

ADA

BUDGET INDIA - 2016

DIRECT TAX



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The Finance Minister Arun Jaitley has presented Union Budget 2016 in Lok Sabha on 29th February, 2016. Following are the key highlights of the Finance Bill:

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Rates of Income-tax

- ❖ *Rates of income-tax in respect of income liable to tax for the assessment year 2016-2017.*
- ❖ *Rates for deduction of income-tax at source during the financial year 2016-2017 from certain incomes other than "Salaries"*
- ❖ *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 2016-2017.*

Additional Resource Mobilisation effective from the 1st April, 2017

- ❖ Rationalization of taxation of income by way of dividend
- ❖ Change in rate of Securities Transaction tax in case where option is not exercised
- ❖ Equalisation Levy

Widening of Tax Base and Anti-Abuse Measures effect from 1st June, 2016

- ❖ Tax Collection at Source (TCS) on sale of vehicles; goods or
- ❖ Tax on distributed income to shareholder
- ❖ Levy of tax where the charitable institution ceases to exist or converts into a non-charitable organization.

Measures to Phase Out Deductions effect from 1st April, 2017

- ❖ Phasing out of deductions and exemptions

Measures to Promote Socio-economic Growth effect from 1st April, 2017

- ❖ *Exemption of income of Foreign company from storage and sale of crude oil stored as part of strategic reserves. This amendment will take effect retrospectively from 1st April, 2016 .*
- ❖ *Extending the benefit of initial additional depreciation under section 32(1)(ia) for power sector*
- ❖ *Taxation of Income from 'Patents'*
- ❖ *Tax incentives for start-ups*
- ❖ *Incentives for Promoting Housing for All*
- ❖ *Tax incentive for employment generation*

Relief and Welfare Measures effective from the 1st day of April, 2017

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- ❖ *Provision for Tax benefits to Sovereign Gold Bond Scheme, 2015 and Rupee Denominated Bonds*
- ❖ *Consolidation of 'plans' within a 'scheme' of mutual fund*
- ❖ *Rationalization of limit of deduction allowable in respect of rents paid under Section 80GG*
- ❖ *Tax Treatment of Gold Monetization Scheme, 2015 effective from the 1st day of April, 2016*
- ❖ *Rationalization of section 56 of the Income-tax Act*
- ❖ *Rationalization of limit of rebate in income-tax allowable under Section 87A*
- ❖ *Increase in time period for acquisition or construction of self-occupied house property for claiming deduction of interest*
- ❖ *Simplification and rationalisation of provisions relating to taxation of unrealised rent and arrears of rent*

Ease of doing Business & Dispute Resolution effective from 1st April, 2017

- ❖ *Exemption from Dividend Distribution Tax (DDT) on distribution made by an SPV to Business Trust effective from the 1st day of April, 2016*
- ❖ *Modification in conditions of special taxation regime for off shore funds Section 9A*
- ❖ *Enabling provision for implementation of various provisions of the Act in case of a foreign company held to be resident in India.*
- ❖ *Introduction of Presumptive taxation scheme for persons having income from profession*
- ❖ *Increase in threshold limit for audit for persons having income from profession*
- ❖ *Increase in threshold limit for presumptive taxation scheme for persons having income from business.*
- ❖ *Deduction in respect of provision for bad and doubtful debt in the case of Non-Banking Financial companies.*
- ❖ *Rationalisation of scope of tax incentive under section 32AC effective from the 1st day of April, 2016*
- ❖ *Exemption from requirement of furnishing PAN under section 206AA to certain non-resident effective from the 1st day of April, 2016*

- ❖ **Applicability of Minimum Alternate Tax (MAT) on foreign companies for the period prior to 01.04.2015.**
- ❖ **Tax Incentives to International Financial Services Centre**
- ❖ **The Income Declaration Scheme, 2016 effective from the 1st day of April, 2016**
- ❖ **Providing Time limit for disposing applications made by assessee under section 273A, 273AA or 220(2A) effective from the 1st day of April, 2016.**
- ❖ **Providing legal framework for automation of various processes and paperless assessment effective from the 1st day of April, 2016**

Rationalisation Measures

- ❖ **Rationalization of tax deduction at source provisions relating to payments by Category-I and Category-II Alternate Investment Funds to its investors.**
- ❖ **New Taxation Regime for securitisation trust and its investors**
- ❖ **BEPS action plan - Country-By-Country Report and Master file**
- ❖ **Exemption of Central Government subsidy or grant or cash assistance, etc. towards corpus of fund established for specific purposes from the definition of Income**
- ❖ **Extension of scope of section 43B to include certain payments made to Railways**
- ❖ **Clarification regarding set off losses against deemed undisclosed income**
- ❖ **Taxation of Non-compete fees and exclusivity rights in case of Profession**
- ❖ **Clarification regarding the definition of the term 'unlisted securities' for the purpose of Section 112 (1) (c)**
- ❖ **Time limit for carry forward and set off of such loss under section 73A of the Income-tax Act**
- ❖ **Amortisation of spectrum fee for purchase of spectrum**
- ❖ **Rationalization of tax deduction at Source (TDS) provisions 1st June, 2016.**
- ❖ **Enabling of Filing of Form 15G/15H for rental payments**
- ❖ **Rationalization of Section 50C in case sale consideration is fixed under agreement**
- ❖ **executed prior to the date of registration of immovable property**

- ❖ Rationalization of conversion of a company into Limited Liability Partnership (LLP)
- ❖ Rationalisation of tax treatment of Recognised Provident Funds, Pension Funds and National Pension Scheme
- ❖ Filing of return of Income Processing under section 143(1) be mandated before assessment
- ❖ Rationalisation of time limit for assessment, reassessment and recomputation
- ❖ Rationalisation of time limit for assessment in search cases
- ❖ Rationalisation of advance tax payment schedule under section 211 and charging of interest under section 234C
- ❖ Payment of interest on refund
- ❖ Rationalisation of the provisions relating to Appellate Tribunal
- ❖ Rationalisation of penalty provisions
- ❖ Amendment of section 271AAB
- ❖ Amendment of Section 272A
- ❖ Provision for bank guarantee under section 281B
- ❖ Extension of time limit to Transfer Pricing Officer in certain cases
- ❖ Assumption of jurisdiction of Assessing Officer
- ❖ Legislative framework to enable and expand the scope of electronic processing of information
- ❖ Immunity from penalty and prosecution in certain cases by inserting new section 270AA

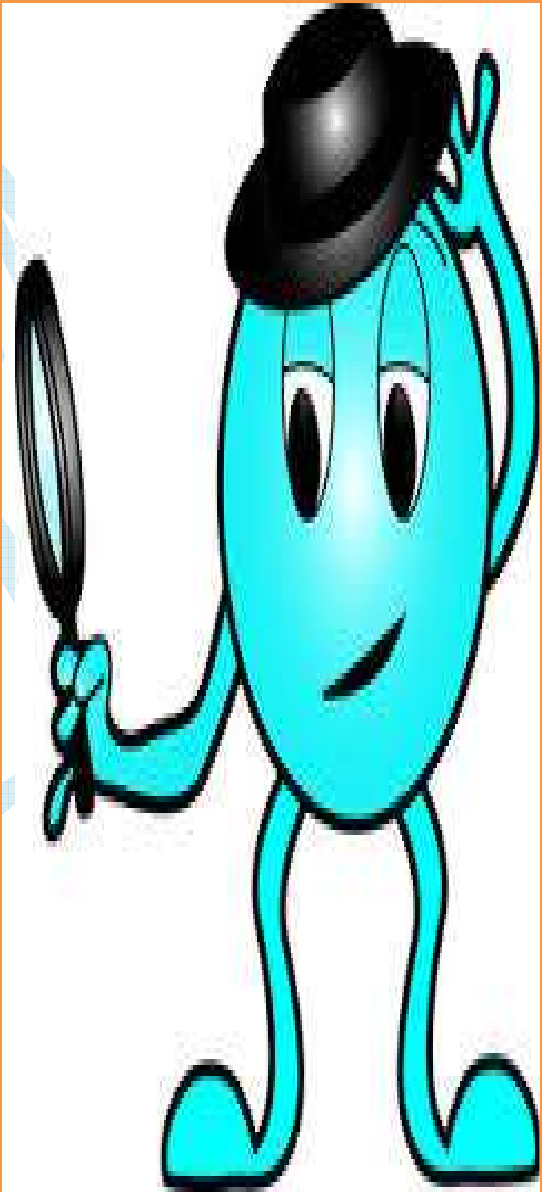
In view of the above, few amendments have been described in detail:

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1. RATES OF INCOME TAX

PROPOSED:

- ❖ It is proposed that there will be no change in the rate of tax for Individuals, HUFs, AOPs, BOIs, Artificial Juridical Person, Firms, Cooperative Societies and Local Authorities in the FY 2016-17.
- ❖ In case of domestic company, the rate of Income-tax shall be 29% of the total income if the total turnover or gross receipts of the company in the previous year 2014-15 does not exceed Rs. 5 Crore and in all other cases the rate of Income- tax shall be 30% of the total income.
- ❖ It is further proposed to levy a surcharge @15% on Individuals, HUFs, AOPs, BOIs, Artificial Juridical Person and @12% on Firm, Cooperative Societies & Local Authorities having income exceeding Rs. 1 Crore.
- ❖ Education Cess & Secondary & Higher Education Cess is proposed to be continued @2% and 1% respectively.
- ❖ **Insertion of a new Section 115BA:** New manufacturing companies incorporated on or after 1.3.2016 to be given an option to be taxed at 25% plus surcharge and cess provided they do not claim profit linked or investment linked deductions and do not avail of investment allowance and accelerated depreciation.
- ❖ It is proposed to raise the ceiling of tax rebate under 87A from Rs. 2,000 to Rs. 5,000.



EXISTING PROVISIONS:

- ❖ Rate of income tax in case of domestic companies is 30%.
- ❖ Surcharge is leviable @12% on Individuals, HUFs, AOPs, BOIs, Artificial Juridical Person, Firms, Cooperative Societies and Local Authorities having income exceeding Rs. 1 Crore.
- ❖ Surcharge in the case of domestic companies having income exceeding Rs. 1 Crore and

upto Rs. 10 Crore is to be levied @7% and surcharge @12% is to be levied on domestic companies having income exceeding Rs. 10 Crore.

- ❖ Surcharge in the case of foreign companies having income exceeding Rs. 1 Crore and upto Rs. 10 Crore is to be levied @2% and surcharge @5% is to be levied on domestic companies having income exceeding Rs. 10 Crore.
- ❖ Section 87A of Income-tax Act, provide for a rebate of an amount equal to 100% of such income-tax or an amount of Rs. 2,000/- whichever is less, from the amount of income-tax to an individual resident in India whose total income does not exceed Rs. 5,00,000.

2. TAXATION OF INCOME BY WAY OF DIVIDEND

PROPOSED:

- ❖ It is proposed to tax dividend income in excess of Rs. 10 Lacs @10% in the case of an individual, Hindu undivided family (HUF) or a firm who is resident in India.



EXISTING PROVISIONS:

- ❖ As per Clause (34) of Section 10 of the Act, any income by way of dividend referred to in Section 115-0 is exempt in the hands of the shareholders.
- ❖ Further, under section 115-0 dividends are taxed only at the rate of fifteen percent at the time of distribution in the hands of company declaring dividends.

3. CHANGE IN RATE OF SECURITIES TRANSACTION TAX (STT)

PROPOSED:

- ❖ It is proposed to increase the rate of STT where option is not exercised from 0.017% to 0.05%.



EXISTING PROVISIONS:

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- ❖ Section 98 of the Finance (No.2) Act, 2004 provides that the securities transaction tax on sale of an option in securities where option is not exercised is 0.017% of the option premium.

4. TCS ON SALE OF VEHICLES; GOODS OR SERVICES

PROPOSED:

- ❖ It is proposed to amend the aforesaid section to provide that the seller shall collect the tax at the rate of one per cent from the purchaser on sale of motor vehicle of the value exceeding ten lakh rupees and sale in cash of any goods (other than bullion and jewellery), or providing of any services (other than payments on which tax is deducted at source under Chapter XVII-B) exceeding two lakh rupees.
- ❖ It is also proposed to provide that the sub-section (1D) 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.



EXISTING PROVISIONS:

- ❖ The existing provision of section 206C of the 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.

5. BENEFIT OF ADDITIONAL DEPRECIATION

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PROPOSED:

- ❖ In order to rationalise the incentive of power sector , it is proposed to amend this section 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.



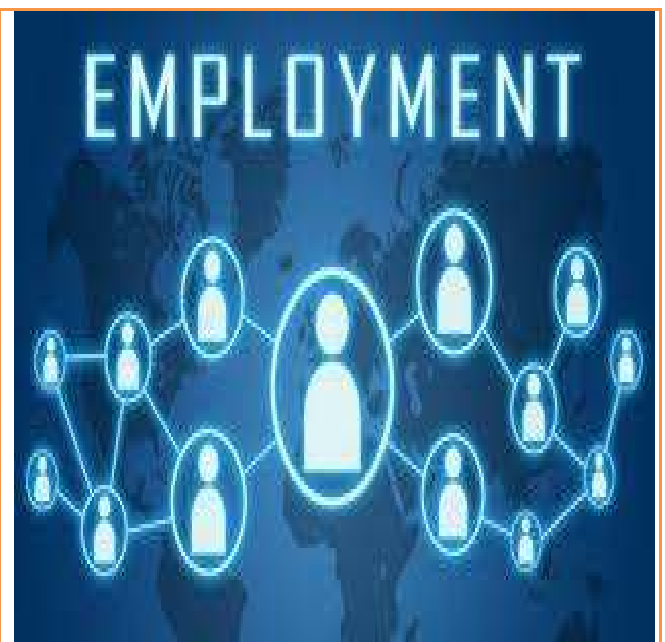
EXISTING PROVISIONS:

- ❖ Under the existing provisions of section 32(1)(ia) of the Act, additional depreciation of 20% is allowed in respect of the cost of new plant or machinery acquired and installed by certain assesseees 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.

6. TAX INCENTIVE FOR EMPLOYMENT GENERATION

PROPOSED:

- ❖ It is proposed to extend the benefit to all assesseees who are required to get their accounts audited u/s 44AB. Deduction under the proposed provisions will be available in respect of cost incurred on those employees whose total emoluments are less than or equal to Rs. 25,000/- p.m.
- ❖ It is also proposed to provide that in the first year of a new business, 30% of all emoluments paid or payable to the employees employed during the previous year shall be allowed as deduction.
- ❖ It is further proposed to reduce minimum number of days of employment in a F.Y. from 300 days to 240 days and also the condition of 10% increase in



number of employees every year is proposed to be done away. However, no deduction shall be allowed in respect of cost incurred on those employees for whom the entire contribution is paid by the Government under the Employees' Pension Scheme notified in accordance with the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

EXISTING PROVISIONS:

- ❖ The existing provisions of Section 80JJAA provide for a deduction of 30% 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 percent in total number of workmen employed on the last day of the preceding year.

7. DEDUCTION U/S 80GG FOR RENT PAID

PROPOSED:

- ❖ It is proposed to amend section 80GG so as to increase the maximum limit of deduction from existing Rs. 2000 per month to Rs. 5000 per month.



EXISTING PROVISIONS:

- ❖ The existing provisions of Section 80GG provide for a deduction of any expenditure incurred by an individual in excess of 10% 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 (HRA) by his employer, to the extent such excess expenditure does not exceed Rs. 2,000 per month or 25% of his total income for the year, whichever is less, subject to other conditions as prescribed therein.

8. TAXABILITY OF SHARES UNDER DEMERGER/AMALGATION

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PROPOSED:

- ❖ It is proposed 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 of the Income-tax Act.



EXISTING PROVISIONS:

- ❖ The existing provisions of clause (vii) of sub-section 2 of section 56 of the Act provide 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 Hindu undivided family (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 regarded as transfer where the recipient is a firm or a company.

9. INTEREST DEDUCTION FROM HOUSE PROPERTY INCOME

PROPOSED:

- ❖ It is proposed that second proviso of clause (b) of section 24 be 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 5 years from the end of the financial year in which capital was borrowed.



EXISTING PROVISIONS:

- ❖ The existing provision of Clause (b) of section 24 provides that interest payable on capital borrowed for acquisition or construction of a house property shall be deducted while computing income from house property.
- ❖ Further, second proviso to the said clause provides that a deduction of an amount of Rs. 2,00,000/- shall be allowed where a house property referred to in sub-section (2) of section 23 (i.e. 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 3 years from the end of the financial year in which capital was borrowed.

10. TAXATION OF UNREALISED RENT & ARREARS OF RENT

PROPOSED:

It is proposed to –

- ❖ Simplify these provisions and merge them under a single new section 25A and bring uniformity in tax treatment of arrears of rent and unrealised rent.
- ❖ Provide 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.
- ❖ 30% of the arrears of rent or the unrealised rent realised subsequently by the assessee shall be allowed as deduction.



EXISTING PROVISIONS:

- ❖ Existing provisions of sections 25A, 25AA and 25B 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.

11. PRESUMPTIVE TAXATION SCHEME FOR PROFESSIONALS

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PROPOSED:

- ❖ It is proposed to insert a new Section 44ADA 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 whose total gross receipts does not exceed Rs. 50 Lacs in a previous year, at a sum equal to 50% of the total gross receipts earned.
- ❖ The scheme will apply to a resident assessee who is an individual, Hindu undivided family or partnership firm but not to Limited Liability partnership firm.
- ❖ Under the scheme, the assessee will be deemed to have been allowed the deductions under section 30 to 38.
- ❖ It is also proposed 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.

**EXISTING PROVISIONS:**

- ❖ 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.

12. TAX AUDIT U/S 44AB FOR PROFESSIONALS

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PROPOSED:

- ❖ It is proposed to increase the threshold limit of total gross receipts, specified under section 44AB for getting accounts audited, from Rs. 25 Lacs to Rs. 50 Lacs in the case of persons carrying on profession.



EXISTING PROVISIONS:

- ❖ Under the existing provisions of section 44AB of the Act every person carrying on a profession is required to get his accounts audited if the total gross receipts in a previous year exceed Rs. 25 Lacs.

13. PRESUMPTIVE TAXATION FOR BUSINESS PERSONS

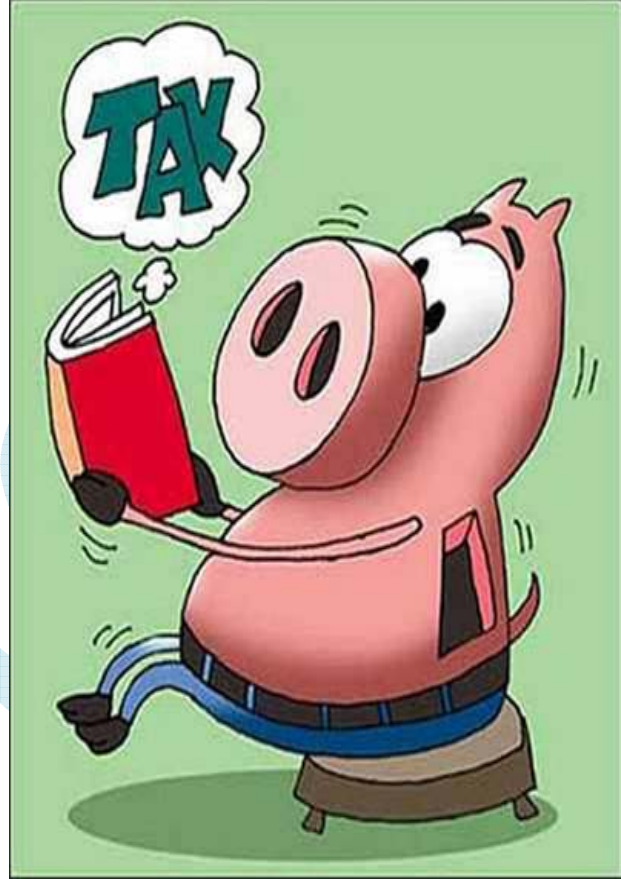
PROPOSED:

It is proposed to -

- ❖ To increase the threshold limit of Rs. 1 Crore specified in the definition of "eligible business" to Rs. 2 Crore.
- ❖ 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.

- ❖ 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 sub-section (1), 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 sub-section (1).
- ❖ To provide that eligible assessee shall be required to pay advance tax.



EXISTING PROVISIONS:

- ❖ The existing provisions of section 44AD 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 Rs. 1 Crore, a sum equal to 8% of the total turnover or gross receipts 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 Act.
- ❖ Further, the eligible assessee can report income less than the deemed income of 8% of the total turnover or gross receipts not exceeding Rs. 1 Crore provided he maintains books of accounts as per section 44AB.
- ❖ Further in the case of an eligible assessee, so far as the eligible business is concerned, the provisions of Chapter XVII-C shall not apply.

14. TAX INCENTIVE U/S 32AC

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PROPOSED:

- ❖ It is proposed to amend the sub-section (1A) of section 32AC 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 is further proposed to provide 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.



EXISTING PROVISIONS:

- ❖ The existing provision of sub-section (1A) in section 32AC of the 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.

15. EXEMPTION FROM SECTION 206AA TO SOME NR

PROPOSED:

- ❖ It is proposed to amend the said section 206AA so as 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.



EXISTING PROVISIONS:

- ❖ The existing provision of section 206AA, inter alia, provides that any person who is entitled to receive any sum or income or amount on which tax is deductible under Chapter XVIIIB of the 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 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.

16. APPLICABILITY OF MAT ON FOREIGN COMPANIES**PROPOSED:**

With a view to provide certainty in taxation of foreign companies, it is proposed to amend the Income-tax Act so as to provide that with effect from 01.04.2001, the provisions of section 115JB shall not be applicable to a foreign company if -

- ❖ the assessee is a resident of a country or a specified territory with which India has an agreement referred to in sub-section 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
- ❖ 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.



EXISTING PROVISIONS:

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- ❖ Under the existing provisions contained in sub-section (1) of the 115JB 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.

17. SECTION 43B INCLUDED PAYMENT TO RAILWAY

PROPOSED:

- ❖ With a view to ensure the prompt payment of dues to Railways for use of the Railway assets, it is proposed to amend section 43B so as to expand its scope to include payments made to Indian Railways for use of Railway assets within its ambit.



EXISTING PROVISIONS:

- ❖ The existing provisions of section 43B of the 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.

18. SET OFF LOSSES

PROPOSED:

- ❖ It is proposed to amend the provisions of the sub-section (2) of section 115BBE 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.



EXISTING PROVISIONS:

- ❖ Section 115 BBE of the 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.

19. TAXATION OF NON-COMPETE FEES**PROPOSED:**

- ❖ It is proposed to amend clause (va) of section 28 of the Act 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 Act i.e. the charging section of profits and gains of business or profession.
- ❖ Further, it is also proposed to amend the proviso 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.
- ❖ It is also proposed to amend section 55 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'

**EXISTING PROVISIONS:**

- ❖ The existing provision of **clause (va) of section 28** of the Act includes within the scope of "**profit and gains of business or profession**"(PGBP) 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, license, 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 are 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.

20. CLARIFICATION REGARDING UNLISTED SECURITIES

PROPOSED:

- ❖ It is proposed to amend the provisions of clause (c) of sub-section (1) of section 112 of the Income- tax Act, 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.



EXISTING PROVISIONS:

- ❖ Existing provisions of clause (c) of sub-section (1) of section 112 provide 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".

21. CARRY FORWARD & SET OFF OF LOSSES

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PROPOSED:

- ❖ It is proposed to amend section 80 so as to provide that the loss determined as per section 73A of the 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.



EXISTING PROVISIONS:

- ❖ The existing provisions of section 73A of the 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 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.

22. TDS RELATED PROVISIONS

PROPOSED:

- ❖ 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 proposed to be revised as mentioned in the following tables:



INCREASE IN THRESHOLD LIMIT (TABLE-1):

Present Section	Heads	Existing Threshold Limit(Rs.)	Proposed Threshold Limit (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 limit of annual 75,000	Aggregate annual limit of 1,00,000
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

REVISION IN RATES OF TDS (TABLE-2):

Present Section	Heads	Existing Rate of TDS (%)	Proposed Rate of TDS(%)
194DA	Payment in respect of Life Insurance Policy	2%	1%
194EE	Payments in respect of NSS Deposits	20%	10%
194D	Insurance commission	Rate in force (10%)	5%
194G	Commission on sale of lottery tickets	10%	5%
194H	Commission or brokerage	10%	5%

OMISSION OF NON OPERATIONAL PROVISIONS (TABLE-3):

Present Section	Heads	Proposal
194K	Income in respect of Units	To be omitted w.e.f 01.06.2016

194L

Payment of Compensation on acquisition of Capital Asset

To be omitted w.e.f 01.06.2016

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23. FORM 15G/15H FOR RENTAL PAYMENTS

PROPOSED:

- ❖ It is proposed to amend the provisions of section 197A for making the recipients of payments referred to in section 194-I also 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 as there may be cases where the tax payable on recipient's total income, including rental payments, will be nil.



EXISTING PROVISIONS:

- ❖ The provision of sub-section 194-I of the Act, inter alia, provides 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.
- ❖ 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.

24. SALE CONSIDERATION U/S 50C

PROPOSED:

- ❖ It is proposed to amend the provisions of section 50C 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 is further proposed to provide 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.



EXISTING PROVISIONS:

- ❖ Under the existing provisions contained in Section 50C, 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 Act i.e. when an immovable property is sold as a stock-in-trade.

25. CONVERSION OF COMPANY INTO LLP

PROPOSED:

- ❖ It is proposed to amend the said section 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.



EXISTING PROVISIONS:

- ❖ Existing provisions of clause (xiiib) of Section 47 provides 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, include a condition that the company's gross receipts, turnover or total sales in any of the preceding three years did not exceed Rs.60 lakh.

26. PROCESSING OF RETURN U/S 143(1)**PROPOSED:**

- ❖ It is proposed to amend sub-section (1D) of the aforesaid section to provide that before making an assessment under sub-section (3) of section 143, a return shall be processed under sub-section (1) of section 143.



Income Tax
Intimation 143(1)

EXISTING PROVISIONS:

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

27. TIME LIMIT TO TPO**PROPOSED:**

It is proposed to amend sub-section (3A) of section 92CA 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.



EXISTING PROVISIONS:

- ❖ As per the existing provisions, 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.

28. INTEREST ON REFUND

PROPOSED:

- ❖ It is proposed to amend section 244A 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.
- ❖ It is further proposed to provide 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.
- ❖ It is also proposed to provide that



where a refund arises out of appeal effect being delayed beyond the time prescribed under sub-section (5) of section 153, the assessee shall be entitled to receive, in addition to the interest payable under sub-section of section 244A, 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 to the date on which the refund is granted.

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EXISTING PROVISIONS:

- ❖ Section 244A 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 April of the assessment year and ends on the date on which refund is granted.

29. ADVANCE TAX & INTEREST U/S 234C

PROPOSED:

- ❖ It is proposed that the date of advance payment by all assessee's shall be uniform. Now non corporate assessee's shall also be required to deposit advance tax in four installments.
- ❖ Assessee in respect of eligible business referred to in section 44AD 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 installment on or before the 15th March of the financial year.
- ❖ It has also been clarified that the any amount of taxes paid on or before 31st March shall also be treated as advance Tax.
- ❖ Similar amendments have been made to section 234C for computation of interest on deferment of advance taxes.
- ❖ However, an exemption has been permitted to an assessee in whose case no interest u/s 234C shall be levied, if the income under the head PGBP accrues to him for the first time.



EXISTING PROVISIONS:

- ❖ As per the existing provisions of sub-section (1) of section 211, 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.

30. FILING OF RETURN OF INCOME**PROPOSED:**

- ❖ **Mandatory filing of ITR by person having Exempt LTCG from Equity shares and Equity oriented mutual funds income in excess 10 Lakhs.**
- ❖ **Filing of return of loss within 'due date' made mandatory for specified business u/s 35AD.**
- ❖ **Revision of Belated return filed, made permissible (Goetze Law nullified). However, time to file revised return permitted is too short.**
- ❖ **Vide Finance Act, 2013, section 139(9) was amended to provide that where tax is unpaid u/s 140A, the return shall be deemed to be defective. This clause (aa) is sought to be omitted, apparently due to the fact that the return, if tax is unpaid, cannot be Now filed online.**

**EXISTING PROVISIONS:**

- ❖ Existing provisions of sub-section (1) of section 139 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, exceeds the maximum amount which is not chargeable to income tax shall be liable to furnish

return on or before the due date.

- ❖ Existing provision of sub-section (4) of section 139 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, 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.
- ❖ Sub-section (5) of the section 139 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 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.
- ❖ Clause (aa) of Explanation to sub-section (9) of the section 139 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, has been paid on or before the date of furnishing of return.

