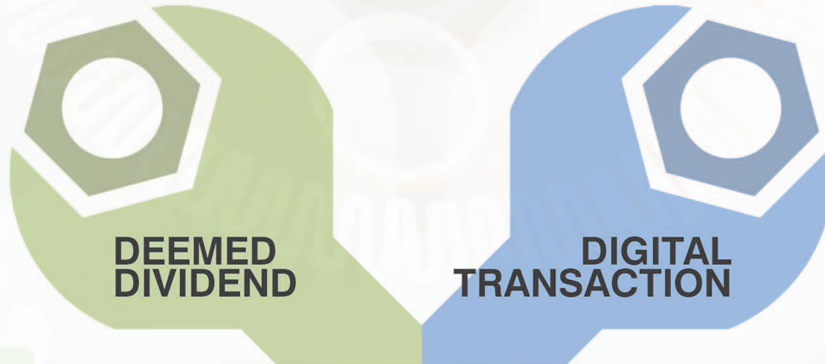
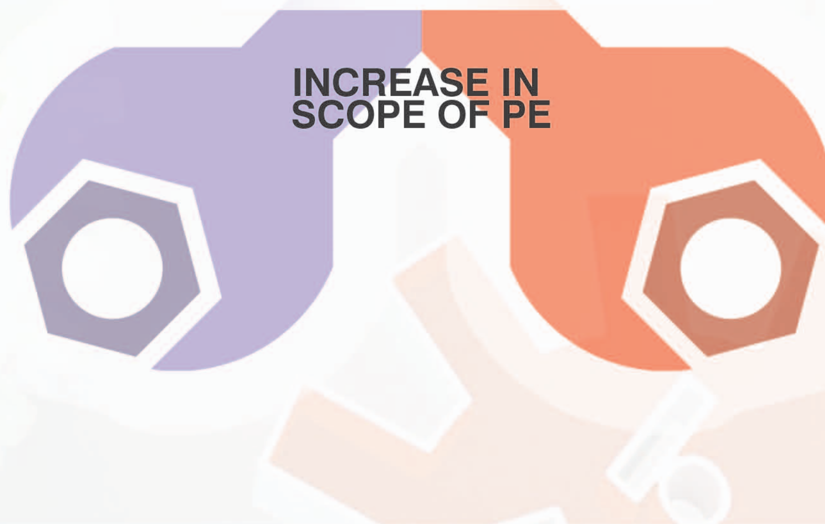
The Finance Bill 2018

Ek Samiksha...



TIGHTENING LOOSE-ENDS

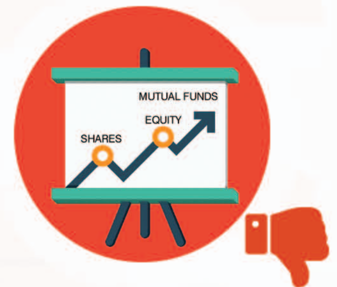


CORPORATE TAX RATES

CONCESSION TO SENIOR CITIZENS

ICDS REINSTATED

DDT & LONG TERM GAIN TAX



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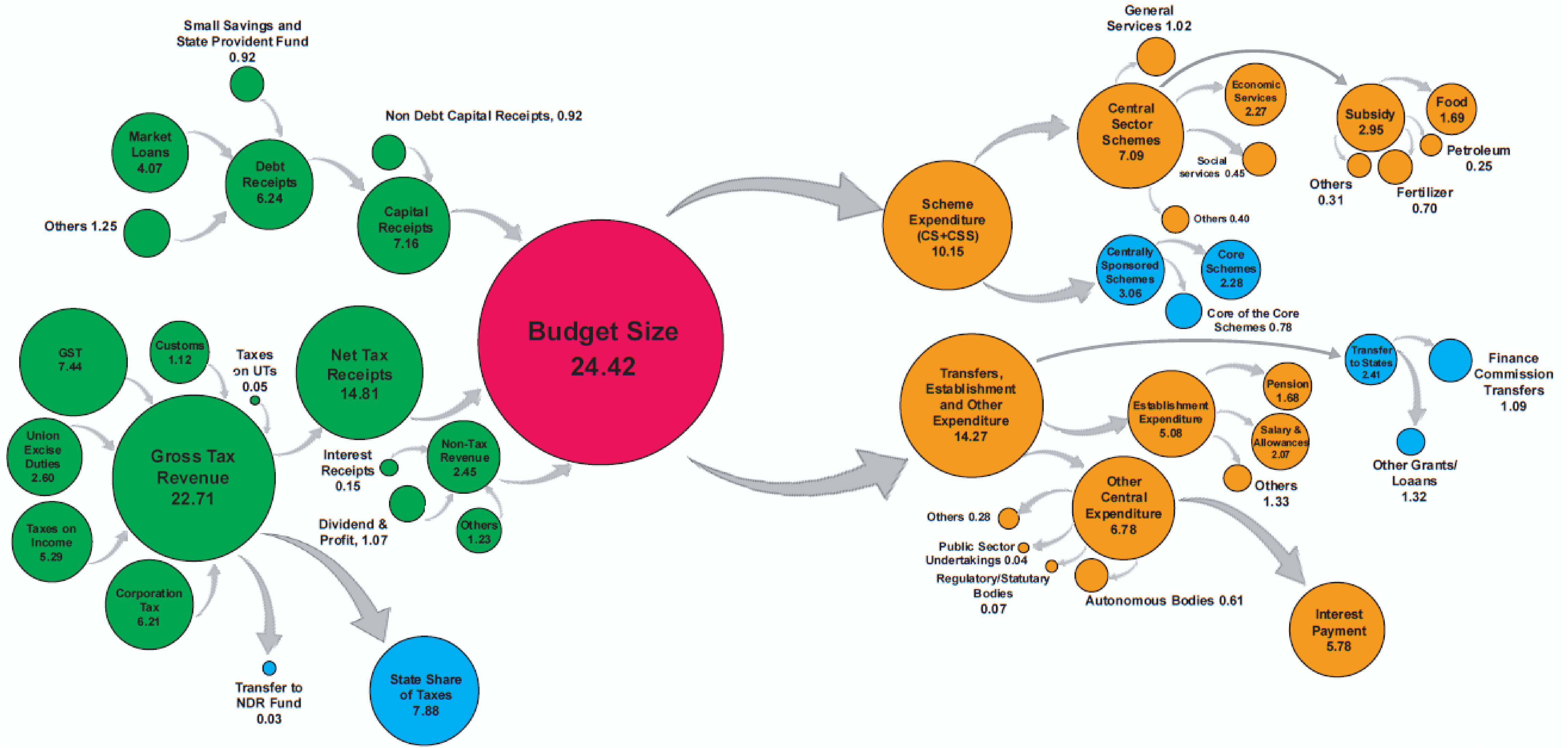
S. S. JHUNJHUNWALA & CO. [CHARTERED ACCOUNTANTS]

204/306, AKRUTI ARCADE, J.P. ROAD, OPP. WADIA HIGH SCHOOL, ANDHERI (WEST), MUMBAI - 400053. MAHARASHTRA. INDIA.

+91 - 22 - 6127 7474 / 5 www.ssjco.in ssjco@ssjco.in

Budget Profile



5th February, 2018

Dear Madam/Sir,

The Finance Minister Mr. Arun Jaitley presented his fifth budget on 1st February, 2018. This being labeled as election budget, there were lots of wishes and expectations. Some may have been fulfilled, some may not have been fulfilled.

A very good sign of this year's finance bill is that it talks about "accountability of the tax administration" in the opening paragraph. Hope, this is carried out to the spirit of the letter.

Also, as a responsible citizen of a country, we should also not complain about immaterial things. Undoubtedly, there is an increase in individual tax burden due to increase in cess from 3% to 4%. When a person is earning gross income of say Rs. 10 lakhs, is the additional tax payable of Rs. 1,125/- (i.e. less than Rs. 100/- per month), so material to make a complaint about it?

Like all these years, we have made an attempt to appraise our esteemed clients of the important amendments as proposed by the Finance Bill, 2018 in the arena of Income Tax Act, 1961.

This study note of ours titled "The Finance Bill, 2018 – Ek Samiksha" is enclosed herewith. After you had an opportunity to go through the same, we may discuss this further at your convenience.

Happy Reading!

With regards,

Yours truly,
Team-S. S. Jhunjhunwala & Co.

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In this note an attempt has been made to summarize various proposals of The Finance Bill, 2018. Specific guidance may be obtained before acting on the proposals and provisions.

It should be noted that the Finance Bill, 2018 will be discussed in the Parliament and is subject to any amendments that may be made pursuant to such discussion.

Now a days, two trends are seen, roll back of certain proposals and putting some new proposals at the time of enactment of the Bill. So when the Bill is enacted please have a relook at it to see changes between “Bill” and “Act”

Budget at a Glance

Rs. in crores

	Particulars	2016-2017	2017-2018	2017-2018	2018-2019
		Actuals	Budget	Revised	Budget
			Estimates	Estimates	Estimates
1	**Revenue Receipts**	**13,74,203**	**15,15,771**	**15,05,428**	**17,25,738**
2	Tax Revenue(Net to Centre)	11,01,372	12,27,014	12,69,454	14,80,649
3	Non-Tax Revenue	2,72,831	2,88,757	2,35,974	2,45,089
4.	**Capital Receipts (1)**	**6,00,991**	**6,30,964**	**7,12,322**	**7,16,475**
5	Recoveries of Loans	17,630	11,933	17,473	12,199
6	Other Receipts	47,743	72,500	1,00,000	80,000
7	Borrowing and Other Liabilities (2)	5,35,618	5,46,531	5,94,849	6,24,276
8	**Total Receipts (1+4)**	**19,75,194**	**21,46,735**	**22,17,750**	**24,42,213**
9	**Total Expenditure (10+13)**	**19,75,194**	**21,46,735**	**22,17,750**	**24,42,213**
10	On Revenue Account of which	16,90,584	18,36,934	19,44,305	21,41,772
11	Interest Payments	4,80,714	5,23,078	5,30,843	5,75,795
12	Grants in Aid for creation of captial	1,65,733	1,95,350	1,89,245	1,95,345
13	On Capital Account	2,84,610	3,09,801	2,73,445	3,00,441
14	**Revenue Deficit (10-1)**	**3,16,381**	**3,21,163**	**4,38,877**	**4,16,034**
		(2.1)	**(1.9)**	**(2.6)**	**(2.2)**
15	**Effective Revenue Deficit (14-12)**	1,50,648	1,25,813	2,49,632	2,20,689
		(1.0)	**(0.7)**	**(1.5)**	**(1.2)**
16	Fiscal Deficit [9-(1+5+6)]	5,35,618	5,46,531	5,94,849	6,24,276
		(3.5)	**(3.2)**	**(3.5)**	**(3.3)**
17	Primary Deficit (16-11)	54,904	23,453	64,006	48,481
		(0.4)	**(0.1)**	**(0.4)**	**(0.3)**

1 Excluding receipts under Market Stabilisation Scheme

2 Includes draw - down of Cash Balance

Notes:

(i) GDP for BE 2018-2019 has been projected at Rs. 18722302 crore assuming 11.5% growth over the estimated GDP of Rs. 16784679 crore for 2017-18 (RE).

(ii) Individual items in this document may not sum up to the totals due to rounding off

(iii) Figures in parenthesis are as a percentage of GDP

TAX RECEIPTS

The statement below summarized, by broad categories, the estimates of tax revenue receipt over a period. The estimates include the effect of budget proposals.

(Rs. in Crores)

	2016-17 Actual	2017-18 Budget	2017-18 Revised	2018-19 Budget
Gross Tax Revenue	**1715822**	**1911579**	**1946119**	**2271242**
Corporation Tax	484924	538745	563745	621000
Taxes on Income	364604	441255	441255	529000
Wealth Tax	185	---	---	---
Customs	225370	245000	135242	112500
Union Excise Duties	382094	406900	276995	259600
Service Tax	254499	275000	79507	---
GST	---	---	444631	743900
- CGST	---	---	221400	603900
- IGST	---	---	161900	50000
- GST Compensation Cess	---	---	61331	90000
Taxes on Union Territories	4146	4679	4744	5242
Less: NCCD transferred to the NCCF/NDRF	**6450**	**10000**	**3660**	**2500**
Less: State's share	**608000**	**674565**	**673005**	**788093**
Centre's Net Tax Revenue	**1101372**	**1227014**	**1269454**	**1480649**

FINANCE BILL, 2018 – AN INTRODUCTION

Finance Bill

The proposal of government for levy of new taxes, modification of the existing tax structure or continuance of the existing tax structure beyond the period approved by the Parliament are submitted to the Parliament through this bill. It is the key document as far as taxes are concerned.

The Finance Bill, 2018 relating to direct taxes seek to amend the Income-tax Act, 1961 to continue to provide momentum to the buoyancy in direct taxes through deepening and widening of the tax base, reducing the corporate tax rate for micro, small and medium enterprises, promoting horizontal equity in personal income-tax and enhancing the effectiveness, transparency and accountability of the tax administration.

INCOME TAX PROVISIONS

In this chapter, we have dealt with the proposed amendments to Income Tax Act, 1961 (hereinafter referred to as “the Act”) by Finance Bill, 2018 (hereinafter referred to as Bill). We have made references from Notes on Clauses and Memorandum explaining the provisions of the Bill.

In this study note, we have made an attempt to put related amendments under one topic head and reference of the same is given at appropriate places.

1. Effective Dates:

- The amendments in income tax provisions are proposed to be effective from 1st April, 2019 relevant to the Assessment Year 2019–2020 unless otherwise specified.
- The amendments proposed in procedural section are effective for the proceedings taken on or after the date as specified.
- The amendments made in substantive sections are effective from the first day of the Assessment Year from which it is proposed to be effective.

2. Rates of Taxes:

a) There is no change in basic limit and slab rates for the financial year 2018-19 relevant to Assessment Year 2019-20 for all categories of tax payers; however there is a change in the rate of the cess.

° I am minority in India, I want reservation. We are only 2.53% of the population...

... my caste is 'Income Tax payer'

For Individual and HUF:-

Existing		Proposed	
Taxable income	**Rate of tax**	**Taxable income**	**Rate of tax**
Upto Rs. 2,50,000	NIL	**No Change**	
Rs. 2,50,001 to Rs. 5,00,000	5% on amount exceeding 2,50,000		
Rs. 5,00,001 to Rs. 10,00,000	Rs. 12,500/- + 20% on amount exceeding Rs. 5,00,000/-		
Above Rs. 10,00,000	Rs. 1,12,500/- + 30% on the amount exceeding Rs. 10,00,000/-		

Individual who is of the age of 60 years or more but less than 80 years:-

Existing		Proposed	
Taxable income	**Rate of tax**	**Taxable income**	**Rate of tax**
Upto Rs. 3,00,000	NIL	**No Change**	
Rs. 3,00,001 to Rs. 5,00,000	5% on amount exceeding 3,00,000		
Rs. 5,00,001 to Rs. 10,00,000	Rs. 10,000/- + 20% on amount exceeding Rs. 5,00,000/-		
Above Rs. 10,00,000	Rs. 1,10,000/- + 30% on the amount exceeding Rs. 10,00,000/-		

Individual who is of the age of 80 years or more:-

Existing		Proposed
Taxable income	**Rate of tax**	**No Change**
Upto Rs. 5,00,000	NIL	
Rs. 5,00,001 to Rs. 10,00,000	20% on amount exceeding Rs. 5,00,000/-	
Above Rs. 10,00,000	Rs. 1,00,000/- + 30% on the amount exceeding Rs. 10,00,000/-	

b) There is no change in rate of surcharge for the financial year 2018-19 relevant to Assessment Year 2019-20. The rates of surcharge are as under:

Existing			Proposed
Type of Tax Payer	**Income at which surcharge is leviable**	**Rate of Surcharge**	
Individual, HUF, AOP, BOI	Rs. 50 Lakhs to Rs. 1 crore	10%	**No change**
	Rs. 1 crore	15%	
Firms	Rs. 1 crore	12%	
Co-op Society	Rs. 1 crore	12%	
Local Authority	Rs. 1 crore	12%	

Existing			Proposed
Domestic Company:			**No change**
Income	Rs. 1 crore	7%	
Income	Rs. 10 crore	12%	
Foreign Company:			
Income	Rs. 1 crore	2%	
Income	Rs. 10 crore	5%	

The above rate of surcharge is applied on tax amount. Provisions for marginal relief are provided.

c) When taxable income will exceed Rs.50,00,000/-, the surcharge will be leviable on tax on total income. On incremental every Rs.1,00,000/-, the tax amount (by way of surcharge and cess there on) will increased by Rs.3,090/- along with surcharge on tax on first Rs.50,00,000/-.

Surcharge will also be levied at the appropriate rates in cases where the tax is payable u/s 115JC.

d) The education cess at the rate of 2% and secondary and higher education cess at the rate of 1% shall be discontinued. However, a new cess by the name of "Health and Education Cess" shall be levied at the rate of 4%.

The Health and Education cess is leviable on the amount of tax and surcharge. No marginal relief shall be available in respect of such Cess.

Friday, 17th August 1945
1121 ചിങ്ങം 1-ാംനു- വെള്ളിയാഴ്ച

RATES OF INCOME-TAX

A. In the case of every individual, Hindu undivided family, undivided Marumakkathayam tarawad, unregistered firm and other association of persons not being a case to which paragraph *B* of this schedule applies—

	Rate in the rupee
1. On the first Rs. 1,500 of total income ..	Nill
2. On the next Rs. 3,500 of total income ..	Eight pies
3. On the next Rs. 5,000 of total income ..	One anna
4. On the next Rs. 5,000 of total income ..	One anna six pies
5. On the balance income ..	Two annas

Provided that—

(i) no income-tax shall be payable on a total income which does not exceed Rs. 2,000.

TABLE FOR PERSONAL TAXATION

Income	All Individuals other than resident senior citizen			Resident senior citizen (Age 60 years or more but less than 80 years)		
Total Income	**Tax Pre-Budget**	**Tax Post-Budget**	**Savings in Tax / (Additional Tax)**	**Tax Pre-Budget**	**Tax Post-Budget**	**Savings in Tax / (Additional Tax)**
(Rs.)	**(Rs.)**	**(Rs.)**	**(Rs.)**	**(Rs.)**	**(Rs.)**	**(Rs.)**
3,00,000	-	-	-	-	-	-
5,00,000	12,875	13,000	(125)	10,300	10,400	(100)
10,00,000	1,15,875	1,17,000	(1,125)	1,13,300	1,14,400	(1,100)
15,00,000	2,70,375	2,73,000	(2,625)	2,67,800	2,70,400	(2,600)
20,00,000	4,24,875	4,29,000	(4,125)	4,22,300	4,26,400	(4,100)
25,00,000	5,79,375	5,85,000	(5,625)	5,76,800	5,82,400	(5,600)
30,00,000	7,33,875	7,41,000	(7,125)	7,31,300	7,38,400	(7,100)
40,00,000	10,42,875	10,53,000	(10,125)	10,40,300	10,50,400	(10,100)
50,00,000	13,51,875	13,65,000	(13,125)	13,49,300	13,62,400	(13,100)
55,00,000	16,57,013	16,73,100	(16,088)	16,54,180	16,70,240	(16,060)
60,00,000	18,26,963	18,44,700	(17,738)	18,24,130	18,41,840	(17,710)
80,00,000	25,06,763	25,31,100	(24,338)	25,03,930	25,28,240	(24,310)
85,00,000	26,76,713	27,02,700	(25,988)	26,73,880	26,99,840	(25,960)
90,00,000	28,46,663	28,74,300	(27,638)	28,43,830	28,71,440	(27,610)
95,00,000	30,16,613	30,45,900	(29,288)	30,13,780	30,43,040	(29,260)
1,00,00,000	31,86,563	32,17,500	(30,938)	31,83,730	32,14,640	(30,910)
1,10,00,000	36,86,756	37,22,550	(35,794)	36,83,795	37,19,560	(35,765)
2,00,00,000	68,84,906	69,51,750	(66,844)	6881,945	69,48,760	(66,815)
5,00,00,000	1,75,45,406	1,77,15,750	(1,70,344)	1,75,42,445	1,77,12,760	(1,70,315)
10,00,00,000	3,53,12,906	3,56,55,750	(3,42,844)	3,53,09,945	3,56,52,760	(3,42,815)
50,00,00,000	17,74,52,906	17,91,75,750	(17,22,844)	17,74,49,945	17,91,72,760	(17,22,815)

e) **Rate of tax for Co-operative Societies continues to be same. There is no change in rate of surcharge. The effective rates for Financial Year 2018-19 (Assessment Year 2019-20) are as under:**

Total Income	Income tax	Surcharge	Health Education cess	Total
	%	%	%	%
For income upto Rs. 10,000/-	10	Nil	4	10.40
For income exceeding Rs. 10,000/- but does not exceeding Rs. 20,000/-	20	Nil	4	20.80
For income exceeding Rs. 20,000/-	30	Nil	4	31.20

A surcharge of 12% is applicable if income exceeds Rs. 1 crore. Marginal Relief is available.

f) **Rate of tax for Firms, LLP, Local authorities, Company - domestic and Company - foreign continues to be the same. In the case of domestic companies two categories are proposed to be added. The effective rates for Financial Year 2018-19 (Assessment Year 2019-20) are as under:**

	Income tax %	Surcharge %	Health and Education cess %	Proposed Effective Rate %	Existing effective rate %
Firm, Local authorities (including LLP)					
For income upto Rs. 1 crore	30	Nil	4	31.20	30.90
For income exceeding Rs. 1 crore	30	12	4	34.94	34.61
i. For Companies incorporated on or after 01.03.2016 subject to conditions by Finance Act,2016 specified u/s 115BA (Note 1)	25	Nil	4	26.00	25.75

ii. For Companies where total turnover or gross receipts of the previous year 2015-16 does not exceed Rs. 50 crores (Note 1)	25	Nil	4	26.00	25.75
iii. For Companies where total turnover or gross receipts of the previous year 2016-17 does not exceed Rs. 250 crores (Note 1)	25	Nil	4	26.00	30.90
iv. Others a) For income upto Rs. 1 crore	30	Nil	4	31.20	30.90
b) For income exceeding Rs. 1 crore but does not exceeding Rs. 10 crore	30	7	4	33.38	33.06
c) For income exceeding Rs. 10 crore	30	12	4	34.94	34.61

Note:
1) Surcharge will be applicable depending on the total income of the company.

	Income tax **%**	**Surcharge** **%**	**Health and Education cess** **%**	**Proposed Effective Rate** **%**	**Existing effective rate** **%**
Company – Foreign					
For income upto Rs. 1 crore	40	Nil	4	41.60	41.20
For income exceeding Rs. 1 crore but does not exceeding Rs. 10 crore	40	2	4	42.43	42.03
For income exceeding Rs. 10 crore	40	5	4	43.68	43.26

In case of company assessee, applicable tax rate will be applied on total income and no slab wise calculation is required to be made.

g) **Rate of MAT / AMT**

The existing MAT and AMT of 18.5% continues to be same for Financial Year 2018-19. The effective rates under the MAT and AMT for the Financial Year 2018-19 relevant to Assessment Year 2019-20 would be as under:

Particulars	Basic Rate %	Sur-charge %	Cess %	Proposed Effective Rate %	Existing effective rate %
Domestic Company (MAT)					
For income upto Rs. 1 crore	18.5	Nil	4	19.24	19.06
For income exceeding Rs. 1 crore but does not exceeding Rs. 10 crore	18.5	7	4	20.59	20.39
For income exceeding Rs. 10 crore	18.5	12	4	21.55	21.34
Company – Foreign (MAT)					
For income upto Rs. 1 crore	18.5	Nil	4	19.24	19.06
For income exceeding Rs. 1 crore but does not exceeding Rs. 10 crore	18.5	2	4	19.63	19.43
For income exceeding Rs. 10 crore	18.5	5	4	20.20	20.01
Person other than a company (AMT)					
For income upto Rs. 1 crore	18.5	Nil	4	19.24	19.06
For income exceeding Rs. 1 crore	18.5	12	4	21.55	21.34

(Also please refer Para 35 below)

h) **Rate of income / dividend distribution tax and other rate of tax:**

In other cases (including Sections 115-O, 115QA or 115R) the surcharge shall be levied at the rate of twelve percent and the effective rate for the Financial Year 2018-19 would be as under:

Particular	Section	Basic Rate %	Sur-charge %	Cess %	Proposed Effective Rate %	Existing effective rate %
Dividend Distribution Tax:						
On Shares:	115-O	17.65	12	4	20.56	20.36
On Mutual Funds:	115-R					
Equity Oriented Funds		10	12	4	11.65	Nil
Other Mutual Funds						
(i) Individual or HUF		33.33	12	4	38.38	38.45
(ii) Other Tax Payers		42.86	12	4	49.92	49.44

Under Section 115-R tax on income distributed to non-resident or foreign company by Mutual Fund under an Infrastructure Debt scheme would be 5.67% (inclusive of applicable surcharge and cess).

3. Securities Transaction Tax ('STT'):

There is no change proposed in the rate of STT for the Financial Year 2018-19 relevant to Assessment Year 2019-20.

4. Rate of Tax Deduction at Source ('TDS'):

a) Under the scheme of deduction of tax at source as provided in the Act, every person responsible for payment of any specified sum to any person is required to deduct tax at source at the prescribed rate and deposit it with the Central Government within specified time. However, no deduction is required to be made if the payments do not exceed prescribed threshold limit.

b) In order to provide relief to senior citizen, the threshold limit for deduction of tax at source on interest on deposits has increased from Rs. 10,000/- to Rs. 50,000/- (Section 80TTB).

(Also please refer Para 30 below)

c) There is no other change in rate of TDS and threshold.

h) The surcharge and cess would continue to be payable on payments to the Non resident tax payers, as under:

Type of Tax Payer (Non-Resident)	Amount of income paid at which surcharge is leviable	Rate of Surcharge
Other than Company	Rs. 1 crore	12%
Foreign Company:		
Income paid or likely to be paid	Rs. 1 crore	2%
Income paid or likely to be paid	Rs. 10 crores	5%

i) In the case of a resident assessee including domestic company, no surcharge and cess would be levied on the amount of tax deducted at source. However, surcharge and health and education cess would be applicable on tax deducted at source in the case of salary payments.

5. Deemed Dividend [Section 2(22)]:

Section 2(22) deals with provisions of deemed dividend. Explanation 2 to the section defines the expression "accumulated profits".

Existing Provision	Proposed Amendment
The expression "accumulated profits" in sub-clauses (a), (b), (d) and (e), shall include all profits of the company up to the date of distribution or payment referred to in those sub-	It is proposed to insert explanation 2A to provide – Explanation 2A.— In the case of an amalgamated company, the accumulated

clauses, and in sub-clause (c) shall include all profits of the company up to the date of liquidation, but shall not, where the liquidation is consequent on the compulsory acquisition of its undertaking by the Government or a corporation owned or controlled by the Government under any law for the time being in force, include any profits of the company prior to three successive previous years immediately preceding the previous year in which such acquisition took place.	profits, whether capitalized or not, or loss, as the case may be, shall be increased by the accumulated profits, whether capitalized or not, of the amalgamating company on the date of amalgamation.

Clause (22) of the said section defines "dividend" to include distribution of accumulated profits (whether capitalized or not) to its shareholders by a company, whether it is in the nature of,—

(a) release of all or any of its assets,

(b) issue of debentures in any form (with or without interest) or distribution of bonus to its preference shareholders,

(c) distribution of proceeds on liquidation,

(d) on the reduction of capital, or

(e) in the case of an unlisted company, any loan or advance given to a shareholder having shareholding of 10% or above, or to a concern in which such shareholder holds substantial interest (exceeding 20% of shareholding or interest) or any payment by such company on behalf of or for the individual benefit of such shareholder.

Explanation 2 to the said clause provides the definition of the term 'accumulated profits' for the purposes of the said clause, as all profits of the company up to the date of distribution or payment or liquidation, subject to certain conditions.

It is stated that companies are resorting to arrangements in order to escape liability of paying tax on distributed profits. Under such arrangements, companies with large accumulated profits adopt the amalgamation route to reduce capital and circumvent the provisions of sub-clause (d) of clause (22) of section 2. With a view to preventing such arrangements, it is proposed to insert a new Explanation 2A in clause (22) of section 2 to widen the scope of the term 'accumulated profits' so as to provide that in the case of an amalgamated company, accumulated profits, whether capitalised or not, or losses as the case may be, shall be increased by the accumulated profits of the amalgamating company, whether capitalized or not, on the date of amalgamation.

Effective Date:
This amendment will take effect from 1st April, 2018 and will accordingly apply in relation to assessment year 2018-19 and subsequent assessment years.

6. Conversion of Stock-in-trade into Capital Asset [Sections 2(24)(xiia), 2(42A), 28(via) and 49(9)]:
The term "income" is defined u/s 2(24).

It is proposed to insert a new clause (xiia) in the definition of income, which provides as under:

"The fair market value of inventory referred to in clause (via) of section 28."

Section 45 provides for mode of calculation of income and tax on conversion of capital asset into stock-in-trade. It provides that when a capital asset is converted into a stock in trade –

- On the date of conversion from capital asset to stock in trade, the fair market value (FMV) of the asset is to be determined.

- A taxable event arises on the date of ultimate sale of that stock in trade;

- The total income on the ultimate date of sale is to be bifurcated in two parts:

    * The difference between the FMV on the date of conversion and the original cost of acquisition will be taxed as capital gain; and

    * The difference between the sale price of stock in trade and FMV on the date of conversion will be taxed as profit and gains of business.

However, in cases where the stock in trade is converted into, or treated as, capital asset, the existing law does not provide for mode of calculation of its tax liability.

Now, it is proposed to insert the above clause in the definition of income and amendments are proposed in section 28(via), section 49(9) and section 2(42A) to provide mode of calculation of tax and income on conversion of stock in trade into capital asset.

(i) A new sub-clause (via) is proposed to be inserted in section 28 so as to provide that any profit or gains arising from conversion of inventory into capital asset or its treatment as capital asset shall be charged to tax as business income. It is also proposed to provide that the fair market value of the inventory on the date of conversion or treatment determined in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of such conversion or treatment;

(ii) A new sub-clause (xiia) is proposed to be inserted in section 2(24) so as to include such fair market value in the definition of income;

(iii) A new sub-section (9) is proposed to be inserted in section 49 so as to provide that for the purposes of computation of capital gains arising on transfer of such capital assets, the fair market value on the date of conversion shall be the cost of acquisition;

(iv) A new sub clause (ba) proposed to be inserted in explanation 1 to section 2(42A) to provide that the period of holding of such capital asset shall be reckoned from the date of conversion or treatment.

Thus, the mode of calculation of income and tax on conversion of stock in trade into capital asset will work as under:

- On the date of conversion from stock in trade to capital asset, the fair market value (FMV) of stock in trade is to be determined.

- The first taxable event would be the date of conversion of stock in trade. This is the major departure from the earlier mode of calculation. As per the proposed amendment, on the date of conversion, it will be deemed as sale and the resultant profit will be taxable, even though it is actually not sold and it is a notional sale from self to self. This will result in immediate tax outflow on notional income.

- On ultimate sale of capital asset, the difference between FMV on the date of conversion and sale consideration of asset will be taxed as capital gains.

- Depending upon period of holding from the date of conversion, it will be taxed as short term or long term capital gain.

The proposed amendments impact the decision of the Hon'ble High Court of Bombay in the case of Yatish Trading Co. Pvt. Ltd. wherein Hon'ble Court has held that gains from sale of shares and securities, previously held as stock in trade but converted to investment, to be taxed as capital gains. It is further held that gains arising before the date of conversion into investments are to be treated as business income.

Effective Date:
These amendments will take effect, from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

7. Compensation for termination of employment or modification of terms [Sections 2(24)(xviib) and 56(2)(xi)]:

It is proposed that any compensation received or receivable, whether in the nature of revenue or capital, in connection with the termination or the modification of the terms and conditions of any contract relating to its employment shall be taxable under section 56 as income from other sources.

Simultaneously, definition of income is proposed to be amended by inserting new clause (xviib) which provides that income will include any compensation or other payments referred to in clause (xi) of sub-section (2) of section 56.

The Hon'ble Delhi High Court in the case of Pritam Das Narang has held that amount received by assessee from prospective employer as compensation for non-commencement of employment would not be in nature of 'profit in lieu of salary' but in nature of capital receipt not chargeable to tax.

Effective Date:
These amendments will take effect from 1st April, 2019 and will, accordingly, apply in relation to assessment year 2019-20 and subsequent assessment years.

8. Increase in scope of "business connection" [Section 9(1)]:

'Base Erosion and Profit Sharing' (BEPS) Action Plans are tax policy recommendations formulated by Organization for Economic Cooperation and Development (OCED) on initiative directions from the G20 summit to prevent double non taxation and ensure Multinationals Enterprises (MNE's) pay their fair share of taxes. G20 summit is an international forum on economic cooperation and development which has gained prominence since the 2008 global financial crisis and OECD is the think tank and policy making body on taxation policies.

India, being part of G20 nations, is an active member in BEPS project.

The BEPS action plan identifies 15 Actions to address BEPS in a comprehensive manner and sets a deadline to implement those actions.

Over the last couple of years, the Government has enacted several provisions in line with the Base Erosion and Profit Shifting Action Plan ("BEPS Action Plan") by the Organization for Economic Cooperation and Development ("OECD"). This year, the Budget proposes to expand the scope of the 'business connection' test (the equivalent of permanent establishment) through two sets of changes. Firstly, the scope of 'dependent agent' has been widened to include persons who habitually play the principal role leading to conclusion of contracts by non-residents. This is in line with the expansion of the concept of Permanent Establishment ("PE") under the Multilateral Instrument ("MLI"). [Please refer para 8(A) below]. Secondly, to tax new business models in the digital space, the Budget proposes to include a 'significant economic presence test'. [Please refer para 8(B) below].

8(A) Aligning the scope of "business connection" with modified PE Rule as per Multilateral Instrument (MLI) [Section 9(1)(i)]:

It is proposed to amend section 9(1)(i) to increase the scope of business connection in line with MLI.

Existing Provision	Proposed Amendment
Explanation 2 to clause (i) of sub-section (1) of the section 9 provides that "business connection" shall include any business activity carried out through a person who, acting on behalf of the non-resident-	It is proposed to substitute clause (a) of the said Explanation 2 so as to provide that "business connection" shall include any business activity carried through a person who, acting on behalf of the non-resident, has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident or habitually concludes

(a) has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident, unless his activities are limited to the purchase of goods or merchandise for the non-resident; or (b) has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident; or (c) habitually secures orders in India, mainly or wholly for the non-resident or for that non-resident and other non-residents controlling, controlled by, or subject to the same common control, as that non-resident.	contracts or habitually plays the principal role leading to conclusion of contracts by the non-resident and the contracts are— (i) in the name of the non-resident; or (ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that non-resident has the right to use; or (iii) for the provision of services by that non-resident.

Under the existing provisions of Explanation 2 to clause (i) of sub-section (1) of section 9, "business connection" includes business activities carried on by non-resident through dependent agents. The scope of "business connection" under the Act is similar to the provisions relating to Dependent Agent Permanent Establishment (DAPE) in India's Double Taxation Avoidance Agreements (DTAAs). In terms of the DAPE rules in tax treaties, if any person acting on behalf of the non-resident, is habitually authorized to conclude contracts for the non-resident, then such agent would constitute a PE in the source country. However, in many cases, with a view to avoid establishing a permanent establishment (hereafter referred to as 'PE') under Article 5(5) of the DTAA, the person acting on the behalf of the non-resident, negotiates the contract but does not conclude the contract. Further, under paragraph 4 of Article 5 of the DTAAs, a PE is deemed not to exist when a place of business is engaged solely in certain activities such as maintenance of stocks of goods for storage, display, delivery or processing, purchasing of goods or merchandise, collection of information. This exclusion applies only when these activities are preparatory or auxiliary in relation to the business as a whole.

The OECD under BEPS Action Plan 7 reviewed the definition of 'PE' with a view to preventing avoidance of payment of tax by circumventing the existing PE definition by way of commissionaire arrangements or fragmentation of business activities. In order to tackle such tax avoidance scheme, the BEPS Action plan 7 recommended modifications to paragraph (5) of Article 5 to provide that an agent would include not only a person who habitually concludes contracts on behalf of the non-resident, but also a person who habitually plays a principal role leading to the conclusion of contracts. Similarly Action Plan 7 also recommends the introduction of an anti fragmentation rule as per paragraph 4.1 of Article 5 of OECD Model tax conventions,

2017 so as to prevent the tax payer from resorting to fragmentation of functions which are otherwise a whole activity in order to avail the benefit of exemption under paragraph 4 of Article 5 of DTAAs.

Further, with a view to preventing base erosion and profit shifting, the recommendations under BEPS Action Plan 7 have now been included in Article 12 of Multilateral Convention to Implement Tax Treaty Related Measures (herein referred to as 'MLI'), to which India is also a signatory. Consequently, these provisions will automatically modify India's bilateral tax treaties covered by MLI, where treaty partner has also opted for Article 12. As a result , the DAPE provisions in Article 5(5) of India's tax treaties, as modified by MLI, shall become wider in scope than the current provisions in Explanation 2 to section 9(1)(i). Similarly, the anti-fragmentation rule introduced as per paragraph 4.1 of Article 5 of the OECD Model Tax Conventions, 2017 has narrowed the scope of the exception under Article 5(4), thereby expanding the scope of PE in DTAA vis-à-vis domestic provisions contained in Explanation 2 to section 9(1)(i).

The relevant provisions in the DTAAs are wider in scope than the domestic law. However, sub-section (2) of section 90 provides that the provisions of the domestic law would prevail over corresponding provisions in the DTAAs, to the extent they are more beneficial. Since, in the instant situations, the provisions of the domestic law being narrower in scope or more beneficial than the provisions in the DTAAs, as modified by MLI, such wider provisions in the DTAAs are ineffective.

In view of the above, it is proposed to amend the provision of section 9 so as to align them with the provisions in the DTAA as modified by MLI so as to make the provisions in the treaty effective. Accordingly, clause (i) of sub-section (1) of section 9 is being proposed to be amended to provide that "business connection" shall also include any business activities carried through a person who, acting on behalf of the non-resident, habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by the non-resident. It is further proposed that the contracts should be-

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

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

(iii) for the provision of services by that non-resident.

After the introduction of this change, if the non-resident is significantly assisted by the agent in India in either negotiating and concluding contracts in the name of the non-resident or if the contract entered into relates to services provided by the non-resident, or relates to the transfer of property (including intellectual property), or permits the use of property, then that would result in the creation of a business connection, thereby forming the requisite nexus under the Income Tax Act to tax such transactions.

Effective Date:
These amendments will take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-2020 and subsequent years.

8(B) "Business connection" to include "Significant Economic presence" [Section 9(1)]:

It is further proposed to insert a new Explanation 2A in clause (i) of sub-section (1) of the said section so as to provide that the significant economic presence of a non-resident in India shall constitute "business connection" of the non-resident in India and the "significant economic presence" for this purpose, shall mean—

(a) any transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or

(b) systematic and continuous soliciting of its business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means.

It is further proposed to provide that the transactions or activities shall constitute significant economic presence in India, whether or not the non-resident has a residence or place of business in India or renders services in India.

It is also proposed to provide that only so much of income as is attributable to the transactions or activities referred to in clause (a) or clause (b) shall be deemed to accrue or arise in India.

Ordinarily, as per the allocation of taxing rules under Article 7 of DTAAs, business profit of an enterprise is taxable in the country in which the taxpayer is a resident. If an enterprise carries on its business in another country through a 'Permanent Establishment' situated therein, such other country may also tax the business profits attributable to the 'Permanent Establishment'. For this purpose, 'Permanent Establishment' means a 'fixed place of business' through which the business of an enterprise is wholly or partly carried out provided that the business activities are not of preparatory or auxiliary in nature and such business activities are not carried out by a dependent agent.

For a long time, nexus based on physical presence was used as a proxy to regular economic allegiance of a non-resident. However, with the advancement in information and communication technology in the last few decades, new business models operating remotely through digital medium have emerged. Under these new business models, the non-resident enterprises interact with customers in another country without having any physical presence in that country resulting in avoidance of taxation in the source country. Therefore, the existing nexus rule based on physical presence do not hold good anymore for taxation of business profits in source country. As a result, the rights of the source country to tax business profits that are derived from its economy are unfairly and unreasonably eroded.

OECD under its BEPS Action Plan 1 addressed the tax challenges in a digital economy wherein it has discussed several options to tackle the direct tax challenges arising in digital businesses. One such option is a new nexus rule based on “significant economic presence”. As per the Action Plan 1 Report, a non-resident enterprise would create a taxable presence in a country if it has significance economic presence in that country on the basis of factors that have a purposeful and sustained interaction with the economy by the aid of technology and other automated tools. It further recommended that revenue factor may be used in combination with the aforesaid factors to determine 'significance economic presence'.

The scope of existing provisions of clause (i) of sub-section (1) of section 9 is restrictive as it essentially provides for physical presence based nexus rule for taxation of business income of the non-resident in India. Explanation 2 to the said section which defines ‘business connection’ is also narrow in its scope since it limits the taxability of certain activities or transactions of non-resident to those carried out through a dependent agent. Therefore, emerging business models such as digitized businesses, which do not require physical presence of itself or any agent in India, is not covered within the scope of clause (i) of sub-section (1) of section 9.

In view of the above, it is proposed to amend clause (i) of sub-section (1) of section 9 to provide that 'significant economic presence' in India shall also constitute 'business connection'.

The proposed amendment in the domestic law will enable India to negotiate for inclusion of the new nexus rule in the form of 'significant economic presence' in the Double Taxation Avoidance Agreements. It may be clarified that the aforesaid conditions stated above are mutually exclusive. It is stated that the threshold of “revenue” and the “users” in India will be decided after consultation with the stakeholders. Further, it is also clarified that unless corresponding modifications to PE rules are made in the DTAAs, the cross border business profits will continue to be taxed as per the existing treaty rules.

The point to note is significant discussions have taken place with respect to BEPS Action Plan 1 on Taxation of the Digital Economy and a final report stated to be released later this year. BEPS Action Plan 1 has identified significant economic presence test and equalization levy as alternative majors that a country may adopt. This concept of “significant economic presence” is not yet included in MLI as it stands today.

India has originally implemented equalization levy in 2016 on cross boarder online advertising services. Now pending the final recommendation of OECD, India has taken the second step of introducing concept of “significant economic presence”. One has to wait and watch as to what would be the interplay between equalization levy and significant business presence test.

Effective Date:
These amendments will take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-2020 and subsequent years.

As per our understanding the impact of these two proposed amendments would be as under:

MLI will be operative when the prescribed procedure is complete. It may take another 12 to 24 months. Under this process each country has notified its position on each clause of MLI vis-à-vis the other country. Thus, the particular clause in MLI between the two countries will be effective only when both the countries have notified similar wordings in respect of a particular article in the MLI. In that case, the MLI will override DTAA. Thereafter, those wordings will be compared with the wording under the domestic Act and whichever is beneficial will be applicable. Thus, the proposed amendment will be effective only when –

1. In respect of the country with which India does not have DTAA.

2. A similar clause exists in the treaty between India and other country, which is not the case with most of the countries.

3. Both the countries have signed MLI and have notified similar wording for each other in MLI in respect of this article.

In respect of significant presence test, it is stated that this clause is currently not there in most of the DTAA. Thus, this proposed amendment will only be effective when –

1. In respect of the country with which India does not have DTAA.

2. A similar clause exists in the treaty between India and other country, which is not the case with most of the countries.

3. As and when India is able to renegotiate the treaty and the similar clause is agreed to between the countries and made effective.

9. Royalty and FTS being exempt in the hands of NTRO [Section 10(6D)]:

The section 10 provides exemption in respect of certain categories of income.

It is proposed to insert a new clause (6D) in the said section so as to exempt any income arising to a non-resident, not being a company, or a foreign company, by way of royalty from or fees for technical services rendered in or outside India to the National Technical Research Organization.

Effective Date:
This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-2019 and subsequent years.

10. Payment from National Pension System Trust [Section 10(12A)]:

Existing Provision	Proposed Amendment
Section provides that any payment from the National Pension System Trust to an employee on closure of his account or on his opting out of the pension scheme referred to in section 80CCD, to the extent it does not exceed forty per cent. of the total amount payable to him at the time of such closure or his opting out of the scheme shall not be included in his total income.	It is proposed to amend the said clause so as to extend the aforesaid exemption to all the assessees who have subscribed to the National Pension System Trust.

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

Effective Date:
This amendment will take effect, from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

11. Tax deduction at source and manner of payment in respect of certain exempt entities [Sections 10(23C) and 11]:
The third proviso to clause (23C) of section 10 provides for exemption in respect of income of the entities referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of said clause (i.e. certain national funds, educational institutions and hospitals) in a case where such income is applied or accumulated during the previous year for certain purposes in accordance with the relevant provisions. Section 11 also contains provisions relating to income from property held for charitable or religious purposes.

At present, there are no restrictions on payments made in cash by charitable or religious trusts or institutions. There are also no checks on whether such trusts or institutions follow the provisions of deduction of tax at source under Chapter XVII-B. This has led to lack of an audit trail for verification of application of income.

It is stated that in order to encourage a less cash economy and to reduce the generation and circulation of black money, it is proposed to insert a new Explanation to the sections 11 and 10(23C) to provide that following amounts shall not be considered as application of income–

- Where any sum payable to a resident on which tax has not been deducted or after deduction has not been paid on or before due date of filing of return, 30% of such sum - sub-clause (ia) of clause (a) of section 40;

- Any sum paid in cash above Rs. 10,000 per person per day – sub-section (3) of section 40A; and

- Any allowance made for any liability, payment for which is made in cash in the subsequent year exceeding Rs. 10,000 per person per day; shall not be considered as application in the subsequent year - sub-sections (3A) of section 40A,

Effective Date:
These amendments will take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent years.

12. Tax on Long Term Capital Gain on Shares or Units of Equity Oriented Fund or Business Trust [Sections 10(38) and 112A]:
A new tax regime for taxation of long term capital gain on sale of equity shares or unit of equity oriented fund or business trust has been introduced.

Section 10(38) hither to provided exemption to long term capital gains on such capital asset.

Existing Provision	Proposed Amendment
Section 10(38) currently provides for exemption in respect of long term capital gains in respect of equity shares in a company or units of equity oriented fund or of a business trust. A new scheme of taxation is proposed to be introduced in respect of these long term capital assets.	It is proposed to add following proviso – Provided also that nothing contained in this clause shall apply to any income arising from the transfer of long-term capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust, made on or after the 1st day of April, 2018.

It is proposed to withdraw the exemption under clause 10(38) and to introduce new section 112A in the Act to provide for taxation of these long term capital assets.

a) The new section 112A provide that long term capital gains arising from transfer of a long term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust shall be taxed at 10 per cent. of such capital gains exceeding one lakh rupees.

b) This concessional rate of 10 percent will be applicable to such long term capital gains, if—

i) in a case where long term capital asset is in the nature of an equity share in a company , securities transaction tax has been paid on both acquisition and transfer of such capital asset; and

ii) in a case where long term capital asset is in the nature of a unit of an equity oriented fund or a unit of a business trust, securities transaction tax has been paid on transfer of such capital asset.

c) It is further proposed to provide that in the case of an individual or a Hindu undivided family, being a resident, where the total income as reduced by such long-term capital gains is below the maximum amount which is not chargeable to income-tax, then, such long-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax.

d) It is also proposed to provide that capital gains arising from a transaction undertaken on a recognized stock exchange located in any International Financial Services Centre and where the consideration for such transaction is received or receivable in foreign currency shall be eligible under this section without payment of securities transaction tax.

e) Further, sub-section (4) of the new section 112A empowers the Central Government to specify by notification the nature of acquisitions in respect of which the requirement of payment of securities transaction tax shall not apply in the case of equity share in a company. Similarly, the requirement of payment of STT at the time of transfer of long term capital asset, being a unit of equity oriented fund or a unit of business trust, shall not apply if the transfer is undertaken on recognized stock exchange located in any International Financial Services Centre (IFSC) and the consideration of such transfer is received or receivable in foreign currency.

f) The long term capital gains will be computed without giving effect to the first and second provisos to section 48, i.e. inflation indexation in respect of cost of acquisitions and cost of improvement, if any, and the benefit of computation of capital gains in foreign currency in the case of a non-resident, will not be allowed.

g) The cost of acquisitions in respect of the long term capital asset acquired by the assessee before the 1st day of February, 2018 , shall be deemed to be the higher of –

a) the actual cost of acquisition of such asset; and
b) the lower of –
    (I) the fair market value of such asset as on 31st January, 2017; and
    (II) the full value of consideration received or accruing as a result of the transfer of the capital asset.

h) The benefit of deduction under chapter VIA shall be allowed from the gross total income as reduced by such capital gains. Similarly, the rebate under section 87A shall be allowed from the income tax on the total income as reduced by tax payable on such capital gains.

i) It is also proposed to define the expression "equity oriented fund", "fair market value", "International Financial Services Centre" and "recognized stock exchange".

The explanation has defined equity oriented fund as under:

"(a) "equity oriented fund" means a fund set up under a scheme of a mutual fund specified under clause (23D) of section 10 and —

(i) in a case where the fund invests in the units of another fund which is traded on a recognized stock exchange—

(A) a minimum of ninety percent of the total proceeds of such fund is invested in the units of such other fund; and

(B) such other fund also invests a minimum of ninety percent of its total proceeds in the equity shares of domestic companies listed on a recognized stock exchange; and

(ii) in any other case, a minimum of sixty-five per cent. of the total proceeds of such fund is invested in the equity shares of domestic companies listed on a recognized stock exchange:

Provided that the percentage of equity shareholding or unit held in respect of the fund, as the case may be, shall be computed with reference to the annual average of the monthly averages of the opening and closing figures."

The reasons explained in the memorandum for the proposed amendment is that exemption of long term capital gains on shares and units of equity oriented fund is inherently biased against manufacturing and has encouraged diversion of investment in financial asset. It has led to significant erosion in the tax base resulting in revenue loss.

We will discuss the provisions with the help of a case study.

Case Study 1:
The facts are as under:

1. Mr. S has acquired 1000 equity shares of M/s. L Ltd. two years back, say on 1st January, 2016 at the rate of Rs. 500/- per share. Thus the total cost was Rs. 5,00,000/-.

2. The fair market value as on 31st January, 2018 is Rs. 800/- per share.

3. Mr. S proposes to sell these shares on –
   a) Before 31st March, 2018 (say on 21st March, 2018)
   b) After 31st March, 2018 (say 4th May, 2018)

4. The realizable value of shares of L Ltd. on recognized Stock Exchange on these dates are as under:
   a) On 21st March, 2018 – Rs. 1,200/- per share.
   b) On 4th May, 2018 – Rs. 1,300/- per share.

5. There is no other transaction resulting into long term capital gain on sale of shares and/or units of equity oriented fund / business trust.

6. All other conditions are assumed to have been complied with.

7. What would be the tax payable on sale of shares in above two scenarios.

Solution:

Particulars			**Sale of shares before 31/3/18**	**Sale of shares after 31/3/18**
Name of the Script	A		L Ltd	L Ltd
Date of Purchase	B		01/01/2016	01/01/2016
No. of Shares	C		1000	1000
Cost per Share	D	Rs.	500	500
Total Cost	E = C X D	Rs.	5,00,000	5,00,000
FMV per share as on 31/1/18	F	Rs.	800	800
Date of Sale	G		21/03/2018	04/05/2018
Sale price per share	H	Rs.	1,200	1,300
Deemed cost of purchase	I	Rs.	500	800
Gain / (Loss) per share	J = H – I	Rs.	700	500
Total Gain / (Loss)	K = C X J	Rs.	7,00,000	5,00,000
Tax Payable	L L = 10% of (K-1,00,000)	Rs. Rs.	Nil	 40,000

Working Notes:

a) If the shares are sold before 31st March, 2018, the existing provisions of law will apply. The amendment to section 10(38) clearly provides that the exemption will not be available for transfer on or after 1st April, 2018.

b) Accordingly, on pre March 2018 sale of shares, the FMV as on 31st January, 2018 is not relevant.

c) In second scenario, since the sale is after 31st March, 2018, the proposed

amendment will apply and accordingly, the cost of acquisition would be FMV as on 31st January, 2018. The gain between 1st January, 2016 and 31st January, 2018 of Rs. 300/- per share is god fathered and will not be subject to tax.

d) The tax is payable on long term capital gain exceeding Rs. 1,00,000/- on such capital asset and, therefore, the exemption of Rs. 1,00,000/- is claimed in calculation of tax payable.

e) The amount of tax payable will further be increased by applicable surcharge and cess.

Case Study 2:
Further if in the instant case, if the FMV as on 31st January, 2018 is Rs. 300/- per share, then what would be the tax payable under the above two scenarios:

Solution:
a) In case of sale before 31st March, 2018, there will be no change in working as the proposed provision will not apply to sale of shares on 21st March, 2018.

b) In case of sale of shares after 31st March, 2018, i.e. on 4th May, 2018, the gain per share would be Rs. 800/- per share i.e. Rs. 1,300/- minus Rs. 500/- (the cost or FMV whichever is higher).

Thus, the total capital gain would be Rs. 8,00,000/- and tax payable thereon would be Rs. 70,000/- plus applicable surcharge and cess.

Finance Act, 2017 had restricted exemptions on listed shares to only those transactions where STT had been paid also at the time of acquisition of the share. This was introduced as an anti-abuse measure to crack down on black money. Pursuant to several stakeholder representations, the Government last year came out with a notification No. 43 of 2017 dated 5th June, 2017 providing for transactions which would be eligible to the exemption, even though STT had not been paid at the time of acquisition of the shares, such as in case of preferential issue of shares, off-market acquisition of listed shares etc.

In order to maintain consistency, it is important that the Government notifies the same carve outs for acquisition of listed shares in order for granting the benefit of a 10% tax rate on sale of those shares. In the absence of such carve outs, the transactions listed in the notification would lose the beneficial tax rate of 10% under the proposed section 112A and will be taxable at the prevailing rate of 20%.

Post proposed amendment, the long term capital gain on equity shares would be as under:

Nature	Rate of Tax (%)	
	Resident investor	**Non-resident investor**
Unlisted shares	20%*	10%
Listed shares (sold off the market)	10% / 20%*	10%
Listed shares (STT paid# on sale and purchase)	10% (exceeding Rs. One lakh)	10% (exceeding Rs. One lakh)

* After applying indexation
# Central Government empowered to notify acquisitions in respect of which STT shall not apply

Effective Date:
These amendments will take effect from 1st April, 2019 and will accordingly, apply in relation to assessment year 2019-20 and subsequent assessment years.

CBDT has issued a FAQ vide press Note F No. 370149/20/2018-TPL dated 4th February, 2018. FAQ clarifies that proposed regime applies where equity is held for a minimum 12 months and the STT is paid at the time of transfer (however, for shares acquired after 1.10.2004, STT is required to be paid even at the time of acquisition); CBDT further clarifies that the modes of acquisition of equity shares that are exempted for the purposes of Sec. 10(38) vide its notification no. 43/2017, is proposed to be reiterated for the new regime; Likewise, CBDT clarifies on the point of chargeability, method for - calculating LTCG, determining cost of acquisition for assets acquired on or before 31st January, 2018, determining fair market value ('FMV'), states that FMV of bonus shares and rights shares as on 31st January, 2018 will be taken as cost of acquisition (except in some typical situations) for such shares acquired before 1st February 2018; CBDT further clarifies that "As the exemption from long-term capital gains under clause (38) of section 10 will be available for transfer made between 1st February, 2018 and 31st March, 2018, the long-term capital loss arising during this period will not be allowed to be set-off or carried forward."; Lastly, CBDT clarifies that grandfathering of gains upto January 31st will apply to FIIs also.

A full text of the FAQ is placed at Page 59 of this Note.

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

Clause (48A) of section 10 provides that any income accruing or arising to a foreign company on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India shall be exempt, if

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

ii) having regard to the national interest, the foreign company and the agreement or arrangement is notified by the Central Government.

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

The benefit of exemption is presently not available on sale out of the leftover stock of crude in case of termination of the said agreement or the arrangement.

Given the strategic nature of the project benefitting India to augment its strategic petroleum reserves, it is proposed to amend clause (48B) of section 10 to provide that the benefit of tax exemption in respect of income from left over stock will be available even if the agreement or the arrangement is terminated in accordance with the terms mentioned therein.

Effective Date:
This amendment will take effect from 1st of April, 2019 and will, accordingly, apply in relation to assessment year 2019-20 and subsequent years.

14. Standard Deduction on Salary Income [Sections 16 and 17]:
Section 16, provides for certain deduction in computing income chargeable under the head "Salaries". It is proposed to allow a standard deduction upto Rs 40,000/- or the amount of salary received, whichever is less.

Consequently the following are proposed to be withdrawn:

- Exemption in respect of Transport Allowance (except in case of differently abled persons) as per Rule 2BB of the Income Tax Rules, 1962; and

- Reimbursement of medical expenses as per section 17(2).

Currently, the exemption for transport allowance is upto Rs. 19,200/- per annum and the non-taxable reimbursement of medical expenses are upto Rs. 15,000/- per annum. If an employer is providing these two items in CTC to any employee, then on an average an employee is getting benefit of Rs. 34,200/-. As per proposed amendment this benefit of Rs. 34,200/- will be withdrawn and proposed standard deduction of Rs. 40,000/- will be allowed. Thus, the net gain would be reduction in income of Rs. 5,800/-. The tax impact at highest rate of income tax would be about Rs. 2,000/- and at lower slabs the benefit will be still smaller.

Further, if this calculation is carried out considering the impact of increase in cess to 4%, the benefit may work out to as small as Rs. 35/- at 20% tax slab.

The following persons would be mainly benefited by this:

- Persons receiving pension income;
- Employees whose salary package does not include items like transport allowance and medical expenses reimbursement.

The reliving factor is that the expenditure incurred by an employer on medical treatment in a hospital provided to an employee or his/her family member, will continue to be non-taxable subject to complying with the conditions stated in the Act.

Effective Date:
These amendments will take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

15. Taxability of compensation in connection to business or employment [Section 28(ii)(e)]:
Under the existing provisions, certain types of compensation receipts are taxable as business income under section 28. However, still many items of compensation receipts in connection with business are out of the purview of taxation.

Therefore, it is proposed to amend section 28 by inserting new clause (e) in section 28(ii) to provide that any compensation received or receivable, whether revenue or capital, in connection with the termination or the modification of the terms and conditions of any contract relating to its business shall be taxable as business income.

The proposed amendment has overruled decisions of various High Courts including that of Hon'ble Delhi High Court in the case of HCL Infosystems Ltd., Khanna & Anandhanam, Eligant Chemicals Enterprises Pvt. Ltd.

Effective Date:
These amendments will take effect from 1st April, 2019 and will, accordingly, apply in relation to assessment year 2019-20 and subsequent assessment years.

16. Amendment in respect of Income Computation and Disclosure Standards (ICDS) [Sections 36, 40A, 43AA, 43CB, 145A and 145B]:
Section 145 empowers the Central government to notify Income Computation and Disclosure Standards (ICDS). In pursuance the central government has notified ten such standards effective from 1st April 2017 relating to Assessment year 2017-18. These are applicable to all assesses (other than an individual or a Hindu undivided family who are not subject to tax audit under section 44AB of the said Act) for the purposes of computation of income chargeable to income-tax under the head "Profits and gains of business or profession" or "Income from other sources".

The Hon'ble High Court of Delhi in Writ Petition No. (C) 5595/2017 & CM Application No. 23467 of 2017 in the matter of The Chamber of Tax Consultants & Another v/s Union of India & Others, has struck down certain provisions of ICDS.

To nullify the effect of the above decision, the following amendments have been proposed in the Act with effect from assessment year 2017-18.

(a) To amend section 36 to provide that marked to market loss or other expected loss as computed in the manner provided in income computation and disclosure standards notified under sub-section (2) of section 145, shall be allowed deduction.

(b) To amend 40A to provide that no deduction or allowance in respect of marked to market loss or other expected loss shall be allowed except as allowable under newly inserted clause (xviii) of sub-section(1) of section 36.

(c) To insert a new section 43AA in the Act to provide that, subject to the provisions of section 43A, any gain or loss arising on account of effects of changes in foreign exchange rates in respect of specified foreign currency transactions shall be treated as income or loss, which shall be computed in the manner provided in ICDS as notified under sub-section (2) of section 145.

For the purpose of calculating gains or loss, foreign currency transaction includes-

i) Monetary items and non-monetary items;
ii) Translation of financial statements of foreign operations;
iii) Forward exchange contracts;
iv) Foreign currency translation reserves.

(d) To insert new section 43CB to provide that profits and gains of a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145.

It is further proposed to provide that in the case of a contract for providing services with duration less than ninety days, the profits and gains shall be determined on the basis of project completion method.

It is also proposed to provide that in the case of a contract for provision of services involving indeterminate number of acts over a specific period of time, the profits and gains arising from such contract shall be determined on the basis of a straight line method.

It is also proposed to provide that for this purpose the contract revenue shall include retention money and the contract costs shall not be reduced by any incidental income in the nature of interest, dividends or capital gains.

(e) To substitute new section 145A to provide that for the purpose of determining the income chargeable under the head "Profits and gains of business or profession",—

(i) the valuation of inventory shall be made at lower of actual cost or net realizable value in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145;

(ii) the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation;

(iii) the valuation of inventory being securities not listed on a recognized stock exchange; or listed but not quoted on a recognized stock exchange with regularity from time to time, shall be valued at actual cost initially recognized in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145;

(iv) inventory being securities other than those referred to in clause (iii), shall be valued at lower of actual cost or net realizable value in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145 and for this purpose the comparison of actual cost and net realizable value shall be done category-wise.

(f) To insert a new section 145B in the Act to provide that-

(i) interest received by an assessee on compensation or on enhanced compensation, shall be deemed to be the income of the year in which it is received.

(ii) the claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realization is achieved.

(iii) income referred to in sub-clause (xviii) of clause (24) of section 2 (such as subsidy / grants / cash incentives / duty drawback, etc) shall be deemed to be the income of the previous year in which it is received, if not charged to income tax for any earlier previous year.

The notified ICDS are not applicable to an individual and HUF who are not subject to tax audit. However, whether the same thing will apply when there is a proposed amendment in the Act and no exclusion has been provided for under the proposed amended sections. This needs to be clarified.

Effective Date:
This amendment will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years.

17. Tax treatment of transactions in respect of trading in agricultural commodity derivatives [Section 43(5)]:

Clause (5) of section 43 defines speculative transaction. The proviso to the said clause, however, stipulates certain transactions to be non-speculative nature even though the contracts are settled otherwise than by the actual delivery or transfer of the commodity or scraps. The clause (e) to the said proviso provides that trading in commodity derivatives carried out in a recognized stock exchange, which is chargeable to commodity transaction tax is a non-speculative transaction.

Commodity transaction tax (CTT) was introduced vide Finance Act'2013 to bring transactions relating to non-agricultural commodity derivatives under the tax net while keeping the agricultural commodity derivatives exempt from CTT. Since no CTT is paid, the benefit of clause (e) of the proviso to clause (5) of the section 43 is not available to transaction in respect of trading of agricultural commodity derivatives and accordingly, such transactions are held to be speculative transactions.

In order to encourage participation in trading of agricultural commodity derivatives, it is proposed to amend the provisions of clause (5) of section 43 to provide that a transaction in respect of trading of agricultural commodity derivatives, which is not chargeable to CTT, in a registered stock exchange or registered association, will be treated as non-speculative transaction.

Effective Date:

These amendments will take effect from 1st April, 2019 and will, accordingly, apply in relation to assessment year 2019-20 and subsequent assessment years.

18. Providing of margin on Stamp Duty Value for Calculation of Sale Price in respect of land or building or both [Sections 43CA, 50C and 56]:

Section 43CA deals with provisions for considering stamp duty value on sale of land or building or both as stock in trade resulting into business profit in the hands of seller. It provides that the sale price is less than stamp duty value in respect of land or building or both, the stamp duty value will be treated as full consideration and accordingly, the business profit will be calculated.

Section 50C deals with provision for considering stamp duty value on transfer of a capital asset being land or building or both resulting into capital gain in the hands of transferor. Similarly, this section 50C provides that in case of transfer of a capital asset being land or building or both, the value adopted or assessed or assessable by the stamp valuation authority for the purpose of payment of stamp duty in respect of such transfer shall be taken as the full value of consideration for the purposes of computation of Capital gains in the hands of the seller, if the same is more than the full value of consideration.

Section 56(2)(x) deals with taxation of excess amount of stamp duty value over the amount of purchase price of land or building or both in the hands of transferee/ buyer.

In all the three above instances, the excess of stamp duty value over the actual consideration will be treated as income of both – seller as well as buyer. No permissible margin has been provided for.

It has been pointed out that this variation can occur in respect of similar properties in the same area because of a variety of factors, including shape of the plot or location. In order to minimize hardship in case of genuine transactions in the real estate sector, the amendment has been proposed.

It has now been proposed in all the three sections to provide that no adjustments shall be made in a case where the variation between stamp duty value and the sale consideration is not more than five percent of the sale consideration.

The other remedies such as referring to the valuation cell will continue to be available to the assessee.

Effective Date:
These amendments will take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

19. Presumptive income in case of goods carriage [Section 44AE]:

Section 44AE, inter alia provides that, the profits and gains shall be deemed to be an amount equal to seven thousand five hundred rupees per month or part of a month for each goods carriage or the amount claimed to be actually earned by the assessee, whichever is higher. The current presumptive income scheme is applicable uniformly to all classes of goods carriages irrespective of their tonnage capacity. The only condition which needs to be fulfilled is that the assessee should not have owned more than 10 goods carriages at any time during the previous year. Accordingly, the transporters who owns (less than 10) large capacity/ size goods carriages are also availing the benefit of section 44AE.

It is proposed to amend the section 44AE to provide that, in the case of heavy goods vehicle (more than 12MT gross vehicle weight), the income would deemed to be an amount equal to one thousand rupees per ton of gross vehicle weight or unladen weight, as the case may be, per month or part of a month for each goods vehicle or the amount claimed to be actually earned by the assessee, whichever is higher. The vehicles other than heavy goods vehicle will continue to be taxed as per the existing rates.

The condition of not owning more than 10 vehicles any time during the previous year continues.

Effective Date:
These amendments will take effect 1st April, 2019 and will, accordingly, apply in relation to assessment year 2019-20 and subsequent assessment years.

20. Transactions not regarded as transfer for Capital Gains [Section 47]:

<table>
<tr><th>Existing Provision</th><th>Proposed Amendment</th></tr>
<tr><td>The section provides that certain transfers of capital assets are not to be regarded as transfer for the purposes of section 45 of the Income-tax Act.</td><td>It is proposed to insert a new clause (viiab) in the section so as to provide that any transfer of a capital asset, being-

a. bond or Global Depository Receipt referred to in sub-section (1) of section 115AC or
b. rupee denominated bond of an Indian company or
c. derivative,

made by a non-resident on a recognized stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency, shall not be regarded as transfer.

The expressions are proposed to be defined as under:-

(a) “International Financial Services Centre” shall have the meaning assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005;

(b) “recognized stock exchange” shall have the meaning assigned to it in clause (ii) of Explanation 1 to clause (5) of section 43;

(c) “derivative” shall have the meaning assigned to it in clause (ac) of section 2 of the Securities Contracts (Regulation) Act, 1956.’.</td></tr>
</table>

This amendment is proposed to promote the development of world class financial infrastructure in India.

Effective Date:
The amendment referred to above will take effect from 1st April, 2019 and will accordingly apply in relation to assessment year 2019-20 and subsequent assessment years.

21. Capital Gain not to be charged on Investment in certain Bonds [Section 54EC]:

Section 54EC deals with exemption in respect of capital gains on investment in certain bonds. Two amendments are proposed in this section.

Existing Provision	Proposed Amendment
The section provides that capital gain arising from the transfer of a long-term capital asset, invested in the long-term specified asset at any time within a period of six months after the date of such transfer, shall not be charged to tax subject to certain conditions specified in the said section. Presently, exemption is provided in respect of any long term capital asset.	It is proposed to amend the said section so as to provide that capital gain arising from the transfer of a long-term capital asset, being land or building or both, invested in the long-term specified asset at any time within a period of six months after the date of such transfer, the capital gain shall not be charged to tax subject to certain conditions specified in the said section. It is proposed to restrict the exemption only in respect of capital asset being land or building or both.

The amendment is proposed to restrict the scope of section only to capital gains arising from long term capital asset being land or building or both.

Existing Provision	Proposed Amendment
Clause (ba) of the Explanation to the section 54EC defines expression "long-term specified asset" for making any investment under the said section on or after the 1st day of April, 2007, to mean any bond, redeemable after three years and issued on or after the 1st day of April, 2007 by the National Highways Authority of India or by the Rural Electrification Corporation Limited; or any other bond notified by the Central Government in this behalf.	It is proposed to substitute the said clause so as to provide that long-term specified asset for making any investment under the said section on or after the 1st day of April, 2007 but before the 1st day of April, 2018 shall mean any bond, redeemable after three years and issued on or after the 1st day of April, 2007 but before the 1st day of April, 2018; and For making any investment under the section on or after the 1st day of April, 2018 shall mean any bond, redeemable after five years and issued on or after the 1st day of April, 2018 by the National Highways Authority of India or by the Rural Electrification Corporation Limited or any other bond notified by the Central Government in this behalf.

It is proposed to provide that investment in specified bonds made on or after 1st April, 2018 will be redeemable after 5 years as against 3 years provided in respect of such bonds issued before 1st April, 2018. Please note that proposed section provides for investments made on or after 1st April, 2018. Thus, even if the capital gain has accrued on or before 31st March, 2018 but investment in specified bonds is made on or after 1st April, 2018, then the bonds will be redeemable after 5 years.

The amendment is proposed to make available funds at the disposal of eligible bond issuing company for a longer period.

Effective Date:
Both these amendments will take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-2020 and subsequent years.

22. Transfer of Capital Asset between Holding and Subsidiary [Section 56(2)(x)]:
Section 47 provides for certain tax neutral transfers. Section 56 also excludes income arising out of certain tax neutral transfers from its ambit. However, the transfers referred to in clause (iv) and clause (v) of section 47 have not been excluded from the scope of section 56.

Existing Provision	Proposed Amendment
The fourth proviso to section 56(2)(x) provides for exceptions under which provisions of this sub-section are not applicable. The proviso deals with some of the transactions not regarded as transfers as per section 47.	It is proposed to amend the fourth proviso to clause (x) of the said sub-section so as to exclude the transfer of capital asset between holding company and its wholly owned Indian subsidiary company and between subsidiary company and its Indian holding company, which are not regarded as transfer under clause (iv) or clause (v) of section 47, from the scope of clause (x) of the said sub-section.

Section 47 provides for certain tax neutral transfers. Transfer of capital asset by a company to its subsidiary company or transfer of a capital asset by a subsidiary to its holding company is not taxable in the hands of the transferor subject to certain compliances. However, the same is taxable in the hands of the transferee under section 56 if the value of the asset received by the transferee is more than the consideration. Certain exclusions have already been provided u/s 56(2)(x). However, this has remained to be provided for and, therefore, it is now proposed to exclude such transactions between holding and its subsidiary from ambit of section 56(2)(x).

Effective Date:
The amendment will take effect from 1st April, 2018 and shall accordingly, apply in relation to the transactions made on or after 1st April, 2018.

23. Benefit of carry forward and set off of losses [Section 79]:

Existing Provision	Proposed Amendment
Section 79 of Act provides that carry forward and set off of losses in a closely held company shall be allowed only if there is a continuity in the beneficial owner of the shares carrying not less than 51 percent of the voting power, on the last day of	It is proposed to add third proviso as under: "Provided also that nothing contained in this section shall apply to a company where a change in the shareholding takes place in a previous year pursuant to a

the year or years in which the loss was incurred.	resolution plan approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner."

The case of a company seeking insolvency resolution under Insolvency and Bankruptcy Code, 2016, involves change in the beneficial owners of shares beyond the permissible limit under section 79.

It is, therefore, proposed to provide that the requirement of 51% voting powers remaining the same shall not apply in case of such companies, whose resolution plan has been approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

Effective Date:
This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to assessment year 2018-19 and subsequent assessment years.

24. Deductions in respect of certain incomes not to be allowed unless return is filed by the due date [Section 80AC]:

Existing Provision	Proposed Amendment
Where in computing the total income of an assessee of the previous year relevant to the assessment year commencing on the 1st day of April, 2006 or any subsequent assessment year, any deduction is admissible under section 80-IA or section 80-IAB or section 80-IB or section 80-IC or section 80-ID or section 80-IE, no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139.	It is proposed to substitute the said section so as to provide that in computing the total income of an assessee of the previous year relevant to the assessment year commencing on or after the 1st day of April, 2018, deduction under any other provisions of Chapter VIA under the heading "C.—Deductions in respect of certain incomes" (i.e. sections 80H to 80TT) shall be allowed only if the return is filed within the due date specified under sub-section (1) of section 139.

The operative sections under Part C of Chapter VI-A are 80IA; 80IAB; 80IAC; 80IB; 80IBA; 80IC; 80ID; 80IE; 80JJA; 80JJAA; 80LA; 80P; 80Q; 80QQA; 80QQB; 80RRB.

Please note that a proposed amendment will be effective from assessment year 2018-19 and, therefore, if a taxpayer is claiming deduction under any of these sections for the year ending on 31st March, 2018, then he must file the return of income within the due date of filing of the return of income.

Effective Date:
This amendment will take effect, from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.

25. Deduction in respect of Health Insurance premium paid [Section 80D]:
Section 80D, inter-alia, provides that a deduction upto Rs 30,000/- shall be allowed to an assessee, being an individual or a Hindu undivided family, in respect of payments towards annual premium on health insurance policy, or preventive health check-up, of a senior citizen, or medical expenditure in respect of very senior citizen. It is proposed to amend section 80D so as to raise this monetary limit of deduction from Rs 30,000/- to Rs 50,000/-.

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

Effective Date:
These amendments will take effect, from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

26. Deduction in respect of medical treatment, etc. [Section 80DDB]:

Existing Provision	Proposed Amendment
The existing provisions allow deduction to an Individual and Hindu undivided family with regard to amount paid for medical treatment of specified diseases in respect of very senior citizen upto Rs 80,000/- and in case of senior citizens upto Rs 60,000/- subject to compliance with the conditions prescribed.	It is proposed to amend the provisions of section 80DDB so as to raise this monetary limit of deduction to Rs 1,00,000/- for both senior citizens and very senior citizens.

The distinction of separate monetary limit between senior citizen and very senior citizen has been done away with.

Effective Date:
These amendments will take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

27. Deduction available to eligible start up [Section 80IAC]:
Section provides for deduction to an eligible start-up for three consecutive assessment years out of seven years at the option of the assessee.

Existing Provision	Proposed Amendment
The section provides that deduction shall be available to an eligible start-up, if – • It is incorporated on or after the 1st day of April, 2016 but before the 1st day of April, 2019; • The total turnover of its business does not exceed twenty-five crore rupees in any of the previous years beginning on or after the 1st day of April, 2016 and ending on the 31st day of March, 2021; and • It is engaged in the eligible business.	It is proposed to amend the section so as to provide that deduction under the said section shall be available to an eligible start-up, if – • It is incorporated on or after the 1st day of April, 2016 but before the 1st day of April, 2021; • The total turnover of its business does not exceed twenty-five crore rupees in any of the seven previous years beginning from the year in which it is incorporated. • It is engaged in the eligible business.

It is also proposed to expand definition of eligible business.

Existing Provision	Proposed Amendment
"Eligible business" means a business which involves innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property;	“Eligible business” means a business carried out by an eligible start up engaged in innovation, development or improvement of products or processes or services or a scalable business model with a high potential of employment generation or wealth creation.

The section 80-IAC was introduced by Finance Act, 2016. The scope is now proposed to be expanded as under:

(i) The benefit would also be available to start ups incorporated on or after the 1st day of April 2019 but before the 1st day of April, 2021;

(ii) The requirement of the turnover not exceeding Rs 25 Crore would apply to seven previous years commencing from the date of incorporation;

(iii) The definition of eligible business has been expanded to provide that the benefit would be available if it is engaged in innovation, development or improvement of products or processes or services, or a scalable business model with a high potential of employment generation or wealth creation.

Effective Date:
The amendment will take effect, from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.

28. Deduction in respect of employment of new employees [Section 80JJAA]:

The section provides for a deduction of thirty percent of emoluments paid to a new employee for three years.

Existing Provision	Proposed Amendment
The new employee must be employed for more than two hundred and forty days in the year of employment or one hundred and fifty days in case of business of manufacturing of apparel, subject to certain conditions.	It is proposed to amend the said section so as to provide that in the case of business of manufacturing of footwear or leather products, the minimum number of days of employment in the years of employment shall be one hundred and fifty days in place of two hundred and forty days. It is further proposed to provide that where a new employee is employed during the previous year for a period of less than two hundred and forty days or one hundred and fifty days, as the case may be, but is employed for a period of two hundred and forty days or one hundred and fifty days, as the case may be, in the immediately succeeding year, he shall be deemed to have been employed in the succeeding year and the provisions of this section shall apply accordingly.

Effective Date:
These amendments will take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-2020 and subsequent years.

29. Insertion of New section 80PA to provide deduction in respect of income of Farm Producer Companies [Section 80PA]:
Section 80P provides for 100 percent deduction in respect of profit of cooperative society which provides assistance to its members engaged in primary agricultural activities.

It is proposed to extend similar benefit to Farm Producer Companies (FPC), having a total turnover upto Rs 100 crore, whose gross total income includes any income from-

(i) the marketing of agricultural produce grown by its members, or

(ii) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or

(iii) the processing of the agricultural produce of its members.

The benefit shall be available for a period of five years from the financial year 2018-19.

It is further proposed to provide that where the assessee is entitled also to deduction under any other provision or provisions of Chapter VIA, the deduction under this section shall be allowed from the gross total income as reduced by the deduction under such other provision or provisions of the said Chapter.

Effective Date:
This amendment will take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

30. Deduction in respect of interest income on deposits held by Senior Citizens [Sections 80TTA and 80TTB]:

At present, a deduction upto Rs 10,000/- is allowed under section 80TTA to an assessee in respect of interest income from savings account. A separate limit is now proposed to be provided for interest on deposits to senior citizen. Accordingly, three amendments have been proposed:

a) The deduction under existing section 80TTA will not be provided to senior citizen claiming deduction under section 80TTB.

b) A new section 80TTB is proposed to be inserted to provide that where the gross total income of an assessee, being a senior citizen, includes any income by way of interest on deposits with a banking company to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act) or a co-operative society engaged in the business of banking (including a co-operative land mortgage bank or a co-operative land development bank) or a Post Office as defined in clause (k) of section 2 of the Indian Post Office Act, 1898, a deduction of an amount up to fifty thousand rupees shall be allowed.

   It is further proposed to provide that where the income referred to in this section is derived from any deposit held by, or on behalf of, a firm, an association of persons or a body of individuals, no deduction shall be allowed under this section in respect of such income in computing the total income of any partner of the firm or any member of the association or any individual of the body.

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

Effective Date:
This amendment will take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years. However, the proposed amendment in section 194A will take effect from 1st April, 2018.

31. Tax on Income of Foreign Institutional Investors (FII) from securities [Section 115AD]:

Section 115AD deals with the taxation of Income of Foreign Institutional Investors from securities and capital gain arising from their transfer

Existing Provision	Proposed Amendment
The existing provisions of section 115AD provide that where the total income of a FII includes income by way of long-term capital gains arising from the transfer of certain securities, such capital gains shall be chargeable to tax at the rate of ten per cent.	
However, long term capital gains arising from transfer of long term capital asset being equity shares of a company or a unit of equity oriented fund or a unit of business trusts, is exempt from income-tax under clause (38) of section 10.	It is proposed to amend the section so as to bring it in the line of proposed amendment brought in to Section 10(38) and 112A. As in the case of domestic investors, the FIIs will also be liable to tax on such long term capital gains only in respect of amount of such gains exceeding one lakh rupees.

Income Tax Department tweet clarifies that long-term capital gains on listed equities arising upto 31st January, 2018 has been grandfathered for resident and non-resident assessees (including Foreign Institutional Investors). Also refer FAQ on Page 59.

Effective Date:

The amendment is proposed to be made effective from 1st April, 2019 and shall accordingly, apply in relation to assessment year 2019-20 and subsequent years.

32. Tax on Income of Certain Domestic Companies [Section 115BA]:

Section 115BA deals with the tax on Income of certain domestic companies.

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

However, there are certain incomes which are subject to a scheduler tax at a rate which is lower or higher than 25 per cent. Consequently tax payers have been subjected to unintended hardship or unwarranted relief. Accordingly it is proposed to amend section 115BA so as to clarify that the provisions of section 115BA is restricted to the income from the business of manufacturing, production, research or distribution referred to therein; and income which are at present taxed at a scheduler rate will continue to be so taxed.

Effective Date:
The amendment is proposed to be made effective retrospectively from 1st April, 2017 and shall accordingly, apply in relation to assessment year 2017-18 and subsequent years.

33. Tax on Income referred to in Section 68 or Section 69 or Section 69A or Section 69B or Section 69C or Section 69D [Section 115BBE]:

Section 115BBE deals with the tax on Income referred to in Section 68 or Section 69 or Section 69A or Section 69B or Section 69C or Section 69D.

Existing Provision	Proposed Amendment
Section 115BBE (2) provides that no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any provision of the said Act in computing his income referred to in clause (a) of sub-section (1).	It is proposed to amend the said sub-section (2) so as to include income referred to in clause (b) of sub-section (1) which refers to the Total Income determined by the Assessing Officer is such income is not covered under clause (a).

Section 115BBE provides for tax on income referred to in section 68 (cash credit) or section 69 (unexplained investment) or section 69A (unexplained money etc.) or section 69B (amount of investments, etc. not fully disclosed in the books of account) or section 69C (unexplained expenditure) or section 69D (amount borrowed or repaid on hundi) at a higher rate of sixty percent.

Sub-section (1) of section 115BBE provides for two situations-

a) Where the assessee includes any of the above income in his return of income;

b) Where the assessing officer determines such income where it is not disclosed in the return of income by the assessee.

Sub-section (2) of said section provides that no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any provision in computing his income referred to in clause (a) of sub-section (1). Thus, it was provided that where the assessee himself declares such income in his return of income, no deduction will be allowed in respect of expenditure, allowance, loss, etc. However, there was no provision for not allowing any deduction out of such income in respect of expenditure, allowance, loss, etc. where the assessing officer determines such income.

It is now proposed to amend the said sub-section (2) so as to also include income referred to in clause (b) of sub-section (1). Thus, as per proposed amendment, no deduction will be allowed out of such income of any expenditure, allowance, loss, etc. under both the cases i.e. –

a) Where the assessee includes any of the above income in his return of income;

b) Where the assessing officer determines such income where it is not disclosed in the return of income by the assessee.

Effective Date:
The amendment is proposed to be made effective retrospectively from 1st April, 2017 and shall accordingly, apply in relation to assessment year 2017-18 and subsequent years.

34. Special provisions for payment of tax by certain companies [Section 115JB]:
Section 115JB deals with Minimum Alternate Tax payable by the companies.

There are two amendments under this section.

A) Application admitted under Insolvency and Bankruptcy Code:

Existing Provision	Proposed Amendment
Section 115JB, provides for levy of a minimum alternate tax (MAT) on the "book profits" of a company. In computing the book profit, it provides for a deduction in respect of the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account. Consequently, where the loss brought forward or unabsorbed depreciation is Nil, no deduction is allowed.	It is proposed to amend section 115JB to provide that the aggregate amount of unabsorbed depreciation and loss brought forward shall be allowed to be reduced from the book profit, if a company's application for corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 has been admitted by the Adjudicating Authority.

Accordingly, a company whose application has been admitted under Insolvency and Bankruptcy Code, 2016 would be entitled to reduce the amount of unabsorbed depreciation and loss brought forward for the purposes of computing book profit under section 115JB.

Earlier, Income Tax Appellate Tribunal, Ahmedabad in the case of Surat Textile Mills Ltd. has held that "Unabsorbed depreciation adjusted from capital receipts under rehabilitation scheme of sick company would not extinguish such depreciation from accounts in actual terms; same would be available as deductible expenditure to calculate book profits".

Effective Date:
The amendment is proposed to be made effective from 1st April, 2018 and shall accordingly, apply in relation to assessment year 2018-19 and subsequent years.

B) MAT on Foreign Company paying tax under Presumptive Tax:

It is proposed to insert a new Explanation 4A in section 115JB so as to clarify that the provisions of the said section shall not be applicable and shall be deemed never to have been applicable to an assessee, being a foreign company, where its total income comprises solely of profits and gains from business referred to in section 44B or

section 44BB or section 44BBA or section 44BBB and such income has been offered to tax at the rates specified in the said sections.

Effective Date:
Insertion of Explanation 4A is being clarificatory in nature will take effect retrospectively from 1st April, 2001 and will, accordingly, apply in relation to the assessment year 2001-2002 and subsequent years.

35. Special provisions for payment of tax by certain persons other than a company [Sections 115JC and 115JF]:
Section 115JC deals with Alternate Minimum Tax payable by certain persons other than a company.

Existing Provision	Proposed Amendment
The section provides that where in the case of a person, other than a company, the regular income-tax payable for any previous year is less than the alternate minimum tax payable for such previous year, the adjusted total income shall be deemed to be the total income of that person for such previous year and the assessee shall be liable to pay income-tax on such total income at the rate of eighteen and one-half per cent.	It is proposed to amend the section so as to provide that for the assessee being a person which, is a unit located in an International Financial Service Centre and derives its income solely in convertible foreign exchange, the rate of tax shall be nine per cent.

Consequential amendments are made in Section 115JF to include nine percent rate of tax in alternate minimum tax and to include the definition of convertible foreign exchange, International Financial Services Centre and unit.

Effective Date:
The amendment is proposed to be made effective from 1st April, 2019 and shall accordingly, apply in relation to assessment year 2019-20 and subsequent years.

36. Tax on distributed profits of domestic companies [Sections 115O and 115Q]:
Section 115O deals with tax on distributed profits on domestic companies

Existing Provision	Proposed Amendment
The existing provisions provide for dividend distribution tax payable by a domestic company. However, deemed dividend under sub-clause (e) of clause (22) of section of 2 the Act is taxed in the hands of the recipient at the applicable rate of tax.	It is proposed to insert a proviso to sub-section (1) of section 115-O so as to provide for levy of tax at the rate of thirty per cent on distributed profits in the nature of dividend under Section 2(22)(e). It is further proposed to insert a proviso to sub-section (1B) of the said section 115-O so as to exclude the amount of dividend

	under sub-clause (e) of clause (22) of section 2 from the applicability of grossing up provisions of the said sub-section.

The taxability of deemed dividend in the hands of recipient has posed problem of the collection of the tax liability and has also been the subject matter of extensive litigation.

It is therefore, proposed to delete the Explanation to Chapter XII-D occurring after section 115Q so as to bring deemed dividends under section 2(22)(e) also under the scope of dividend distribution tax under section 115-O. Further, such deemed dividend is proposed to be taxed at the rate of 30 per cent. (without grossing up).

Effective Date:
The amendment is proposed to be made effective from 1st April, 2018 and accordingly it will apply to transactions referred to in section 2(22)(e) undertaken on or after 1st April, 2018.

37. Tax on distributed income to unit holders [Section 115R]:
Section 115R deals with tax on distributed income to unit holders

Existing Provision	Proposed Amendment
The existing section provides that any amount of income distributed by the specified company or a Mutual Fund to its unit holders shall be chargeable to tax and such specified company or Mutual Fund shall be liable to pay additional income-tax on such distributed income at the rate specified in the said section.	It is proposed to amend the section so as to provide that where any income is distributed to any person by an equity oriented fund, the fund shall be liable to pay additional income-tax at the rate of ten per cent on income so distributed.
Clause (b) of the second proviso to sub-section (2) provides that nothing contained in Section 115R shall apply in respect of any income distributed to a unit holder of equity oriented funds in respect of any distribution made from such funds.	It is further proposed to omit clause (b) of the second proviso to sub-section (2) which is consequential in nature.

Effective Date:
The amendment is proposed to be made effective from 1st April, 2018.

38. Unit Trust of India or Mutual Fund to be an assessee in default [Section 115T]:
Section 115T deals with Unit Trust of India or Mutual Fund to be an assessee in default

Existing Provision	Proposed Amendment
The existing section provides the definition of "equity oriented fund" to mean the Unit Scheme, 1964 made by the Unit Trust of India; and such fund where the investible funds are invested by way of equity shares in domestic companies to the extent of more than sixty-five per cent of the total proceeds of such fund.	It is proposed to amend the clause so as to define "equity oriented fund" as a fund referred to in clause (a) of Explanation to section 112A and the Unit Scheme, 1964 made by the Unit Trust of India.

For definition of equity oriented fund, please refer Para 12 above.

Effective Date:
The amendment is proposed to be made effective from 1st April, 2018.

39. Permanent Account Number [Section 139A]:
Section 139A deals with Permanent Account Number

Existing Provision	Proposed Amendment
The existing sub-section (1) of the said section provides that every person specified therein and who has not been allotted a permanent account number shall apply to the Assessing Officer for allotment of a permanent account number.	It is proposed to insert a new clause (v) in the said sub-section so as to provide that every person, not being an individual, who enters into a financial transaction of an amount aggregating to two lakh fifty thousand rupees or more in a financial year shall apply to the Assessing Officer for allotment of a permanent account number. It is further proposed to insert a new clause (vi) so as to provide that the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred to in clause (v), or any person competent to act on behalf of the person referred to in clause (v), shall also apply to the Assessing Officer for the allotment of permanent account number.

Effective Date:
The amendment is proposed to be made effective from 1st April, 2018.

40. Return by whom to be verified [Section 140]:
Section 140 deals with verification of return of income.

It is proposed to amend the section 140 so as to provide that where in respect of a company whose application has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016, the

return of income shall be verified by the insolvency professional appointed by such Adjudicating Authority.

It is further proposed to define the expressions "insolvency professional" and "Adjudicating Authority" in the section.

Effective Date:
The amendment is proposed to be made effective from 1st April, 2018 and will, accordingly apply to return filed on or after the said date.

41. Assessment [Section 143]:
Section 143 provides for the procedure for assessment. Two sets of amendments are proposed –

A) Under section 143(1) – for issuing intimation:

The existing clause (a) of sub-section (1) of the section provides that at the time of processing of return of income made under section 139, or in response to a notice under sub-section (1) of section 142, the total income or loss shall be computed after making the adjustments specified in clauses (i) to (vi) therein.

Existing Provision	Proposed Amendment
The existing sub-clause (vi) of the sub-section 143(1)(a) provides for adjustment in respect of addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return.	It is proposed to insert a new proviso to the said clause so as to provide that no adjustment under sub-clause (vi) of the said clause shall be made in respect of any return furnished for the assessment year commencing on or after the 1st day of April, 2018.

Finance Act, 2016 has inserted sub-clause (vi) to section 143(1)(a), enabling of making adjustment for addition of income appearing in Form 26AS or Form 16A or Form 16 (the three Forms) which has not been included in computing the total income in the return. In this regard, CBDT has issued Instruction No.(s) 9/2017 dated 11th October 2017 and 10/2017 dated 15th November 2017 for identification of instances in which section 143(i)(a)(vi) may be invoked by CPC-ITR, Bengaluru on the basis of information contained in the ITR Forms 1 to 6.

The CBDT has now issued another Circular No. 01 of 2018 dated 10th January 2018 by which it has issued directions regarding the processing of income-tax returns under section 143(1) of the Income-tax Act, 1961 which were filed in Forms ITR-1 to 6 and the applicability of section 143(1)(a)(vi).

It has been decided that before issuing an intimation of the proposed adjustment, initially an awareness campaign would be carried out to draw the attention of the taxpayer to such differences. This would be in form of an e-mail and SMS communication to the concerned taxpayer informing him about the variation in the tax-return vis-a-vis the information available in the three Forms and requesting him to submit response to the variation within one month of receiving the communication

electronically. In case the taxpayer does not respond within the available time-frame or the response is not satisfactory, a formal intimation u/s 143(l)(a)(vi) proposing adjustment to the returned income would be issued to him. As per the second proviso to section 143(1)(a)(vi), in a case where no response is received from the taxpayer within thirty days of issue of such an intimation, the proposed adjustment shall be made to the returned income. Therefore, it is of utmost necessity that the concerned taxpayer files a prompt, timely and satisfactory response to the awareness campaign or subsequent intimation proposing adjustment u/s 143(1)(a)(vi). Mode of filing response has also been provided for.

Based upon response of the taxpayer and the information so available with the CPC-ITR, thereafter, such returns shall be taken up for processing by CPC-ITR as per provisions of section(s) 143(1), 143(1)(a)(vi) read with Instruction Nos. 9 & 10/2017 of CBDT.

B) Under section 143(3) – for scrutiny assessment:

Sub-section (3) of the said section empowers the Assessing Officer to make, by an order in writing, an assessment of total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

Following further amendments have been proposed under this section being the steps towards e-assessment.

Existing Provision	Proposed Amendment
	It is further proposed to insert sub-sections (3A), (3B) and (3C) in the said section so as to, inter alia, provide for a scheme, by notification in the Official Gazette, for the purpose of making assessment of total income or loss of the assessee under sub-section (3).

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

It is proposed to amend the section 143, by inserting a new sub-section (3A), after sub-section (3), enabling the Central Government to prescribe the aforementioned new scheme for scrutiny assessments, by way of notification in the Official Gazette.

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

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

Effective Date:
The amendment is proposed to be made effective from 1st April, 2018.

42. TDS on interest on Savings Bonds [Section 193]:
It is proposed to amend the proviso to clause (iv) of the section 193 to provide that the person responsible for paying to a resident any interest on 7.75% Savings (Taxable) Bonds, 2018 shall deduct income-tax, if the interest payable on such bonds exceeds ten thousand rupees during the financial year.

Effective Date:
This amendment will take effect from 1st April, 2018.

43. Authority for Advance Rulings [Sections 245-O and 245-Q]:
The section 245-O provides for constitution of an Authority for Advance Rulings.

It is proposed to amend the said section so as to provide that the said Authority shall cease to act as an Authority for Advance Rulings for the purpose of Chapter V of the Customs Act, 1962 on and from the date of appointment of Customs Authority for Advance Rulings under section 28EA of the Customs Act, 1962 and the Authority for Advance Rulings under section 245-O shall act as an Appellate Authority, for the purpose of Chapter V of the Customs Act, 1962 on and from the said date.

It is further proposed that the Authority for Advance Rulings under section 245-O shall not admit any appeal against any ruling or order passed earlier by it in the capacity of Authority for Advance Rulings for the purposes of Chapter V of the Customs Act, 1962 after the date of appointment of Customs Authority for Advance Rulings.

It is also proposed that where the Authority for Advance Rulings under section 245-O is dealing with an application seeking advance ruling in the matters of the Income-tax Act, the revenue Member of the Bench shall be such member as referred to in sub-clause (i) of clause (c) of sub-section (3) of the said section.

The consequential amendment is proposed in section 245-Q so as to omit the provisions with regard to admissibility of applications for advance ruling under Chapter V of the Customs Act, 1962.

Effective Date:
These amendments will take effect from 1st April, 2018.

44. Appeal to Appellate Tribunal [Section 253]:
Sub-section (1) of the said section provides that any assessee aggrieved by any of the orders mentioned therein may appeal to the Appellate Tribunal.

It is proposed to amend clause (a) of the said sub-section so as to make an order passed by a Commissioner (Appeals) under section 271J (penalty for furnishing incorrect information in reports or certificates) also appealable to the Appellate Tribunal.

Effective Date:
This amendment will take effect from 1st April, 2018.

45. Penalty for failure to furnish Statement of Financial Transaction [Section 271FA]:

The statement of financial transaction or reportable account u/s 285BA(1) is required to be filed by 31st May following that year. A penalty under this section is leviable for failure to furnish within the prescribed time, the statement of financial transaction or reportable account u/s 285BA(1). The amount of penalty is now proposed to be increased as under:

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

Effective Date:
This amendment will take effect from 1st April, 2018.

46. Prosecution proceedings for failure to furnish Return of Income [Section 276CC]:

Section 276CC provides that if a person willfully fails to furnish in due time the return of income which he is required to furnish, he shall be punishable with imprisonment for a term, as specified therein, with fine.

Existing Provision	Proposed Amendment
Sub-clause (b) of clause (ii) of the proviso to the said section provides that a person shall not be proceeded against under the said section for any assessment year commencing on or after the 1st day of April, 1975, if the tax payable by him on the total income determined on regular assessment as reduced by the advance tax, if any, paid and any tax deducted at source, does not exceed three thousand rupees.	It is proposed to amend the provisions of the said sub-clause (b) so as to provide that the conditions specified therein shall not be applicable in respect of a company.

The explanation given in the Memorandum is that in order to prevent abuse of the said proviso by shell companies or by companies holding Benami properties, it is

proposed to amend the provisions of the said sub-clause so as to provide that the said sub-clause shall not apply in respect of a company.

Let us note a point that the existing provision itself provides for threshold of tax amount of only Rs. 3,000/- for initiation of prosecution proceedings. Now it is proposed to carve out non-corporate assessees from this. What concept of materiality we are considering - the tax amount of Rs. 3,000/- only?

The amendment has now highlighted this provision and it is sending an alert indirectly that all the taxpayers should file their return of income in due time and comply with the provisions. If not done, then for a meager amount of tax of Rs. 3,000/- plus, a prosecution proceedings can be initiated. Also, one should keep in mind that from assessment year 2017-18 onwards the return of income has to be filed within the assessment year itself. Thus, the return of income for assessment year 2017-18 cannot be filed after 31st March, 2018 and the same time limit applies for the subsequent period.

Effective Date:
This amendment will take effect from 1st April, 2018.

47. Filing of Country-by-Country Report(CbCR) [Section 286]:
Section 286 contains provisions relating to specific reporting regime in the form of Country-by-Country Report (CbCR) in respect of an international group. Based on model legislation of Action Plan 13 of Base Erosion and Profit Shifting (BEPS) of the Organization for Economic Co-operation and Development (OECD) and others, following amendments are proposed to be made:—

(i) The time allowed for furnishing the Country-by-Country Report (CbCR), in the case of parent entity or Alternative Reporting Entity (ARE), resident in India, is proposed to be extended to twelve months from the end of reporting accounting year. However, for the assessment year 2017-18 due dates has already been extended upto 31st March, 2018 vide Circular No. 26 dated 25th October, 2017.

(ii) Constituent entity resident in India, having a non-resident parent, shall also furnish CbCR in case its parent entity outside India has no obligation to file the report of the nature referred to in sub-section (2) in the latter's country or territory.

(iii) The time allowed for furnishing the CbCR, in the case of constituent entity resident in India, having a non-resident parent, shall be twelve months from the end of reporting accounting year.

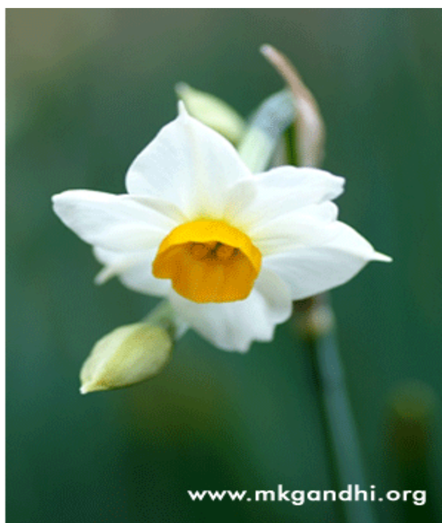
(iv) The due date for furnishing of CbCR by the ARE of an international group, the parent entity of which is outside India, with the tax authority of the country or territory of which it is resident, will be the due date specified by that country or territory.

(v) Agreement would mean an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A, and also an agreement for exchange of the report referred to in sub-section (2) and sub-section (4) as may be notified by the Central Government.

(vi) "Reporting accounting year" has been defined to mean the accounting year in respect of which the financial and operational results are required to be reflected in the report referred to in sub-section (2) and sub-section (4).

These amendments are clarificatory in nature.

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



Make in India

F. No. 370149/20/2018-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, Dated 4th February, 2018

Subject: Frequently Asked Questions (FAQs) regarding taxation of long-term capital gains proposed in Finance Bill, 2018-reg.

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

2. In order to minimise economic distortions and curb erosion of tax base, it is proposed to withdraw the exemption under clause (38) of section 10 and to introduce a new section 112A in the Income-tax Act, 1961 ('the Act') vide clause 31 of the Finance Bill, 2018 so as to provide that long-term capital gains arising from transfer of such long-term capital asset exceeding one lakh rupees will be taxed at a concessional rate of 10 percent.

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

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

Ans 1. Long term capital gains mean gains arising from the transfer of long-term capital asset. The Finance Bill, 2018 proposes to provide for a new long-term capital gains tax regime for the following assets–

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

The proposed regime applies to the above assets, if–

a. the assets are held for a minimum period of twelve months from the date of acquisition; and

b. the Securities Transaction Tax (STT) is paid at the time of transfer. However, in the case of equity shares acquired after 1.10.2004, STT is required to be paid even at the time of acquisition (subject to notified exemptions).

Q 2. What are the modes of acquisition of equity shares which are proposed to be exempted from the condition of payment of STT?

Ans 2. The Central Government had exempted certain modes of acquisition of equity shares for the purposes of clause (38) of section 10 of the Act vide notification no. 43/2017 dated 5th of June, 2017. This notification is proposed to be reiterated for the purposes of clause 31 of the Finance Bill, 2018 after its enactment.

Q 3. What is the point of chargeability of the tax?

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

Q 4. What is the method for calculation of long-term capital gains?

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

Q 5. How do we determine the cost of acquisition for assets acquired on or before 31st January, 2018?

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

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

Further, if the full value of consideration on transfer is less than the fair market value, then such full value of consideration or the actual cost, whichever is higher, will be deemed to be the cost of acquisition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q 8. Whether the cost of acquisition will be inflation indexed?

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

Q 9. What is the date of commencement of the proposed new tax regime?

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

Q 10. What will be the tax treatment of accrued gains upto 31st January 2018?

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

Q 11. What will be the tax treatment of transfer of share or unit between 1st February 2018 to 31st March 2018?

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

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

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

Q13. What is the date from which the holding period will be counted?

Ans 13. The holding period will be counted from the date of acquisition.

Q 14. Whether tax will be deducted at source in case of gains by resident tax payer?

Ans 14. No. There will be no deduction of tax at source from the payment of long-term capital gains to a resident tax payer.

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

Ans 15. Ordinarily, under section 195 of the Act, tax is required to be deducted on payments made to non-residents, at the rates prescribed in Part-II of the First

Schedule to the Finance Act. The rate of deduction in the case of capital gains is also provided therein. In terms of the said provisions, tax at the rate of 10 per cent. will be deducted from payment of long-term capital gains to a non-resident tax payer (other than a Foreign Institutional Investor). The capital gains will be required to be computed in accordance with clause 31 of the Finance Bill, 2018.

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

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

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

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

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

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

Q 19. **What will be the tax treatment of transfer of share or unit between 1st February 2018 to 31st March 2018 in the case of FIIs?**

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

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

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

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

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

Q 22. What will be the cost of acquisition in the case of right share acquired before 1st February 2018?

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

Q 23. What will be the treatment of long-term capital loss arising from transfer made between 1st February, 2018 and 31st March, 2018?

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

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

Ans 24. Long-term capital loss arising from transfer made on or after 1st April, 2018 will be allowed to be set-off and carried forward in accordance with existing provisions of the Act. Therefore, it can be set-off against any other long-term capital gains and unabsorbed loss can be carried forward to subsequent eight years for set-off against long-term capital gains.

(Pravin Rawal)
Director (TPL-II)
Tel. 011-23093765

To
The Web Manager, www.incometaxindia.gov.in for uploading on the Departmental website.

STORY TO REMEMBER

Little girl and her father were crossing a bridge.

The father was kind of scared so he asked his little daughter, "Sweetheart, please hold my hand so that you don't fall into the river."

The little girl said, "No, Dad. You hold my hand."

"What's the difference?" Asked the puzzled father.

"There's a big difference," replied the little girl. "If I hold your hand and something happens to me, chances are that I may let your hand go. But if you hold my hand, I know for sure that no matter what happens, you will never let my hand go."

Moral : TRUST and RESPECT cannot be LEARNED, PURCHASED or ACQUIRED. They can only be EARNED.

TEAM SSJCO

GUPSHUP

Anay **Hey, tell me any three things in this budget which is for the benefit of Youth?**

Taniji Mobile price has gone up;
Car price has gone up; and
Focus on research in new areas of machine learning, artificial intelligence, Robotics, etc. to prepare our Youth and the Country for the technology of future.

Khush **What co-relation mobile price and car price has with Youth?**

Barbie Be smart instead of using smart phones, less use of mobile will save time to focus on studies, work and less rays to brain.

Rasgulla *No more travelling in car – Start walking or cycling – Good for health, Good for pocket and Good for global warming.*

Khush Artificial Intelligence (AI), Robotic and all sounds good but on the other hand we are still struggling with the problem of illiteracy.

Taniji True and government has equal focus on that also.
But tell me one thing; is it responsibility of government alone to provide education to all?
Can we not or rather why we should not ourselves do something to resolve this.

Rasgulla **Hold on, what are you trying to say?**

Barbie Each one – Teach one.

JAI HO!