

Budget 2016

Direct Tax Proposals

HEADS UP



Corporate Tax Rates

Particulars	Taxable Income			
	Less than INR 1 Cr	INR 1 - 5 Cr	INR 5 - 10 Cr	INR 10 Cr+
Effective Corporate Tax Rate – Domestic Companies	29.88%	31.97%	33.07%	34.61%
Effective Corporate Tax Rate – Foreign Companies	41.21%	42.03%		43.27%
Effective MAT	19.06%	20.39%		21.35%
Effective DDT	20.36%			
Effective Buy-back	23.08%			

New manufacturing companies meeting prescribed conditions may opt for a lower corporate tax rate of 25% (plus surcharge and cess, as applicable). This option can be exercised, by giving up certain deductions and incentives

Equalisation Levy on NRs for Online Advertising [1/2]

Presently, taxation of income of foreign companies from online advertising has been the subject matter of litigation in India. Tax challenges of Digital Economy have also been the subject matter of OECD's BEPS Action Plan 1.

To counter such concerns, a 6% **Equalisation Levy** has been proposed on gross fee paid to a NR service provider, for online advertisement / provision for digital advertising space. It may be noted that Equalisation Levy was one of the option that was considered (but not recommended) in the Final report of the OECD Task Force

- › Such Levy shall not be made where:
 - Service provider has an Indian PE, to which the advertising service is effectively connected
 - Total fee paid in an year by a payer, is upto INR 1 Lac
 - Payment made is not for carrying out a business / profession
- › Every payer is required to deduct and deposit such Levy with the Central Government, failing which, the entire expenditure will be disallowed in computing its business profits
- › Incomes which have been subjected to the Levy, shall be exempted under section 10. This may mitigate litigation on taxability of such advertising income of foreign companies

Equalisation Levy on NRs for Online Advertising [2/2]

- › We believe that the Equalisation Levy is likely to face significant challenge by foreign companies, particularly because:
 - As the Levy has not been characterized as a 'tax', it appears that a treaty over-ride cannot be opted for by the NR recipients
 - For the same reason, the NR recipients are likely to struggle in claiming a foreign tax credit in their State of Residence
 - In respect of the options considered but not recommended (which included inter alia an Equalisation Levy), the Final OECD Report did state that countries could introduce any of them in their domestic laws as additional safeguards against BEPS, provided they respect existing treaty obligations. However, as discussed above, the same does not appear to be the intention so far, behind this proposal

Phasing Out of Tax Incentives

- › To correspond with the planned reduction in corporate tax rates, it is proposed to phase out several tax incentives and / or weighted deductions, such as:

Tax Incentive	Proposed Change
Sec. 10AA: Tax holiday to SEZ units	15 year tax holiday available so far – Discontinued for units commencing manufacture of goods or provision of services on / after 1 April 2020
Sec. 80-IA: Development, operation, maintenance of infrastructure facility Sec. 80-IAB: Development of SEZ Sec. 80-IB: Mineral oil, Natural gas	100% profit linked incentive available so far – Discontinued if the specified activity commences on / after 1 April 2017
Sec. 32(1): Accelerated depreciation	Available upto 100% so far - Restricted to 40% w.e.f. 1 April 2017
Sec. 35: R&D Expenditure	Sunset clause proposed for reduction in percentage of weighted deduction, or for limiting the deduction to actual payment
Sec. 35AD: Investment linked incentive	Weighted deduction of 150% in case of certain businesses - Restricted to 100% w.e.f. 1 April 2017

BEPS Action Plan Implementation

- › Provisions applicable only to Assesseees having consolidated group revenue in the preceding year above a threshold limit to be prescribed*
- › Applicable from Assessment Year 2017-18
- › BEPS Action Plan 13 prescribes three-tier documentation structure consisting of:
 - Master file containing standardized information relevant for all MNE group members
 - Local file referring to transactions of local taxpayers
 - Country-by-country report containing information relating to the Global allocation of MNE's income and taxes with indicators of economic activities within the MNE group
- › Every parent entity resident in India shall furnish a 'Country By Country Report' before the due date of filing of ITR. Such report shall contain:
 - Information in respect of amount of revenue, profit or loss before tax, amount of taxes paid, taxes accrued, stated capital, accumulated earnings, number of employees and tangible assets for each country in which the group operates
 - Details of each constituent entity of the group along with country of establishment and residence
 - Nature and details of main business activity of each constituent entity

* the memorandum indicates that the limit shall be approx. INR 5,400 crores

BEPS Action Plan Implementation

- › Where the parent entity of a resident constituent entity is resident of a country with which India does not have an agreement for exchange of 'Country By Country Report', or where there has been a systematic failure of the country and such failure has been intimated to such constituent entity, 'Country By Country Report' shall be furnished by resident constituent entity
- › Where there are more than one constituent entities of a group which are resident in India, then such 'Country By Country Report' can be furnished by either of such entities that has been designated by the group to furnish the report
- › However, even in cases mentioned above, the constituent entity is not required to provide such 'Country By Country Report' , where:
 - Such report has been furnished by an alternate reporting entity to the tax authorities of a country with which India has entered into an agreement for exchange of the said report
 - Such country has been informed by such constituent entity that it is alternate reporting entity on behalf of the international group
 - Prescribed authorities have been informed of the same, by the resident constituent entity

BEPS Action Plan Implementation

- › Further, every constituent entity resident in India, the parent entity of which is not resident in India shall notify in the prescribed manner:
 - If it is an alternate reporting entity of an international group
 - Details of the parent entity or alternate reporting entity of the international group and their country of residence
- › Every constituent entity shall also keep and maintain prescribed information and documents
- › The prescribed authority may issue a notice requiring the information and documents to determine the accuracy of the reports furnished by the Indian constituent entity / Indian Parent.

BEPS Action Plan Implementation - Penalties

Particulars	Fines and Penalties
Failure to furnish documentation by Indian Constituent Entity [Sec. 271AA(2)]	INR 5,00,000
Failure to furnish 'Country By Country Report' by the Parent entity [Sec. 271GB(1)]	
<ul style="list-style-type: none"> - If failure continues for period not exceeding 1 month 	INR 5,000 per day
<ul style="list-style-type: none"> - After one month 	INR 15,000 per day
Failure to furnish information/document required in notice issued under section 286(6) [Sec. 271GB(2)]	INR 5,000 per day from the expiry of prescribed period
Failure to pay penalty even after an order directing such payment has been passed [Sec. 271GB(3)]	INR 50,000 per day from the date of service of order
Furnishing of inaccurate particulars by the entity knowingly [Sec. 271GB(4)]	INR 5,00,000

Taxation of Royalty From Patents

- › Concessional Tax Regime introduced for 'income from patents' to encourage R&D activities
- › Amendments in line with BEPS Action Plan 5
- › Section 115BBF inserted to provide for taxing income by way of royalty at 10%. Lump Sum consideration also covered
- › No deductions in respect of any expenditure or allowance to be allowed
- › Eligibility for claiming benefit
 - Assessee should be resident in India
 - Assessee should be “true and first inventor”
 - Patent should have been developed and registered in India
- › Provision shall not cover taxability of Capital gains on patents or sale of products manufactured with patented process or article
- › Provisions of MAT also amended to
 - exclude income from royalty from book profits; and
 - disallow expenditures with respect to royalty

Income Declaration Scheme

[1/2]

- › Opportunity provided to declare undisclosed income
- › Features
 - Year - Any year upto FY 2015-16
 - Rate - 45% (ie Tax @ 30% + Krishi Kalyan Cess @ 7.5% + Penalty @ 7.5%)
 - Payment date - To be paid before a date to be notified by the Government
 - Applicability - From 1 June 2016 till the date to be notified by the Government
 - No deduction in respect of expenditure or allowance allowed against such income
- › Following would not be eligible for scheme:
 - Notice already issued / issuable by revenue authorities (including search / survey) under specified section
 - Information regarding such income received under a DTAA
 - Cases covered under specified acts (e.g. Black Money Act / Special Court Act / Indian Penal code, etc.)

Income Declaration Scheme

[2/2]

- › Other benefits:
 - Declaration shall be exempt from wealth tax
 - No scrutiny and enquiry under Income-tax Act and Wealth Tax Act
 - Immunity from prosecution
 - Immunity from Benami Transactions (Prohibition) Act, 1988
- › Void under following instances:
 - Tax not paid by the notified due date
 - Declaration made by misrepresentation or suppression of facts

- › In order to reduce huge backlog of cases and realize dues expeditiously, it is proposed to introduce Dispute Resolution Scheme. Features:
 - Applicability – From 1 June 2016 till the date to be notified by the Government
 - Pending appeal against assessment order or penalty order
 - Declarant is required to pay the amount payable (discussed subsequently) before a date to be notified by the Government
 - Consequent to declaration, appeal against CIT(Appeals) shall be deemed to be withdrawn
 - Additionally, in respect of Specified tax (ie tax due to retrospective amendments):
 - Appeal / writ petition before CIT(Appeals), Tribunal, HC or SC - to be withdrawn and furnish proof of the same
 - Arbitration / Mediation / Notice under any law or agreement with India - to be withdrawn
 - Undertaking - waiving right to seek or pursue any remedy or claim which is otherwise allowance

Dispute Resolution Scheme

[2/3]

- › Following would not be eligible for scheme:
 - Cases where prosecution has been initiated before 29 Feb 2016
 - Search / survey cases
 - Undisclosed foreign income or assets
 - Cases based on Information received under a DTAA
 - Cases covered under specified acts (e.g. Special Court Act / Indian Penal code, etc.)
- › Void under following instances:
 - Material particular furnished is false at any stage
 - Declarant violates any conditions of scheme
 - Acts in a manner which is not in accordance with the undertaking

- › Amount payable under the scheme:
 - In case of tax and interest:
 - Where disputed amount not more than 10 lakhs - Disputed tax *plus* Interest till the date of assessment / reassessment
 - Where disputed amount more than 10 lakhs - Disputed tax *plus* Interest till the date of assessment / reassessment *plus* 25% of minimum Penalty
 - In case of penalty - 25% of minimum penalty leviable *plus* Tax and interest
 - In case of Specified tax - Disputed tax
- › Benefits:
 - Immunity from prosecution
 - Immunity from penalty and interest (other than the amount payable specified above)
 - Such matter shall not be reopened in any other proceedings

Tax Holiday

- › It is proposed to insert a new section 80-IAC, which provides to ‘eligible startups’, a deduction of 100% profits, derived from ‘eligible business’, for any 3 consecutive years out of 1st five years from incorporation, subject to prescribed conditions
- › “Eligible business” means business which involves innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property
- › “Eligible Startup” means company satisfying the following conditions:
 - Incorporated on or after 1 April 2016 but before 1 April 2019
 - Total turnover of business does not exceed INR 25 Crores in any of 5 financial year beginning 1 April 2016

Capital Gains Exemption for Investment in Fund of Funds [Insertion of new section 54EE]

- › Providing exemption from capital gains tax arising from sale of any long term capital asset;
- › If capital gains are invested by an assessee in units of fund notified by the Government;
- › Exemption subject to maximum investment of INR 50 Lacs;
- › Units shall not be ‘transferred’ before 3 years of purchase

Capital Gains Exemption in Respect of Equity Investment in Startups

- › Currently, section 54GB provides an exemption to individuals/ HUFs in respect of LTCG arising from transfer of residential property, if the proceeds are invested in a company qualifying as an MSME, subject to certain conditions
- › The exemption is now proposed to be extended to investments made in 'eligible startups' carrying on 'eligible business' ('eligible startups'/ 'eligible business' as defined in section 80 IAC, covered in previous slide)
- › One of the conditions for availing exemption under section 54GB was that the company should invest the equity proceeds in 'new assets', which essentially meant new plant and machinery
- › In the context of startups, 'new assets' would also cover computers/ computer software. However, for this purpose, the startup would need to be certified (as a technology driven startup) by the Inter Ministerial Board for Certification as notified by the Government

POEM - Transition Framework

- › The Place of Effective Management (POEM) based test for determination of residential status for the foreign companies was introduced through Finance Act, 2015
- › The same has now been postponed by a year
- › The Finance Bill, 2016 proposes transition framework (to be notified separately) on applicability of certain provisions to prevent companies from undue hardship for the years which have passed between the previous year for which such determination has been first made and the year in which such determination is made

Rationalization of RPF / Pension Funds / NPS

Taxability upon withdrawal of Recognized Provident Fund

- › It has been proposed that in respect of contributions made to funds post 1 April 2016, only 40% of such contribution would be exempt from tax upon withdrawal

Taxability upon commutation of annuity of Superannuation Fund

- › It has been proposed that in respect of payment in commutation of annuity purchased out of contribution made on or after 1 April 2016, only 40% of such annuity would be exempt from tax

Exemption upon payment from NPS Trust on closure / opting out of NPS

- › It has been proposed that payment from NPS Trust on account of closure or opting out of NPS shall be exempt to tax to the extent of 40%

Limit on Employer's contribution to PF

- › It has been proposed that the employer's contribution to PF is restricted to INR 1,50,000 without attraction of tax

Distributions by Companies

Buyback Distribution Tax

- › Section 115QA amended to provide that 'buyback distribution tax' shall be applicable to buybacks not only under section 77A of the Companies Act, 1956, but also those carried out under any other provisions of company law/ other laws
- › This has been proposed in the context of views held by some companies that section 115QA shall not apply to buybacks undertaken under section 391-394 of the Companies Act, 1956
- › Also, for the purposes of calculation of the amount on which tax is to be paid under this section (ie sale consideration less the amount received for issue of shares bought back), the Government, via rules shall prescribe the manner of determining the 'amount received for issue of shares'. This has become necessary to address computational issues, especially in cases where the deductible amount was to be ascertained for shares issued in tax neutral transactions (eg merger, demerger, etc.)

Dividend Distribution Tax

- › Dividend from domestic companies, in excess of INR 10 lacs, received by resident individuals, HUFs and firms (including LLPs) shall be taxable at 10%
- › No deductions or set off of losses shall be allowed against such dividend

Tax Regime for REITs and InvITs

- › Impact/ cascading effect of DDT in relation to dividends distributed by SPVs of REITs and InvITs is proposed to be removed. Therefore, dividend distributed by such SPVs:
 - shall not be subject to DDT (when the SPV distributes dividend to REIT/ InvIT)
 - shall be exempt in the hands of the REIT/ InvIT; and
 - shall be exempt in the hands of the investor
- › The above treatment is available if REIT/ InvIT hold 100% of equity share capital of the SPV (except where equity is held by Government/ Government body, or any other person pursuant to a mandatory requirement under any law/ regulations)
- › Further, the beneficial treatment above shall only be available to dividend distributions made from current income of the SPV after the date of the REIT/ InvIT acquiring the shareholding as mentioned above

Withholding Tax on AIF Distributions

- › Currently, distribution of income to investors by category 1 and 2 AIFs are subject to a tax withholding at 10% under section 194 LBB
- › In the current regime, it was difficult for non resident investors to claim treaty relief in respect of such distributions. Similarly, it was not possible for obtaining a certificate for lower tax withholding in relation to such distributions under section 197
- › Amendments are now proposed such that:
 - Non resident investors can claim treaty relief in respect of distribution from AIF
 - Investors can obtain a certificate for lower tax withholding under section 197

Tax Regime for Securitization Trusts

- › Currently, income of securitization trusts, and also their investors, is treated as tax exempt. However, there is a flat withholding tax at 25% / 30%. These were proving to be tax inefficient for investors, especially banks and FIs, since disallowance of expenditure increased the effective tax rate
- › A new regime is proposed, wherein:
 - Income of securitization trusts would be tax exempt
 - Income distributed to investors would be taxable in the same manner, and to the same extent as if the investor had made the investment directly
 - Income distributions shall be subject to tax withholding at (a) 25% (for resident individuals or HUFs), (b) 30% (for other resident), and (c) rates in force (for non residents, thereby enabling them to avail treaty relief)
 - Expenses in respect of distributions will be available
 - Nil/ lower rate of tax withholding under section 197 can be availed
- › The new regime shall also be applicable to trusts set up by reconstruction companies or securitization companies formed for the purposes of SARFAESI

Ease of Operating Offshore Funds from India

- › Section 9A was inserted in the Act by Budget 2015, to encourage offshore funds to locate their fund managers in India. However, several representations were made by the industry in respect of certain pre-requisites in the said provision
- › In order to address the same, the following changes are proposed:
 - The condition that the fund shall be a tax resident of a treaty country, has been relaxed. Instead, it shall be sufficient compliance, if it is established / registered in a treaty country
 - The condition of fund not controlling and managing any business in India or from India, shall be restricted only in the context of activities in India

International Financial Services Center

To encourage the growth of IFSCs in India, they are permitted to operate as units of SEZ, with a 10 year tax holiday in respect of their income. As a further incentive, it has been proposed that:

- › LTCG on a foreign currency transaction on a recognized stock exchange located in an IFSC shall be exempt from capital gain tax, even when no STT has been paid thereon
- › A company, being a unit located in an IFSC and deriving its income solely in convertible foreign exchange, shall be subject to MAT at a concessional rate of 9% (plus surcharge and cess)
- › Such a company shall be exempt from DDT. Further, the shareholder recipient will continue to enjoy the exemption from tax in respect of such dividend income
- › Commodities Transaction Tax and Securities Transaction Tax shall not apply to foreign currency transactions (which are otherwise subject to CTT / STT) entered into by any person on a recognized stock exchange located in an IFSC

Diamond Trading in “Special Notified Zone”

- › A Special Notified Zone ("SNZ") is a facilitation centre where global miners can undertake certain diamond trading related activities in beneficial tax environment
- › Section 9 has been amended to exclude certain activities in relation to diamond trading from purview of creating business connection in India
- › Operations excluded include activities confined to display of ‘uncut’ and ‘unassorted’ diamond in a SNZ
- › ‘Sorting’ or ‘Sale’ of diamonds is not covered under the said exclusion
- › This amendment will take effect retrospectively from Assessment Year 2016-17

Exemption for Storage, Sale of Crude

- › Under the provisions of the Act, business profits of a NR from an Indian business connection or source, is taxable in India
- › However, in order to promote build-up of strategic oil reserves in India, it is proposed to exempt **foreign National Oil Companies** and **MNCs** from taxation of their income that may arise from storage and sale of crude to Indian tax residents. This should help the process of setting up of underground storage facility by the Indian Strategic Petroleum Reserves Limited
- › A pre-requisite of claim of such exemption is that such activities shall be in pursuance to an agreement / arrangement entered into with or approved by Central Government, and notified as such in national interest

Tax Neutral Conversion to an LLP

- › Section 47(xiii b) provides conditions for availing a tax neutral conversion of a private/ unlisted public company into an LLP
- › Since the introduction of section 47(xiii b), the Government has taken the view that tax neutrality benefits should be available only to entities of a relatively smaller scale. Therefore, tax neutrality benefits envisaged are subject to compliance with prescribed conditions inter alia financial thresholds
- › In keeping with this position, an additional condition is proposed to be inserted in section 47(xiii b) whereby, to qualify for tax neutrality, the value of total assets in the books of account of the company in any of the 3 financial years preceding the conversion should not exceed INR 5 crores

Presumptive Taxation

Persons carrying eligible business

- › The threshold limit of turnover or gross receipts for availing presumptive taxation proposed to be increased to INR 2 crore from INR 1 crore. However, the consequent amendment in the tax audit provisions seems to have been inadvertently omitted
- › It has been proposed that in case of a firm, salary and interest paid to partners shall not be deductible while computing the income under presumptive taxation
- › It has also been proposed that where the eligible assessee does not avail presumptive taxation scheme in any of the 5 consecutive years post the year in which the scheme has been availed, such assessee shall not be eligible to claim the benefit of this provision for next 5 years. Consequent amendment in the tax audit provisions has also been proposed

Persons carrying on notified professions

- › It has been proposed that in case of specified professionals where the gross total income does not exceed INR 50 lakhs, a sum equal to 50% of the gross receipts may be taxed on presumptive basis. Consequent amendment in the tax audit provisions has also been proposed
- › No need to maintain books of accounts
- › Such scheme is applicable to resident assessee who is individual, HUF or partnership firm but not LLP

Amortisation of Spectrum Fee

- › To clarify the tax deductibility of newly introduced spectrum fee for purchase of spectrum, it is proposed to insert a new provision viz. section 35ABA.
- › This provision provides for amortisation of capital expenditure on acquisition of any right to use spectrum for telecom services, in equal instalments over the period for which such rights remain in force
- › Such amortisation would be available only in respect of spectrum fees actually paid
- › Effectively, the new provision prescribes a tax treatment which is almost same as that of treatment for license to operate telecommunication business

Rationalization of Housing Benefits to Individuals

Individuals buying 1st Residential Property

- › Deduction of interest upto a maximum of INR 50,000 has been proposed under section 80EE of the Act, which shall be subject to the following conditions:
 - Loan has been sanctioned by a financial institution between 1 April 2016 to 31 March 2017
 - Amount of loan does not exceed INR 35 Lacs
 - The value of the residential property does not exceed INR 50 Lacs
 - Individual does not own any other residential house property on the date of sanction of loan
- › It has also been proposed to extend the aforesaid deduction during the tenure of the loan
- › Further, the aforesaid deduction shall be available over and above the deduction of INR 2 Lacs for interest in relation to self occupied property

Self Occupied - Increase in time period for acquisition / construction

- › As per the existing provisions, an enhanced deduction of INR 2 lacs is allowable for interest paid on capital borrowed if the property is acquired / constructed within 3 years
- › In view of the fact that housing projects often take longer time for completion, it has been proposed that the time limit for acquisition / construction is increased to 5 years

Deduction of Profits from Affordable Housing Projects

- › Real estate developers building affordable housing would be eligible for 100% deduction of profits arising from such project, subject to the following conditions:
 - The project should be approved by a competent authority on or prior to 31 March 2019
 - The project should be completed within a period of 3 years from date of approval
 - Size of plot of land for the project:
 - If within 25 kms of 4 metro cities - minimum 1,000 sq. meters
 - Any other area - minimum 2,000 sq. meters
 - Size of the residential unit:
 - If within 25 kms of 4 metro cities - maximum 30 sq. meters
 - Any other area – maximum 60 sq. meters
 - Residential unit allotted to an individual and no such unit has been allotted to any other member of the family

Non-compete, Exclusivity Rights of Profession

- › Presently, any income by way of receipt of non-compete fee is taxable under section 28 business profit, and consideration for exclusivity rights is taxable under section 45 read with section 55 as capital gain
- › While the language of the above-stated provisions expressly refers to the term 'business', both these provisions are silent in respect of similar receipts from 'profession'. In order to plug this gap, it is now proposed that:
 - **Non-compete fee** received in relation to any profession shall be taxable under the head Profits and Gains of Business or Profession
 - Cost of Acquisition as well as Cost of Improvement of the capital asset being the right to carry on any profession shall be taken to be NIL. As a result, full value of consideration in respect of transfer of such an **Exclusivity Right** shall be a Capital Gain (and cannot, anymore, be said to be 'indeterminate')

Additional Depreciation - Scope Extended

- › Additional depreciation of 20% is currently allowed over and above the depreciation allowed as per section 32(1)(ii) of the Act, in respect of the cost of new plant or machinery acquired and installed for assesses engaged in the business of generation and distribution of power
- › The said benefit has now been extended to assesses engaged in the business of transmission of power

Reduction in Litigation - Appellate Tribunal

- › The Revenue cannot anymore appeal against an assessment order passed in pursuance to directions of Dispute Resolution Panel. This should bring early finality on Transfer Pricing matters and taxation of foreign companies
- › Time available with the Appellate Tribunal for rectification of mistakes apparent from record in its order, has been curtailed to 6 months (from the earlier 4 years)
- › Similar reduction in time limit for rectification by the Appellate Tribunal was also suggested in the first batch of recommendations of **Justice R.V. Easwar's Income Tax Simplification Committee**

Rationalization Provisions

Exemption of PAN – NR

- › Following the recommendations of **Justice R.V. Easwar's Income Tax Simplification Committee**, it has been proposed that the requirement of furnishing PAN (for withholding tax provisions) shall be done away with (subject to conditions as may be prescribed) for Non Resident and Foreign Company

Agreement to sell vs. Actual Transfer

- › Following the recommendations of **Justice R.V. Easwar's Income Tax Simplification Committee**, stamp duty value on date of agreement may be considered for computation of capital gains under section 50C. Accordingly, capital gains computation has been brought at par with transfer of assets in case of business profits as well as gift

Receipt of shares for lower / no consideration - Demerger / Amalgamation

- › It has been proposed that receipt of shares by individual / HUF pursuant to demerger / amalgamation shall not be taxable in the hands of individual / HUF

Tax Deduction at Source

Section	Details	Earlier Limit/ Rate	Proposed Limit/ Rate
194C	Exemption limit on aggregate payment to contractors during the financial year	INR 75,000	INR 100,000
194H	Exemption limit on payment of commission (not being insurance commission) or brokerage	INR 5,000	INR 15,000
	Applicable rate on payment of commission (not being insurance commission) or brokerage	10%	5%
194LA	Exemption limit on payment of consideration/ compensation on account of compulsory acquisition of immovable property (other than agricultural land) during the financial year	INR 200,000	INR 250,000

- › No TDS shall be applicable on payment of rent provided a declaration under section 197A in a prescribed manner has been provided by the receiver, stating that his/ her total income during the previous year is NIL

TCS on Cash purchases, Motor Cars

- › Presently, a seller is required to collect tax, in case of certain prescribed transactions
- › It is proposed that a seller shall be required to collect TCS at 1% of consideration for:
 - Sale of Motor Vehicle of value exceeding INR 10 Lac (By any mode, ie cash / Banking channel)
 - Cash sale of goods (except bullion and jewellery - already covered in the existing provisions) or provision of services, of value exceeding INR 2 Lac
- › TCS shall not apply to a transaction, that has already been subjected to TDS

Rationalization of Payment Schedule of Advance Tax

- › As per the current provisions, the advance tax payment schedule for all assessees, other than companies, is 30%, 60% and 100% of tax payable on current income to be paid by 15th September, 15th December and 15th March respectively
- › It has been proposed that the schedule for advance tax shall be 15% till 15th June, 45% till 15th September, 75 % till 15th December and 100% till 15th March, except in case of an assessee eligible for presumptive taxation under section 44AD, who shall be liable to pay advance tax in one installment on or before 15th March

Changes in Return Filing Compliances

- › All taxpayers are now mandatorily required to file return of income if their gross total income, inclusive of Long term capital gain on account of sale of equity shares, exceeds the minimum limit not chargeable to tax
- › Stringent deadline introduced in current budget to file belated return on or before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier
- › Belated return can now be revised
- › Return filed cannot be declared defective on account of non payment of self - assessment tax and interest
- › These amendments will apply in relation to Assessment Year 2017-18 and subsequent years

Processing of Return Under Section 143(1)

Scope of adjustments which can be made while processing the return of income under section 143(1) has been expanded to include

- › Disallowance of any loss claimed, if return of the previous year for which set off of loss is claimed is furnished after the due date
- › Disallowance of expenditure indicated in the audit report but not taken into account in computing the total income
- › Disallowance of deduction claimed under section 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID, 80-IE if return is furnished after the due date
- › Addition of any income reflecting in Form 26AS or Form 16 or Form 16A in excess of income as shown by the assessee in the return of income

These adjustments can be made only after due intimation has been given to the taxpayer. The response of the taxpayer shall be considered in deciding on the above, provided the same has been received within stipulated time of 30 days.

Also, prior to passing of assessment order under section 143(3), issuance of intimation (along with refund due, if any) has been made mandatory.

Interest on Refund

- › It has been proposed to change the start date for computation of interest (at 0.5% per month) on refund as follows:
 - Where refund is out of advance tax, TDS or TCS:
 - If return filed within due date – From 1st April
 - If return filed after due date – From date of filing the return
 - Where refund is out of self assessment tax
 - From the date of furnishing of return or payment of tax, whichever is later
- › In case of refund out of appeal effect being delayed beyond 3 months (ie the prescribed time period):
 - Additional interest @ 3% per annum is proposed - from the date following the date of expiry of the aforesaid 3 months period till the date on which refund is granted

Paperless Proceedings and Automation

- › To provide a legal framework for having paperless assessments and to improve compliance efficiency, it is proposed that a '**hearing**', in the course of a proceeding, shall include communication of data and documents through electronic mode
- › So far, the Act requires that all notices to be issued by any tax authority be signed in manuscript by that authority. It is now proposed that the same can be served in electronic form too
- › Provision relating to notice for initiation of scrutiny assessment has also been amended to allow issuance thereof by a prescribed tax authority

It is noteworthy that a pilot project for paperless assessment for select non-corporate taxpayers was recently notified by the CBDT. The proposed amendment appears to be a step in the same direction, to reduce human interface and minimize time consuming visits to the tax office.

Such e-governance initiative was also suggested in the first batch of recommendations of **Justice R.V. Easwar's Income Tax Simplification Committee**, for bringing about greater transparency in tax administration

Time Limit for Completion of Assessment, etc.

- › Section 153 is proposed to be substituted with changes in time limits for completion of assessment proceedings. Following are the proposed changes in time limits:

Order under section	Existing provisions	New Provisions
Section 143 or 144	24 months*	21 months*
Section 147	12 months**	9 months **
Fresh assessment in pursuance of an order under section 254, 263, or 264	12 months***	9 months ***

* *From the end of the relevant AY*

** *From the end of FY in which the notice under section 148 was served*

*** *From the end of the FY in which the order is received/passed*

- › The Assessing Officer shall give effect to an order under section 250, 254, 260, 262, 263, or 264 within three month from the end of the month in which the order is received / passed
- › *Note - Where reference has been made to Transfer pricing officer in respect to the above mentioned cases, the time limit shall stand extended by 12 months*

Penalty - Under Reporting / Misreporting of Income

- › Existing Provision: Penalty for concealment of income or furnishing inaccurate particulars of income was chargeable under section 271(1)(c) of the Act. In order to reduce litigation, section 271 is to be omitted and replaced by a new section 270A
- › Section 270A segregates levy of penalty broadly under 2 heads:
 - Under Reporting - Where income assessed is greater than income determined in the return processed
 - Misreporting of income - Broadly covers misrepresentation of facts, recording of false entry etc.
- › Penalty provisions proposed are as follows:
 - Under reporting of income - 50% of the amount of tax payable on under - reported income
 - Misreporting of income - 200% of the amount of tax payable on under- reported income
- › For computation of penalty “tax payable” is to be determined as under:
 - In case of company, firm or local authority: At the same rate as applicable in case of company, firm or local authority
 - In any other case - At 30% of the amount of under- reported income
- › Instances of “Misreporting of Income” as provided in the said section are vague and can lead to litigations

Penalty on Transfer Pricing Adjustments

- › **Existing Provisions:** Penalty under section 271(1)(c) for concealment of income could be initiated in case of additions on account of Transfer Pricing adjustments [Explanation 7 to the said section provided for the same]
- › Section 271 has been omitted. It has been replaced by section 270A which provides that no penalty shall be levied in case of Transfer Pricing adjustments, if:
 - Assessee has maintained information and documents as prescribed in section 92D
 - Assessee has declared the international transactions and has disclosed all the material facts related to such transaction

Immunity from Imposition of Penalty

- › An assessee may make an application to the Assessing Officer for grant of immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C
- › Application can be filed only if tax and interest payable as per the order is paid within time specified and no appeal is preferred against the said order
- › Time limit for application: Within one month from the end of the month in which the order is received
- › No Immunity if the penalty proceedings initiated due to misreporting of income
- › Assessing Officer to pass Order on application within one month from the end of the month in which application is filed. Opportunity of being heard to be given to the assessee. Order of the Assessing officer shall be final

Provisional Attachment - Relaxation

- › Presently, in order to protect the interests of the Revenue, an assessing officer has power to provisionally attach for 6 months during the pendency of an assessment proceedings, any property belonging to a taxpayer
- › In order to relax these provisions, it is proposed that:
 - AO will have to revoke such attachment within 15 days of furnishing of a bank guarantee by the taxpayer, of an amount not less than the FMV of the property
 - To determine such FMV, the AO may make a reference to a Valuation Officer
- › Similar relaxation was also suggested in the first batch of recommendations of **Justice R.V. Easwar's Income Tax Simplification Committee**

Other Changes

Extension of Scope of 43B

- › **Existing Provision:** Any sum payable by the Assesse by way of tax, cess, duty or fee, employer contribution to Provident Fund, etc. is allowable as deduction only if the payment for same is made on or before the due date of furnishing of the return of income
- › It is proposed to amend section 43B to include payments made to Indian Railways for use of Railway assets within its ambit
- › The said amendment will be effective from 1st April, 2017

Investment Allowance - Relaxation

- › Currently, a manufacturing company is allowed a deduction of 15% of actual cost of new plant and machinery, if it exceeds INR 25 crores, provided the year of acquisition and installation, both are the same
- › To put an end to this dual condition, it has been proposed to provide this deduction, even if the year of acquisition of the assets is different from their installation – in which case, the deduction shall be allowed in the year of installation

Other Changes

Tax Rate on Unlisted Securities

- › For non residents, section 112(1)(c)(iii) provided a beneficial tax rate of 10% (without indexation and foreign exchange conversion benefit) in respect of long term capital gains arising from unlisted securities
- › In the context of decisions under SCRA, it was debated whether this beneficial rate will be available in respect of gains arising from shares of private companies
- › This debate is proposed to be settled by making amendments clarifying that the beneficial rate will be available in respect of LTCG from sale of shares in “companies in which public are not substantially interested” as well

Set-off of Losses Against Unexplained Items

- › Under the present provisions, any cash credits, investments, moneys, valuables or expenditure, which a taxpayer is unable to explain to the Revenue, may be deemed to be its income, and taxed at 30% without allowing deduction for any expenditure / allowances. However, the said provisions are silent as to whether such deemed income shall be arrived upon after reduction of any losses
- › To reduce litigation, it is proposed to expressly deny such set-off of losses against the above stated deemed incomes.

Other Changes

Employment Generation

- › Under the present provisions, a taxpayer engaged in manufacture of goods in a factory is allowed a tax incentive on employment of additional workmen
- › It is proposed to extend the said incentive to all the sectors, and to relax some of the conditions subject to which the said tax benefit is available, such as:
 - Reduction of min. number of days of employment in an year from 300 days to 240 days
 - Removal of condition of 10% increase in number of employees every year
 - Employment of a minimum of 100 persons
- › No deduction shall be available in respect of employees whose entire EPS contribution is paid by the Government, or whose total emoluments are in excess of INR 25,000 per month

Amendments in MAT Provisions

- › The provision of section 115JB shall not apply to a foreign company:
 - who is resident of a country with which India has a DTAA; the foreign co. does not have a PE in India as per the relevant treaty
 - who is resident of a country with which India does not have a DTAA; the foreign co. is not required to seek registration under any law relating to companies

Other Changes

Taxation on Consolidation of Mutual Fund Plans

- › Like consolidation of mutual fund schemes, amendments have been proposed in section 47 to provide that consolidation of mutual fund plans within the same scheme shall also be a non taxable event for the unit holder
- › Consequential amendments as to the carry forward of cost of acquisition and period of holding seem to have been inadvertently omitted

Carry Forward of Losses - Filing of return

- › Presently, most of the tax losses can be carried forward by a taxpayer, only if it has filed its return of loss, on or before the due date for filing of return of income. However, this condition was not applicable to taxpayers availing investment linked incentives under section 35AD
- › It has now been proposed that such condition (of filing of return of loss by the due date) shall also apply to taxpayer covered under section 35AD

Other Changes

Time Limit for Disposing Applications under section 273A, 273AA or 220(2A)

- › Section 273A, 273AA and 220(2A) provides principle commissioner and commissioner, powers to waive off or reduce the amount of penalty or interest
- › The said relief can be provided on application in this regard being moved by the taxpayer
- › Under existing provisions, no time limit was prescribed regarding accepting or rejecting these applications
- › Also, the provisions did not specifically mandated giving opportunity of being heard to the taxpayer
- › Time limit of 12 months from the end of the month in which application has been received has been introduced to dispose such applications
- › No order rejecting the application can now be passed without giving assessee opportunity of being heard
- › These amendments will take effect from 1st June 2016

FDI Reforms Announced

The following reforms were announced on the FDI front in the budget speech. It is hoped that relevant press notes/ changes to FEMA regulations follow shortly:

- › FDI of upto 100% will be allowed via approval route in marketing of food products produced and manufactured in India (presently, in MBRT, FDI limit is 51% subject to certain conditions)
- › Foreign investment upto 49% in the insurance and pension sectors will be under the automatic route - presently, foreign investments upto 26% are under automatic route, and above 26% (upto 49%) are under approval route
- › FDI upto 100% will be allowed in ARCs under automatic route (presently, FDI+FII/FPI is allowed upto 49% under automatic route, and beyond 49% under approval route). FPIs will be allowed up to 100% of each tranche in SRs issued by ARCs subject to sectoral caps
- › Investment limit for foreign entities in Indian stock exchanges will be enhanced from 5 to 15%
- › The basket of eligible FDI instruments will be expanded to include hybrid instruments subject to certain conditions
- › FDI will be allowed beyond the 18 specified NBFC activities in the automatic route in other activities which are regulated by financial sector regulators



Gaurav Singhal,
Chartered Accountant



Manish Khurana,
Chartered Accountant



Anuj Mahajan,
Chartered Accountant



Malav Shah
Chartered Accountant



Pawan Kumar Pahwa
Advocate



Siddharth Sehgal
Chartered Accountant

Heads-up: hedzʌp / hedz-uhp / [Business English];

.n. a short statement giving information on how a situation is developing; a piece of advice about something so that you are prepared for it.

.adj. alert; perceptive; resourceful; quick to grasp a situation.