoF set up for disinvestment of Central Public Sector Enterprises ("**CPSEs**").

Taking a cue from the aforesaid amendment, the Finance Bill further proposes to extend the benefit of concessional rate of tax provided under Section 111A on short term capital gains arising from transfer of units of such FoF. The extant Section 111A provides concessional rate of 10% short term capital gains tax on, inter alia, equity oriented funds. These equity oriented funds have been defined to mean such funds, more than 65% of the proceeds of which are invested in the equity shares of domestic companies.

In order to give effect to the benefit of extending this rate to units of FoF, the definition of equity oriented funds is also proposed to be amended by Finance Bill. The proposed definition proposes to include such funds, which invest a minimum of 90% of total proceeds in another funds, which in turn invests more than 90% of its total proceeds in the equity shares of domestic companies, which are listed on a recognized stock exchange in India.

However, this benefit is only extended to FoF whose proceeds are ultimately invested in the equity shares of listed companies only. The threshold of investments has also been increased substantially to 90% as against the current requirement of 65%.

This is again a welcome move and have been intended to provide the requisite benefit only to the intended taxpayers on account of the high threshold requirements.

vi. Pass through of losses of AIFs to unit holding investors

Any investment fund registered as a Category - I or Category - II AIFs is treated as a pass through entity under the Section 115UB of the IT Act. Consequently, any income earned by such AIFs,

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other than business income, is taxed directly in the hands of investors. However, as per extant Section 115UB, this treatment as pass through entity is only restricted to the event of passing the income earned by the investment funds to investors and accordingly taxing the investors. The losses earned by the investment funds are not passed on to investors and are carried forward or set off by the AIF in accordance with Chapter VI of the IT Act, as provided under sub-section (2) of Section 115UB.

In order to reduce to tax burden on the investors by giving them the benefit of losses for set-off against income earned through such investment funds, the Finance Bill proposes to provide for pass through of losses, other than business loss, to investors of such investment funds. This benefit would come in as an amendment to sub-section (2) of Section 115UB, to provide:

a) The business losses of the investment fund would be carried forward and set-off by the investment fund in the manner provided under Chapter – VI of the IT Act;

b) Losses, other than business losses, shall not be passed through to the investor if such losses arise in respect of unit which have been held by the investor for at least 12 months;

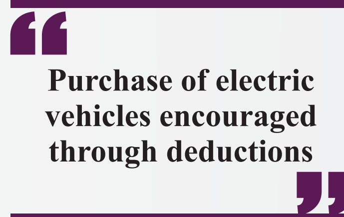
Other than amendment to sub-section (2), sub-section (2A) is proposed to be added to Section 115UB losses, other than business losses, accumulated at the level of investment fund as on 31 March, 2019, shall be deemed to be the loss of the investor holding the unit as on 31 March, 2019. The investor can carry forward and set-off such losses for the remaining period of such losses, which would be computed from the year in which the loss arose.

Further, the losses that are passed through to the unit holders, would not be available to the investment fund for set-off or carry forward.

The said amendment is a welcome measure because it puts investors in AIFs at par with direct investors. As per the extant provisions, while the income earned at the level of investment is passed on to the investors, the losses are retained at the investment fund level and are not available for carry forwards and set-off in the hands of the investors. This used to put the investors of AIFs at a disadvantage by not giving them the benefit of setting off of loss against their income, as compared to direct investors. This anomaly is expected to be addressed by the proposed amendment to Section 115UB by the Finance Bill and may provide an incentive to the investors to look at AIFs as one of the more viable options of making investments in India.

vii. Deduction with respect to purchase of electric vehicle

Vehicular pollution has been considered a major factor impacting the environment and the resultant climate change. Electric vehicles are seen as a steady solution to combat the vehicular pollution caused a result of the fuels currently being used by the automobiles. Even the recently released Economic Survey, 2019, has highlighted that electric vehicles hold an enormous potential for India not only because its environment friendly but also because India can emerge as a hub of manufacturing of electric vehicles, thereby generating employment and growth opportunities. Acknowledging the same and in order to incentivize the use and sale of electric vehicles, tax deductions have been made available on the purchase of such electric vehicles under the proposed Section 80EEB of the IT Act.



As per the aforesaid provisions, on the interest payable on loans taken from any bank or NBFCs (referred to as financial institutions) for purchasing an electric vehicle, a deduction of up to INR 150,000 per annum shall be available to the taxpayer at the time of computing total income. The deduction shall be available provided that the loan is sanctioned between April 01, 2019 and March 31, 2023 i.e. for four FYs. Needless to say, where the deduction is allowed under this provision it shall not be allowed under any other provision of the Act for the same or any other assessment year.

Further, the manner in which the Section is worded, clarity would be required on whether the deduction would be available for loan taken for purchase of more than one electric vehicle. While there is no cap on the quantum of loan taken, the proposed Section states "*for the purpose of purchase of an electric vehicle*". Thus, the availability of deduction on interest on loan taken and utilized for purchase of multiple electric vehicle, may be challenged by the tax authorities.

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viii. Exemption from applicability of Section 50CA / deemed FMV of shares in prescribed situations

Currently, the provisions of Section 56(2)(x) of the IT Act provide for the cases where the transfer of unlisted shares by a person to another at a price which is less than FMV by an amount exceeding INR 50,000, is held to be taxable as 'Other Income' in the hands of the receiver of shares.

Correspondingly, for the purpose of computation of capital gain on such transaction, the transfer of such shares is deemed to have been taken place at FMV in the hands of such transferor as per the provisions of Section 50CA of the IT Act.

While there are certain exemptions available under Section 56(2)(x) of the IT Act for transactions of gifts from relative, etc., it has been observed by the Government that similar exemptions are not available under Section 50CA of the IT Act.

The reasoning provided for such proposed amendment is that it may have led to unnecessary questioning on the transferor in case of genuine transactions wherein the consideration for transfer of shares is approved by certain authorities and persons transferring their shares have no control over the determination of value.

As of now, there is no clarity on whether the list of transactions to be exempted for the purpose of Section 50CA would be more or less than the transactions already exempt under Section 56(2)(x) of IT Act. However, it is expected that the exemptions to be provided for the purpose of Section 50CA would, *inter-alia*, cover the situation where the shares of unlisted company held by any company under IBC are transferred at fair market value upon approval from NCLT.

Hence, it needs to be seen what gets covered under the final list of exemptions prescribed under Section 50CA of the IT Act.

ix. Tax incentives for housing developers

Another important amendment under the scheme to provide affordable housing is simplifying and relaxing the requirements of claiming tax incentive for the affordable housing developers. The extant Section 80-IBA of the IT Act provides that where the gross total income of the assessee includes profits and gains derived from the business of developing and building housing projects, the assessee shall be eligible for a deduction equaling to 100% of the profits and gains derived from such business, subject to certain conditions specified in the Section.

With respect to the housing projects approved on or after September 01, 2019, the conditions for availing deductions have been modified to expand the benefits.

The proposed modifications in the conditions are specified below:

a) The requirement of plot size not exceeding one thousand square meters has been expanded from only metropolitan cities to certain additional areas like Bengaluru, Delhi National Capital Region (including Delhi, Greater Noida, Ghaziabad, Gurugram, Faridabad), Hyderabad, and the whole of Mumbai Metropolitan region;

b) The threshold of carpet area of the residential unit has been increased from 30 square meters to 60 square meters for metropolitan cities listed above and from 60 square meters to 90 square meters for all other cities. This means that the threshold of carpet area for one residential unit should not exceed 60 square meters in metropolitan cities and 90 square meters in non-metropolitan cities, for the developers to avail the exemption; and

c) The stamp duty value of such residential unit should not exceed INR 4.5 million.

The proposed amended conditions have been done to align the definition of "affordable housing" under the GST Act with the deduction available under Section 80-IBA. As stated above, the conditions shall be applicable on housing projects approved on or after 1 September, 2019.

This provision, along with additional benefits of up to an extra INR 150,000 per annum on the interest payable by them on the cost of houses not exceeding INR 4.5 million to the future homebuyers, is expected to provide a huge relief to the real estate sector.

x. Exemption for interest income arising to non-resident on RDBs

Under the existing provisions of section 194LC of the IT Act, interest income arising to a non-resident on rupee denominated bonds issued by an Indian company or a business trust is taxable at the concessional rate of 5%. In order to bring encourage capital inflows from non-resident and strengthen the falling rupee in the year 2018, a press release dated

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September 17, 2018 was issued by the CBDT declaring that interest payable for bonds issued during September 17, 2018 to March 31, 2019 shall not be subjected to tax and accordingly, the issuers do not have to withhold any taxes.

This amendment seems to be in line with the assurance provided by the CBDT on September 17, 2018 and to avoid any unwarranted litigation.

IV. STRENGTHENING OF ANTI ABUSE MEASURES

i. Listed companies to pay tax on buy back of shares

Section 115QA of the IT Act provides for provides for companies to pay to an additional tax i.e. BBT, which is over and above income tax paid by the company, on the income distributed by the company on buy back of shares from a shareholder. Such BBT is charged at an effective rate of 23.29% and is charged on the difference between the consideration paid by the company for buy-back of shares and the issuance price of the shares received by the company at the time of issue of shares. The intent behind introducing BBT in the hands of the company was to use it as an anti-abuse mechanism to control the practice of unlisted companies preferring to buy-back shares from the shareholders instead of providing them dividends and paying DDT on the same. However, the extant provisions excluded listed companies from the purview of BBT.

Listed companies to pay tax on Buy back of shares

It has now been observed by the Government that several instances of listed companies resorting to buy-back of shares as against resorting to paying dividends to shareholders have been observed. In order to prevent such exploitation, as specified by the FM, Finance Bill proposes to do away with the exemption provided to listed companies from BBT. Thus, listed companies would also be required to pay BBT on the difference between the consideration paid to the shareholders for buy-back of shares and the amount received by the Company at the time of issue of such shares.

The amount received by the Company at the time of issues of shares, would be determined as per Rule 40BB of the IT Rules. Pursuant to the said amendment coming into force, there would be a requirement to amend Rule 40BB to include the provision to determine the amount received by the listed company at the time of issue of shares.

As per the extant provisions, where listed companies are outside the purview of BBT, the amount received in lieu of buyback of shares is taxed in the hands of shareholder currently holding the share. Such shareholder would pay BBT on the difference between the purchase price of the shares and the consideration received on buyback of shares by listed company. Considering that the shares of a listed company are traded frequently on a recognized stock exchange, the price actually received by the Company at the time of issue of shares may not be the same as the price at which the current shareholder purchased it. It is also pertinent to note that a company goes through several series of fund raising activities at different points of time, before raising funds from the public. It may be extremely difficult for the Company to compute the difference between the price at which shares were allotted and the price payable by the Company during buy-back, as the Company may not have control over the shares that are being tendered.

It is also pertinent to note that BBT may not be appropriate for the concerned shareholder compared to the price at which it was bought. For instance, the issue price of a share, when it was first allotted could be INR 10 per share. The price at which current shareholder purchased the shares could be at the rate of INR 40 per share and the buyback consideration received by the shareholder would be INR 60 per share. Ordinarily, if the shares were sold by the shareholder in the open market, he would have been liable to pay tax on INR 20 per share (INR 60 – INR 40). However, if the company decides to buy-back such shares and the shareholder decides to tender his shares, the company will end up paying tax on the difference between buyback consideration and amount actually received by the company i.e. on INR 50 per share (i.e. INR 60 – INR 10).

Thus the proposed amendment would not only bring into place a check on the listed companies distributing income through buyback of shares instead of paying dividends, it would also generate higher revenues for the ITD as it may be noted that the company may end up paying a significantly

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higher amount of tax as BBT. It is also important to note that buy-back of shares is not an easy process and comes with a lot of operational issues / concerns. Also, to allege that a listed company is indulging in tax evasion, is an extremely avoidable presumption.

ii. Cancellation of registration of Trust or Institution

The existing provisions of Section 12AA of the IT Act provide for the procedure for granting registration to a trust or institution for availing exemption for its income under Section 11 of the IT Act, subject to such conditions as may be specified. The Section provides for situations in which such registrations may be cancelled i.e. when the activities of the trust are not genuine or where the activities are conducted in such a manner that the income ceases to be exempt.

Further, in order to ensure that the trusts do not deviate from their objects and strengthen the purpose for which the exemption has been provided, the following additional conditions have been proposed in Section 12AA of the IT Act:

a) At the time of granting the registration, the Principal Commissioner or the Commissioner shall also satisfy himself that the trust will comply with any other laws which is material for achieving its objects.

b) Where a trust or institution obtains a registration and subsequently, it is held by way of an order, direction or decree that there is a violation of any law which is material for achieving its objects, and the same is either not disputed or has attained finality, then such registration may be cancelled after giving a reasonable opportunity of being heard.

> **Trust registrations to be cancelled for non-compliance with certain laws**

The above amendments shall be effective from September 01, 2019.

This is an important provision as it ensures that the trust or institution complies with all the other laws which is material for the purpose of achieving its objects.

However, from the perusal of the proposed amendment, it appears that the Government does not have any specific situation or objections to any specified charitable institutions who need to be denied the benefit and hence, the manner of determination of laws the compliance of which is "material for achieving its objects", is not clear. It is hoped that the Government comes up with a clarification in the coming days to clarify and provide guidance as to how these provisions were to be applied or benefits to be claimed. For instance, it may be worthwhile for the CBDT to list out the provisions which have to be complied to satisfy each of limbs which constitute 'charitable purpose' as it is defined under Section 2(15) of the IT Act viz. education, medical relief, etc.

It has been observed that wherever discretion has been granted to the ITD, they were tempted to apply such discretion in absolutely arbitrary manner which results in enormous amount of unwarranted litigation. Thus, it is advisable that clarity should be provided to the extent possible to avoid any such eventuality.

iii. Mandatory filing of return of income by non-taxable persons who undertake high value transaction

Under the existing provisions of the IT Act, an individual /HUF is required to furnish the return of income only if total taxable income exceeds the basic exemption limit (i.e. INR 500,000), subject to certain other conditions.

However, the Government in its effort to bring more tax payers under its radar and also to enhance its ambit to prevent any tax evasion or avoidance, has proposed to require certain individuals to file the return of income, even if their total income does not exceed the taxable limit, provided they meet certain other criteria.

A new provision is proposed to be incorporated which requires that the following persons shall have to mandatorily file their return of income:

a) a person who has deposited more than INR 10 million in his bank accounts;

b) a person who has incurred an aggregate expenditure in excess of INR 200,000 on himself (or for any other person) for travel to a foreign country;

c) a person who has incurred an aggregate expenditure in excess of INR 100,000 on consumption of electricity; or

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d) a person who fulfils any other condition as may be prescribed.

Further, it is also proposed to require persons who were otherwise required to file return of income, if not for the capital gains exemption availed by them, would also be mandatorily required to file their respective returns of income in India.

While there has been a significant improvement in the tax compliance in the last few years, India is still largely a tax non-compliant country. These provisions are expected to bring in more people and transactions into the reporting mechanism and shall be able to examine a large number of potentially tax avoidance transactions.

These amendments are proposed to take effect from April 01, 2020 and will, accordingly apply in relation to assessment year 2020-2021 and subsequent assessment years.

V. REVISING TRANSFER PRICING PROVISIONS

i. No requirement for AO to conduct assessment or reassessment after modified return of income giving effect to APA is filed

Section 92CC of the IT Act allows the CBDT to enter into any APAs with any taxpayer to determine the ALP or decide the manner of determination of ALP, for the international transactions (to be) entered into by that person.

Section 92CD of the IT Act gives effect to the APA entered into by the CBDT and the said person. Sub-section (1) of the said Section provides for a modified return of income to be filed by a person who has entered into an APA after filing the return of income for the FY to which the said APA applies. The time period for furnishing the modified return is 3 months. Further, sub-section (3) of Section 92CD provides that if the assessment or reassessment for the FY referred to above, has been completed before the expiry of the time span of three months provided to file a modified return, and a modified return is filed with regards to the APA, the AO shall assess or reassess or re-compute the total income to give effect to the APA.

> **"No further assessment required if modified return of income giving effect to APA filed"**

The Finance Bill proposes to do away with the requirement of assessing or reassessing the modified return filed in the three month period and expedites the process by requiring the AO to directly pass an order modifying the total income of the relevant FY in pursuance of the APA. Thus, the requirement of AO to undertake assessment or reassessment after filing of the modified return has now been done away with effective September 01, 2019.

The proposed amendment makes the process easier for persons entering into APAs. As per the existing provisions, such persons would have to undergo assessments multiple times and creates unnecessary complications for the tax payers since the AO can technically scrutinize the entire income, once again, in the subsequent assessment on the garb of reassessment.

The Memorandum clarifies that the intent of the legislature is merely modify the total income subsequent to the modified return filed in pursuance of APA. Thus, where the assessment or reassessment is completed and consequently modified return is filed in the three month period, the job of the AO is now only to modify the total income of the relevant FY, which was computed in the assessment or reassessment, as per the APA entered into by such persons, which effectively means the AO will no longer be able to re-scrutinize the income of the tax payer.

Assuming the value of the transaction undertaken with associated enterprises have already been agreed between the taxpayer and the AO, there is no need to further get into any further discussion with the taxpayer and hence, it is fair for the AO to carry out the requisite corrections on the basis of the APA.

ii. Clarification on the secondary adjustment provisions for transfer pricing

The Finance Act, 2017 introduced the provision of secondary adjustment to transfer pricing under Section 92CE of the IT Act according to which, a secondary adjustment in the books of accounts of the assessee and its AEs shall have to be done to be consistent with the transfer price determined in the primary adjustment to ensure parity between the profit allocation between the assessee and its AEs.

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However, the requirement to do a secondary adjustment arises only where the primary adjustments in the particular financial FY exceed INR 10 million. The secondary adjustment, as per the extant provision, is required to be done only in respect of primary adjustment done in the AY commencing on or before April 01, 2016.

To provide better clarity to the provisions pertaining to secondary adjustment regime, the Finance Bill proposes multiple amendments to Section 92CE, with an objective to make it easier to comply with the requirement of making secondary adjustments. The proposed amendments include:

a) Secondary adjustment provisions will be made applicable on satisfaction of one of the conditions i.e. (a) threshold of primary adjustment being of INR 10 million or (b) above and of primary adjustment made up to AY 2016-17.

As per the existing Section 92CE, both conditions have to be satisfied for the applicability of secondary adjustment requirement. However, the amendment clarifies that either the primary adjustment has to be for an amount exceeding INR 10 million or the primary adjustment had to be done till AY 2016-17.

The said clarity was necessarily required to be provided because the extant Section 92CE uses the term “AND” instead of “OR” as a conjunction between two conditions. This would mean that both conditions shall have to be fulfilled. Thus, it would limit to secondary adjustments only in respect of primary adjustments done till AY 2016-17 and where the value of such adjustments exceeded INR 10 million. Essentially primary adjustment done after AY 2016-17 would not fall under the secondary adjustment regime. Given the same, clarification that the two conditions are alternate to each other was considered as essential by the Government as the same would also help in widening the tax base. The said amendment is applicable retrospectively from AY 2018-19;

“Option to pay additional tax on non - repatriated amounts from Aes”

b) Sub- (2) to Section 92CE provides that in cases where, as a result of the primary adjustment, there is an increase in the total income or reduction in the loss of the assessee, the excess money which is available with the AEs would either had to be repatriated to India in the prescribed time period or would be regarded as an advance made by the assessee to its AE and accordingly, interest shall be charged by the assesse on such advance, in the prescribed manner.

The Finance Bill proposes to clarify that if a part of such excess money had already been repatriated by the AE to the assessee during the requisite time period, then interest has to be computed by the assesse for the remaining amount. This has been done with an intention to address cases of partial repatriation of excess amounts lying with the AEs. This amendment shall also be retrospectively applicable from AY 2018-19;

c) Apart from making amendments that are clarificatory in nature, the Finance Bill also proposes to introduce certain new provision under Section 92CE with respect to excess money lying with AEs, referred to sub-section (2). These provisions provide an additional option to the assessee to pay income tax at the rate of 18% on the excess money or part of such excess money lying with the AEs and not repatriated to it within the prescribed time period. If the assessee agrees to pay 18% tax on the excess money or part of excess money, no further secondary adjustment or interest computation would be required from the date of payment of such tax. However, no further credit would be available on this additional income tax payable by the assessee and no deduction under any other provisions of the IT Act shall be available to the assessee. These provisions would be applicable from September 01, 2019.

This is a much needed relief which would address the concerns of the many of the taxpayers as it is near to impossible to require the AE to repatriate the money back to India, on account of transfer pricing adjustments

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made in India, owing to the tedious procedural requirements based on the local laws and accounting requirements.

It must be noted that during transfer pricing proceedings, it has been observed that there are huge differences of opinion between the taxpayer and the tax authorities due to which most of the times, tax authorities end up suggesting changes to the transfer price reported by the taxpayer. In many instances, the taxpayer might be willing to give up on some issues and may not want to litigate further considering the amount of adjustment involved, but was unable to do the same in the absence of any acceptable compromise formula. This onetime payment of tax could be a compromise that might persuade him to accept the position and not litigate any further.

iii. Constituent entities to maintain documentation and information regardless of international transaction.

For every person entering into international transactions or specified domestic transaction under the IT Act, Section 92D of the IT Act, inter alia, requires, under sub-section (1), maintenance of such information and document as prescribed under Rule 10D of the IT Rules. Vide Finance Act, 2016, proviso was added to sub-section (1) of Section 92D, to extend the requirement of maintaining and keeping the information and documentation to constituent entity[1] of an international group[2] as well. This requirement was extended to constituent entities in order to give effect to the BEPS Action Plan 13 which mandates country by country reporting of certain information and providing master file reporting standardized information by the MNEs. Thus, even constituent entities of international groups are also required to maintain relevant information and documentation as prescribed. However, the extant provisions mandated the requirement of maintenance of information or documentation only for persons being constituent entities only under proviso to sub-section 1, which triggers the maintenance of information only on the person who has entered into international transaction. This would mean that the primary requirement to trigger the maintenance of information and documentation is entering into international transaction.

> **"Constituent to maintain document and information despite no international transaction"**

The Finance Bill proposes to keep the obligation of maintaining information and documentation on the constituent entity, independent from the obligation imposed on the person entering into international transaction. Thus, a separate clause (ii) is proposed to be inserted under Section 92D(1) for imposing independent obligation on the constituent entities of international groups to maintain information and documentation prescribed under Rule 10D. Thus, even where no international transaction has been entered into by the constituent entity, the constituent entity would still be required to maintain the information and documentation prescribed in Rule 10D. The constituent entity would furnish such information and documentation to the prescribed authority under Section 286(1) of the IT Act. The earlier provisions did not have any prescribed penalty for the non-compliance of these provisions. However, such anomaly is proposed to be adjusted from this FY, since Finance Bill provides that any non-compliance would result in the violation of Section 92D read with Rule 10D of the IT Rules.

This proposed shall come into effect from April 01, 2020 and accordingly apply from AY 2020-21 onwards.

iv. Amendment to the CbCR rules

Section 286 of the IT Act contains provisions relating to specific reporting regime in the form of CbCR in respect of an international group. It provides that every parent entity or the alternate reporting entity resident in India shall, for every reporting accounting year, furnish a report to the prescribed authority within a period of twelve months from the end of the said reporting accounting year.

[1] Constituent entity has been defined under Section 286(9)(d) of the IT Act to mean (i) separate entity of an international group that is included in the consolidated financial statements of the said group for prescribed purposes (ii) any such entity that is excluded from the consolidated financial statements of the international group solely on the basis size or materiality; or (iii) any PE of any separate entity of the international group included in the above clauses if the financial statements of such PE are prepared separately for financial reporting, regulatory, tax reporting or internal management and control purposes.

[2] The term international group has been defined under Section 286(9)(g) of the IT Act to mean a group that includes either two or more enterprises which are resident of different countries or territories or includes an enterprise resident in one country carrying on business through a PE in other countries or territories.

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In cases where the Indian entity is considered to be the alternate reporting entity whose ultimate parent entity is not a resident in India, the accounting year would be the accounting year applicable in the country where such ultimate parent entity is resident and cannot be the previous year of the entity resident in India. Accordingly, there were a number of representations wherein it was requested that this unintended anomaly with regard to the interpretation of accounting year in case of alternate reporting entity resident in India may be removed.

In order to address such concerns and to bring clarity in law, the Finance Bill proposed to suitably amend Section 286 so as to provide that the accounting year shall be regarded as the FY only if the parent entity is a resident in India.

VI. MEASURES TO STRENGTHEN TAX COMPLIANCE

i. Inter-changeability of PAN & Aadhar

The Government proposes to make PAN and Aadhaar interchangeable. As per the proposals, individuals who do not have PAN will soon be able to file their return of income just by quoting their Aadhaar number. In addition to that, persons who do not have PAN can simply quote their Aadhaar number wherever PAN is mandatory to quote.

> **Aadhaar maybe quoted instead of PAN for undertaking compliances under IT Act**

As per the existing provisions of the IT Act, every person who are required to comply with the provisions of the IT Act shall have to obtain a PAN. It has been proposed to provide for inter- changeability of PAN with the Aadhaar number. Accordingly, a new Section 5D is proposed to be inserted into Section 139A of the IT Act to provide the following:

a) a person who has not been allotted PAN but has been allotted Aadhaar number may quote his/her Aadhar number instead of PAN for undertaking compliances under the IT Act; and

b) a person who has been linked his/her Aadhar number with the both PAN may furnish Aadhar number instead of PAN for reporting purposes.

While this proposed move have been projected as an instrument to ease the tax compliances, it may also turn out to be a very critical step for the Government to check tax evasion. It may be noted that while obtaining a PAN has become very simple, there are still challenges in ensuring that each individual is awarded with only one PAN and there are no duplications. In the absence of any biometric verification, it is also difficult to differentiate and distinguish between two PANs. On the other hand, it is generally understood that no individual should be able to obtain two Aadhaar Cards and due to a mandatory biometric test, it may be not feasible to duplicate the same either. The proposals contained in the Finance Bill seem to link each and every major transaction to an Aadhaar Card, which has the potential of linking such transactions to the actual owner / beneficiary and hence, should provide the requisite information / details with the ITD to question the concerned taxpayer, should the need arise in the future.

ii. Mandatory linking of PAN with Aadhaar number

In addition to the interchange of PAN and Aadhaar number, it has also been proposed to amend the proviso to Section 139AA(2) which currently provides that the failure to link the PAN with Aadhaar number before the notified date shall make the PAN invalid. The proposed amendment envisages that such PAN shall be inoperative prospectively but would not make it invalid.

Section 139AA(2) of the IT Act provides for mandatory linking of PAN and Aadhaar numbers which have been embroiled in the controversy for a long time now on account of confidentiality and data protection issues. The SC had, in the recent past, upheld the constitutional validity of Section 139AA of the IT Act pursuant to which the Government had notified that tax payers shall have to mandatorily link their PAN and Aadhaar number on or before March 31, 2019. Confusion arose on the aspect as to whether such PAN would be deactivated in view of the proviso to Section 139AA(2) of the IT Act and the impact of any such deactivation on the transactions undertaken by the concerned taxpayers earlier. The instant amendment is proposed to protect validity of such transactions previously carried out through already available PANs.

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iii. Mandatory quoting of PAN & Aadhaar number in certain transactions

The Finance Bill also proposes mandatory quoting of PAN/Aadhaar number in order to track high-value transactions and provides that persons who are proposing to carry out certain specified transactions, shall have to mandatorily quote PAN/Aadhaar number, along with demographic / biometric validation, in the documents pertaining to such transactions. While the list of such transactions have not yet been prescribed, it is understood that the same would be made applicable in cases involving huge withdrawal of money from the bank or purchase of large amount of foreign currency, etc.

It is to be noted that as per the proposed provisions, the person who receives such specified documents (i.e. banks, etc.), they have also been entrusted with the responsibility of ensuring the correctness of the validation / authentication made by the persons who will undertake such transactions.

> **Nil/Lower withholding tax certificates can be obtained online**

In order to ensure adequate compliance of these requirements, a penalty of INR 10,000 individually for each such defaults has been proposed to be levied under Section 272B(2A) and Section 272(2B) of the IT Act in the hands of the person who will fail to quote and authenticate the PAN/Aadhaar number as well as on the person who will fail to ensure the quoting of such PAN/Aadhaar number.

iv. Widening the scope of Statement of Financial Transactions

Existing provisions of Section 285BA of the Act, inter alia, provide for furnishing of statement of financial transaction (**"SFT"**) or reportable account by person specified therein. It may be noted that these provisions were introduced to give effect to the FATCA which was introduced in the US in 2009 and India had signed a memorandum of understanding with the USA wherein she has agreed to cooperate and provide all requisite information on a reciprocal basis with an intention to prevent any form of tax evasion and avoidance.

In order to enable pre-filling of return of income, the Finance Bill has also proposed to obtain information through widening the scope of furnishing of statement of financial transactions by certain prescribed persons other than those who are currently furnishing the same. Such persons would be mandated to provide certain specific details through a statement. It is also proposed to remove the current threshold of rupees fifty thousand on aggregate value of transactions during a FY, for furnishing of information, with a view to ensure pre-filling of information relating to small amount of transactions as well.

Further, in order to ensure proper compliance, the Finance Bill also proposed to amend the provisions of sub-section (4) of aforesaid Section so as provide that if the defect in the statement is not rectified within the time specified therein, the provisions of the IT Act shall apply as if such person had furnished inaccurate information in the statement.

Consequently, it is also proposed to amend the penalty provisions contained in Section 271FAA so as to ensure correct furnishing of information in the SFT and widen the scope of penalty to cover all the reporting entities under Section 285BA of the IT Act.

These changes again shall have far reaching implications on the concerned taxpayers and it is expected to prevent certain taxpayers to split a large transaction into a series of small transactions to avoid detection or prevent payment of requisite taxes. The information being collected as a consequence of this exercise could also be mapped at the backend and would be analysed to examine any probable tax avoidance or evasion.

v. Simplified procedure for claiming of refund

This Finance Bill proposes to amend Section 239 of the IT Act to reduce the formalities involved in the claim of refund. The proposed amendment provides that the refund shall be made automatic when the return of income under Section 139 of the IT Act is appropriately filed.

vi. Electronic filing of Nil/lower withholding tax certificates and certain compliances

The Finance Bill proposes to further the Government's objective of reducing the human interface and increase the use of technology by making the process of obtaining the nil and lower withholding tax certificates entirely online. In this regard, Section 195 and 197 has been proposed to be suitably amended. It may be noted that as per the office memorandum issued by the CBDT in the year 2018, the ITD is expected to issue a nil/lower

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withholding tax certificate within a period of 30 days. The proposed amendment to entirely make the process of issuing such certificates online is definitely a welcome move as it would remove the ambiguity of the parties who are involved in the transaction with the regard to the stance of the tax department on those transaction, which would provide the comfort the purchasers and ensure the completion of the transaction in a hassle free manner.

Similarly, the Finance Bill also proposes to amend Section 206A of the IT Act to enable banking institutions to file the withholding return tax return in cases where no taxes where no tax has been deducted at source i.e. when the banks pay interest to its account holders in excess of INR 10,000 a year, it is supposed to file a withholding tax return in a specified manner declaring about the details of amount interest paid to its account holders. This amendment enables such banks to make the compliance online.

vii. Enabling E-assessment

The FM had stated in her speech that the scrutiny assessment cases would henceforth be allocated to assessment units in a random manner and notices shall be issued electronically by the central cell without disclosing the name, designation or location of the assessing officer and that the central cell shall be the single point of contact between the taxpayer and the department. The Finance Bill, however, is silent about it and it is expected that the CBDT may issue any circular/notifications in near future providing a mechanism for the same.

VII. AMENDMENTS IMPACTING WITHHOLDING TAX OBLIGATIONS

i. TDS on sale of immovable property

Section 194-IA of the IT Act provides for withholding of taxes at the rate of 1% when the sale consideration exceeds INR 5 million on the purchase of immovable property. While the existing provision did not define the term 'consideration', the general practice is to consider the amount mentioned in the sale deed, which is to be registered with state government, as sale consideration.

However, complexities arise when a tax payer purchase a residential apartment in a township project or from a similar project wherein substantial amount shall have to be shelled out separately for car parking fees, electricity and water facility fees, club membership fees, etc.

This Finance Bill proposes to define the term 'consideration for immovable property' and provide that the same shall include all charges of nature of club membership fees, car parking fees, electricity or water fees, maintenance fees, advance fee or *any other charges of similar nature*, which are incidental to the transfer of immovable property.

This would effectively mean all the unbundled charges which are attached to the purchase of the property would now be considered as consideration payable for the transfer of property and accordingly, taxes shall have to be withheld in cases when the consolidated amount exceeds INR 5 million.

It is proposed that this amendment will be given effect from September 01, 2019.

ii. TDS obligations on individual/ HUF

As per the existing provisions of the IT Act, individuals/ HUF are required to withhold taxes only in limited cases i.e. when they purchase an immovable property for over INR 5 million and when the payment of rent is in excess of INR 50,000 in a month.

Similarly, under the existing provisions of Section 194C of the IT Act, the individuals/ HUF are required not withhold taxes when the payment is made to a contractor for personal use. Further, under Section 194J of the IT Act, individuals are not required to withhold taxes on the payment of professional fees.

This Finance Bill, however, proposes to increase the withholding tax obligations of individuals/ HUF who spend more than INR 5 million towards payment of work in a contract or by way of professional fees.

The Finance Bill proposes to adopt the definitions provided in Section 194C and 194J of the IT Act as definition for the term 'contract', 'work' and 'professional fees'. Therefore, the individuals/ HUF who were earlier not required to withhold taxes in respect of the activities mentioned in Section 194C and 194J would now have obligation to undertake withholding compliances by virtue of the proposed provision.

It appears that the purpose of this withholding provision is twofold. In addition to helping the government in advancing its revenue mobilization on account of the withholding and related reporting

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obligations, it will also enable the ITD to examine the relevant transaction and ensure that there is no avoidance or evasion of payment of appropriate taxes.

iii. TDS on non-exempt portion of life insurance pay-out on net basis

The existing Section 194DA of the IT Act provides that taxes need to be withheld at the rate of 1% of the sum payable to a tax payer under any life insurance policy, which is not exempt under Section 10(10D) of the IT Act. It is to be noted that on such sum, the taxes need to be paid only on the net income i.e. after deducting the amount of insurance premium paid by him from the total sum received. In such cases where the tax deduction has been made on the gross income, it becomes to administratively difficult to match the said amount with the net income shown on the withholding tax return filed by the tax payer.

In order to alleviate the administrative issue, Finance Bill proposes to amend Section 194DA to allow taxes to be withheld at a higher rate of five per cent on the net income of the tax payer instead of the erstwhile one per cent on the gross payment made.

> **Banks shall deduct TDS @2% on cash withdrawals above INR 10 Million**

VIII. MEASURES FOR PROMOTING CASHLESS ECONOMY

i. Prescribing electronic modes of payments

This Finance Bill has proposed slew of measures for promoting cash less economy in line with the Government's Digital India initiative. Apart from providing certain incentives for undertaking digital transaction, provisions of the IT Act dealing with levy of penalty (viz. Section 26SS, 269ST and Section 269T of the IT Act) have been revised to allow the taxpayers to carry out modes of electronic payments at par with banking channels. It may be noted that in the Budget speech, the FM noted that low-cost digital modes of payment such as BHIM UPI, UPI-QR Code, Aadhaar Pay, certain Debit cards, NEFT and RTGS shall be used to promote less cash economy.

It is also proposed to mandate every business organizations with a turnover of more than INR 500 million to provide additional facility to provide the aforementioned prescribed mode of digital payments, in addition to the various electronic mode facilities that it is already providing.

In order to ensure compliance of the aforesaid provisions, it is also proposed to provide that the failure to provide facility for electronic modes of payment prescribed under Section 269SU shall attract penalty of a sum of five thousand rupees, for every day during which such failure continues. The Finance Bill also provides that the said penalty shall not be imposed if the person proves that there were good and sufficient reasons for such failure. This provision will take effect from 1 November, 2019

Apart from introducing new provisions, amendments have been proposed across IT Act in various Sections, to recognize electronic mode of payment as an option other than existing prescribed modes of payments. These provisions include revisions to Sections 13A, 35AD, 40A, 43(1), 43CA, 44AD and 80JJAA.

All these amendments are set to take effect from September 01, 2019.

ii. TDS on cash withdrawals

The Finance Bill proposes that the banking institutions shall withhold taxes at the rate of 2% on cash withdrawals above INR 10 million by virtue of introducing a new Section 194N into the IT Act. This is being done to discourage business payments in cash and in order to promote cashless economy.

This is a very well thought out initiative which is expected to put restrictions on the unbridled usage of cash by the concerned taxpayers. The fact that the intermediaries like Banks have to report such transactions separately also means that they will be available in a consolidated manner with the tax authorities, who will not have to spend any significant amount of time to peruse the details and identify the targeted transactions. It is assumed that entities and organizations that withdraw significant amount of cash during any previous FY, shall be individually singled out and notified. Thus, a very focused and specific investigation can be initiated against them which would go a long way to identify any potential tax avoidance or money laundering initiatives by unscrupulous taxpayers.

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This amendment is proposed to take effect from September 01, 2019.

IX. TAX INCENTIVES FOR INDIVIDUALS

i. Contributions made by the Central Government under the National Pension System

In order to increase tax saving incentive for the Central Government employees, additional provisions have been proposed to be added under Section 80C of the IT Act which provides deductions available to individuals or HUF from their total income in respect of certain payments made by them. The total deduction that can be claimed is aggregate of the payments or deposits made as per the said Section, subject to a maximum of INR 150,000. Sub-section (2) of Section 80C provides an inclusive list of payments or deposits that the individual can make, on which deduction can be claimed subject to the prescribed cap.

Benefits to Central Government employees investing in National Pention System

Under the list prescribed under Section 80C(2), the Finance Bill proposes to add contributions made by employees of the Central Government to the specified additional account under the National Pension System. The said contributions have to be made for a fixed period which is not less than 3 years and have to be in accordance with the schemes notified by the Central Government.

The proposed amendment provides more tax saving options to Central Government Employees under the National Pension System. Therefore, the contributions made by the Central Government Employees to their Tier – II accounts provided under the National Pension System, shall be eligible for deductions under Section 80C.

ii. Contributions made by the Central Government to specified pension scheme accounts

Section 80CCD of the IT Act provides for deductions from the total income of the employee or any other individual, on the amount of contribution made by him or on his behalf by his employer or Central Government, to his/ her account under the pension scheme of Central Government. With respect to the contributions made by the employer or Central Government to the account of the individual, the deduction available is on the whole of the contribution made by the employer or Central Government, subject to a cap of 10% of the total salary of the individual in that particular FY.

In order to incentivize the contributions into the specified pension scheme, the Finance Bill proposes to increase the threshold of 10% to 14% where the contribution is being made by the Central Government. For contribution made by any other employer, the 10% threshold limit shall continue to apply.

iii. Deduction on interest paid on the loans taken for certain house property

The IT Act presently, under Section 80EE, provides deduction upto INR 50,000 on the interest paid for loan taken from financial institutions for acquiring a residential property. The deduction was subject to the condition that the loan sanctioned does not exceed INR 3.5 million and the value of residential property does not exceed INR 5 million. Further, the assessee should not own any residential house property on the date of sanction of loan.

For assessees who could not claim deduction under the aforesaid Section due to the conditions specified, the Finance Bill proposes to provide incentive under the proposed Section 80EEA. Individuals taking loans from any financial institution for acquiring a residential house property can avail a deduction on the interest payments on such loans upto a maximum of INR 150,000. However, availability of deduction is subject to the condition that the loan has been sanctioned during the period of beginning on April 01, 2019 to March 31, 2020, the stamp duty value of the residential house property does not exceed INR 4.5 million and the assessee taking the loan does not own any other house property on the date of sanction of loan.

The proposed Section is in line with the 'Housing for all' objective of the Government in order to provide low cost funding to the home buyers. The incentive is, however, available for a limited period only for loans taken in the current FY i.e. FY 2019-20.

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X. RATIONALIZATION OF PROVISIONS

i. Rationalisation of provisions relating to Securities Transaction Tax

As per Section 99 of Finance Act No. 2 of 2004, dealing with STT, value of taxable securities transaction in respect of sale of an option in securities, where such option is exercised, is taken to be the settlement price.

The Finance Bill proposes to rationalise the provisions of STT for exercise of options and in lieu of the same Section 99 has been amended to provide value of taxable securities transaction in respect of sale of an option in securities, where such option is exercised, to be taken as the difference between the strike price and the settlement price. The settlement price is the average closing of the underlying on the day of expiry and the strike price is the level of underlying for which the option is bought. The said amendment is to take effect from 1 September, 2019.

This amendment can be seen as a relief for taxpayers trading in equity derivatives option.

ii. Mega Investment in Advanced Technology Areas

In the Budget speech, the FM had given special attention to the Mega Investment in Sunrise and Advanced Technology Areas. As a part of this, several amendments were proposed by the FM in the IT Act which could give an impetus to the Make in India project of the Government and the subsequent economic growth. The speech highlighted the Government's plan to invite global companies by means of bidding process to set-up mega manufacturing plans in sunrise and advanced technology areas such as Semi-conductors Fabrication (FAB), Solar Photo Voltaic Cells, Lithium storage batteries, Solar electric charging infrastructures, computer servers, laptops etc. To incentivize this scheme the Budget speech of FM had proposed providing of investment linked income tax exemptions under Section 35AD of IT Act. However, no amendment to this effect has been proposed under Section 35AD in the Finance Bill. It appears that the same shall be launched later through an amendment/ Notification.

> **Additional deduction of INR 50,000 on the interest paid on home loan for individuals**

iii. Rationalization of penalty provisions relating to under-reporting of income

Section 270A contains provisions relating to penalty for under-reporting and misreporting of income. The existing provisions provide for various situations for the purposes of levy of penalty under this Section. The said provision provides for a mechanism for determining under-reporting of income and quantum of penalty to be levied when no return of income was filed by the tax payer. Several dispute arose overtime on whether the said mechanism would be applicable when the tax payer files the return of income for the first time in response to the notice issued under Section 148 of the IT Act but had failed to furnish return of income under Section 139 of the IT Act.

It has now been proposed to amend the said Section so as to provide that said mechanism would be made applicable even in cases where the tax payer files the return of income for the first time in response to a notice issued under Section 148 of the IT Act. This amendment is proposed to be effective retrospectively from the AY 2017-18 i.e. the year from when provisions relating to Section 270A of the IT Act was first introduced.

iv. Rationalisation of provisions of 276CC

The existing provisions of Section 276CC of the IT Act, *inter alia*, provide that prosecution proceedings for failure to furnish returns of income against a person shall not proceeded against, for failure to furnish the returns of income in due time, if the tax payable by such person on the total income determined on regular assessment does not exceed INR 3,000. The existing provisions did not deal with tax collected at source and self-assessment taxes paid for the purposes of determining the tax liability.

Since the intent of said provision has always been to take into account pre-paid taxes, while determining the tax payable, Finance Bill proposes to amend the said Section to include the self-assessment tax, if any, paid before the expiry of the assessment year, and tax collected at source for the purpose of determining tax liability.

Further, it is further proposed to amend the said Section so as to increase the threshold of tax payable from the existing rupees three thousand to rupees ten thousand.

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v. Streamlining of certain provisions to give effect to the relief provided under Section 89

Section 89 of the IT Act provides relief to employees when they receive the salary in advance or in arrears. For instance, salaries received in the current year pertaining to the past year can be deducted from the taxable income of the current year.

While the provisions dealing with self-assessment tax (Section 140A of IT Act), assessment (Section 143 of IT Act) and interest for default in furnishing the return of income/payment of advance tax/deferment of payment of advance tax (Sections 234A, 234B and 234C of IT Act) provide a mechanism to tax credit for certain prepaid taxes, admissible reliefs, credits, etc.

In order to bring parity, the Finance Bill proposes to amend the aforementioned provisions to provide that computation of tax liability shall be made after allowing relief under Section 89 of the IT Act.

It is pertinent to note that this amendment shall be effective retrospectively, however, considering that this is a beneficial provision and is expected to grant the requisite relief to the taxpayer, it is unlikely to create any concern on account of the retrospective nature of its application.

vi. Increase in time limit for sale of attached immovable property

Schedule II of the IT Act lays down an elaborate framework of procedure for recovery of tax by the ITD. The powers of the ITD in this schedule extend to attachment and sale of immovable properties by the ITD for the purposes of tax recovery.

In this context, Rule 68B of Schedule II provides a time limit to ITD to sell-off the immovable properties for tax recovery purposes. The time limit provided under the aforesaid rule is 3 years from the end of the FY in which the crystallisation demand of any tax, interest, fine, penalty or any other sum, vide an order passed either by the ITD or appellate authorities or even by the Settlement Commission. This period of 7 years can be further extended by 3 years by the CBDT after recording reasons in writing.

The said amendment has been brought in with an intent to eliminate or minimise impediments faced by the ITD in tax recovery. However, the time limit has been increased by a much higher margin than one would have estimated. While this amendment maybe welcomed with open arms by the ITD, it will certainly not receive the same response from the taxpayers.

vii. Retrospective inclusion of certain non-residents under the Black Money Act

Expanding the coverage of Black Money Act, the Finance Bill proposes to retrospectively include non-resident Indians under its ambit.

The existing provisions of Section 2 of the Black Money Act provide *inter alia* that the "assessee" means a person who is resident in India within the meaning of Section 6 of the IT Act. Now, the Finance Bill has proposed to retrospectively amend the said definition to provide power to ITD to take action against those who were residents at the time of acquisition of the undisclosed asset and then turned into non-residents.

> **"Retrospective amendment of the term 'Residents' under the Black Money Act to target residents who turned into non-residents"**

The proposed amendment clearly shows the government's intention to expand the coverage of notices issued under Black Money Act to the assessees who were resident while acquiring the foreign assets or liabilities but subsequently became non-resident. The move is expected to aid the government in recovering undisclosed assets stashed away abroad in cases where high-profile tax evaders have left the country.

The proposed amendment may also result in an increase in future litigations under Black Money Act, especially the validity of criminal prosecution with retrospective effect. While the proposed retrospective amendment on the tax and penalty could get sustained by the courts of law, it would be difficult for the Government to get the retrospective imposition of criminal prosecution in the courts.

Apart from the above, the Finance Bill proposes certain additional rationalizing changes to the Black Money Act viz. it has proposed to amend Section 17 of the Black Money Act in order to enable the CIT(A) to enhance or reduce the penalty orders since existing provisions only provide for enhance or reduce the assessment orders. Also, Section 84 of the Black Money Act is proposed to amended to provide that

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the provisions of Section 144BA of the IT Act shall be applicable to the Black Money Act as well, which would enable the Joint Commissioner to examine the records of the proceedings pending before the assessing officer and issue necessary directions, if required.

viii. Rationalisation of the Income Declaration Scheme, 2016

The IDS, which came into effect from June 01, 2016 and was open till September 30, 2016, provided an opportunity to persons who had not paid full taxes in the past to declare their domestic undisclosed income and assets.

The existing provisions of Section 187 of the Finance Act, 2016 provide, *inter alia,* that the tax, surcharge and penalty in respect of the undisclosed income, declared under the Income Declaration Scheme, 2016 (the Scheme) shall be paid on or before a notified due date.

In order to address genuine concern of the declarants, the Finance Bill proposes that where the amount of tax, surcharge and penalty, has not been paid within the due date, the Central Government may notify the class of persons who may make the payment of such amount on or before a notified date, along with the interest on such amount, at the rate of 1% of every month commencing on the date immediately following the due date and ending on the date of such payment.

By virtue of the proposed amendment, the Government now provides yet another opportunity to declarants under the already closed IDS to deposit tax, surcharge and penalty which has not been paid within the due date.

ix. Amendments to the Prohibition of Benami Property Transactions Act

The Finance Bill proposes to amend PBPT to enable confiscation of benami property and provide for prosecution, thus blocking a major avenue for generation and holding of black money in the form of benami property.

In order to enable admissibility of certified copies of records or other documents in the custody of the authority as evidence in any proceeding under the PBPT, the Finance Bill proposes to insert a new Section 54B in the said Act so as to provide that entries in the records or other documents in the custody of an authority shall be admitted as evidence in any proceedings for the prosecution of any person for an offence under the PBPT. This would enable the authorities to rely on the information obtained from certain sources as evidences against the alleged offender.

x. Disallowance under section 40(a)(I) is streamlined with 40(a)(ia)

Section 201 of the IT Act provides that where any person who is required to withhold tax, does not withhold tax, shall be deemed to be an 'assessee-in-default' and subject to interest at the rate of 1% per month with the possibility of a penalty of up to 100% of the amount that should have been deducted. Further, under Section 40 of the IT Act, the payer is barred from claiming such payments as deductions while filing its return of income in India.

However, under the existing provisions of the IT Act i.e. Section 40(a)(ia), in case of payments to a resident, a payer will not be deemed to be an assessee-in-default if, despite its failure to deduct tax, the recipient resident has filed his return of income, disclosed the payment and paid his taxes. Further, the payer can also claim the payments as deductions, but will still be required to pay interest on the amount that should have been withheld for the period commencing on the date on which the payment was made till the date on which the recipient resident furnishes its return of income.

The Finance Bill proposes extending this flexibility to similar situations involving payments to non-resident recipients as well i.e. Section 40(a)(i) of the IT Act will be suitably amended to provide that a payer, who had paid money to a non-resident, will not be considered as assessee-in-default if the non-resident recipient filed his return of income and disclosed the sum received.

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SECTION B:

ANALYSIS OF THE PROPOSED CHANGES IN INDIRECT TAXES

I. SUBSTANTIVE CHANGES TO CUSTOMS ACT

i. Import/export procedures

Section 41(1) of the Customs Act is proposed to be amended to empower the Government to notify persons, other than persons in charge of conveyance, to furnish departure manifest or export manifest, as the case may be applicable.

ii. Robust verification of identity

A new Chapter XIIB is proposed to be introduced, incorporating provisions for verification of identity, when considered necessary in the interest of Revenue or to prevent smuggling.

Taking cognizance of the Supreme Court's decision to not make Aadhaar number mandatory in all cases, the verification may be undertaken either by furnishing an Aadhaar number or any other alternate documents, as may be prescribed.

In cases of failure to submit documents or information or a failed authentication, the provision proposes to empower the Principal Commissioner/ Commissioner of Customs to suspend the clearance of imported goods, sanctioning of refund, drawback, duty exemption, license or registration, etc.

With such robust verification proposals, the Government seems very determined in its agenda of preventing tax evasion and ensuring maximum compliance.

iii. Enhanced power of proper officers

Currently, where the proper officer has a reason to believe that a person has secreted any good liable for confiscation in his body, he is only empowered to detain and produce such person before the magistrate for scanning or screening without any delay.

The Finance Bill now proposes to substitute Section 103(1) and 103(6) of the Customs Act to empower proper officers to conduct scanning or screening of such person at the earliest, subject to the approval of Deputy or Assistant Commissioner of Customs as well as the consent of such person. Thereafter, the proper officer would be required to forward the report of the same to the nearest magistrate if the goods appear to be secreted inside his body, without any delay.

It is pertinent to note that the lack of such power with the proper officer results in inadvertent delays at the execution level. Additionally, detention of a person till he is produced before the magistrate has also raised concerns of harassment. Hence, incorporation of such a provision to empower the proper officers comes as a boon to both, the customs authorities and the accused.

iv. Extension of extra territorial power

Section 104 of the Customs Act was earlier amended *vide* the Finance Act, 2018 to empower the customs authorities to arrest any person in relation to certain offences mentioned therein, till the Indian Customs Waters (extra territorial jurisdiction). Prior to this amendment in 2018, such powers were limited to arrest a person only within the territory of India.

It is now proposed to amend Section 104(1) of the Customs Act to further extend the extra-territorial jurisdictional power of the customs officer. In terms of the proposed amendment, the customs officer can now arrest a person in Indian Customs waters as well as outside India, having committed any of the specified offences mentioned therein.

v. Custody of seized goods

It is proposed to substitute the existing *Proviso* to Section 110(1) of the Customs Act with two *Provisos* so as to extend the power of the proper officer to grant custody of seized goods, where transportation or physical possession of such goods is not possible. Such custody can be given to the owner, beneficial owner, person holding himself to be the importer or person from whose custody goods have been seized, subject to the condition that such goods cannot be removed or otherwise dealt with, without the permission of such officer.

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vi. Attachment of Bank Account

The Finance Bill also proposes to insert Section 110(5) of the Customs Act to empower the proper officer to provisionally attach any bank account for the purpose of safeguarding the interest of the revenue or prevention of smuggling, for a period not exceeding six months. Currently, customs officers do not have any such powers. Accordingly, corresponding amendments are also proposed to Section 110A of the Customs Act to enable the adjudicating authority to release the bank accounts provisionally attached under Section 110 of the Customs Act.

vii. Prosecution and enhanced penalty

The Finance Bill has also proposed enhanced prosecution and penalty for various offences under the Customs Act.

To begin with, the Finance Bill has proposed to amend Section 104(4) of the Customs Act to extend the list of cognizable offences as well as non-bailable offences to include new offences, such as, attempting to fraudulently avail benefits under duty drawback or exemption or duty scrips, licenses or authorization.

The maximum limit of penalty leviable under Section 117 of the Customs Act, for contravention of any provisions of the customs laws, is also proposed to be enhanced to INR 4,00,000/- from the existing penalty of INR 1,00,000/-.

The *Proviso* to Section 125(1) of the Customs Act is proposed to be amended to clarify that no fine in lieu of confiscation shall be imposed on assessees, who pay the duty liability along with interest, after the pre-notice consultation.

Further, a new clause (e) is proposed to be inserted under Section 135(1) of Customs Act to make the obtaining and utilisation of duty scrips, licenses or authorization, by fraud, collusion, wilful misstatement or suppression of facts, a punishable offence, if the duty relatable to utilisation of the such duty scrips, licenses or authorization exceeds INR 50,00,000/-.

An amendment has also been proposed in Section 158 of the Customs Act to enhance the extent of penalty which may be levied on any person for contravention or failure in compliance with the provisions of rules or regulations, from INR 50,000/- to INR 2,00,000/-.

With such strict prosecution and penalty provision, the Government seems to be very strongly determined to penalize evasion of customs duties. Insertion of such provisions in the Customs Act would certainly cause a significant reduction in such offences.

viii. Enabling and Retrospective Amendments

It is proposed to amend Section 149 of the Customs Act so as to empower the Board to make regulations specifying time, form, manner, restrictions and conditions for amendment of any document presented before the Customs House. Further, Section 157 of the Customs Act is also proposed to be amended to similarly empower the Board to make regulations for the proposed provisions above.

II. SUBSTANTIVE CHANGES IN THE CUSTOMS TARIFF ACT

i. Anti-Circumvention provision

Section 9(1A) is proposed to be inserted in the Customs Tariff Act to empower the Central Government to extend the countervailing duty to such articles where it is of the opinion that circumvention of countervailing duty has taken place through alteration of name/description etc. of the articles.

ii. Amendment in First Schedule

The Finance Bill also provides that the First Schedule to the Customs Tariff Act shall be amended in the manner specified for Fourth Schedule, and Fifth Schedule effective from the date of notification, as the case may be.

iii. Appeal in specified cases

Section 9C(1) of the Customs Tariff Act is proposed to be amended to provide for appeals to the CESTAT against orders of determination/review regarding imposition of safeguard duty.

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iv. Retrospective amendments

Retrospective effect is given to Notification No G.S.R. 665 (E), dated July 5, 2016, to exclude expanded Polypropylene beads and ter-polymer from the levy of anti-dumping duty from March 8, 2016 to July 5, 2016.

Retrospective amendments were made to certain notifications to change the tariff classification of Stearic acid from "3823 10 90" to "3823 11 00". An amendment is also proposed to give retrospective effect to Notification No G.S.R. 1270(E), dated December 31, 2018, to extend the benefit of IGST exemption on the temporary importation of vehicles from July 1, 2017.

Retrospective effect is also given to Notification number G.S.R. 186(E), dated February 22, 2016 which amended, the description of 'all goods' under Chapter 73 to 'all goods other than screws, sim sockets and other mechanical items for cellular mobile phones'. Such change will now be effective from October 21, 2016 itself.

III. CHANGES IN RATES OF CUSTOMS DUTY ON VARIOUS GOODS

i. Exemption on import of defense weapon

Import of various goods *inter-alia* including steam turbine, turbojets, utility helicopter, airplanes, ships, boats, electric generating sets, vessels, artillery weapons, rockets, etc., by the Ministry of Defence or Defence Forces has been exempted from the levy of customs duty, subject to specified conditions.

ii. Other rate reduction

a) The additional customs duty on the import of petrol and high speed diesel oil has been reduced to INR 9 per litre.

b) The effective rate of basic customs duty on petroleum crude has been increased from nil to INR 1 per tonne.

c) Certain capital goods to be used for manufacture of specified items by IT and electronic industry are also exempted from the levy of customs duties.

d) Other item wise changes in rates of duty have been tabularized as below:

Sr. No.	Description	Pre-Budget rate	Post Budget rate	Change
	Construction Materials			
1.	Floor covering of plastics, Wall or ceiling coverings of plastics	10%	15%	↑
2.	Ceramic roofing tiles and ceramic flags and pavings, hearth or wall tiles	10%	15%	↑
3.	Base metal fittings, mountings and similar articles suitable for furniture, doors, staircases, windows, blinds or hinge for auto mobiles	10%	15%	↑
	Precious Metals			
4.	Silver (including silver plated with gold and platinum) unwrought in semi-manufactured forms or in powdered form; base metals clad with silver, not further worked than semi-manufactured; Gold; Platinum; Base metals clad with silver, gold or platinum; waste and scrap of precious metals	10%	12.5%	↑

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Sr. No.	Description	Pre-Budget rate	Post Budget rate	Change
	Precious Metals			
4.	Silver (including silver plated with gold and platinum) unwrought in semi-manufactured forms or in powdered form; base metals clad with silver, not further worked than semi-manufactured; Gold; Platinum; Base metals clad with silver, gold or platinum; waste and scrap of precious metals	10%	12.5%	↑
	Automobile Parts			
5.	Friction material and articles thereof (for example, sheets, rolls, strips, segments, discs, washers, pads), not mounted, for brakes, for clutches or the like, with a basis of asbestos, of other mineral substances or of cellulose, whether or not combined with textile or other materials	10%	15%	↑
6.	Glass mirrors, whether or not framed, including rear-view mirrors	10%	15%	↑
7.	Locks of a kind used in motor vehicles 10%15%↑			
8.	Lighting or visual signaling equipment of a kind used in bicycles or motor vehicles; horns for vehicles; windscreen wipers, defrosters and demisters, Sealed beam lamp units and other lamps for automobiles; chassis fitted with engines, for the motor vehicles of headings 8701 to 8705; bodies (including cabs), for the motor vehicles of Headings 8701 to 8705	10%	15%	↑
9.	Oil or petrol filters for internal combustion engines; Intake air-filters for internal combustion engines; air purifiers or cleaners and other filtering or purifying machinery and apparatus for gases; parts of visual or sound signalling equipment for bicycles or motor vehicles	7.5%	10%	↑
10.	Other visual or sound signalling equipment for bicycles or motor vehicles	7.5%	15%	↑
11.	Catalytic convertor (all goods under these tariff items other than	5%	10%	↑
12.	Completely Built Unit (CBU) of vehicles falling under heading	25%	30%	↑
13.	Following parts of electric vehicles: - (i) E-Drive assembly, (ii) On board charger, (iii) E-compressor and (iv) Charging Gun	Applicable rate	Nil	↓

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Sr. No.	Description	Pre-Budget rate	Post Budget rate	Change
	Electronics and Electrical Equipment			
14.	Indoor and outdoor unit of split –system air conditioner	10%	20%	↑
15.	Loudspeaker	10%	15%	↑
16.	Digital Video Recorder (DVR) and Network Video Recorder (NVR); CCTV camera and IP camera	15%	20%	↑
17.	Optical Fibres, optical fibre bundles and cables	10%	15%	↑

e) Other proposed item wise changes in rates of duty have been tabularized as below :

Sr. No.	Description	Pre-Budget rate	Post Budget rate	Change
	Medical Devices			
1.	Raw material, parts or accessories for use manufacture of artificial kidneys, disposable sterilized dialyzer and micro-barrier of artificial kidney	Applicable rate	Nil	↓
	Food Processing			
2.	Cashew kernel broken	Rs. 60/ Kg or 45%,whichever is higher	70%	↑
3.	Cashew kernel whole, Cashew nuts shelled, others Oils and associated chemicals	Rs. 75/ Kg or	70%	↑
4.	Palm stearin and other oils, having 20% or more free fatty acid, Palm Fatty Acid Distillate and other industrial monocarboxylic fatty acids, acid oils from refining, for use in manufacture of soap and oleo chemicals.	Nil	7.5%	↑
	Petroleum and Petrochemicals			
5.	Petroleum Crude	Nil	Re. 1 per tonne	↑
6.	Naphtha	5%	4 %	↓
7.	Ethylene dichloride (EDC)	2%	Nil	↓
8.	Methyloxirane (Propylene Oxide)	7.5%	5%	↓
	Plastic and Rubber			
9.	Poly Vinyl Chloride	7.5%	10%	↑
10.	Articles of plastics	10%	15%	↑
11.	All goods i.e. Butyl Rubber; Chlorobutyl rubber or bromobutyl rubber	5%	10%	↑
	Paper and Paper Products			
12.	Newsprints, uncoated paper used for printing of newspapers, lightweight coated paper used for printing of magazines	Nil	10%	↑

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Sr. No.	Description	Pre-Budget rate	Post Budget rate	Change
13.	Printed books (including covers for printed books) and printed manuals, in bound form or in loose-leaf form with binder, executed on paper or any other material including transparencies.	Nil	5%	↑
	Precious Metals			
14.	Silver dore bar, having silver content not exceeding 95%	8.5%	11%	↑
15.	Gold dore bar, having gold content not exceeding 95%	9.35%	11.85%	↑
16.	Gold (excluding ornaments studded with stones or pearls) imported by an eligible passenger as baggage; Silver (excluding ornaments studded with stones or pearls) imported by an eligible passenger as baggage	10%	12.5%	↑
	Textiles			
17.	Wool Fibre & Tops	5%	2.5%	↓
	Iron and Steel			
18.	Stainless steel in ingots or other primary forms; semi-finished products of stainless less; Other alloy steel in ingots or other primary forms; semi-finished products of other alloy steel	5%	7.5%	↑
19.	Inputs for the manufacture of CRGO steel:- a) MgO coated cold rolled steel coils b) Hot rolled coils c) Cold-rolled MgO coated and annealed steel d) Hot rolled annealed and pickled coils Cold rolled full hard	5%	2.5%	↓
20.	Amorphous alloy ribbon	10%	5%	↓
21.	Wire of other alloy steel (other than INVAR)	5%	7.5%	↑
22.	Cobalt mattes and other intermediate products of cobalt metallurgy	5%	2.5%	↓
	Capital Goods			
23.	Stone crushing (cone type) plants for the construction of roads	Nil	7.5%	↑
24.	Capital goods used for manufacturing of following electronic items, namely- (I) Populated PCBA (ii) Camera module of cellular mobile phones (iii) Charger/Adapter of cellular mobile phone (iv) Lithium Ion Cell (v) Display Module (vi) Set Top Box Compact Camera Module	Applicable rate	Nil	↓

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IV. CHANGES IN EXCISE DUTY

1. In order to end the dispute regarding levy of a cess in the absence of any excise duty, the excise duty on petroleum crude has been revised from nil to INR 1 per tonne.

2. Rate changes have been introduced for tobacco and tobacco products. The revised effective rate of excise duties are as under :

Sr. No.	Description	Pre-Budget rate	Post Budget rate	Change
Cigarettes				
1.	Cigarettes classifiable under Headings 24022010, 24022020, 24022030, 24022040 and 24022050 and Cigarettes of tobacco substitute	Nil	INR 5 per thousand	↑
2.	Any other type of cigarettes classifiable under Headings 24022090	Nil	INR 10 per thousand	↑
3.	Hookah, gudaku tobacco , homogenized, reconstituted tobacco, chewing tobacco, preparation containing chewing tobacco, jarda scented tobacco, snuff, preparation containing snuff, tobacco extracts, and other tobacco classifiable under Heading 24039900	Nil	0.5%	↑
4.	Biris other than paper rolled biris, manufactured without the aid of	Nil	5 paisa per thousand	↑
Precious Metals				
5.	Silver; Gold; Platinum; Base metals clad with silver, gold or platinum; Waste and scrap of precious metals.	10%	12.5%	↑

3. Rate changes have also been introduced for petroleum products still under Central Excise. The revised effective rate of excise duties are as under:

Sr. No.	Item	Pre-Budget				Post-Budget			
		Basic Excise Duty	Additional Excise Duty	Special Additional Excise Duty	Total Excise Duty	Basic Excise Duty	Additional Excise Duty	Special Additional Excise Duty	Total Excise Duty
1.	Petrol (unbranded)	2.98	7	8	17.98	2.98	8	9	19.98
2.	Petrol (branded)	4.16	7	8	19.16	4.16	8	9	21.16
3.	Diesel (unbranded)	4.83	1	8	13.83	4.83	2	9	15.83
4.	Diesel (branded)	7.19	1	8	16.19	7.19	2	9	18.19

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V. AMENDMENTS TO FINANCE ACT, 1994

i. Retrospective Exemptions

In order to bring parity and extend the benefit of exemptions currently available for certain services to similar services provided in the pre-GST regime, the following retrospective exemptions are proposed:

a) Services provided by way of issuing liquor licence, against consideration in the form of licence fee or application fee or by whatever name, by the State Government during the period from April 1, 2016 to June 30, 2017.

b) Services provided by the Indian Institute of Management to their students by way of two-year full time Post Graduate programmes, fellow programme in Management and five year integrated programme in Management during the period from July 1, 2003 to March 31, 2016.

c) Services of long term lease of 30 years or more for development of infrastructure in financial business where consideration is paid in the form of an upfront amount called premium, salami, etc., during the period from October 1, 2013 to June 30, 2017.

Applications for claim of refund of service tax paid in relation to the foresaid amendment are to be made within 6 months from the date on which the Finance Bill 2019 receives the assent of the President.

VI. SUBSTANTIVE CHANGES TO CENTRAL GOODS AND SERVICES TAX ACT

The following changes are proposed to be made to the GST legislations pursuant to the GST Council meeting. Unless otherwise provided, changes will come into effect on the date the Finance Bill receives the assent of the President.

i. Establishment of a national appellate authority

In order to implement the recommendations of the GST Council to create and operationalize NAAR for hearing appeals in conflicting AAAR rulings in different States/Union Territory, Sections 101A, 101B and 101C are proposed to be inserted to provide for provisions in relation to constitution, procedure for appeal and order, respectively. The NAAR will be constituted from the date, as may be specified in the notification issued by the Central Government in this regard.

The Government proposes that the NAAR should consist of a President (Judge of the Supreme Court or Chief Justice/judge of High Court) and one Technical Member each from the Central and the State. The proposed provisions also provide for appointments, salary, term and termination etc.

An appeal before the NAAR can be filed on the question on which conflicting rulings are given by the AAARs within 30 days from the receipt of such order by an applicant. Such limitation will extend to 90 days for appeal by the officer of the State. The NAAR will have to pass an order within 90 days from the filing of such appeal.

The Finance Bill also proposes to amend the definition of 'adjudicating authority' enunciated in Section 2(4) of the CGST Act to exclude NAAR from the ambit of the adjudicating authority.

ii. Composition levy

An Explanation is proposed to be added to Section 10(1) of the CGST Act to clarify that the value of turnover for computing the composition tax would not include the value of the exempt supply of services provided by way of extending deposits, loans, etc., where consideration is represented by way of interest or discount, etc.

It is also proposed that the casual taxable persons as well as non-resident taxable persons would be barred from availing the benefit of composition scheme.

An alternate composition scheme has now been proposed to be introduced for the suppliers of services as well as suppliers of goods and services having an annual turnover not exceeding INR 50,000/-. It is proposed that the rate of composition levy for such suppliers should not exceed 3%.

Additionally, two Explanations are proposed to be added to clarify that the term 'aggregate turnover' would include the value of supplies made from April 1 of a financial year upto the date when he becomes liable for registration under this Act excluding the value of exempt supplies of services. On the other hand, the 'turnover in State or Union territory' would not include the above supplies.

While the proposed amendment brings relief to suppliers engaged in supply of services and the

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composition suppliers, it creates disparity between the suppliers of goods and the suppliers of services, and would defeat the ideology of having a one nation one tax.

iii. **Enhanced threshold for registration**

The threshold for registration for suppliers exclusively engaged in supply of goods, from INR 20,00,000/- to INR 40,00,000/-. An Explanation is also proposed to be inserted to clarify that the supplier engaged in supply of exempt services of extending loans, deposits and advances, along with goods will also be eligible for enhanced threshold.

iv. **Robust verification of identity**

With a view to implement a robust verification system, the Finance Bill also proposes to include provisions in Section 25 of the CGST Act to provide a mandatory requirement of authentication by every existing registered person by way of furnishing Aadhaar, or in the absence of same, an alternate and viable means of identification, in the manner as may be prescribed. In case of failure to do, the registration allotted to such person will be deemed to be invalid.

It is also proposed that from the effective date, mandatory authentication would be a pre-requisite for every individual and persons other than individual, for being eligible to obtain registration under the GST legislations**.**

v. **Promotion of digital payment**

Section 31A is proposed to be incorporated in the CGST Act to empower the Government to make it mandatory for a specified class of suppliers to offer an option of digital payments to their recipients with a view to check black money transactions and also promote less cash flow in the economy.

vi. **Returns**

In order to incorporate the proposal of the GST Council to ease the compliance by medium and small scale suppliers, the Government has also proposed to substitute the specified timeline of 18 days with such time as may be prescribed, for filing of return for the suppliers of composition levy.

In furtherance to the amendments in the composition levy scheme, the Finance Bill also proposes to substitute Sub-section 7 of Section 39 of the CGST Act to exclude suppliers opting for the composition levy, and other suppliers who are required to file quarterly return, from mandatory requirement of payment of tax on the last date of filing of return.

Such amendments would allow the Government to give an option of monthly or quarterly return filing and tax payments to the suppliers of composition levy.

Further a *Proviso* is proposed to be inserted in Section 44 of the CGST Act to empower the Commissioner to extend the time limit for furnishing annual return for such class of registered persons, as may be prescribed.

vii. **Cross utilization of taxes**

To address the issue of accumulation of credits and make it easier for the suppliers to undertake supplies, it is proposed in the Finance Bill that any amount of tax, interest, penalty, fee, or any other amount available under any head on the common portal can be transferred to any other head of the portal to increase the cross utilization, subject to the conditions prescribed in this regard by way of incorporation of Section 53A of the CGST Act.

The Finance Bill also proposes to add a corresponding provision for refund by the Central Government itself. It is proposed to insert a new sub-section in Section 54 of the CGST Act to empower the Central Government for disbursal of refund in respect of State taxes.

viii. **Interest on delayed payment**

A *Proviso* is proposed to be inserted to Section 50 of the CGST Act to provide that the interest on delayed payments will only be applicable on the amount which is paid through cash, except when the return reflecting such tax inability is filed after the initiation of an assessment proceeding for such period.

The proposed amendment would bring much needed clarity and put a rest to a number of litigation currently pending before various judicial forums.

ix. **Extension of time limit for TCS**

The Government has also proposed to insert three *Provisos* in Section 52 of the CGST Act to empower the Commissioner to extend the time limit for furnishing of statement and annual statement for such class of suppliers as may be prescribed.

x. **Rate of penalty on profiteering amount**

Pursuant to the extension of the sunset period of anti-profiteering authority and decision on the applicable rate of penalty on profiteering by the GST Council, the Government proposed to incorporate a provision under the CGST Act to provide for the applicable rate for levy of penalty on the profiteered amount. It is

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proposed that no penalty would be levied on profiteering if such amount is deposited within 30 days of passing of order. However, no benefit of waiver of penalty is provided to suppliers who wish to refund the profiteered amount to their recipients.

VII. SABKA VISHWAS (LEGACY DISPUTE RESOLUTION SCHEME), 2019

The Finance Bill proposes to introduce a dispute resolution cum amnesty scheme called the Sabka Vishwas Legacy Dispute Resolution Scheme ("**Dispute Resolution Scheme**") with the objective of quick and effective closure of legacy cases of Central Excise, Service Tax and Cesses.

The Dispute Resolution Scheme covers disputes of federal taxes which were subsumed into GST such as Central Excise, Service Tax and Cesses etc. All persons are eligible to avail benefit of the Dispute Resolution Scheme, except:

a) those convicted under the enactment in the case for which he intends to make declaration, or

b) those who have filed an appeal before the appellate forum and final hearing has taken place on or before the June 30, 2019.

The relief under the scheme varies from 40% to 70% of the tax dues for cases other than voluntary disclosure cases, depending on the quantum of tax involved. The scheme also provides relief from payment of interest and penalty. Additionally, a person discharged under the scheme shall not be liable for prosecution.

The Dispute Resolution Scheme envisages the constitution of a designated committee to look into the authenticity of the declarations made. The composition of this committee is to be prescribed as per rules to be laid down by the Central Government on a later date. To ensure effective compliance, strict time limits for the issue of certificate by the designated committee and payment by the declarant have been prescribed. Such certificate would be considered conclusive under the Scheme and cannot be disputed. Further, any amount paid (by the taxpayer) under the Scheme cannot be paid through ITC nor can it be refunded under any circumstance. Thus, ideally, it aims at completion of the entire process within 150 days.

The Scheme shall become available from a date to be notified by the Government.

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GLOSSARY

ABBREVIATION	MEANING
AE	Associated Enterprise
AIF	Alternative Investment Funds
ALP	Arm’s Length Price
AMT	Alternate Minimum Tax
AO	Assessing Officer
AOP	Association of Person
APA	Advance Pricing Agreement
AY	Assessment Year
BBT	Buy Back Tax
Black Money Act	Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015
BEPS	Base Erosion and Profit Sharing
BOI	Body of Individual
Budget	Union Budget 2018-2019
Companies Act	Companies Act, 2013
CbCR	Country by Country Reporting
CBDT	Central Board of Direct Taxes
CIT(A)	Commissioner of Income Tax (Appeals)
CCIT	Chief Commissioner of Income Tax
CGST Act	Central Goods and Services Tax Act, 2017
CPSE	Central Public Sector Enterprise
CIT(A)	Commissioner of Income Tax(Appeal)
CWT(A)	Commissioner of Wealth Tax(Appeal)
Courts	Courts of competent jurisdiction in India
CET Act	Central Excise Tariff Act, 1985
Customs Act	Customs Act, 1962
CT Act	Customs Tariff Act, 1975
CTT	Commodities Transaction Tax
DAPE	Dependent Agent Permanent Establishment
DDT	Dividend Distribution Tax
DTAA	Double Taxation Avoidance Agreement
ECB	External Commercial Borrowings
FATCA	Foreign Account Tax Compliance Act
FI	Financial Institutions
FII	Foreign Institutional Investor

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GLOSSARY

ABBREVIATION	MEANING
Finance Bill	Finance Bill, 2019
FM	Finance Minister
FMV	Fair Market Value
FoF	Funds of Funds
FPI	Foreign Portfolio Investment
FTS	Fee for Technical Services
FY	Financial Year
GDR	Global Depository Receipt
GST	Goods and Services Tax
HC	High Court
HUF	Hindu Undivided Family
IBC	Insolvency and Bankruptcy Code, 2016
IDS	Income Declaration Scheme
IFSC	International Financial Services Centre
IGST	Integrated Goods and Services Tax
Ind AS	Indian Accounting Standard
INR	Indian National Rupee
ITD	Income Tax Department
ITAT	Income Tax Appellate Tribunal
IT Act	Income Tax Act, 1961
IT Rules	Income Tax Rules, 1962
ITR	Income Tax Reporter
LLP	Limited Liability Partnership
LTCG	Long-Term Capital Gains
MAT	Minimum Alternative Tax
Memorandum	Memorandum to the Finance Bill, 2019
MSME	Micro, Small, Medium Enterprises
MNE	Multinational Enterprise
NBFC	Non Banking Financial Companies
NHAI	National Highway Authority of India
NCLT	National Company Law Tribunal
OECD	Organization for Economic Cooperation and Development
PAN	Permanent Account Number
PBPT	Prohibition of Benami Property Transaction Act, 1988

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GLOSSARY

ABBREVIATION	MEANING
PE	Permanent Establishment
POEM	Place of Effective Management
RBI	Reserve Bank of India
RDB	Rupee Denominated Bonds
SC	Supreme Court
SFT	Statement of Financial Transactions
SEZ	Special Economic Zone
STCG	Short-Term Capital Gains
STT	Securities Transaction Tax
TDS	Tax Deducted at Source

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