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BHUJ BRANCH OF

WESTERN INDIA REGIONAL COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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Dear Professional Colleagues,

With the Advent of the Changes that are happening across the globe, India is not far behind in the race. On the First Day of this month February, Our Honorable Finance Minster Shri Arun Jaitely have presented us the Budget 2018. In this edition our young members with the mentorship of CA Jagrut Anjariya have compiled the Budget Highlights with their best explanation possible and provided us with the Insights on the same.

This edition is budget special and also gallery of the sports event undertaken by us , recalling the memories of the Event held in January 2018. This is the fastest issue we have tried to release. My sincere thanks to all the writers of this edition who brought this to us on time.

This newsletter is my last newsletter in my tenure of Chairmanship. I am so delighted to bring my views across all as the whole year members and students have supported me and my team to bring out the newsletter edition. The writers to all the newsletter articles supported us time and again and we could bring out the monthly editions on time.

I extend my thanks to all those who have supported me in all the activities and newsletter editions undertaken by the branch. Without the Help of Members and Students this task was difficult to stride.

I express my sincere gratitude to all the Members and Students of Bhuj Branch of WIRC of ICAI for giving me an opportunity to serve you all for my term. My heartfelt apologies for anything that if I have missed and could not deliver it to you.

Thank You All for Your Faith in Me !!!!!!!!!!!

A Million Feelings
Unforgettable,
A Thousand Thoughts.
Vivid and
A Hundred Memories.
!!!!!!!!!
One Person.

Some Memories are
Remaining Ever
Heartwarming

CA Bhavee Thacker
Chairperson

Overview of some key provisions in Finance bill 2018

CA Hardik V.Thacker
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ALL "DEEMED DIVIDEND" COVERED WITHIN THE SCOPE OF SECTION 115-O

The definition of dividend is given in in clause (22) of section 2 of the Income Tax Act, 1961 in inclusive manner and includes "deemed dividend" as mentioned in sub clause (a) to (e) of the said section which is described below

Section 2(22) of Income Tax Act, 1961 has defined the term "Dividend"

"dividend"[7] includes (deemed dividend)—

(a) any distribution[7] by a company of accumulated profits[7], whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company ;

(b) any distribution[8] to its shareholders by a company of debentures, debenture-stock, or deposit certificates in any form, whether with or without interest, and any distribution to its preference shareholders of shares by way of bonus, to the extent to which the company possesses accumulated profits[8], whether capitalised or not ;

(c) any distribution[8] made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not ;

(d) any distribution[8] to its shareholders by a company on the reduction of its capital, to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st day of April, 1933, whether such accumulated profits have been capitalised or not ;

(e) *any payment[9] by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) [10][made after the 31st day of May, 1987, by way of advance or loan[9] to a shareholder[9], being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern)] or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits[11] ;*

At present dividend distribution tax on dividend including dividend distributing under sub clause (a) to (d) of section 2 (22) is being paid the company declaring dividend under section 115-O of the Income Tax Act,1961. The dividend distribution tax is in addition to whatever Income Tax as payable by the company and the dividend is tax free in the hands of the recipient of dividend.

However, tax on dividend as mentioned under sub clause (e) of section 2 (22) of the Act is presently payable by recipient of the dividend.

Current applicable rate of dividend distribution tax is 15%,which is payable by company distributing dividend including dividend distributed under clause (a) to (d) of section 2(22) while tax at applicable marginal (slab) rate is payable by recipient of dividend as defined sub clause (e) of section 2(22) of the Act.

Now, as proposed in the finance bill 2018, all types of dividend including dividend deemed dividend as mentioned in sub clause (a) to (e) will be covered the within the scope of section 115-O and accordingly all such dividend turn out to be tax free in the hands of recipient of the dividend. However, rate of DDT for dividend distributed under clause (e) is proposed to 30% while 15% rate will be continuingfor all other dividend. One more exception provided for clause (e) is that "grossing up" of tax is not required while arriving at tax amount as against other all other dividend where "grossing up" of tax is mandatory.

The amendment is proposed with the intention to remove problems of collection of tax liability on the deemed dividend and to mitigate litigation.

Applicable Date: - Transaction undertaken on or after 1st April, 2018
One more amendment to sub section (22) of section (2) as extracted above is proposed to widening the meaning of "accumulated profit". The deemed dividend as mentioned above is liable for dividend distribution tax under section 115-O of the Act. However, legislature feels that companies are adopting abusive arrangement to avoid dividend distribution tax in respect of such deemed dividend. One of such manner is amalgamation. By deciding exchange ratio in such manner companies may effectively do reduction of capital which attract dividend distribution tax under sub clause (d) of section 2(22). With the intention to prevent such abusive arrangement, Explanation 2A is proposed to be inserted,

Explanation 2A: - In case of an amalgamated company, the accumulated profits, whether capitalised or not, or loss, as the case may be, shall be increased by accumulated profits, whether capitalised or not, of the amalgamating company on the date of amalgamation.

Applicable Date: - From 1st April, 2018 and will accordingly apply in relation to A.Y. 2018-19 (F.Y.2017-18) and subsequent assessment years

RATIONALIZATION OF SECTION 115BA

Section 115BA of the Income Tax Act, 1961 provides for tax at the rate of 25%, for certain domestic companies complying with conditions as mentioned in the section. The relevant section is produced below.

115BA. *(1) Notwithstanding anything contained in this Act but* ***subject to the provisions of section 111A and section 112****, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2017, shall, at the option of such person, be computed at the rate of twenty-five per cent, if the conditions contained in sub-section (2) are satisfied.*

(2) For the purposes of sub-section (1), the following conditions shall apply, namely: —

(a) the company has been set-up and registered on or after the 1st day of March, 2016;

(b) the company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it; and

(c) the total income of the company has been computed, —

(i) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AC or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AC or section 35AD or section 35CCC or section 35CCD or under any provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" other than the provisions of section 80JJAA;

(ii) without set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred to in sub-clause (i); and

(iii) depreciation under section 32, other than clause (iia) of sub-section (1) of the said section, is determined in the manner as may be prescribed.

(3) The loss referred to in sub-clause (ii) of clause (c) of sub-section (2) shall be deemed to have been already given full effect to and no further deduction for such loss shall be allowed for any subsequent year.

(4) Nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the first of the returns of income which the person is required to furnish under the provisions of this Act:

***Provided** that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.]*

At present all the income of the companies covered within section 115BA is being taxed at the rate of 25% **except**

(1) short term capital gain as mentioned in section 111A of the Act which attract specific tax rate of 15% and

(2) Long term capital gain as mentioned in section 112 of the Act which attract specific tax rate of 20%

However, there are also certain other provisions within the chapter***(i.e Chapter XII, Section 110 to section 115BBF)*** which attract specific rate of tax which may be higher or lower than 25 % which cause unintended hardship or unwarranted relief among tax payers.

Example: -Section 115BBF provides for specific tax rate of 10% on income by way of royalty in respect of patent developed and registered in India. At present companies covered by section 115BA is currently liable to tax 25% though the applicable tax rate is 10%, which cause hardship to taxpayers which is unintended.
By substituting, the phrase "subject to the provisions of section 111A and section 112" with all the provision of the chapter (i.e. Chapter XII, Section 110 to section 115BBF), the above unintended hardship and unwarranted relied will get remove.
Applicable date: - Retrospectively from 1st April, 2017 and will accordingly apply in A.Y. 2017-18 and subsequent years

"COMMERCIAL COMPENSATION (INCOME NATURE) CAN NO MORE ESCAPE FROM TAX

Under the existing provision of the Act, certain types of receipts are taxable as business income as per clause (ii) of section 28 of the Act.
The said clause (ii) is produced below

ii) any compensation or other payment due to or received by, —

(a) any person, by whatever name called, managing the whole or substantially the whole of the affairs of an Indian company, at or in connection with the termination of his management or the modification of the terms and conditions relating thereto;

(b) any person, by whatever name called, managing the whole or substantially the whole of the affairs in India of any other company, at or in connection with the termination of his office or the modification of the terms and conditions relating thereto;

(c) any person, by whatever name called, holding an agency in India for any part of the activities relating to the business of any other person, at or in connection with the termination of the agency or the modification of the terms and conditions relating thereto;

(d) any person, for or in connection with the vesting in the Government, or in any corporation owned or controlled by the Government, under any law for the time being in force, of the management of any property or business;

Above mentioned compensations is restrictive and the legislature feels that large segment of compensation receipt in connection with business& employment is going untaxed leading to loss of tax revenue. To bring within tax bracket, remaining such compensation income clause (e) is proposed in clause (ii) of section 28: -

Insertion

"(e) any compensation or other payment due to or received by any person, by whatever name called, at or in connection with the termination or the modification of the terms and conditions, of any contract relating to his business."

By insertion of this clause, all types of compensation income received in connection to business will be liable for Income Tax

In addition, to tax compensation income received in connection with termination or modification of employment contract, clause (xi) is proposed to introduce in sub section (2) of section 56 which is produced below

In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely: —

(i)to (x) existing clauses

Insertion

(xi) any compensation or other payment, due to or received by any person, by whatever name called in connection with the termination of his employment or the modification of the terms and condition relating thereto

Applicable date: - From 1st April 2019 and will accordingly, apply in relation to assessment year 2019-20 (i.e. F.Y. 2018-19)

Overview of some key provisions in Finance bill 2018

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Introduction:

India has witnessed several important systematic changes being implemented in Indian economy in recent past. Current finance bill unveiled a series of tax reforms. Some changes are made in tax provisions to punish willful tax evaders and non-filers. Also to end litigations and misinterpretation of law, some sections has been made more specific and restrictive. Changes made in some provisions have been discussed hereunder.

Widening scope of section 276CC:

Apart from penalty for various defaults, the Income Tax Act also contains provisions for punishment with imprisonment. Section 276CC is related to prosecution for failure to furnish return of income. As per section 276CC, if a person willfully fails to furnish return of income in due time, he shall be punishable:
(1) in case where amount of tax evaded if the failure has not been discovered exceeds Rs.25000/- with a rigorous imprisonment for a term not less than six months but which may extend to seven years and with fine;
(2) in any other cases with imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.
provided that a person shall not be proceeded under this section if (1) the return is furnished by him before expiry of the assessment year or the tax payable by him on the total income determined on regular assessment, as reduced by the advance tax, if any paid and any tax deducted at source does not exceed three thousand rupees. But the shell companies or companies holding Benami properties have taken undue advantage of proviso to this section. Government has taken various steps against shell companies for statutory compliance and to check abuse for tax evasion.

As a part of such measures, an amendment has been made to proviso to section 276CC stipulating that with effect from 1st April, 2018, the proviso to section 276CC shall not be applicable to companies. Hence the prosecution shall lie against companies for non filing of the return irrespective of the fact that whether any tax is payable or not.

Taxability of conversion of stock in trade into capital asset:

Section 45 of the Act provides for taxability of capital gain arising from conversion of capital asset into stock in trade. Such capital gain is chargeable to tax in the previous year in which such transfer took place and fair market value of asset converted is deemed as full value of consideration. But this section was not applicable vice versa. Hence there was no provision to charge tax on transfer of stock in trade into capital asset. Hence it was the device to differ tax. If an assessee is in the business of real estate and on closure of his business, he retains existing stock in trade of immovable properties of the business with him, it becomes capital asset from the date of closure of business. It was taxable only when he sells such assets. Also indexation benefit was available for this transaction. Moreover, in case of trading of shares, even during continuation of business, the assessee may transfer some of his stock into capital asset and can pay capital gain on the date of sale of such shares. Now with effect from 1st April, 2019 (A.Y.2019-20), profit or gains arising in conversion of stock in trade into capital assets brought under tax net and will be treated as business income. For this purpose fair market value of such inventory on the date of conversion or transfer shall be treated as full value of consideration and said value will be treated as cost of conversion while computing capital gain on sale of such capital asset. Also period of holding of such capital asset shall be reckoned from the date of conversion or treatment and the asset will be treated as short term/long term as per that holding period. Hence section 28 and section 2(24), section 49 and section 2(42A) has been amended accordingly.

Amendment in scope of section 56

Section 47 of the Act treats transaction of transfer of capital asset as stock in trade between holding company and wholly owned Indian subsidiary company and between wholly owned Indian subsidiary company and holding company as tax neutral. Section 47 stipulates that certain transaction will not be regarded as transfer and section 45 is not applicable for such transfers.

Sub-clause (iv) of this section provides that: "*any transfer of a capital asset by a company to its subsidiary company will not be regarded as transfer, if the parent company or its nominees hold the whole of share capital of the subsidiary company and the subsidiary company is an Indian company*." Sub-clause (v) of this section provides that "*any transfer of a capital asset by a subsidiary company to the holding company will not be regarded as transfer if the whole of share capital of subsidiary company is held by holding company and the holding company is an Indian Company*." Hence transfer of money or property between holding and subsidiary company was not taxable. Section 56 also excludes income arising from certain tax neutral transfers from its ambit. However transactions as per sub-section (iv) and (v) of section 47 were not excluded from the scope of section 56(2)(x) which stipulates transfer at fair market value Consequently such transfer of capital asset by holding company to subsidiary company without consideration or for a consideration less than fair market value by an amount exceeding Rs.50000/- were subjected to tax under the head "income from other sources" in the hands of recipient company. To resolve such inconsistency, amendment has been made to fourth proviso to clause (x) of section 56 with effect from 1st April, 2018 so as to exclude such transactions from its scope. Hence now such transactions shall not be included as income from other sources.

Rationalization of section 54EC:

Existing section 54EC provides that capital gain to the extent of Rs.50 Lakh arising from the transfer of a long term capital asset shall be exempt if whole or part of capital gain is invested in bond issued by National Highway Authority of India or by Rural Electrification Corporation Limited or in any bond redeemable after three years within a period of six months after the date of such transfer. The section was introduced for transfer of immovable long term capital assets. But due to misinterpretation of the term "*a long term capital asset*" used in section 54EC, there were litigations regarding availability of benefit of this section to transfer of movable assets such as depreciable assets Some experts were of view that legal fiction created in section 50 has to be confined only for the computation of capital gain only and it cannot be extended beyond that. Therefore it cannot be said that section 50 converts long term capital asset into short term capital asset. Section 54EC is an independent section not controlled by section 50. Also existing section 54EC does not make any distinction between depreciable asset and non-depreciable asset. Hence benefit of section 54EC was also claimed for transfer of depreciable assets.

A well known instance of misinterpretation of words comes into mind where the teacher asked one student "The school starts at 8.00 a.m. and you are coming at 9.00 a.m. every day. Why you are coming so late? The student replied that "Sir, sorry for that. But from tomorrow, don't wait for me and start school at scheduled time." When such instances happen with interpretation of law, they convert into unnecessary litigations and undue hardship to assessee. To avoid such litigations, applicability of this section has been made more specific and restrictive. Now with effect from 1st April, 2018, benefit of this section has been available only to transfer of "long term capital asset being land or building or both". Hence deduction u/s. 54EC can be claimed only on transfer of land or building or both. Also to make available funds at the disposal of eligible bond issuing company, existing holding period of three years has been extended to five years. Hence with effect from 1st April, 2019, exemption under this section shall be available only in respect of investment in the bond made for a minimum period of 5 years.

Rationalization of provisions of section 115BBE:

Section 115BBE relates to tax treatment of unexplained items deemed as income referred to in section 68 (cash credits), 69 (unexplained investments), 69A (unexplained money etc), 69B (amount of investments etc. not fully disclosed in books of accounts), 69C (unexplained expenditure etc.) or section 69D (amount borrowed or repaid on hundi). Section 115BBE provides that income tax shall be calculated at 60% where total income of assessee includes following income:

(a) income referred to in section 68, 69, 69A, 69B, 69C or section 69D and reflected in the return of income furnished under section 139; or

(b) Which is determined by the Assessing Officer and includes any income referred to in section 68, 69, 69A, 69B, 69C or section 69D if such income is not covered under clause (a).

The income tax payable shall be aggregate of (1) the amount of income-tax calculated on the income referred to in clause (a) and (b) at the rate of sixty percent and (2) the amount of income tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).

From A.Y. 2017-18, an amendment was made to this section by providing that no deduction is available for any expenditure or allowance or set-off of any loss in computing income referred to in clause (a) above.

But such deduction was allowed for clause (b) mentioned above. Hence it was appear that if assessing officer has assessed income as per section 115BBE, assessee was entitled to claim deduction for any expenditure, allowance or set-off of any loss. This seems to be unintentional. Hence a retrospective amendment to that effect has been made to sub- section 115BBE to include clause (b) of section (1) to sub-section (2). Hence with effect from 1st April, 2017 no deduction for any expenditure or allowance or set-off of any loss shall be allowed to assessee in respect of returned income as well as assessed income under section 115BBE.

AMENDMENTS IN RELATION TO NOTIFIED INCOME COMPUTATION AND DISCLOSURE STANDARDS (ICDS) BY FINANCE BILL, 2018

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Central Government by power conferred under section 145(2) notify ten income computation and disclosure standards, by substituting accounting standards and made applicable from 1st April, 2017.

From its applicability, there is lot of dispute regarding computation of income arose due to contradiction with Act and judicial pronouncements. To overcome such issue, the government has issued circulars and FAQs for the matter.

In further step, the Government by Finance Bill, 2018 has made some amendment in Income Tax Act in certain sections which is in contradiction of ICDS vide**RETROSPECTIVE EFFECT FROM 1ST APRIL, 2017**i.e the date on which the ICDS was made effective.

The following amendments are summarized here with explanation;

Section 36 – Other deductions;

> *"Amended by inserting clause 36(1)(xviii), to provide that marked to market loss or other expected loss as computed in the manner provided in income computation and disclosure standards notified under sub section (2) of section 145, shall be allowed as deduction."*

Section 40A – Expenses or payments not deductible in certain circumstances;

> *"Amended by inserting clause, to provide that no deduction or allowance in respect of marked to market loss or other expected loss shall be allowed except as allowable under section 36(1)(xviii)."*

In combine reading of both section for newly added clause, it is apparent that deduction in respect of marked to market loss or other expected loss is allowed only if it is computed in the manner provided in income computation and disclosure standards notified under sub section (2) of section 145.
Now looking to the provision of ICDS, the scope of ICDS VI on "Effects of changes in foreign exchange rates" inter-alia includes treatment of foreign currency transactions in the nature of forward exchange contracts.

Further, ICDS defines forward exchange contract as an agreement to exchange different currencies at a forward rate, and includes a foreign currency option contract or another financial instrument of a similar nature. Further, CBDT vide circular no. 10/2017 dt 23.03.17 clarifies that ICDS VI provides guidance only on certain derivative contracts such as forward contract and other similar contracts and that derivatives not covered within the scope of ICDS VI, would be governed by the provisions of ICDS I.

Para 4 of ICDS I provides that Mark to Market (MTM) loss or an expected loss shall not be recognised unless the recognition of such loss is in accordance with the provisions of any other ICDS.

To sum up, it may be inferred that for derivative instruments other than forward contract such as futures, interest rate swaps, currency swaps, etc. no deduction in respect of marked to market loss or other expected loss is allowed, as it is not dealt by ICDS presently.

As per ICDS-III – Construction Contracts, foreseeable or expected loss cannot be recognized as contract cost till such losses are actually incurred and on Percentage of Completion Method basis.

New Section 43AA

> *"Subject to provision of section 43A, any gain or loss arising on account of effects of changes in foreign exchange rates in respect of specified foreign currency transactions shall be treated as income or loss, which shall be computed in the manner provided in ICDS as notified under sub-section (2) of section 145."*

Section 43A dealt with gain/loss arising due to revision of exchange rate while making payment of foreign loans taken for imported assets. According to this section, the same should be capitalized to Assets.

As per ICDS VI read with section 43A of the Income-tax Act, foreign exchange difference realized at the time of making foreign loan payment is required to be capitalized.

In earlier practice before introduction of ICDS, the gain/loss is recognized to Profit & Loss a/c. Hence with introduction of this provision, revision in tax calculation is needed by Deduct / Add MTM foreign exchange (Loss) / Gain, to the cost of the asset capitalized in books for computing actual cost and Add/Less foreign exchange (Loss) /Gain to the cost of assets on realisation at the time of repayment of Foreign Currency Loan.

While no changes are required for foreign exchange difference arising on account of loan taken in foreign currency to purchase asset locally, because as per ICDS-VI also it is required to be recognised in P/L account.

New Section 43CB

> *"Inserted to provide that profits arising from a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method except for certain service contracts, and that the contract revenue shall include retention money, and contract cost shall not be reduced by incidental interest, dividend and capital gains."*

By inserting this section, the government has tried to legitimize the provision of ICDS and by making it retrospective opens the door for re-calculation and assessment proceedings.

Section 145A – Method of accounting in certain cases;

"To provide that, for the purpose of determining the income chargeable under the head "Profits and gains of business or profession;

(a) The valuation of inventory shall be made at lower of actual cost or net realizable value computed in the manner provided in income computation and disclosure standards notified under (2) of section 145.

As per ICDS-II presently two techniques have been notified for measurement of cost is Standard Cost and Retail Method, while valuation of inventory can be done by either Specific identification of cost or First-in-First-out (FIFO) and Weighted Average depending upon nature of nature of business.

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

(c) Inventory being securities not listed, or listed but not quoted, on a recognised stock exchange, shall be valued at actual cost initially recognised in the manner provided in income computation and disclosure standards notified under (2) of section 145.

(d)Inventory being listed securities, shall be valued at lower of actual cost or net realisable value in the manner provided in income computation and disclosure standards notified under (2) of section 145 and for this purpose the comparison of actual cost and net realisable value shall be done category-wise.

Hence, the valuation criteria changed from scrip wise valuation to category-wise.Securities are classified under following categories (a) shares; (b) debt; (c) convertible securities; and (d) other securities.

New Section 145B

"Inserted to provide that,

a. *Interest received by an assessee on compensation or on enhanced compensation, shall be deemed to be the income of the year in which it is received.*

b. *The claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved.*

c. *Income referred to in sub-clause (xviii) of clause (24) of section 2 shall be deemed to be the income of the previous year in which it is received, if not charged to income tax for any earlier previous year.*

As per ICDS VII, Government Grants has to be recognized on receipt basis whether or not it is accrued as per the conditions attached thereto are satisfied or not, which in turn required to be return of Government Grant. This is in contradict of accrual principal. Thus, this clause is inserted to wipe off the ambiguity between ICDS and Act in earlier.

Clause (a) of section 145B was earlier mentioned under section 145A, while clause (b) and (c) is newly added with introduction of this new section.

With introduction of these amendments the government has tried to streamline ICDS with Act for the purpose of regularize the compliance with the notified ICDS by large number taxpayers so as to prevent any further inconvenience to them. But by making it retrospective, it has triggered lot of exercise for those who have not complied during assessment year 2017-18.

Overview of some key provisions in Finance bill 2018

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TAX ON LONG TERM CAPITAL GAIN AS PER FINANCE ACT,2018:

PRESENT REGIME:

Section 10(38):

Long term capital gain arising from transfer of long term capital assets being equity shares of a company or an unit of equity oriented fund or an unit of business trusts routed through recognized stock exchange on which Securities Transaction Tax is paid is exempt from income tax under clause (38) of Section 10 of Income Tax Act,1961.

AMENDMENT BY FINANCE ACT,2018(Clause 5 & 31 of Finance Act, 2018):

With a view to curb the tax erosion and abusive use of tax arbitrage opportunities created by erstwhile exemption government has proposed to withdraw the exemption under Section 10(38) and introduced a new **section 112A** which is as follows:

Long term capital gain arising from transfer of a long term capital asset being,

- An equity share in a company or,
- A unit of an equity oriented fund or,
- A unit of a business trust

Shall be taxed at **10% of such capital gains exceeding Rs.1 lakh**.

Conditions for concessional rate of 10% on Long term capital gain are as follows:

- **For Equity share of a company**:
  Securities Transaction Tax has been paid on BOTH i.e. ACQUISITION and TRANSFER of such capital asset.
- **For unit of Equity oriented fund or a unit of Business Trust:**
  Securities Transaction Tax has been paid on transfer of such capital asset.

Now, here the issue is whether this will be applicable to shares subscribed through Initial Public Offer, through Right Shares or Bonus Shares.
For this reference can be made to amendment made by Finance Act,2017, extract of which is as follows:
Following third proviso shall be inserted after the second proviso to clause (38) of section 10 by the Finance Act, 2017, w.e.f. 1-4-2018 :
Provided also that nothing contained in this clause shall apply to any income arising from the transfer of a long-term capital asset, being an equity share in a company, if the transaction of acquisition, ***other than the acquisition notified by the Central Government in this behalf****, of such equity share is entered into on or after the 1st day of October, 2004 and such transaction is not chargeable to securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004 (23*

of 2004).

Here there is specific wording and exception made to securities which are notified by the central government from the non applicability of STT paid at the time of acquisition for exemption under section 10(38).Also notification dated 5th June,2017 was issued describing the transactions on which though no STT has been paid but exemption u/s 10(38) will be allowable.

In that notification all the transactions were notified on which no STT has been paid under chapter VII of the Finance(No 2) Act,2004(23 of 2004),other than the specific transactions as mentioned in the notification.

Similar provision has been incorporated in the sub section (4) of the newly inserted section.

Further following provisions are proposed under section 112A:

- The cost of Acquisition in respect of the long term capital asset acquired by the assessee before 1st February,2018 shall be HIGHER of STEP I and STEP II:

Step I:

The fair market value of such asset* or

The full value of consideration received or accruing as a result of transfer of such capital asset

W.E.LOWER

Step II:

The actual cost of acquisition of such asset

"Fair Market Value" means-

(i) In a case where capital asset is listed on any recognized stock exchange,the highest price of the capital asset quoted on such exchange on the 31st Day of January,2018.

Provided that where there is no trading in such asset on such exchange on 31st day of January,2018,the highest price of such asset on such exchange on a date immediately preceding the 31st Day of January,2018 when such asset was traded on such exchange shall be the fair market value.

(ii) In a case where the capital asset is a unit and not listed on a recognized stock exchange the net asset value of such asset as on the 31st Day of January,2018.

For example if Mr.A has purchased 1000 equity shares of XYZ Co.@ Rs.100 on 25.07.2017.The highest price of the share as on 31.01.2018 was Rs.130.Now Mr A sells the 1000 equity shares @ Rs. 350 on 31.07.2018 then on this transaction Long term capital gain will be calculated as follows:

Step I:

FMV as on 31.01.2018:Rs.130

Full value of consideration on transfer of such capital asset/share: Rs.350

w.e. lower = Rs.130

Step II:

Actual cost of acquisition: Rs.100

Now cost of acquisition is higher of Step I and Step II and hence Rs.130 will be the cost of acquisition.

Sale price/share is Rs.350

Total capital gain = (350-130)* 1000 shares

= 2,20,000/-

Taxable capital gain = Rs.1, 20,000/-(amount exceeding Rs. 1,00,000/-)

-
- The Long term capital gains will be computed without giving effect to first and second proviso of section 48 i.e no benefit of indexation of cost of acquisition or cost of improvement or benefit of computation of capital gain in foreign currency in the case of a non resident can be taken.
- The benefit of deduction under chapter VIA shall not be allowed from such taxable long term capital gain as computed under section 112A.
- The benefit under section 87A will also not be available from such taxable long term capital gain as computed under section 112A.
- However threshold limit exemption under income tax slabs will be available to individuals and HUFs to reduce the above mentioned capital gain.

TAX DEDUCTION AT SOURCE AND MANNER OF PAYMENT IN RESPECT OF CERTAIL EXEMPT ENTITIES:

In present tax regime there is an exemption in respect of income of the entities referred to in 10(23C)(iv), 10(23C)(v), or 10(23C)(via) and section 11 of the act in a case where such income is applied or accumulated during the previous year for mentioned purposes in accordance with respective provisions.

Also there are no restrictions or checks on payments made by these entities in cash or compliance of provisions of deduction of tax at source under chapter XVII-B of the Act.

AMENDMENT BY FINANCE ACT,2018 (Clause 5 & 6 of Finance Act, 2018):

So to cope up with issues under clause 5 & 6 it is proposed to insert a new explanation to the section 11 and 10(23c) to provide that for the purpose of determining the application of money under respective sections, the provisions of 40(a)(ia),40A and 40A(3A) shall mutatis mutandis apply as they apply in computing the income chargeable under the head " Profits and Gains of business or profession".

- Hence form A.Y. 2019-2020 if cash payment is made exceeding Rs.10000 subject to section 40A and 40A(3A) by the above mentioned entities then whole expenditure would be disallowed.
- On the same ground if the above mentioned entities do not comply with provisions under chapter XVII-B then 30% of such expenditure would be disallowed.

Consider this on the following lines:-

1. Under 10(23C) and 11, application of income or accumulation of income are not included in the total income.
2. With this amendment, such exclusion will be there only if provisions of sections 40(a)(ia), 40A, and 40A(3A) are complied with.
3. In case provisions of these sections are not complied with, the disallowances as envisaged by the respective sections will follow. This may mean that the benefit of exclusion from total income will stand withdrawn to the extent of the amount of disallowance according to the respective sections.

CHANGES IN FINANCE ACT 2018 REGARDING TRANSACTIONS IN SHARES AND COMMODITY DERIVATIVES AND STAMP DUTY VALUATION AND AMENDMENTS IN 50C AND 43CA

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There have been several important changes in the direct tax legislature, but herein, we shall restrict the explanation to only the transactions in shares and commodity futures and regarding amendments in Section 50C and Section 43CA and I shall try to make it as comprehensive, lucid and exhaustive as I can.

TRANSACTIONS IN SHARES AND COMMODITY DERIVATIVES

⇨ **IN TRANSACTIONS OF DELIVERY BASED SHARES (REGARDING SPECULATIVE)**

- EARLIER: Generally, If a person was indulged in Share Trading by way of delivery of shares, either such purchase and sale of shares were inclined with the "Capital Gains" or "Profits and Gains from Business and Profession" under Non-Speculative Business. And if it was Long Term Capital Gains on Sale of such shares, it was exempt by virtue of Section 10(38)
- NOW: The situation remains the same, in relation to Business Income. However, under capital gains, the situation almost is the same in relation to nature of income, however, 10% Tax has been introduced on such long term gains, keeping the conditions of Section 10(38) as it is. So, if conditions of 10(38) earlier are not followed now, the benefit of 10% lesser tax is not available.

⇨ **IN TRANSACTIONS OF INTRADAY SHARE TRADING**

- EARLIER: Generally, If a person was indulged in Shares Intraday Business, It was treated as Speculative Business Income under the head of "Profits and Gains from Business and Profession".
- NOW: The situation still remains the same

⇨ **IN TRANSACTIONS OF SHARES FUTURES AND OPTIONS**

- EARLIER: Generally, on shares, Futures and options, Securities Transaction Tax is levied, and by virtue of law, all shares derivatives on which Securities Transaction Tax is levied, fall outside the purview of Speculative Transactions. They are normal Business Transactions.

- NOW: The situation still remains the same

⇨ **IN TRANSACTIONS OF COMMODITIES FUTURES AND "OPTIONS ON COMMODITY DERIVATIVES"**

- EARLIER: Commodities Transaction Tax is levied on all Non-Agricultural Commodity Futures. And, the transaction on which Commodities Transaction Tax is not levied was regarded as Speculative Business. So, on Agricultural Commodity derivatives, as Commodity Transaction Tax was not levied, it was falling under the definition of Speculative Business.
- NOW: They have amended the legislature to include Transactions related to trading in Derivatives of Agricultural Commodities, not liable to Commodity Transaction Tax also to be Non-Speculative Transactions and rates and value at which commodity transaction tax will be levied have also been specified mentioned hereunder. The only issue arising in my mind is regarding the Loss on Agricultural Commodity Future which was speculative earlier, and on bare reading, the allowability of such loss is tough.

  *[The **rates** of CTT as specified are:*
  *On **Sale of Commodity Derivatives, 0.01 %** to be paid by **seller***
  *On **Sale of Option of Commodity Derivative, 0.05%** to be paid by **seller***
  *On **Sale of Option of Commodity Derivative**, **Where Option is exercised, 0.0001 %** to be paid by the **purchaser***
  *They have also amended the legislature to include the **Value** of Taxable Commodity Transactions, being commodity derivatives chargeable to commodity transaction tax as,*
  - In case of a taxable commodity derivative transaction, Value shall be the price at which the derivative is traded.
  - In case of taxable commodity transaction regarding option on derivative, shall be the option premium, when option isn't exercised and shall be the settlement price when option is exercised.]
  (w.e.f 01-04-2019)

AMENDMENTS IN SECTION 50C AND SECTION 43CA

⇨ EARLIER: Under both the sections, 50C (For Capital Gains) and 43CA (Profits and Gains from Business and Profession), If Stamp Duty Value exceeded the Selling Price of an immovable Property, The Stamp Duty value was regarded as Sale Consideration (For 50C) and Stamp Duty Value was regarded as Selling Price under Business Income (For 43CA)

NOW: The situation almost remains the same, However they have inserted a proviso under both the sections that If the Stamp Duty Value doesn't exceed 105% of the Sale Consideration, then Sale Consideration taken would be duly considered and Stamp Duty value will not come into play. For eg, If Sale consideration of a property is Rs 1,00,000 and Stamp duty Value is less than or equal to Rs 1,05,000, then Sale Consideration would be allowed to be taken as Rs 1,00,000 only and not Rs 1,05,000.

⇨ EARLIER: There was a difference in 43CA and 50C in relation to an advance money taken before the date of agreement by different modes. In 50C, If even part advance was taken by **account payee cheque, account payee bank draft or electronic clearing system**, before or on the date of agreement, it was allowed to take Stamp Duty value on the date of agreement. Whereas, in 43CA, it was written that even part advance was taken by **any mode other than cash,** Stamp duty value on the date of agreement was allowed. One example is bearer cheque. If advance was received by bearer cheque before or at the time of agreement, Section 50C didn't allow that transaction to make the assessee take the Stamp Duty Value on the date of agreement. However, Section 43CA allowed the stamp duty value to be taken on the date of agreement as the mode is other than cash

NOW: They have amended Section 43CA and have made the provisions of taking date of agreement parallel to Section 50C and have substituted **"By any mode other than cash"** to **"By Account Payee Cheque or Account Payee Bank Draft or through use of an electronic clearing system through a Bank Account"**

Summary on Some Provisions Introduced in Budget

CA Pratik A. Vyas
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Finance Bill for Financial Year 2018-19 has been introduced by Honorable Finance Minister Shri Arun Jaitley on 01st February, 2018. There are some key provisions that were introduced in the Bill and some which we are going to see briefly here in this column. There are many views on the bill such Political Budget or Futuristic Budget. On the whole we can say it is a historical bill in a way as it has tried to put forth provisions with long term objectives. In this article we are going to focus on following provisions in a bit detail;

1. Entities to apply for PAN in certain cases
2. Dividend Distribution Tax on Payouts to unit holders in Equity Oriented Fund
3. Key Change in Presumptive Income Under Section 44AE for Goods Carriage

By Going through the provisions we can see that there are some key amendments which are likely to impact strategic decision making. Let us see through the above provisions in details.

1. **Entities to Apply for PAN in Certain Cases Clause 42 of Finance Bill 2018**

   The Above Provision is with Respect to Section 139A of Income Tax Act, 1961 which specifically enlists every person specified therein and who has not obtained or has not been allotted PAN shall apply to Assessing Officer for Allotment of PAN. There have been proposals regarding use of PAN as Unique Identity Number (UEN) for non individual entities and finally in the bill provision has been introduced regarding the same.

   Section 139A has been amended with effect of Clause 42 of Finance Bill 2018 which enlists that a **person not being an Individual** who enters into Financial Transactions for a sum Equal to **Exceeding than** Indian Rupees Two Lakhs Fifty Thousand shall apply for Allotment of PAN to the Assessing Officer.
   Further, it has been enlisted in order to link the transactions with Natural Persons; it has been proposed that any person competent to Act on behalf on such Non Individual entity enlisted as above shall also be required to apply for PAN. Person Competent shall include Managing Director, Director, Partner,

and Trustee, Author, Founder, Karta, Chief Executive Officer, Principal Officer or Any such office bearer.

The Above listed provision will take **effect from 1st April, 2018.**

2. Dividend Distribution Tax on Dividends to Unit Holders under Equity Oriented Fund Clause 40,41 and 214

Above listed provisions in Clause 40, 41 and 214 in Finance Bill 2018 are in respect of Section 115R which at present enlists for Additional Tax on Income Distributed by Specified Company or Debt Oriented Mutual Fund. Dividend paid by Equity Oriented Mutual Funds was not covered under the provisions of Sections 115R till Finance Bill 2018.

In the Finance Bill 2018 it has been proposed to impose Additional Income Tax at the rate of 10% on Income distributed by Equity Oriented Fund to its Unit Holders. Such Provision has been introduced to bring about parity between Dividend Oriented Schemes and Growth Oriented Schemes.

The Mutual Funds which have at least 65% of their assets in Equities can be termed as Equity Oriented Mutual Fund. Such Funds were not covered under the provisions of DDT and were paying Dividend freely without DDT to its Unit Holders. The amended provision intends to bring 10% DDT on Dividends Distributed by Such Equity Oriented Funds to Unit Holders. However Such Dividend shall still be Tax Free in the hands of Unit Holders yet it will have its impact on In hand receivables of the Unit Holders. Hence we can see this as a move to provide better opportunities to Growth Oriented Schemes.

The above provision will take **effect from 1st April, 2018.**

3. Key Change in Presumptive Income under section 44AE for Goods Carriage

Section 44AE enlists criteria for Presumptive Income under section 44AE in the case of Goods Carriage. The said sections enlists that where a person who does not own more than 10 goods carriages shall have Income deemed to be an amount equal to Indian Rupees 7500/- per month or part thereof a month of each goods carriage or amount actually earned by the assessee whichever is higher. The above said criterion is applicable to both Large Capacity Goods Carriages (having

Capacity of Higher than 12 MT) and Small Capacity Goods Carriages (having Capacity of Lesser than 12 MT).

Government here in view to bring a change is of view that profit margins of Large Capacity Goods Carriages are higher than Small Capacity Goods Carriages and the tax consequences on both are similar which not in favorable to the principle of equity. Considering the said facts it has been proposed to amend the section 44AE of the Act to **provide that Large Capacity Goods Carriages (heavy vehicles) the income would be deemed to be equal to Indian Rupees 1000/- per ton of gross vehicle weight or unladen weight as the case may be**, per month or part of thereof for each goods carriage or the amount actually earned whichever is higher. Small Capacity Goods Carriages shall continue to be governed by provision in place at present, only Large Capacity Goods Carriages shall comply with the amended the provisions.

The listed Amendment will take **effect from 1st April, 2019 i.e. from Assessment Year 2019-20 and subsequent Assessment Years.**

Summary on Some Provisions Introduced in Budget

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Incentive for employment generation(Section 80JJAA):

Current Provision:

Section 80JJAA provides a deduction of 30% in addition to normal deduction of 100% in respect of emoluments paid to eligible new employees who have been employed for a minimum period of 150 days in the previous year in which employment made for apparel manufacturing industry to whom provisions of section 44AB applies and 240 days for other industry to whom provisions of section 44AB applies. This deduction is available for the period of 3 assessment years including the assessment year relevant to previous year in which employment made.

Amendment to Section 80JJAA:

In order to encourage creation of new employment it is proposed to give benefit of section 80JJAA to footwear and leather industry of this 30% additional deduction of emoluments paid to eligible new employees who have been employed for a minimum period of 150 days in the previous year in which employment made.

Further it is also proposed to rationalize this deduction of 30% by allowing the benefit for a new employee who is employed for less than minimum period of 150 days or 240 days as may be applicable during first previous year of employment but continues to remain employed for the minimum period in subsequent year.

This amendment will take effect from 1st April,2019 and will, accordingly, apply in relation to the assessment years 2019-2020 and subsequent assessment years.

New scheme for scrutiny assessment(Section 143(3)):

Current Provision:

Section 143(3) deals with scrutiny assessment.In which where a return has been furnished u/s 139 or in response to notice u/s 142(1),the Assessing Officer or prescribed income tax authority if considers it necessary to ensure that there is no understated income or excessive loss claimed or under payment of tax after serving notice requiring assessee to attend office of AO or produce required evidence and after hearing such evidence as assessee may produce and such other evidence as AO may require on specified points and after considering all relevant material which AO has gathered,by order in writing make an assessment of total income or loss of assessee and determine sum payable by assessee or

refund due to assessee on the basis of such assessment.

Amendments to Section 143(3):

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

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

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

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

This amendments will take effect from 1st April,2018.

- **Rationalisation of prima-facie adjustments during processing of return of income(Section 143(1):**

Current Provision:

Section 143(1) provides for processing of return of income made u/s 139,or in response to notice u/s 142(1).Clause (a) of the said sub-section provides that at the time of processing of return,the total income or loss shall be computed after making the adjustments specified in sub-clause (i) to (vi) thereof. Sub-clause (vi)of the said clause provides for adjustment in respect of addition of income appearing in Form 26AS or Form 16A or Form 16A which has not been included in computing the total income in the return after giving intimation to assessee in writing or in electronic mode for proposed adjustments and asking response from assessee within 30 days of issue of such intimation.

Amendment to Section 143(1):

With a view to restrict the scope of adjustments, it is proposed to insert a new proviso to the said clause to provide that no adjustment under sub-clause (vi) of the said clause shall be made in respect of any return furnished on or after the assessment year commencing on the first day of April,2018.

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

TDS on 7.75% GOI Savings (Taxable) Bonds,2018:

Current Provision:

Government of India introduced 8% Savings (Taxable) Bonds,2003 in Year 2003.Under the existing law,the interest received by investor is taxable.Further the payer is also liable to deduct tax at source u/s 193 of the Act, at the time of payment or credit of such interest whichever is earlier of such interest in excess of Rs.10000 to a resident.

Amendment:

Government has now decided to discontinue the existing 8% Savings (Taxable) Bonds,2003 with a new 7.75.However the taxability of interest and provisions of deduction of tax at source u/s 193 on interest received in this new 7.75% GOI Savings (Taxable) Bonds,2018 remains the same as it was in case of 8% Savings (Taxable) Bonds,2003.Section 193 amended accordingly.

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

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