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Ministry of Finance

Department of Revenue

(Central Board of Direct Taxes)

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Dated, the 20th of January, 2017

EXPLANATORY NOTES TO THE PROVISIONS OF THE FINANCE ACT, 2016

CIRCULAR

INCOME-TAX ACT

Finance Act, 2016 ─ Explanatory Notes to the Provisions of the Finance Act, 2016

CIRCULAR NO. - 3/2017, DATED 20th JANUARY, 2017

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1. Introduction

1.1 The Finance Act, 2016 (hereafter referred to as 'the Act') as passed by the Parliament, received the assent of the President on the 14th day of May, 2016 and has been enacted as Act No. 28 of 2016. This circular explains the substance of the provisions of the Act relating to direct taxes.

2. Changes made by the Act

2.1 The Act has-

(i) specified the rates of income-tax for the assessment year 2017-18 and the rates of income-tax on the basis of which tax has to be deducted at source and advance tax has to be paid during financial year 2016-17;

(ii) amended sections 2, 6, 9, 9A, 10, 10AA, 17, 24, 25A, 28, 32, 32AC, 35, 35AC, 35AD, 35CCC, 35CCD, 36, 43B, 44AB, 44AD, 47, 48, 50C, 54GB, 55, 56, 80, 80CCD, 80GG, 80IA, 80IAC, 80IB, 80IBA, 87A, 92CA, 92D, 111A, 112, 115BBE, 115JB, 115-O, 115QA, 115TA, 115TC, 115TD, 115TE, 115TF, 115UA, 119, 124, 133C, 139, 143, 147, 153, 153B, 192A, 194BB, 194C, 194D, 194DA,194EE, 194G, 194H, 194K, 194L, 194LA, 194LBA, 194LBB, 197, 197A, 206AA, 206C, 211, 220, 234C, 244A, 249, 252, 253, 254, 255, 271, 271A, 271AA, 271AAA, 272A, 273A, 273B, 273AA, 276C, 281B, 282A and 288 of the Income-tax Act, 1961 ('the Income-tax Act');

(iii) Substituted new sections for sections 80EE, 80JJAA and 153B the Income-tax Act;

(iv) inserted new sections 35ABA, 44ADA, 54EE, 80IAC, 80IBA, 115BA, 115BBDA, 115BBF, 115TCA, 194LBC, 270A, 270AA, 271GB and 286 in the Income-tax Act;

(v) inserted Chapter XII-BC consisting of section 115JH in the Income-tax Act.

(vi) introduced, vide Chapter VIII, Equalisation Levy on e-commerce transactions;

(vii) introduced, vide Chapter X, the Direct Tax Dispute Resolution Scheme, 2016, to reduce litigation and enable the Government to realise its dues expeditiously.

3. Rate structure

3.1 Rates of income-tax in respect of incomes liable to tax for the assessment year 2016-17.

3.1.1 In respect of income of all categories of assessees liable to tax for the assessment year 2016-17, the rates of income-tax have been specified in Part I of the First Schedule to the Act. These rates are the same as those laid down in Part III of the First Schedule to the Finance Act, 2015 for the purposes of computation of "advance tax", deduction of tax at source from "Salaries" and charging of tax payable in certain cases during the financial year 2015-16.

The main features of the rates specified in the said Part I are as follows:

3.1.2 Individual, Hindu undivided family (HUF), association of persons, body of individuals or artificial juridical person.

Paragraph A of Part I of the First Schedule specifies the rates of income-tax in the case of every individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person (other than a co-operative society, firm, local authority and company) as under:

<table>
<tr><th>Income chargeable to tax</th><th colspan="3">Rate of income- tax</th></tr>
<tr><td></td><td>Individual (other than senior and very senior citizen), HUF, association of persons, body of individuals and artificial juridical person.</td><td>Individual, resident in India who is of the age of sixty years or more but less than eighty years. (senior citizen)</td><td>Individual, resident in India who is of the age of eighty years or more (very senior citizen)</td></tr>
<tr><td>Up to Rs. 2,50,000</td><td>Nil</td><td rowspan="2">Nil</td><td rowspan="3">Nil</td></tr>
<tr><td>Rs. 2,50,001 - Rs. 3,00,000</td><td rowspan="2">10%</td></tr>
<tr><td>Rs. 3,00,001 - Rs. 5,00,000</td><td>10%</td></tr>
<tr><td>Rs. 5,00,001 - Rs. 10,00,000</td><td>20%</td><td>20%</td><td>20%</td></tr>
<tr><td>Exceeding Rs. 10,00,000</td><td>30%</td><td>30%</td><td>30%</td></tr>
</table>

The amount of income-tax so computed shall be increased by a surcharge at the rate of twelve per cent of such income-tax in case of a person having a total income exceeding one crore rupees. However, marginal relief shall be available so the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent. on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall

be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

For instance, if the income of an individual below sixty years of age is Rs. 1,01,00,000/- and income-tax computed is Rs. 28,55,000/-. Surcharge on the income-tax at the rate of twelve per cent of such tax is Rs. 3,42,600/-. Thus the total income-tax inclusive of surcharge is Rs. 31,97,600/- without providing marginal relief. On providing marginal relief, the income-tax inclusive of surcharge shall be limited to Rs. 29,55,000/-. Then the education cess of two per cent is to be computed on Rs. 29,55,000/- which works out to Rs. 59,100/-. In addition, the amount of tax computed shall also be increased by an additional cess called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax which for the present case of income-tax of Rs. 29,55,000/- works out to be Rs. 29,550/-. Thus, where the amount of tax computed is Rs. 29,55,000/-, the Education Cess of two per cent is Rs. 59,100, the Secondary and Higher is Rs. 29,550/-. The total cess in this case will amount to Rs. 88,650 (*i.e.*, Rs. 59,100/- + Rs. 29,550/-). No marginal relief shall be available in respect of such Cess.

3.1.3 Co-operative Societies.

In the case of every co-operative society, the rates of income-tax have been specified in Paragraph B of Part I of the First Schedule to the Act. The rates are as follows:-

Income chargeable to tax	Rate
Up to Rs. 10,000	10%
Rs. 10,001 - Rs. 20,000	20%
Exceeding Rs. 20,000	30%

The amount of income-tax so computed shall be increased by a surcharge at the rate of twelve per cent of such income-tax in case of a co-operative society having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.1.4 Firms.

In the case of every firm, the rate of income-tax of thirty per cent has been specified in Paragraph C of Part I of the First Schedule to the Act.

The amount of income-tax so computed shall be increased by a surcharge at the rate of twelve per cent of such income-tax in case of a firm having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.1.5 Local Authorities.

In the case of every local authority, the rate of income-tax has been specified at thirty per cent in Paragraph D of Part I of the First Schedule to the Act.

The amount of income-tax so computed shall be increased by a surcharge at the rate of twelve per cent of such income-tax in case of a local authority having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.1.6 Companies.

In the case of a company, the rate of income-tax has been specified in Paragraph E of Part I of the First Schedule to the Act.

In case of a domestic company, the rate of income-tax is thirty per cent of the total income. The tax computed shall be enhanced by a surcharge of seven per cent where such domestic company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of twelve per cent shall be levied if the total income of the company exceeds ten crore rupees.

In the case of a company other than a domestic company, royalties received from Government or an Indian concern under an approved agreement made after 31-3-1961 but before 1-4-1976 shall be taxed at fifty per cent. Similarly, fees for technical services received by such company from Government or an Indian concern under an approved agreement made after 29-2-1964 but before 1-4-1976 shall be taxed at fifty per cent. On the balance of the total income of such company, the tax rate shall be forty per cent. The tax computed shall be enhanced by a surcharge of two per cent where such company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of five per cent shall be levied if the total income of the company other than domestic company exceeds ten crore rupees.

However, marginal relief shall be allowed in the case of every company to ensure that

(i) the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees, and

(ii) the total amount payable as income-tax and surcharge on total income exceeding ten crore rupees shall not exceed the total amount payable as income-tax and surcharge on a total income of ten crore rupees by more than the amount of income that exceeds ten crore rupees.

Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed, inclusive of surcharge in the case of every company. Also, such amount of tax and surcharge shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of the amount of tax computed, inclusive of surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.2 Rates for deduction of income-tax at source from certain incomes during the financial year 2016-17.

3.2.1 In every case in which tax is to be deducted at the rates in force under the provisions of Sections 193, 194, 194A, 194B, 194BB, 194D, 194LBA, 194LBB, 194LBC and 195 of the Income-tax Act, the rates for deduction of income-tax at source during the financial year 2016-17 have been specified in Part II of the First Schedule to the Act. The rates for deduction of income-tax at source during the financial year 2016-17 will continue to be the same as those specified in Part II of the First Schedule to the Finance Act, 2015 except that in case of payments in the nature of income by way of insurance commission made to a resident (other than a company), the rate shall be five per cent of such income instead of ten per cent..

3.2.2 Surcharge.

The tax deducted at source in the following cases shall be increased by a surcharge for purposes of the Union indicated below:

(i) In case of every non-resident person (other than a company), the rate of surcharge is,

- **(a)** fifteen per cent of such tax, in case of an individual, HUF, association of person, body of individual or artificial juridical person;
- **(b)** twelve per cent of such tax, in case of a firm or cooperative society;

where the income or aggregate of such income paid or likely to be paid and subject to the deduction exceeds one crore rupees.

(ii) In case of payments made to foreign company, the rate of surcharge is two per cent of such tax where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees but does not exceed ten crore rupees. In case where such income or the aggregate of such incomes paid or likely to be paid to a foreign company and subject to the deduction exceeds ten crore rupees, the rate of surcharge is five per cent.

(iii) No surcharge on tax deducted at source shall be levied in the case of an individual, Hindu undivided family, association of persons, body of individuals, artificial juridical person, co-operative society, local authority, firm, being a resident or a domestic company.

3.2.3 Education Cess.

Education Cess on income-tax shall continue to be levied for the purposes of the Union at the rate of two per cent of income-tax and surcharge, if any. For instance, if the amount of income of a foreign company is Rs. 1,20,00,000/- and tax is deducted from such foreign company is Rs. 12,00,000/- at the rate of 10 per cent, then the surcharge at the rate of two per cent on such tax deducted shall be Rs. 24,000/-. Education cess on such amount of tax deducted and surcharge (Rs. 12,00,000/- + Rs. 24,000/- = Rs. 12,24,000/-) shall be Rs. 24,480/-.

In addition, the amount of tax deducted and surcharge shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent in all such cases. Thus in the above illustration, where the amount of tax deducted is Rs. 12,00,000/-, the surcharge is Rs. 24,000/-, the said Secondary and Higher Education Cess will be computed at the rate of one per cent on Rs. 12,24,000/- which works out to be Rs. 12,240/-. The total cess in this case will, therefore, amount to Rs. 36,720/- (i.e., Rs. 24,480/- + Rs. 12,240/-).

3.3 Rates for deduction of income-tax at source from "Salaries", computation of "advance tax" and charging of income-tax in special cases during the financial year 2016-17.

3.3.1 The rates for deducting income-tax at source from 'Salaries' and computing advance tax during the financial year 2016-17 have been specified in Part III of the First Schedule to the Act. These rates are also applicable for charging income-tax during the financial year 2016-17 on current incomes in cases where accelerated assessments have to be made, *e.g.*, provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good during that financial year, assessment of persons who are likely to transfer property to avoid tax, assessment of bodies formed for short duration, etc. The rates are as follows:-

3.3.2 Individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person.

Paragraph A of Part III of the First Schedule specifies the rates of income-tax in the case of every individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person (other than a co-operative society, firm, local authority and company).

The basic exemption limit, rates of tax and slabs of income for various categories remain the same as in financial year 2015-16. The rates of tax during the financial year 2016-17 are as follows:-

<table>
<tr><th>Income chargeable to tax</th><th colspan="3">Rate of income- tax</th></tr>
<tr><td></td><td>Individual (other than senior and very senior citizen), HUF, association of persons, body of individuals and artificial juridical person</td><td>Individual, resident in India who is of the age of sixty years or more but less than eighty years. (senior citizen)</td><td>Individual resident in India, who is of the age of eighty years or more. (very senior citizen)</td></tr>
<tr><td>Up to Rs. 2 ,50,000</td><td>Nil</td><td rowspan="2">Nil</td><td rowspan="3">Nil</td></tr>
<tr><td>Rs. 2,50,001 - Rs. 3,00,000</td><td rowspan="2">10%</td></tr>
<tr><td>Rs. 3,00,001 - Rs. 5,00,000</td><td>10%</td></tr>
<tr><td>Rs. 5,00,001 - Rs. 10,00,000</td><td>20%</td><td>20%</td><td>20%</td></tr>
<tr><td>Exceeding Rs. 10,00,000</td><td>30%</td><td>30%</td><td>30%</td></tr>
</table>

The amount of income-tax so computed shall be increased by a surcharge at the rate of fifteen per cent of such income-tax in case of a person having a total income exceeding one crore rupees as against the rate of twelve per cent for the financial year 2015-16.

However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.3.3 Co-operative Societies.

In the case of every co-operative society, the rates of income-tax have been specified in Paragraph B of Part III of the First Schedule to the Act. The rates are as follows-

Income chargeable to tax	Rate
Up to Rs. 10,000	10%
Rs. 10,001 -Rs. 20,000	20%
Exceeding Rs. 20,000	30%

The amount of income-tax so computed shall continue to be increased by a surcharge at the rate of twelve per cent of such income-tax in case of a co-operative society having a total income exceeding one crore rupees.

However, marginal relief shall be available. Accordingly, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Education Cess on income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of income-tax computed inclusive of surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.3.4 Firms.

In the case of every firm, the rate of income-tax of thirty per cent has been specified in Paragraph C of Part III of the First Schedule to the Act.

The amount of income-tax so computed shall continue to be increased by a surcharge at the rate of twelve per cent of such income-tax in case of a firm having a total income exceeding one crore rupees.

However, marginal relief shall be available. Accordingly, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent. on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.3.5 Local Authorities.

In the case of every local authority, the rate of income-tax has been specified at thirty per cent in Paragraph D of Part III of the First Schedule to the Act.

The amount of income-tax so computed shall continue to be increased by a surcharge at the rate of twelve per cent of such income-tax in case of a local authority having a total income exceeding one crore rupees.

However, marginal relief shall be available. Accordingly, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Education Cess on Income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of income tax and surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.3.6 Companies.

In the case of a company, the rate of income-tax has been specified in Paragraph E of Part III of the First Schedule to the Act. In case of a domestic company, the rate of income-tax is twenty nine per cent of the total income, if the total turnover or gross receipts of the company in the previous year 2014-15 does not exceed five crore rupees, and in all other cases, the rate of income tax is thirty per cent of total income.

In order to provide relief to newly setup domestic companies engaged solely in the business of manufacture or production of article or thing, a new section 115BA has been inserted in the Income-tax Act, to provide that the income-tax payable in respect of the total income of a domestic company for any previous year relevant to the assessment year beginning on or after the 1st of April, 2017 shall be computed @ 25% at the option of the company, if, -

(i) the company has been setup and registered on or after 1st day of March, 2016;

(ii) the company is engaged in the business of manufacture or production of any article or thing and is not engaged in any other business;

(iii) the company while computing its total income has not claimed any benefit under section 10AA, benefit of accelerated depreciation, benefit of additional depreciation, investment allowance, expenditure on scientific research and any deduction in respect of certain income under Part-C of Chapter-VI-A other than the provisions of section 80JJAA; and

(iv) the option is furnished in the prescribed manner before the due date of furnishing of return of income.

The tax computed shall continue to be enhanced by a surcharge of seven per cent where such domestic company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of twelve per cent shall continue to be levied if the total income of the company exceeds ten crore rupees.

In the case of a company other than a domestic company, royalties received from Government or an Indian concern under an approved agreement made after 31-3-1961 but before 1-4-1976 shall be taxed at fifty per cent. Similarly, fees for technical services received by such company from Government or Indian concern under an approved agreement made after 29-2-1964 but before 1-4-1976 shall be taxed at fifty per cent. On the balance of the total income of such company, the tax rate shall be forty per cent. The tax computed shall continue to be enhanced by a surcharge of two per cent where such company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of five per cent shall continue to be levied if the total income of the company other than domestic company exceeds ten crore rupees.

However, marginal relief shall be allowed in the case of every company to ensure that,

(i) the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees, and

(ii) the total amount payable as income-tax and surcharge on total income exceeding ten crore rupees shall not exceed the total amount payable as income-tax and surcharge on a total income of ten crore rupees, by more than the amount of income that exceeds ten crore rupees.

Education Cess on Income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of income-tax computed including surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.4 Surcharge on Additional Income-tax.

Where additional income-tax has to be paid under Section 115-O or Section 115-QA or Sub-section (2) of Section 115R or Section 115TA or Section 115TD of the Income-tax Act, that is to say, on distribution of dividend by domestic companies or distribution of income by a company on buy-back of shares from shareholders or on distribution of income by a mutual fund to its unit holders or on distribution of income by a securitization trust to its investors or on accreted income of certain trusts and institutions, the additional tax so payable shall be increased by a surcharge of twelve per cent of such tax.

4. Enabling provision for implementation of various provisions of the Act in case of a foreign company held to be resident in India.

4.1 Section 6 of the Income-tax Act provides for conditions in which residence in India is determined in case of different category of persons. Section 6(3) deals with conditions to be satisfied for a company to be treated as resident in India in any previous year. Prior to amendment of Section 6(3) by the Finance Act 2015, a company was said to be resident in India in any previous year if it was an Indian company or during that year the control and management of its affairs was situated wholly in India.

4.2 The Finance Act, 2015 amended the above provision so as to provide that a company would be resident in India in any previous year if it is an Indian company or its Place of Effective Management (POEM) in that year is in India. The POEM was defined to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are in substance made.

4.3 In the context of implementation of POEM based residence rule, certain issues, relating to the applicability of current provisions of the Income-tax Act to a company which is incorporated outside India and has not earlier been assessed to tax in India, have arisen. In particular, the issues relate to applicability of specific provisions of the Income-tax Act relating to Advance tax payment, applicability of TDS provisions, computation of total income, set off of losses and manner of application of transfer pricing regime. These provisions have compliance requirements which would not have been undertaken by the company at relevant time due to absence of any such requirement under tax laws of country of incorporation of such

company. Similarly, issues of computation of depreciation also arise when in earlier years it has not been subject to computation under the Income-tax Act.

4.4 Problems highlighted also arise due to the fact that a company may be claiming to be a foreign company not resident in India but in the course of assessment, it is held to be resident based on POEM being in fact in India. This determination would be well after closure of the previous year and it may not be possible for company to undertake many of procedural requirements. Representations have also been made by stakeholders that the implementation of POEM be deferred by a year, by which time clarity regarding guidelines and applicability of other provisions of the Income-tax Act would be in place.

4.5 In order to provide clarity in respect of implementation of POEM based rule of residence and also to address concerns of the stakeholders, amendments to Section 6 of the Income-tax Act and Section 4 of the Finance Act, 2015 have been made. These amendments have been made so as to defer the applicability of POEM based residence test by one year and the determination of residence based on POEM shall be applicable from 1st of April 2017. Further, a new Chapter XII-BC consisting of Section 115JH has been inserted in the Income-tax Act. The provisions of Section 115JH of Income-tax Act,-

(a) provide a transition mechanism for a company which is incorporated outside India and has not earlier been assessed to tax in India. The Central Government has been empowered to notify exception, modification and adaptation subject to which, the provisions of the Income-tax Act relating to computation of income, treatment of unabsorbed depreciation, set off or carry forward and setoff of losses, special provision relating to avoidance of tax and the collection and recovery of taxes shall apply in a case where a foreign company is said to be resident in India due to its POEM being in India for the first time and the said company has never been resident in India before.

(b) provide that these transition provisions would also cover any subsequent previous year upto the date of determination of POEM in an assessment proceedings. However, once the transition is complete, then normal provision of the Income-tax Act would apply.

(c) provide that in the notification, certain conditions including procedural conditions subject to which these adaptations shall apply can be provided for and in case of failure to comply with the conditions, the benefit of such notification would not be available to the foreign company.

(d) provide that every notification issued in exercise of this power by the Central Government shall be laid before each house of the Parliament.

4.6 ***Applicability:*** This amendment takes effect from 1st of April, 2017 and will, accordingly, apply in relation to assessment year 2017-18 and subsequent assessment years.

5. Exemption of income of Foreign Company from storage and sale of crude oil stored as part of strategic reserves.

5.1 Section 5 of the Income-tax Act provides for the scope of total income. In the case of a non-resident, the taxation of income takes place only if the income accrues or arises in India or

is deemed to accrue or arise in India or is received in India. Section 9 of the Income-tax Act provides for circumstances in which the income is deemed to accrue or arise in India. One of the circumstances providing for income to be deemed to accrue or arise in India is if any income is directly or indirectly derived through or from a business connection in India.

5.2 The setting up and maintenance of underground storage facility for storage of crude oil as part of strategic reserves is in India's national interest and ensures price stability for Indian oil companies. The filling cost of such facility entails huge financial burden. The Government has explored the possibility of meeting a substantial part of the financial burden through participation of private players including foreign national oil companies (NOCs) and multinational companies (MNCs) storing and selling crude oil from outside India. However, the storage of crude oil by NOCs/ MNCs and its sale in India would create tax liability for these entities.

5.3 In order to achieve neutrality in terms of taxation to encourage the NOCs and MNCs to store their crude oil in India and to build up strategic oil reserves, the provisions of Section 10 of the Income-tax Act have been amended to provide 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 not be included in the total income, if, -

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

(ii) having regard to the national interest, the foreign company and the agreement or arrangement are notified by the Central Government in this behalf.

5.4 ***Applicability:*** This amendment takes effect retrospectively from 1st of April, 2016 and will, accordingly, apply in relation to assessment year 2016-17 and subsequent assessment years.

6. Exemption in respect of certain activity related to diamond trading in "Special Notified Zone".

6.1 Section 5 of the Income-tax Act provides for the scope of total income. In case of non-resident person, the taxation of income in India happens only if the income accrues or arises in India or is deemed to accrue or arise in India or is received in India. Section 9 of the Income-tax Act provides circumstances under which income is deemed to accrue or arise in India. One of the circumstances providing for income to be deemed to accrue or arise in India is if any income is directly or indirectly derived through or from a business connection in India.

6.2 A "Special Notified Zone" (SNZ) had been created to facilitate shifting of operations by foreign mining companies (FMC) to India and to permit the trading of rough diamonds in India by the leading diamond mining companies of the world. The activity of FMC of mere display of rough diamonds even with no actual sale taking place in India may lead to creation of business connection in India of the FMC. This potential tax exposure has been an area of concern for the mining companies willing to undertake these activities in India.

6.3 In order to facilitate the FMCs to undertake activity of display of uncut diamond (without any sorting or sale) in the special notified zone, Section 9 of the Income-tax Act has been amended to provide that in the case of a foreign company engaged in the business of mining of diamonds, no income shall be deemed to accrue or arise in India to it through or from the activities which are confined to display of uncut and unassorted diamonds in a Special Zone notified by the Central Government in the Official Gazette in this behalf.

6.4 ***Applicability:*** This amendment takes effect retrospectively from 1st of April, 2016 and will, accordingly, apply in relation to assessment year 2016-17 and subsequent assessment years.

7. Modification in conditions of special taxation regime for off shore funds Section 9A.

7.1 Section 9A of the Income-tax Act provides for a special regime in respect of offshore funds. It provides that in the case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund. Further, an eligible investment fund shall not be said to be resident in India merely because the eligible fund manager undertaking fund management activities on its behalf is located in India. The benefit under Section 9A is available subject to the conditions provided in sub-sections (3), (4) and (5) of this section.

7.2 Sub-section (3) of section 9A provides for the conditions for the eligibility of the fund. These conditions, *inter-alia*, are related to residence of fund, corpus size, investor base, investment diversification and payment of remuneration to fund manager at arm's length. In respect of residence of the fund, the condition is that the fund has to be resident of a country or territory with which India has entered into a Double Taxation Avoidance Agreement (DTAA) or Tax Information Exchange Agreement (TIEA).

7.3 In respect of activities of fund, there is a restriction that the fund shall not carry on or control and manage, directly or indirectly, any business in India or from India and shall neither engage in any activity which constitutes a business connection in India nor have any person acting on its behalf whose activities constitute a business connection in India other than the activities undertaken by the eligible fund manager on its behalf.

7.4 It was pointed out by stakeholders that there are many instances where a fund may not qualify as a tax resident of a country on account of domestic tax laws or legal framework of the country. The global structure of these funds had been based on applicable legal and regulatory framework of their country of incorporation and cannot be modified in respect of any investment made in a particular country. Examples of large pension funds or mutual funds from USA or SICAVs (open-ended collective investment schemes) from Luxembourg had been cited. It has been stated that India would still be able to collect information regarding fund under the applicable DTAA or TIEA as under the agreements with many of the countries, information can be exchanged in respect of persons who may not be resident of the country. It had been further mentioned that the conditions relating to restriction on fund carrying on

business or controlling fund managing business in India or from India restricts the flexibility of operation for funds and focus should be on nature of activities undertaken in India.

7.5 In order to rationalise the regime and to address the concerns of the industry, Section 9A of the Income-tax Act has been amended to provide that the eligible investment fund for the purposes of Section 9A, shall also mean a fund established or incorporated or registered outside India in a country or a specified territory notified by the Central Government in this behalf. It has also been provided that 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.

7.6 ***Applicability:*** This amendment takes effect from 1st of April, 2017 and will, accordingly, apply in relation to assessment year 2017-18 and subsequent assessment years.

8. Exemption from Dividend Distribution Tax (DDT) on distribution made by an SPV to Business Trust.

8.1 The Income-tax Act contains a specific taxation regime in respect of taxation of business trusts comprising of Real Estate Investment Trust (REITs) and Infrastructure Investment Trust (Invits) regulated by SEBI. Under this regime, multiple taxation due to interposition of business trusts is avoided. Under the SEBI regulation, these business trusts can hold the income generating asset either directly or through a Special Purpose Vehicle (SPV). The SPV can be a company or an LLP. Under SEBI Regulation, SPV is defined to mean any company or LLP in which REIT holds or proposes to hold controlling interest which is not less than fifty per cent of the equity share capital or interest. The SPV should hold at least 80% of the assets in properties and not invest in other SPV. The existing tax regime provides that in case of REITs, the income by way of interest paid by SPV being a company to REIT is given pass through i.e. it is not taxed at the level of REIT but in the hands of respective investors of REIT. The rental income from directly held assets by REIT is also allowed a pass through. In respect of assets held through an SPV, if SPV is a company then the company pays normal corporate tax and thereafter when the income is distributed to the REIT being a shareholder, it suffers Dividend Distribution Tax (DDT) under Section 115-O of the Income-tax Act which is paid by the SPV and thereafter the income is exempt both in the hands of REIT and also its investors. In case of Invits, there is a similar regime with only exception being that there is no pass through for Invits holding income generating assets directly as normally such large infrastructure projects are not held directly in the trust but are held through an SPV. As an incentive in the case of sponsor (the person setting up trust), capital gain arising at time of swap of its shareholding in SPV for units of business trust is deferred both under normal provisions and from applicability of MAT. Such gains get taxed only after actual sale of units.

8.2 It has been pointed out by the stakeholders that levy of dividend distribution tax at the level of SPV when it distributes its current income to the business trust makes the business trust structure tax inefficient and adversely impacts the rate of return for the investor. This is more so, as under SEBI regulations both the SPV and business trust are obligated to distribute 90% of their operating income to the investors, whereas in case of normal real estate company, there is no requirement of such annual distribution of dividends. It has been mentioned that

because of the additional levy of DDT and associated tax inefficiency, these initiatives have not yet taken off.

8.3 In order to further rationalise the taxation regime for business trusts (REITs and Invits) and their investors, provisions of Sections 10, 115-O, 115UA and 194LBA of the Income-tax Act have been amended to provide a special dispensation and exemption from levy of Dividend Distribution Tax. The salient features of the said special dispensation are:

- **(a)** exemption from levy of DDT in respect of distributions made by SPV to the business trust;
- **(b)** such dividend received by the business trust and its investor shall not be taxable in the hands of trust or investors;
- **(c)** the exemption from levy of DDT shall only be in the cases where the business trust either holds 100% of the share capital of the SPV or holds all of the share capital other than that which is required to be held by any other entity as part of any direction of any Government or specific requirement of any law to this effect or which is held by Government or Government bodies; and
- **(d)** the exemption from the levy of DDT shall only be in respect of dividends paid out of current income after the date when the business trust acquires the shareholding referred in (c) above in the SPV. The dividends paid out of accumulated and current profits up to this date shall be liable for levy of DDT as and when any dividend out of these profits is distributed by the company either to the business trust or any other shareholder.

8.4 ***Applicability:*** The amendments to Sections 115-O and 194LBA take effect from 1st June, 2016. The amendments to Sections 10 and 115UA take effect from 1st of April, 2017 and will, accordingly apply in relation to assessment year 2017-18 and subsequent assessment years.

9. Tax on distributed income to shareholder.

9.1 Section 115QA of the Income-tax Act provides for the levy of additional Income-tax at the rate of 20 per cent of the distributed income on account of buy back of unlisted shares by a company. The distributed income as defined in the Section prior to its amendment by the Act meant the consideration paid by the company on buy back of shares as reduced by the amount which was received by the company for issue of such shares. Buyback had also been defined to mean the purchase of a company of its own shares in accordance with the provisions of Section 77A of the Companies Act, 1956.

9.2 Doubts have arisen regarding the effect of buybacks undertaken by the company under different provisions of the Companies Act, 1956 or the Companies Act, 2013 and applicability of provisions of Section 115QA to such transactions. An issue of lack of clarity had also arisen in respect of determination of consideration received by the company at the time of issue of shares being bought back by the company. There are situations where shares may have been issued by the company in tranches, for different considerations, at different point of time or

may have been issued in lieu of existing shares of another company under amalgamation, merger or demerger.

9.3 For the purposes of Section 115QA, it is the effect of buyback being in the nature of distribution of income which is relevant rather than particular provision of the law relating to companies under which it has been undertaken. Further, lack of clarity in the manner of determination of consideration received by the company would lead to avoidable disputes and also presented a tax arbitrage opportunity of scaling up of consideration particularly under a tax neutral business reorganisation followed by buyback of shares.

9.4 In order to provide clarity and remove any ambiguity on the above issues, Section 115QA of the Income-tax Act has been amended to provide that the provisions of this Section shall apply to any buy back of unlisted share undertaken by the company in accordance with the provisions of the law relating to the Companies and not necessarily restricted to Section 77A of the Companies Act, 1956. It has been further provided that for the purpose of computing distributed income, the amount received by the Company in respect of the shares being bought back shall be determined in the prescribed manner.

9.5 ***Applicability:*** This amendment takes effect from 1st June, 2016.

10. New Taxation Regime for securitisation trust and its investors.

10.1 A special taxation regime in respect of income of the securitisation trusts and the investors of such trusts was contained in Chapter-XII-EA of the Income-tax Act consisting of Sections 115TA, 115TB and 115TC. The regime provided that income distributed by the securitisation trust to its investors shall be subject to a levy of additional tax to be paid by the securitisation trust within 14 days of distribution of income. The distribution tax was to be paid @ 25% if the distribution was made to an individual or a HUF and @ 30% if the distribution was to others. Further, no distribution tax was to be levied if the distribution was made to an exempt entity. Consequent to the levy of distribution tax, the income of the investor, received from the securitisation trust, was exempt under Section 10(35A) of the Income-tax Act and the income of securitisation trust itself is exempt under Section 10(23DA) of the Income-tax Act.

10.2 The existing regime did not cover the trusts set up by reconstruction companies or the securitisation companies are not covered although such trusts were also engaged in securitisation activity. These companies are established for the purposes of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and their activities are regulated by the Reserve Bank of India (RBI). Further, the final levy in the form of distribution tax was tax inefficient for the investors specially the banks and financial institutions. Disallowance of expenditure in respect of income received from securitisation trust increased the effective rate of taxation. The non-resident and resident investors were also unable to take benefits of their specific tax status.

10.3 In order to rationalise the tax regime for securitisation trust and its investors, and to provide tax pass through treatment, the provisions of Section 2, Section 10, Section 115TA, Explanation in Section 115TC and Section 197 of the Income-tax Act have been amended and

Sections 115TCA and 194LBC have been inserted in the Income-tax Act to substitute the existing special regime for securitisation trusts by a new regime having the following elements:

(i) The new regime shall apply to securitisation trust being an SPV defined under SEBI (Public Offer and Listing of Securitised Debt Instrument) Regulations, 2008 or SPV as defined in the guidelines on securitisation of standard assets issued by RBI or being setup by a securitisation company or a reconstruction company in accordance with the SARFAESI Act;

(ii) The income of securitisation trust shall continue to be exempt. However, exemption in respect of income of investor from securitisation trust would not be available and any income from securitisation trust would be taxable in the hands of investors;

(iii) The income accrued or received from the securitisation trust shall be taxable in the hands of investor in the same manner and to the same extent as it would have happened had investor made investment directly in the underlying assets and not through the trust;

(iv) Tax deduction at source under a newly inserted section 194LBC shall be effected by the securitisation trust at the rate of 25% in case of payment to resident investors which are individual or HUF and @ 30% in case of others. In case of payments to non-resident investors, the deduction shall be at rates in force;

(v) The facility for the investors to obtain low or nil deduction of tax certificate would be available; and

(vi) The trust shall provide breakup regarding nature and proportion of its income to the investors and also to the prescribed income-tax authority.

10.4 Further, it has also been provided that the regime of distribution tax existing prior to above amendments by the Act shall cease to apply in case of distribution made by securitisation trusts with effect from 1st June, 2016.

10.5 ***Applicability:*** The amendments to Sections 2, 115TA and 197, and the insertion of Section 194LBC take effect from 1st June, 2016. The amendment to Section 115TCA takes effect from 1st of April, 2017 and will, accordingly apply in relation to assessment year 2017-18 and subsequent assessment years.

11. Levy of tax where the charitable institution ceases to exist or converts into a non-charitable organization.

11.1 Section 2(24) of the Income-tax Act defines "Income" in an inclusive manner. Any voluntary contribution received by a charitable trust or institution or a fund is included in the definition of income. Sections 11 and 12 of the Income-tax Act provide for exemption to trusts or institutions in respect of income derived from property held under trust and voluntary contributions, subject to various conditions contained in the said sections. The primary condition for grant of exemption is that the income derived from property held under trust should be applied for the charitable purposes, and where such income cannot be applied during the previous year, it has to be accumulated and invested in the modes prescribed and applied for such purposes in accordance with various conditions provided in the section. If the accumulated income is not applied in accordance with the conditions provided in the said

section within a specified time, then such income is deemed to be taxable income of the trust or the institution. Section 12AA provides for registration of the trust or institution which entitles them to be able to get the benefit of Sections 11 and 12. It also provides the circumstances under which the registration can be cancelled. Section 13 of the Income-tax Act provides for the circumstances under which exemption under Section 11 or 12 in respect of whole or part of income would not be available to a trust or institution.

11.2 A society or a company or a trust or an institution carrying on charitable activity may voluntarily wind up its activities and dissolve or may also merge with any other charitable or non-charitable institution, or it may convert into a non-charitable organization. In such a situation, the existing law does not provide any clarity as to how the assets of such a charitable institution shall be dealt with. Under provisions of Section 11, certain amount of income of prior period can be brought to tax on failure of certain conditions. However, there was no provision in the Income-tax Act which ensured that the corpus and asset base of the trust accreted over period of time, with promise of it being used for charitable purpose, continues to be utilised for charitable purposes and is not used for any other purpose. In the absence of a clear provision, it was always possible for charitable institutions to transfer assets to a non-charitable institution. Therefore, there was a need to ensure that the benefit conferred over the years by way of exemption is not misused and to plug the gap in law that allowed the charitable trusts having built up corpus/wealth through exemptions being converted into non-charitable organisation with no tax consequences.

11.3 In order to ensure that the intended purpose of exemption availed by trust or institution is achieved, a specific provision in the Act is required for imposing a levy in the nature of an exit tax which is attracted when the organisation is converted into a non-charitable organisation or gets merged with a non-charitable organisation or a charitable organisation with dissimilar objects or does not transfer the assets to another charitable organisation.

11.4 Accordingly, a new Chapter XII-EB consisting of Sections 115TD, 115TE and 115TF has been inserted in the Income-tax Act. This chapter contains specific provisions for levy of additional income-tax in case of conversion into, or merger with, any non-charitable form or on transfer of assets of a charitable organisation on its dissolution to a non-charitable institution. The main elements of this regime are:

(i) The accretion in income (accreted income) of the trust or institution shall be taxable on conversion of trust or institution into a form not eligible for registration u/s 12 AA or on merger into an entity not having similar objects and registered under Section 12AA or on non-distribution of assets on dissolution to any charitable institution registered u/s 12AA or approved under Section 10(23C) within a period of twelve months from the end of the month of dissolution.

(ii) Accreted income shall be amount of aggregate of Fair Market Value (FMV) of total assets as reduced by the liability as on the specified date. The method of valuation is to be prescribed in rules. However, for the purposes of computation of accreted income, the following asset and related liability, if any, shall be excluded:

(a) any asset which is established to have been directly acquired from agricultural income;

(b) any asset acquired during the period from the date of creation or establishment of the trust or institution to the date of registration under Section 12AA, if benefit of Sections 11 and 12 were not allowed during said period. However, where the trust or institution has been allowed benefit under Section 11 and 12 for any previous year on the basis of registration under Section 12AA, then, asset to be excluded shall be those which trust or institution had at the beginning of the earliest of such previous years;

(c) any assets which have been transferred to another charitable organisation within specified time.

(iii) The taxation of accreted income shall be at the maximum marginal rate.

(iv) This levy shall be in addition to any income chargeable to tax in the hands of the entity.

(v) This tax shall be final tax for which no credit can be taken by the trust or institution or any other person, and like any other additional tax, it shall be leviable even if the trust or institution does not have any other income chargeable to tax in the relevant previous year.

(vi) The tax has to be paid within the specified period. In case of failure of payment of tax within the specified period, a simple interest at the rate of one per cent. per month or part of it shall be applicable for the period of non-payment.

(vii) For the purpose of recovery of tax and interest, the principal officer or the trustee and the trust or the institution shall be deemed to be assessee in default and all provisions related to the recovery of taxes shall apply. Further, the recipient of assets of the trust, which is not a charitable organisation, shall also be liable to be held as assessee in default in case of non-payment of tax and interest. However, the recipient's liability shall be limited to the extent of the assets received.

11.4 ***Applicability:*** This amendment takes effect from 1st June, 2016.

12. Rationalization of tax deduction at source provisions relating to payments by Category-I and Category-II Alternate Investment Funds to its investors.

12.1 A special taxation regime in respect of Category-I and II Alternative Investment Funds (investment fund) registered with SEBI was inserted by the Finance Act, 2015. The special taxation regime is intended to ensure tax pass through status in respect of these investment funds which are collective investment vehicles. The special regime is contained in Sections 10(23FBA), 10 (23FBB), 115UB and 194LBB of the Income-tax Act. Under this regime, the income of the investment fund (not being in the nature of business income) is exempt in the hands of investment fund but income received by the investor from the investment fund (other than income which is taxed at the level of investment fund) is taxable in the hands of investor. The taxation in the hands of investors is in the same manner and in the same proportion as it would have been, had the investor received such income directly and not through the investment fund.

12.2 Section 194LBB of the Income-tax Act prior to its amendment by the Act provided that in respect of any income credited or paid by the investment fund to its investor, a tax deduction at source (TDS) shall be made by the investment fund at the rate of 10 per cent of the

income. Under Section 197 of the Income-tax Act, facility for certificate for deduction of tax at lower rate or no deduction was available in respect of sections enumerated therein, if the Assessing Officer is satisfied that total income of the recipient justifies issue of such certificate, Section 194LBB was not included in this provision.

12.3 The existing TDS regime had created certain difficulties. The non-resident investor is not able to claim benefit of lower or NIL rate of taxation which is available to him under the relevant Double Taxation Avoidance Agreement (DTAA), and deduction of tax at the rate of 10 per cent was to be undertaken mandatorily even if under DTAA or the Income-tax Act, the income is not taxable in India. There was no facility for any investor to approach the Assessing Officer for seeking certificate for TDS at a lower or NIL rate in respect of deductions made under Section 194LBB.

12.4 In order to rationalise the TDS regime in respect of payments made by the investment funds to its investors, Section 194LBB of the Income-tax Act has been amended to provide that the person responsible for making the payment to the investor shall deduct income-tax under Section 194LBB, at the rate of ten per cent where the payee is a resident; and at the rates in force where the payee is a non-resident (not being a company) or a foreign company. However, it has also been provided that where the payee is a non-resident (other than a company) or a foreign company, no deduction shall be made in respect of income not chargeable to tax under the provisions of the Income-tax Act.

12.5 Further, Section 197 of the Income-tax Act has also been amended to include Section 194LBB in the list of sections for which a certificate for deduction of tax at lower rate or no deduction of tax can be obtained. Consequential amendment has also been made to the definition of "rates in force" contained in Section 2(37A) of the Income-tax Act, so as to include Section 194LBB in it.

12.6 ***Applicability:*** These amendments take effect from 1st June, 2016.

13. BEPS action plan - Country-By-Country Report and Master file.

13.1 Sections 92 to 92F of the Income-tax Act contain provisions relating to transfer pricing regime. Under provision of Section 92D, there is requirement for maintenance of prescribed information and document relating to the international transaction and specified domestic transaction.

13.2 The OECD report on Action 13 of BEPS Action plan provides for revised standards for transfer pricing documentation and a template for country-by-country reporting of income, earnings, taxes paid and certain measure of economic activity. India has been one of the active members of BEPS initiative and part of international consensus. It is recommended in the BEPS report that the countries should adopt a standardised approach to transfer pricing documentation. A three-tiered structure has been mandated consisting of:

(i) a master file containing standardised information relevant for all multinational enterprises (MNE) group members;

(ii) a local file referring specifically to material transactions of the local taxpayer; and

(iii) a country-by-country (CbC) report containing certain information relating to the global allocation of the MNE's income and taxes paid together with certain indicators of the location of economic activity within the MNE group.

13.3 The report mentioned that taken together, these three documents (country-by-country report, master file and local file) will require taxpayers to articulate consistent transfer pricing positions and will provide tax administrations with useful information to assess transfer pricing risks. It will facilitate tax administrations to make determinations about where their resources can most effectively be deployed, and, in the event audits are called for, provide information to commence and target audit enquiries.

13.4 The country-by-country report requires MNEs to report annually and for each tax jurisdiction in which they do business; the amount of revenue, profit before income tax and income tax paid and accrued. It also requires MNEs to report their total employment, capital, accumulated earnings and tangible assets in each tax jurisdiction. Finally, it requires MNEs to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of the business activities each entity engages in. The CbC report has to be submitted by parent entity of an international group to the prescribed authority in its country of residence. This report is to be based on consolidated financial statement of the group.

13.5 The master file is intended to provide an overview of the MNE group’s business, including the nature of its global business operations, its overall transfer pricing policies, and its global allocation of income and economic activity in order to assist tax administrations in evaluating the presence of significant transfer pricing risk. In general, the master file is intended to provide a high-level overview in order to place the MNE group's transfer pricing practices in their global economic, legal, financial and tax context. The master file shall contain information which may not be restricted to transaction undertaken by a particular entity situated in particular country. In that aspect, information in master file would be more comprehensive than the existing regular transfer pricing documentation. The master file shall be furnished by each entity to the tax authority of the country in which it operates.

13.6 In order to implement the international consensus, a specific reporting regime in respect of CbC reporting and also the master file has been provided. The essential elements of this regime that have been included in the Income-tax Act by amending sections 92D, 271AA and 273B and inserting new sections 271GB and 286. The remaining aspects shall be prescribed through rules. The elements relating to CbC reporting requirement and matters related to it included through amendment of the Income-tax Act are:

(i) the reporting provision shall apply in respect of an international group having consolidated revenue above a threshold to be prescribed.

(ii) the parent entity of an international group, if it is resident in India shall be required to furnish the report in respect of the group to the prescribed authority on or before the due date of furnishing of return of income for the Assessment Year relevant to the Financial Year (previous year) for which the report is being furnished;

(iii) the parent entity shall be an entity which is required to prepare consolidated financial statement under the applicable laws or would have been required to

prepare such a statement, had equity share of any entity of the group been listed on a recognized stock exchange in India;

(iv) every constituent entity in India, of an international group having parent entity that is not resident in India, shall provide information regarding the country or territory of residence of the parent of the international group to which it belongs. This information shall be furnished to the prescribed authority on or before the prescribed date;

(v) the report shall be furnished in prescribed manner and in the prescribed form and would contain aggregate information in respect of revenue, profit & loss before Income-tax, amount of Income-tax paid and accrued, details of capital, accumulated earnings, number of employees, tangible assets other than cash or cash equivalent in respect of each country or territory along with details of each constituent's residential status, nature and detail of main business activity and any other information as may be prescribed. This shall be based on the template provided in the OECD BEPS report on Action Plan 13;

(vi) an entity in India belonging to an international group shall be required to furnish CbC report to the prescribed authority if the parent entity of the group is resident:-

 (a) in a country with which India does not have an arrangement for exchange of the CbC report; or

 (b) such country is not exchanging information with India even though there is an agreement; and

 (c) this fact has been intimated to the entity by the prescribed authority;

(vii) If there are more than one entities of the same group in India, then the group can nominate (under intimation in writing to the prescribed authority) the entity that shall furnish the report on behalf of the group. This entity would then furnish the report;

(viii) If an international group, having parent entity which is not resident in India, had designated an alternate entity for filing its report with the tax jurisdiction in which the alternate entity is resident, then the entities of such group operating in India would not be obliged to furnish report if the report can be obtained under the agreement of exchange of such reports by Indian tax authorities;

(ix) The prescribed authority may call for such document and information from the entity furnishing the report for the purpose of verifying the accuracy as it may specify in notice. The entity shall be required to make submission within thirty days of receipt of notice or further period if extended by the prescribed authority, but extension shall not be beyond 30 days;

(x) For non-furnishing of the report by an entity which is obligated to furnish it, the following graded penalty structure shall apply:

 (a) if default is not more than a month, penalty of Rs 5,000/- per day;

 (b) if default is beyond one month, penalty of Rs 15,000/- per day for the period exceeding one month;

 (c) for any default that continues even after service of order levying penalty either under (a) or under (b), then the penalty for any continuing default beyond the date of service of order shall be Rs 50,000/- per day;

(xi) In case of non-submission of information within the time-limits before prescribed authority when called for, a penalty of Rs 5,000/- per day shall apply. Similar to the above, if default continues even after service of penalty order, then penalty of Rs 50,000/- per day shall apply for default beyond date of service of penalty order;

(xii) If the entity has provided any inaccurate information in the report and,-

  (a) the entity knows of the inaccuracy at the time of furnishing the report but does not inform the prescribed authority; or

  (b) the entity discovers the inaccuracy after the report is furnished and fails to inform the prescribed authority and furnish correct report within a period of fifteen days of such discovery; or

  (c) the entity furnishes inaccurate information or document in response to notice of the prescribed authority, then penalty of Rs 5,00,000/- applies under Section 271GB of the Income-tax Act;

(xiii) The entity can offer reasonable cause defence for non-levy of penalties mentioned above.

The remaining aspects shall be prescribed through rules.

13.7 The amendments made in respect of maintenance of master file and furnishing it are:

(a) the entities being constituent of an international group shall, in addition to the information related to the international transactions, also maintain such information and document as is prescribed in the rules;

(b) the information and document shall also be furnished to the prescribed authority within such period as may be prescribed and the manner of furnishing will also be provided for in the rules;

(c) for non-furnishing of the information and document to the prescribed authority, a penalty of Rs 5,00,000/- shall be leviable. However, reasonable cause defence against levy of penalty shall be available to the entity.

13.8 ***Applicability:*** These amendments take effect from 1st of April, 2017 and will, accordingly apply in relation to assessment year 2017-18 and subsequent assessment years.

14. Rationalisation of taxation of income by way of dividend

14.1 The provisions contained in clause (34) of Section 10 of the Income-tax Act, before its amendment by the Act, provided that dividend which suffers dividend DDT under Section 115-O is exempt in the hands of the shareholder. Section 115-O specifies that dividends are taxed only at the rate of fifteen per cent. at the time of distribution in the hands of company declaring dividends. This created vertical inequity amongst the tax payers as those who have high dividend income are subjected to tax only at the rate of 15% whereas such income in their hands would have been chargeable to tax at the rate of 30%.

14.2 With a view to rationalise the tax treatment provided to income by way of dividend, Section 115BBDA has been inserted in the Income-tax Act to provide that any income by way of dividend in excess of ten lakh rupees shall be chargeable to tax in the case of an individual,

HUF or a firm who is resident in India, at the rate of ten per cent The taxation of dividend income shall be on gross basis and no deduction of any expenditure or allowance or set off of loss shall be allowed in computing said income.

14.3 The taxation of dividend income shall be on gross basis and no deduction for any expenditure or allowance or set off of loss shall be allowed in computing the income by way of dividend.

14.4 ***Applicability:*** This amendment takes effect from 1st of April, 2017 and will, accordingly, apply in relation to assessment year 2017-18 and subsequent assessment years.

15. Period of holding of shares of unlisted companies to be treated as long term capital assets

15.1 Clause (29A) of section 2 of the Income-tax Act defines "long-term capital asset" to mean a capital asset which is not a short-term capital asset. Clause (42A) of section 2 defines short-term capital asset to mean a capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its transfer. The first proviso to the clause (42A), inter alia, provides for a reduced period of holding of twelve months for certain securities including listed shares of a company.

15.2 In order to reduce the holding period of unlisted shares of a company, section 2 of the Income-tax Act has been amended to provide that in case of unlisted shares of a company, period of holding shall be twenty-four months instead of thirty-six month for these shares to be treated as long-term capital asset.

15.3 ***Applicability:*** This amendment takes effect from 1st of April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years.

16. Tax incentives for start-ups

16.1 With a view to provide an impetus to start-ups and facilitate their growth in the initial phase of their business, a new section 80-IAC has been inserted in the Income-tax Act to provide a deduction of one hundred per cent of the profits and gains derived by an eligible start-up from a business involving innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property. The benefit of hundred per cent deduction of the profits derived from such business shall be available to an eligible start-up, being a company or Limited Liability Partnership (L.L.P), setup before 01.04.2019, subject of fulfilment of certain condition,.

16.2 In order to promote the start-up ecosystem in the country, it was envisaged in *'Start-up India Action Plan'* to establish a Fund of Funds. With a view to provide tax incentive for investment in Fund of Funds, section 54EE has been inserted in the Income-tax Act so as to provide exemption from capital gains if the long term capital proceeds are invested by an assessee in units of notified fund subject to condition that the amount remains invested for three years failing which the exemption shall be withdrawn. The investment in the units of the notified funds shall be allowed up to Rs.50 lakh.

16.3 The provisions contained in section 54GB of the Income-tax Act, before its amendment by the Act, *inter alia,* provided exemption from tax on long term capital gains in respect of the gains arising on account of transfer of a residential property, if such capital gains are invested in subscription of shares of a company which qualifies to be a small or medium enterprise under the Micro, Small and Medium Enterprises Act, 2006 subject to other conditions specified therein.

16.4 With an objective to provide relief to an individual or HUF willing to setup a start-up company by selling a residential property to invest in the shares of such company, section 54GB of the Income-tax Act has been amended so as to provide that long term capital gains arising on account of transfer of a residential property shall not be charged to tax if such capital gains are invested in subscription of shares of a company which qualifies to be an eligible start-up subject to the condition that the individual or HUF holds more than fifty per cent shares of the company and such company utilises the amount invested in shares to purchase new asset before due date of filing of return by the investor.

16.5 Further, section 54GB before its amendment by the Act required that the company should invest the proceeds in the purchase of new asset being new plant and machinery but does not include, *inter alia*, computers or computer software.

16.6 With a view to avoid incidence of the aforesaid condition on start-up where computers or computer software form the core asset base owing to nature of business activity, section 54GB of the Income-tax Act has further been amended so as to provide that the expression *"new asset"* includes computers or computer software in case of technology driven start-ups so certified by the Inter-Ministerial Board of Certification notified by the Central Government in the official Gazette.

16.7 ***Applicability:*** These amendments take effect from 1st of April, 2017 and will, accordingly apply in relation to assessment year 2017-18 and subsequent assessment years.

17. Incentives for Promoting Housing for All

17.1 With a view to incentivise affordable housing sector as a part of larger objective of *'Housing for All'*, a new section 80-IBA has been introduced to provide for hundred per cent deduction of the profits of an assessee developing and building housing project if the housing project is approved by the competent authority before the 31st March, 2019 subject to certain conditions which *inter alia*, include:

(i) The project is completed within a period of three years from the date of approval,

(ii) The project is on a plot of land measuring not less than 1000 sq. metres where the project is located within the cities of Delhi, Mumbai, Chennai & Kolkata or within 25 kms measured aerially; from the municipal limits of these four metros and in any other area, it is measuring not less than 2000 sq. metres and where the built-up area of the residential unit in the said areas is not more than thirty sq. metres and sixty sq. metres, respectively and also the project is only housing project on such plot of land,

(iii) Where residential unit is allotted to an individual, no such unit shall be allotted to him or any member of his family, etc.

17.2 The provisions contained in section 80EE of the Income-tax Act, before its substitution by the Act, *inter alia*, provided a deduction of up to one lakh rupees in respect of interest paid on loan by an individual for acquisition of a residential house property. This benefit was available for the two assessment years beginning on the 1st day of April, 2014 and on the 1st day of April, 2015.

17.3 In furtherance of the goal of the Government of providing *'Housing For All'*, section 80EE of the Income-tax Act has been substituted to incentivise first-home buyers availing home loans, by providing additional deduction of Rs 50,000 in respect of interest on loan taken for acquisition of a residential house property from any financial institution. This incentive has been extended to a house property of a value less than fifty lakhs rupees in respect of which a loan of an amount not exceeding thirty five lakh rupees has been sanctioned during the period from the 1st day of April, 2016 to the 31st day of March, 2017.Further, this benefit of deduction is extended till the repayment of loan continues. This deduction under section 80EE shall be over and above the deduction of two lakh rupees available under section 24 of the Income tax Act for interest payable on loan taken for self-occupied property.

17.4 ***Applicability:*** These amendments take effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

18. Tax incentive for employment generation

18.1 The provisions of section 80JJAA of the Income tax Act, before its substitution by the Act provided for a deduction of thirty per cent of additional wages paid to new regular workmen in a factory for three years. The provisions apply to the business of manufacture of goods in a factory where *'workmen'* are employed for not less than three hundred days in a previous year. Further, benefits are allowed only if there is an increase of at least ten per cent in total number of workmen employed on the last day of the preceding year.

18.2 With a view to encourage employment generation and provide incentive to all sectors, section 80JJAA has been substituted to provide that the deduction under the said provisions shall be available in respect of cost incurred on any employee whose total emoluments are less than or equal to twenty five thousand rupees per month. No deduction, however, shall be allowed in respect of cost incurred on those employees, for whom the entire contribution under Employees' Pension Scheme notified in accordance with Employees' Provident Fund and Miscellaneous Provisions Act, 1952, is paid by the Government.

18.3 Further, the norms for minimum number of days of employment in a financial year has been relaxed from 300 days to 240 days .In this connection it may be noted that the norms for minimum number of days of employment has further been relaxed to 150 days for an assessee who is engaged in the business of manufacturing of apparel by The Taxation Laws (Amendment) Act 2016.The existing condition of ten per cent increase in number of employees every year has been done away with so that any increase in the number of employees will be eligible for deduction under the new provisions.

18.4 It is also provided that in the first year of a new business, thirty per cent of all emoluments paid or payable to the employees employed during the previous year shall be allowed as deduction.

18.5 ***Applicability:*** This amendment takes effect from 1st of April, 2017 and will accordingly apply in relation to assessment year 2017-18 and subsequent assessment years.

19. Provision for Tax benefits to Sovereign Gold Bond Scheme, 2015.

19.1 The Government of India has introduced the Sovereign Gold Bond Scheme with the aim of reducing the demand for physical gold so as to reduce the outflow of foreign exchange on account of import of gold. The Gold Bond is a mode for substitution of physical gold and also provides security to the individual investor who invests in Gold for meeting their social obligation. Accordingly, with a view to provide parity in tax treatment between physical gold and Sovereign Gold Bond, section 47 of the Income-tax Act has been amended so as to provide that any redemption of Sovereign Gold Bond under the Scheme, by an individual shall not be treated as transfer and therefore shall be exempt from tax on capital gains.

19.2 Further, Section 48 of the Income-tax Act has also been amended so as to provide indexation benefits to long term capital gains arising on transfer of Sovereign Gold Bond to all assessees.

19.3 ***Applicability:*** These amendments take effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

20. Provisions for tax benefits to Rupee Denominated Bond

20.1 The Reserve Bank of India permitted Indian corporates to issue rupee denominated bonds outside India as a measure to enable the Indian corporates to raise funds from outside India. Accordingly, with a view to provide relief to non-resident investor who bears the risk of currency fluctuation, section 48 of the Income-tax Act has been amended to provide that the capital gains, arising in case of appreciation of rupee between the date of issue and the date of redemption against the foreign currency in which the investment is made shall be exempt from tax on capital gains.

20.2 ***Applicability:*** This amendment takes effect from 1st of April, 2017 and will accordingly apply in relation to assessment year 2017-18 and subsequent assessment years.

21. Consolidation of 'plans' within a 'scheme' of mutual fund

21.1 Under the provisions of clause (xviii) of section 47 of the Income-tax Act, any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating scheme of a mutual fund, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated scheme of the mutual fund is not chargeable to tax.

21.2 Security Exchange Board of India (SEBI) has issued guidelines for consolidation of mutual fund plans within a scheme.To extend the tax exemption, available on merger or consolidation of mutual fund schemes, to the merger or consolidation of different plans in a mutual fund scheme, section 47 of the Income-tax Act has been amended so as to

provide that any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating plan of a mutual fund scheme, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated plan of that scheme of the mutual fund, shall not be considered transfer for the purposes of tax on capital gains and thereby shall not be chargeable to tax.

21.3 *Applicability:* This amendment takes effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

22. Rationalization of limit of deduction allowable in respect of rents paid under Section 80GG

22.1 The provision contained in Section 80GG of the Income-tax Act before the amendment by the Act provided for a deduction of any expenditure incurred by an individual in excess of ten per cent of his total income towards payment of rent in respect of any furnished or unfurnished accommodation occupied by him for the purposes of his own residence if he is not granted house rent allowance by his employer, to the extent such excess expenditure does not exceed two thousand rupees per month or twenty-five per cent of his total income for the year, whichever is less, subject to other conditions as specified therein.

22.2 With a view to provide relief to the individual tax payers, section 80GG of the Income-tax Act has been amended to increase the maximum limit of deduction from two thousand rupees per month to five thousand rupees per month.

22.3 *Applicability:* This amendment takes effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

23. Tax Treatment of Gold Monetization Scheme, 2015

23.1 Under the existing provisions of section 10, interest on Gold Deposit Bonds issued under Gold Deposit Scheme, 1999 is exempt. Further, these bonds are excluded from the definition of capital asset and therefore exempt from tax on capital gains on their transfer.

23.2 The Gold Monetization Scheme, 2015 has since been introduced by the Government of India. With a view to extend the same tax benefits to the scheme as were available to the Gold Deposit Scheme, 1999, clause (14) of section 2 of the Income-tax Act has been amended so as to exclude Deposit Certificates issued under Gold Monetisation Scheme, 2015 notified by the Central Government, from the definition of capital asset and thereby to exempt it from tax on capital gains. Further, clause (15) of section 10 of the Income-tax Act has also been amended so as to provide that the interest on Deposit Certificates issued under the Scheme, shall be exempt from tax.

23.3 *Applicability:* These amendments take effect retrospectively from 1st of April, 2016 and will, accordingly, apply in relation to assessment year 2016-17 and subsequent assessment years.

24. Rationalization of section 56 of the Income-tax Act

24.1 The provision contained in clause (vii) of sub-section (2) of section 56 of the Income-tax Act before amendment by the Act provided for chargeability of income from other

sources in case any money, immovable property or other property with or without consideration in excess of Rs 50,000 is received by an assessee being an individual or an HUF. The provisions also apply where shares of a company are received as a consequence of demerger or amalgamation of a company. Such a transaction is not chargeable where the recipient is a firm or a company.

24.2 With a view to bring uniformity in tax treatment between different categories of assessees, clause (vii) of sub-section 2 of section 56 of the Income-tax Act has been amended to provide that any shares received by an individual or HUF as a consequence of demerger or amalgamation of a company shall not attract the provisions of clause (vii) of sub-section (2) of section 56.

24.3 ***Applicability:*** This amendment takes effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

25. Rationalization of limit of rebate in income-tax allowable under Section 87A

25.1 The provisions contained in section 87A of the Income-tax Act before amendment by the Act provided for a rebate of an amount equal to hundred per cent of income-tax or an amount of two thousand rupees, whichever is less, from the amount of income-tax to an individual resident in India whose total income does not exceed five hundred thousand rupees.

25.2 With a view to provide relief to resident individuals in the lower income slab, section 87A of the Income-tax Act has been amended so as to increase the maximum amount of rebate available under this provision from existing two thousand rupees to five thousand rupees.

25.3 ***Applicability:*** This amendment takes effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

26. Applicability of Minimum Alternate Tax (MAT) on foreign companies for the period prior to 01.04.2015.

26.1 The existing provision of sub-section (1) of section 115JB of the Income-tax Act provide that in case of a company, if the tax payable on the total income as computed under the Income-tax Act, is less than eighteen and one-half per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee for the relevant previous year shall be eighteen and one-half per cent of its book profit.

26.2 Issues were raised in the past regarding applicability of this provision to Foreign Institutional Investors (FIIs) who do not have a permanent establishment (PE) in India. With a view to address this issue, vide Finance Act, 2015, the provisions of section 115JB were amended to provide that in case of a foreign company any income chargeable at a rate lower than the rate specified in section 115JB of the Income-tax Act shall be reduced from the book profits and the corresponding expenditure will be added back. However, since this amendment was prospective w.e.f assessment year 2016-17, the issue for assessment year prior to 2016-17 remained to be addressed.

26.3 A Committee on Direct Tax matters headed by Justice A.P. Shah, set up by the Government to look into the matter, recommended for an amendment of section 115JB to clarify the applicability of Minimum Alternate Tax (MAT) provisions to Foreign Institutional Investors/Foreign Portfolio Investors (FIIs/FPIs) in view of the fact that FIIs and FPIs normally do not have a place of business in India.

26.4 In view of the recommendations of the committee and with a view to provide certainty in taxation of foreign companies, section 115JB of the Income-tax Act has been amended to provide that with effect from 01.04.2001, the provisions of section 115JB shall not be applicable to a foreign company if –

(i) the assessee is a resident of a country or a specified territory with which India has an agreement referred to in sub-section (1) of section 90 or the Central Government has adopted any agreement under sub-section (1) of section 90A and the assessee does not have a permanent establishment in India in accordance with the provisions of such Agreement; or

(ii) the assessee is a resident of a country with which India does not have an agreement of the nature referred to in clause (i) above and the assessee is not required to seek registration under any law for the time being in force relating to companies.

26.5 ***Applicability:*** This amendment takes effect retrospectively from the 1st of April, 2001 and will, accordingly, apply in relation to assessment year 2001-02 and subsequent years.

27. Tax Incentives to International Financial Services Centre

27.1 Under the existing provisions of clause (38) of section 10 of the Income-tax Act, income by way of long term capital gains arising from equity shares or units of an equity oriented fund or business trust is exempt where securities transaction tax is paid.

27.2 With a view to incentivise the growth of International Financial Services Centre into a world class financial services hub, section 10 of the Income-tax Act has been amended so as to provide for exemption from tax on capital gains to the income arising from transaction undertaken in foreign currency on a recognised stock exchange located in an International Financial Services Centre even when securities transaction tax is not paid in respect of such transactions. Similar amendment has been made to section 111A of the Income-tax Act to provide for the reduced rate of tax on short-term capital gain.

27.3 Under the existing provisions of section 115JB of the Income-tax Act, in case of a company, if the tax payable on the total income as computed under the Income-tax Act, is less than eighteen and one-half per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the MAT payable by the assessee for the relevant previous year shall be eighteen and one-half per cent of such book profit.

27.4 With a view to provide a competitive tax regime to International Financial Services Centre, section 115JB of the Income-tax Act has been amended so as to provide that in case of a company, being a unit located in International Financial Services Centre and

deriving its income solely in convertible foreign exchange, MAT shall be chargeable at the rate of nine per cent.

27.5 Section 115-O of the Income-tax Act has also been amended so as to provide that no tax on distributed profits shall be chargeable in respect of the total income of a company being a unit located in International Financial Services Centre, deriving income solely in convertible foreign exchange, for any assessment year on any amount declared, distributed or paid by such company, by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2017 out of its current income, either in the hands of the company or the person receiving such dividend.

27.6 The existing provisions relating to securities transaction tax and commodities transaction tax provide for levy of tax on transactions in taxable securities and commodities respectively. Section 113A of the Finance (No.2) Act, 2004 has been substituted so as to provide that the provisions of Chapter VII shall not apply to taxable securities transactions entered into by any person on a recognized stock exchange located in International Financial Services Centre where the consideration for such transaction is paid or payable in foreign currency, thereby exempting such transaction from securities transaction tax.

27.7 Further, section 132A in Chapter VII of the Finance Act, 2013 has been inserted so as to provide that the provisions of Chapter VII shall also not apply to taxable commodities transactions entered into by any person on a recognized association located in unit of International Financial Services Centre where the consideration for such transaction is paid or payable in foreign currency, thereby exempting such transaction from commodities transaction tax.

27.8 ***Applicability:*** The insertion of Section 113A to Finance (No.2) Act, 2004 and section 132A to the Finance Act, 2013 take effect from 1st June, 2016. The amendments to Sections 10, 111A, 115JB and 115-O take effect from 1st of April, 2017 and will, accordingly apply in relation to assessment year 2017-18 and subsequent assessment years.

28. Clarification regarding the definition of the term 'unlisted securities' for the purpose of Section 112(1)(c)

28.1 The existing provision of clause (c) of sub-section (1) of section 112 of the Income-tax Act provides for tax rate of ten per cent for long-term capital gain arising from transfer of securities, whether listed or unlisted. The expression "securities" for the purpose of the said provision has the same meaning as in clause (h) of section 2 of the Securities Contracts (Regulations) Act, 1956 (32 of 1956)('SCRA'). A view has been taken by the courts that shares of a private company are not ″securities″.

28.2 With a view to clarify the position in so far as taxability is concerned, the provisions of clause (c) of sub-section (1) of section 112 of the Income-tax Act have been amended so as to provide that long-term capital gains arising from the transfer of a capital asset being shares of a company not being a company in which the public are substantially interested, shall be chargeable to tax at the rate of 10 per cent.

28.3 *Applicability:* This amendment takes effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

29. Rationalization of Section 50C in case sale consideration is fixed under agreement executed prior to the date of registration of immovable property

29.1 Section 50C of the Income-tax Act provides that in case of transfer of a capital asset being land or building or both, the value adopted or assessed by the stamp valuation authority for the purpose of payment of stamp duty shall be taken as the full value of consideration for the purposes of computation of capital gains. This provision does not provide any relief where the seller has entered into an agreement to sell the property much before the actual date of transfer of the immovable property and the sale consideration is fixed in such agreement, whereas similar provision exists in section 43CA of the Income-tax Act i.e. when an immovable property is sold as stock-in-trade.

29.2 Section 50C of the Income-tax Act has been amended so as to provide that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of computing the full value of consideration. It has been further provided that this provision shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, on or before the date of the agreement for the transfer of such immovable property.

29.3 *Applicability:* This amendment takes effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

30. Rationalization of conversion of a company into Limited Liability Partnership (LLP)

30.1 Clause (xiiib) of Section 47 of the Income-tax Act before amendment by the Act provided that conversion of a private limited or unlisted public company into Limited Liability Partnership (LLP) shall not be regarded as transfer, if certain conditions are fulfilled, which, inter alia, included a condition that the company's gross receipts, turnover or total sales in any of the preceding three years did not exceed sixty lakh rupees.

30.2 Clause (xiiib) of Section 47 of the Income-tax Act has been amended so as to provide that, for availing tax-neutral conversion, in addition to the existing conditions, the value of the total assets in the books of accounts of the company in any of the three previous years preceding the previous year in which the conversion takes place, should not exceed five crore rupees.

30.3 *Applicability:* This amendment takes effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

31. Rationalisation of tax treatment of National Pension Scheme, Recognised Provident Funds and Superannuation Funds

31.1 The provisions of 80CCD of the Income-tax Act before its amendment by the Act provided that any payment from National Pension System Trust to an employee on account of closure or his opting out of the pension scheme shall be chargeable to tax.

31.2 A new clause (12A) has been inserted in section 10 of the Income-tax Act and section 80CCD of the Income-tax Act has also been amended so as to provide that any payment from National Pension System Trust to an employee on account of closure or 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 closure or his opting out of the scheme, shall be exempt from tax. However, the whole amount received by the nominee, on death of the assessee shall be exempt from tax.

31.3 Recognised provident funds and Superannuation funds are alternate options for social security provided by employer. Under the Part A of Fourth Schedule to the Act contributions made by employer to the credit of an employee participating in a recognised provident fund, which are in excess of twelve per cent of the salary of the employee, are liable to tax in the hands of the employee. However, there is no monetary limit for the contribution made by the employer. Part A of Fourth schedule was amended to provide a monetary cap of rupees one lakh and fifty thousand on tax-free contribution by an employer in employee's account in a recognised provident fund. Further, under section 17, perquisite in the hands of the assessee includes the amount of any contribution exceeding one lakh rupees to an approved superannuation fund by the employer. In order to bring parity between the tax-free employer's contribution to both approved superannuation fund and recognised provident fund, section 17 has been amended to increase the limit of employer contribution to one lakh and fifty thousand rupees without attracting tax.

31.4 ***Applicability:*** These amendments take effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

32. Equalisation Levy

32.1 If permanent establishment (PE) principles are to remain effective in the new economy operating in the digital domain, the fundamental PE rules developed for the old economy i.e. place of business, location, and permanency must be reconciled with the new digital reality.

32.2 In this regard, the Organization for Economic Cooperation and Development (OECD) under Action plan 1 of Base Erosion and Profit Shifting (BEPS) project has suggested several options to tackle the direct tax challenges. The options *inter-alia* include option to impose a final withholding tax on certain payments for digital goods or services provided by a foreign e-commerce provider. The committee on taxation of e-commerce formed by the CBDT, after deliberating on all the options provided by OECD recommended equalisation levy in the form of final withholding tax option for taxation of digital transactions in India.

32.3 In view of the above, a Chapter titled *"Equalisation Levy"* was inserted through the Act, so as to provide that an equalisation levy of 6% of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment ('PE') in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India.

32.4 Further, in order to reduce burden of small players in the digital domain, it is also provided that no such levy shall be made if the aggregate amount of consideration for specified services received or receivable by a non-resident from a person resident in India or from a non-resident having a permanent establishment in India does not exceed one lakh rupees in any previous year.

32.5 In order to avoid double taxation, it is also further provided that exemption under section 10 of the Income-tax Act for any income arising from providing specified services on which equalisation levy is chargeable.

32.6 In order to ensure compliance with the provisions of this Chapter, it is further provided that the expenses incurred by the assessee towards specified services chargeable under this Chapter shall not be allowed as deduction in case of failure of the assessee to deduct and deposit the equalisation levy to the credit of Central government.

32.7 ***Applicability:*** It was provided that this chapter shall come in to force from a date to be appointed by the Central Government through notification in Official Gazette. Subsequently, the Central Government vide Notification. No 37(SO 1904E), dated 27th May 2016 appointed 1st of June, 2016 as the date from which the provisions of this Chapter will come into force.

33. Tax Collection at Source (TCS) on sale of vehicles; goods or services

33.1 The existing provision of section 206C of the Income-tax Act, *inter alia*, provides that the seller shall collect tax at source at specified rate from the buyer at the time of sale of specified items such as alcoholic liquor for human consumption, *tendu* leaves, scrap, mineral being coal or lignite or iron ore, bullion etc. in cash exceeding two lakh rupees.

33.2 In order to reduce the cash transactions in sale of goods and services, and for curbing the flow of unaccounted money in to the trading system and to bring high value transactions into tax net, sub-section (1D) of section 206C of the Income-tax Act has been amended by the Act to provide that the seller shall collect tax at the rate of one per cent from the purchaser on sale in cash of any goods (other than bullion and jewellery) or providing of any services (other than payment on which tax is deducted at source under chapter XVII-B) exceeding two lakh rupees and new sub-section (1F) was inserted in section 206C of the Income-tax Act to provide that the seller who receives consideration for sale of a motor vehicle exceeding ten lakh rupees, shall collect one per cent of the sale consideration as tax from the buyer.

33.3 Further new sub-section (1E) was inserted in section 206C of the Income-tax Act to provide that the provisions of sub-section (1D) of section 206C relating to TCS in

relation to sale of any goods (other than bullion and jewellery) or services shall not apply to certain class of buyers who fulfil such conditions as may be prescribed.

33.4 Moreover, the Board has issued Circular No 22/2016 dated 8th June, 2016 and Circular No. 24/2016 dated 24th June, 2016 to clarify the scope, applicability and the procedure to be followed in case of the amended provisions of section 206C.

33.5 ***Applicability:*** This amendment takes effect from 1st of June, 2016.

34. Phasing out of deductions and exemptions

34.1 The Finance Minister in his Budget Speech, 2015 has indicated that the rate of corporate tax will be reduced from 30% to 25% over the next four years along with corresponding phasing out of exemptions and deductions. Accordingly, the Government implemented this decision in a phased manner based on certain guiding principles and proposed phasing out plan. Subsequently, taking into account the response of the stakeholders on the proposed phasing out plan, the following incentives under the Income-tax Act are phased out in the manner as tabulated below in Table 1 and Table 2 by amending the relevant provisions of the Income tax Act:

Table-1

Sl. No	Section	Incentive available in the Income-tax Act before amendment	Phase out of incentive vide Amendment of Income-tax Act by Act 2016
1	10AA- Special provision in respect of newly established units in Special economic zones (SEZ).	Profit linked deductions for units in SEZ for profit derived from export of articles or things or services.	No deduction shall be available to units commencing manufacture or production of article or thing or start providing services on or after 1st day April, 2020. (from previous year 2020-21 onwards).
2	35AC-Expenditure on eligible projects or schemes	Deduction for expenditure incurred by way of payment of any sum to a public sector company or a local authority or to an approved association or institution, etc. on certain eligible social development project or a scheme.	No deduction shall be available with effect from 1.4.2017 (i.e from previous year 2017-18 and subsequent years).
3	35CCD-Expenditure project on skill development	Weighted deduction of 150 per cent on any expenditure incurred (not being expenditure in the nature of cost of any land or building) on any notified skill	Deduction shall be restricted to 100 per cent from 01.04.2020 (i.e. from previous year 2020-21 onwards).

		development project by a company.	
4	35CCC- Expenditure on notified agricultural extension project.	Weighted deduction of 150 per cent of expenditure incurred on notified agricultural extension project.	Deduction shall be restricted to 100 per cent from 01.04.2020 (i.e. from previous year 2020-21 onwards).
5	Section 80IA; 80IAB, and 80IB - Deduction in respect of profits derive from a) development, operation and maintenance of an infrastructure b) facility (80-IA) development of special economic zone (80-IAB) c) production of mineral oil and natural gas [80-IB(9)]	100 per cent profit linked deductions for specified period on eligible business carried on by industrial undertakings or enterprises referred in **section 80IA**; 80IAB, and 80IB.	No deduction shall be available if the specified activity commences on or after 1st day April, 2017. (i.e from previous year 2017-18 and subsequent years).

34.2 ***Applicability:*** These amendments mentioned in Table 1 take effect from 1st of April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years.

Table-2

Sl. No	**Section**	**Incentive available in the Income-tax Act before amendment by Act,2016**	**Phase out of incentive vide Amendment of Income-tax Act by Act 2016**
1	32 read with rule 5 of Income-tax Rules, 1962 – Accelerated Depreciation.	Accelerated depreciation is provided to certain Industrial sectors in order to give impetus for investment. The depreciation under the Income-tax Act is available up to 100% in respect of certain block of assets.	The New Appendix I read with rule 5 of Income-tax Rules, 1962 is amended to provide that highest rate of depreciation under the Income-tax Act shall be restricted to 40% w.e.f 01.4.2017. (i.e from previous year 2017-18 and subsequent years). The new rate shall be made

			applicable to all the assets (whether old or new) falling in the relevant block of assets.
2	35(1)(ii) – Expenditure on scientific research.	Weighted deduction from the business income to the extent of 175 per cent of any sum paid to an approved scientific research association which has the object of undertaking scientific research. Similar deduction is also available if a sum is paid to an approved university, college or other institution and if such sum is used for scientific research.	Weighted deduction shall be restricted to 150 per cent from 01.04.2017 to 31.03.2020 (i.e. from previous year 2017-18 to previous year 2019-20) and deduction shall be restricted to 100 per cent from 01.04.2020 (i.e. from previous year 2020-21 onwards).
3	35(1)(iia) – Expenditure on scientific research.	Weighted deduction from the business income to the extent of 125 per cent of any sum paid as contribution to an approved scientific research company.	Deduction shall be restricted to 100 per cent with effect from 01.04.2017 (i.e. from previous year 2017-18 and subsequent years).
4	35(1)(iii) – Expenditure on scientific research.	Weighted deduction from the business income to the extent of 125 per cent of contribution to an approved research association or university or college or other institution to be used for research in social science or statistical research.	Deduction shall be restricted to 100 per cent with effect from 01.04.2017 (i.e. from previous year 2017-18 and subsequent years).
5	35(2AA) – Expenditure on scientific research.	Weighted deduction from the business income to the extent of 200 per cent of any sum paid to a National Laboratory or a university or an Indian Institute of Technology or a specified person for the purpose of approved scientific research programme.	Weighted deduction shall be restricted to 150 per cent with effect from 01.04.2017 to 31.03.2020 (i.e. from previous year 2017-18 to previous year 2019-20). Deduction shall be restricted to 100 per cent from 01.04.2020 (i.e. from previous year 2020-21 onwards).

6	35(2AB) – Expenditure on scientific research.	Weighted deduction of 200 per cent of the expenditure (not being expenditure in the nature of cost of any land or building) incurred by a company, engaged in the business of bio-technology or in the business of manufacture or production of any article or thing except some items appearing in the negative list specified in Schedule-XI, on scientific research on approved in-house research and development facility.	Weighted deduction shall be restricted to 150 per cent from 01.04.2017 to 31.03.2020 (i.e. from previous year 2017-18 to previous year 2019-20). Deduction shall be restricted to 100 per cent from 01.04.2020 (i.e. from previous year 2020-21 onwards).
7	35AD – Deduction in respect of specified business.	In case of a cold chain facility, warehousing facility for storage of agricultural produce, an affordable housing project, production of fertiliser and hospital weighted deduction of 150 per cent of capital expenditure (other than expenditure on land, goodwill and financial assets) is allowed.	In case of a cold chain facility, warehousing facility for storage of agricultural produce, hospital, an affordable housing project, production of fertilizer, deduction shall be restricted to 100 per cent of capital expenditure w.e.f. 01.4.2017 (i.e. from previous year 2017-18 onwards).

34.3 *Applicability:* These amendments mentioned in Table 2 take effect from 1st of April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

35. Extending the benefit of initial additional depreciation under section 32(1)(iia) for power sector

35.1 Under the existing provisions of section 32(1)(iia) of the Income-tax Act, 1961, additional depreciation of 20% is allowed in respect of the cost of new plant or machinery acquired and installed by certain assessees engaged in the business of generation and distribution of power. This depreciation allowance is over and above the deduction allowed for general depreciation under section 32(1)(ii) of the Act. This benefit of additional depreciation is not available on the new machinery or plant installed by an assessee engaged in the business of transmission of power.

35.2 In order to rationalise the incentive of power sector, section 32(1)(iia) of the Act has been amended so as to provide that an assessee engaged in the business of transmission of power shall also be allowed additional depreciation at the rate of 20% of actual cost of new machinery or plant acquired and installed in a previous year.

35.3 ***Applicability:*** This amendment takes effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

36. Amortisation of spectrum fee for purchase of spectrum

36.1 Government has newly introduced spectrum fee for auction of airwaves and has allowed the payment for acquiring right to spectrum to be paid either lump sum or over instalments along with interest. There is uncertainty in tax treatment of above mentioned payments (lump sum or instalments) in respect of Spectrum i.e. whether spectrum is an intangible asset and the spectrum fees paid is eligible for depreciation under section 32 of the Income-tax Act or whether it is in the nature of a 'license to operate telecommunication business' and eligible for deduction under section 35ABB of the Income-tax Act.

36.2 In order to provide clarity and avoid any future litigation and controversy, the Act, inserted a new section 35ABA in the Income-tax Act to provide that the fees paid for obtaining right to use the spectrum is to be amortized over the period for which the right to use the spectrum has been granted. The following detailed tax treatment of spectrum fee is provided,-

(i) any capital expenditure incurred and actually paid by an assessee or payable by an assessee in such manner as may be prescribed for the acquisition of any right to use spectrum for telecommunication services by paying spectrum fee will be allowed as a deduction in equal instalments over the period for which the right to use spectrum remains in force.

(ii) where the spectrum is transferred and proceeds of the transfer are less than the expenditure remaining unallowed, a deduction equal to the expenditure remaining unallowed as reduced by the proceeds of transfer, shall be allowed in the previous year in which the spectrum has been transferred.

(iii) if the spectrum is transferred and proceeds of the transfer exceed the amount of expenditure remaining unallowed, the excess amount shall be chargeable to tax as profits and gains of business in the previous year in which the spectrum has been transferred.

(iv) unallowed expenses in a case where a part of the spectrum is transferred would be amortised.

(v) under the scheme of amalgamation, if the amalgamating company sells or transfer the spectrum to an amalgamated company, being an Indian company, then the provisions of this section will apply to amalgamated company as they would have applied to amalgamating company if later has not transferred the spectrum.

36.3 *Applicability:* This amendment takes effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

37. Taxation of Income from 'Patents'

37.1 In order to encourage indigenous research & development activities and to make India a global R & D hub, the Government has decided to put in place a concessional taxation regime for income from patents. The aim of the concessional taxation regime is to provide an additional incentive for companies to retain and commercialise existing patents and to develop new innovative patented products. This will encourage companies to locate the high-value jobs associated with the development, manufacture and exploitation of patents in India. The Organization for Economic Cooperation and Development (OECD) has recommended, in Base Erosion and Profit Shifting (BEPS) project under Action Plan 5, the nexus approach which prescribes that income arising from exploitation of Intellectual property (IP) should be attributed and taxed in the jurisdiction where substantial research & development (R&D) activities are undertaken rather than the jurisdiction of legal ownership only.

37.2 Accordingly, a new section 115BBF has been inserted in the Income-tax Act to provide for concessional tax regime. It has been provided that where the total income of the eligible assessee income includes any income by way of royalty in respect of a patent developed and registered in India, such royalty shall be taxable at the rate of ten per cent (plus applicable surcharge and cess) on the gross amount of royalty. No expenditure or allowance in respect of such royalty income shall be allowed under the Income-tax Act. It is further provided that this concessional tax regime is optional and the eligible assesse may exercise the option for taxation under this section in prescribed manner on or before the due date of furnishing the return of income under section 139(1) of the Income-tax Act. It has been also provided that where an eligible assessee declares income by way of royalty for any previous year in accordance with the provisions of this section but he does not declares such income for any of the five consecutive assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of this section, he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of this section.

37.3 For the purpose of this concessional tax regime an eligible assessee means a person resident in India, who is the true and first inventor of the invention and whose name is entered on the patent register as the patentee in accordance with Patents Act, 1970 and includes every such person, being the true and the first inventor of the invention, where more than one person is registered as patentee under Patents Act, 1970 in respect of that patent. Further amendments has also been made to section 115JB of the Income-tax act to provide that the amount of income by way of royalty chargeable to tax under section 115BBF and related expenditure shall not be taken in to account for computation of book profit under section 115JB of the Income-tax Act.

37.4 *Applicability:* These amendments take effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

38. Introduction of Presumptive taxation scheme for persons having income from profession

38.1 The existing scheme of taxation provides for a simplified presumptive taxation scheme for certain eligible persons engaged in certain eligible business only and not for persons earning professional income. In order to rationalize the presumptive taxation scheme and to reduce the compliance burden of the small tax payers having income from profession and to facilitate the ease of doing business, the Income-tax Act has been amended to provide for presumptive taxation regime for professionals.

38.2 Accordingly, a new section 44ADA has been inserted in the Income-tax Act to provide for estimating the income of an assessee who is engaged in any profession referred to in sub-section (1) of section 44AA such as legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette and whose total gross receipts does not exceed fifty lakh rupees in a previous year, at a sum equal to fifty per cent. of the total gross receipts, or, as the case may be , a sum higher than the aforesaid sum earned by the assessee. The scheme will apply to such resident assessee who is an individual, Hindu undivided family or partnership firm but not Limited Liability partnership firm.

38.3 Under the scheme, the assessee will be deemed to have been allowed the deductions under section 30 to 38 of the Income-tax Act. Accordingly, the written down value of any asset used for the purpose of the profession of the assessee will be deemed to have been calculated as if the assessee had claimed and had actually been allowed the deduction in respect of depreciation for the relevant assessment years.

38.4 It has also been provided that the assessee will not be required to maintain books of account under sub-section (1) of section 44AA and get the accounts audited under section 44AB in respect of such income unless the assessee claims that the profits and gains from the aforesaid profession are lower than the profits and gains deemed to be his income under sub-section (1) of section 44ADA and his income exceeds the maximum amount which is not chargeable to income-tax.

38.5 ***Applicability:*** These amendments take effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

39. Increase in threshold limit for audit for persons having income from profession

39.1 The existing provisions of section 44AB of the Income-tax Act provides that every person carrying on a profession is required to get his accounts audited if the total gross receipts in a previous year exceed twenty five lakh rupees.

39.2 In order to reduce the compliance burden section 44AB has been amended to increase the threshold limit of gross receipts for getting the accounts audited from twenty five lakh rupees to fifty lakh rupees for persons carrying on profession.

39.3 *Applicability:* This amendment takes effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

40. Increase in threshold limit for presumptive taxation scheme for persons having income from business.

40.1 The existing provisions of section 44AD of the Income-tax Act provide for a presumptive taxation scheme for an eligible business. Where in case of an eligible assessee engaged in eligible business having total turnover or gross receipts not exceeding rupees one crore, a sum equal to eight per cent of the total turnover or gross receipts, or as the case may be, a sum higher than the aforesaid sum shall be deemed to be profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession". Under the scheme, the assessee will be deemed to have been allowed the deduction under sections 30 to 38 of the Income-tax Act. Further, the eligible assessee can report income less than the deemed income of eight per cent of the total turnover or gross receipts not exceeding rupees one crore provided he maintains books of accounts as per section 44AA of the Income-tax Act.

40.2 In order to reduce the compliance burden of the small tax payers and facilitate the ease of doing business, section 44AD of the Income-tax Act has been amended to increase the threshold limit of one crore rupees specified in the definition of "eligible business" to two crore rupees.

40.3 It has also been provided that the expenditure in the nature of salary, remuneration, interest etc. paid to the partner as per clause (b) of section 40 shall not be deductible while computing the income under section 44AD as the said section 40 does not mandate for allowance of any expenditure but puts restriction on deduction of amounts, otherwise allowable under section 30 to 38.

40.4 It has been further provided that where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five consecutive assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of this section, he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of this section. For example, an eligible assessee claims to be taxed on presumptive basis under section 44AD for Assessment Year 2017-18 and offers income of Rs. 8 lakh on the turnover of Rs. 1 crore. For Assessment Year 2018-19 and Assessment Year 2019-20 also he offers income in accordance with the provisions of section 44AD. However, for Assessment Year 2020-21, he offers income of Rs.4 lakh on turnover of Rs. 1 crore. In this case since he has not offered income in accordance with the provisions of section 44AD for five consecutive assessment years, after Assessment Year 2017-18, he will not be eligible to claim the benefit of section 44AD for next five assessment years i.e. from Assessment Year 2021-22 to 2025-26.

40.5 Further as the turnover limit of presumptive taxation scheme has been enhanced to rupees two crore, It has been further provided eligible assessee shall be require to pay advance tax. However, in order to keep the compliance minimum in his case, it is proposed that he may pay advance tax by 15th March of the financial year. The applicability of section 44AB has also been clarified vide Press release dated 20th June, 2016.

40.6 *Applicability:* These amendments take effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

41. Deduction in respect of provision for bad and doubtful debt in the case of Non-Banking Financial companies.

41.1 Under the existing provisions of sub-clause (c) of clause (viia) of sub-section (1) of section 36 of the Income-tax Act, in computing the profits of a public financial institutions, State financial corporations and State industrial investment corporations a deduction, limited to an amount not exceeding five per cent of the gross total income, computed, before making any deduction under the aforesaid clause and Chapter VI-A, is allowed in respect of any provision for bad and doubtful debt.

41.2 Considering the fact that Non-Banking Financial companies (NBFCs) are also engaged in financial lending to different sectors of society, the provision of clause (viia) of sub-section (1) of section 36 has been amended so as to provide that deduction from total income (computed before making any deduction under this clause and Chapter-VIA) on account of provision for bad and doubtful debts to the extent of five per cent of the total income shall be available to NBFCs.

41.3 *Applicability:* This amendment takes effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

42. Rationalisation of scope of tax incentive under section 32AC

42.1 The existing provision of sub-section (1A) in section 32AC of the Income-tax Act provides for investment allowance at the rate of 15% on investment made in new assets (plant and machinery) exceeding Rs.25 crore in a previous year by a company engaged in manufacturing or production of any article or thing subject to the condition that the acquisition and installation has to be done in the same previous year. This tax incentive is available up to 31.03.2017.

42.2 The dual condition of acquisition and installation causes genuine hardship in cases in which assets having been acquired could not be installed in same previous year.

42.3 The provision of sub-section (1A) of section 32AC of the Income-tax Act has been amended so as to provide that the acquisition of the plant & machinery of the specified value has to be made in the previous year. However, installation may be made by 31.03.2017 in order to avail the benefit of investment allowance of 15%. It has been further provided that where the installation of the new asset is in a year other than the year of acquisition, the deduction under this sub-section shall be allowed in the year in which the new asset is installed.

42.4 *Applicability:* This amendment takes effect retrospectively from 1st of April, 2016 and will, accordingly, apply in relation to assessment year 2016-17 and subsequent assessment years.

43. Exemption from requirement of furnishing PAN under section 206AA to certain non-resident.

43.1 The existing provision of section 206AA of the Income-tax Act, inter alia, provides that any person who is entitled to receive any sum or income or amount on which tax is deductible under Chapter XVIIB of the Income-tax Act shall furnish his Permanent Account Number to the person responsible for deducting such tax, failing which tax shall be deducted at the rate mentioned in the relevant provisions of the Income-tax Act or at the rate in force or at the rate of twenty per cent., whichever is higher. The provisions of section 206AA also apply to non-residents with an exception in respect of payment of interest on long-term bonds as referred to in section 194LC.

43.2 In order to reduce compliance burden, the said section 206AA of the Income-tax Act has been amended to provide that the provisions of this section shall also not apply to a non-resident, not being a company, or to a foreign company, in respect of any other payment, other than interest on bonds, subject to such conditions as may be prescribed.

43.3 **Applicability:** This amendment takes effect from 1st of June, 2016.

44. Exemption of Central Government subsidy or grant or cash assistance, etc. towards corpus of fund established for specific purposes from the definition of Income

44.1 The Finance Act, 2015 had amended the definition of income under clause (24) of section 2 of the Income-tax Act so as to provide that the income shall include assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43 of the Income-tax Act.

44.2 As a result grant or cash assistance or subsidy etc. provided by the Central Government for budgetary support of a trust or any other entity formed specifically for operationalizing certain government schemes will be taxed in the hands of trust or any other entity. Therefore, the provision of clause (xviii) of sub-section (2) of section 24 of the Income-tax Act has been amended so as to provide that subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or State government shall not form part of income.

44.3 *Applicability:* This amendment takes effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

45. Extension of scope of section 43B to include certain payments made to Railways

45.1 The existing provisions of section 43B of the Income-tax Act, *inter alia*, provide that any sum payable by the assessee by way of tax, cess, duty or fee, employer contribution to Provident Fund, etc., is allowable as deduction of the previous year in which the liability to pay such sum was incurred (relevant previous year) if the same is actually paid on or before the due date of furnishing of the return of income irrespective of method of accounting followed by a person.

45.2 With a view to ensure the prompt payment of dues to Railways for use of the Railway assets, the provision of section 43B of the Income-tax Act has been amended so as to expand its scope to include payments made to Indian Railways for use of Railway assets within its ambit.

45.3 ***Applicability:*** This amendment takes effect from 1st of April, 2017 and would accordingly apply to assessment year 2017-18 and subsequent assessment years.

46. Clarification regarding set off of losses against deemed undisclosed income

46.1 Section 115BBE of the Income-tax Act *inter alia* provides that the income relating to section 68 or section 69 or section 69A or section 69B or section 69C or section 69D is taxable at the rate of thirty per cent and further provides that no deduction in respect of any expenditure or allowances in relation to income referred to in the said sections shall be allowable

46.2 Currently, there is uncertainty on the issue of set-off of losses against income referred to in section 115BBE of the Income-tax Act. The matter has been carried to judicial forums and courts in some cases has taken a view that losses shall not be allowed to be set-off against income referred to in section 115BBE. However, the current language of section 115BBE of the Income-tax Act does not convey the desired intention and as a result the matter is litigated. In order to avoid unnecessary litigation, the provision of the sub-section (2) of section 115BBE of the Income-tax Act has been amended as to expressly provide that no set off of any loss shall be allowable in respect of income under the sections 68 or section 69 or section 69A or section 69B or section 69C or section 69D.

46.3 ***Applicability:*** This amendment takes effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

47. Taxation of Non-compete fees and exclusivity rights in case of Profession

47.1 The existing provision of clause (va) of section 28 of the Income-tax Act includes within the scope of "Profit and gains of business or profession" any sum received or receivable in cash or in kind under an agreement for not carrying out activity in relation to any business; or not to share any know how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services and is chargeable to tax as business income. Further, the provisions clarify that receipts for transfer of right to manufacture, produce or process any article or thing or right to carry on any business, which

are chargeable to tax under the head "Capital gains", would not be taxable as profits and gains of business or profession. Under section 45 of the Income-tax Act, any capital receipt arising out of transfer of any business or commercial rights is taxable under the head "Capital gains". The amount of "Capital gains" is computed according to section 48 of the Income-tax Act. For this purpose, 'cost of acquisition' and 'cost of improvement' are defined under section 55. However, non-compete fee received/receivable in relation to carrying out of profession are not covered under these provisions. Clause (va) of section 28 of the Income-tax Act has been amended so as to bring the non-compete fee received/receivable(which are recurring in nature) in relation to not carrying out any profession, within the scope of section 28 of the Income-tax Act i.e. the charging section of profits and gains of business or profession. Further, the proviso to clause (va) of section 28 of the Income-tax Act has also been amended to clarify that receipts for transfer of right to carry on any profession, which are chargeable to tax under the head "Capital gains", would not be taxable as profits and gains of business or profession. Consequentially, the provision of section 55 has been amended so as to provide that the 'cost of acquisition' and 'cost of improvement' for working out "Capital gains" on capital receipts arising out of transfer of right to carry on any profession shall also be taken as 'nil'.

47.2 *Applicability:* These amendments take effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

48. Time limit for carry forward and set off of such loss under section 73A of the Income-tax Act

48.1 The existing provisions of section 73A of the Income-tax Act provide that any loss, computed in respect of any specified business referred to in section 35AD shall not be set off except against profits and gains, if any, of any other specified business. Further, section 80 of the Income-tax Act inter-alia provides that a loss which has not been determined in pursuance of return filed in accordance with the provisions of sub-section (3) of section 130, shall not be carried forward and set-off under sub-section (1) of section 72 or sub-section (2) of section 73 or sub-section (1) or sub-section (3) or section 74 or sub-section 74A.

48.2 In accordance with the scheme of the Income-tax Act, this loss is to be allowed if the return is filed within the specified time i.e. by the due date of filing of the return of the income as provided in section 80 for other losses determined under the Income-tax Act.

48.3 Accordingly, section 80 of the Income-tax Act has been amended so as to provide that the loss determined as per section 73A of the income-tax Act shall not be allowed to be carried forward and set off if such loss has not been determined in pursuance of a return filed in accordance with the provisions of sub-section (3) of section 139. Consequential amendment has also been made in section 139 so as to give reference of sub-section (2) of section 73A in that sub-section.

48.4 *Applicability:* These amendments take effect retrospectively from 1st of April, 2016 and will, accordingly, apply from assessment year 2016-17 and subsequent assessment years.

49. Rationalization of Tax Deduction at Source (TDS) provisions

49.1 Under the scheme of deduction of tax at source as provided in the Income-tax 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. In order to rationalise the rates and base for TDS provisions, the existing threshold limit for deduction of tax at source and the rates of deduction of tax at source are rationalised by amending the respective sections of the Income-tax Act through the Act as mentioned in **Table 3** and **Table 4** respectively.

Table – 3

Present Section	**Heads**	**Threshold Limit prior to Amendment by Finance Act, 2016 (in Rs.)**	**Revised Threshold Limit as per amendments made in the Finance Act, 2016 (in Rs.)**
192A	Payment of accumulated balance due to an employee	30,000	50,000
194BB	Winnings from Horse Race	5,000	10,000
194C	Payments to Contractors	Aggregate annual limit of75,000	Aggregate annual limit of1,00,000
194LA	Payment of Compensation on acquisition of certain Immovable Property	2,00,000	2,50,000
194D	Insurance commission	20,000	15,000
194G	Commission on sale of lottery tickets	1,000	15,000
194H	Commission or brokerage	5,000	15,000

Table – 4

Present Section	**Heads**	**Rateof TDS (%) prior to amendment by Finance Act, 2016**	**Revised Rate ofTDS (%) as per amendments made vide Finance Act, 2016**
194DA	Payment in respect of Life Insurance Policy	2%	1%
194EE	Payments in respect of NSS Deposits	20%	10%
194D	Insurance commission in	Rate in force (10%)	5%*

	case of persons other than a company		
194G	Commission on sale of lottery tickets	10%	5%
194H	Commission or brokerage	10%	5%

49.2 The Following provisions of the Income-tax act which are not in operation are omitted in the Income-tax Act as detailed in Table 5.

Table – 5

Present Section	**Heads**	**Amendment made vide Finance Act, 2016**
194K	Income in respect of Units	Omitted w.e.f 01.06.2016
194L	Payment of Compensation on acquisition of Capital Asset	Omitted w.e.f 01.06.2016

49.3 ***Applicability:*** These amendments take effect from 1st of June, 2016.

50. Enabling of Filing of Form 15G/15H for rental payments

50.1 The provisions of section 194-I of the Income-tax Act provide *inter alia* for tax deduction at source (TDS) for payments in the nature of rent beyond a threshold limit. The existing provisions provide threshold of Rs. 1,80,000/- per financial year for deduction of tax under this section. In spite of providing higher threshold for deduction of tax under this section, there may be cases where the tax payable on recipient's total income, including rental payments, will be nil.

50.2 The existing provisions of section 197A of the Income-tax Act *inter alia* provide that tax shall not be deducted, if the recipient of certain payments on which tax is deductible furnishes to the payer a self- declaration in prescribed Form No. 15G/15H declaring that the tax on his estimated total income of the relevant previous year would be nil.

50.3 In order to reduce compliance burden in such cases, the provisions of section 197A of the Income-tax Act have been amended so as to provide that the recipients of payments referred to in section 194-I of the Income-tax Act shall also be eligible for filing self-declaration in Form no. 15G/15H for non-deduction of tax at source in accordance with the provisions of section 197A of the Income-tax Act.

50.4 ***Applicability:*** This amendment takes effect from 1st of June, 2016.

51. Increase in time period for acquisition or construction of self-occupied house property for claiming deduction of interest

51.1 The existing provision of clause (b) of section 24 of the Income-tax Act provides that interest payable on capital borrowed for acquisition or construction of a house

property shall be deducted while computing income from house property. The second proviso to the said clause provides that a deduction of an amount of two lakh rupees shall be allowed where a house property referred to in sub-section (2) of section 23 of the Income-tax Act (self-occupied house property) has been acquired or constructed with capital borrowed on or after the 1st day of April, 1999 and such acquisition or construction is completed within three years from the end of the financial year in which capital was borrowed.

51.2 In view of the fact that housing projects often take longer time for completion, the second proviso to clause (b) of section 24 of the Income-tax Act has been amended to provide that the deduction under the said proviso on account of interest paid on capital borrowed for acquisition or construction of a self-occupied house property shall be available if the acquisition or construction is completed within five years from the end of the financial year in which capital was borrowed.

51.3 ***Applicability:*** This amendment takes effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

52. Simplification and rationalisation of provisions relating to taxation of unrealised rent and arrears of rent

52.1 Existing provisions of sections 25A, 25AA and 25B of the Income-tax Act relate to special provisions on taxation of unrealised rent allowed as deduction when realised subsequently, unrealised rent received subsequently and arrears of rent received respectively. Certain deductions are available thereon.

52.2 In order to rationalise the above provisions and bring uniformity in tax treatment of arrears of rent and unrealised rent, these provisions have been merged under a single new section 25A of the Income-tax Act and it has been provided that the amount of rent received in arrears or the amount of unrealised rent realised subsequently by an assessee shall be charged to income-tax in the financial year in which such rent is received or realised, whether the assessee is the owner of the property or not in that financial year. It is also provided that thirty per cent of the arrears of rent or the unrealised rent realised subsequently by the assessee shall be allowed as deduction.

52.3 ***Applicability:*** This amendment takes effect from 1st of April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years.

53. Providing Time limit for disposing applications made by assessee under section 273A, 273AA or 220(2A) of the Income-tax Act

53.1 Sub-section (2) of section 220 of the Income-tax Act provides for levy of interest at the rate of 1 per cent for every month or part of month for the period during which the default continues. Sub-section (2A) of said section *inter alia* empowers the Principal Chief Commissioner, Chief Commissioner, Principal Commissioner or Commissioner to reduce or waive the amount of interest paid or payable under sub-section (2) of the said section.

53.2 Sub-section (4) of section 273A of the Income-tax Act *inter alia* provides that the Principal Commissioner or the Commissioner may, on an application made by an assessee,

reduce or waive the amount of any penalty payable by the assessee or stay or compound any proceeding for recovery of the penalty amount in certain circumstances.

53.3 Section 273AA of the Income-tax Act provides *inter alia* that the Principal Commissioner or the Commissioner may grant immunity from penalty, if penalty proceedings have been initiated in case of a person who has made application for settlement before the Settlement Commission and the proceedings for settlement had abated under the circumstances contained in section 245HA of the Income-tax Act.

53.4 Under the existing provisions no time limit has been provided regarding the passing of orders either under section 220 or sections 273A or 273AA of the Income-tax Act. Further, these provisions do not specifically mandate that assessee be given an opportunity of being heard in case such application is rejected by an authority. Therefore, in order to rationalise the provisions and provide for specific time-line, amendment to the existing provisions have been made.

53.5 In view of the above, section 220 of the Income-tax Act has been amended to provide that an order accepting or rejecting application of an assessee shall be passed by the concerned Principal Chief Commissioner, Chief Commissioner, Principal Commissioner or Commissioner within a period of twelve months from the end of the month in which such application is received.

53.6 On the same line**,** section 273A and section 273AA of the Income-tax Act have been amended to provide that an order accepting or rejecting the application of an assessee shall be passed by the Principal Commissioner or Commissioner within a period of twelve months from the end of the month in which such application is received.

53.7 Further, it is also provided that no order rejecting the application of the assessee under section 220 or 273A, 273AA of the Income-tax Act shall be passed without giving the assessee an opportunity of being heard. However, in respect of applications pending as on 1st day of June, 2016, the order under said sections shall be passed on or before 31st May, 2017.

53.8 ***Applicability:*** These amendments take effect from 1st June, 2016.

54. Providing legal framework for automation of various processes and paperless assessment

54.1 In order to enhance efficiency and reduce the burden of compliance, a series of legislative measures have been taken to provide adequate legal framework for paperless assessment.

54.2 Existing sub-section (1) of section 282A of the Income-tax Act provides that where a notice or other document is required to be issued by any income-tax authority under the Act, such notice or document should be signed by that authority in manuscript.

54.3 Sub-section (1) of section 282A of the Income-tax Act has been amended to provide that notices and documents required to be issued by income-tax authority under the

Income-tax Act shall be issued by such authority either in paper form or in electronic form in accordance with such procedure as may be prescribed.

54.4 Existing sub-section (2) of section 143 of the Income-tax Act provides that if the Assessing Officer considers it necessary and expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, he shall serve on the assessee a notice requiring him to produce, or cause to be produced on a specified date, any evidence on which the assessee may rely in support of the return.

54.5 In order to ensure timely service of notice issued under sub-section (2) of section 143 of the Income-tax Act, the said sub-section has been substituted to provide that notice under the said sub-section may be served on the assessee by the Assessing Officer or the prescribed income-tax authority, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return.

54.6 The existing provision of section 2 of the Income-tax Act has also been amended by inserting new clause (23C) to define the term "hearing" to include communication of data and documents through electronic mode.

54.7 ***Applicability:*** These amendments effect from 1st June, 2016.

55. Filing of return of Income

55.1 Existing provisions of sub – section (1) of section 139 of the Income-tax Act provide that every person referred to therein shall file a return of income on or before the due date. The sixth proviso to the said section provides that every person, being an individual or Hindu undivided family or an association of person or a body of individual, whether incorporated or not or any artificial juridical person, if his total income or of any other person in respect of which he is assessable under this Act during the previous year, without giving effect to provisions of section 10A or section 10B or section 10BA or Chapter VI-A of the Income-tax Act, exceeds the maximum amount which is not chargeable to income tax shall be liable to furnish return on or before the due date.

55.2 Existing provision of sub-section (4) of section 139 of the Income-tax Act provides that a person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under sub -section (1) of section 142 of the Income-tax Act, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

55.3 Sub-section (5) of the section 139 of the Income-tax Act provides that if any person, having furnished the return under sub-section (1), or in pursuance of a notice issued under sub-section (1) of section 142 of the Income-tax Act discovers any omission or any

wrong statement therein, he may furnish a revised return at any time before one year from the end of the relevant assessment year or completion of assessment, whichever is earlier.

55.4 Clause (aa) of Explanation to sub-section (9) of the section 139 of the Income-tax Act provides that a return of income shall be regarded as defective unless the self-assessment tax together with interest, if any, payable in accordance with the provisions of section 140A of the Income-tax Act, has been paid on or before the date of furnishing of return.

55.5 In order to rationalise the time allowed for filing of returns, completion of proceedings, and realization of revenue without undue compliance burden on the taxpayer, and to promote the culture of compliance, the above provisions of the Income-tax Act have been amended.

55.6 The sixth proviso to sub-section (1) of the section 139 of the Income-tax Act has been amended to include that if a person during the previous year earns income which is exempt under clause (38) of section 10 of the Income-tax Act and income of such person without giving effect to the said clause of section 10 of the Income-tax Act exceeds the maximum amount which is not chargeable to tax, shall also be liable to file return of income for the previous year within the due date.

55.7 Sub-section (4) of the aforesaid section has been substituted to provide that any person who has not furnished a return within the time allowed to him under sub-section (1), may furnish the return for any previous year at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

55.8 Sub-section (5) of the aforesaid section has been substituted so as to provide that if any person, having furnished a return under sub-section (1) or under sub-section (4), or in a return furnished in response to notice issued under sub-section (1) of section 142, discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

55.9 Clause (aa) of the Explanation to sub-section (9) of aforesaid section has been omitted to provide that a return which is otherwise valid would not be treated defective merely because self-assessment tax and interest payable in accordance with the provisions of section 140A of the Income-tax Act has not been paid on or before the date of furnishing of the return.

55.10 ***Applicability:*** The amendment to sub-section (3) of section 139 takes effect retrospectively from 1st of April, 2016 and will, accordingly, apply in relation to assessment year 2016-17 and subsequent assessment years. The amendments to sub-sections (1), (4), (5) and (9) of section 139 will take effect from 1st of April, 2017 and will, accordingly apply in relation to assessment year 2017-18 and subsequent years.

56. Processing under section 143(1) of the Income-tax Act be mandated before assessment

56.1 Under the existing provision of sub-section (1D) of section 143 of the Income-tax Act, processing of a return is not necessary where a notice has been issued to the assessee under sub-section (2) of the said section.

56.2 The said sub-section (1D) of the aforesaid section has been amended to provide that in cases where a notice has been issued under sub-section (2) of section 143 of the Income-tax Act the processing of return shall not be necessary before the expiry of one year from the end of the financial year in which the return is furnished. However, it is mandated to process the return before the issuance of order under sub-section (3) of section 143 of the Income-tax Act.

56.3 ***Applicability:*** This amendment takes effect from the 1st of April, 2017 and will, accordingly apply in relation to assessment year 2017-18 and subsequent years.

57. Rationalisation of time limit for assessment, reassessment and recomputation

57.1 The existing statutory time limit for completion of assessment proceedings is two years from the end of the assessment year in which the income was first assessable. It is desirable that proceedings under the Act are finalised more expeditiously as digitisation of processes within the Department has enhanced its efficiency in handling workload. In order to simplify the provisions of existing section 153 of the Income-tax Act by retaining only those provisions that are relevant to the current provisions of the Income-tax Act, section 153 of the Income-tax Act has been amended by substituting the existing section with the following changes in time limit from the existing time limits:

(i) the period, for completion of assessment under section 143 or section 144 has been changed from existing two years to twenty-one months from the end of the assessment year in which the income was first assessable;

(ii) the period for completion of assessment under section 147 has been changed from existing one year to nine months from the end of the financial year in which the notice under section 148 was served;

(iii) the period for completion of fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment has been changed from existing one year to nine months from the end of the financial year in which the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, or the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner

57.2 It is further provided that the period for giving effect to an order, under sections 250 or 254 or 260 or 262 or 263 or 264 of the Income-tax Act or an order of the Settlement Commission under sub-section (4) of section 245D of the Income-tax Act, where effect can be given wholly or partly otherwise than by making a fresh assessment or reassessment shall be

three months from the end of the month in which order is received or passed, as the case may be, by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. It is also provided that in a case where it is not possible for the Assessing Officer to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such reasons in writing from the Assessing Officer, if satisfied, may allow additional time of six months to give effect to the said order. However, in respect of cases pending as on 1st June 2016, the time limit for passing such order has been extended to 31.3.2017.

57.3 It is also provided that where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, 254, 260, 262, 263, or section 264 of the Income-tax Act or in an order of any court in a proceeding otherwise than by way of appeal or reference under the Income-tax Act, then such assessment, reassessment or recomputation shall be made on or before the expiry of twelve months from the end of the month in which such order is received by the Principal Commissioner or Commissioner. However, for cases pending as on 1.6.2016, the time limit for taking requisite action is 31.3.2017 or twelve months from the end of the month in which such order is received, whichever is later.

57.4 Where an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147 of the Income-tax Act, such assessment shall be made on or before the expiry of twelve months from the end of the month in which the assessment order in the case of the firm is passed. However, for cases pending as on 1.6.2016, the time limit for taking requisite action shall be 31.3.2017 or twelve months from the end of the month in which order in case of firm is passed, whichever is later.

57.5 Similarly, consequential changes in time limit for completion of assessment or reassessment by the Assessing Officer have been made in accordance with the extension of time limit provided to the Transfer Pricing Officer in certain cases by amendment in sub-section (3A) to section 92CA of the Income-tax Act.

57.6 The provisions of section 153 of the Income-tax Act as they stood immediately before their amendment by the Act shall apply to and in relation to any order of assessment, reassessment or recomputation made before the 1st of June, 2016.

57.7 ***Applicability:*** These amendments take effect retrospectively from 1st of June, 2016.

58. Rationalisation of time limit for assessment in search cases

58.1 The time limit for completion of assessments made under section 153A or section 153C of the Income-tax Act has been amended to bring it in sync with the new time limits provided for other cases. In order to simplify the provisions of existing section 153B of the Income-tax Act by retaining only those provisions that are relevant to the current provisions of the Act, section 153B of the Income-tax Act has been substituted with the following changes in time limit from the existing time limits as under:

(i) The limitation for completion of assessment under section 153A of the Income-tax Act, in respect of each assessment year falling within six assessment years referred to in clause (b) of sub-section (1) of section 153A of the Income-tax Act and in respect of the assessment year relevant to the previous year in which search is conducted under section 132 of the Income-tax Act or requisition is made under section 132A of the Income-tax Act has been changed from existing two years to twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 of the Income-tax Act or for requisition under section 132A of the Income-tax Act was executed.

(ii) The limitation for completion of assessment in case of other person referred to in section 153C of the Income-tax Act has been changed from existing two years to twenty-one months from the end of the financial year in which the last of the authorisation for search under Section 132 of the Income-tax Act or requisition under section 132A of the Income-tax Act was executed or nine months (changed from the existing one year) from the end of the financial year in which the books of account or documents or assets seized or requisition are handed over under section 153C of the Income-tax Act to the Assessing Officer having jurisdiction over such other person, whichever is later.

58.2 The provisions of section 153B of the Income-tax Act as they stood immediately before their amendment by the Act shall apply to and in relation to any order of assessment, reassessment or recomputation made before the 1st of June, 2016.

58.3 ***Applicability:*** This amendment takes effect retrospectively from 1st of June, 2016.

59. Rationalisation of advance tax payment schedule under section 211 and charging of interest under section 234C of the Income-tax Act

59.1 As per the existing provisions of sub-section (1) of section 211 of the Income-tax Act, the advance tax payment schedule for a company is fifteen per cent, forty-five per cent, seventy-five per cent and hundred per cent of tax payable on the current income to be paid by 15th June, 15th September, 15th December and 15th March respectively. For other assessees, the advance tax payment schedule is thirty per cent, sixty per cent and hundred per cent of tax payable on current income to be paid by 15th September, 15th December and 15th March respectively.

59.2 Based on the recommendations of Expenditure Management Commission clubbed with the fact that most of the advance tax is now paid electronically the schedule for advance tax payment has been rationalised by amending the provisions of section 211 of the Income-tax Act and same advance tax schedule has been prescribed for all assessees other than an eligible assessee in respect of eligible business as referred to in section 44AD of the Income-tax Act. The modification in payment schedule will facilitate forecasting of revenue collections during a financial year with greater accuracy.

59.3 It is further provided that an eligible assessee in respect of eligible business referred to in section 44AD of the Income-tax Act opting for computation of profits or gains of business on presumptive basis shall be required to pay advance tax of the whole amount in one instalment on or before the 15th March of the financial year.

59.4 Consequential amendments have also been made to section 234C of the Income-tax Act which provides for chargeability of interest for deferment of advance tax to bring it in sync with the amendments made in section 211 of the Income-tax Act.

59.5 It is also provided that interest under section 234C of the Income-tax Act shall not be chargeable in case of an assessee having income under the head "Profits and gains of business or profession" for the first time, subject to fulfilment of conditions specified therein.

59.6 ***Applicability:*** These amendments take effect from 1st of June, 2016.

60. Payment of interest on refund

60.1 Section 244A of the Income-tax Act *inter alia* provides that an assessee is entitled to interest on refund arising out of excess payment of advance tax, tax deducted or collected at source. It also provides that the period for which the interest is paid on such excess payment of tax begins from the 1st of April of the assessment year and ends on the date on which refund is granted.

60.2 In order to ensure filing of return within the due date section 244A of the Income-tax Act has been amended to provide that in cases where the return is filed after the due date, the period for grant of interest on refund may begin from the date of filing of return.

60.3 In the interest of fairness and equity, it is further provided that an assessee shall be eligible to interest on refund of self-assessment tax for the period beginning from the date of payment of tax or filing of return, whichever is later, to the date on which the refund is granted. For the purpose of determining the order of adjustment of payments received against the taxes due, the prepaid taxes i.e. the TDS, TCS and advance tax shall be adjusted first.

60.4 It is also provided that where a refund arises out of appeal effect being delayed beyond the time prescribed under sub-section (5) of section 153 of the Income-tax Act, the assessee shall be entitled to receive, in addition to the interest payable under sub-section (1) of section 244A of the Income-tax Act, an additional interest on such refund amount calculated at the rate of three per cent per annum, for the period beginning from the date following the date of expiry of the time allowed under sub-section (5) of section 153 of the Income-tax Act to the date on which the refund is granted. It is clarified that in cases where extension is granted by the Principal Commissioner or Commissioner by invoking proviso to sub-section (5) of section 153 of the Income-tax Act, the period of additional interest, if any, shall begin from the expiry of such extended period.

60.5 ***Applicability:*** This amendment takes effect from 1st of June, 2016.

61. Rationalisation of the provisions relating to Appellate Tribunal

61.1 Existing clause (b) of sub-section (3), sub-section (4A) and sub-section (5) of section 252 of the Income-tax Act provide for the appointment and powers of Senior Vice-President of the Appellate Tribunal.

61.2 In view of the fact that there are no extra-judicial or administrative duties or difference in the pay scale attached with the post of Senior Vice-president in the Tribunal, the reference of "Senior Vice-President" has been omitted from the above provisions of section 252 of the Income-tax Act.

61.3 Sub-section (2A) of section 253 of the Income-tax Act provides that the Principal Commissioner or Commissioner may, if he objects to any direction issued by the Dispute Resolution Panel (DRP) under sub-section (5) of section 144C of the Income-tax Act in pursuance of which the Assessing Officer has passed an order completing the assessment or reassessment, direct the Assessing Officer to appeal to the Appellate Tribunal against such order.

61.4 Further, sub-section (3A) of section 253 of the Income-tax Act provides that every appeal under sub-section (2A) shall be filed within sixty days of the date on which the order sought to be appealed against is passed by the Assessing Officer in pursuance of the directions of the DRP under sub-section (5) of section 144C of the Income-tax Act.

61.5 In line with the decision of the Government to minimise litigation, sub-sections (2A) and (3A) of section 253 of the Income-tax Act have been omitted in order to do away with the filing of appeal by the Assessing Officer against the order of the DRP. Consequent amendments have been made in sub-section (3A) and (4) of the said provision.

61.6 ***Applicability:*** This amendment takes effect from 1st of June, 2016.

61.7 It is also provided that in cases where Department is already in appeal against the directions of DRP under sub-section (2A) of the section 253 of the Income-tax Act (as it stood before the amendment brought by the Act), no fee shall be payable.

61.8 ***Applicability:*** This amendment takes effect from 1st July, 2016.

61.9 The existing provisions of sub-section (2) of section 254 of the Income-tax Act provide that the Appellate Tribunal may rectify any mistake apparent from the record in its order at any time within four years from the date of the order.

61.10 In order to bring certainty to the order of ITAT, the provisions of sub-section (2) of section 254 of the Income-tax Act have been amended to provide that the Appellate Tribunal may rectify any mistake apparent from the record in its order at any time within six months from the end of the month in which the order was passed.

61.11 The existing provision of sub-section (3) of section 255 of the Income-tax Act *inter alia* provides that a single member bench may dispose of any case which pertains to an

assessee whose total income as computed by the Assessing Officer does not exceed fifteen lakh rupees.

61.12 In view of the recent increase in monetary limit for filing appeal before ITAT and to expedite the process of dispute resolution at the level of ITAT, the provision of sub-section (3) of section 255 of the Income-tax Act has been amended so as to provide that a single member bench may dispose of a case where the total income as computed by the Assessing Officer does not exceed fifty lakh rupees.

61.13 ***Applicability:*** These amendments to sections 254 and 255 take effect from 1st June, 2016.

62. Rationalisation of penalty provisions

62.1 Under the existing provisions, penalty on account of concealment of particulars of income or furnishing inaccurate particulars of income is leviable under section 271(1)(c) of the Income-tax Act. In order to rationalize and bring objectivity, certainty and clarity in the penalty provisions, section 271 of the Income-tax Act has been made non- applicable in relation to any assessment for the assessment year commencing on or after the 1st of April, 2017 and subsequent assessment years and penalty shall be levied under the newly inserted section 270A of the Income-tax Act with effect from 1st of April, 2017. The new section 270A of the Income-tax Act provides for levy of penalty in cases of under reporting and misreporting of income.

62.2 Sub-section (1) of section 270A of the Income-tax Act provides that the Assessing Officer, Commissioner (Appeals) or the Principal Commissioner or Commissioner during the course of any proceedings under the Act may levy penalty if a person has under reported his income.

62.3 It provides that a person shall be considered to have under reported his income if,–

(a) the income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of section 143 of the Income-tax Act;

(b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished;

(c) the income reassessed is greater than the income assessed or reassessed immediately before such re-assessment;

(d) the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or 115JC of the Income-tax Act, as the case may be, is greater than the deemed total income determined in the return processed under clause (a) of sub-section (1) of section 143 of the Income-tax Act;

(e) the amount of deemed total income assessed as per the provisions of section 115JB or 115JC of the Income-tax Act is greater than the maximum amount not chargeable to tax, where no return of income has been filed;

(f) the amount of deemed total income reassessed as per the provisions of section 115JB or 115JC of the Income-tax Act is greater than the deemed total income assessed or reassessed immediately before such reassessment;

(g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

62.4 The amount of under-reported income shall be calculated in different scenarios as discussed herein. In a case where return is furnished and assessment is made for the first time the amount of under reported income in case of all persons shall be the difference between the assessed income and the income determined under section 143(1)(a) of the Income-tax Act. In a case where no return has been furnished and the return is furnished for the first time, the amount of under-reported income shall be:

(i) for a company, firm or local authority, the assessed income;

(ii) for a person other than company, firm or local authority, the difference between the assessed income and the maximum amount not chargeable to tax.

62.5 In case of any person, where income is not assessed for the first time, the amount of under reported income shall be the difference between the income assessed or determined in such order and the income assessed or determined in the order immediately preceding such order.

62.6 It is further provided that in a case where under reported income arises out of determination of deemed total income in accordance with the provisions of section 115JB or section 115JC of the Income-tax Act, the amount of total under reported income shall be determined in accordance with the following formula-

(A - B) + (C - D)
where,
A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC of the Income-tax Act (herein called general provisions);
B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under reported income;
C = the total income assessed as per the provisions contained in section 115JB or section 115JC of the Income-tax Act;
D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC of the Income-tax Act been reduced by the amount of under reported income.

However, where the amount of under reported income on any issue is considered both under the provisions contained in section 115JB of the Income-tax Act or and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

62.7 It is clarified that in a case where an assessment or reassessment has the effect of reducing the loss declared in the return or converting that loss into income, the amount of under reported income shall be the difference between the loss claimed and the income or loss, as the case may be, assessed or reassessed.

62.8 Calculation of under-reported income in a case where the source of any receipt, deposit or investment is linked to earlier year shall be provided based on the existing Explanation 2 to sub-section (1) of section 271 of the Income-tax Act.

62.9 It is also provided that the under-reported income under this section shall not include the following cases:

(i) where the assessee offers an explanation and the income-tax authority is satisfied that the explanation is bona fide and all the material facts have been disclosed;

(ii) where such under-reported income is determined on the basis of an estimate, if the accounts are correct and complete but the method employed is such that the income cannot properly be deduced therefrom;

(iii) where the assessee has, on his own, estimated a lower amount of addition or disallowance on the issue and has included such amount in the computation of his income and disclosed all the facts material to the addition or disallowance;

(iv) where the assessee had maintained information and documents as prescribed under section 92D of the Income-tax Act, declared the international transaction under Chapter X of the Income-tax Act and disclosed all the material facts relating to the transaction;

(v) where the undisclosed income is on account of a search operation and penalty is leviable under section 271AAB of the Income-tax Act.

62.10 The rate of penalty shall be fifty per cent of the tax payable on under-reported income. However in a case where under reporting of income results from misreporting of income by the assessee, the person shall be liable for penalty at the rate of two hundred per cent of the tax payable on such misreported income. The cases of misreporting of income have been specified as under:

(i) misrepresentation or suppression of facts;

(ii) non-recording of investments in books of account;

(iii) claiming of expenditure not substantiated by evidence;

(iv) recording of false entry in books of account;

(v) failure to record any receipt in books of account having a bearing on total income;

(vi) failure to report any international transaction or deemed international transaction under Chapter X of the Income-tax Act.

62.11 The tax payable on under reported income in different circumstances has been provided as under:

(a) Where no return has been furnished and income is assessed for first time, the amount of tax calculated on under reported income as increased by maximum amount not chargeable to tax as if it was the total income.

(b) In case of loss determined in processing or in an immediately preceding order, as the case may be, the amount of tax calculated on under reported income as if it was the total income.

(c) In any other case, difference between the tax calculated on the under reported income as increased by the total income determined under section 143(1)(a) of the Income-tax Act or total income assessed/reassessed/recomputed in the immediately preceding order as if it was the total income and the tax calculated under section 143(1)(a) of the Income-tax Act or total income assessed/reassessed/recomputed in the immediately preceding order as if it was the total income.

62.12 It is also provided that no addition or disallowance of an amount shall form the basis for imposition of penalty, if such addition or disallowance has formed the basis of imposition of penalty in the case of the person for the same or any other assessment year.

62.13 Consequential amendments have been made in sections 119, 253, 271A, 271AA, 271AAB, 273A, 276C and 279 of the Income-tax Act to provide reference to newly inserted section 270A of the Income-tax Act.

62.14 ***Applicability:*** These amendments take effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

62.15 The provisions of section 270A of the Income-tax Act are illustrated through examples as below:

Example 1. Case is of a firm liable to tax at the rate of 30 per cent.

	(Figures in Rs. lakh)
Returned total Income	100
Total Income determined under section 143(1)(a) of the Income-tax Act	110
Total Income assessed under section 143(3) of the Income-tax Act	150
Total Income reassessed under section 147 of the Income-tax Act	180

Considering that none of the additions or disallowances made in assessment or reassessment as above qualifies under sub-section (6) of section 270A of the Income-tax Act, the penalty would be calculated as under:

	Assessment under section 143 (3) of the Income-tax Act	Re-assessment under section 147 of the Income-tax Act
Under-reported Income	(150-110) = 40	(180-150) = 30

Tax Payable on under-reported Income	30 % of 40 = 12	30 % of 30 = 9
Penalty Leviable*	50 % of 12 = 6	50 % of 9 = 4.5

* Considering under-reported income is not on account of misreporting

Example 2. Case is of an individual below 60 years of age and no return of income has been furnished liable to tax at slab rates as: income *up to 2,50,000- Nil; 2,50,000- 5,00,000-10%; 5,00,000-10,00,000-20%; income > 10,00,000- 30%:*

	(Figures in Rs)
Total Income assessed under section 143(3) of the Income-tax Act	10,00,000
Under-reported Income	10,00,000-2,50,000* =7,50,000
Under-reported Income as increased by maximum amount not chargeable to tax	7,50,000+2,50,000=10,00,000
Tax payable	10% of 2,50,000 + 20% of 5,00,000 = 1,25,000
Penalty Leviable**	50 % of 1,25,000 = 62,500

* Being maximum amount not chargeable to tax

** Considering under-reported income is not on account of misreporting

Example 3. Case is of a company liable to tax at the rate of 30 per cent.:

	(Figures in Rs lakh)
Returned total Income (loss)	(-)100
Total Income (loss) determined under section 143(1)(a) of the Income-tax Act	(-)90
Total Income (loss) assessed under section 143(3) of the Income-tax Act	(-)40
Total Income reassessed under section 147 of the Income-tax Act	20

Considering that none of the additions or disallowances made in assessment or reassessment as above qualifies under sub-section (6) of section 270A of the Income-tax Act, the penalty would be calculated as under:

	Assessment under section 143 (3) of the Income-tax Act	Re-assessment under section 147 of the Income-tax Act
Under-reported Income	(-)40 minus (-)90 = 50	20 minus (-)40 = 60
Tax Payable on under-reported Income	30 % of 50 = 15	30 % of 60 = 18
Penalty Leviable*	50 % of 15 = 7.5	50 % of 18 = 9

** Considering under-reported income is not on account of misreporting*

62.16 Amendment of section 271AAB of the Income-tax Act

62.16.1 Existing provision of clause (c) of sub-section (1) of section 271AAB of the Income-tax Act provides that in a case not covered under the provisions of clauses (a) and (b) of the said sub-section of section 271AAB of the Income-tax

Act, a penalty of a sum which shall not be less than thirty per cent but which shall not exceed ninety per cent of the undisclosed income of the specified previous year shall be levied in case where search has been initiated under section 132 of the Income-tax Act on or after the 1st of July, 2012.

62.16.2 In order to rationalise the rate of penalty and to reduce discretion, clause (c) of sub-section (1) of section 271AAB of the Income-tax Act has been amended to provide for levy of penalty on such undisclosed income at a flat rate of sixty per cent of such income.

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

62.17 Amendment of Section 272A of the Income-tax Act

62.17.1 The existing provision of sub-section (1) of section 272A of the Income-tax Act provides for levy of penalty of ten thousand rupees for each failure or default to answer the questions raised by an income-tax authority under the Income-tax Act, refusal to sign any statement legally required during the proceedings under the Income-tax Act or failure to attend to give evidence or produce books or documents as required under sub-section (1) of section 131 of the Income-tax Act.

62.17.2 The said provisions of sub-section (1) of section 272A of the Income-tax Act have been amended to further include levy of penalty of ten thousand rupees for each default or failure to comply with a notice issued under sub-section (1) of section 142 of the Income-tax Act or sub-section (2) of section 143 of the Income-tax Act or failure to comply with a direction issued under sub-section (2A) of section 142 of the Income-tax Act.

62.17.3 Further, sub-section (3) of section 272A of the Income-tax Act has been amended to provide that penalty in case of failure referred above shall be levied by the income tax authority issuing such notice or direction.

62.17.4 Consequential amendments to section 288 of the Income-tax Act have been made by making reference of newly inserted clause (d) in sub- section (1) of section 272A of the Income-tax Act to clause (b) of sub-section (4) of section 288.

62.17.5 ***Applicability:*** These amendments will take effect from the 1st of April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years.

63. Provision for bank guarantee under section 281B of the Income-tax Act

63.1 Under the existing provisions of section 281B of the Income-tax Act the Assessing Officer may provisionally attach any property of the assessee during the pendency of assessment or reassessment proceedings, for a period of six months with the prior approval of

the income- tax authorities specified therein, if he is of the opinion that it is necessary to do so for the purpose of protecting the interests of the revenue. Such attachment of property is extendable to a maximum period of two years or sixty days after the date of assessment order, whichever is later.

63.2 The Income Tax Simplification Committee (Easwar Committee) had recommended that provisional attachment of property could be substituted by a bank guarantee subject to fulfilment of certain conditions. Having considered this recommendation, section 281B of the Income-tax Act has been amended provided that the Assessing Officer shall revoke provisional attachment of property made under sub – section (1) of the aforesaid section in a case where the assessee furnishes a bank guarantee from a scheduled bank, for an amount not less than the fair market value of such provisionally attached property or for an amount which is sufficient to protect the interests of the revenue.

63.3 It is also provided that to determine the fair market value of the property, the Assessing Officer may, make a reference to the Valuation Officer, who shall be required to submit the report of the estimate of the property to the Assessing Officer within a period of thirty days from the date of receipt of such reference.

63.4 In order to ensure the revocation of attachment of property in lieu of bank guarantee in a time bound manner, it has been provided that an order revoking the attachment shall be made by the Assessing Officer within fifteen days of receipt of such guarantee, and in a case where a reference is made to the Valuation Officer, within forty-five days from the date of receipt of such guarantee.

63.5 It is further provided that where a notice of demand specifying a sum payable is served upon the assessee and the assessee fails to pay such sum within the time specified in the notice; the Assessing Officer may invoke the bank guarantee, wholly or partly, to recover the said amount.

63.6 In a case where the assessee fails to renew the bank guarantee or fails to furnish a new guarantee from a scheduled bank for an equal amount fifteen days before the expiry of such guarantee, the Assessing Officer may in the interest of the revenue, invoke the bank guarantee. The amount realised by invoking the bank guarantee shall be adjusted against the existing demand which is payable and the balance amount, if any, shall be deposited in the Personal Deposit Account of the Principal Commissioner or Commissioner in the branch of Reserve Bank of India or the State Bank of India or of its subsidiaries or any bank as may be appointed by the Reserve Bank of India as its agent under the provisions of sub – section (1) of section 45 of the Reserve Bank of India Act, 1934 at the place where the office of the Principal Commissioner or Commissioner is situated.

63.7 In a case where the Assessing Officer is satisfied that the bank guarantee is not required anymore to protect the interests of the revenue, he shall release that guarantee forthwith.

63.8 ***Applicability:*** This amendment takes effect from 1st June, 2016.

64. Extension of time limit to Transfer Pricing Officer in certain cases

64.1 As per the existing provisions of sub-section (3A) of section 92CA of the Income-tax Act, the Transfer Pricing Officer (TPO) has to pass his order sixty days prior to the date on which the limitation for making assessment expires. It is noted that at times seeking information from foreign jurisdictions becomes necessary for determination of arm's length price by the TPO and at times proceedings before the TPO may also be stayed by a court order.

64.2 Therefore, provisions of sub-section (3A) of section 92CA of the Income-tax Act have been amended to provide that where assessment proceedings are stayed by any court or where a reference for exchange of information has been made by the competent authority, the time available to the Transfer Pricing Officer for making an order after excluding the time for which assessment proceedings were stayed or the time taken for receipt of information, as the case may be, is less than sixty days, then such remaining period shall be extended to sixty days.

64.3 ***Applicability:*** This amendment takes effect from 1st June, 2016.

65. Assumption of jurisdiction of Assessing Officer

65.1 The existing sub-section (3) of the section 124 of the Income-tax Act provides *inter alia* that no person shall be entitled to call in question the jurisdiction of an Assessing Officer in a case where return is filed under section 139 of the Income-tax Act, after the expiry of one month from the date on which he was served with a notice issued under sub-section (1) of section 142 of the Income-tax Act or sub-section (2) of section 143 of the Income-tax Act or after the completion of the assessment, whichever is earlier. Currently, this provision does not specifically refer to notices issued under section 153A of the Income-tax Act or section 153C of the Income-tax Act which relate to assessment in cases where a search and seizure action has been taken or cases connected to such cases.

65.2 Instances have come to notice wherein the jurisdiction of an Assessing Officer in such cases have been called into question at the appellate stages, despite the fact that order passed under section 153A or 153C of the Income-tax Act is read with section 143(3) of the Income-tax Act. In order to remove any ambiguity in such cases, the provisions of sub-section (3) of section 124 of the Income-tax Act have been amended to specifically provide that cases where search is initiated under section 132 of the Income-tax Act or books of accounts, other documents or any assets are requisitioned under section 132A of the Income-tax Act, no person shall be entitled to call into question the jurisdiction of an Assessing Officer after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 153A of the Income-tax Act or sub-section (2) of section 153C of the Income-tax Act or after the completion of the assessment, whichever is earlier.

65.3 ***Applicability:*** This amendment takes effect from 1st June, 2016.

66. Legislative framework to enable and expand the scope of electronic processing of information

66.1 The existing provisions of section 133C of the Income-tax Act empower the prescribed income-tax authority to issue notice calling for information and documents for the purpose of verification of information in its possession.

66.2 In order to expedite verification and analysis of the information and documents so received, provisions of section 133C of the Income-tax Act have been amended to provide adequate legislative backing for processing of information and documents so obtained and making the outcome thereof available to the Assessing Officer for necessary action, if any.

66.3 Explanation 2 to section 147 of the Income-tax Act has also been amended to provide for reopening of cases by the AO on the basis of the information so received.

66.4 Clause (a) of sub-section (1) of section 143 of the Income-tax Act provides that a return filed is to be processed and total income or loss is to be computed after making the adjustments on account of any arithmetical error in the return or on account of an incorrect claim, if such incorrect claim is apparent from any information in the return.

66.5 In order to expeditiously remove the mismatch between the return and the information available with the Department, the scope of adjustments that can be made at the time of processing of returns under sub-section (1) of section 143 of the Income-tax Act has been expanded. It has been provided that such adjustments can be made based on the data available with the Department in the form of audit report filed by the assessee, returns of earlier years of the assessee, 26AS statement, Form 16, and Form 16A. However, before making any such adjustments, in the interest of natural justice, intimation shall be given to the assessee either in writing or through electronic mode requiring him to respond to such adjustments. The response received, if any, will be duly considered before making any adjustment. However, if no response is received within thirty days of issue of such intimation, the processing shall be carried out incorporating the adjustments.

66.6 ***Applicability:*** The amendments to sections 133 and 147 take effect from 1st June, 2016. The amendment to Section 143 takes effect from 1st of April, 2017 and will, accordingly apply in relation to assessment year 2017-18 and subsequent assessment years.

67. Immunity from penalty and prosecution in certain cases by inserting new section 270AA of the Income-tax Act

67.1 In order to provide immunity from penalty and prosecution in certain cases, a new section 270AA has been inserted in the Income-tax Act under which an assessee may make an application to the Assessing Officer for grant of immunity from imposition of penalty under section 270A of the Income-tax Act and initiation of proceedings under section 276C or section 276CC of the Income-tax Act, provided he pays the tax and interest payable as per the order of assessment or reassessment within the period specified in such notice of demand and does not prefer an appeal against such assessment order. The assessee can make such application, within one month from the end of the month in which the order of assessment or reassessment is received, in such form and manner, as may be prescribed.

67.2 It is also provided that the Assessing Officer shall, on fulfilment of the above conditions and after the expiry of period of filing appeal as specified in sub-section (2) of section 249 of the Income-tax Act, grant immunity from initiation of penalty and proceeding under section 276C or section 276CC of the Income-tax Act, if the penalty proceedings under section 270A of the Income-tax Act have not been initiated on account of the following, namely:—

(a) misrepresentation or suppression of facts;

(b) failure to record investments in the books of account;

(c) claim of expenditure not substantiated by any evidence;

(d) recording of any false entry in the books of account;

(e) failure to record any receipt in books of account having a bearing on total income; or

(f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction to which the provisions of Chapter X of the Income-tax Act apply.

67.3 The Assessing Officer shall pass an order accepting or rejecting such application within a period of one month from the end of the month in which such application is received. However, in the interest of natural justice, no order rejecting the application shall be passed by the Assessing Officer unless the assessee has been given an opportunity of being heard. The order of Assessing Officer under the said section shall be final.

67.4 Further, no appeal under section 246A of the Income-tax Act or an application for revision under section 264 of the Income-tax Act shall be admissible against the order of assessment or reassessment referred to in clause (a) of sub-section (1), in a case where an order under section 270AA of the Income-tax Act has been made accepting the application.

67.5 Clause (b) of sub-section (2) of section 249 of the Income-tax Act provides that an appeal before the Commissioner (Appeals) is to be made within thirty days of the receipt of the notice of demand relating to an assessment order.

67.6 In line with the insertion of section 270AA of the Income-tax Act, the provisions of section 249 of the Income-tax Act have also been amended to provide that in a case where the assessee makes an application under section 270AA of the Income-tax Act seeking immunity from penalty and prosecution, then, the period beginning from the date on which such application is made to the date on which the order rejecting the application is served on the assessee shall be excluded for calculation of the aforesaid thirty days period. The said amendment is consequential to the insertion of section 270AA of the Income-tax Act.

67.7 ***Applicability:*** These amendments will take effect from the 1st of April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years.

68. The Direct Tax Dispute Resolution Scheme, 2016

68.1 Litigation has been a major area of concern in direct taxes. In order to reduce the huge backlog of cases and to enable the Government to realise its dues expeditiously, *'The Direct Tax Dispute Resolution Scheme, 2016'* has been introduced in relation to tax arrears and specified tax. The salient features of the scheme are as under:

(1) The scheme is applicable to "tax arrears" which is defined as the amount of tax, interest or penalty determined under the Income-tax Act or the Wealth-tax Act, 1957 ('the Wealth-tax Act') in respect of which appeal is pending before the Commissioner of Income-tax (Appeals) or the Commissioner of Wealth-tax (Appeals) as on the 29th day of February, 2016.

(2) The pending appeal could be against an assessment order or a penalty order.

(3) The declarant under the scheme is required to pay tax at the applicable rate plus interest up to the date of assessment. However, in case of disputed tax exceeding rupees ten lakh, twenty-five per cent of the minimum penalty leviable is also required to be paid.

(4) In case of pending appeal against a penalty order, twenty-five per cent of minimum penalty leviable is payable along with the tax and interest payable on account of assessment or reassessment.

(5) Consequent to such declaration, appeal in respect of the disputed income and disputed wealth pending before the Commissioner (Appeals) shall be deemed to be withdrawn.

68.2 In addition to the above, the Scheme provides that person may also make a declaration in respect of any tax determined in consequence of or is validated by an amendment made with retrospective effect in the Income-tax Act or Wealth-tax Act, as the case may be, for a period prior to the date of enactment of such amendment and a dispute in respect of which is pending as on 29.02.2016 (referred to as specified tax). For availing the benefit of the Scheme, such declarant should withdraw any writ petition or any appeal filed against such specified tax before the Commissioner (Appeals) or the Tribunal or High Court or Supreme Court, before making the declaration and shall also furnish a proof of such withdrawal. Further, if any proceedings for arbitration, conciliation or mediation have been initiated by the declarant or he has given any notice under any law or agreement entered into by India, whether for protection of investment or otherwise, he shall withdraw such notice or claim for availing benefit under this Scheme.

68.3 The person making declaration in respect of specified tax shall furnish an undertaking in the prescribed form and verified in the prescribed manner, waiving the right, whether direct or indirect, to seek or pursue any remedy or claim in relation to the specified tax which otherwise be available to him under any law, in equity, by statute or under an agreement, whether for protection of investment or otherwise, entered into by India with a country or territory outside India. No appellate authority or Arbitrator or Conciliator or Mediator shall proceed to decide an issue relating to the specified tax in the declaration in respect of which an

order is made by the designated authority or in respect of the payment of the sum determined to be payable.

68.4 Where the declarant violates any of the conditions referred to in the scheme or any material particular furnished in the declaration is found to be false at any stage, it shall be presumed as if the declaration was never made under this Scheme and all the consequences under the Income-tax Act or Wealth-tax Act under which the proceedings against declarant were or are pending, shall be deemed to have been revived.

68.5 The declarant under the scheme shall get immunity from institution of any proceeding for prosecution for any offence under the Income-tax Act or the Wealth-tax Act. In case of specified tax the declarant shall also get immunity from imposition of penalty under the Income-tax Act or the Wealth-tax Act. However, in case of tax arrears immunity from penalty is of the amount that exceeds the penalty payable as per the scheme. The scheme provides waiver of interest under the Income-tax Act or the Wealth-tax Act in respect of specified tax. However, waiver of interest in respect of tax arrears is to the extent the interest exceeds the amount of interest referred in the scheme.

68.6 In the following cases a person shall not be eligible for the scheme:

(i) Cases where the process of instituting prosecution was initiated on or before 29.02.2016, the assessee was intimated of the same and prosecution proceedings were instituted before the date of filing of declaration.

(ii) Search or survey cases where the declaration is in respect of tax arrears.

(iii) Cases relating to undisclosed foreign income and assets.

(iv) Cases based on information received under Double Taxation Avoidance Agreement under section 90 or 90A of the Income-tax Act where the declaration is in respect of tax arrears.

(iv) Person notified under Special Courts Act, 1992.

(v) Cases covered under Narcotic Drugs and Psychotropic Substances Act, Indian Penal Code, Prevention of Corruption Act or Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

68.7 A declaration under the scheme is to be made to the designated authority not below the rank of Commissioner in such form and verified in such manner as prescribed. The designated authority shall, within sixty days from the date of receipt of the declaration, determine the amount payable by the declarant. The declarant shall pay such sum within thirty days of the passing of such order and furnish proof of payment of such sum. Any amount paid in pursuance of a declaration shall not be refundable under any circumstances.

68.8 No matter covered by order of designated authority shall be reopened in any other proceeding under the Income-tax Act or Wealth-tax Act. The designated authority shall subject to the conditions provided in the scheme grant immunity from instituting any

proceeding for prosecution for any offence under the two Acts in respect of matters covered in the declaration.

68.9 Nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in relation to which the declaration has been made.

68.10 ***Applicability:*** The scheme has come into effect from 1st June 2016.

[Niraj Kumar]
Under Secretary to the Government of India
Dated 20.01.2017

[F. No. F. No. 370142/20/2016-TPL]

Copy to:-

1. PS to FM/OSD to FM/ OSD to MoS (R).
2. PS to Secretary (Revenue)/ OSD to Advisor to FM.
3. The Chairperson, Members and all other officers in CBDT of the rank of Under Secretary and above.
4. All Chief Commissioners/ Director General of Income-tax – with a request to circulate amongst all officers in their regions/ charges.
5. DGIT (International Taxation)/ DGIT (Systems)/ DGIT (Vigilance)/ DGIT (Admn.)/ DGIT (NADT)/ DGIT (L&R).
6. Media Co-ordinator and official spokesperson of CBDT.
7. DIT (IT)/ DIT (RS&PR)/ DIT (Audit)/ DIT (Vig.)/ DIT (Systems)/ DIT (O&MS)/ DIT (Spl. Inv.).
8. The Comptroller and Auditor General of India (30 copies).
9. Joint Secretary and Legal Advisor, Ministry of Law and Justice, New Delhi.
10. The Institute of Chartered Accountants of India, IP Estate, New Delhi.
11. All Chambers of Commerce as per usual mailing list.

[Niraj Kumar]
Under Secretary to the Government of India